SAN PEDRO BAY PORTS

CLEAN AIR ACTION PLAN

March 20, 2017

Clerk of the Board
Air Resources Board
1001 I Street
Sacramento, California 95814

Re: Comments on the South Coast Air Quality Management District's *Final 2016 Air Quality Management Plan*

Dear Clerk:

For more than a decade, the ports of Long Beach and Los Angeles ("Ports") have worked closely with the Air Resources Board (ARB) and other air quality regulatory agencies, local community members, environmental groups, our customers, and the broader goods movement industry to implement our Clean Air Action Plan (CAAP), which has contributed to significant emissions reductions in the South Coast Air Basin. While the 2016 Air Quality Management Plan (AQMP) includes a collaborative approach to develop strategies to reduce emissions from mobile sources, it also includes an indirect source rule provision which could pave the way for conflict between our agencies. The Ports strongly oppose the imposition of any indirect source rule, and respectfully request that ARB support collaborative approaches to identify and implement future clean air initiatives that would also include voluntary strategies to achieve full SIP credit for emission reductions, such as the Environmental Protection Agency's Voluntary Mobile Source Emission Reduction Program (VMEP) or other similar strategies.

Over the last 10 years, the Ports have worked together with ARB staff not only on the CAAP but also on the development and implementation of source-specific regulations that sustain early actions taken by the Ports to reduce emissions from equipment and vehicles used in port-related operations. We are proud to say this collaboration has contributed to significant emissions reductions in the South Coast Air Basin, with more than 84% reduction in diesel particulate matter emissions, 97% reduction in sulfur oxides and 50% reduction in nitrogen oxides from port-related sources between 2005 and 2015, during a period when the Ports experienced a combined seven percent growth in container cargo volume. We recognize there is more work to be done and we look forward to ongoing collaboration to continue these successes into the future.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

The Ports are currently in the process of developing a 2017 CAAP update that will identify the path to get to even cleaner operations by port-related sources, ultimately including zero emissions where it is feasible. These strategies are in alignment with the goals of the state's Sustainable Freight Action Plan. It is our intent that the process to develop and implement new CAAP strategies will continue to follow the collaborative approach that has been so successful to this point. We believe that this process and the strategies proposed in the 2017 CAAP update will serve as a local implementation mechanism to provide further support to ARB to expeditiously meet its emission reduction commitments.

For these reasons, the Ports wholeheartedly support a collaborative approach to identify and implement future clean air initiatives. However, while the 2016 AQMP includes a collaborative approach to develop strategies to reduce emissions from mobile sources, it also states that "if progress is not made in identifying specific actions" to meet unidentified emissions reductions targets, the AQMD may elect to move forward with rulemaking on an indirect source rule.

The Ports have consistently provided comments to the air quality agencies stating our serious concerns about an indirect source rule. These concerns have also been documented in our comment letters on the 2016 AQMP (attached), and we continue to believe an indirect source rule as proposed to be applied to the Ports is counterproductive, unnecessary and outside of the AQMD's authority to impose. We therefore feel the need to reiterate our strong opposition to the proposed indirect source rule option included in the 2016 AQMP. We believe conflict over rulemaking would be a waste of time and money, disrupt over ten years of productive partnership, and most importantly would delay our shared goal of implementing new initiatives to help clean the air in the South Coast Air Basin. Instead, as stated above, we encourage ARB to support continued collaboration with the Ports as the most effective way to continue to reduce emissions associated with port operations, and as part of this process consider voluntary strategies to achieve full SIP credit for emission reductions, such as the Environmental Protection Agency's Voluntary Mobile Source Emission Reduction Program (VMEP) or other strategies that use a similar approach for SIP credit.

The Ports appreciate this opportunity to provide additional comments on the 2016 AQMP. We look forward to continuing to work with ARB to advance our shared goals for clean air in the South Coast region.

Sincerely,

Duane Kenagy
Interim Chief Executive
Port of Long Beach

Gene Seroka
Executive Director
Port of Los Angeles

Attachments

cc: POLB Harbor Commission
POLA Harbor Commission

Wayne Nastri, Executive Officer, South Coast Air Quality Management District
Richard Corey, Executive Officer, California Air Resources Board
Alexis Strauss, Acting Regional Administrator, Region 9

SAN PEDRO BAY PORTS

CLEAN AIR ACTION PLAN

February 27, 2017

Dr. William Burke
Chairman
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Comments on the South Coast Air Quality Management District's *Draft Final 2016 Air Quality Management Plan* (December 2016)

Dear Dr. Burke:

Over the past ten years, the ports of Long Beach and Los Angeles ("Ports") have worked closely with the South Coast Air Quality Management District and other air quality regulatory agencies, local community members, environmental groups, our customers, and the goods movement industry to implement our Clean Air Action Plan (CAAP). We are proud to say this collaboration has contributed to significant emissions reductions in the South Coast Air Basin, with more than 84% reduction in diesel particulate matter emissions, 97% reduction in sulfur oxides and 50% reduction in nitrogen oxides from port-related sources between 2005 and 2015, during a period when the Ports experienced a combined seven percent growth in container cargo volume. We recognize there is more work to be done and we look forward to ongoing collaboration to continue these successes in the future.

The Ports are currently in the process of developing a 2017 CAAP update that will identify the path to get to even cleaner operations by port-related sources, ultimately including zero emissions where it is feasible. It is our intent that the process to develop and implement new CAAP strategies will continue to follow the collaborative approach that has been so successful to this point. We believe that this process and the strategies proposed in the 2017 CAAP update will provide further support to the District to expeditiously meet its goals.

For these reasons, the Ports wholeheartedly support a collaborative approach to identify and implement future clean air initiatives as expressed by the District staff. However, while the 2016 AQMP proposes a collaborative approach to develop strategies to reduce emissions from mobile

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

sources, it also states that "if progress is not made in identifying specific actions," the District may elect to move forward with rulemaking on an indirect source rule. Further, a proposed amendment introduced by Board Member Sheila Kuehl at the February 3rd Governing Board meeting, would require immediate commencement of indirect source rulemaking.

As you know, the Ports have consistently provided comments to the District on the indirect source rule, including through our comment letters on the 2016 AQMP, and we continue to believe an indirect source rule is counterproductive, unnecessary and outside of the AQMD's authority to impose. We therefore feel the need to reiterate our strong opposition to the proposed indirect source rule, including the recently introduced amendment by Board Member Kuehl. We believe conflict between our organizations would be a waste of time and money, disrupt over ten years of productive partnership, and most importantly would delay our shared goal of implementing new initiatives to help clean the air in the South Coast Air Basin. Instead, we encourage the District Governing Board to support continued collaboration with the Ports as the most effective way to continue to reduce emissions associated with port operations.

The Ports appreciate this opportunity to provide additional comments on the 2016 AQMP. We look forward to continuing to work with the District on advancing our shared goals for clean air in the South Coast region.

Sincerely,

Duane Kenagy
Interim Chief Executive
Port of Long Beach

Gene Seroka
Executive Director
Port of Los Angeles

cc: POLB Harbor Commission
POLA Harbor Commission
SCAQMD Governing Board Members
Wayne Nastri, Executive Officer, South Coast Air Quality Management District
Richard Corey, Executive Officer, California Air Resources Board
Alexis Strauss, Acting Regional Administrator, Region 9

SAN PEDRO BAY PORTS

CLEAN AIR ACTION PLAN

January 17, 2017

Mr. Wayne Nastri
Executive Officer
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Re: Comments on the Draft Financial Incentives Funding Plan for the 2016 AQMP

Dear Mr. Nastri,

The Ports of Long Beach and Los Angeles (the Ports) appreciate the opportunity to comment on the Draft Financial Incentives Funding Action Plan (Funding Plan) for the 2016 Air Quality Management Plan (AQMP). The Ports recognize the effort that has gone into the development of the Funding Plan and commends the South Coast Air Quality Management District's (SCAQMD) efforts to pursue long-term, sustainable levels of incentive funding in order to help the region meet federal air quality standards.

Because the Draft AQMP hinges on the use of incentive programs to accelerate turnover to cleaner vehicles and equipment, the Funding Plan is a critical document. If the SCAQMD is not successful in securing the roughly $1 billion a year in public subsidies, the region risks continued non-attainment with federal air quality standards, which could lead to draconian regulations on many industries, including the Ports and our goods movement partners. For this reason, the Ports strongly support a comprehensive, strategic, and realistic funding plan so the region can succeed in achieving federal air quality standards through an incentives-based approach.

Additionally, the Ports have voluntarily developed the highly successful San Pedro Bay Ports Clean Air Action Plan (CAAP) and have a proven track record of developing and implementing appropriate and effective emission reduction strategies based on cooperative and voluntary measures, often independent of and in advance of regulatory requirements.

In November 2016, the Ports released the 2017 CAAP Update Draft Discussion Document (CAAP 2017 Update), which identifies programs that will serve as a roadmap for continued emission reduction activities in collaboration with industry stakeholders, local communities, environmental groups, and regulatory agencies for the next 20 years. Many of these proposed

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strategies call for fees and/or incentives on the same operators that may be affected by SCAQMD's Funding Plan. Thus, it is critical for the Ports and SCAQMD to work together to avoid duplication of efforts or competing programs that undermine the region's push for cleaner air.

To that end, the Ports respectfully submit the following comments regarding the Funding Plan that should be addressed prior to finalization and adoption of the 2016 AQMP by SCAQMD. Our comments fall broadly into three categories: (1) General Principles, (2) Specific Funding Strategies, and (3) Requests for Clarification.

General Principles

1. *The Ports support the guiding principles and request an additional principle that encourages early adoption of clean technologies.*

   The Ports support the guiding principles outlined on pages I-1 through I-3. In particular, the Ports are pleased to see an emphasis on prioritizing benefits to environmental justice communities, building a strong collaborative coalition of stakeholders, minimizing economic impacts, and avoiding the diversion of existing funding programs for air quality purposes as many of these programs provide critical transportation infrastructure dollars to our Ports.

   Also, the Ports request that SCAQMD add another guiding principle – that any new fees exempt operators that are utilizing clean vehicles or equipment. A blanket fee on operators regardless of the vehicle's or equipment's environmental characteristics could discourage early adoption of cleaner technologies. As the Ports know from our highly successful Clean Trucks Program, the imposition of fees greatly impacts buying decisions, and – when properly differentiated to reward investments in clean technology – can spur fleet turnover on its own. Thus, the Ports strongly suggest that any new fee program exclude clean vehicles and equipment so as not to penalize early adopters.

2. *The Ports believe that the funding estimates identified by SCAQMD as necessary to meet the attainment standards underestimate the true funding need.*

   The SCAQMD estimates the need for $1 billion in incentives each year to achieve attainment of the federal air quality standards. The Ports are concerned that this figure represents only the <u>public</u> subsidies that could be awarded through current incentive programs. The figure does not include the sizeable private investment that will be needed to achieve this turnover, and as such, the Ports believe the SCAQMD's Funding Plan underestimates the need. To put this into context, the Ports suggest that the Funding Plan present an estimate of the overall cost needed to replace emission sources in order to comply with federal air quality standards, together with an estimate of the amount of government funding that is expected to be available to support this effort. In addition, since many government funding programs, such as Proposition 1B and the Diesel Emissions Reduction Act (DERA), require private operators to come up with significant matching funds, the Ports recommend that SCAQMD work with private industry to develop strategies to address the necessary cost share needed to apply for the grants.

3. *The Funding Plan does not address costs beyond equipment replacement.*

   The Ports want to emphasize the importance of addressing all requirements and potential costs associated with the use of zero-emission vehicles and equipment. Zero-emission technologies entail more than just equipment upgrades or replacement. Electric technologies, for example, require infrastructure such as charging stations and associated electrical supply. The costs of such infrastructure should be factored into the Funding Plan, and the Ports urge SCAQMD to develop strategies to fund these sizeable investments in electrical and fueling infrastructure.

4. *There should be a nexus between the funding strategies and emission sources.*

   The Funding Plan should identify which emission sources would benefit from the proposed funding strategies. Furthermore, the Ports strongly encourage SCAQMD to establish a nexus between the funding sources and the beneficiaries of such incentives. For example, fees assessed on port drayage trucks should be spent on cleaner trucks here in the port complex, not on other emission sources with limited connection to the ports. The Ports also stress that DERA or similar funds received by the Ports would be used at the Ports' discretion, per the grant requirements, and for sources with a direct nexus to Port activities. Lastly, the Ports wish to remind SCAQMD that revenues generated as a result of tidelands commerce may be subject to the Public Trust Doctrine, which requires that such funds be spent on activities directly related to the tidelands zone. The Ports encourage SCAQMD to engage the State Lands Commission as a stakeholder in this funding strategy.

5. *The Ports would like to participate in the Financial Incentives Funding Working Group.*

   The Ports would be pleased to participate in the Financial Incentives Funding Working Group cited on page VI-2 and would like to be a part of any national coalition designed to direct more funding to the South Coast region in support of cleaner technologies.

Specific Funding Strategies

1. *The Ports are concerned that the "cargo container fee", as discussed in the Funding Plan, poses significant legal implications, does not reflect current market conditions, and serves to confuse the discussion by referencing a variety of funding sources.*

   The Ports acknowledge that the potential funding sources discussed in the Funding Plan are intended to generate discussion; however, the Ports believe the treatment of cargo container fees (pages IV-4 through IV-6) require significant clarification and correction. By referencing the Ports' container fee, the Funding Plan links a port-collected fee to the SCAQMD's funding strategy. The Ports want to remind SCAQMD that the Ports cannot collect fees on SCAQMD's behalf. This poses significant legal jurisdiction issues including:

   - The Federal Maritime Commission (FMC) has authority to review fees on shippers imposed by Ports and has, in the past, expressed concerns about environmental fees.

Fees imposed by other entities could potentially violate the Commissions' charter and usurp their powers.

- The cities' charters place sole authority for fees on the Boards of Harbor Commissioners at each Port to operate the Ports, including setting fees by tariff-consistent with Tidelands Trust grant by the state to each city.
- Another governmental entity, such as an air district cannot direct fees collected by the ports to be used for its purposes.
- To the extent the Ports would be expected to collect such a fee, SCAQMD may run afoul of the Public Trust Doctrine governing tidelands uses.
- The San Pedro Bay Ports are also concerned about potential cargo diversion marketing campaigns (particularly by other West Coast ports) due to the economic inequities that fees create.

It is important to understand the scope and rationale behind the Ports' container fee. In 2008, the Ports set a $35 per TEU fee as part of the Clean Truck Program for one purpose: to discourage dirty trucks. It was not intended as an ongoing revenue generator. It began in 2008 and was designed to sunset in 2012, when all trucks were required to meet the cleaner environmental standard. In fact, most of the revenue generated by the fee came in its first two years, when trucks were still being purchased to meet cleaner truck standard. In the last two years, much less money was collected because nearly all trucks demonstrated compliance with the Clean Truck Program requirement.

While the Ports have proposed a cargo fee on older trucks as part of the Draft CAAP 2017 Update as a way to accelerate the transition to near-zero and zero-emissions trucks, the actual fee amount has not yet been established and will only be established pursuant to a future economic study and with consideration of existing market conditions. At present, the port and goods movement sector is experiencing a high-level of economic uncertainty due to unprecedented changes to the maritime shipping industry. Therefore, the funding estimate calculated in the Funding Plan is premature.

Lastly, the Funding Plan includes reference to various pieces of proposed state and federal legislation. Two of the referenced pieces of legislation – HR 2355 (Richardson) and HR 1308 (Lowenthal) – are not container fees, but taxes on the value of imports and the cost of ground transportation, respectively. Container fees imposed at the state level (as proposed in SB 760, SB 927, and SB 974) may have significant competitive implications for the Ports; while the a national container fee (as proposed under HR 7002) may raise fairness, equity, and nexus issues.

2. *Depending upon the circumstances, the Ports would be open to discussing a federal NOx emissions use fee or excise tax at the federal level.*

   In general, the Ports support action at the federal level that establish uniform standards and avoid inequities for our local operators. As with the cargo fees, the Ports recommend that this excise tax be evaluated to consider how it would affect the market place, and also it should exclude clean vehicles and clean equipment.

3. *The Ports support SCAQMD's desire to maximize funding given to other agencies so long as these agencies maintain control of the funding.*

The Funding Plan describes programs that would be implemented primarily by SCAQMD; however, the Funding Plan also mentions securing additional funding for programs that would be implemented by other public and private agencies. The Funding Plan provides the example of the Ports' receipt of DERA funding for cleaner equipment. The Ports commend the SCAQMD's commitment to work collaboratively to help secure funding for such projects. The Ports also stress that DERA or similar funds received by the Ports must be used at the Ports' discretion, per DERA requirements, and for sources with a direct nexus to Port activities.

Requests for Clarification

4. *The Funding Plan does not support the statement on jobs creation.*

   The Funding Plan states in the Executive Summary and in Section V that "near-zero and zero emission vehicles and equipment needed to be built for sale in the near-term will help create jobs needed to design, construct, and assemble such vehicles and equipment at all regional levels." However, the Funding Plan neither explains nor supports this statement. The Funding Plan should clarify whether these would be new jobs to the region or replacement jobs. The Funding Plan should also provide supporting information or refer the reader to the economic analysis where this information is explained and supported.

5. *The Funding Plan needs to clarify the commercial availability of near-zero and zero-emission technologies.*

   Section II of the Funding Plan (page II-3) states that "The level of incentive funding per vehicle or equipment shown in Table II-2 are based on the assumption that near-zero and zero-emission technologies are commercially available and over the longer term, less funding will be needed on a per vehicle or equipment basis. In the near-term, higher incentive funding levels will be needed to incentivize early adopters of near-zero and zero emission technologies and provide a signal to engine manufacturers, truck body manufacturers, and advanced technology."

   There are three issues with this statement that the Funding Plan should revise and clarify:

   - The assumption that near-zero and zero-emission technologies are commercially available should be supported. In fact, the next paragraph states that "Currently, there are no engines certified to the 0.02 g/bhp-hr NOx level."
   - If the goal of the Funding Plan is to pursue incentive funding in order to accelerate turnover of older vehicles and equipment to new, near-zero and zero emission vehicles and equipment, then the required incentive funding should reflect that many near-zero and zero-emission technologies are new and may only be commercially available for small scale operations. In other words, funding requirements and strategies should reflect technology development, market penetration incentives, and avoidance of stranded assets as operators plan for transition to this equipment. The Ports believe this is, in fact, the intent of the Funding Plan strategies and that Section II should be clarified accordingly.

- Table II-2 does not support the statement that "over the longer term, less funding will be needed on a per vehicle or equipment basis." Table II-2 actually shows that necessary funding per equipment would increase from 2023 to 2031 for medium- and heavy-duty vehicles, and for construction/industrial equipment. Table II-2 further shows that funding per equipment would neither increase nor decrease for other sources. The Action Plan should be modified to address this inconsistency.

6. *SCAQMD should clarify the incentives proposed for ocean-going vessels.*

   Tables II-1 and II-2 identify incentives for ocean-going vessels, presumably to attract Tier 3 ships. The Ports, however, are not aware of any existing incentive programs – other than those managed by the Ports – that would provide such incentives. Further, SCAQMD should explain the rationale behind setting the incentive amount at $50,000 per call. The Ports remain committed to achieving our clean air goals to help improve regional air quality. The Ports strongly believe that the voluntary and cooperative CAAP process remains the most appropriate forum for the Ports and the air regulatory agencies to discuss policy, technical, and funding issues related to reducing emissions from port-related sources.

The Ports commend SCAQMD's leadership in identifying strategic approaches to incentive funding for our region. We strongly support the concept of an ongoing Financial Incentives Working Group, in which we hope to be included. Finally, the Ports appreciate this opportunity to provide comments on the Draft Financial Incentives Funding Action Plan for the 2016 Air Quality Management Plan.

We look forward to continuing to work with SCAQMD on advancing our shared goals for clean air in the South Coast region.

Sincerely,

Heather A. Tomley
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

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Mr. Wayne Nastri
Acting Executive Officer
South Coast Air Quality Management District
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Electronic Submittal Via:
https://onbase-pub.aqmd.gov/sAppNet/UnityForm.aspx?key=UFSessionIDKey

Re: Port of Long Beach Comments on the Preliminary Draft Socioeconomic Report (SER) for the 2016 Air Quality Management Plan

Dear Mr. Nastri:

The Port of Long Beach (Port) appreciates the opportunity to participate in the South Coast Air Quality Management District's (SCAQMD's) 2016 Air Quality Management Plan Advisory Committee, and to comment on the Preliminary Draft Socioeconomic Report (SER) for the 2016 Air Quality Management Plan released on August 31, 2016. The Port recognizes the amount of effort that has gone into development of the SER, and acknowledges SCAQMD's efforts to release a plan that seeks to balance "traditional" regulatory measures with innovative incentive-based measures. Accordingly, the Port offers the following comments on the SER.

General Comments

First, the Port requests more time to provide comments on the SER once all chapters have been released. As of the writing of this letter, only Chapters 1-3 and 6 are available and some key analyses are not presented in the August 2016 preliminary draft. Specifically, the following key analyses and related chapters have not been completed and/or presented:

- Employment impact
- Impacts on economic groups and communities
- Impacts on competitiveness
- Small business impact analysis (placeholder on p. 28)
- Cost-effectiveness using discounted and levelized cash flow (DCF and LCF, respectively) for non-AQMD control measures (which account for the greatest reductions in the AQMP)
- Concentration-Response (C-R) sensitivity analyses (p. 41) for premature deaths avoided

Additionally, key papers cited in the SER should be noticed and placed on SCAQMD's website, particularly those related to "Willingness-to-Pay" and "Value of a Statistical Life" (p. 39, footnote 44; see details in minor comments in Attachment 1).

Second, the draft AQMP has control measures that could directly affect the port, including on-road heavy duty truck measures (e.g., proposed federal and state low NO_X standards and further deployment of near-zero/zero emission trucks), freight trains (e.g., more stringent federal standards and further deployment of cleaner locomotives), and ocean-going vessels (e.g., Tier 4 vessel standards, further development and incentives for cleaner OGVs). These measures have, to some extent, costs and emission reductions assigned to them in the SER. Other important port-related measures include MOB-01, MOB-02, and MOB-03, which are "facility-based" mobile source measures for ports, rail yards, and warehouse distribution, respectively. These last measures are not quantified in the preliminary draft SER. The Port requests a full socioeconomic analysis of all control measures, and that the socioeconomic analysis be completed and an adequate opportunity for public comment be provided prior to action on the Draft 2016 AQMP.

The Port appreciates the efforts that AQMD is making to improve the Socioeconomic Analysis and strongly encourages continuing efforts to allow the future assessment of AQMP impacts on small industry sectors and small business, which are key parts of the supply chain. Also, the Port appreciates the discussion throughout the SER on the pivotal part that the goods movement sector plays in the regional economy.

Technical Comments

Chapter 1

The latest scientific evidence relating ozone and $PM_{2.5}$ exposure to public health (p. 4-5) must include information sent to the Scientific Technical Modeling Peer Review Advisory Group (STMPR AG) and comments on Appendix I (Health Effects), in particular, California-specific results of peer-reviewed papers such as those presented by (and/or referenced by) Professor Stanley Young (adjunct professor of statistics at North Carolina State University, the University of Waterloo, and the University of British Columbia, as well as adjunct Professor of biostatistics at Georgia Southern University) that indicate a much lower concentration-response function for $PM_{2.5}$ and mortality.

The Port strongly recommends that median pay rather than average pay also be used in the discussion of the economic outlook for potentially affected industries (pp. 6-11) because using the average would skew salaries in certain sectors with high part-time work forces. We also note that transportation/warehouse jobs pay two to three times more money than restaurant and other lowerskilled jobs (pp. 8-9).

Chapter 2

The SER indicates that there will be no analysis of the unquantified measures that appear in the Draft AQMP, among which is MOB-1, the facility-based measure aimed at ports. This means there will be no comprehensive review of the impacts associated with implementation of a facility-based cap on port emissions, which could have devastating socioeconomic effects. The Port requests a full socioeconomic analysis of all control measures, including those without quantified emission reductions.

Moreover, the Port has concerns about SCAQMD analyzing only the incremental costs associated with the AQMP strategies. Incremental cost analysis is appropriate only if the private industry can upgrade

to cleaner equipment as part of its normal replacement schedule; however, the private industry may be forced to accelerate fleet turnover to meet the aggressive attainment deadlines. This situation could be exacerbated by adoption of measures such as MOB-1, although there is no way of knowing because the MOB-1 timeline is not presented in the Draft 2016 AQMP or SER. An accelerated replacement schedule could result in significant private investments in equipment before the end of the equipment's useful life, and using only incremental costs as the basis for analysis could far underestimate the true cost to society.

Additionally, the SER assumes that federal, state, or local governments will be responsible for financing the entire incentive amount (p. 18). SCAQMD has identified the need for nearly $16 billion in incentives to meet the region's attainment goals. Only a small portion of this necessary investment has actually been identified. Indeed, SCAQMD is developing a comprehensive strategy to seek more incentive dollars, but there is no guarantee those dollars will materialize. Because the fleet turnover will be expected to happen with or without government subsidies, the Port strongly urges SCAQMD to analyze the socioeconomic impacts of the Draft 2016 AQMP assuming no additional incentive dollars are available.

Furthermore, it appears the SER does not analyze the socioeconomic impacts associated with the public tax increases necessary to support more incentive funding. The Draft 2016 AQMP clearly states AQMD's intent to seek local and state ballot measures, which would include taxpayer funding (p. 4-68). If tax increases are assumed, the SER must analyze the impact of higher public taxes. If tax increases are not assumed as a strategy to secure more incentive funding, the SCAQMD must identify the funding source and analyze those impacts in the SER.

Also, the Port has concerns related to CARB's Mobile Source SIP assumptions for costs related to truck/vessel replacements (as reflected in Appendix 2-A) and will continue to work with CARB and AQMD to improve the estimates of these costs and scope of needed incentives for accelerated fleet turnover.

The Port reserves the right to make technical comments on the small business analysis and LCF/DCF cost-effectiveness analyses (particularly for the CARB mobile source control measures) when these analyses are finally released.

Chapter 3

The Port requests clarification as to which initiative funding scenario is modeled for Figure 3-1. The reductions for light-duty vehicles (LDV) and heavy-duty vehicles (HDV) in the different incentive funding scenarios do not appear to match the emission reductions for those source categories in draft AQMP Appendix V, Attachment 3. Reductions for the more realistic incentive strategies (focus on larger vehicles/equipment) should reflect relatively small reductions in LDV emissions (and larger reductions for HDVs) than the CARB SIP strategy; this could significantly affect the spatial distribution of $PM_{2.5}$ reductions.

As noted (p. 41), sensitivity analyses of alternative concentration-response (C-R) functions, such as those brought up by Professor Young in our comments on Chapter 1 above, should be conducted, as well as an analysis of health benefits above the health standards only, which would be different from

the similar sensitivity test using the "lowest measured level (LML)" of $PM_{2.5}$ already conducted by SCAQMD staff (see Appendix 3-B, p. 112).

The overwhelming majority of premature deaths avoided, which is the main driver of the monetized public health benefits, are reductions of $PM_{2.5}$ occurring in areas that already achieve the $PM_{2.5}$ standards.

We strongly recommend that a complementary analysis of the health effects estimates (Table 3-3) and monetized annual health benefits (Table 3-4) be calculated using the federal standards as cutoffs; this analysis is crucial to understanding the costs and benefits of attaining healthful concentrations (i.e., bringing concentrations to the health standard) compared to the costs and benefits of reducing exposure of healthful air pollutant concentrations.

The Port requests to see the cited 2016 papers related to "Willingness-to-Pay (WTP)" and "Value of a Statistical Life (VSL)" to understand the South Coast per capita WTP used in the analysis.

The Port believes the sensitivity analysis described in Table 3-5 should be revised. The annual real income growth rate was taken as 1.9% per year from 2019 through 2031 (per Appendix 3-B, p. 109), but this rate, which appears to be for California not just the South Coast, may be nonsensical for the vast majority of South Coast workers (particularly those in the Inland Empire). The Port requests that this growth rate be revised based on local forecasts.

The use of income elasticity other than $\varepsilon_I = 0$ should be justified given that the vast majority of South Coast workers do not have discretionary income and that any increase in income growth rate would be preferentially used for necessities and reducing debt.

The Preliminary Discussion of the Health Effects of Unemployment recognizes the need for such an assessment but does not account for several comments proffered by STMPR AG members and others. The insufficiency of the analysis and need for revisions is strikingly clear when a key conclusion is that "as headline unemployment rates went up, public health metrics improve" (p.46). It was strongly suggested that non-headline employment rates be used, such as the Bureau of Labor Statistics (BLS) U6, which includes discouraged workers, all other marginally attached workers, and those workers who are part-time purely for economic reasons, as well as the official BLS U3 unemployed (unemployed and actively searched for work in the past 4 weeks). We strongly suggest that this issue continue to be studied and refined by SCAQMD staff during the development of the incentive funding program and implementation of the 2016 AQMP.

Chapter 6

The Port understands that SCAQMD staff has conducted an Environmental Justice (EJ) working group as a sub-group to the STMPR AG for the purposes of implementing the 2014 Abt Report recommendations for a new analysis—evaluating the distribution of health risks and comparing the differences, if any, between EJ and non-EJ communities of implementing the 2016 AQMP versus not implementing the 2016 AQMP. Tables 6-4 through Tables 6-6 indicate "that, on average, EJ communities are projected to experience greater health benefits as a result of Plan implementation" and that "EJ communities are projected to experience a[sic] larger per capita health benefits."

Please update this analysis by modeling an incentives strategy that preferentially incentivizes cleaner HDVs over cleaner LDVs, which should provide greater emission reductions along goods movement corridors. Also, the Port requests an analysis of how tax increases necessary to support incentive funding could adversely affect EJ communities, as many tax mechanisms disproportionately impact low-income residents.

The Port appreciates the opportunity to comment on the Preliminary Draft SER and reserves the right to offer more extensive and fuller comments once all sections are available.

Sincerely,

Heather A. Tomley
Director of Environmental Planning
Port of Long Beach

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Port of LONG BEACH
The Green Port

November 14, 2016

Michael Krause
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Planning, Rule Development, and Area Sources
South Coast Air Quality Management District
21865 Copley Drive
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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]

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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

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.

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.

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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.

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.

II. THE DPEIR FAILS TO COMPLY WITH CEQA.

A. <u>The DPEIR Does Not Provide A Full And Accurate Description Of The Project</u>.

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]

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] 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.)

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.

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.

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.

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.

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.

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.

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;

[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]

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]

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.

[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.)

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.

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]

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.

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.)

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*.)

[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]

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.

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

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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."].)

[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.

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.

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*.)

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.

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."

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.)

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

[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.

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.

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.

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.

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.

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.

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.

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.

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

[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.)

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.)

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.

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.

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."].)

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. 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.

[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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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

[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.

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.

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.

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.

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.

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.

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.

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*.)

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."

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.

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.

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.

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.

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.

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.

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.

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.

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.

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*.)

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.

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.

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].)

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.)

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.)

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.)

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.)

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.)

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

[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.)

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.

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.

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.)

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.

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.

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.

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.

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.

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.

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.

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."

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.

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*.)

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.

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.

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*.)

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.

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.

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.

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.

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.

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.

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. 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,

[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.

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.

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).)

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.

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.

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.

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.

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.

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.

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.

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.

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.)

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]

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.

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.)

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.)

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.)

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

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.

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.

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.

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

[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.

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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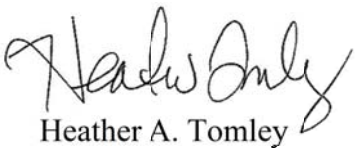
Sincerely,



Heather A. Tomley
Director of Environmental Planning
Port of Long Beach

cc: Wayne Nastri, Acting Executive Officer, South Coast Air Quality Management District
Barbara Baird, Chief Deputy Counsel, South Coast Air Quality Management District
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Rick Cameron, Managing Director, Port of Long Beach

SAN PEDRO BAY PORTS

CLEAN AIR ACTION PLAN

November 7, 2016

Mr. Wayne Nastri
Acting Executive Officer
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Electronic Submittal Via:
https://onbase-pub.agmd.gov/sAppNet/UnityForm.aspx?key=UFSessionIDKey

SUBJECT: COMMENTS BY PORTS OF LONG BEACH AND LOS ANGELES ON *REVISED DRAFT* OF SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT'S 2016 AIR QUALITY MANAGEMENT PLAN

Dear Mr. Nastri:

The Port of Long Beach and Port of Los Angeles (Ports) appreciate the opportunity to participate in the South Coast Air Quality Management District's (District or SCAQMD) 2016 Air Quality Management Plan Advisory Committee, and to comment on the *District's Revised Draft 2016 Air Quality Management Plan* (either "Revised Draft" or "AQMP") released to the public on October 7, 2016.

The Ports previously submitted comments on the June 2016 draft of the 2016 AQMP on August 19, 2016, which are attached hereto. The Revised Draft, however, does not acknowledge or respond to the Ports' previous comments and objections to the proposed AQMP (and in some cases appears to further aggravate issues to which objections have been raised). The Ports therefore respectfully request that their comments be deemed to be incorporated in the Ports' comments on the current Revised Draft.

The Ports also note that their ability to provide comments on all aspects of the proposed new 2016 AQMP is precluded by the lack of complete information in the Revised Draft AQMP;

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e.g., proposed control measure MOB-01 is incomplete and vague, the socio-economic analysis and incentive funding plans have not yet been completed and the critical Appendices V and VI have not yet been finalized or released to the public. Accordingly, the Ports request that the District extend the comment period on the 2016 AQMP to allow the public an adequate opportunity to review and further comment on all Appendices and other critical components of the AQMP (e.g., the socioeconomic analysis, Incentive Funding Action Plan, etc.) well before the AQMP is to submitted for consideration by the District Board.

OVERVIEW OF ISSUES

The cities and businesses that move goods in and out of the Ports are vital to the regional, state, and national economy. The international cargo handled by the Ports accounts for over 1.1 million jobs in California and 3.3 million jobs in the United States; however, competition for much of this cargo is intensifying particularly with other international ports (Panama Canal, Canada, Mexico). The Ports are global leaders in the highly successful Clean Air Action Plan (CAAP) and other environmental programs, working in partnership with the port-related industry to reduce emissions from goods movement sources (ships, trains, trucks, cargo handling equipment, harbor craft). The CAAP, however, is not a blue print for the AQMP. The control measures in the Revised AQMP holds the Ports and related facilities responsible for shortfalls in voluntary CAAP measures, and will deter other ports and industries from any type of voluntary action.

The Ports have been innovative and effective leaders in the efforts of public agencies to improve air quality despite the fact that the Ports do not have regulatory authority or control over the emissions sources. Working collaboratively and voluntarily with the EPA, CARB, and the District, the Ports' efforts have achieved unprecedented success in helping the maritime goods movement industry obtain substantial reductions in emissions. The Ports continue to remain firm in our position that the District's attempt to regulate the Ports as "indirect sources" is unnecessary and counterproductive to the successful collaborative approach, and should not be included in the SIP. The District is inappropriately proposing to impose enforcement actions on the Ports for emissions generated by emissions sources that the Ports do not own, operate, or control. The District should, respectfully, focus on funding efforts as opposed to regulation that would detour from the overall objective of improving air quality.

As the Ports have noted in these and prior comments, the District lacks authority to adopt any control measure or "backstop" rule that would go into effect if the emission targets for NOx, SOx, and $PM_{2.5}$ from port-related sources are not met. Nor are such measures necessary because the Ports' recent emissions inventories show that the ports have exceeded the projected emission reduction targets identified in the CAAP. For example, diesel particulate matter (DPM) emissions have been reduced by 85% over the 9 year period between 2005 and 2014. In addition, emissions of nitrogen oxides (NOx) are down by 51%, and sulfur oxides (SOx) emissions have been reduced by 97%.

The Ports continually develop and support emission reduction strategies and programs that will result in cleaner air for the local communities and the region. These efforts have been entered into voluntarily, working cooperatively with the operators in the port area and the air quality regulatory agencies working aggressively with the goods movement industry to reduce

air quality impacts from the equipment they operate. The potential for additional regulation by the District on the Ports brings significant uncertainty that will have broad negative effects on the goods movement industry and the economy as a whole, and will jeopardize the voluntary, collaborative partnership between the cities, the industry, and all of the air agencies that has led to the significant emissions reductions achieved to date.

The current Revised Draft 2016 AQMP raises many concerns, and grounds for objection, in addition to the numerous concerns with the 2016 AQMP previously raised by the Ports. Those comments and objections are detailed in the attachment(s) to this letter. However, we take this opportunity to briefly note, and highlight for the District's consideration and response, the following points raised by the Revised Draft AQMP:

1. <u>The District Lacks Jurisdiction To Adopt Or Implement Several Of The Control Measures Proposed By The 2016 AQMP</u>.

The Ports, and others, have repeatedly pointed out the limitations imposed by federal and state law on the District's authority to impose regulations on emission sources that are not within its jurisdiction. Air pollution control districts only have the authority "to adopt and enforce rules and regulations" as to "emission sources under their jurisdiction. (Health & Safety Code, § 40001, sub. (a).)" (*Friends of Oceano Dunes, Inc. v. San Luis Obispo County Air Pollution Control District* (2015) 235 Cal.App.4th 957, 963, as modified on denial of reh'g (Apr. 23, 2015).

The revisions to the current draft AQMP have not only ignored those objections, but have actually proposed to move the District into even more flagrant excesses of the District's limited regulatory jurisdiction by repeatedly calling not just for incentive-based "control measures" but threatening the creation of new rule-making and "regulations" that would be imposed on emission sources beyond the District's existing legal jurisdiction. (E.g., Revised Draft AQMP, p. 4-3: "These strategies include *aggressive new regulations and* development of incentive funding ... " [newly revised text in italics]; *id.* at p. 4-22 & 23, also, Appendix IV-A-6 through 9.)

The District's authority to regulate is limited to its jurisdictional boundaries. The District was created by the California Legislature "in those portions of the Counties of Los Angeles, Orange, Riverside, and San Bernardino included within the area of the South Coast Air Basin, as described in Section 60104 of Title 17 of the California Administrative Code, as now or hereafter amended." (Cal. Health & Safety Code, § 40410.) The District's boundaries do not include the ocean area adjacent to the South Coast Air Basin. Thus, the District lacks authority to adopt and enforce measures in the AQMP because it does not have jurisdiction to regulate emission sources outside of its geographical boundaries as would be required if the CAAP programs become involuntary and mandatory.

The Cities' management of the Ports is largely subject to their roles as trustees of tidelands under the legislative acts that granted tidelands to the Cities under a public trust. As tidelands trustees, the Cities have been granted the discretion over how to best fulfill the express trust purposes. The District cannot adopt policies, control measures, or regulations that might attempt to compel the Ports to violate these tidelands trust obligations.

2. <u>The 2016 AQMP Would Exacerbate The Legal Conflicts Resulting From The District's Attempts To Regulate Mobile Sources Disguised As "indirect source control measures and regulations</u>."

The District has no authority to regulate mobile sources, or to arbitrarily group source categories or invoke geographic boundaries (e.g., the Ports) and declare those areas or groups of sources, by mischaracterizing them as an "indirect source." The Ports and the activities conducted there are not "indirect sources" of emissions within the meaning of the federal Clean Air Act (42 U.S.C. § 7410(a)(5)(C).) An "indirect source review program" is "the facility-by-facility review of indirect sources of air pollution, including such measures as are necessary to assure, or assist in assuring, that a new or modified indirect source will not attract mobile sources of air pollution" that would contribute to the exceedance of the NAAQS. (42 U.S.C., § 741O(a)(5)(D)(i).) "Direct emissions sources or facilities at, within, or associated with, any indirect source shall not be deemed indirect sources for the purpose" of an indirect source review program. (42 U.S.C. § 7410(a)(5)(C).) Indirect source control measures cannot be required as a condition of SIP approval by EPA or CARB. (42 U.S.C., § 7410(a)(5)(A)(ii); Health & Safety Code, § 40468.) There are no provisions in the Clean Air Act for including "backstop" measures. Only those provisions necessary to meet the requirements of the Clean Air Act can be included in the SIP. (Health & Safety Code, § 39602.) Backstop measures are not necessary to meet the 24-hour PM2.5 NAAQS requirements of Clean Air Act, and there is no emission reduction target in the attainment strategy for AQMP which the proposed measures purport to implement. (See e.g., 40 C.F.R. §§ 51.112-51.114.)

Furthermore, air pollution control districts such as SCAQMD are <u>not</u> authorized to regulate or impose a permit system on "indirect sources" of emissions. (*Friends of Oceano Dunes, Inc. v. San Luis Obispo County Air Pollution Control District*, *supra,* 235 Cal.App.4th at 964.)

The AQMP control measures appear to be yet another misguided effort to use the Clean Air Act's indirect source provisions as a guise to impermissibly regulate mobile sources. The District cannot regulate emissions from on- and off-road mobile sources operating at, and to and from, the Ports, which includes ocean-going vessels and locomotives. The District cannot regulate emissions from the tailpipes of on-road and off-road mobile sources, or enact mobile source regulations. The District also cannot regulate off-site emissions (emissions occurring during transit "to and from" the purported "site"). Congress did not intend or authorize the use of the indirect source provisions of the Clean Air Act as a way to circumvent mobile source preemption.

3. <u>The 2016 AQMP Would Violate The Dormant Commerce Clause</u>.

The control measures proposed in the Revised Draft AQMP would have serious negative effects on international and interstate commerce, navigation, maritime as well as land-based commerce, are will add unique and 'discriminatory' burdens which will have the effect of impeding California's and the Ports' economic competitiveness. Accordingly, these measures will likely undergo close scrutiny under the federal constitution's "dormant commerce clause" and "rights and immunities" protections.

"The high court's dormant commerce clause jurisprudence "'significantly limits the ability of States and localities to regulate or otherwise burden the flow of interstate commerce.'" (*McBurney, supra*, 569 U.S. at p. ___ [133 S.Ct. at p. 1719] ....) . Generally speaking, the Commerce Clause protects against inconsistent legislation arising from the projection of one state regulatory regime into the jurisdiction of another State. [Citation.]" (*Healy, supra*, at pp. 336-337.)" (*Alamo Recycling, LLC v. Anheuser Busch InBev Worldwide, Inc.* (2015) 239 Cal. App.4th 983, 996.)

4. <u>The AQMP Would Unconstitutionally Impose Unfunded State Mandates</u>.

The California Supreme Court recently ruled in *State Department of Finance v. Commission of State Mandates (County of Los Angeles)* (2016) 220 Cal.App.4th 740, that certain requirements of the 2001 Los Angeles County Municipal Separate Storm Sewer System (MS4) Permit could be considered unfunded State mandates that would violate the constitutional prohibition against such unfunded mandates (Cal.Const. art. X III B, sec. 6(C), unless adequate state reimbursement was also provided. The same rationale would apply to any unfunded requirements that are imposed upon the Ports under the 2016 AQMP. As framed, the requirements being imposed on the Ports are the creation of the District. The requirements are not "federal mandates" that might be exempted from this constitutional mandate.

5. <u>The 2016 AQMP Would Unnecessarily And Erroneously Include Measures Based On Inapplicable NAAQS</u>.

The District asserts that it is required to have a new attainment demonstration for three NAAQS: (1) the 8-hour ozone NAAQS established in 2008, 75 ppb (2008 8-hour Ozone); (2) the annual PM2.5 NAAQS established in 2012, 12 µg/m3 (2012 annual PM2.5); and, (3) the 24-hour PM2.5 NAAQS established in 2006, 35 µg/m3 (2006 24-hour PM2.5). This is not entirely accurate. EPA has yet to decide whether to revoke the 2008 8-hour ozone NAAQS or to impose appropriate anti-backsliding requirements. EPA will provide guidance on these issues in a subsequent rulemaking. It is premature to address the 2008 8-hour Ozone in the 2016 AQMP until EPA finalizes its rule. The 2016 AQMP demonstrates that the 2006 24-hour PM2.5 standard will be met by the 2019 attainment year with no additional reductions needed beyond already adopted measures. Therefore, the 2016 AQMP does not need to include new control measures to meet this standard. The 2016 AQMP states that the 2012 annual PM2.5 standard cannot be met by 2021, which is the attainment year for the current "moderate" designation. Therefore, the District will be requesting EPA re-designate the Basin as a "serious" nonattainment area, which will provide four more years to attain the annual PM2.5 standard by 2025. The Ports agree this request should be included in the draft 2016 AQMP. The District also concedes it is voluntarily submitting attainment demonstrations for the following NAAQS: (1) 1997 8-hour Ozone NAAQS, 80 ppb and (2) the 1979 1-hour Ozone NAAQS, 120 ppb. The District has prematurely chosen to provide for the alternative NOx/VOC reductions instead of the reasonable further progress demonstration under 42 U.S.C., § 7511a(c)(2) without conducting an economic analysis of these options. (40 C.F.R., § 51.1100(o)(12).) This economic analysis should be conducted and public input sought on this issue before the draft 2016 AQMP addresses the 1997 8-hour Ozone NAAQS and 1979 1-hour Ozone NAAQS.

6. <u>The District should not conduct its CEQA review or require public comment on the AQMP before all aspects of the Plan have been completed</u>.

The Ports note the difficulty, if not the inefficiencies, posed by the District's continuing practice of releasing the proposed new 2016 AQMP in piecemeal and incomplete fashion. It appears that the current Revised Draft AQMP is itself not yet complete, and anticipates additional substantive content. The necessary socio-economic analysis is also not yet complete.

As noted in the Ports comments on the Draft EIR, it is procedurally and legally inappropriate for the District to be conducting its CEQA review before the details of the proposed AQMP have been completed. The Ports and the public should not be required to review and comment on important environmental documents before the full shape of the proposed project (2016 AQMP) is better known and disclosed. (See, e.g., *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1450: "A <u>complete</u> project description is necessary [for CEQA] to assure that <u>all</u> of a project's environmental impacts are considered."].)

Additional comments and objections are further detailed in the attachment(s) to this letter.

<u>CONCLUSION</u>

The Ports strongly encourage the District to strongly consider the issues identified herein and in its prior comments on the Draft 2016 AQMP, and to make the above-requested changes to the Draft 2016 AQMP, including but not limited to the following:

- eliminate control measure MOB-01 as it is unnecessary and exceeds the District's authority;
- clarify that control measure EGM-01 and any subsequent rulemaking related to indirect source review does not apply to the Ports; and
- revise control measure MOB-14 to clarify that it does not preclude the maritime goods movement industry's ability to secure grant funding for early actions.

The Ports also urge the District to complete the appropriate Incentive Funding Action Plan, as well as the appropriate socioeconomic impact analysis, and to provide the Ports and other members of the public with an adequate opportunity for comprehensive review and comment on those documents along with the (revised) Draft 2016 AQMP *prior to* submitting the Plan to the Board for consideration.

The Ports remain committed to achieving our clean air goals identified in the CAAP to help improve regional air quality. We strongly believe that the voluntary and cooperative CAAP process established by the Ports remains the most appropriate forum for the Ports and the air regulatory agencies to discuss technical and policy issues related to reducing emissions from port-related sources.

The Ports appreciate this opportunity to provide comments on the proposed 2016 AQMP. We look forward to continuing to work with the District on advancing our shared goals for clean air in the South Coast region.

Sincerely,

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Port of Long Beach

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ATTACHMENT
DETAILED COMMENTS ON THE REVISED DRAFT 2016 AQMP

1. The District Lacks Jurisdiction Over Ocean-Going Vessels.

The District's authority to regulate is limited to its jurisdictional boundaries. The District was created by the California Legislature "in those portions of the Counties of Los Angeles, Orange, Riverside, and San Bernardino included within the area of the South Coast Air Basin, as described in Section 60104 of Title 17 of the California Administrative Code, as now or hereafter amended." (Cal. Health & Safety Code, § 40410.)

The South Coast Air Basin includes the portion of Los Angeles County "[b]eginning at the Los Angeles-San Bernardino County boundary and running west along the township line common to T.3 N and T.2 N, San Bernardino Base and Meridian; then north along the range line common to R.8 W and R.9 W; then west along the township line common to T.4 N and T.3 N; then north along the range line common to R.12 W and R.13 W to the southeast corner of Section 12, T.5 N, R.13 W; then west along the south boundaries of Sections 12, 11, 10, 9, 8, 7, T.5 N, R.13 W to the boundary of the Angeles National Forest which is collinear with the range line common to R.13 W and R.14 W; then north and west along the Angeles National Forest boundary to the point of intersection with the township line common to T.7 N and T.6 N (point is at the northwest corner of Section 4 in T.6 N, R.14 W); then west along the township line common to T.7 N and T.6 N; then north along the range line common to R.15 W and R.16 W to the southeast corner of Section 13, T.7 N, R.16 W; then along the south boundaries of Sections 13, 14, 15, 16, 17, 18, T.7 N, R.16 W; then north along the range line common to R.16 W and R.17 W to the north boundary of the Angeles National Forest (collinear with township line common to T.8 N and T.7 N); then west and north along the Angeles National Forest boundary to the point of intersection with the south boundary of the Rancho La Liebre Land Grant; then west and north along this land grant boundary to the Los Angeles-Kern County boundary. (17 Cal. Code Regs., § 60104(d).)

The District's boundaries do not include the ocean area adjacent to the South Coast Air Basin. Thus, the District lacks authority to adopt and enforce measures in the AQMP (e.g., MOB-01, MOB-02, MOB-03, and EGM-01) because it does not have jurisdiction to regulate emission sources outside of its geographical boundaries as would be required if the CAAP programs become involuntary and mandatory. The Ocean Going Vessel (OGV) Vessel Speed Reduction program would require OGVs to slow vessel speed to 12 knots during their approach and departure from the ports at a distance of either 20 nm or 40 nm from Point Fermin, which is outside the District's jurisdictional boundary. The OGV Low Sulfur Fuel for Auxiliary Engines

and Auxiliary Boilers program would require OGVs to switch to low sulfur distillate fuel within 40 nm from Point Fermin, which is outside of the District's jurisdictional boundary. The OGV Low Sulfur Fuel for Main Engines program would require OGVs to switch to low sulfur distillate fuel within 40 nm from Point Fermin, which is outside of the District's jurisdictional boundary.

The OGV Vessel Speed Reduction program is the only CAAP measure that is not already part of regulations adopted by other agencies. Yet, the Ports also lack jurisdiction to mandate any OGV actions of the ship owners if CAAP voluntary incentive targets are not met. OGVs are regulated by the federal government implementing its treaty obligations under MARPOL, administered by the IMO, specifically MARPOL Annex VI Regulations for the Prevention of Air Pollution from Ships (Annex VI), which sets global limits for SOx, NOx, and PM emissions from OGVs. Congress vested MARPOL and Annex VI authority with the Secretary of the U.S. Coast Guard (Secretary) and the Administrator (Administrator) of the EPA. (33 U.S.C., § 1903.) The Secretary has exclusive MARPOL administrative and enforcement authority. (33 U.S.C., § 1903(a).) The Administrator has Annex VI administrative, regulatory, investigative, and enforcement authority. (33 U.S.C., §§ 1901 et seq.)

The District's ability to adopt, enforce, and require the Ports to comply with any measure mandating the Vessel Speed Reduction program is precluded and preempted by Annex VI and federal regulations. (40 CFR § 1043.10.) The federal government has historically been the principal regulator of emissions from U.S. and foreign-flagged ships (or OGVs) under Annex VI. (40 C.F.R., § 94; 40 C.F.R., § 1043, 33 C.F.R. § 151).

The Ports are located within the "North American Environmental Control Area" (ECA) established under Annex VI. The North American ECA's limits are much stricter than Annex VI's global requirements. It would be unlawful for the District to require the Ports to collect and report NOx, SOx, and PM emissions information from OGVs subject to Annex VI requirements in the North American ECA. To collect this information, the Ports must impose a reporting requirement for OGVs coming and going from the Ports– effectively regulating them under Annex VI. The Ports lack authority to regulate U.S. and foreign-flagged ships in this manner. (33 U.S.C., §§ 1903, 1907.) Federal recordkeeping and reporting requirements for fuel and marine engines are expressly allowed (40 C.F.R., § 1043.70(b)-(c)), but no other recordkeeping and reporting requirements are authorized by statute or regulation. Any reporting requirement by the District is thus preempted by both Annex VI's record-keeping requirements for NOx engine standards and sulfur content in fuel (Regulations 13 and 14, Annex VI; incorporated by reference at 40 C.F.R., § 1043.100) and federal regulatory record-keeping and reporting requirements (40 C.F.R., § 1043.70).

The District's attempt to mandate certain voluntary CAAP programs would also be preempted on enforcement grounds. Congress expressly reserved enforcement authority of Annex VI regulations to the U.S. Coast Guard and EPA. (33 U.S.C., §§ 1903, 1907.) Enforcement inspections will be conducted only by the U.S. Coast Guard and, when referred by the Secretary, investigated by the Administrator. (33 U.S.C., §§ 1907(f)(1)-(2).) The U.S. Coast Guard and EPA are authorized to impose civil penalties for violations of MARPOL (including Annex VI) and 33 U.S.C., §§ 1901 et seq., § 1908(b)(1). The Ports and the District are not so authorized and cannot inspect, penalize, or undertake enforcement actions against OGVs under Annex VI and 33 U.S.C., §§ 1901 et seq.

The District's Executive Officer also lacks authority to decide that any emission target is not met. To satisfy the Emission Reduction Plan requirement, the Ports may have to impose more stringent emissions requirements on U.S. and foreign-flagged vessels than required by Annex VI. The Ports and the District both lack this authority.

2. The District Lacks Authority To Regulate Port Activities As "Indirect Sources."

The District has no authority to regulate mobile sources, and may not do so by mischaracterizing them as "indirect sources." (*Friends of Oceano Dunes, Inc. v. San Luis Obispo County Air Pollution Control District*, *supra*, 235 Cal.App.4th at 964 [air pollution control districts are not authorized to regulate or impose a permit system on "indirect sources" of emissions].) The Clean Air Act defines an indirect source as "a facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution." (42 U.S.C., § 7410(a)(5)(C).) The Ports are not within this definition. "Direct emissions sources or facilities at, within, or associated with, any indirect source shall not be deemed indirect sources for the purpose" of an indirect source review program. (42 U.S.C., § 7410(a)(5)(C).)

Indirect source control measures cannot be required as a condition of SIP approval by EPA or CARB. (42 U.S.C., § 7410(a)(5)(A)(ii); Health & Safety Code, § 40468.) There are no provisions in the Clean Air Act for including "backstop" measures. Only those provisions necessary to meet the requirements of the Clean Air Act can be included in the SIP. (Health & Safety Code, § 39602.) Backstop measures are not necessary to meet the 24-hour PM2.5 NAAQS requirements of Clean Air Act, and there is no emission reduction target in the attainment strategy for AQMP which the proposed measures purport to implement. (See e.g., 40 C.F.R., §§ 51.112-51.114.)

The District advances the novel theory that it can designate a geographic area, such as a city or a Port, to be an "indirect source." Further, the geographic line drawn by the District does not respect political boundaries and lumps portions of the cities together as a single indirect source. The District believes it can draw any geographic boundary it desires and declare that area to be an "indirect source" without regard for whether the landowner operates or controls mobile sources that pass through the area. Under the District's theory, a local air district could designate as a stationary source, and an indirect source, any city or county that has natural features that attract ships or cars or other mobile sources, even if the city or county does not own, operate or control those sources. Is a city with oil fields a stationary source and indirect source because it attracts refineries, trucks and trains to transport the petroleum products? If Riverside County has increased the numbers of warehouses and distribution centers within its borders, is the governmental agency or county geographical area now a stationary source and indirect source because such distribution centers within their borders attract trucks and trains?

The AQMP control measures would use the Clean Air Act's indirect source provisions as a guise to impermissibly regulate mobile sources. The District cannot regulate emissions from on- and off-road mobile sources operating at, and to and from, the Ports, which includes ocean-going vessels and locomotives. The District cannot regulate emissions from the tailpipes of on-road and off-road mobile sources, or enact mobile source regulations. The District also cannot regulate off-site emissions (emissions occurring during transit "to and from" the purported

"site"). Congress did not intend or authorize the use of the indirect source provisions of the Clean Air Act as a way to circumvent mobile source preemption.

The AQMP measures also fail as an indirect source review program because the Ports are not a "new or modified indirect emissions source." The Clean Air Act defines modification as "any physical change in, or change in the method of operation, of a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of an air pollutant not previously emitted." (42 U.S.C., § 7411(a)(4).) The criteria pollutants targeted are among those that have been identified and reduced for the duration of the CAAP. Because the Ports do not qualify as either a new or modified source, any attempt to regulate them as such exceeds the the District's authority.

The AQMP control measures also violate the nexus requirement for indirect source review programs. The purpose of an indirect source review program is to ensure that mobile source emissions do not "cause or contribute to air pollution concentrations exceeding any national primary ambient air quality standard for a mobile-source related air pollutant." (42 U.S.C., § 7410(a)(5)(D)(i).) The District's own PM2.5 monitors show that emissions from mobile sources operating in and around the Ports are not causing or contributing to the South Coast Air Basin's nonattainment of the PM2.5 NAAQS. The District has in the past attributed nonattainment to a single monitor – Mira Loma (Van Buren) – which is located in Riverside, approximately 60 miles northeast of the Ports. This monitor has purportedly failed to attain the PM2.5 NAAQS because of drought conditions in Southern California, even though all of the South Coast Air Basin has experienced the drought and none of SCAQMD's other monitors have failed to demonstrate attainment with the PM2.5 NAAQS, including the two State and Local Air Monitoring Stations nearest to the Ports – in North and South Long Beach. The Long Beach monitors have consistently demonstrated attainment for at least the last four years and are projected to continue attaining the standard through 2019. The data thus suggest a nexus between nonattainment and a source located near the Mira Loma (Van Buren) monitor – not the Ports.

MOB-01 also fails as an indirect source review program because the businesses within the geographic and source designated areas are not a "new or modified indirect emissions source." (42 U.S.C., § 7410(A)(5).) A source is new if it adds to the air basin's existing emissions baseline. (*National Ass'n of Home Builders v. San Joaquin Valley Unified Air Pollution Control Dist.* (9th Cir. 2010) 627 F.3d 730, 731-32.) The Clean Air Act defines modification as "any physical change in, or change in the method of operation, of a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of an air pollutant not previously emitted." (42 U.S.C., § 7411(a)(4).)

3. "Mobile Sources" Are Beyond The Scope Of District Authority.

The revised AQMP continues and aggravates previously-objected-to proposals seeking to create and assert novel District regulatory authority over emission sources attributed to the Ports, which are mischaracterized as "facility-based mobile sources" – without identifying any legal authority for those proposed actions. (Revised Draft, pp. 4-27 through 4-33.) While the District acknowledges that it only has "limited authority to regulate mobile sources" (Revised Draft, p. ES-7), the AQMP nonetheless persists in attempting to do just that in MOB-01. The current revisions make explicit the threat to take such unauthorized actions "in the form of a regulation

by the SCAQMD ... " in order to characterize the Ports' voluntary, but effective, CAAP measures as "*enforceable commitments*." (Revised Draft, p. 4.28.) The Revised Draft continues to describe MOB-01 as a control measure to achieve and enforce emission reductions at commercial marine ports and continues to erroneously characterize it as a "facility-based mobile source control measure." The proposed MOB-01 is yet another attempt by the District (like prior IND-01 and PR 4001) to justify the imposition of illusory regulatory authority over the Ports as "indirect sources" of emissions.

By characterizing the Ports as a "facility-based mobile source," it appears that the District intends to use MOB-01 as not just an "indirect source" control measure, but as a prelude to "immediate" rule-making and enactment of regulations that might be enforced against the independent Ports. The Ports continue to oppose any form of a "rule" that would shift the District's oversight obligations on the Ports. They strongly oppose the District creating or relying on any concept of a "facility-based mobile source measure," whether described as an "Indirect Source Rule," "Backstop Rule" or the "freight hub," "facility cap," and/or "freight facility performance targets" approach.

The Ports are not a "Facility" as required by the Clean Air Act's indirect source provisions. Together, the Port of Los Angeles and Port of Long Beach encompass 10,700 acres, miles of waterfront and features 50 passenger and cargo terminals, including dry and liquid bulk, container, breakbulk, automobile and warehouse facilities, and a cruise passenger complexes. While some U.S. ports are "operating ports" that own and operate their terminals and equipment and hire longshoremen to handle cargo, the Ports are "non-operating" or "landlord" ports that hold the tidelands property in trust for the State of California and lease it out to port tenants that operate the terminals. Each port tenant is treated as an individual stationary source facility by the District and their activities are separately regulated and permitted by the District.

"Mobile sources" of emissions are beyond the limited regulatory authority conferred by the Legislature on local or regional districts (e.g., Health & Safety Code § 40001(a); *also see*, 76 Ops. Cal. Atty. Gen. 11 (1993); 75 Ops. Cal. Atty. Gen. 256 (1992); 74 Ops. Cal. Atty. Gen. 196 (1991); 73 Ops. Cal. Atty. Gen. 229, 234-35 (1990)). Congress vested the federal government with the authority to set nationwide emissions standards for mobile sources, including non-road mobile engines and vehicles. (42 U.S.C. §§ 7521, 7547.) Congress expressly and impliedly preempted states from setting standards or other requirements relating to the control of emissions for mobile sources. (42 U.S.C., § 7543, (a) & (e).) The maritime goods movement emission sources are within the express and implied preemption. The Clean Air Act allows California to seek authorization from EPA to adopt "standards and other requirements related to the control of emissions" for some, but not all, mobile sources covered by MOB-01. (42 U.S.C., §§ 7543 (b) & (e)(2)(A).) Thus, the District simply does not have mobile source regulatory authority.

The mobile emission sources that utilize the Ports already exist and are part of the baseline. Moreover, only those provisions necessary to meet the requirements of the Clean Air Act are included in the SIP. (Health & Safety Code, § 39602.) The purpose of an indirect source program is to ensure that mobile source emissions do not "cause or contribute to air pollution concentrations exceeding any national primary ambient air quality standard for a mobile-source related air pollutant." (42 U.S.C., § 7410(a)(5)(D)(i).) MOB-01 is not necessary to meet the NAAQS requirements of Clean Air Act. The emissions reductions listed in the Revised Draft for MOB-1 for the years 2023 and 2031 are listed as '**To Be Determined**" -- which indicates that

the reductions will be determined once the inventory and control approach are identified, and are not relied upon for attainment demonstration purposes. In reality, there would be little to no emission reduction benefit from indirect source measures because state, federal and international authorities have adopted rules and regulations to significantly reduce NOx emissions from these on- and off-road mobile sources. According to the AQMP, "[t]he effect of the rules and regulations are significant, showing reductions of over 67 percent in NOx emissions and close to 60 percent in VOC emissions between 2012 and 2023, even with increases in fleet population" (p. 3-4).

Despite repeated requests, the District still has not identified any legislation purporting to confer authority on the District to regulate public marine facilities as "mobile sources."[1] The District itself acknowledges that it does not have "primary regulatory authority" over the Port (or other large facilities identified as major sources of emissions, e.g., rail yards, airports, and distribution centers). Nevertheless, the Revised Draft states: "[T]he enforceable commitment may be in the form of a regulation by the SCAQMD within its existing legal authority, or by the State or federal government, or other enforceable mechanisms." (p. 4-28.) This statement raises the very same legal issues regarding the extent of the District's limited "existing legal authority" that the Ports have previously raised in opposition to PR 4001, and in their August 19, 2016 comment letter. The Revised Draft continues to ignore these basic, jurisdictional, flaws in the approach proposed to be taken by the 2016 AQMP.

The Ports maintain their fundamental objections to the provisions of the new AQMP that would inject the Ports into a newly-contrived regulatory scheme in an attempt to extend de facto District jurisdiction over mobile emission sources where no such jurisdiction exists as a matter of law. We refer to and incorporate the objections to this approach previously detailed in comment letters submitted in response to proposed IND-01, and to Proposed Rule 4001, and the Ports' August 19, 2016 letter commenting on the June draft AQMP.

4. <u>The AQMP Includes Procedural Deficiencies</u>.

Even though the Revised Draft AQMP would impose a strict timeline on the District to undertake rulemaking to create enforceable regulations "immediately" after the adoption of the Final 2016 AQMP (Table 4-3), the District has not complied with the procedural requirements to adopt indirect source control rules that are contemplated in MOB-01. The requirements are: (1) ensure, to the extent feasible, and based upon the best available information, assumptions, and methodologies that are reviewed and adopted at a public hearing, that the proposed rule or regulation would require an indirect source to reduce vehicular emissions only to the extent that the district determines that the source contributes to air pollution by generating vehicle trips that would not otherwise occur; (2) ensure that, to the extent feasible, the proposed rule or regulation does not require an indirect source to reduce vehicular trips that are required to be reduced by other rules or regulations adopted for the same purpose; (3) take into account the feasibility of implementing the proposed rule or regulation; (4) consider the cost effectiveness of the proposed rule or regulation; (5) determine that the proposed rule or regulation would not place any requirement on public agencies or on indirect sources that would duplicate any requirement

[1] The EPA itself treats "facilities based" emission sources as distinct from "mobile sources". See, e.g., 66 FR 65208 "Database of sources of environmental releases of dioxin-like compounds in the U.S.", ref year 1987-1995. December 18, 2001.

placed upon those public agencies or indirect sources as a result of another rule or regulation adopted pursuant to Health and Safety Code sections 40716 or 40717. (Health & Saf. Code, § 40717.5.)

The Revised Draft also inappropriately refers to the Ports as an "Implementing Agency," (Appendix IV-A, p. 126), which the AQMP elsewhere defines as "the agency(ies) responsible for implementing the control measure." On pages IV-A-127, the Revised Draft AQMP now purports to commit the Ports and District staff "to develop an enforceable mechanism to recognize the voluntary actions ... that can be credited in the SIP in a timely manner." However, to the extent the AQMP would mischaracterize the Ports as "Implementing Agencies," without including all of the other public and private partners working to achieve emission reductions, it improperly shifts an unwarranted burden of regulatory implementation to the Ports and erroneously implies that the Ports would have an assigned enforcement obligation, While the Ports have successfully adopted voluntary efforts to reduce emissions from maritime goods movement sources, and continue to be devoted to reducing emissions by working with the District as well as their own initiatives, the Ports are not air agency regulators. The AQMP should not commit the Ports to regulatory responsibility for "development" of enforceable mechanisms or control measures as to sources over which they do not have jurisdiction, ownership or operational control.

Further, as the District is well aware from the Ports' previous comment letters on these issues, the Ports lack authority to enforce as mandates the programs on all mobile sources operating in the Ports as they are preempted by state, federal and international law. This portion of the AQMP, requiring the Ports to select and implement the control measures, does not address or overcome these legal impediments.

5. <u>Control Measures in the AQMP would violate the dormant Commerce Clause</u>.

The "facility-based mobile source measure" approaches proposed in the revised draft AQMP would have serious negative effects on international and interstate commerce, navigation, maritime as well as land-based commerce, are will add unique and 'discriminatory' burdens which will have the effect of impeding California's and the Ports' economic competitiveness. Accordingly, these measures will likely undergo close scrutiny under the federal constitution's "dormant commerce clause" and "rights and immunities" protections.

"[A]ny state statute or regulation that impacts domestic interstate or foreign commerce is subject to judicial scrutiny under the commerce clause unless the statute or regulation has been preempted, or expressly authorized, by an act of Congress. (See, e.g., *Atlantic Coast Demo. v. Bd. of Chosen Freeholders* (3d Cir. 1995) 48 F.3d 701, 710.) The commerce clause's implicit, self-executing restriction on the states' power to regulate domestic interstate and foreign commerce is commonly referred to as the "negative" or "dormant" commerce clause. (*Barclays Bank, supra*, 512 U.S. 298, fn. 9....)" (*Pacific Merchant Shipping Assn. v. Voss* (1995) 12 Cal.4th 503, 514-15.)

The California Court of Appeal recently explained the broad scope of these constitutional limitations on state or local "regulations" impacting commerce, in *Alamo Recycling, LLC v. Anheuser Busch InBev Worldwide, Inc.* (2015) 239 Cal.App.4th 983, 996:

> The high court's dormant commerce clause jurisprudence "'significantly limits the ability of States and localities to regulate or otherwise burden the flow of interstate commerce.'" (*McBurney, supra*, 569 U.S. at p. ___ [133 S.Ct. at p. 1719] ....) More broadly, the high court in *Healy* explained that, taken together, its dormant commerce clause cases "stand at a minimum" for the three propositions. (*Healy, supra*, 491 U.S. at p. 336.) First, a state law violates the commerce clause if it applies to commerce that takes place wholly outside of the state's borders, regardless of whether the commerce has effects within the state. (*Id.* at p. 336, ...) Second, a state law that "directly controls" commerce occurring wholly outside the state's borders is invalid regardless of whether the law's extraterritorial reach was intentional....*Brown-Forman Distillers v. N. Y. Liquor Auth.* (1986) 476 U.S. 573, 579 [A statute that "directly regulates or discriminates against interstate commerce … is virtually *per se* invalid under the Commerce Clause … ."].) Third, "the practical effect of the statute must be evaluated not only by considering the consequences of the statute itself, but also by considering how the challenged statute may interact with the legitimate regulatory regimes of other States and what effect would arise if not one, but many or every, State adopted similar legislation. Generally speaking, the Commerce Clause protects against inconsistent legislation arising from the projection of one state regulatory regime into the jurisdiction of another State. [Citation.]" (*Healy, supra*, at pp. 336-337.)

Those burdensome and counter-productive approaches would be directly in conflict with the goals of Governor Brown's Executive Order to improve freight transportation efficiency and increase competitiveness of California's freight system, as well as the recently-released California Sustainable Freight Action Plan.

6. <u>The AQMD'S Imposition Of Unfunded Obligations On The Ports Violates The California Constitution, Article XIII B, Section 6</u>.

Article XIII B, Section 6(a) of the California Constitution states in relevant part as follows: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service ...."

The California Supreme Court recently ruled in *State Department of Finance v. Commission of State Mandates (County of Los Angeles)* (2016) 220 Cal.App.4th 740, that certain requirements of the 2001 Los Angeles County Municipal Separate Storm Sewer System (MS4) Permit could be considered unfunded State mandates that would violate the above quoted constitutional mandate unless state reimbursement was provided.

The same rationale would apply to any unfunded requirements that are imposed upon the Ports under the 2016 AQMP. As framed, the requirements being imposed on the Ports are the creation of the District. The requirements are not "federal mandates" that might be exempted from this constitutional mandate.

7. The AQMP Is Duplicative Of CARB and EPA Actions

Control Measure MOB-01 is duplicative of existing ARB, EPA and international rules. When the CAAP was first released in 2006, there were few if any rules regulating port-related sources. A decade later, many of the voluntary port-related control strategies implemented under the CAAP have been superseded by state or international regulation. Much of the unprecedented emissions reductions from port-related sources that have been achieved to date rely on, and are largely (over 90% of emission reductions), the result of regulations for port-related sources at the state and international levels, including:

- CARB Truck Bus Regulation
- CARB Ocean-going Vessel At-Berth Regulation
- CARB and International Ocean-going Vessels Low-Sulfur Fuel Regulations
- CARB Cargo-handling Equipment Regulation
- CARB Commercial Harbor Craft Regulation
- International Maritime Organization North American Emission Control Area

The draft 2016 AQMP acknowledges this regulatory history and that the CAAP has been superseded by existing regulations.

8. The District Cannot Adopt Control Measures Based On Unattainable Modeling Assumptions.

Through MOB-01 through MOB-05 and EGM-01, the District is also inappropriately attempting to enforce the unattainable modeling assumptions in the SCAG's SCS, and any modifications the District utilized in the draft 2016 AQMP. If EPA approves this novel and significant change in SIPs in its final rulemaking, it will be signaling to states and local agencies that they can enforce assumptions. This will undermine the SIP process and lead to serious disagreements and controversies over all assumptions states and local agencies include in their SIPs because the regulated community will be fearful that any technical assumptions included in the SIP will be enforced in the future. Technical assumptions estimated by scientists will become political decisions. Further, this approach has been disapproved by the Ninth Circuit Court of Appeal in *Bayview Hunters Point Community Advocates v. Metropolitan Transportation Commission*, 366 3d 692 (9th Cir. 2004).

9. The Requirements For RACM/RACT (Technologically And Economically Feasible) Have Not Been Met.

The requirements in subparts 1 and 4 relative to RACM/RACT have not been met. EPA states that RACM includes any potential control measure for non-road emission sources that is both technologically and economically feasible. (80 Fed. Reg. 63647.) There must be an evaluation of technical feasibility that includes operation conditions, and non-air quality impacts as well as an economic feasibility that includes consideration of cost per ton of pollutant reduced, capital costs and annualized costs. There is no such analysis in the AQMP. The District cannot evade these requirements by calling a control measures an indirect source measure or a measure to simply enforce an attainment demonstration assumption.

10. No Emission Reductions Are Attributed To The MOB-01 Measure.

EPA has never approved the 2012 Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities [PR4001] as part of the SIP. No emission reductions from this measure are included in the attainment demonstration for the 2012 AQMP. Yet, the draft 2016 AQMP states that rulemaking is underway for PR 4001. There is no requirement or legal basis for continuing to develop PR 4001. MOB-01 addresses the same emissions sources. The District is singling out the Ports for double regulation. The impacts of this double regulation have not been assessed in the socio-economic analysis. The Ports' will be at a competitive disadvantage compared to other west-coast Ports. This will negatively impact the regional economy.

The District Governing Board previously found that without Control Measure IND-01: (1) "the 2012 AQMP, in conjunction with earlier AQMPs contains every feasible control strategy and measure to ensure progress toward attainment…."; (2) "the AQMP satisfies all the attainment deadlines for federal ambient air quality standards for 24-hour PM2.5 and 1-hour ozone NAAQS"; (3) "the 2012 AQMP satisfies the planning requirements set forth in the federal and California Clean Air Acts"; and, (4) "the 2012 AQMP includes every feasible measure and an expeditious adoption schedule". (Attachment 21, Resolution, motions, deleted Control Measure IND-01.)

On January 25, 2013, the CARB Board adopted Resolution No. 13-3. (Attachment 22, Resolution.) The CARB Board found that without Control Measure IND-01: (1) "the attainment analysis in the 2012 AQMP demonstrates that the 24-hour PM2.5 standard will be met throughout the [South Coast Air] Basin by the proposed attainment date"; (2) the 2012 AQMP demonstrates the [South Coast Air] Basin will attain the 1-hour ozone standard by 2022"; (3) "[t]the 2012 AQMP meets the applicable planning requirements established by the [Clean Air] Act and the Rule for 24-hour PM2.5 SIPs, and includes the required air quality and emissions data, modeled attainment demonstrations, RACM/RACT demonstrations, new source review, transportation conformity emission budgets, and contingency measures"; (4) "[t]he 2012 AQMP identifies contingency measures that will achieve additional emission reductions, beyond those relied on in the attainment demonstration, in the event that the South Coast Air Basin does not attain the 24-hour PM2.5 standard by 2014"; and, (5) "[t]he 2012 AQMP meets applicable planning requirements established by the [Clean Air] Act for 1-hour ozone SIPs, and includes the required air quality and emissions data, modeled attainment demonstrations, new source review and RACM/RACT demonstrations".

EPA proposes to conclude that RACM/RACT have been met without Control Measure IND-01/Proposed Rule 4001. Because there is no need for Control Measure IND-01/Proposed Rule 4001, there is no basis for approving it as part of the SIP.

11. Provisions Of The Proposed AQMP Would Improperly Infringe Upon The Ports' Roles As Trustees Of California Tidelands.

The Cities' management of the Ports is largely subject to their roles as trustees of tidelands under the legislative acts that granted tidelands to the Cities under a public trust. (E.g., *State of California ex rel. California State Lands Com. v. City of Long Beach* (2005) 125 Cal.App.4th 767, 771: "In 1911, the State granted the City of Long Beach all of its right, title and

interest in the tidelands situated within the boundaries of the city, to be held in trust and used to establish a harbor and to construct anything necessary or convenient for the promotion of commerce and navigation.") As tidelands trustees, the Cities have been granted the discretion over how to best fulfill the express trust purposes. The District cannot adopt policies, control measures, or regulations that might attempt to compel the Ports to violate these tidelands trust obligations.

The Revised Draft AQMP would strip the Cities of their discretion in administering the tidelands for the benefit of the State of California and compels the Cities to utilize their revenues for air quality purposes ahead of the purposes expressly set forth in the enactments granting tidelands to the Cities. As a practical matter, compliance with the incentives, control measures, and regulations proposed by the AQMP would depend in part on the Cities providing financial incentives to the owners and operators of mobile sources to incentivize emission reductions. If the District's Executive Officer could effectively require the Ports to develop an Emission Reduction Plan that requires more generous financial incentives must be offered by the Ports to achieve the emission targets (which is contemplated by the Revised Draft AQMP), this would ultimately impair and diminish the Cities' ability to execute their tidelands trust obligations by depleting revenues reserved for express trust purposes.

In their discretion, the Ports consider environmental quality to fall within the implied scope of the tidelands trust and have in fact made substantial expenditures when their operating budgets allow. The Ports also fully comply with the California Environmental Quality Act when developing their properties for tenants' use, which may include providing mitigation such as air quality reduction measures to address any environmental impacts. However, the tidelands trust does not expressly require revenues be expended for "air quality improvement", and the financial incentive programs and control measures proposed in the Revised Draft appear to infringe on the Cities' jurisdiction over their own funds, if the only way to increase compliance with a CAAP incentive program, for example, would be to increase the amount of incentives.

The proposed AQMP also compels the Cities to violate their Tidelands Trust obligations by mandating requiring the Ports to utilize trust for an entirely local program to reduce PM 2.5, SOx, and NOx emissions. The funding to implement the AQMP would confer only an emission reduction benefit to the South Coast Air Basin rather than to the entire State of California. Thus, funding or financial incentives compelled by the AQMP would require the Ports to provide "mitigation" beyond their direct impacts, and in conflict with the tidelands trust.

Moreover, the proposed AQMP would place the Ports at a competitive disadvantage to other California or West Coast ports. If commercial maritime business meant for the Los Angeles or Long Beach ports is diverted elsewhere as a result of compliance with the novel regulations and economic burdens arising from the AQMP, the Cities will be deprived of revenues they need to fulfill their tidelands trust obligations.

The Ports respectfully remind the District that the CAAP is a planning document that provides guidance on strategies and targets that are ultimately implemented through individual actions adopted by each Port's respective Board of Harbor Commissioners (Boards). The State granted to the Cities of Long Beach and Los Angeles exclusive authority to implement the tidelands trust under the oversight of the State Lands Commission. Each City has been appointed as a trustee and has established their respective Board of Harbor Commissions with

exclusive control and management of the Tidelands and revenues and expenditures from the Tidelands. However, such discretion must be exercised in accordance with their obligations to prudently manage Tidelands assets and revenues within a nexus and proportionality to the Tidelands Trust interest, as well as in accordance with applicable laws such as the California Environmental Quality Act (CEQA) and principles of federal preemption. The District cannot mandate action by each Port's Board of Harbor Commissioners, nor can the District direct how the Ports may be obligated to spend state Tidelands money; only the appointed trustee can make discretionary actions to obligate state Tidelands funds. Specifically, any measures listed in the AQMP or the CAAP must each require the Boards to authorize the expenditure of monies and program costs, or to approve conditions of infrastructure project development in their discretion as a CEQA lead agency and as Tidelands trustees.

12. <u>The AQMP Improperly Includes Control Measures That Identify Emissions Reductions as "TBD</u>."

The proposed control measures that identify the emission reductions as "TBD" should be removed from the draft 2016 AQMP (i.e., EGM-01& MOB-01). According to the draft 2016 AQMP, "TBD" is for emission reductions to be determined once the measure is further evaluated, the technical assessment is complete, and the inventory and cost-effective control approaches are identified. The District also concedes that the "TBD" measures are not relied upon for attainment demonstration purposes. As these control measures stand, they cannot meet the CAA requirements for a SIP submittal. The District has not shown these measures are cost-effective or feasible. The District is also including activities in these measures that the District lacks jurisdiction to adopt (as discussed in the previous section of this letter). These two "TBD" measures have virtually no details explaining how these measures will be implemented. This makes it difficult for the Ports' to assess the impacts, which is contrary to a public review and comment process.

It is not until after adoption of the 2016 AQMP, that the District proposes to engage in a public process to develop rules to implement these AQMP control measures. All of this "process" was supposed to take place during the development of the 2016 AQMP. The post adoption process includes identifying actions (voluntary and regulatory) that will result in emission reductions. The District intends to convene working groups for EGM-01 and MOB-01 within one month after adopting the 2016 AQMP, and then define objectives; seek initial input on the types of actions with potential criteria pollutant reductions; identify existing actions with potential emission reductions; identify future actions with potential emission reductions; develop model quantification methodologies for emission reductions associated with identified actions; quantify potential emission reductions; and develop mechanisms to ensure reductions are real, surplus and enforceable on-going on a monthly basis. This process is supposed to be completed in the next six months. After this task is completed, District staff will report to the Mobile Source Committee and Governing Board as to whether the District should continue with the process or recommend formal rule development. There is no option for dropping the control measures if the process concludes these control measures should not be implemented. By including these control measures in the 2016 AQMP, the District is committing to develop these rules regardless of the process outcome, and will place the South Coast Air Basin at risk of sanctions if the process shows these measures should not be implemented. Because these measures are not sufficiently developed, the impacts of these measures on the economy are not

taken into consideration in the socio-economic analysis, which significantly underestimates the costs associated with the 2016 AQMP.

The District's approach is not consistent with the Clean Air Act. In *Sierra Club v. Environmental Protection Agency* (D.C. Cir. 2004) 356 F.3d 296, 301-304, the court struck down the EPA's approval of a SIP that contained similar deferral and ambiguous strategies. The court held that the EPA's interpretation of the Act "cannot be squared with the unambiguous statutory language. The statute requires that the States commit to adopt *specific* enforceable measures. Here, the agency has accepted as sufficient a commitment to adopt what it concedes are *unspecified* measures –with the specifics to be named later." (*Id.* at 302, emphasis in original). These "TBD" measures must be removed from the 2016 AQMP.

The "TBD" measures do not quality as feasible at this time, and as such are not required to be in the 2016 AQMP. The District asserts that the emission reductions achieved and quantified by these "TBD" measures can be applied toward contingency requirements, make up for any shortfalls in reductions from other quantified measures, be credited towards rate-of-progress reporting, and/or be incorporated into future Plan revisions. Accordingly, it is premature to include these "TBD" measures in the 2016 AQMP.

13. <u>The AQMP Over-Reaches On Toxics And Enforceable Commitments</u>.

The Revised Draft 2016 AQMP also "embraces strategies that reduce toxic risk impacting local neighborhoods and disadvantaged communities adjacent to goods movement and transportation corridors." The Ports concur that reducing toxic risk is important and that there should be a strategy. However, the CAA does not address toxics through the SIP process; it is through NESHAPs, MACTs, etc. The strategies that reduce toxic risk should not be submitted to CARB or EPA as a SIP submittal. There is no reason for the District to put the South Coast Air Basin at risk of SIP sanctions or FIPs by including control measures that are not required by the CAA.

In the Revised Draft AQMP, the District implies it intends to only rely upon the EPA's economic incentive programs (EIP) to render the incentive measures enforceable. None of the incentive programs meet the requirements of the EIP. In addition, there are other more worthy options that the District excludes such as MOUs and EPA's Voluntary Mobile Source Emission Reduction Program (VMEP). EPA has issued guidance on incorporating VMEPs into SIPs pursuant to Section 110 of the federal Clean Air Act. EPA developed the VMEP as an innovative program to assist states and local air agencies in implementing incentive programs. The VMEPs accommodates the uncertainty associated with the incentive and voluntary measures in the 2016 AQMP. For example, the SIP submittal must include a "good faith estimate" of emission reductions, including assumptions, and addressing both compliance and programmatic uncertainty. EPA's Guidance suggests that states enter into a Memorandum of Understanding with VMEP sponsors.

14. Comments Specific To Individual Proposed Control Measures.

a. EGM-01: "Emission Reductions From New Development And Redevelopment Projects [All Pollutants]."

There is only proposed control measure in the category for "emission growth management measures" in the AQMP ... "EGM-01. The Revised Draft (p.IV-A-7) explains that this proposed measure is intended to "evaluate the applicability" of the "Indirect Source Review – Rule 9510" as adopted by the San Joaquin Valley Air Pollution Control District ("SJVAPCD"), apparently pursuant to the District's belief that such evaluation is required by "a provision under state law." The Ports recognize the District's interest in evaluating "all feasible measures" to reduce emissions, but respectfully urge that any such evaluation of a "Rule 9510-style" indirect source review be framed so as to exclude the Ports or activities at the Ports.

i. Ports Should Not Be Subject To EGM-01.

The SJVAPCD adopted its Rule 9510 back in December 2005, near the height of a land development and residential construction boom in the San Joaquin air basin. The SJVAPCD explained that its primary purpose for pursuing its novel "indirect source review" program under Rule 9510 was "to reduce the impacts of growth in emissions resulting from new land development in the San Joaquin Valley." Those types of concerns – emissions from new land development" and housing construction – are not applicable to the Ports or the types of activities typically conducted at the Ports.

The Revised Draft explains that the "purpose" of EGM-01 is to mitigate emissions from new development and redevelopment projects, which it characterizes as "indirect sources." (Appendix IV-A, p. 185.) The Ports have previously pointed out, however, that the AQMP misuses that term at least as it seeks to use the "indirect source" characterization as a justification for imposing measures on mobile sources (even "facility-based mobile sources") associated with the Ports. To the extent that this measure appears to be an attempt to assert "indirect source" regulatory authority over activities at the Ports, it would be in excess of the District's jurisdiction, as explained in the comments on "indirect sources" and MOB-01.

The Ports have further explained that even if authority to regulate "indirect source" emissions may be appropriate as to some types of stationary facilities, such authority applies only to "new" sources of air pollution. The Revised Draft appears to justify this measure based on its anticipation that unspecified "outlying areas continue to be developed" in parts of the District. (Cf. Appendix IV-A, p. 185.) However, the Ports do not fit that description either, and cannot be characterized as areas of significant "new land development" such as served as the justification for SJVAPCD's Rule 9510.

Accordingly, the AQMP should make clear that this measure and any rule-making that may emerge from the District's evaluation of an indirect source review program like Rule 9510 would not be intended to be applicable to the Ports.

ii. Adoption Of An "indirect source rule" Like San Joaquin Valley APCD Rule 9510 Would NOT Be Appropriate Or Lawful.

The Revised Draft AQMP further states: "[f]or the purposes of this measure [EGM-01], indirect sources include all facilities not covered by another 2016 AQMP Control Measure, *specifically, control measures MOB-01 through MOB-14 to the extent that these control measures are part of the adoption of the Final 2016 AQMP."* . In addition, during the rule development process, additional indirect sources may be included or excluded" (Appendix IV-A, p. 185).

The Ports should not be included within this control measure in the event MOB-01 is removed from the Final 2016 AQMP or during the rule development process. In addition to the reasons stated above, the Ports have serious concerns about the District making a commitment to the state and federal governments that the SCAQMD will control growth or dictate land use decisions in areas subject to the Cities' police power (and the Ports' tidelands trust roles). SCAQMD has no authority to control growth or overrule local land use decisions. (Health & Saf. Code, § 40716 [air districts cannot infringe on the existing authority of counties and cities to plan or control land use]; see also Health & Safety Code, §§ 40000, 40414, 40440.1, 40717.5(c)(1).) Land use is within the exclusive preview of local cities and counties.

In addition, the legal constraints on the establishment or imposition of fees and charges, may no longer allow the District to pursue an indirect source review program with fees like Rule 9510. That Rule was adopted in 2005, and was subjected to judicial review in 2008, prior to passage of Proposition 26.. Accordingly, the District's evaluation of a similar rule (to the extent that such an contemplated rule may include a component requiring the payment of ISR mitigation fees or regulatory fees) may need to be able to meet the requirements of these subsequent constitutional amendments, imposing more stringent burdens on state and local agencies when they seek to establish or impose fees or other charges. (Cal. Const. art. XIII A, § 3 subd. (d); art. XIII C, § 1, subd. (e); art. XIII D, § 6, subd. (b)(5); *Schmeer v. City of Los Angeles* (2014) 213 Cal.App.4th 1310, 1322.) Accordingly, provisions for voter approval may need to be considered.

Further, the District cannot justify the inclusion of EGM-01 in the 2016 AQMP based on the premise that the CAA requires that all measures adopted by other air district must be included in the 2016 AQMP. Because EGM-01 is an indirect source control measure, the measure cannot be required as a condition of SIP approval by EPA or CARB. (42 U.S.C., § 7410(a)(5)(A)(ii); Cal. Health & Safety Code, § 40468.) Only those provisions necessary to meet the requirements of the Clean Air Act can be included in the SIP. (Cal. Health & Safety Code, § 39602.) Therefore, the District is not required by the CAA to adopt EGM-01 simply because San Joaquin Valley APCD adopted this measure.

b. MOB-01: "Emission Reductions At Commercial Marine Ports."

The Revised Draft continues to recognize the Ports' successful efforts in implementing the CAAP since 2006, exceeding our emission reduction goals in 2014. The Revised Draft, however, now asserts that the goal of proposed control measure MOB-01 is related to sources, admittedly mobile sources that "operate in and out of" the Ports. (Appendix IV-A, p. 121, also, p. 124.) The Revised Draft AQMP continues to mischaracterize the Ports as a "facility-based

mobile source," and seeks to justify MOB-01 as an indirect source control measure in order to quantify and to further the "enforceability" of emissions reductions achieved by the Ports under the CAAP. MOB-01 is described as a control measure to achieve emission reductions at commercial marine ports and is characterized in the AQMP as a "facility-based mobile source control measure."

The Revised Draft continues to attempt to hold the Ports responsible for achieving the Port Standards, and the AQMP continues to propose MOB-01 in this attempt. Further, MOB-01 suggests that if the emission reductions occurring at the Ports are not maintained after they are reported into the SIP that this measure may be implemented in the form of new rule-making or other "regulatory" action by the SCAQMD, or other "enforceable mechanisms," notwithstanding the limitations of the federal Clean Air Act. The Ports have previously addressed those limitations on the District's authority, above as well as in prior communications on this topic.

The most recent revisions to the Draft AQMP appear to signal that the District is seeking to even more aggressively pursue this "regulatory" approach, despite the objections to such measures. (Appendix IV-A, pp. 125-126.) It proposes to go so far as to "provide a schedule" for implementation of rule-making leading to new regulations or "other enforceable mechanisms" "immediately after adoption of the Final 2016 AQMP." (*Ibid*.) The Revised Draft would even commit the District staff to report "within six months after adoption of the Final 2016 AQMP" as to whether the Board should consider adopting rules within its existing authority or seek additional authority to adopt and implement measures. (Revised draft AQMP p. 4.23.) It also would require the District to make a recommendation "whether to proceed with formal rulemaking" no later than one year after adoption of the Final 2016 AQMP. (Appendix IV-A, p. 125) and would include a "schedule" for such enforcement and rulemaking (Table 4-3.)

The Revised Draft reveals that the District still fails to identify any statutory authority for its continued pursuit of this measure, despite its recognition that its authority in this regard is "limited." The Ports raised many questions and objections when the District has previously considered various other approaches, e.g., control measure MOB-03 in the 2007 AQMP and control measure IND-01 in the 2012 AQMP, to pursue this approach. The District ultimately appeared to recognize their shortcomings. The 2007 MOB-03 was described as "a backstop measure for indirect sources of emissions from ports and port-related facilities" and in the ensuing years, District staff proposed and sought public review of a 'backstop" rule that would be enforceable and applicable to the Ports, "Proposed Rule 4001." EPA, in its April 2016 action partially approving the 2012 SIP, excluded the commitments proposed by IND-01 from its action and stated that would respond to that in a separate rulemaking. (See 81 FR 22025 (April 14, 2016) "US EPA Partial Approval and Partial Disapproval of California Air Quality SIP.") The District has reported that Proposed Rule 4001 has been placed on hold, in light of work to develop supposedly different approaches for the pending 2016 AQMP.2

i. <u>Exceeds District Authority.</u>

Neither EPA nor CARB can require the District to adopt a control measure such as MOB-01 because indirect source control measures cannot be required as a condition of SIP

[2] Minutes of the District's "Mobile Source Committee" meeting of April 15, 2016, included in the District's Board Meeting minutes from May 6, 2016 (agenda item #21).

approval. (42 U.S.C. § 7410(a)(5)(A)(ii); Health & Safety Code, § 40468.) Therefore, the Ports have serious concerns about, and continuing objections to, the proposals in the revised draft AQMP for the District making enforceable commitments to the state and federal governments that the Ports will control and regulate "indirect sources."

The District has not identified any legislation purporting to confer authority on the SCAQMD to regulate public marine facilities as "mobile sources."[3] The District itself acknowledges that it does not have "primary regulatory authority" over the Port (or other large facilities identified as major sources of emissions, e.g., rail yards, airports, and distribution centers), and acknowledges that "additional authority provided to the State or SCAQMD for sources traditionally under the jurisdiction of the federal government (e.g., locomotives, aircraft and ships.)" (Revised Draft AQMP at p. ES-5.)

The District has no authority to regulate mobile sources or to draw any geographic boundary or to arbitrarily characterize source categories and declare those areas or groups of sources to be an "indirect source." "Mobile sources" of emissions are beyond the limited regulatory authority conferred by the Legislature on local or regional districts (e.g., Health & Safety Code § 40001(a); also see, 76 Ops. Cal. Atty. Gen. 11 (1993); 75 Ops. Cal. Atty. Gen. 256 (1992); 74 Ops. Cal. Atty. Gen. 196 (1991); 73 Ops. Cal. Atty. Gen. 229, 234-35 (1990)).

The Ports respectfully suggest, as more feasible and lawful alternatives to MOB-01, that these portions of the AQMP should pursue the District's reasonable goals by a collaborative, voluntary approach that will continue to be the most effective means for controlling emissions from maritime goods movement activities within the jurisdiction of Ports. This approach, which could be memorialized under a cooperative agreement between the Ports and SCAQMD, CARB, and EPA, would benefit all parties because it continues the collaborative effort that has resulted in unprecedented emission reductions at the Ports, shares responsibility between Parties, provides more certainty for the local economy, avoids litigation, insures incentive funding that is tied to excess emissions will continue to be available, and will result in better air quality.

ii. <u>Preemption By The Federal Clean Air Act</u>.

Congress vested the federal government with the authority to set nationwide emissions standards for mobile sources, including nonroad mobile engines and vehicles. (42 U.S.C., §§ 7521, 7547.) Congress expressly and impliedly preempted states from setting standards or other requirements relating to the control of emissions for mobile sources. (42 U.S.C., § 7543, (a) & (e) The goods movement sources that would be regulated by Proposed Rule 4001 are within the express and implied preemption. The Clean Air Act allows California to seek authorization from the EPA to adopt "standards and other requirements relating to the control of emissions" for some but not all mobile sources that would be covered by Proposed Rule 4001. (42 U.S.C., §§ 7543, (b) & (e)(2)(A).) The Clean Air Act does not allow for California to seek an EPA waiver for every one of the goods movement emission sources, nor has CARB made such a request.

c. <u>MOB-14: "Emission Reductions From Incentive Programs [NOx, PM]</u>."

[3] The EPA itself treats "facilities based" emission sources as <u>distinct</u> from "mobile sources". See, e.g., 66 FR 65208 "Database of sources of environmental releases of dioxin-like compounds in the U.S., ref year 1987-1995. December 18, 2001.

i. Impact On Existing Funding Programs.

The District is relying on securing significant funding for incentives to implement early deployment and commercialization of zero and near-zero technologies." There are a number of funding sources available provided the emission reductions are not required by a plan or rule. By making voluntary actions, mandatory, the District will reduce the funding sources that would otherwise be available.

Specifically, the Revised Draft 2016 AQMP mobile source control measures include development of incentive funding programs and supporting infrastructure for early deployment of advanced control technologies. MOB-14 states that it seeks to develop a rule similar to the San Joaquin Valley Air Pollution Control District Rule 9610 – "State Implementation Plan Credit for Emission Reductions Generated through Incentive Programs" -- such that emissions reductions generated through incentive programs can be credited in the SIP emission inventories (p. 4-33.). MOB -14 would also create "a new administrative mechanism to credit toward SIP requirements for future emission reductions achieved... through incentive programs administered by the District, CARB or US EPA." (Appendix IV-A-178.)

It will be critical to prioritize and secure the necessary funding needed to implement the proposed incentive-based measures in the Draft AQMP and achieve the aggressive emission reduction targets in the South Coast Air Basin. The Ports know first-hand that the move toward zero emissions is a costly endeavor and have placed significant emphasis on efforts to advance the development of near-zero and zero emissions equipment for on-terminal and on-road applications. Through the Ports' Technology Advancement Program (TAP), we have been involved with funding the demonstration of clean technologies used in port operations for nearly a decade. Significant progress has been made and we expect that zero emissions operations will be feasible in the future. The scale of this effort will be significant, with cost for the equipment and fueling infrastructure in the *Billions* of dollars.

The Ports and the maritime goods movement industry will require a substantial amount of funding assistance from the local, state and federal agencies. As such, the Ports are supportive of incentive funding to accelerate advancement of technologies. The Ports continue to strongly support the implementation of funding programs such as the Proposition 1B Goods Movement Emission Reduction Program and the Carl Moyer Memorial Air Quality Attainment Program, both of which have provided funding for much needed assistance with upgrading wharves for shore power, the replacement of drayage trucks, and the replacement and repower of engines in cargo-handling equipment, harbor craft, and locomotives.

While the Ports support funding programs and the need to credit emissions reductions generated from through incentive funding programs, the Ports strongly recommend that MOB-14, or any resulting regulatory strategy be structured in such a way that does not preclude the maritime goods movement industry's ability to secure grant funding for early actions. For example, it is not clear from the description of MOB-14 whether facility emission caps or port backstop rules could effectively disqualify companies and agencies from received grants, because typically grants funds cannot be used for regulatory compliance. The Ports believe that this unintended consequence of a control measure like MOB-14 could significantly impede early equipment replacement and transition to zero emission technologies, and also severely affect the economic competitiveness of the maritime goods movement industry. In addition, if the required

emission levels for attainment are not be met in the region, the Ports must not be held accountable for attaining emission reductions that are predicated on incentive funding if the funding does not come through at the necessary and appropriate levels.

We also note that the AQMP is vague as to how this measure may be "implemented," and merely asserts that "the District has developed [unspecified] policies and procedures to ensure that this control measure is successfully implemented." (Appendix IV-A-182.) Concerns would be raised if the AQMP were to contemplate "implementation" by measures including the imposition of purported "regulatory fees" such as those in the San Joaquin Valley APCD Rule 9510 scheme, as discussed above.

The District also proposes to revise Credit Rules 1612 and 1612.1 so that mobile source emission reduction credits generated under these rules would only be available to help facilities affected by the facility-based measures (MOB-01 through MOB-04 and EGM-01). The credits are proposed to not be eligible for offset stationary source emissions. This will unnecessarily constrain the market for mobile source emission reduction credits and reduce the incentives for the conversion of mobile sources to zero and near-zero technologies.

15. <u>The District Lacks Authority To Require The Ports To Enforce Or Implement The Control Measures</u>.

The AQMP unlawfully compels the Ports to regulate local air quality in violation of California Health and Safety Code sections 40414 and 40440. The District's authority is confined to air quality and cannot infringe on the land use authority of counties and cities. (42 U.S.C., § 7431; Cal. Health and Safety Code, § 40414.) The Ports, not the District, have the authority to determine their own land use needs to advance trade and commerce. The Ports play a critical role in facilitating domestic and international maritime commerce. The Los Angeles City Charter charges the Port of Los Angeles with possession, management, and control of all navigable waters, tidelands, submerged lands, and other lands as specified in the City Charter. (City Charter, Sections 602 and 651.) Similarly, the Long Beach City Charter vests in the Long Beach Harbor Department the authority to control and supervise the Harbor District to provide for the needs of commerce, navigation, recreation and fishery. (Long Beach charter Article X11.) As an exercise of this authority, the ports decided to develop an emission inventory and implement CAAP programs after having weighed the risks of losing business to other ports without a CAAP-equivalent program. These emissions are not caused by the ports' own equipment or operations – they are caused by tenants and other goods movement customers that operate in or near the ports.

The Ports are not authorized by state or federal law to carry out the air quality responsibilities of an air district or state. (40 C.F.R., § 51.232(a).) The delegation requirements are also not met. (40 C.F.R., § 51.232(b).) The AQMP nevertheless requires the Ports to conduct regulatory activities, such as developing and adopting emission reduction strategies for maritime goods movement emission sources, which may include retrofit, idling, or fuel requirements; seeking the District's approval to implement the ERP regulations; and establishing enforcement procedures to ensure that PM2.5 emission reductions from mobile sources operating in or near the ports meet the 2012 AQMP assumptions.

16. <u>The AQMP's Contingency Measures Are Inconsistent With The Control Measures</u>.

The District intends to utilize the "TBD" control measures as contingency measures, which is inconsistent with the proposed control description in the "TBD" control measures. The inclusion of contingency measures is for federally enforceable attainment demonstrations (i.e., those SIP submittals approved by EPA). The 2016 AQMP attainment demonstration has not been approved by EPA as a SIP submittal. Under the CAA contingency measures consists of other available control measures that are not included in the control strategy and become effective upon a determination by the EPA Administrator that the area has failed to make reasonable further progress or to attain the NAAQS by the applicable statutory deadline. Reasonable further progress is quantitative emissions reduction milestones which are to be achieved every 3 years until the area is redesignated attainment. The contingency measures are supposed to be interim measures that address only the shortfall of either the reasonable further progress target or specific attainment deficiency until a SIP revision is prepared. The MOB-01 control measure is not a suitable contingency measure. Such measures must be fully adopted rules that are ready for rapid implementation upon failure to achieve RFP or attainment. The issues that are listed in this letter prove MOB-01 cannot and will not meet the contingency measure requirements.

The District should instead explore using excess emission reductions from existing rules as contingency measures. The RFP contingency requirement may also be met by utilizing an RFP above the requirement amount. EPA also allows reductions achieved through early implementation of an emission reduction measure to be used towards the contingency requirement. According to the 2016 AQMP, U.S. EPA's March 2015 ozone implementation rule provides that "extreme" areas with approved Section 182(e)(5) commitments only had to submit contingency measures under three years before the attainment date, and not the general CAA contingency measures.

17. <u>The AQMP Prematurely Includes Attainment Demonstrations For Revised And Revoked NAAQS</u>.

The draft 2016 AQMP addresses five NAAQS. The District asserts that it is required to have a new attainment demonstration for three NAAQS: (1) the 8-hour ozone NAAQS established in 2008, 75 ppb (2008 8-hour Ozone); (2) the annual PM2.5 NAAQS established in 2012, 12 $\mu g/m^3$ (2012 annual PM2.5); and, (3) the 24-hour PM2.5 NAAQS established in 2006, 35 $\mu g/m^3$ (2006 24-hour PM2.5). The District concedes it is ***voluntarily*** submitting an attainment demonstration for the following NAAQS: (1) 1997 8-hour Ozone NAAQS, 80 ppb and the 1979 1-hour Ozone NAAQS, 120 ppb.

<u>2008 8-hour Ozone</u>: The 2016 AQMP includes control measures and an attainment strategy to reach attainment of this standard by 2032. As part of EPA's development of an ozone NAAQS Implementation Rule for the revised 2015 8-hour ozone standard, EPA intends to, among other things, decide whether to revoke the 2008 8-hour ozone NAAQS, and to impose appropriate anti-backsliding requirements to ensure that the protections afforded by that standard are preserved. It is premature to include a full-scale attainment demonstration when anti-backsliding controls would govern the strategies available for the applicable demonstrations if and when the 2008 standard is revoked. The draft 2016 AQMP currently shows a transportation conformity demonstration under 42 U.S.C. § 7506(c) is required for the 2008 standard. (Table 6-1, page 6-10.) However, this requirement became inapplicable after revocation of the 1997 standard and may also become inapplicable under the Implementation Rule for the 2015

standard. (See 80 FR 12264, 12284.) Further, the anti-backsliding requirements applicable to a revoked 2008 standard may include those currently set forth for the 1997 revoked standard. (40 C.F.R. §§ 51.1105(a)(1), 51.1100(o); 42 U.S.C. §§ 7502(c)(4), 7511a(b)(1) and (c)(2).) But they could also be amended, as they were in the Implementation Rule for the 2008 standard. (80 FR 12264, 12298.)

2012 annual PM2.5: The 2016 AQMP states that the 2012 annual PM2.5 standard cannot be met by 2021, which is the attainment year for the current "moderate" designation. Therefore, the District will be requesting EPA re-designate the Basin as a "serious" nonattainment area, which will provide four more years to attain the annual PM2.5 standard by 2025. The Ports believe this is a prudent approach.

2006 24-hour PM2.5: The 2016 AQMP demonstrates that the 2006 24-hour PM2.5 standard will be met by the 2019 attainment year with no additional reductions needed beyond already adopted measures. Therefore, no additional measures should be included in the 2016 AQMP to achieve this standard.

1997 8-hour Ozone: In 2008, the 1997 8-hour Ozone standard was lowered to 75 ppb (the 2008 8-hour Ozone standard). EPA revoked the 8-hour 1997 standard, effective in 2015. The District included new control measures and prepared an attainment demonstration of 2031 in the 2016 AQMP. The District has prematurely chosen to provide for the alternative NOx/VOC reductions instead of the reasonable further progress demonstration under 42 U.S.C. § 7511a(c)(2) without conducting an economic analysis of these options. (40 C.F.R. § 51.1100(o)(12).) The District should study the costs associated with each analysis to determine which results in lower costs to businesses and the Ports. Additionally, it is unclear whether the attainment demonstration incorporates transportation conformity thereby subjecting the District to possible sanctions. Transportation conformity should be excluded because it became inapplicable after revocation of the standard. (See 80 FR 12264, 12284.)

1979 1-hour Ozone: EPA revoked the 1-hour standard entirely, effective in 2005. As stated above, the District should conduct an economic analysis of the NOx/VOC reductions and the reasonable further progress demonstration before selecting one over the other. It is also necessary to know whether the attainment demonstration incorporates transportation conformity for the reasons set forth above.

18. The Socio-Economics Analysis Is Incomplete.

The Ports note the difficulty, if not the inefficiencies, posed by the District's continuing practice of releasing the proposed new 2016 AQMP in piecemeal and incomplete fashion. It appears that the current Revised Draft AQMP is itself not yet complete, and anticipates additional substantive content. The necessary socio-economic analysis is also not yet complete.

The Revised Draft 2016 AQMP also indicates that there will be no analysis of contingency measures in the Socioeconomic study. Also, it appears that several measures that do not have emissions reduction targets or other information will not be included in the Socioeconomic analysis. This means there will be no comprehensive review of the impact

associated with implementation of all measures or the repercussions of the potential adoption of the "facility-based mobile source measures" discussed in the MOB-1 section above.

The Revised Draft (p.9-7) states that it anticipates that "the 2016 AQMP Socioeconomic Report will contain enhanced impact analyses on Environmental Communities...." That information should be made available as part of a complete analysis.

Furthermore, it appears that the Socioeconomic study will only analyze the impacts associated with approximately $16 billion in government subsidies, not including the match funding that will be required from private operators. The Ports are concerned that this amount is substantially underestimated and ignores the necessary private capital that will be necessary to purchase thousands of pieces of costly near-zero and zero emission equipment to be deployed at the ports and throughout the region.

Finally, the description of the anticipated socioeconomic study assumes that there will be no tax increases to fund these incentives; however, the Revised Draft AQMP contradicts this assumption as it clearly states AQMD's intent to seek local and state ballot measures, which would include taxpayer funding (p. 4-68).

The Socioeconomic analysis must include an analysis of the impacts on the private sector from having to invest in significant new capital costs associated with cleaner equipment, and it must include an analysis of the impact on taxpayers as a result of higher taxes.

To the limited extent portions of the Socioeconomic Report have been released, it appears that it may: (a) Underestimate the costs of compliance with new measures contemplated by the 2016 AQMP; (b) Overestimate the extent and benefits of changes in health costs and risk reductions; and (c) Fail to accurately address or quantify the likely impacts on Port competiveness and other related impacts on the regional economy.

The Ports request a full socioeconomic analysis of all control measures, and that the socioeconomic analysis be completed and an adequate opportunity for public comment be provided *prior to* action on the Revised Draft 2016 AQMP.

19. <u>The District Is Improperly Conduction CEQA Review Before The AQMP Is Complete</u>.

The draft Environmental Impact Report for the proposed 2016 AQMP is now out for public review and comment. The Ports are submitting separate comments on that Draft EIR, and we refer to and incorporate those comments here as well.

As noted in the Ports comments on the Draft EIR, it seems to be procedurally and legally inappropriate for the District to be conducting its CEQA review before the details of the proposed AQMP have been completed. The Ports and the public should not be required to review and comment on important environmental documents before the full shape of the proposed project (2016 AQMP) is better known and disclosed. (See, e.g., *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1450: "A <u>complete</u> project description is necessary [for CEQA] to assure that <u>all</u> of a project's environmental impacts are considered."].)

20. Specific Technical Comments On AQMP

The Ports previously submitted specific technical comments on the June 2016 draft AQMP, and we appreciate that some of these comments are reflected in the revised draft, particularly the revised emissions under MOB-01, which are more consistent with the Ports' emission inventories. Many of our comments, however, are not explicitly addressed in the revised draft, and it is not clear that the current revised draft AQMP has acknowledged or responded to those comments.

We therefore incorporate by reference the technical comments raised in our August 19, 2016 letter, which is attached, and additionally, highlight the following new and/or restated technical issues.

a. Appendix IV-A, Table IV-A-2 SCAQMD Proposed Mobile Source 8-Hour Ozone Measures, p. IV-A-4.

For MOB-01, the emission reductions in tons per day (tpd) for 2023/2031 is identified as "TBD" with a corresponding footnote "b", which states "Submitted into the SIP as part of reporting or in baseline inventories for future AQMP/SIP Revisions." We request that the District provide further clarification on how the "Rate of Progress" will be calculated and compared to ensure that the emissions reductions achieved by the proposed control measure are surplus emissions.

b. Appendix IV-A, Page 7, Emission Reduction Benefits Of Funding Programs.

The Ports each prepare annual air emissions inventories of port-related sources. These inventories are based on actual equipment and activity data, and as such, incorporate emission reductions due to funding incentive programs if they occurred in the current or previous years emission inventories. The Revised Draft AQMP contains this language: "In addition, the SCAQMD is implementing several incentives funding programs that have resulted in early emission reductions (e.g., the Carl Moyer Memorial Air Quality Standards Attainment Program, the Surplus Off-Road Opt-In for NOx (SOON) program, and Proposition 1B – Goods Movement Emissions Reduction Program). The emission reduction benefits of the funding programs are quantified and are proposed to be included as part of the overall emission reductions for attainment of the NAAQS." (IV-A, page 7).

It is important to identify those reductions for port sources to avoid double-counting in the baseline and future emissions reductions analysis. The Ports' emissions inventories include incentive programs in the baseline year but do not project additional benefits that may occur due to additional incentive funding from these programs.

c. Appendix IV-A, Emission Reductions At Commercial Marine Ports [NOx, SOx, PM], p. IV-A-120.

The Ports each prepare annual air emissions inventories of port-related sources, and in July 2015, transmitted the San Pedro Bay Ports 2012 air emissions inventory, as well as forecasted port-related emissions for each year through 2031 for inclusion on the 2016 AQMP based on discussions with District and ARB staff. The Ports appreciate that emissions under MOB_01 have been revised, and they are within 5% of the San Pedro Bay Ports emissions that we shared with SCAQMD and ARB.

It is the Ports' understanding that the emissions from port-related sources in the 2016 AQMP would reflect the actual emissions reported by the Ports. These discrepancies should be addressed.

To provide for a meaningful and comprehensive review, the Ports request that the District identify the port-related sources (i.e., ocean-going vessels, harbor craft, locomotives, cargo-handling equipment, and heavy-duty trucks) of emissions that make up the total emissions in the Control Measure Summary (p. IV-A-109). It is also important to identify the assumptions used to estimate future emissions in 2022, 2023, and 2031. For instance, it is important to understand the assumed International Maritime Organization (IMO) tier level of ocean-going vessels calling at the Ports, as well as the fleet makeup of all other port-related source categories, including heavy-duty trucks, cargo-handling equipment, locomotives, and harbor craft. It is also important to identify the source-specific "growth" factors that were used to estimate future year emissions.

The **table** below shows a comparison of the emissions provided in the Revised Draft 2016 AQMP and the Ports' actual 2012 emissions and forecasted emissions for 2023 and 2031.

ANNUAL AVERAGE	All Source Categories			
	2012	**2022**	**2023**	**2031**
MOB1 NOx (Draft 2016 AQMP as of October 2016)	43.61	46.57	45.27	41.37
SPBP EIs	41.95	47.80	46.35	42.03
MOB1 /Ratio from 2012	1.00	1.07	1.04	.95
SPBP EIs PM2.5 Ratio from 2012	1.00	1.14	1.10	1.00
MOB1 PM2.5 (Draft 2016 AQMP)	1.03	0.83	0.84	0.93
SPBP EIs	1.03	0.83	0.84	0.93
MOB1 Ratio from 2012	1.00	0.81	0.82	0.90
SPBP EIs Ratio from 2012	1	0.80	0.81	0.91
MOB1 SOx (Draft 2016 AQMP)	3.9	0.81	0.82	0.91
SPBP EIs	3.90	0.81	0.82	0.91
MOB1 Ratio from 2012	1.00	0.21	0.21	0.23
SPBP EIs Ratio from 2012	1.00	0.21	0.21	0.23

As stated in our previous comment letter, to provide for a meaningful and comprehensive review, the Ports' request that the District identify the port-related sources (i.e., ocean-going vessels, harbor craft, locomotives, cargo-handling equipment, and heavy-duty trucks) of emissions that make up the total emissions in the Control Measure Summary (p. IV-A-120). It is also important to identify the assumptions used to estimate future emissions in 2022, 2023, and 2031. For instance, it is important to understand the assumed International Maritime Organization (IMO) tier level of ocean-going vessels calling at the Ports, as well as the fleet makeup of all other port-related source categories, including heavy-duty trucks, cargo-handling equipment, locomotives, and harbor craft. It is also important to identify the source-specific "growth" factors that were used to estimate future year emissions.

d. Appendix IV-A, Format Of Control Measures, Emission Reductions. p. IV-A-21.

This section states that: "During the rule development, the most current inventory will be used. However, for tracking rate-of-progress for the SIP emission reduction commitment, the approved AQMP inventory will be used. More specifically, emission reductions due to mandatory or voluntary, but enforceable actions shall be credited toward SIP obligations" (p. IV-A-21).

We request that any differences between the "most current inventory" used for rule development and the "approved AQMP inventory" be clearly described and addressed prior to any mandatory or voluntary emissions being credited toward SIP obligations.

e. Appendix IV-B, South Coast Mobile Source Emission Reductions, p. IV-B-5.

In this table, NOx reductions for 2031 are shown from 2015 level whereas the AQMP reductions are from 2012 level. SCAQMD should clarify how it plans to reconcile the emission reductions as the discrepancy could cause confusion when setting up goals and emission reduction targets.

f. Appendix IV-B, Tier 4 Vessel Standards. p. IV-B-50.

Under this proposed action, the ARB intends to work with the EPA, U.S. Coast Guard, and international partners to urge the International Maritime Organization (IMO) to adopt a Tier 4 NOx standard for new ocean-going vessels and efficiency requirements for existing vessels (p. IV-B-50).

The Ports support the advocacy for more stringent IMO standards and efficiency targets for ships. Currently, newly built ships are required to meet IMO Tier 3 standards for NOx. The Ports have developed an IMO Tier distribution forecast based on the existing world fleet, estimated future vessel calls at the Ports, and Tier 3 order information provided by the engine manufactures. The Ports' Tier distribution forecast indicates strongly that there will be no significant (less than 5%, best case scenario) Tier 3 penetration of the ship calls by 2023. Further, the forecast indicates that the existing world fleet (Tier 0-2) could service the Ports through the mid to late 2030s to 2040s.

Recognizing that Tier 3 fleet penetration will be significantly slower than CARB is estimating and coupled with the fact that there have been NO discussions at IMO Marine Environmental Protection Committee related to a Tier 4 NOx engine standard, the Ports believe that it is highly inappropriate to assume aspirational reductions related to Tier 4 fleet penetration until the standard is at least drafted if not promulgated. Taking reductions for standards that are neither in discussion nor in development is not appropriate for SIP planning purposes. Therefore, the Ports request that the estimated emissions reductions associated with Tier 3 fleet penetration this measure be reconsidered for the proposed SIP commitment and that all reductions associated with Tier 4 be removed.

Furthermore, it is stated that: "The new standards would be allowed to enter the fleet using natural turnover and would not be accelerated by additional rules or incentives" (p. IV-B-51). While the Ports are in favor of the ARB advocating for IMO Tier 4 NOx standards and efficiency targets for ships, we believe that effort should be placed on encouraging the cleanest ships to deploy to our ports now. There are currently fewer than 50 ships worldwide on order that will have IMO Tier 3 capabilities and it is unknown where they will be they deployed. We do not foresee a sizeable number of Tier 3 ships servicing our ports in the near term. As more of these ships become available for deployment, the Ports recommend the development of statewide strategies, such as incentive funding programs to attract these clean new ships to our Ports.

SAN PEDRO BAY PORTS

CLEAN AIR ACTION PLAN

August 19, 2016

Mr. Wayne Nastri
Acting Executive Officer
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765
Electronic Submittal Via:
https://onbase-pub.aqmd.gov/sAppNet/UnityForm.aspx?key=UFSessionIDKey

Dear Mr. Nastri:

SUBJECT: COMMENTS ON THE SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT'S *DRAFT 2016 AIR QUALITY MANAGEMENT PLAN* (JUNE 2016)

The Ports of Long Beach and Los Angeles (Ports) appreciate the opportunity to participate in the South Coast Air Quality Management District's (District or SCAQMD) 2016 Air Quality Management Plan Advisory Committee and to comment on the *Draft 2016 Air Quality Management Plan* released on June 30, 2016 (AQMP). The Ports recognize the amount of effort that has gone into the development of the 2016 AQMP and acknowledge the efforts of the District to release a plan that seeks to balance "traditional" regulatory measures with innovative incentive-based measures.

The Ports support the development and implementation of programs to achieve the applicable and current national ambient air quality standards (NAAQS). Consistent with that effort, the Ports voluntarily developed the highly successful San Pedro Bay Ports Clean Air Action Plan (CAAP) and continue to be successful in implementing those programs. As a result of the CAAP, between 2005 and 2015, emissions from maritime goods movement sources were reduced at an accelerated rate over command and control rules; accounting for overall reductions of 84% for diesel particulate matter (DPM), 50% for nitrogen oxides, and 97% for sulfur oxides. The Ports' emissions inventories in 2015 show reductions that are in excess of the 2014 emission

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

reduction goals in the CAAP. Thus, the Ports have a proven track record of developing and implementing appropriate and effective emission reduction strategies based on cooperative and voluntary measures, independent of or in advance of regulatory requirements.

The CAAP relies upon cooperative efforts with the maritime goods movement industry to achieve healthful air for the surrounding communities. The voluntary and cooperative aspects of the CAAP are critical because the Ports set stretch goals under incentive-based programs that rely in part upon federal, state and District monetary grants. Many of these grants are only available for programs that achieve "surplus" emissions reductions (i.e., those emissions reductions that are not required by regulation) by either accelerating the air quality regulatory agency requirements, or implementing non-regulatory programs. A significant concern of the Ports is the potential loss of this grant money, which is essential to continuing the successful implementation of the CAAP, if CAAP measures are included in the 2016 AQMP, directly or indirectly.

In order to meet the NAAQS, a collaborative and concerted effort with our agency partners is also essential, with the understanding that while the Ports can voluntarily achieve significant emission reductions, the CAAP is not a suitable control measure for the 2016 AQMP. United States Environmental Protection Agency (EPA), California Air Resources Board (CARB), and the District are the air quality regulatory agencies, and as such have authority as granted by statute to regulate the emissions directly from maritime goods movement sources. The Ports do not operate, own or control the maritime goods movement emission sources, and do not have the same authority as the air quality regulatory agencies. As such, the Ports should not be the agencies designated as responsible for achieving emission reductions from the maritime goods movement industry.

Additionally, the Ports are currently in the process of developing the next update of the CAAP. Many of the existing CAAP control strategies have been adopted or superseded by state or international requirements, such as the rules for replacing drayage trucks, switching to cleaner marine fuels, and using shore power while at berth. In collaboration with the maritime goods movement industry and our regulatory partners, the Ports seek to identify additional strategies to voluntarily achieve emissions reductions from ships, trucks, locomotives, cargo-handling equipment, and harbor craft to support the state's and region's air quality attainment needs. The CAAP Update will also incorporate strategies to address near-zero and zero emission technologies, greenhouse gas emissions, energy, and operational efficiencies.

In response to the District's request, the Ports respectfully submit the following comments regarding the Draft 2016 AQMP at this time, as well as questions and concerns that must be addressed *prior to* finalization and adoption of the 2016 AQMP by the District. We note, however, that it is difficult for the Ports to specify all comments at this time as the critical Appendices V and VI, Incentive Funding Action Plan, and

socioeconomic analysis have not yet been released to the public. We urge the District to consider extending the comment date on the 2016 AQMP until all Appendices and other critical components of the AQMP (e.g., the socioeconomic analysis, Incentive Funding Action Plan, etc.) have been released to the public so that a more comprehensive analysis can be conducted and comments provided to the District prior to Board consideration. Based on the information currently available, the Ports request that the Draft 2016 AQMP be revised as follows:

- Remove Mobile Source Control Measure MOB-01, as it does not provide emission reductions for the attainment demonstration, exceeds the District's authority, and is duplicative of other proposed control measures and state, federal and international laws.
- Exclude the Ports from the growth management control measure, EGM-01.
- Revise MOB-14 so that it does not preclude the maritime goods movement industry's ability to obtain grant funding.
- Focus on attaining the applicable NAAQS and not the revoked NAAQS.
- Specifically identify which measures are contingency measures as required by the Clean Air Act.
- Include in the socioeconomic analysis prepared for the 2016 AQMP a thorough cost-benefit evaluation of all control measures, including MOB-01 if it remains in the Plan as currently proposed, and all contingency measures.
- Complete and circulate the Incentive Funding Action plan for public review and comment *before* inclusion in the Socioeconomic analysis.
- Respond with changes in the 2016 AQMP to address the Ports' concerns and questions associated with the technical analysis, including the baseline and future year emissions inventory.

Detailed comments on each of the Ports' requested bullet items above are provided in the following Attachment.

The Ports strongly encourage the District to make the above-requested changes to the Draft 2016 AQMP, and in particular, eliminate control measure MOB-01 as it is unnecessary and exceeds the District's authority. The Ports also urge the District to complete the appropriate Incentive Funding Action Plan, as well as the appropriate socioeconomic impact analysis, and to provide the Ports and other members of the public with an adequate opportunity for comprehensive review and comment on those documents along with the (revised) Draft 2016 AQMP *prior to* submitting the Plan to the Board for consideration.

The Ports remain committed to achieving our clean air goals identified in the CAAP to help improve regional air quality. We strongly believe that the voluntary and cooperative CAAP process established by the Ports remains the most appropriate forum for the Ports and the air regulatory agencies to discuss technical and policy issues related to reducing emissions from port-related sources.

The Ports appreciate this opportunity to provide comments on the Draft 2016 AQMD. We look forward to continuing to work with the District on advancing our shared goals for clean air in the South Coast region.

Sincerely,

HEATHER A. TOMLEY
Director of Environmental Planning
Port of Long Beach

CHRISTOPHER CANNON
Director of Environmental Management
Port of Los Angeles

CC:LW:TD:mrx
APP No.: 160818-518

cc: Jon Slangerup, Port of Long Beach, Chief Executive Officer
Gene Seroka, City of Los Angeles Harbor Department, Executive Director
Richard Corey, California Air Resources Board, Executive Officer
Alexis Strauss, Region 9, Acting Regional Administrator

Attachment: Detailed Comments on the Ports' Requested DRAFT 2016 AQMP Revisions

ATTACHMENT

Detailed Comments on the Ports' Requested DRAFT 2016 AQMP Revisions

1. SCAQMD Mobile Source Control Measure: MOB-01 Emission Reductions at Commercial Marine Ports.

The Ports appreciate the discussion in this control measure that recognizes our successful efforts in implementing the CAAP since 2006 and exceeding our emission reduction goals in 2014. Yet, it appears that the District remains concerned over its ability to claim and quantify credit in the state implementation plan SIP for the emission reductions achieved by the Ports through the CAAP in the absence of District-imposed "enforceable" rules or control measures. The District continues to attempt to hold the Ports responsible for achieving their voluntary stretch goals, and for backstopping requirements that are currently being enforced by state and international regulations. Further, MOB-01 suggests that if the emission reductions occurring at the Ports are not maintained after they are reported into the SIP that this measure may be implemented in the form of a backstop regulation by the SCAQMD or by the State or federal government, or other enforceable mechanisms, notwithstanding the limitations of the federal Clean Air Act.

The District has previously proposed to address its need for enforceable measures by various other approaches, e.g., control measure MOB-03 in the 2007 AQMP and control measure IND-01 in the 2012 AQMP,which characterized the Ports as "indirect sources" of emissions.. The 2007 MOB-03 was described as "a backstop measure for indirect sources of emissions from ports and port-related facilities" and in the ensuing years, District staff proposed and sought public review of a 'backstop" rule that would be enforceable and applicable to the Ports, "Proposed Rule 4001." The Ports raised many questions and objections to control measure IND-01 and Proposed Rule 4001 in numerous comment letters[1] sent to the District and EPA. EPA, in its April 2016 action

[1] Comment Letters to U.S. Environmental Protection Agency dated November 19, 2015; California Air Resources Board dated March 25, 2014; South Coast Air Quality Management

partially approving the 2012 SIP, excluded the commitments proposed by IND-01 from its action and stated that it would respond to that in a separate rulemaking. (See 81 FR 22025 (April 14, 2016) US EPA Partial Approval and Partial Disapproval of California Air Quality SIP.) The District has reported that Proposed Rule 4001 has been placed on hold, in light of work to develop supposedly different approaches for the pending 2016 AQMP.[2]

The Draft 2016 AQMP indicates, however, that the District has not abandoned those efforts to establish policies and control measures that may provide a framework or justification for the District to adopt rules or regulatory measures that may be applied to the Ports, either directly or as a backstop or contingency measures. The Draft AQMP introduces a new proposed control measure "MOB-01" which states: "The proposed measures will replace control measures MOB-03 in the 2007 AQMP and IND-01 in the 2012 AQMP." (Draft 2016 AQMP, p. 4-24.) MOB-01 is described as a control measure to achieve emission reductions at commercial marine ports and is characterized in the Draft AQMP as a "facility-based mobile source control measure." Although the nomenclature may have changed, the Ports believe that proposed new MOB-01 is no different from the District's previous Ports-related control measures, where the District invoked its purported authority to regulate the Ports as "indirect sources" of emissions. The Ports point to the Draft AQMP, which states that "mobile sources" currently contribute about 88% of the region's total NOx emissions. It then acknowledges that "[s]ince the SCAQMD has limited authority to regulate mobile sources, staff worked closely with the CARB and EPA, which have primary authority over mobile sources, to ensure mobile sources perform their fair share of pollution reduction responsibilities" (p. ES-7).

The Ports also note that in describing the MOB-01 control measure, the Draft 2016 Plan characterizes the Ports as a "facility-based mobile source." In addition to the troublesome wording of that characterization, the description of this proposed control

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District dated January 15, 2014, January 31, 2014, October 2, 203, August 21, 2013, October 31, 2012, and August 30, 2012

[2] According to the minutes of the District's "Mobile Source Committee" meeting of April 15, 2016, included in the District's Board Meeting minutes from May 6, 2016 (agenda item #21), the U.S. EPA "in its recent decision on the approval of the 2012 AQMP did not evaluate IND-01 and will evaluate the control measure at some future date. Staff has been working on Proposed Rule 4001 to implement Control Measure IND-01 and has placed the rule development on hold with the development of the 2016 AQMP."

measure strongly indicates that the District intends to use MOB-01 as an indirect source control measure in order to quantify and lock in the emissions reductions achieved by the Ports under the CAAP. These "facility-based mobile source measure" approaches would have serious negative effects on maritime commerce and impede the State of California's freight competitiveness. Those burdensome and counter-productive approaches would be directly in conflict with the goals of Governor Brown's Executive Order to improve freight transportation efficiency and increase competitiveness of California's freight system, as well as the recently-released California Sustainable Freight Action Plan. The Ports continue to oppose any form of a "rule" that would impose SCAQMD oversight on the Ports and are strongly opposed to the District creating or relying on any concept of a "facility-based mobile source measure," whether described as an "Indirect Source Rule," "Backstop Rule" or the "freight hub," "facility cap," and/or "freight facility performance targets" approach. Neither EPA nor CARB can require the District to adopt a control measure for MOB-01 because indirect source control measures cannot be required as a condition of SIP approval. (42 U.S.C. § 7410(a)(5)(A)(ii); Health & Safety Code, § 40468.) Therefore, the Ports have serious concerns about the District making enforceable commitments to the state and federal governments that the Ports will control "indirect sources."

The District has not identified any legislation purporting to confer authority on the SCAQMD to regulate public marine facilities as "mobile sources."[3] The District itself acknowledges that it does not have "primary regulatory authority" over the Port (or other large facilities identified as major sources of emissions, e.g., rail yards, airports, and distribution centers). Nevertheless, the Draft AQMP further states: "This measure [MOB-01] may be implemented in the form of a regulation by the SCAQMD within its existing legal authority, or by the State or federal government, or other enforceable mechanisms." (p. 4-24.) This statement raises legal issues regarding the extent of the District's limited "existing legal authority;" the Ports have previously raised these issues in opposition to PR 4001. The Draft Plan is vague and ambiguous as to the source and extent of any specific "existing legal authority" that may be contemplated by the District or by MOB-01. The District has not previously cited any specific authority under the California Clean Air Act for this type of regulation (Cf., Health & Safety Code §§ 39000 et seq., and more specifically Chapter 5.5 (§§ 40400-40536) dealing with the SCAQMD).

[3] The EPA itself treats "facilities based" emission sources as distinct from "mobile sources". See, e.g., 66 FR 65208 "Database of sources of environmental releases of dioxin-like compounds in the U.S., ref year 1987-1995. December 18, 2001.

In fact, the District has no authority to regulate mobile sources or to draw any geographic boundary or to arbitrarily characterize source categories and declare those areas or groups of sources to be an "indirect source." "Mobile sources" of emissions are beyond the limited regulatory authority conferred by the Legislature on local or regional districts (e.g., Health & Safety Code § 40001(a); *also see*, 76 Ops. Cal. Atty. Gen. 11 (1993); 75 Ops. Cal. Atty. Gen. 256 (1992); 74 Ops. Cal. Atty. Gen. 196 (1991); 73 Ops. Cal. Atty. Gen. 229, 234-35 (1990)). Congress vested the federal government with the authority to set nationwide emissions standards for mobile sources, including non-road mobile engines and vehicles. (42 U.S.C. §§ 7521, 7547.) Congress expressly and impliedly preempted states from setting standards or other requirements relating to the control of emissions for mobile sources. (42 U.S.C. § 7543, (a) & (e).) The maritime goods movement emission sources are within the express and implied preemption. The Clean Air Act allows California to seek authorization from EPA to adopt "standards and other requirements related to the control of emissions" for some, but not all, mobile sources covered by MOB-01. (42 U.S.C. §§ 7543 (b) & (e)(2)(A).) Thus, District does not have mobile source regulatory authority.

The Clean Air Act defines an indirect source as "a facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution." (42 U.S.C. § 7410(a)(5)(C).) An "indirect source review program" is "the facility-by-facility review of indirect sources of air pollution, including such measures as are necessary to assure, or assist in assuring, that a new or modified indirect source will not attract mobile sources of air pollution" that would contribute to the exceedance of the NAAQS. (42 U.S.C. § 7410(a)(5)(D)(i).) "Direct emissions sources or facilities at, within, or associated with, any indirect source shall not be deemed indirect sources for the purpose" of an indirect source review program. (42 U.S.C. § 7410(a)(5)(C).) Air pollution control districts are not statutorily authorized to impose a permit system on indirect sources. (*Friends of Oceano Dunes, Inc. v. San Luis Obispo County Air Pollution Control District* (2015) 235 Cal.App.4th 957, 964, as modified on denial of reh'g (Apr. 23, 2015).)

The control measures also fail as an indirect source review program because the businesses within the geographic and source designated areas are not a "new or modified indirect emissions source." (42 U.S.C. § 7410(A)(5).) A source is new if it adds to the air basin's existing emissions baseline. (*National Ass'n of Home Builders v. San Joaquin Valley Unified Air Pollution Control Dist.* (9th Cir. 2010) 627 F.3d 730, 731-32.) The Clean Air Act defines modification as "any physical change in, or change in the method of operation, of a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of an air pollutant not previously emitted." (42 U.S.C. § 7411(a)(4).)

Only those provisions necessary to meet the requirements of the Clean Air Act are included in the SIP. (Health & Safety Code, § 39602.) The purpose of an indirect source program is to ensure that mobile source emissions do not "cause or contribute to air pollution concentrations exceeding any national primary ambient air quality standard for a mobile-source related air pollutant." (42 U.S.C. § 7410(a)(5)(D)(i).) MOB-01 is not necessary to meet the NAAQS requirements of Clean Air Act. The emissions reductions listed in the Draft AQMP for MOB-1 for the years 2023 and 2031 are listed as "To Be Determined" -- which indicates that the reductions will be determined once the inventory and control approach are identified, and are not relied upon for attainment demonstration purposes. In reality, there would be little to no emission reduction benefit from indirect source measures because state, federal and international authorities have adopted rules and regulations to significantly reduce NOx emissions from these on- and off-road mobile sources. According to the 2016 AQMP, "[t]he effect of the rules and regulations are significant, showing reductions of over 67 percent in NOx emissions and close to 60 percent in VOC emissions between 2012 and 2023, even with increases in fleet population" (p.3-4).

MOB-01 further violates the dormant Commerce Clause by impeding the free and efficient flow of commerce by imposing a heavy burden on ports, the shipping industry, navigation and commerce without any local environmental benefit, or an insubstantial local benefit at best.

The Draft 2016 AQMP also inappropriately refers to the Ports as an "Implementing Agency," which the AQMP defines as "the agency(ies) responsible for implementing the control measure" (p. IV-A-20MOB-01 statesthat "[t]he Ports through its CAAP update can decide the most effective approaches to achieve the overall emission reductions targets" (p. IV-113). However,to the extent the AQMP singles out and mischaracterizes the Ports as "Implementing Agencies," without including all of the other public and private partners working to achieve emission reductions, it erroneously implies that the Ports would have an assigned enforcement obligation, and improperly shifts an unwarranted burden of regulatory implementation to the Ports. While the Ports have successfully adopted voluntary efforts to reduce emissions from maritime goods movement sources, the Ports are not air agency regulators. The Ports do not have the regulatory responsibility or authority to achieve emission reductions from sources over which they do not have jurisdiction, ownership or operational control. Further, the District is well aware from the Ports' previous comment letters on these issues, that generally the Ports lack authority to enforce as mandates the programs on all mobile sources operating in the Ports as they are preempted by state, federal and international law. This portion of the AQMP, requiring the Ports to select and implement the control measures, does not address or overcome these legal impediments.

The Ports respectfully remind the District that the CAAP is a planning document that provides guidance on strategies and targets that are ultimately implemented through individual actions adopted by each Port's respective Board of Harbor Commissioners (Boards). The State granted to the Cities of Long Beach and Los Angeles exclusive authority to implement the Tidelands Trust under the oversight of the State Lands Commission. Each city has been appointed as a trustee and has established their respective Board of Harbor Commissions with exclusive control and management of the Tidelands and revenues and expenditures from the Tidelands. However, such discretion must be exercised in accordance with their obligations to prudently manage Tidelands assets and revenues within a nexus and proportionality to the Tidelands Trust interest, as well as in accordance with applicable laws such as the California Environmental Quality Act (CEQA) and principles of federal preemption. The District cannot mandate action by each Port's Board of Harbor Commissioners, nor can the District direct how the Ports may be obligated to spend state Tidelands money; only the appointed trustee can make discretionary actions to obligate state Tidelands funds. Specifically, any measures listed in the AQMP or the CAAP must each require the Boards to authorize the expenditure of monies and program costs, or to approve conditions of infrastructure project development in their discretion as a CEQA lead agency and as Tidelands trustees.

Further, the District has not complied with the procedural requirements to adopt indirect source control rules that are contemplated in MOB-01. The requirements are: (1) ensure, to the extent feasible, and based upon the best available information, assumptions, and methodologies that are reviewed and adopted at a public hearing, that the proposed rule or regulation would require an indirect source to reduce vehicular emissions only to the extent that the district determines that the source contributes to air pollution by generating vehicle trips that would not otherwise occur; (2) ensure that, to the extent feasible, the proposed rule or regulation does not require an indirect source to reduce vehicular trips that are required to be reduced by other rules or regulations adopted for the same purpose; (3) take into account the feasibility of implementing the proposed rule or regulation; (4) consider the cost effectiveness of the proposed rule or regulation; (5) determine that the proposed rule or regulation would not place any requirement on public agencies or on indirect sources that would duplicate any requirement placed upon those public agencies or indirect sources as a result of another rule or regulation adopted pursuant to Health and Safety Code sections 40716 or 40717. (Health & Saf. Code, § 40717.5.)

Instead of MOB-01, the Ports suggest that a collaborative, voluntary approach, consistent with the cooperative partnership that has been proven to be successful over the past decade, will continue to be the most effective means for controlling emissions from maritime goods movement activities within the jurisdiction of Ports. This approach,

which could be memorialized under a cooperative agreement between the Ports and SCAQMD, CARB, and EPA, would benefit all parties because it continues the collaborative effort that has resulted in unprecedented emission reductions at the Ports, shares responsibility between Parties, provides more certainty for the local economy, avoids litigation, insures incentive funding that is tied to excess emissions will continue to be available, and will result in better air quality.

2. SCAQMD Growth Management Control Measure: EGM-01

The Draft 2016 AQMP states: "[f]or the purposes of this measure [EGM-01], indirect sources include all facilities not covered by another 2016 AQMP Control Measure. In addition, during the rule development process, additional indirect sources may be included or excluded" (p. IV-A-169).

The Ports should not be included within this control measure in the event MOB-01 is removed from the 2016 AQMP or during the rule development process. In addition to the reasons stated above in section 1, the Ports have serious concerns about the District making a commitment to the state and federal governments that the SCAQMD will control growth or dictate land use decisions. SCAQMD has no authority to control growth or overrule local land use decisions. (Health & Saf. Code, § 40716 [air districts cannot infringe on the existing authority of counties and cities to plan or control land use]; see also Health & Saf. Code, §§ 40000, 40414, 40440.1, 40717.5(c)(1).) Land use is within the exclusive preview of local cities and counties.

3. SCAQMD Mobile Source Control Measure: MOB-14 Emission Reductions from Incentive Programs

The Draft 2016 AQMP mobile source control measures include development of incentive funding programs and supporting infrastructure for early deployment of advanced control technologies. MOB-14 states that it seeks to develop a rule similar to the San Joaquin Valley Air Pollution Control District Rule 9610 – "State Implementation Plan Credit for Emission Reductions Generated through Incentive Programs" -- such that emissions reductions generated through incentive programs can be credited in the SIP emission inventories.

It will be critical to prioritize and secure the necessary funding needed to implement the proposed incentive-based measures in the Draft AQMP and achieve the aggressive emission reduction targets in the South Coast Air Basin. The Ports know first-hand that the move toward zero emissions is a costly endeavor and have placed significant emphasis on efforts to advance the development of near-zero and zero emissions equipment for on-terminal and on-road applications. Through the Ports' Technology

Advancement Program (TAP), we have been involved with funding the demonstration of clean technologies used in port operations for nearly a decade. Significant progress has been made and we expect that zero emissions operations will be feasible in the future. The scale of this effort will be significant, with cost for the equipment and fueling infrastructure in the *Billions* of dollars.

The Ports and the maritime goods movement industry will require a substantial amount of funding assistance from the local, state and federal agencies. As such, the Ports are supportive of incentive funding to accelerate advancement of technologies. The Ports continue to strongly support the implementation of funding programs such as the Proposition 1B Goods Movement Emission Reduction Program and the Carl Moyer Memorial Air Quality Attainment Program, both of which have provided funding for much needed assistance with upgrading wharves for shore power, the replacement of drayage trucks, and the replacement and repower of engines in cargo-handling equipment, harbor craft, and locomotives.

While the Ports support funding programs and the need to credit emissions reductions generated from through incentive funding programs, the Ports strongly recommend that MOB-14, or any resulting regulatory strategy be structured in such a way that does not preclude the maritime goods movement industry's ability to secure grant funding for early actions. For example, it is not clear from the description of MOB-14 whether facility emission caps or port backstop rules could effectively disqualify companies and agencies from received grants, because typically grants funds cannot be used for regulatory compliance. The Ports believe that this unintended consequence of a control measure like MOB-14 could significantly impede early equipment replacement and transition to zero emission technologies, and also severely affect the economic competitiveness of the maritime goods movement industry. In addition, if the required emission levels for attainment are not be met in the region, the Ports must not be held accountable for attaining emission reductions that are predicated on incentive funding if the funding does not come through at the necessary and appropriate levels.

4. Inclusion of Revoked NAAQS in the 2016 AQMP

The Draft 2016 AQMP includes updates to previous plans for the revoked 1-hour (120 ppb) and 1997 8-hour (80 ppb) ozone NAAQS (p. 4-1), rather than addressing the current and controlling ozone NAAQS. For example,, the Draft 2016 AQMP attainment strategy seeks to reduce NOx emissions sufficiently to meet the revoked 1-hour ozone NAAQS of 120 ppb by 2023 and the revoked 8-hour ozone NAAQS of 80 ppb by 2024, instead of focusing on achieving the applicable ozone NAAQS of 75 ppb by 2032. This approach is inappropriate and unnecessary.

While the SCAQMD is required to comply with the anti-backsliding provisions of the Clean Air Act [CAA sec 172(e)], which preclude the adoption of controls that are less stringent than existing controls applicable in the District, the 2012 AQMP does not contain any mandates akin to MOB-01 that are applicable to the Ports. Therefore, the removal of MOB-01 from the 2016 AQMP by the District would not be "backsliding" from any existing standards relied upon for attainment under the existing 2012 AQMP.

Furthermore, the proposed approach of targeting the revoked standards and their associated deadlines of 2023 and 2024, which are significantly earlier than the controlling deadline of 2032 in the current regulations, puts the region at unnecessary risk that contingency measures for ozone will be required in the three years leading up to the attainment date for the revoked NAAQS.

5. Contingency Measures

> The Draft 2016 AQMP states the following regarding contingency measures: "Some measures in the summary table are listed as "TBD" (to be determined) for emission inventory, emission reductions and/or cost control. The "TBD" measures are not relied upon to demonstrate attainment of the standards but have been included if potentially feasible for the integrated, comprehensive plan. "TBD" measures require future technical and/or cost assessments in order to better understand and quantify emissions from and cost impact to the anticipated affected sources for the measures. It may be determined at that time that the "TBD" measure is not feasible or cost-effective to adopt and implement, or if reductions can be achieved, those reductions would be submitted into the SIP. Thus, "TBD" measures are included in the Plan as needed for contingency or if there are any shortfalls in committed emission reductions" (p. IV-A-18).

The District needs to identify specifically which measures in the AQMP it intends to be "contingency measures." Referring to "TBD" measures does not provide sufficient identification because the measure language is not consistent with the measure being a contingency measure. The contingency measures should only be for the *applicable* NAAQS, and not for the revoked NAAQS attainment timeframes.

Further, EPA's March 6, 2015, rulemaking allows extreme nonattainment areas for ozone to develop and adopt contingency measures meeting the requirements of 182(e)(5) (black box) to satisfy the requirements for both attainment contingency measures in CAA sections 172(c)(9) and 182(c)(9). These enforceable commitments must obligate the state to submit the required contingency measures to the EPA no later

than three years before any applicable implementation date, in accordance with CAA section 182(e)(5). (See Federal Register, Vol. 80, No. 44, 12264 Friday, March 6, 2015.) Therefore, it is premature to submit contingency measures for 2032. As for reasonable further progress (RFP) contingency measures, these are only needed to provide the incremental shortage in emission reductions and last one year.

EPA is also continuing its long term policy that allows promulgated federal measures to be used as contingency measures as long as they provide emission reductions in the relevant years in excess of those needed for attainment or RFP. The 2016 AQMP needs to be revised to reflect these allowances that EPA has made for extreme nonattainment areas.

6. State and Federal Control Measures and Incentive Funding Strategy

The Draft AQMP includes additional control measures to reduce emissions from sources that are primarily under State and Federal jurisdiction, including on-road and off-road mobile sources. As stated, these reductions are needed to achieve the remaining emission reductions necessary for the Basin's attainment. The Draft AQMP identifies 107 tons of NOx reductions in 2023 and 97 tons of NOx reductions in 2031 to help the District meet attainment. Almost all of these reductions, however, are associated with the measures calling for "further deployment of cleaner technologies," which involve accelerating the development, demonstration, and deployment of cleaner engine technologies, in whole or in part through the use of incentive programs. Achieving these substantial emission reductions "is predicated on securing the amount of funding needed" to further deploy these cleaner technologies, according to the Draft AQMP.

The AQMP estimates an approximate range of $4 to $11 billion in funding over a 7 to 15 year period to achieve the projected NOx emissions reductions from mobile sources (p. 4-59). "The total funding needed ranges from $13 to $16 billion to achieve the NOx emission reductions associated with the State Mobile Source Strategy" (p. 4-62). "A total of $1.1 to $1.6 billion of stationary source incentive funding programs are proposed with projected cost-effectiveness levels in the same range as the mobile source incentives" (p. 4-66). The AQMP further states:

> "The amount of incentive funding needed is estimated to be approximately $11 – 14 billion in total funding over a seven to fifteen year period. Currently, the SCAQMD receives around $56 million per year in incentives funding to accelerate turnover of on- and off-road vehicles and equipment under SB1107, a portion of the state's Tire Fee, and AB923. AB 923 will sunset in 2024. In addition, the District has received close to $550 million in Proposition 1B funding. The last round of Proposition 1B will be ending in

> the next couple of years. The District has also received funding under the DERA program on a competitive basis. However, the amount of funding needed to achieve the NOx emission reductions associated with the "Further Deployment" measures proposed in the State Mobile Source Strategy and the 2016 AQMP will require on the order of $1 billion per year if funding is available beginning in 2017" (pp. ES-8 to 9).
> As such, the short-fall is significant.

Assuming $16 billion is a reasonable estimate – and the accuracy of that estimate is open to question – should the District fail to secure this funding, it may be forced to adopt the "contingency" measures specified in the Draft AQMP, of which MOB-01 may be is one. The Ports are concerned the District may not secure the necessary funding, which would likely necessitate the hasty adoption of such contingency measures without a comprehensive analysis of the impacts, or possible alternatives, and without robust public input.

In addition, the Draft AQMP acknowledges that achieving the emissions reductions from the 2016 AQMP incentive-based control measures for both mobile and stationary sources will require approximately $11 – $14 Billion in total funding. Given this significant funding level needed to attain the ozone NAAQS over the next seven to fifteen years, the Draft AQMP refers to "an action plan [that] will be developed as part of the AQMP public adoption process" to identify the necessary actions to secure new sources of funding to implement the AQMP (p. 4-66). However, the Draft AQMP provided insufficient details on what would be contained in such an Incentive Funding Action Plan.

Furthermore, at the District's Mobile Source Committee meeting of July 22, 2016, the AQMD staff presentation indicated that a draft of the Incentive Funding Action Plan is expected as part of 2016 AQMP adoption. However, District staff has informed the Ports that an Incentive Funding Plan will not be available until *after* the AQMP has been adopted. This is not acceptable. Without a review of the Incentive Funding Action Plan concurrent with the Draft AQMP, it is not known whether the Plan is viable (i.e., activities to secure additional funding or actions are not realized), and the risk of contingency measures being triggered cannot be evaluated.
For this reason, the Ports urge the District to fully analyze the Incentive Funding Action Plan, and all contingency measures now, and to release that analysis *prior to* the close of public comment so that the public can evaluate the adequacy of the District's strategy and comment on that strategy.

7. Socioeconomic Impact Analysis

The Draft 2016 AQMP indicates that there will be no analysis of contingency measures in the socioeconomic study. Also, it appears that several measures that do not have emissions reduction targets or other information will not be included in the socioeconomic analysis. This means there will be no comprehensive review of the impacts associated with implementation of all measures or the repercussions of the potential adoption of the "facility-based mobile source measures" discussed in the MOB-01 section above.

The Ports request a full socioeconomic analysis of all control measures, and that the socioeconomic analysis be completed and an adequate opportunity for public comment be provided *prior to* action on the Draft 2016 AQMP.

Furthermore, it appears that the socioeconomic study will only analyze the impacts associated with approximately $16 billion in government subsidies, not including the match funding that will be required from private operators. The Ports are concerned that this amount is substantially underestimated and ignores the private capital that will be necessary to purchase thousands of pieces of costly near-zero and zero emission equipment to be deployed at the ports and throughout the region.

Finally, the description of the anticipated socioeconomic study assumes that there will be no tax increases to fund these incentives; however, the Draft AQMP contradicts this assumption as it clearly states AQMD's intent to seek local and state ballot measures, which would include taxpayer funding (p. 4-68).

The socioeconomic analysis must include an analysis of the impacts on the private sector from having to invest in significant new capital costs associated with cleaner equipment, and it must include an analysis of the impact on taxpayers as a result of higher taxes.

8. Specific Technical Comments on the 2016 Draft AQMP

a. Appendix IV-A, Table IV-A-2 SCAQMD Proposed Mobile Source 8-Hour Ozone Measures, p. IV-A-4

The title of MOB-01 is inconsistent with the description of the control measure provided starting on page IV-A-109, which lists "CO" as a target pollutant. The control measure summary for MOB-01 (pp. IV-A-109-115) indicates that the goal of the measure is to seek emission reductions of NOx, SOx, and PM2.5. Please

clarify if the measure is also intended to address emissions of CO, otherwise CO should be removed from Table IV-A-2 and updated accordingly.

In addition, for MOB-01, the emission reductions in tons per day (tpd) for 2023/2031 are identified as "TBD" with a corresponding footnote "b", which states "Submitted into the SIP as part of reporting or in baseline inventories for future AQMP/SIP Revisions." We request that the District provide further clarification on how the "Rate of Progress" will be calculated and compared to ensure that the emissions reductions achieved by the proposed control measure are surplus emissions.

b. Appendix IV-A, Emission Reductions at Commercial Marine Ports [All Pollutants], p. IV-A-109

The Ports each prepare annual air emissions inventories of port-related sources, and in July 2015, transmitted the San Pedro Bay Ports 2012 air emissions inventory, as well as forecasted port-related emissions for each year through 2031 for inclusion on the 2016 AQMP based on discussions with District and CARB staff.[4,5] It is not clear whether the emissions of NOx, SOx, and PM2.5 listed in the Control Measure Summary Table (p. IV-A-109) reflect the Port's actual emissions, as they do not correspond with those transmitted to the District and CARB.

It is the Ports' understanding that the emissions from port-related sources in the 2016 AQMP would reflect the actual emissions reported by the Ports. These discrepancies should be addressed.

To provide for a meaningful and comprehensive review, the Ports request that the District identify the port-related sources (i.e., ocean-going vessels, harbor craft, locomotives, cargo-handling equipment, and heavy-duty trucks) of emissions that make up the total emissions in the Control Measure Summary (p. IV-A-109). It is

[4] Email Communication, Subject: San Pedro Bay Ports 2012 Emissions Inventory. July 21, 2015. Allyson Teramoto (Port of Long Beach) to Henry Hogo, Joe Casmassi, Randall Pasek (AQMD); Nicole Dolney, Sylvia Vanderspek, Gabe Ruiz (CARB).

[5] Email Communication, Subject: 2016 AQMP Emissions Forecasting Dial +1 (312) 757-3121 Access Code: 299-388-957. August 9, 2016. Archana Agrawal (Starcrest Consulting Group, LLC) to Henry Hogo, Randall Pasek (AQMD); Nicole Dolney, Sylvia Vanderspek, Russel Furey, Vernon Hughes, Gabe Ruiz (CARB).

also important to identify the assumptions used to estimate future emissions in 2022, 2023, and 2031. For instance, it is important to understand the assumed International Maritime Organization (IMO) tier level of engines installed on ocean-going vessels calling at the Ports, as well as the fleet makeup of all other port-related source categories, including heavy-duty trucks, cargo-handling equipment, locomotives, and harbor craft. It is also important to identify the source-specific "growth" factors that were used to estimate future year emissions.

The **table** on the next page shows a comparison of the emissions provided in the Draft 2016 AQMP and the Ports' actual 2012 emissions and forecasted emissions for 2023 and 2031. As shown, there are several inconsistencies in the emissions inventories prepared by the Ports and the inventory used for the AQMP.

Annual Average	**2012**	**2022**	**2023**	**2031**
NOx (MOB-01 Draft 2016 AQMP)	39.37	TBD	42.39	35
NOx (2012 San Pedro Bay Ports Actual Emissions)	41.95	47.80	46.35	42.03
PM2.5 (MOB-01 Draft 2016 AQMP)	1.06	TBD	0.81	0.93
PM2.5 (2012 San Pedro Bay Ports Actual Emissions)	1.03	0.83	0.84	0.93
SOx (MOB-01 Draft 2016 AQMP)	4.04	TBD	1.23	1.47
SOx (2012 San Pedro Bay Ports Actual Emissions)	3.90	0.81	0.82	0.91

As previously mentioned, we request that the control costs associated with MOB-01 (and all other control measures) be quantified and included in the 2016 AQMP.

c. Appendix IV-A, Emission Reductions at Commercial Marine Ports [All Pollutants], CARB In-Use Fleet Rules. p. IV-A-112

It is stated in this paragraph that "The majority of marine vessel emissions are created by main propulsion engines, but auxiliary engines emissions are important, in part because they occur at dock in closer proximity to persons in and around the port" (p. IV-A-112). This statement is misleading in that the contribution of auxiliary engine emissions (excluding boiler emissions) to overall ocean-going vessel emissions (including transit, maneuvering, and hoteling at-berth) is often times nearly equivalent to or higher than main propulsion engines, which are only operational during transit and maneuvering.

d. Appendix IV-A, Format of Control Measures, Emission Reductions. p. IV-A-19

This section states that: "During the rule development, the most current inventory will be used. However, for tracking rate-of-progress for the SIP emission reduction commitment, the approved AQMP inventory will be used. More specifically, emission reductions due to mandatory or voluntary, but enforceable actions shall be credited toward SIP obligations" (p. IV-A-19).
We request that any differences between the "most current inventory" used for rule development and the "approved AQMP inventory" be clearly described and addressed prior to any mandatory or voluntary emissions being credited toward SIP obligations.

e. Appendix IV-B, Tier 4 Vessel Standards. p. IV-B-50

Under this proposed action, CARB intends to work with the EPA, U.S. Coast Guard, and international partners to urge the International Maritime Organization (IMO) to adopt a Tier 4 NOx standard for new ocean-going vessels and efficiency requirements for existing vessels (p. IV-B-50).

The Ports support the advocacy for more stringent IMO standards and efficiency targets for ships. Currently, newly built ships are required to meet IMO Tier 3 standards for NOx. The Ports have developed an IMO Tier distribution forecast based on the existing world fleet, estimated future vessel calls at the Ports, and Tier 3 order information provided by the engine manufactures. The Ports' Tier distribution forecast indicates strongly that there will be no significant (less than 5%, best case scenario) Tier 3 penetration of the ship calls by 2023. Further, the forecast indicates that the existing world fleet (Tier 0-2) could service the Ports through the mid to late 2030s to 2040s.

Recognizing that Tier 3 fleet penetration will be significantly slower than CARB is estimating and coupled with the fact that there have been no discussions at IMO Marine Environmental Protection Committee related to a Tier 4 NOx engine standard, the Ports believe that it is highly inappropriate to assume aspirational reductions related to Tier 4 fleet penetration until the standard is at least drafted if not promulgated. Taking reductions for standards that are neither in discussion nor in development is not appropriate for SIP planning purposes. Therefore, the Ports request that the estimated emissions reductions associated with Tier 3 fleet penetration this measure be reconsidered for the proposed SIP commitment and that all reductions associated with Tier 4 be removed.

Furthermore, it is stated that: "The new standards would be allowed to enter the fleet using natural turnover and would not be accelerated by additional rules or incentives" (p. IV-B-51). While the Ports are in favor of CARB advocating for IMO Tier 4 NOx standards and efficiency targets for ships, we believe that effort should be placed on encouraging the cleanest ships to deploy to our ports now. There are currently fewer than 50 ships worldwide on order that will have IMO Tier 3 capabilities and it is unknown where they will be they deployed. We do not foresee a sizeable number of Tier 3 ships servicing our ports in the near term. As more of these ships become available for deployment, the Ports recommend the development of statewide strategies, such as incentive funding programs to attract these clean new ships to our Ports.

f. Appendix II, Chapter 2, PM10 Temporal Variation. p. II-2-57

The Ports are concerned that the narrative in this section misrepresents what is actually occurring at the Ports. In particular, we feel the following statement is misleading:

Moreover, higher port activity due to peak cargo traffic which typically occurs in the fall of each year coupled with the lower mixing height in the fall may also contribute to the higher PM10 concentrations during this time of year.

Actually, higher port activity generally occurs in the middle to late summer, however the shape of the peak has become less pronounced. And furthermore, historical data received at the Ports' Air Monitoring Stations indicates that PM10 concentrations near the Ports are no higher in the fall than any other time of the year. Since these findings do not support the assumption in the statement above, the Ports request that the statement above be removed from the document.

SAN PEDRO BAY PORTS

CLEAN AIR ACTION PLAN

August 19, 2016

Mr. Wayne Nastri
Acting Executive Officer
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765
Electronic Submittal Via:
https://onbase-pub.aqmd.gov/sAppNet/UnityForm.aspx?key=UFSessionIDKey

Dear Mr. Nastri:

SUBJECT: COMMENTS ON THE SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT'S *DRAFT 2016 AIR QUALITY MANAGEMENT PLAN* (JUNE 2016)

The Ports of Long Beach and Los Angeles (Ports) appreciate the opportunity to participate in the South Coast Air Quality Management District's (District or SCAQMD) 2016 Air Quality Management Plan Advisory Committee and to comment on the *Draft 2016 Air Quality Management Plan* released on June 30, 2016 (AQMP). The Ports recognize the amount of effort that has gone into the development of the 2016 AQMP and acknowledge the efforts of the District to release a plan that seeks to balance "traditional" regulatory measures with innovative incentive-based measures.

The Ports support the development and implementation of programs to achieve the applicable and current national ambient air quality standards (NAAQS). Consistent with that effort, the Ports voluntarily developed the highly successful San Pedro Bay Ports Clean Air Action Plan (CAAP) and continue to be successful in implementing those programs. As a result of the CAAP, between 2005 and 2015, emissions from maritime goods movement sources were reduced at an accelerated rate over command and control rules; accounting for overall reductions of 84% for diesel particulate matter (DPM), 50% for nitrogen oxides, and 97% for sulfur oxides. The Ports' emissions inventories in 2015 show reductions that are in excess of the 2014 emission

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

reduction goals in the CAAP. Thus, the Ports have a proven track record of developing and implementing appropriate and effective emission reduction strategies based on cooperative and voluntary measures, independent of or in advance of regulatory requirements.

The CAAP relies upon cooperative efforts with the maritime goods movement industry to achieve healthful air for the surrounding communities. The voluntary and cooperative aspects of the CAAP are critical because the Ports set stretch goals under incentive-based programs that rely in part upon federal, state and District monetary grants. Many of these grants are only available for programs that achieve "surplus" emissions reductions (i.e., those emissions reductions that are not required by regulation) by either accelerating the air quality regulatory agency requirements, or implementing non-regulatory programs. A significant concern of the Ports is the potential loss of this grant money, which is essential to continuing the successful implementation of the CAAP, if CAAP measures are included in the 2016 AQMP, directly or indirectly.

In order to meet the NAAQS, a collaborative and concerted effort with our agency partners is also essential, with the understanding that while the Ports can voluntarily achieve significant emission reductions, the CAAP is not a suitable control measure for the 2016 AQMP. United States Environmental Protection Agency (EPA), California Air Resources Board (CARB), and the District are the air quality regulatory agencies, and as such have authority as granted by statute to regulate the emissions directly from maritime goods movement sources. The Ports do not operate, own or control the maritime goods movement emission sources, and do not have the same authority as the air quality regulatory agencies. As such, the Ports should not be the agencies designated as responsible for achieving emission reductions from the maritime goods movement industry.

Additionally, the Ports are currently in the process of developing the next update of the CAAP. Many of the existing CAAP control strategies have been adopted or superseded by state or international requirements, such as the rules for replacing drayage trucks, switching to cleaner marine fuels, and using shore power while at berth. In collaboration with the maritime goods movement industry and our regulatory partners, the Ports seek to identify additional strategies to voluntarily achieve emissions reductions from ships, trucks, locomotives, cargo-handling equipment, and harbor craft to support the state's and region's air quality attainment needs. The CAAP Update will also incorporate strategies to address near-zero and zero emission technologies, greenhouse gas emissions, energy, and operational efficiencies.

In response to the District's request, the Ports respectfully submit the following comments regarding the Draft 2016 AQMP at this time, as well as questions and concerns that must be addressed *prior to* finalization and adoption of the 2016 AQMP by the District. We note, however, that it is difficult for the Ports to specify all comments at this time as the critical Appendices V and VI, Incentive Funding Action Plan, and

socioeconomic analysis have not yet been released to the public. We urge the District to consider extending the comment date on the 2016 AQMP until all Appendices and other critical components of the AQMP (e.g., the socioeconomic analysis, Incentive Funding Action Plan, etc.) have been released to the public so that a more comprehensive analysis can be conducted and comments provided to the District prior to Board consideration. Based on the information currently available, the Ports request that the Draft 2016 AQMP be revised as follows:

- Remove Mobile Source Control Measure MOB-01, as it does not provide emission reductions for the attainment demonstration, exceeds the District's authority, and is duplicative of other proposed control measures and state, federal and international laws.
- Exclude the Ports from the growth management control measure, EGM-01.
- Revise MOB-14 so that it does not preclude the maritime goods movement industry's ability to obtain grant funding.
- Focus on attaining the applicable NAAQS and not the revoked NAAQS.
- Specifically identify which measures are contingency measures as required by the Clean Air Act.
- Include in the socioeconomic analysis prepared for the 2016 AQMP a thorough cost-benefit evaluation of all control measures, including MOB-01 if it remains in the Plan as currently proposed, and all contingency measures.
- Complete and circulate the Incentive Funding Action plan for public review and comment *before* inclusion in the Socioeconomic analysis.
- Respond with changes in the 2016 AQMP to address the Ports' concerns and questions associated with the technical analysis, including the baseline and future year emissions inventory.

Detailed comments on each of the Ports' requested bullet items above are provided in the following Attachment.

The Ports strongly encourage the District to make the above-requested changes to the Draft 2016 AQMP, and in particular, eliminate control measure MOB-01 as it is unnecessary and exceeds the District's authority. The Ports also urge the District to complete the appropriate Incentive Funding Action Plan, as well as the appropriate socioeconomic impact analysis, and to provide the Ports and other members of the public with an adequate opportunity for comprehensive review and comment on those documents along with the (revised) Draft 2016 AQMP *prior to* submitting the Plan to the Board for consideration.

The Ports remain committed to achieving our clean air goals identified in the CAAP to help improve regional air quality. We strongly believe that the voluntary and cooperative CAAP process established by the Ports remains the most appropriate forum for the Ports and the air regulatory agencies to discuss technical and policy issues related to reducing emissions from port-related sources.

The Ports appreciate this opportunity to provide comments on the Draft 2016 AQMD. We look forward to continuing to work with the District on advancing our shared goals for clean air in the South Coast region.

Sincerely,

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Port of Long Beach

CHRISTOPHER CANNON
Director of Environmental Management
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CC:LW:TD:mrx
APP No.: 160818-518

cc: Jon Slangerup, Port of Long Beach, Chief Executive Officer
Gene Seroka, City of Los Angeles Harbor Department, Executive Director
Richard Corey, California Air Resources Board, Executive Officer
Alexis Strauss, Region 9, Acting Regional Administrator

Attachment: Detailed Comments on the Ports' Requested DRAFT 2016 AQMP Revisions

ATTACHMENT

Detailed Comments on the Ports' Requested DRAFT 2016 AQMP Revisions

1. SCAQMD Mobile Source Control Measure: MOB-01 Emission Reductions at Commercial Marine Ports.

The Ports appreciate the discussion in this control measure that recognizes our successful efforts in implementing the CAAP since 2006 and exceeding our emission reduction goals in 2014. Yet, it appears that the District remains concerned over its ability to claim and quantify credit in the state implementation plan SIP for the emission reductions achieved by the Ports through the CAAP in the absence of District-imposed "enforceable" rules or control measures. The District continues to attempt to hold the Ports responsible for achieving their voluntary stretch goals, and for backstopping requirements that are currently being enforced by state and international regulations. Further, MOB-01 suggests that if the emission reductions occurring at the Ports are not maintained after they are reported into the SIP that this measure may be implemented in the form of a backstop regulation by the SCAQMD or by the State or federal government, or other enforceable mechanisms, notwithstanding the limitations of the federal Clean Air Act.

The District has previously proposed to address its need for enforceable measures by various other approaches, e.g., control measure MOB-03 in the 2007 AQMP and control measure IND-01 in the 2012 AQMP,which characterized the Ports as "indirect sources" of emissions.. The 2007 MOB-03 was described as "a backstop measure for indirect sources of emissions from ports and port-related facilities" and in the ensuing years, District staff proposed and sought public review of a 'backstop" rule that would be enforceable and applicable to the Ports, "Proposed Rule 4001." The Ports raised many questions and objections to control measure IND-01 and Proposed Rule 4001 in numerous comment letters[1] sent to the District and EPA. EPA, in its April 2016 action

[1] Comment Letters to U.S. Environmental Protection Agency dated November 19, 2015; California Air Resources Board dated March 25, 2014; South Coast Air Quality Management

partially approving the 2012 SIP, excluded the commitments proposed by IND-01 from its action and stated that it would respond to that in a separate rulemaking. (See 81 FR 22025 (April 14, 2016) US EPA Partial Approval and Partial Disapproval of California Air Quality SIP.) The District has reported that Proposed Rule 4001 has been placed on hold, in light of work to develop supposedly different approaches for the pending 2016 AQMP.[2]

The Draft 2016 AQMP indicates, however, that the District has not abandoned those efforts to establish policies and control measures that may provide a framework or justification for the District to adopt rules or regulatory measures that may be applied to the Ports, either directly or as a backstop or contingency measures. The Draft AQMP introduces a new proposed control measure "MOB-01" which states: "The proposed measures will replace control measures MOB-03 in the 2007 AQMP and IND-01 in the 2012 AQMP." (Draft 2016 AQMP, p. 4-24.) MOB-01 is described as a control measure to achieve emission reductions at commercial marine ports and is characterized in the Draft AQMP as a "facility-based mobile source control measure." Although the nomenclature may have changed, the Ports believe that proposed new MOB-01 is no different from the District's previous Ports-related control measures, where the District invoked its purported authority to regulate the Ports as "indirect sources" of emissions. The Ports point to the Draft AQMP, which states that "mobile sources" currently contribute about 88% of the region's total NOx emissions. It then acknowledges that "[s]ince the SCAQMD has limited authority to regulate mobile sources, staff worked closely with the CARB and EPA, which have primary authority over mobile sources, to ensure mobile sources perform their fair share of pollution reduction responsibilities" (p. ES-7).

The Ports also note that in describing the MOB-01 control measure, the Draft 2016 Plan characterizes the Ports as a "facility-based mobile source." In addition to the troublesome wording of that characterization, the description of this proposed control

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District dated January 15, 2014, January 31, 2014, October 2, 203, August 21, 2013, October 31, 2012, and August 30, 2012

[2] According to the minutes of the District's "Mobile Source Committee" meeting of April 15, 2016, included in the District's Board Meeting minutes from May 6, 2016 (agenda item #21), the U.S. EPA "in its recent decision on the approval of the 2012 AQMP did not evaluate IND-01 and will evaluate the control measure at some future date. Staff has been working on Proposed Rule 4001 to implement Control Measure IND-01 and has placed the rule development on hold with the development of the 2016 AQMP."

measure strongly indicates that the District intends to use MOB-01 as an indirect source control measure in order to quantify and lock in the emissions reductions achieved by the Ports under the CAAP. These "facility-based mobile source measure" approaches would have serious negative effects on maritime commerce and impede the State of California's freight competitiveness. Those burdensome and counter-productive approaches would be directly in conflict with the goals of Governor Brown's Executive Order to improve freight transportation efficiency and increase competitiveness of California's freight system, as well as the recently-released California Sustainable Freight Action Plan. The Ports continue to oppose any form of a "rule" that would impose SCAQMD oversight on the Ports and are strongly opposed to the District creating or relying on any concept of a "facility-based mobile source measure," whether described as an "Indirect Source Rule," "Backstop Rule" or the "freight hub," "facility cap," and/or "freight facility performance targets" approach. Neither EPA nor CARB can require the District to adopt a control measure for MOB-01 because indirect source control measures cannot be required as a condition of SIP approval. (42 U.S.C. § 7410(a)(5)(A)(ii); Health & Safety Code, § 40468.) Therefore, the Ports have serious concerns about the District making enforceable commitments to the state and federal governments that the Ports will control "indirect sources."

The District has not identified any legislation purporting to confer authority on the SCAQMD to regulate public marine facilities as "mobile sources."[3] The District itself acknowledges that it does not have "primary regulatory authority" over the Port (or other large facilities identified as major sources of emissions, e.g., rail yards, airports, and distribution centers). Nevertheless, the Draft AQMP further states: "This measure [MOB-01] may be implemented in the form of a regulation by the SCAQMD within its existing legal authority, or by the State or federal government, or other enforceable mechanisms." (p. 4-24.) This statement raises legal issues regarding the extent of the District's limited "existing legal authority;" the Ports have previously raised these issues in opposition to PR 4001. The Draft Plan is vague and ambiguous as to the source and extent of any specific "existing legal authority" that may be contemplated by the District or by MOB-01. The District has not previously cited any specific authority under the California Clean Air Act for this type of regulation (Cf., Health & Safety Code §§ 39000 et seq., and more specifically Chapter 5.5 (§§ 40400-40536) dealing with the SCAQMD).

[3] The EPA itself treats "facilities based" emission sources as distinct from "mobile sources". See, e.g., 66 FR 65208 "Database of sources of environmental releases of dioxin-like compounds in the U.S., ref year 1987-1995. December 18, 2001.

In fact, the District has no authority to regulate mobile sources or to draw any geographic boundary or to arbitrarily characterize source categories and declare those areas or groups of sources to be an "indirect source." "Mobile sources" of emissions are beyond the limited regulatory authority conferred by the Legislature on local or regional districts (e.g., Health & Safety Code § 40001(a); *also see*, 76 Ops. Cal. Atty. Gen. 11 (1993); 75 Ops. Cal. Atty. Gen. 256 (1992); 74 Ops. Cal. Atty. Gen. 196 (1991); 73 Ops. Cal. Atty. Gen. 229, 234-35 (1990)). Congress vested the federal government with the authority to set nationwide emissions standards for mobile sources, including non-road mobile engines and vehicles. (42 U.S.C. §§ 7521, 7547.) Congress expressly and impliedly preempted states from setting standards or other requirements relating to the control of emissions for mobile sources. (42 U.S.C. § 7543, (a) & (e).) The maritime goods movement emission sources are within the express and implied preemption. The Clean Air Act allows California to seek authorization from EPA to adopt "standards and other requirements related to the control of emissions" for some, but not all, mobile sources covered by MOB-01. (42 U.S.C. §§ 7543 (b) & (e)(2)(A).) Thus, District does not have mobile source regulatory authority.

The Clean Air Act defines an indirect source as "a facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution." (42 U.S.C. § 7410(a)(5)(C).) An "indirect source review program" is "the facility-by-facility review of indirect sources of air pollution, including such measures as are necessary to assure, or assist in assuring, that a new or modified indirect source will not attract mobile sources of air pollution" that would contribute to the exceedance of the NAAQS. (42 U.S.C. § 7410(a)(5)(D)(i).) "Direct emissions sources or facilities at, within, or associated with, any indirect source shall not be deemed indirect sources for the purpose" of an indirect source review program. (42 U.S.C. § 7410(a)(5)(C).) Air pollution control districts are not statutorily authorized to impose a permit system on indirect sources. (*Friends of Oceano Dunes, Inc. v. San Luis Obispo County Air Pollution Control District* (2015) 235 Cal.App.4th 957, 964, as modified on denial of reh'g (Apr. 23, 2015).)

The control measures also fail as an indirect source review program because the businesses within the geographic and source designated areas are not a "new or modified indirect emissions source." (42 U.S.C. § 7410(A)(5).) A source is new if it adds to the air basin's existing emissions baseline. (*National Ass'n of Home Builders v. San Joaquin Valley Unified Air Pollution Control Dist.* (9th Cir. 2010) 627 F.3d 730, 731-32.) The Clean Air Act defines modification as "any physical change in, or change in the method of operation, of a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of an air pollutant not previously emitted." (42 U.S.C. § 7411(a)(4).)

Only those provisions necessary to meet the requirements of the Clean Air Act are included in the SIP. (Health & Safety Code, § 39602.) The purpose of an indirect source program is to ensure that mobile source emissions do not "cause or contribute to air pollution concentrations exceeding any national primary ambient air quality standard for a mobile-source related air pollutant." (42 U.S.C. § 7410(a)(5)(D)(i).) MOB-01 is not necessary to meet the NAAQS requirements of Clean Air Act. The emissions reductions listed in the Draft AQMP for MOB-1 for the years 2023 and 2031 are listed as "To Be Determined" -- which indicates that the reductions will be determined once the inventory and control approach are identified, and are not relied upon for attainment demonstration purposes. In reality, there would be little to no emission reduction benefit from indirect source measures because state, federal and international authorities have adopted rules and regulations to significantly reduce NOx emissions from these on- and off-road mobile sources. According to the 2016 AQMP, "[t]he effect of the rules and regulations are significant, showing reductions of over 67 percent in NOx emissions and close to 60 percent in VOC emissions between 2012 and 2023, even with increases in fleet population" (p.3-4).

MOB-01 further violates the dormant Commerce Clause by impeding the free and efficient flow of commerce by imposing a heavy burden on ports, the shipping industry, navigation and commerce without any local environmental benefit, or an insubstantial local benefit at best.

The Draft 2016 AQMP also inappropriately refers to the Ports as an "Implementing Agency," which the AQMP defines as "the agency(ies) responsible for implementing the control measure" (p. IV-A-20MOB-01 statesthat "[t]he Ports through its CAAP update can decide the most effective approaches to achieve the overall emission reductions targets" (p. IV-113). However,to the extent the AQMP singles out and mischaracterizes the Ports as "Implementing Agencies," without including all of the other public and private partners working to achieve emission reductions, it erroneously implies that the Ports would have an assigned enforcement obligation, and improperly shifts an unwarranted burden of regulatory implementation to the Ports. While the Ports have successfully adopted voluntary efforts to reduce emissions from maritime goods movement sources, the Ports are not air agency regulators. The Ports do not have the regulatory responsibility or authority to achieve emission reductions from sources over which they do not have jurisdiction, ownership or operational control. Further, the District is well aware from the Ports' previous comment letters on these issues, that generally the Ports lack authority to enforce as mandates the programs on all mobile sources operating in the Ports as they are preempted by state, federal and international law. This portion of the AQMP, requiring the Ports to select and implement the control measures, does not address or overcome these legal impediments.

The Ports respectfully remind the District that the CAAP is a planning document that provides guidance on strategies and targets that are ultimately implemented through individual actions adopted by each Port's respective Board of Harbor Commissioners (Boards). The State granted to the Cities of Long Beach and Los Angeles exclusive authority to implement the Tidelands Trust under the oversight of the State Lands Commission. Each city has been appointed as a trustee and has established their respective Board of Harbor Commissions with exclusive control and management of the Tidelands and revenues and expenditures from the Tidelands. However, such discretion must be exercised in accordance with their obligations to prudently manage Tidelands assets and revenues within a nexus and proportionality to the Tidelands Trust interest, as well as in accordance with applicable laws such as the California Environmental Quality Act (CEQA) and principles of federal preemption. The District cannot mandate action by each Port's Board of Harbor Commissioners, nor can the District direct how the Ports may be obligated to spend state Tidelands money; only the appointed trustee can make discretionary actions to obligate state Tidelands funds. Specifically, any measures listed in the AQMP or the CAAP must each require the Boards to authorize the expenditure of monies and program costs, or to approve conditions of infrastructure project development in their discretion as a CEQA lead agency and as Tidelands trustees.

Further, the District has not complied with the procedural requirements to adopt indirect source control rules that are contemplated in MOB-01. The requirements are: (1) ensure, to the extent feasible, and based upon the best available information, assumptions, and methodologies that are reviewed and adopted at a public hearing, that the proposed rule or regulation would require an indirect source to reduce vehicular emissions only to the extent that the district determines that the source contributes to air pollution by generating vehicle trips that would not otherwise occur; (2) ensure that, to the extent feasible, the proposed rule or regulation does not require an indirect source to reduce vehicular trips that are required to be reduced by other rules or regulations adopted for the same purpose; (3) take into account the feasibility of implementing the proposed rule or regulation; (4) consider the cost effectiveness of the proposed rule or regulation; (5) determine that the proposed rule or regulation would not place any requirement on public agencies or on indirect sources that would duplicate any requirement placed upon those public agencies or indirect sources as a result of another rule or regulation adopted pursuant to Health and Safety Code sections 40716 or 40717. (Health & Saf. Code, § 40717.5.)

Instead of MOB-01, the Ports suggest that a collaborative, voluntary approach, consistent with the cooperative partnership that has been proven to be successful over the past decade, will continue to be the most effective means for controlling emissions from maritime goods movement activities within the jurisdiction of Ports. This approach,

which could be memorialized under a cooperative agreement between the Ports and SCAQMD, CARB, and EPA, would benefit all parties because it continues the collaborative effort that has resulted in unprecedented emission reductions at the Ports, shares responsibility between Parties, provides more certainty for the local economy, avoids litigation, insures incentive funding that is tied to excess emissions will continue to be available, and will result in better air quality.

2. SCAQMD Growth Management Control Measure: EGM-01

The Draft 2016 AQMP states: "[f]or the purposes of this measure [EGM-01], indirect sources include all facilities not covered by another 2016 AQMP Control Measure. In addition, during the rule development process, additional indirect sources may be included or excluded" (p. IV-A-169).

The Ports should not be included within this control measure in the event MOB-01 is removed from the 2016 AQMP or during the rule development process. In addition to the reasons stated above in section 1, the Ports have serious concerns about the District making a commitment to the state and federal governments that the SCAQMD will control growth or dictate land use decisions. SCAQMD has no authority to control growth or overrule local land use decisions. (Health & Saf. Code, § 40716 [air districts cannot infringe on the existing authority of counties and cities to plan or control land use]; see also Health & Saf. Code, §§ 40000, 40414, 40440.1, 40717.5(c)(1).) Land use is within the exclusive preview of local cities and counties.

3. SCAQMD Mobile Source Control Measure: MOB-14 Emission Reductions from Incentive Programs

The Draft 2016 AQMP mobile source control measures include development of incentive funding programs and supporting infrastructure for early deployment of advanced control technologies. MOB-14 states that it seeks to develop a rule similar to the San Joaquin Valley Air Pollution Control District Rule 9610 – "State Implementation Plan Credit for Emission Reductions Generated through Incentive Programs" -- such that emissions reductions generated through incentive programs can be credited in the SIP emission inventories.

It will be critical to prioritize and secure the necessary funding needed to implement the proposed incentive-based measures in the Draft AQMP and achieve the aggressive emission reduction targets in the South Coast Air Basin. The Ports know first-hand that the move toward zero emissions is a costly endeavor and have placed significant emphasis on efforts to advance the development of near-zero and zero emissions equipment for on-terminal and on-road applications. Through the Ports' Technology

Advancement Program (TAP), we have been involved with funding the demonstration of clean technologies used in port operations for nearly a decade. Significant progress has been made and we expect that zero emissions operations will be feasible in the future. The scale of this effort will be significant, with cost for the equipment and fueling infrastructure in the *Billions* of dollars.

The Ports and the maritime goods movement industry will require a substantial amount of funding assistance from the local, state and federal agencies. As such, the Ports are supportive of incentive funding to accelerate advancement of technologies. The Ports continue to strongly support the implementation of funding programs such as the Proposition 1B Goods Movement Emission Reduction Program and the Carl Moyer Memorial Air Quality Attainment Program, both of which have provided funding for much needed assistance with upgrading wharves for shore power, the replacement of drayage trucks, and the replacement and repower of engines in cargo-handling equipment, harbor craft, and locomotives.

While the Ports support funding programs and the need to credit emissions reductions generated from through incentive funding programs, the Ports strongly recommend that MOB-14, or any resulting regulatory strategy be structured in such a way that does not preclude the maritime goods movement industry's ability to secure grant funding for early actions. For example, it is not clear from the description of MOB-14 whether facility emission caps or port backstop rules could effectively disqualify companies and agencies from received grants, because typically grants funds cannot be used for regulatory compliance. The Ports believe that this unintended consequence of a control measure like MOB-14 could significantly impede early equipment replacement and transition to zero emission technologies, and also severely affect the economic competitiveness of the maritime goods movement industry. In addition, if the required emission levels for attainment are not be met in the region, the Ports must not be held accountable for attaining emission reductions that are predicated on incentive funding if the funding does not come through at the necessary and appropriate levels.

4. Inclusion of Revoked NAAQS in the 2016 AQMP

The Draft 2016 AQMP includes updates to previous plans for the revoked 1-hour (120 ppb) and 1997 8-hour (80 ppb) ozone NAAQS (p. 4-1), rather than addressing the current and controlling ozone NAAQS. For example,, the Draft 2016 AQMP attainment strategy seeks to reduce NOx emissions sufficiently to meet the revoked 1-hour ozone NAAQS of 120 ppb by 2023 and the revoked 8-hour ozone NAAQS of 80 ppb by 2024, instead of focusing on achieving the applicable ozone NAAQS of 75 ppb by 2032. This approach is inappropriate and unnecessary.

While the SCAQMD is required to comply with the anti-backsliding provisions of the Clean Air Act [CAA sec 172(e)], which preclude the adoption of controls that are less stringent than existing controls applicable in the District, the 2012 AQMP does not contain any mandates akin to MOB-01 that are applicable to the Ports. Therefore, the removal of MOB-01 from the 2016 AQMP by the District would not be "backsliding" from any existing standards relied upon for attainment under the existing 2012 AQMP.

Furthermore, the proposed approach of targeting the revoked standards and their associated deadlines of 2023 and 2024, which are significantly earlier than the controlling deadline of 2032 in the current regulations, puts the region at unnecessary risk that contingency measures for ozone will be required in the three years leading up to the attainment date for the revoked NAAQS.

5. Contingency Measures

> The Draft 2016 AQMP states the following regarding contingency measures: "Some measures in the summary table are listed as "TBD" (to be determined) for emission inventory, emission reductions and/or cost control. The "TBD" measures are not relied upon to demonstrate attainment of the standards but have been included if potentially feasible for the integrated, comprehensive plan. "TBD" measures require future technical and/or cost assessments in order to better understand and quantify emissions from and cost impact to the anticipated affected sources for the measures. It may be determined at that time that the "TBD" measure is not feasible or cost-effective to adopt and implement, or if reductions can be achieved, those reductions would be submitted into the SIP. Thus, "TBD" measures are included in the Plan as needed for contingency or if there are any shortfalls in committed emission reductions" (p. IV-A-18).

The District needs to identify specifically which measures in the AQMP it intends to be "contingency measures." Referring to "TBD" measures does not provide sufficient identification because the measure language is not consistent with the measure being a contingency measure. The contingency measures should only be for the *applicable* NAAQS, and not for the revoked NAAQS attainment timeframes.

Further, EPA's March 6, 2015, rulemaking allows extreme nonattainment areas for ozone to develop and adopt contingency measures meeting the requirements of 182(e)(5) (black box) to satisfy the requirements for both attainment contingency measures in CAA sections 172(c)(9) and 182(c)(9). These enforceable commitments must obligate the state to submit the required contingency measures to the EPA no later

than three years before any applicable implementation date, in accordance with CAA section 182(e)(5). (See Federal Register, Vol. 80, No. 44, 12264 Friday, March 6, 2015.) Therefore, it is premature to submit contingency measures for 2032. As for reasonable further progress (RFP) contingency measures, these are only needed to provide the incremental shortage in emission reductions and last one year.

EPA is also continuing its long term policy that allows promulgated federal measures to be used as contingency measures as long as they provide emission reductions in the relevant years in excess of those needed for attainment or RFP. The 2016 AQMP needs to be revised to reflect these allowances that EPA has made for extreme nonattainment areas.

6. State and Federal Control Measures and Incentive Funding Strategy

The Draft AQMP includes additional control measures to reduce emissions from sources that are primarily under State and Federal jurisdiction, including on-road and off-road mobile sources. As stated, these reductions are needed to achieve the remaining emission reductions necessary for the Basin's attainment. The Draft AQMP identifies 107 tons of NOx reductions in 2023 and 97 tons of NOx reductions in 2031 to help the District meet attainment. Almost all of these reductions, however, are associated with the measures calling for "further deployment of cleaner technologies," which involve accelerating the development, demonstration, and deployment of cleaner engine technologies, in whole or in part through the use of incentive programs. Achieving these substantial emission reductions "is predicated on securing the amount of funding needed" to further deploy these cleaner technologies, according to the Draft AQMP.

The AQMP estimates an approximate range of $4 to $11 billion in funding over a 7 to 15 year period to achieve the projected NOx emissions reductions from mobile sources (p. 4-59). "The total funding needed ranges from $13 to $16 billion to achieve the NOx emission reductions associated with the State Mobile Source Strategy" (p. 4-62). "A total of $1.1 to $1.6 billion of stationary source incentive funding programs are proposed with projected cost-effectiveness levels in the same range as the mobile source incentives" (p. 4-66). The AQMP further states:

> "The amount of incentive funding needed is estimated to be approximately $11 – 14 billion in total funding over a seven to fifteen year period. Currently, the SCAQMD receives around $56 million per year in incentives funding to accelerate turnover of on- and off-road vehicles and equipment under SB1107, a portion of the state's Tire Fee, and AB923. AB 923 will sunset in 2024. In addition, the District has received close to $550 million in Proposition 1B funding. The last round of Proposition 1B will be ending in

> the next couple of years. The District has also received funding under the DERA program on a competitive basis. However, the amount of funding needed to achieve the NOx emission reductions associated with the "Further Deployment" measures proposed in the State Mobile Source Strategy and the 2016 AQMP will require on the order of $1 billion per year if funding is available beginning in 2017" (pp. ES-8 to 9).
> As such, the short-fall is significant.

Assuming $16 billion is a reasonable estimate – and the accuracy of that estimate is open to question – should the District fail to secure this funding, it may be forced to adopt the "contingency" measures specified in the Draft AQMP, of which MOB-01 may be is one. The Ports are concerned the District may not secure the necessary funding, which would likely necessitate the hasty adoption of such contingency measures without a comprehensive analysis of the impacts, or possible alternatives, and without robust public input.

In addition, the Draft AQMP acknowledges that achieving the emissions reductions from the 2016 AQMP incentive-based control measures for both mobile and stationary sources will require approximately $11 – $14 Billion in total funding. Given this significant funding level needed to attain the ozone NAAQS over the next seven to fifteen years, the Draft AQMP refers to "an action plan [that] will be developed as part of the AQMP public adoption process" to identify the necessary actions to secure new sources of funding to implement the AQMP (p. 4-66). However, the Draft AQMP provided insufficient details on what would be contained in such an Incentive Funding Action Plan.

Furthermore, at the District's Mobile Source Committee meeting of July 22, 2016, the AQMD staff presentation indicated that a draft of the Incentive Funding Action Plan is expected as part of 2016 AQMP adoption. However, District staff has informed the Ports that an Incentive Funding Plan will not be available until *after* the AQMP has been adopted. This is not acceptable. Without a review of the Incentive Funding Action Plan concurrent with the Draft AQMP, it is not known whether the Plan is viable (i.e., activities to secure additional funding or actions are not realized), and the risk of contingency measures being triggered cannot be evaluated.
For this reason, the Ports urge the District to fully analyze the Incentive Funding Action Plan, and all contingency measures now, and to release that analysis *prior to* the close of public comment so that the public can evaluate the adequacy of the District's strategy and comment on that strategy.

7. Socioeconomic Impact Analysis

The Draft 2016 AQMP indicates that there will be no analysis of contingency measures in the socioeconomic study. Also, it appears that several measures that do not have emissions reduction targets or other information will not be included in the socioeconomic analysis. This means there will be no comprehensive review of the impacts associated with implementation of all measures or the repercussions of the potential adoption of the "facility-based mobile source measures" discussed in the MOB-01 section above.

The Ports request a full socioeconomic analysis of all control measures, and that the socioeconomic analysis be completed and an adequate opportunity for public comment be provided *prior to* action on the Draft 2016 AQMP.

Furthermore, it appears that the socioeconomic study will only analyze the impacts associated with approximately $16 billion in government subsidies, not including the match funding that will be required from private operators. The Ports are concerned that this amount is substantially underestimated and ignores the private capital that will be necessary to purchase thousands of pieces of costly near-zero and zero emission equipment to be deployed at the ports and throughout the region.

Finally, the description of the anticipated socioeconomic study assumes that there will be no tax increases to fund these incentives; however, the Draft AQMP contradicts this assumption as it clearly states AQMD's intent to seek local and state ballot measures, which would include taxpayer funding (p. 4-68).

The socioeconomic analysis must include an analysis of the impacts on the private sector from having to invest in significant new capital costs associated with cleaner equipment, and it must include an analysis of the impact on taxpayers as a result of higher taxes.

8. Specific Technical Comments on the 2016 Draft AQMP

a. Appendix IV-A, Table IV-A-2 SCAQMD Proposed Mobile Source 8-Hour Ozone Measures, p. IV-A-4

The title of MOB-01 is inconsistent with the description of the control measure provided starting on page IV-A-109, which lists "CO" as a target pollutant. The control measure summary for MOB-01 (pp. IV-A-109-115) indicates that the goal of the measure is to seek emission reductions of NOx, SOx, and PM2.5. Please

clarify if the measure is also intended to address emissions of CO, otherwise CO should be removed from Table IV-A-2 and updated accordingly.

In addition, for MOB-01, the emission reductions in tons per day (tpd) for 2023/2031 are identified as "TBD" with a corresponding footnote "b", which states "Submitted into the SIP as part of reporting or in baseline inventories for future AQMP/SIP Revisions." We request that the District provide further clarification on how the "Rate of Progress" will be calculated and compared to ensure that the emissions reductions achieved by the proposed control measure are surplus emissions.

b. Appendix IV-A, Emission Reductions at Commercial Marine Ports [All Pollutants], p. IV-A-109

The Ports each prepare annual air emissions inventories of port-related sources, and in July 2015, transmitted the San Pedro Bay Ports 2012 air emissions inventory, as well as forecasted port-related emissions for each year through 2031 for inclusion on the 2016 AQMP based on discussions with District and CARB staff.[4,5] It is not clear whether the emissions of NOx, SOx, and PM2.5 listed in the Control Measure Summary Table (p. IV-A-109) reflect the Port's actual emissions, as they do not correspond with those transmitted to the District and CARB.

It is the Ports' understanding that the emissions from port-related sources in the 2016 AQMP would reflect the actual emissions reported by the Ports. These discrepancies should be addressed.

To provide for a meaningful and comprehensive review, the Ports request that the District identify the port-related sources (i.e., ocean-going vessels, harbor craft, locomotives, cargo-handling equipment, and heavy-duty trucks) of emissions that make up the total emissions in the Control Measure Summary (p. IV-A-109). It is

[4] Email Communication, Subject: San Pedro Bay Ports 2012 Emissions Inventory. July 21, 2015. Allyson Teramoto (Port of Long Beach) to Henry Hogo, Joe Casmassi, Randall Pasek (AQMD); Nicole Dolney, Sylvia Vanderspek, Gabe Ruiz (CARB).

[5] Email Communication, Subject: 2016 AQMP Emissions Forecasting Dial +1 (312) 757-3121 Access Code: 299-388-957. August 9, 2016. Archana Agrawal (Starcrest Consulting Group, LLC) to Henry Hogo, Randall Pasek (AQMD); Nicole Dolney, Sylvia Vanderspek, Russel Furey, Vernon Hughes, Gabe Ruiz (CARB).

also important to identify the assumptions used to estimate future emissions in 2022, 2023, and 2031. For instance, it is important to understand the assumed International Maritime Organization (IMO) tier level of engines installed on ocean-going vessels calling at the Ports, as well as the fleet makeup of all other port-related source categories, including heavy-duty trucks, cargo-handling equipment, locomotives, and harbor craft. It is also important to identify the source-specific "growth" factors that were used to estimate future year emissions.

The **table** on the next page shows a comparison of the emissions provided in the Draft 2016 AQMP and the Ports' actual 2012 emissions and forecasted emissions for 2023 and 2031. As shown, there are several inconsistencies in the emissions inventories prepared by the Ports and the inventory used for the AQMP.

Annual Average	**2012**	**2022**	**2023**	**2031**
NOx (MOB-01 Draft 2016 AQMP)	39.37	TBD	42.39	35
NOx (2012 San Pedro Bay Ports Actual Emissions)	41.95	47.80	46.35	42.03
PM2.5 (MOB-01 Draft 2016 AQMP)	1.06	TBD	0.81	0.93
PM2.5 (2012 San Pedro Bay Ports Actual Emissions)	1.03	0.83	0.84	0.93
SOx (MOB-01 Draft 2016 AQMP)	4.04	TBD	1.23	1.47
SOx (2012 San Pedro Bay Ports Actual Emissions)	3.90	0.81	0.82	0.91

As previously mentioned, we request that the control costs associated with MOB-01 (and all other control measures) be quantified and included in the 2016 AQMP.

c. Appendix IV-A, Emission Reductions at Commercial Marine Ports [All Pollutants], CARB In-Use Fleet Rules. p. IV-A-112

It is stated in this paragraph that "The majority of marine vessel emissions are created by main propulsion engines, but auxiliary engines emissions are important, in part because they occur at dock in closer proximity to persons in and around the port" (p. IV-A-112). This statement is misleading in that the contribution of auxiliary engine emissions (excluding boiler emissions) to overall ocean-going vessel emissions (including transit, maneuvering, and hoteling at-berth) is often times nearly equivalent to or higher than main propulsion engines, which are only operational during transit and maneuvering.

d. Appendix IV-A, Format of Control Measures, Emission Reductions. p. IV-A-19

This section states that: "During the rule development, the most current inventory will be used. However, for tracking rate-of-progress for the SIP emission reduction commitment, the approved AQMP inventory will be used. More specifically, emission reductions due to mandatory or voluntary, but enforceable actions shall be credited toward SIP obligations" (p. IV-A-19).
We request that any differences between the "most current inventory" used for rule development and the "approved AQMP inventory" be clearly described and addressed prior to any mandatory or voluntary emissions being credited toward SIP obligations.

e. Appendix IV-B, Tier 4 Vessel Standards. p. IV-B-50

Under this proposed action, CARB intends to work with the EPA, U.S. Coast Guard, and international partners to urge the International Maritime Organization (IMO) to adopt a Tier 4 NOx standard for new ocean-going vessels and efficiency requirements for existing vessels (p. IV-B-50).

The Ports support the advocacy for more stringent IMO standards and efficiency targets for ships. Currently, newly built ships are required to meet IMO Tier 3 standards for NOx. The Ports have developed an IMO Tier distribution forecast based on the existing world fleet, estimated future vessel calls at the Ports, and Tier 3 order information provided by the engine manufactures. The Ports' Tier distribution forecast indicates strongly that there will be no significant (less than 5%, best case scenario) Tier 3 penetration of the ship calls by 2023. Further, the forecast indicates that the existing world fleet (Tier 0-2) could service the Ports through the mid to late 2030s to 2040s.

Recognizing that Tier 3 fleet penetration will be significantly slower than CARB is estimating and coupled with the fact that there have been no discussions at IMO Marine Environmental Protection Committee related to a Tier 4 NOx engine standard, the Ports believe that it is highly inappropriate to assume aspirational reductions related to Tier 4 fleet penetration until the standard is at least drafted if not promulgated. Taking reductions for standards that are neither in discussion nor in development is not appropriate for SIP planning purposes. Therefore, the Ports request that the estimated emissions reductions associated with Tier 3 fleet penetration this measure be reconsidered for the proposed SIP commitment and that all reductions associated with Tier 4 be removed.

Furthermore, it is stated that: "The new standards would be allowed to enter the fleet using natural turnover and would not be accelerated by additional rules or incentives" (p. IV-B-51). While the Ports are in favor of CARB advocating for IMO Tier 4 NOx standards and efficiency targets for ships, we believe that effort should be placed on encouraging the cleanest ships to deploy to our ports now. There are currently fewer than 50 ships worldwide on order that will have IMO Tier 3 capabilities and it is unknown where they will be they deployed. We do not foresee a sizeable number of Tier 3 ships servicing our ports in the near term. As more of these ships become available for deployment, the Ports recommend the development of statewide strategies, such as incentive funding programs to attract these clean new ships to our Ports.

f. Appendix II, Chapter 2, PM10 Temporal Variation. p. II-2-57

The Ports are concerned that the narrative in this section misrepresents what is actually occurring at the Ports. In particular, we feel the following statement is misleading:

Moreover, higher port activity due to peak cargo traffic which typically occurs in the fall of each year coupled with the lower mixing height in the fall may also contribute to the higher PM10 concentrations during this time of year.

Actually, higher port activity generally occurs in the middle to late summer, however the shape of the peak has become less pronounced. And furthermore, historical data received at the Ports' Air Monitoring Stations indicates that PM10 concentrations near the Ports are no higher in the fall than any other time of the year. Since these findings do not support the assumption in the statement above, the Ports request that the statement above be removed from the document.

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Port of LONG BEACH
The Green Port

August 4, 2016

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Re: Comments on the Notice of Preparation, Initial Study, and Scope of Proposed Draft Program EIR for the 2016 Air Quality Management Plan

Dear Ms. Wong and Staff of the South Coast Air Quality Management District:

We appreciate this opportunity to submit comments on the Notice of Preparation ("NOP") and the accompanying Initial Study ("IS") 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") 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.[1]

[1] (*See* letters dated 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.)

We are also mindful that the California Environmental Quality Act ("CEQA") calls for public review, critical evaluation, and comment on the scope of the environmental review to be conducted prior to approval of proposed projects. Such review and critique 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. Thorough identification of the proposed Project, and candid disclosure of all phases of the Project and its potential impacts, is essential to assure 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 NOP for the Project as well as questions, concerns, and objections related to the omissions of critical information, unsupported assumptions, or analytical deficiencies in the IS, and comments as to the scope of the proposed Draft Program Environmental Impact Report ("DPEIR") as contemplated and invited by the District's NOP. 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) mitigation measures and alternatives must be provided to address all potentially significant environmental impacts.

A. General Comments on the Initial Study

While we recognize the effort that has gone into preparation of the current NOP/IS, it is apparent that the IS does not provide the information, evidence, or analysis required under CEQA. The IS 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 initial study are described in CEQA Guidelines § 15063(d). An initial study must "contain in brief form:

(1) A description of the Project including the location of the Project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries . . . ;

(4) A discussion of ways to mitigate the significant effects identified, if any;

(5) An examination of whether the Project would be consistent with existing zoning, plans, and other applicable land use controls;

(6) The name of the person or persons who prepared or participated in the initial study."

An initial study that fails to provide all of the information, analysis, and evidence called for by CEQA may be deemed to be inadequate and not a valid basis for CEQA review or project approval. (*See, e.g., City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 407–408, [invalidating the County's proposed general plan amendments because of a deficient initial study: "[T]he initial threshold study is inadequate because it fails to provide sufficient evidence or analysis of the potential environmental effects of the amendments."].)

As set forth in more detail below, the IS fails to: contain an adequate project description, properly identify the environmental setting, and adequately assess the Project's potentially significant environmental effects. It contains no discussion whatsoever of mitigation measures or consistency with existing zoning, plans, and other applicable land use controls, as required. It is therefore respectfully urged that the IS (and the related NOP) be revised, corrected, and recirculated for public review and comment before the District proceeds with any further action, including release of a DPEIR for the proposed Project.

The CEQA Guidelines contemplate that an initial study is to be used in defining the scope of environmental review. (CEQA Guidelines §§ 15006(d), 15063(a), 15143). However, as a result of the omissions, open questions, and deficiencies in the IS as noted below, it appears to have unduly narrowed the District's proposed scope of environmental assessment, and to have caused the NOP to erroneously exclude critical issues and topics from the proposed scope of the DPEIR.

The comments on the current IS included in this letter are organized in the same format used by the IS, i.e., comments on "Chapter 1 – Project Description" followed by comments on "Chapter 2 – Environmental Checklist." The comments are limited to those matters that appear in the current version of the IS, and we reserve the right to provide further comments in the event that additional or different information concerning the proposed Project becomes available, or the District provides a revised and CEQA-compliant initial study.

B. Request for Revision of NOP and Re-Circulation of Revised NOP/IS to Include a Legally-Adequate "Project" Description

As a preliminary matter, we note that the 30 day review period is insufficient time to review the IS and the over 1,000 page Proposed Plan and available appendices. It is also important to note that Appendix V (Modeling & Attainment Demonstrations) and Appendix VI (Compliance With Other Clean Air Act Requirements) of the Proposed Plan has not yet been posted to the District's website.

Further, it is essential that the NOP and the IS be revised to include an adequate "project description" including *all* of the Proposed Plan's pertinent control measures and strategies that is the "project" before the public and agencies can be expected to provide comments and input.

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 MOB-02, MOB-03, MOB-04, MOB-08, MOB-12, MOB-13, and MOB-14.) 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. Accordingly, it is still not possible for the District to proceed with appropriate project-level CEQA review or to issue an accurate NOP/IS at this stage as the details of the Proposed Plan are still under development.

It is necessary that the current NOP and IS be revised to include a revised Project description, to incorporate the text of the Proposed Plan in detail, and to recirculate the revised documents for public review. A new set of public meetings, including a new "scoping meeting" should be scheduled to provide the public with sufficient time and opportunity to comment on the scope and adequacy of the revised notice of preparation/initial study. The comment period on any such revised documents should be at least 60 days in total.

The DPEIR schedule too is very aggressive, with the scoping comment period ending on August 4, 2016, followed immediately by the release of the DPEIR also in August 2016, and final approval planed for December 2, 2016. This schedule provides insufficient time for meaningful input on the scope and content of the DPEIR by members of the public and affected agencies. Further, the POLB is concerned that given the quick turnaround between closure of the scoping period and the scheduled release of the DPEIR, insufficient time will be allowed for thorough review of the scoping comments by the District and inclusion of such comments into the DPEIR.

C. Comments on the Initial Study

1. Chapter 1 of the Initial Study – Inadequate "Project" Description

(a) Deficient "Project" Description – In General

The failure of the IS and NOP to provide an accurate, complete, and coherent description of the "Project" is a fundamental deficiency, which permeates the entire document. The absence of such a clear description of the proposed Project inherently prevents the IS from facilitating meaningful review and analysis of the proposed Project, and violates the requirements of CEQA. (*See, e.g.*, CEQA Guidelines § 15124 and *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376.)

The importance of providing an accurate and informative project description in an initial study was re-emphasized in *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 267:

> ***The initial study must include a description of the project***. Where an agency fails to provide an accurate project description, or fails to gather information and undertake an adequate environmental analysis in its initial study, a negative declaration is inappropriate. An accurate and complete project description is necessary to fully evaluate the project's potential environmental effects.
>
> The scope of the environmental review conducted for the initial study must include the entire project. Thus, a correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA.[2]

In *City of Redlands, supra*, the Court of Appeal likewise observed that:

> An accurate and complete project description is necessary for an intelligent evaluation of the potential environmental impacts of the agency's action. 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.

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

(96 Cal.App.4th at 406, 408; *accord*, *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-193 (an accurate, complete and consistent project description is the sine qua non of informative, legally adequate CEQA review).

CEQA Guidelines § 15063(a)(1) further makes clear that an initial study must take a comprehensive view of the proposed project *as a whole*. "All phases of project planning, implementation, and operation must be considered in the initial study of the project." 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.)

The IS currently falls far short of these requirements in describing the proposed Project, and thus falls equally short of serving the "public awareness" purposes described above and mandated by CEQA. The IS does not include or even describe the text of several control measures supposed to comprise the "Project." The section of the IS that purports to "describe" the Project, includes nothing more than summaries of certain control measures. At least some of the summaries do not accurately match the details described in the appendices to the Proposed Plan. In any event, the summaries are insufficient to describe the Project itself, and prevent effective public review and comment. The IS also fails to describe reasonably foreseeable activities or actions in response to or associated with the proposed Project control measures.

As to certain control measures, the IS appears to imply that any informed public discussion and environmental review on this course of action be *deferred* until 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, 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.)

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 IS.

The Proposed Plan refers to "an action plan [that] will be developed as part of the AQMP public adoption process" to identify strategies to secure new sources of funding in order to implement the Proposed Plan. (Proposed Plan, p. 4-66.) However, the Proposed Plan provides insufficient details on what would be contained in this action plan and what environmental impacts might occur from its adoption. This action plan is part of the Project and must be analyzed in the IS and the resulting DPEIR.

In brief, the NOP/IS 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 as to the scope of review of the Project. No effective CEQA review can be undertaken unless and until the District provides an adequate description of the "Project."

(b) Specific Comments and Questions Regarding "Project Description" and Text

The following comments and questions refer to specific portions or pages of Chapter 1 of the IS:

Pp. 1-5 to 1-6 – Agency Authority-2016 AQMP

The IS 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 . . .." (IS, p. 1-5.)[3] Despite this acknowledged limit on its regulatory jurisdiction, the AQMP nonetheless purports to contain several measures related to mobile source emissions.

Pp. 1-7 to 1-8 – Overall Attainment Strategy

The IS indicates that the Proposed Plan "includes integrated strategies and measures" to meet the following federal standards:

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

[3] *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.").

In addition to developing strategies and measures to meet the above acknowledged revoked standards, the text indicates that a new 8-hour ozone standard has been adopted (70 parts per billion ["ppb"]) ostensibly replacing the 2008 standard analyzed. (IS, p. 1-7.) The text does not explain why a plan is being developed to attain standards that have been revoked or rescinded.

The IS states that the majority of nitrogen oxide ("NOx") emission reductions will need to come from mobile sources and acknowledges again that the District lacks authority to regulate such emissions. As such, why is the District developing an "aggressive mobile source control strategy" to control emissions over which it admittedly lacks regulatory jurisdiction? (IS, p. 1-8.)[4]

P. 1.9 – Project Objectives

The IS notes the objective of achieving the various ozone and particulate matter ("PM2.5") standards by the specified attainment dates. However, as the appendices to the Proposed Plan make clear, several of the emissions reductions are listed as "TBD" with a note that "Emission reductions will be determined after projects are identified and implemented." (Proposed Plan, Appendix IV-A, pp. IV-A-4, IV-A-5, IV-A-96, and IV-A-172.) 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, 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.[5]

Pp. 1-10 – Project Description

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

[4] 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.)

[5] (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.)

The text indicates that the air quality baseline is comprised of 2012 data.[6] 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, 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.

Pp. 1-10 to 1-21 – Stationary Source Control Measures (SCAQMD)

The stationary control measures to be implemented by the District are listed in Table 1.9-1 and summarized in the text following that table.

The IS 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.)

Measure ECC-03 would "seek to provide financial incentives" to go beyond the Title 24 standards and existing local regulations pertaining to NOx emissions. (IS, pp. 1-12 to 1-13.) "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." The measure also references providing "solar thermal and solar photovoltaics" to provide emission reductions within the residential sector. 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 others that are not analyzed in the IS nor proposed for analysis in the DPEIR.

[6] The IS later inconsistently states that the emission benefits associated with SCAG's Final 2016 Regional Transportation Plan/Sustainable Communities Strategy ("RTP/SCS") are reflected in the Project baseline emissions. (IS, p. 1-40.)

Measure ECC-04 similarly 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. Neither this measure nor these impacts are analyzed in the IS nor proposed for analysis in the DPEIR and should be.

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.)[7] The IS contains, at best, an incomplete analysis of this measure as evidenced by its omission of any discussion of its potential growth inducing impacts. (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.].)

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 is not. (*See* Control Measures ECC-04, CMB-01, CMB-02, CMB-03, CMB-04, MCS-02, FLX-01, FLX-02, BCM-01, BCM-02, BCM-04,[8] BCM-06, BCM-07, BCM-10.)

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) . . .." 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 associated 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.)

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

[8] This measure, which calls for revised manure management strategies, requires more analysis than is provided in the IS. (*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 CTS-01 seeks to lower the content of volatile organic compounds ("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.)

Measure BCM-03 calls for an unspecified increase in the watering of roads to control fugitive dust.[9] 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 potential air quality, noise, traffic, and water supply impacts of such a proposal must be thoroughly vetted and analyzed in the IS and the resulting DPEIR.

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.

Pp. 1-19 to 1-25 – Mobile Source Control Measures (SCAQMD)

Notwithstanding its complete 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 "to be implemented" by the District are listed in Table 1.9-2 and summarized in the text following that table.

The IS 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, Measure MOB-01 would make the voluntary emission reductions a mandatory enforceable commitment in the form of a regulation enacted by the District "within its legal authority, or by the state or federal government, or other enforceable mechanism." (IS, p. 1-21.) In a separate comment letter to the District on the Proposed Plan, we will explain why the District lacks the legal authority to adopt or enforce any such regulation. 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.*

[9] Measure BCM-07 likewise 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." (Appendix, 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.

California Coastal Comm'n (2005) 35 Cal.4th 839; and *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912.)

From a CEQA standpoint, the emission reductions from the CAAP Program are already reflected in the baseline/setting. Further, the No Project Alternative is not defined in the NOP/IS. In accordance with 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. Therefore, the DPEIR should consider the impacts that would occur under the existing 2012 Air Quality Management Plan, which contains Measure IND-01.

MOB-02 appears intended to correct two District rules pertaining to rail yards and intermodal facilities rejected by the U.S. Environmental Protection Agency ("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." 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.[10] Any such contemplated implementation strategies must be included in the "Project description" and better identified in a more complete NOP/IS, so that they may be evaluated along with the rest of the Project.

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 IS and resulting DPEIR must contain an analysis of the traffic, noise, air quality, and other impacts associated with such programs.

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. There needs to be an analysis of the solid waste and other impacts associated with such measures.

All potentially significant environmental impacts associated with replacing equipment, operations, and/or infrastructure with new or altered equipment, operations, and/or infrastructure

[10] Similar deficiencies apply to Measures MOB-03 (Emission Reductions at Warehouse Distribution Centers), MOB-04 (Emission Reductions at Commercial Airports), MOB-08 (Accelerated Retirement of Older On-Road Heavy-Duty Vehicles), 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).

must be analyzed and is not. (*See* Control Measures MOB-08, MOB-10, MOB-11, MOB-12, MOB-13, and MOB-14.)

Pp. 1-25 to 1-30 – Air Toxic Control Measures (SCAQMD)

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 1.9-3 and summarized in the text following that table.

The IS 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 IS and resulting 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 analyzed and is not. (*See* Control Measures TXM-04, TXM-05, TXM-06, TXM-08, and TXM-09.)

Pp. 1-30 to 1-38 – Mobile Source Control Measures (Federal and State)

The IS'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 IS, and resulting DPEIR, must contain a thorough analysis of the potentially significant environmental effects associated with these measures.

For instance, 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." 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. 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." 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." These measures could result in significant air quality, noise, traffic, and other impacts that are not currently or adequately described in the IS nor proposed for consideration in the DPEIR.

Further, as noted above, 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.

Pp. 1-38 to 1-40 – Transportation Control Measures from the Southern California Association of Governments 2016 Regional Transportation Plan and Sustainable Communities Strategy

The IS notes that the 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. (IS, p. 1-38.) The IS 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 the Regional Transportation Strategy ("RTS"), including Transportation Control Measures ("TCM"), from SCAG's 2016 RTP/SCS.

Although those measures are only generally described in the IS, they include several measures that may result in significant environmental impacts. (*See*, IS, p. 1-39 [RTS/TCM measures include, among others, expanding regional transit, passenger rail, highway capacity, and high occupancy lanes].) Yet, none of these measures are analyzed in the IS. The IS states that because the environmental impacts were analyzed in SCAG's EIR for the RTP/SCS, the DPEIR will only evaluate potential cumulative impacts associated with implementing the Project and the TCMs.

This statement suggests that the DPEIR is relying on SCAG's EIR through tiering or incorporation by reference, but the IS does not explain which method or demonstrate conformance with pertinent CEQA and other related provisions. More fundamentally, there must be an explanation of the impacts analyzed in SCAG's EIR, the significance criteria and methodologies used, and mitigation measures or alternatives imposed. There must also be an explanation of the discrepancies, if any, between the two environmental documents and how

those discrepancies are proposed to be reconciled. Further, the analysis must consider not only the TCMs, but the RTS as well.

2. Chapter 2 of the Initial Study – The "Environmental Checklist"

(a) General Comments and Questions on the Environmental Checklist

The NOP/IS apparently relied on a standard CEQA environmental checklist to identify those "impact areas" it recognizes to be potentially affected by the Project. In several respects, however, the IS appears to merely assume 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* and *Sundstrom*, both *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 IS. 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 NOP/IS here, by contrast, appears to exclude from consideration in the DPEIR numerous effects that it has not shown to be "clearly insignificant and unlikely to occur."

The NOP/IS currently indicates that the scope of the proposed DPEIR for the "Project" will be limited to the eight topics listed at page 2-2 of the IS. Compliance with CEQA, however, would require not only a new and corrected IS, providing an adequate "Project description" but also a more comprehensive DPEIR that addressed additional areas of potentially significant impact, including (without limitation): (1) Aesthetics, (2) Biological Resources, (3) Cultural Resources, (4) Geology and Soils, (5) Land Use and Planning, (6) Population and Housing, (7) Public Services, and (8) *broadened evaluation* of potential impacts and issues in the areas of Air Quality and Greenhouse Gas Emissions, Energy, Hazards and Hazardous Materials, Hydrology and Water Quality, Noise, Solid and Hazardous Waste, and Transportation and Traffic. Unless and until those areas are more fully addressed, the NOP/IS appears to improperly limit the scope of the proposed DPEIR based on an inaccurate and incomplete Project description, and to thus erroneously exclude areas requiring further assessment.

In addition, there is no indication what criteria were used to develop the significance criteria or that they are supported by substantial evidence, as is 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

IS, the significance criteria are inconsistent with the questions asked to elicit whether the Project would have potentially significant impacts.

(b) Specific Comments and Questions on the Environmental Checklist

Aesthetics – Pp. 2-4 to 2-6

The IS suggests that because the Proposed Plan is intended to "improve air quality and visibility," the District may simply assume that this Project would not be expected to generate significant adverse aesthetics impacts. However, given that several of the measures that would be used to implement the Project are not identified, the IS does not provide evidence, let alone substantial evidence as is required,[11] to demonstrate that the proposed Project would result in less than significant aesthetic impacts.

The IS fails to describe the environmental setting and include any evidence or analysis to support its assumption that implementation of Project control measures would "typically occur inside the buildings" or could "easily blend" with existing facilities "with little or no noticeable effect on adjacent areas." (IS, p. 2-5.) Without a clearly defined project, project location, or description of the environmental setting, it is not possible to conclude that any modifications will have little or no noticeable effect on adjacent areas and would blend in with the visual setting.

The IS further contends that the installation of catenary lines (overhead power lines) in existing high activity transportation corridors, such as the areas within and adjacent to the Ports is not expected to result in any significant aesthetic impacts because the nearest scenic highways would be Routes 1 and 2, located at sufficient distances so as not to be visible from the Ports. (IS, pp. 2-5, 2-6.) In this regard, the IS 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 could have a negative aesthetic impact.

The IS 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

[11] (*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."].)

infrastructure), and cool roofs and solar panels. It likewise improperly defers analysis of certain glare impacts to the local review process, which, in the case of solar panels, may not require discretionary approvals such that this topic will evade CEQA review altogether.

The IS indicates that off-road control measures "may include hoods or bonnets on ship exhaust stacks to capture emissions and are expected to be as high as the height of ship stacks," and concludes that these control devices "would be similar to other structures used within the heavily industrialized portions of the ports . . .." (IS, p. 2-6.) It is speculative and erroneous to assume that control devices as high as 100 feet would have a less than significant visual impact without knowing the location, dimensions, color scheme, and/or critical viewpoints. No such analysis has been considered here and the impact is dismissed with no evidence to support the conclusion.

The IS further errs by dispensing with environmental analysis or evidence, simply because of the (assumed) beneficial air quality goals of the Project. The law is clear that environmentally "benign" aspects of a project do not excuse non-compliance with CEQA and do not justify reliance on assumptions in lieu of evidence to demonstrate the absence of potential impacts. For instance, in *California Farm Bureau Federation v. California Wildlife Conservation Board* (2006) 143 Cal.App.4th 173, 196, the Court of Appeal ruled that a State environmental agency violated CEQA by exempting an environmentally beneficial habitat project from review. In reaching its conclusion, the court reasoned that "it cannot be assumed that activities intended to protect or preserve the environment are immune from environmental review," specifically noting that "***[t]here may be environmental costs to an environmentally beneficial project, which must be considered and assessed***."

Given the nature of proposed Project, it cannot be determined that its implementation would have no significant impact to aesthetics. The DPEIR therefore should include "Aesthetics" as a potentially impacted area of study.

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

Air Quality – Pp. 2-9 to 2-13

The IS indicates that the Project will 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 to support this statement. Control measures related to mobile sources are beyond the District's regulatory jurisdiction and thus infeasible for legal and other grounds.

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 violation of air quality standards, either on a project or cumulative basis, as well as exposure of sensitive receptors to substantial pollutant concentrations. These details must be provided and these topics should also be identified and assessed in a revised IS and the DPEIR. At minimum, the analysis should be expanded to include the potential air quality impacts referenced above.

Certain control measures could involve significant construction retrofits for compliance. (*See, e.g.*, MOB-01, MOB-02, OFRIS-04, and ORFIS-05.) This may result in significant construction-related air quality impacts. Further, these measures and others like it could result in additional electrification and/or the use of additional add-on control equipment, all of which needs to be addressed in the IS and resulting DPEIR.

There is no factual basis in the IS upon which 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.

As noted above, several of the proposed control measures have not yet been developed by the District. Thus, the District lacks the requisite basis to conclude that the Project would not diminish any existing air quality rule and to exclude further analysis of this topic.

While concluding that the Project may have a potentially significant impact with respect to greenhouse gas emissions, the IS 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 state (e.g., AB 32, Scoping Plan, Executive Orders S-3-05 and B-30-15) as well as climate action plans.

At minimum, the additional areas of potential impacts on air quality referenced above should be identified and assessed in the DPEIR.

The NOP/IS 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.

Biological Resources – Pp. 2-14 to 2-16

The IS fails to adequately describe, and improperly minimizes, possible impacts to biological resources. The scope of the proposed DPEIR should be expanded to include environmental analysis of the Project's potentially significant impacts to biological resources.

The IS indicates that "the proposed project will not adversely affect protected wetlands as defined by § 404 of the Clean Water Act, including, but not limited to marshes, vernal pools, coastal wetlands, etc., through direct removal, filling, hydrological interruption or other means." (IS, p. 2-16.) But, the IS fails to analyze, through detailed quantification and hydrodynamic modeling, potential wastewater impacts, including impacts to designated wetlands.

The NOP/IS 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 biological resources, as well as feasible mitigation measures and alternatives designed to address those impacts.

Cultural Resources – Pp. 2-17 to 2-19

The IS fails to adequately describe, and improperly minimizes, possible impacts to cultural resources. For instance, not all areas within the Ports are devoid of cultural resources or have been previously disturbed, as concluded in the IS on page 2-18. There are known recorded historic and prehistoric sites throughout the Ports alone[12] 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 IS that the Project will result in "no impact" to cultural resources is unsupported and lacks evidence or facts to support the finding.

Further, the IS includes language reflecting the typical mitigation measure to be imposed on unknown cultural sources to justify its "no impact" conclusion. (IS, p. 2-19). This fact alone demonstrates that there are potentially significant cultural resource impacts requiring analysis and mitigation in the DPEIR.

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

The NOP/IS 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.

Energy – Pp. 2-18 to 2-19

If the net effect of implementing the Project is an increase in regional energy demand, as the IS indicates is likely, potential conflicts with adopted energy conservation plans and existing energy standards (Items VI.a and IV.e) should not be dismissed as "no impact." The IS must be expanded to also consider and analyze 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 required in the event of a major disaster. Also, some types of emissions control measures, facilities, or technologies contemplated by the Project could increase or shift demand for different types of energy or fuel usage. Although "risk of upset" is not considered in the IS Checklist, it should be cross-referenced here and addressed in the Hazards section of the IS and the DPEIR.

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

Geology and Soils – Pp. 2-23 to 2-19

Because details concerning several Project control measures are not yet known, the IS improperly concludes that the Project has no potential to generate significant adverse impacts to geology and soil resources. In particular, the IS wrongly assumes that only "minor" modifications at existing industrial or commercial facilities would be needed due to Project control measures and that "no AQMP control measures would require the location of new, or relocation of existing facilities in areas prone to liquefaction." (IS, p. 2-23 and 2-24.) At minimum, the potentially significant geology-related impacts associated with the control measures identified above must be analyzed in the DPEIR.

The NOP/IS must be revised, and the scope of the proposed DPEIR 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.

Hazards and Hazardous Materials – Pp. 2-26 to 2-29

In addition to the measures described herein, the potentially significant hazards-related impacts associated with the control measures identified above must also be analyzed in the DPEIR.

Section VIII.d of the IS states 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 concludes 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.) This section must be expanded to also consider that Government Code § 65962.5 requires the disclosure of any work conducted on a site on the Cortese list and precludes a project from being exempt under CEQA even if only minor work is being conducted on such sites. There are several parcels on the Cortese list located within the POLB alone.[13]

In addition, Item VIII.f must be expanded to also consider and analyze the increased reliance on alternative fuels or electrical powered technologies that would require sufficient supply and emergency storage in the event of a major disaster. Although interference with emergency response plans was marginally addressed in this section, "risk of upset" is not considered in the IS checklist.

The NOP/IS 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 hazards and hazardous materials as well as feasible mitigation measures and alternatives designed to address those impacts.

Hydrology and Water Quality – Pp. 2-30 to 2-33

The analysis does not cover all of the control measures that may result in adverse impacts to hydrology impacts. A thorough analysis of all proposed measures must be included in the DPEIR. The IS purports to exclude runoff-related impacts (Items IX.c and d) reasoning that only "minor modifications" would be needed to commercial or industrial facilities affected by the proposed control measures. (IS, p. 2-33.) This is not supported by any evidence in the record. Moreover, as noted above, several of the proposed control measures have not yet been developed by the District. Thus, the District lacks the requisite basis to conclude that the Project would not result in any adverse impacts related to stormwater runoff impacts.

[13] (*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.)

Because details concerning several Project control measures are not yet known, the IS improperly concludes that the Project has no potential to generate significant adverse impacts to geology and soil resources. In particular, the IS wrongly assumes that only "minor" modifications would be needed at existing industrial or commercial facilities due to Project control measures and that "no AQMP control measures would require the location of new, or relocation of existing facilities in areas prone to liquefaction." (IS, pp. 2-23 and 2-24.) At minimum, the potentially significant geology-related impacts associated with the control measures identified above must be analyzed in the DPEIR.

The NOP/IS 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 hydrology and water quality as well as feasible mitigation measures and alternatives designed to address those impacts.

Land Use and Planning – Pp. 2-34 to 2-36

The IS fails to adequately describe, and improperly minimizes, possible inconsistencies between the proposed Project and the existing and applicable land use plans and policies.

The significance criteria asks whether the Project would conflict with the land use and zoning designations established by local jurisdictions. But, 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.) No such question is asked by the IS nor does the resulting analysis provide the District the basis on which to exclude further consideration of land use and planning impacts.

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 are 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 identification in the IS and inclusion in the proposed DPEIR. (CEQA Guidelines § 15125(d).) The fact that the District does not have authority over local land use matters (*see* IS, p. 2-34) does not justify or excuse its need to study this issue consistent with CEQA. (Public Resources Code § 21081(a)(2); *Neighbors for Smart Rail v. Exposition Metro Line Const. Auth.* (2013) 57 Cal.4th 439.)

The IS 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. (IS, p. 2-35.) There is no evidence to support this statement, let alone substantial evidence, as is 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 aesthetic policies especially since these lines are proposed to be located above-ground.

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 IS 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." (IS, p. 2-36.) 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.

The IS states that it incorporates "local land use planning decisions and population growth." (IS, p. 2-36.) 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 physically divide an established community.

The NOP/IS must be revised, and the scope of the proposed DPEIR 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.

Noise – Pp. 2-39 to 2-41

The IS acknowledges that approval of the Project could result in the construction or installation of new control equipment that may result in significant noise impacts. Even so, the IS only analyzes the construction-related noise impacts associated with some, but not all, of the proposed control measures.

Further, there is no evidence cited in the IS to support its assumption that additional permanent noise impacts anticipated from the operations of new control equipment would not "cause substantial noise or excessive groundborne vibration impacts" and its conclusion that "[o]perational noise impacts are expected to be less than significant." (IS, p. 2-41.)

This section of the IS is littered with mere "expectations" unsupported by any evidence regarding the magnitude of new noise impacts, even though such new impacts are anticipated by the IS. Nor is there any analysis of the potential for significant adverse impacts from new noise generators related to the Project.

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

Population and Housing – Pp. 2-42 to 2-43

The analysis assumes that "few or no new employees would need to be hired at affected facilities to operate and maintain new control equipment on site because air pollution control equipment is typically not labor intensive equipment." (IS, p. 2-43.) There is no evidence to support this statement, let alone substantial evidence, as is required.

Further, the IS 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 NOP/IS must be revised, and the scope of the proposed DPEIR 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.

Public Services – Pp. 2-44 to 2-45

The IS assumes that the Project would not generate any increased need for public services. However, the IS 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 NOP/IS must be revised, and the scope of the proposed DPEIR 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.

Transportation and Traffic – Pp. 2-50 to 2-54

The IS erroneously considers only vehicular traffic impacts to local roadways. As such, it fails to adequately describe and analyze potentially significant impacts to rail and marine vessel traffic, ignoring the specific significance criterion related to this topic (s*ee* IS, P. 2-51). In fact, ORFIS-04 (At-Berth Regulation Amendments) could have a significant impact on marine vessel traffic as the only approved technologies to address non-regulated vessels are barge-based, and thus, would increase vessel traffic within harbor waters. An expansion of the at-berth regulation as contemplated in ORFIS-04 would likely require additional barge-based units, further exacerbating vessel traffic and posing safety hazards, all of which must be analyzed in the DPEIR.

The IS does not contain any analysis of the potentially significant traffic impacts associated with increased zero or low emission vehicles. Instead of analyzing the impacts caused by additional vehicles, the analysis assumes that "drivers who purchase low or zero emission vehicles would not be driving the old high emitting vehicles at the same time they are driving the low emitting vehicles." (IS, p. 2-52.) However, other drivers will now be able to drive these vehicles and the analysis should assume both the old and new vehicles will be used at the same time.[14] Further, construction and operation of potential zero emission control measures related to on-road heavy-duty vehicles, such as the use of overhead catenary power lines, could result in significant traffic impacts through closure of lanes and other alternations of traffic flow patterns. Thus, operational traffic impacts should not be dismissed from the DPEIR.

The potential road hazards associated with TCMs are assumed to not exist. (IS, p. 2-53.) However, the analysis of this topic was presumably done by SCAG in the EIR for the RTP/SCS. The IS and resulting DPEIR proposes to rely on this document but does not refer to any of its analysis or explain how the IS analysis conforms to it. The same is true for the IS's analysis of other TCM measures. Indeed, the District's own overhead catenary project has been required to install additional traffic safety measures to compensate for infrastructure design changes that include larger base foundations and wider medians, which have necessitated safety barriers to reduce traffic hazards.

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

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

Mandatory Findings of Significance – Pp. 2-55 to 2-56

As discussed above, the Project's potentially significant impacts to biological resources must be analyzed in the DPEIR and should not be considered beyond the scope of review. Further, all potentially significant impacts to all resource topics should be evaluated in the DPEIR and not just the select list of resource topics identified for consideration. The IS claims that the TCMs are part of the Project (IS, p. 1-10) but then purports to exclude them from its analysis of anything other than cumulative impacts (IS, p. 2-56). Both project and cumulative impacts must be analyzed for all Project components, including (without limitation) the RTS and TCMs.

D. Conclusion

The current version of the NOP/IS fails to adequately describe the "Project" thereby thwarting effective public review and comment on the Proposed Plan. The IS must therefore be revised, corrected, and re-circulated with all of the descriptions and other content required by CEQA.

Even this inadequate NOP/IS makes it clear that the scope of the proposed DPEIR has been unduly narrowed, and that environmental review will be limited in a way that erroneously fails to provide the relevant decision-makers, affected public agencies, residents and the public generally with sufficient evidence and analysis of all anticipated and potential impacts from the Project as a whole, or of all potentially feasible mitigation measures or appropriate Project alternatives as required by CEQA.

While it is clear that an initial study is needed in connection with this proposed Project, it is also clear that the IS should be more complete than the version that was provided for public review and comment. More fundamentally, its scope must be determined by a legally-adequate revised NOP/IS. The IS for the Project must, of course, be supported by credible and substantial evidence, including independent professional analysis.

We respectfully request that these comments and questions be considered before the District embarks on preparation of the DPEIR and all of the other required independent studies in connection with the CEQA review of the proposed Project.

The NOP requests that we provide you with a contact person for each responding agency. For the POLB, the contact persons are as follows:

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Sincerely,

Heather A. Tomley
Director of Environmental Planning
Port of Long Beach

cc: Wayne Nastri, Acting Executive Officer, South Coast Air Quality Management District
Barbara Baird, Chief Deputy Counsel, South Coast Air Quality Management District
Jon Slangerup, Chief Executive, Port of Long Beach
Rick Cameron, Managing Director, Port of Long Beach

July 18, 2016

Clerk of the Board
California Air Resources Board
1001 I Street
Sacramento, California 95814

Electronic Submittal Via:
www.arb.ca.gov/lispub/comm/bcsubform.php?listname=statesip2016&comm_period=N

RE: Proposed 2016 State Strategy for the State Implementation Plan

To Whom It May Concern:

The ports of Long Beach and Los Angeles (ports) appreciate the opportunity to comment on the Proposed 2016 State Strategy for the State Implementation Plan (State SIP Strategy). The ports recognize the amount of effort that has gone into the State SIP Strategy and we hope to support your effort through actions that we continue to undertake at the ports. Over the last decade, the ports in partnership with the maritime goods movement industry have worked aggressively to reduce our fair share of air quality impacts to the South Coast region from port-related operations, as outlined in the San Pedro Bay Ports Clean Air Action Plan (CAAP). Between 2005 and 2014, goods movement-related emissions of diesel particulate matter have been reduced by 85%, while emissions of nitrogen oxides (NOx) have dropped over 50%. While actions under the CAAP and at the local, state, and federal levels have resulted in substantial decreases in NOx emissions, much work remains for the South Coast region to meet the ozone standards in 2023 and 2031.

Overall, the ports are supportive of the proposed measures identified in the State SIP Strategy that relate to port operations, which includes measures to:

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

- **Adopt More Stringent National Locomotive Emission Standards**
  The ports are in favor of encouraging cleaner locomotive technologies and recommend that ARB petition USEPA to establish a new federal standard for locomotives. This effort will assist the railway operators continuing to upgrade the switching and line haul locomotives that service the ports.

- **Introduce Near-Zero Emission Engine Technologies Through Establishment of Low-NOx Emission Standards for On-Road Heavy-Duty Engines**
  The ports are in favor of a new Low NOx Engine standard and recommend that ARB establish a standard for Class 8 drayage trucks to be 90 percent cleaner than the current 2010 standard. In order for such an effort to be equitable across the country, we also urge ARB to petition USEPA to establish a federal standard. This effort will assist the drayage truck operators operating in and around the ports in continuing to upgrade their existing fleet of clean trucks.

- **Advocate with International Partners for the International Maritime Organization to Establish New Tier 4 NOx and Particulate Matter Emission Standards for Ships**
  While the ports are in favor of the ARB advocating for more stringent International Maritime Organization (IMO) standards and efficiency targets for ships, effort should be placed on encouraging the cleanest ships to deploy to our ports now. Ships meeting the IMO Tier 3 standards are currently the cleanest ships available; however, these ships are just in the process of being constructed. Due to various factors, we do not foresee a sizeable number of Tier 3 ships servicing our ports in the near term. As more of these ships become available for deployment we recommend development of strategies to attract these ships to our ports, similar to the strategies contained in the Ports' existing incentive programs. Furthermore, we encourage joint advocacy at the federal and international levels to continue to address the issue of transiting emissions.

- **Incentivize Low-Emission Efficient Ship Visits and Amend the Ships At-Berth Regulation**
  The ports have worked with ARB for a number of years as the At-Berth Regulation has been implemented and revised. Additional revisions to the current regulations are still needed. We suggest amending and expanding the current regulation to include non-regulated ships. We also believe it will be necessary to ensure that funding for shore-side emission reduction infrastructure is appropriately considered to handle future amendments to the At- Berth Regulation.

- **Encourage Further Deployment of Clean Technologies in On-Road Heavy Duty Vehicles, Locomotives, Ocean-Going Vessels, and Off-Road Equipment**
  Through our joint Technology Advancement Program, the ports have been focused on advancing technology for all of the major sources that move freight through our ports. More recent efforts have been dedicated to the development of near-zero and zero emission technology where possible. Although many of the cleaner technologies are still in the prototype testing and demonstration phase, we look forward to deploying these technologies once they are shown to be operationally feasible, durable, reliable, and cost effective. In order to accelerate the timeline for commercialization and deployment of the cleaner technologies, significant funding assistance will be critical, and the ports are very supportive of additional funding opportunities for technology development, equipment, and fueling infrastructure.

Successful Interagency Collaboration

The ports have a proven track record of developing and implementing appropriate and effective emissions reduction strategies such as the Clean Trucks Program and incentive programs for reducing emissions from ships such as the Vessel Speed Reduction Program, the Port of Long Beach Green Ship Program and the Port of Los Angeles Environmental Shipping Index Program. These efforts were entered into voluntarily, working with the goods movement industry, various stakeholders, and the air quality regulatory agencies (i.e., U.S. Environmental Protection Agency, California Air Resources Board, and South Coast Air Quality Management District). Since the ports initially implemented the CAAP, many of the port-related measures have been superseded by state or international requirements, such as the rules for replacing drayage trucks, switching to cleaner fuels, and using shore power while at berth. In particular, the ports have been successful in supporting the agencies by accelerating their adopted regulations. Moving forward, the ports will continue to look for opportunities to assist the agencies in sustaining and achieving the necessary fair-share emissions reductions for the region to meet the upcoming ozone standards.

Furthermore, to sustain the emissions reductions achieved to date and achieve the emissions reductions required to meet the attainment needs of the State and the South Coast Region, the cooperation and concerted effort of our agency partners is vital. The ports are currently in the process of updating the CAAP to identify strategies to reduce criteria pollutant and greenhouse gas emissions from port-related sources. The CAAP – which has long been a collaboration among the ports, goods movement industry and our regulatory agency partners – could be used as a tool to assist in the implementation of the proposed measures identified in the State SIP Strategy. The CAAP development provides a unique forum to discuss the technical and policy

issues related to achieving emissions reductions from goods movement related sources, including how SIP credit is taken for voluntary and incentive based strategies.

Funding for Incentives and New Technologies

Collective prioritization for strategy development and funding allocation will be critical to achieve the State's aggressive targets and broad reaching goals to reduce air pollution while maintaining a robust economy. As identified in the State SIP Strategy, implementation of the current control programs, existing incentive program funding, and new regulatory actions defined in the State SIP Strategy provide the majority of the emissions reductions necessary in the South Coast to meet the 80 parts per billion (ppb) 8-hour ozone standard by 2023 and the 75 ppb standard by 2031.[1]

Securing funding to support the incentive-based advancement of technologies will be crucial and must be prioritized in order to achieve significant market penetration of the cleanest technologies. The ports know first-hand that the move toward zero emissions is a costly endeavor and have placed significant emphasis to advance the development of near-zero and zero emissions equipment for on-terminal and on-road applications. The ports are supportive of State incentive funding to accelerate the market penetration of zero and near-zero emissions equipment beyond the rate of natural turnover. As a valued partner in the San Pedro Bay Ports Technology Advancement Program, we welcome the State and South Coast Air Quality Management District's commitment to help our industry make this transition while supporting our economic competitiveness by providing support to fund demonstration and deployment of clean technologies in port operations.

The State SIP Strategy contains four measures entitled "Further Deployment of Cleaner Technologies," which collectively commit to reduce approximately 70% of NOx emissions by 2023 and another 45% by 2031. As noted above, the ports support incentive-based programs and the advancement of technologies. However, the ports are concerned that these measures are too ambiguous to allow the ports sufficient opportunity to comment. The ports request the Air Resources Board clarify the regulations and/or technologies that are envisioned for these measures in the final State SIP Strategy, given that the emissions reductions are already quantified.

[1] California Air Resources Board. Proposed 2016 State Strategy for the State Implementation Plan, May 17, 2016.

Areas of Concern

- Freight Hub Approach

The ports recognize the need to pursue aggressive actions to reduce air quality impacts in the South Coast Air Basin and fully support the proposals to identify and increase funding to support incentives to achieve emission reductions within the maritime goods movement industry. However, the State SIP Strategy states that regulatory actions comprise the core of the overall attainment strategy and focuses overwhelmingly on emission reductions from maritime goods movement sources, either through existing technologies or "further deployment of cleaner technologies." The Air Resources Board also calls on air districts, and specifically SCAQMD, to increase rulemakings that achieve a "fair share" of emission reductions. The State SIP Strategy indicates that SCAQMD is pursuing "enforceable mechanisms under local authority" and "proposing a complementary suite of mobile source measures to facilitate implementation of the State SIP Strategy." Thus, by design, the State SIP Strategy requires SCAQMD to regulate goods movement sources, even though these sources are statutorily outside of an air district's authority. (42 U.S.C. § 7543; Cal. Health & Saf. Code § 40000.) SCAQMD has historically implemented incentive-based programs to accelerate mobile source turnover, but the State SIP Strategy demands more.

To meet its "fair share," the June 30, 2016, version of the SCAQMD's Air Quality Management Plan includes four "Facility-Based Mobile Source Measures." The ports are particularly concerned with SCAQMD's proposed *Mobile Source Measure MOB-01: Emissions Reductions at Commercial Marine Ports*[2] because it would implement the "freight hub," "facility cap," and/or "freight facility performance targets" approach opposed by the ports. As the ports have stated on numerous occasions in comment letters to the air regulatory agencies, most recently in the ports' comment letters on the California Sustainable Freight Action Plan (CSFAP), the ports strongly oppose any concept of a "facility-based" indirect or mobile source measure, whether it is referred to as a "freight hub" rule, "facility cap", "freight facility performance target," "indirect source rule," or "backstop rule." These indirect source rule concepts would inappropriately delegate to the ports the regulatory responsibility to achieve emission reduction from sources over which they do not have jurisdictional authority, ownership or operational control.[3]

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[2] South Coast Air Quality Management District. Draft 2016 Air Quality Management Plan. June 2016

[3] Comment Letters to U.S. Environmental Protection Agency dated November 19, 2015; California Air Resources Board dated March 25, 2014; South Coast Air Quality Management District dated January 15, 2014, January 31, 2014, October 2, 203, August 21, 2013, October 31, 2012, and August 30, 2012

As recently as June 20, the Air Resources Board testified at an Assembly Information Hearing on the California Sustainable Freight Action Plan (CSFAP) that it will pursue an "emissions performance target for freight facilities like rail yards and ports." The potential development of rules and regulations around an "emissions performance target," especially if applied to a large seaport as a single "freight hub or facility" remains a concern for the ports. Historically, we have worked in cooperation with ARB on the implementation of regulations that apply to mobile sources used for goods movement throughout the state. We believe a collaborative, voluntary approach will continue to be the most effective means for controlling emissions from goods movement activities within the jurisdiction of seaports. As such, we are concerned that a facility cap or performance target – as a rule, regulation, or as a measure in the State Implementation Plan – would diminish the effectiveness of our historic partnership and fundamentally run counter to the objectives of the Governor Brown's Executive Order B-32-15. A freight hub, facility-based cap, or freight facility performance targets approach will have serious negative effects on maritime commerce and impede the State's freight competitiveness, directly in conflict with the goals of the Governor's Executive Order to improve freight transportation efficiency and increase competitiveness of California's freight system.

Practical implementation problems also include how to define the activities for which the freight hub is legally accountable, and the need to align the responsibility for compliance with the freight hub's ability (or lack thereof) to control the emissions-producing equipment and operations. At present, it appears that ARB proposes to view the freight system in segments and focus on emissions and/or efficiencies within each segment. We request that the term "freight hub" and "freight facility performance targets" be defined and we would oppose these concepts if implemented as regulation over the entire seaport, or worse, the two ports of Los Angeles and Long Beach, as a single "freight hub" or "facility". [4]

Furthermore, ARB currently collects data for freight-related on- and off-road mobile sources. The CSFAP suggests that the state may use the emissions data specifically attributable to each "freight hub" to support an eventual regulatory plan that will be used to develop the emissions

[4] The San Pedro Bay in Southern California is a single bay divided into two ports that are owned separately by the Cities of Los Angeles and Long Beach each receiving separate Tidelands grants from the State of California and operated as separate ports of Los Angeles and Long Beach. Unlike some other U.S. Ports in other parts of the United States in which an agency both owns the port land and operates the port operations, called "operating ports," the Ports of Los Angeles and Long Beach are "landlord ports" that lease the land to marine terminal operators. It is the marine terminal operators that operate the marine terminals, have contracts with shipping lines, railroads, logistics companies and other parties in the goods movement chain. Each terminal is operated separately and has different contracts with its own contract parties. The ports do not own, operate or control through contracts, the actual mobile sources used in goods movement. International and Federal preemption apply to the ports' ability to regulate goods movement mobile sources. The ports are also not U.S. air regulatory agencies and lack authority to regulate mobile source or stationary source emissions.

inventories for Air Quality Management Plans and State Implementation Plans in the future. Because "freight hub" is not defined, other than to identify examples of freight hubs such as seaports and airports, we feel the concept is ambiguous and could encompass activities that purport to hold the ports responsible for emissions that the ports do not control.

There are legal authority issues with imposing a "freight hub," "facility cap", "freight facility performance target," and now the "facility-based mobile source measures" proposed by SCAQMD, because each of these approaches treats a seaport as an indirect source under an Indirect Source Review Program. ARB is prohibited from regulating indirect sources or, significantly, from requiring air districts to regulate them. (42 U.S.C. § 7410(a)(5)(D)(i); Health and Safety Code, §§ 39002, 40414, 40440, 40468, 40717.5(c)). ARB's freight hub or facility-based cap approach is also an unlawful land use measure. (42 U.S.C. § 7431; Cal. Health and Safety Code, § 40414.) The air quality authority conferred on ARB and the air districts is expressly precluded from infringing on land use authority. (Cal. Health and Safety Code, § 40717.5(c).) The Cities of Los Angeles and Long Beach, and not ARB or local air districts, are the public agencies with the legal responsibility to manage their seaports within their jurisdictional boundaries for public trust purposes including maritime commerce, navigation, fisheries and water-dependent public uses. Moreover, the freight hub, facility-based cap, freight facility performance target, and facility-based mobile source measures would unlawfully require the ports to regulate emissions outside of their jurisdictional boundaries and regulate vessels subject to the international MARPOL Treaty. (U.S Const.. art. 6, cl. 2; 33 U.S.C. §§1901 et seq.)

We request that the final SIP Strategy exclude reference to the freight hub, facility-based cap, freight facility performance target approach, as well as any other iteration of these concepts. In addition, while the ports agree with prioritizing funding programs to encourage early actions in the region, we emphasize that any sort of regulatory strategy should not preclude the industry's ability to secure grant funding for their early actions, nor should any regulatory requirements be applied only to the region. Such an approach would be counter to the state's economic competitiveness goals and would put the freight operators within the South Coast at a disadvantage. For example, facility emission caps or port backstop rules could effectively disqualify those companies and agencies from receiving grants because grant funds cannot typically be used for regulatory compliance.

The ports appreciate this opportunity to provide comments on the State SIP Strategy. We look forward to continuing to work with the California Air Resources Board on advancing our shared goals for clean air in the South Coast region.

Sincerely,

Heather A. Tomley
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

cc: Mary Nichols, Chair, California Air Resources Board
Richard Corey, Executive Officer, California Air Resources Board
Cynthia Marvin, Division Chief, California Air Resources Board
Wayne Nastri, Acting Executive Officer, South Coast Air Quality Management District

SAN PEDRO BAY PORTS

CLEAN AIR ACTION PLAN

January 20, 2016

Geoffrey L. Wilcox, Esq.
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Re: Docket No. EPA-HQ-OGC-2015-0677
U.S. Environmental Protection Agency
Proposed Consent Decree, Clean Air Act Citizen Suit:
Sierra Club, et al. v. EPA, No. 2:15-cv-3798-ODW (ASx) (C.D. CA.)

Dear Mr. Wilcox:

On behalf of the City of Long Beach acting by its Harbor Department and the City of Los Angeles acting by its Harbor Department (collectively, the Cities or the ports), we appreciate the opportunity to provide comments in response to the U.S. Environmental Protection Agency's (EPA) *Proposed Consent Decree, Clean Air Act Citizen Suit: Sierra Club, et al. v. EPA, No. 2:15-cv-3798-ODW (ASx) (C.D. CA.)* (Proposed Consent Decree), as re-published in the *Federal Register* on December 21, 2015 (Federal Register, Vol. 80. No 244) (the Notice).

I. The Proposed Consent Decree Does Not and Cannot Compel EPA to Take Final Action on Control Measure IND-01 Because It Is Not Properly Before EPA.

The Cities reiterate our initial comments submitted on November 20, 2015 that the Proposed Consent Decree does not and cannot incorporate South Coast Air Quality Management District's (SCAQMD) Control Measure IND-01: Backstop Measure for Indirect Source of Emissions (IND-01) (November 20, 2015 Letter to EPA re: Docket No. EPA-HQ-OGC-2015-0677, attached hereto as Attachment 1 and incorporated as if fully set forth). Control Measure IND-01 would unlawfully designate the port portions of the Cities as "indirect sources," and then codify the voluntary San Pedro Bay Ports Clean Air Action Plan (CAAP) program into law as Rule 4001. As explained further below, Control Measure IND-01 and its proposed implementing Rule 4001 are not properly before EPA for approval (80 FR 63640). Therefore the Proposed Consent Decree must be modified to expressly

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

indicate that EPA's final action on SCAQMD's 2012 Air Quality Management Plan regarding attainment of the 2006 fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard (2012 $PM_{2.5}$ AQMP) does not include Control Measure IND-01. In addition, EPA must expressly state in any final approval, disapproval, or conditional approval pursuant to the Proposed Consent Decree that its action does not include Control Measure IND-01.

The Notice and terms of the Proposed Consent Decree (¶ 1) require EPA, by March 15, 2016, to take final action on the portions of the February 13, 2013 submission of SCAQMD's 2012 $PM_{2.5}$ AQMP. The Cities previously submitted a Comment Letter on November 19, 2015 to EPA re: Docket No. EPA-R09-OAR-2015-0204 (November 19, 2015 Letter), which is attached hereto as Attachment 2 and incorporated as if fully set forth. Both the November 19 and November 20, 2015 Letters explain that Control Measure IND-01 is not properly before EPA for approval (80 FR 63640) because it was expressly ***removed*** from the 2012 $PM_{2.5}$ AQMP during the SCAQMD Governing Board's public hearing on December 7, 2012. (Proof of this fact is shown in Attachment 2, Exhibit 17.) SCAQMD subsequently submitted this version of the 2012 $PM_{2.5}$ Plan to the California Air Resources Board (CARB). The CARB Board, which is the only entity authorized to make State Implementation Plan (SIP) submittals, has never authorized the submittal of Control Measure IND-01 or Proposed Rule 4001 to EPA for inclusion as part of California's SIP for the South Coast Air Basin. On February 13, 2013, the CARB Executive Officer submitted the 2012 $PM_{2.5}$ AQMP to EPA ***without*** Control Measure IND-01. In fact, the 2012 $PM_{2.5}$ AQMP contained in federal Docket No. EPA-R09-OAR-2015-0204 has Control Measure IND-01 ***crossed out*** and thus confirms that it was removed from the 2012 $PM_{2.5}$ AQMP before submittal to CARB and EPA. (See Attachment 2, Exhibit 17.) Therefore, ***the version of the 2012 $PM_{2.5}$ AQMP that is subject to EPA's Proposed Consent Decree rulemaking plainly excludes Control Measure IND-01***. (80 FR 63640). The record upon which EPA is relying upon for the rulemaking does not include Control Measure IND-01. Accordingly, the Proposed Consent Decree must be amended to clearly indicate that EPA's final action does not include Control Measure IND-01. Further, EPA's final approval, disapproval, or conditional approval must expressly state that its action does not include Control Measure IND-01.

Thank you again for the opportunity to comment on the proposed action.

Sincerely,

Heather A. Tomley
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

CC:TD:yo
APP No.: 160114-500 SCAQMD Indirect Source Rule

Attachments

1) November 20, 2015 Letter from City of Long Beach acting by its Harbor Department and City of Los Angeles acting by its Harbor Department to U.S. Environmental Protection Agency Re: Docket No. EPA-HQ-OGC-2015-0677-

2) November 19, 2015 Letter from City of Long Beach acting by its Harbor Department and City of Los Angeles acting by its Harbor Department to U.S. Environmental Protection Agency Re: Docket No. EPA-R09-OAR-2015-0204

cc: Jon Slangerup, Chief Executive, Port of Long Beach
Gene Seroka, Executive Director, Port of Los Angeles
Richard Cameron, Managing Director, Port of Long Beach
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Deborah Jordan, Director, Air Division, EPA, Region 9
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Doug Ito, Chief, Freight Transportation Branch, CARB
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD

November 19, 2015

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Re: Docket No. EPA-HQ-OGC-2015-0677
U.S. Environmental Protection Agency
Proposed Consent Decree, Clean Air Act Citizen Suit:
Sierra Club, et al. v. EPA, No. 2:15-cv-3798-ODW (ASx) (C.D. CA.)

Dear Mr. Wilcox:

On behalf of the City of Long Beach acting by its Harbor Department and the City of Los Angeles acting by its Harbor Department (collectively, the Cities or the ports), we appreciate the opportunity to provide comments in response to the U.S. Environmental Protection Agency's (EPA) *Proposed Consent Decree, Clean Air Act Citizen Suit: Sierra Club, et al. v. EPA, No. 2:15-cv-3798-ODW (ASx) (C.D. CA.)*, as published in the *Federal Register* on October 21, 2015 (Federal Register, Vol. 80. No 203).

I. The Proposed Consent Decree Should Be Re-Noticed.

Clean Air Act section 113(g) (42 U.S.C. § 7413(g)) requires public notice of proposed consent decrees to be published in the federal register for 30 days before becoming final or filed with the court. The Notice for the Proposed Consent Decree must be re-noticed to ensure meaningful public review and comment. First, the Notice indicates that the proposed "partial" Consent Decree is available for public review on the website, www.regulations.gov, under docket number EPA-OGC-2015-0677. (80 FR 63783.) However, the docket failed to contain the Proposed Consent Decree. As of the date of this letter, the Proposed Consent Decree is still not available in the docket. Second, the Cities understand from discussions with EPA that the Proposed Consent Decree would provide a full instead of "partial" resolution of the *Sierra Club* litigation as erroneously stated in the federal register notice. The Notice was therefore vague and misleading. Third, while the Cities were ultimately able to locate the docket with EPA's assistance, the Cities experienced considerable problems accessing the docket using

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

the docket number provided in the Notice. This problem may have also affected other public members seeking to comment and who were unable to do so. We therefore request that EPA re-issue the notice.

II. The Proposed Consent Decree Does and Cannot Compel EPA to Take Final Action on Control Measure IND-01 Because It Is Not Properly Before EPA.

According to the Notice and terms of the Proposed Consent Decree (¶ 1), the final rulemaking would require EPA, by March 15, 2016, to take final action on the portions of the February 13, 2013 submission of South Coast Air Quality Management District's (SCAQMD) 2012 Air Quality Management Plan that address attainment of the 2006 fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard (2012 $PM_{2.5}$ Plan). The Consent Decree cannot address Control Measure IND-01 because Control Measure IND-01 is not before EPA for approval (80 FR 63640). (See Cities' November 19, 2015 Letter to EPA re: Docket No. EPA-R09-OAR-2015-0204, which is attached hereto and incorporated as if fully set forth.) On December 7, 2012, when the SCAQMD Governing Board considered the $PM_{2.5}$ Plan, the Governing Board specifically ***removed*** Control Measure IND-01 from the $PM_{2.5}$ Plan ***before*** adoption. On February 13, 2013, the CARB Executive Officer submitted the 2012 $PM_{2.5}$ Plan to EPA without Control Measure IND-01. This is the version that is subject to EPA's proposed rulemaking. (80 FR 63640).

Thank you again for the opportunity to comment on the proposed action.

Sincerely,

Heather A. Tomley
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachments

1) November 19, 2015 Letter from City of Long Beach acting by its Harbor Department and City of Los Angeles acting by its Harbor Department to U.S. Environmental Protection Agency Re: Docket No. EPA-R09-OAR-2015-0204

cc:

The Honorable Barbara Boxer, United States Senate
The Honorable Janice Hahn, United States House of Representatives
The Honorable Alan Lowenthal, United State House of Representatives
The Honorable Edmund G. Brown, Jr., Governor, State of California
The Honorable Ricardo Lara, California State Senate
The Honorable Patrick O'Donnell, California State Assembly
The Honorable Robert Garcia, Mayor, City of Long Beach

The Honorable Eric Garcetti, Mayor, City of Los Angeles
Jon Slangerup, Chief Executive, Port of Long Beach
Gene Seroka, Executive Director, Port of Los Angeles
Richard Cameron, Managing Director, Port of Long Beach
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Barbara McTigue, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
Jared Blumenfeld, Administrator, EPA, Region 9
Deborah Jordan, Director, Air Division, EPA, Region 9
Elizabeth Adams, Deputy Director, Air Division, EPA, Region 9
Jeanhee Hong, Regional Counsel, EPA Region 9
Richard Corey, Executive Officer, CARB
Cynthia Marvin, Division Chief, Stationary Source Division, CARB
Doug Ito, Chief, Freight Transportation Branch, CARB
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD

ATTACHMENT

SAN PEDRO BAY PORTS

CLEAN AIR ACTION PLAN

November 19, 2015

Ms. Wienke Tax
Air Planning Office (AIR-2)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

Re: Docket No. EPA-R09-OAR-2015-0204
U.S. Environmental Protection Agency
Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; California; South Coast Moderate Area Plan and Reclassification as Serious Nonattainment for the 2006 PM2.5 NAAQS

Dear Ms. Tax:

On behalf of the City of Long Beach acting by its Harbor Department and the City of Los Angeles acting by its Harbor Department (collectively, the Cities or the ports), we appreciate the opportunity to provide comments in response to the U.S. Environmental Protection Agency's (EPA) proposal for *Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; California; South Coast Moderate Area Plan and Reclassification as Serious Nonattainment for the 2006 PM2.5 NAAQS,* as published in the *Federal Register* on October 20, 2015 (Federal Register, Vol. 80. No 202).

I. Summary of Ports' Position.

The Cities urge the EPA to disapprove and exclude the South Coast Air Quality Management District (SCAQMD or District) Control Measure IND-01 and Proposed Rule 4001, *Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities* from the State Implementation Plan (SIP) submittal for the 2006 $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) in the South Coast Air Basin. The Cities recognize that emissions from nearly every business sector, including the maritime goods movement industry, need to be reduced in order for the State of California and SCAQMD to meet the NAAQS. For this reason, the two Cities implemented the highly successful voluntary San Pedro Bay Clean Air Action Plan (CAAP) to encourage the maritime goods movement industry to do its fair share in the South Coast Air Basin to reduce emissions. Most of the strategies included in the CAAP have since been overtaken by regulations enacted by the California Air Resources Board or International Maritime Organization. It is the Cities' understanding that the purpose of Control

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

Measure IND-01 and Proposed Rule 4001 is to allow the SCAQMD to enforce against the Cities their voluntary CAAP program in the event that the international, federal, and state regulatory programs don't achieve the $PM_{2.5}$ emissions inventory that SCAQMD assumed in the baseline for the years 2014 and 2019 in the 2012 AQMP.

The inclusion of Measure IND-01 and Proposed Rule 4001 in the AQMP and SIP is neither necessary nor legally proper, for reasons that will be explained below. SCAQMD proposes by Control Measure IND-01 to improperly designate the entire harbor districts of the Cities as "stationary sources" and "indirect sources," and then hold the two Cities legally responsible for actions by the maritime industry that the SCAQMD assumed in the $PM_{2.5}$ Plan. The Cities do not operate, own or control the emissions sources.

The Cities have long opposed the inclusion of any form of a "backstop" rule on the ports that would apply SCAQMD oversight and enforcement against the ports for failures of the SCAQMD and CARB in assuming maritime goods movement industry activities in the baseline.. We have also raised significant technical, jurisdictional, constitutional, and legal concerns with Proposed Rule 4001 in a series of comment letters sent to SCAQMD, CARB and EPA regarding the inclusion of Control Measure IND-01 in the 2012 Air Quality Management Plan and SIP, and the subsequent rulemaking process of SCAQMD Rule 4001. (See Attachments 1-15.) These letters are incorporated by reference as a part of this comment letter to EPA as if fully set forth herein. With respect to EPA's present rulemaking, as further discussed below in sections III-IV, the ports do not believe that Control Measure IND-01 and Proposed Rule 4001 are properly before EPA. Even if EPA determines there are no procedural infirmities and proceeds with the proposed rulemaking, there are numerous substantive legal reasons why EPA cannot approve Control Measure IND-01 or Proposed Rule 4001 as part of the SIP. These arguments are discussed below in section V.

II. Background.

The Cities and businesses that move goods in and out of the ports are vital to the regional, state, and national economy. The ports are home to the two busiest container seaports in the United States and, if taken together, are the fifth busiest in the world, moving more than $260 billion a year in trade. The international cargo handled by the ports also accounts for over 1.1 million jobs in California and 3.3 million jobs in the United States; however, competition for much of this cargo is intensifying particularly with other international ports (Panama Canal, Canada, Mexico).

The ports are global leaders, voluntarily working in partnership with several public agencies (EPA, CARB, and SCAQMD) and the maritime goods movement industry to achieve unprecedented success in reducing emissions from goods movement sources (ships, trains, trucks, cargo handling equipment, harbor craft) and improving air quality, while continuing to foster port development that is essential to Southern California's economy. On November 20, 2006, the Cities approved the landmark CAAP, the most comprehensive strategy to cut air pollution and reduce health risks ever adopted for a global seaport complex. The CAAP contained goals to achieve a 45% emissions reduction in diesel particulate matter (DPM), nitrogen oxides (NOx), and sulfur oxides (Sox) by the end of 2011 from the mobile sources operating in and around the ports. In 2007, the ports received the 8th Annual National U.S. EPA Clean Air Excellence Award in recognition of this groundbreaking work and commitment.

The Cities continued their pioneering work and commitment to clean air by adopting an update to the CAAP on November 22, 2010. The 2010 CAAP update established several aggressive goals: (1) by 2014, reduce emissions from mobile sources operating in and around the ports by 22% for NOx, 93% for SOx, and 72% for DPM from baseline emissions; (2) by 2023, reduce emissions from mobile sources operating in and around the ports by 59% for NOx, 92% for SOx and 77% for DPM; and, (3) aim by 2020 to lower the cancer risk related to diesel particulate pollution by 85% in the communities adjacent to the ports. The CAAP was initially developed as a voluntary effort not required by any state, federal or local law or regulation. The voluntary aspect of the CAAP is critical. The ports set stretch goals under an incentive-based and collaborative approach that has resulted in billions of dollars of investment by the Cities and private sector businesses in clean air programs and technology. More importantly, because the goals are in advance of regulations, much of the CAAP success is due to reliance on federal, state and SCAQMD grants that can only be obtained for "surplus" emission reductions that go beyond regulation –which will not be available under a required regulation such as PR 4001.

The Cities remain firm in their position that Control Measure IND-01 and Proposed Rule 4001 are unnecessary and counterproductive to a successful collaborative approach, and should not be included in the SIP. These measures would hold the ports, not the owners or operators of the emission sources, responsible for shortfalls in voluntary CAAP measures. This approach will deter the ports as well as other ports and industries from any type of voluntary emission reduction action in the future. The proposed rule would also unfairly impact only the ports in Southern California; no such rule exists for any other port in the United States or other parts of the world.

In addition, the Cities have shown that there is no demonstrated need for a backstop rule for equipment operating in and around the ports, nor is a ports' backstop rule necessary for the regional attainment of the 2006 $PM_{2.5}$ standard. (See Attachment 3, Cities' Letter to Dr. Randall Pasek, SCAQMD, January 15, 2014].). The attainment demonstration for the 2012 $PM_{2.5}$ Plan did not rely on any emission reductions from Control Measure IND-01. As indicated in SCAQMD's supplement to the 24-hour $PM_{2.5}$ SIP, unanticipated extreme weather conditions, not emissions from the maritime goods movement industry, have made attainment unlikely in 2014, citing the effects of the severe drought on the west coast of the United States.

Because any current shortfall in the regional attainment of the $PM_{2.5}$ emissions targets is not caused or controlled by the Cities, and not due to any actions or omissions on the part of the Cities, it is inappropriate and unnecessary to require Rule 4001 enforcement against the ports. The control measure was intended as a "backstop" that would go into effect only if the emission targets for NOx, SOx, and $PM_{2.5}$ from sources operating in or around the ports exceed the levels projected by the ports and assumed in the 2012 AQMP. In fact, the ports' most recently completed emissions inventories for calendar year 2014 show that the ports have **exceeded** the assumptions SCAQMD included in the 2012 $PM_{2.5}$ Plan.. Diesel particulate matter (DPM) emissions have been reduced by 85% over the 9 year period between 2005 and 2014. In addition, NOx emissions are down by 51%, and SOx emissions have been reduced by 97%. Instead of being rewarded for these extraordinary efforts, the Cities will instead be unnecessarily penalized with a port specific backstop rule. Since 2014 $PM_{2.5}$ CAAP goals were met and the ports are on track to maintain these reductions through 2019, there is no identified need or basis for including Proposed Rule 4001 in the SIP. In fact, the ports would be the *only* entities the SCAQMD regulates in this matter, notwithstanding these unprecedented voluntary efforts.

Table 3 of the Notice does not identify the anticipated implementation date and emissions reductions for Rule 4001, rather, listing "N/A". It is unreasonable to approve the inclusion of the Proposed Rule in the SIP without an indication of the implementation date and necessary emissions reductions from implementation of the rule to bring the South Coast Basin into attainment. A critical aspect of this related to the lack of need for an additional regulation on the ports is that many of the voluntary control strategies implemented under the CAAP have been superseded by source-specific state or international regulation. Approximately 98% of the emissions reductions from maritime goods movement emission sources that have been achieved to date rely on, and are largely the result of regulations at the state and international levels, including:

- CARB Truck and Bus Regulation
- CARB Ocean-going Vessel At-Berth Regulation
- CARB and International Ocean-going Vessels Low-Sulfur Fuel Regulations
- CARB Cargo-handling Equipment Regulation
- CARB Commercial Harbor Craft Regulation
- International Maritime Organization North American Emission Control Area

The Cities should not be held responsible for or mandated to backfill any potential emissions shortfalls from regulatory agencies not implementing emission reduction regulations as identified within the SIP, even if those regulations are related to equipment operating in or around the ports. The backstop measure should instead require EPA or CARB to enact applicable regulations under their air regulatory authority applied uniformly to the national ports or state ports, or to find the shortfall emission reductions from other sources in the SIP.

The Cities continually develop and support emission reduction strategies and programs that will result in cleaner air for the local communities and the region. These efforts have been entered into voluntarily, working cooperatively with the operators in the port area to reduce air quality impacts from the equipment they operate. The potential for additional regulation by the SCAQMD in the form of Rule 4001 on the ports brings significant uncertainty that will have broad negative effects on the goods movement industry and the economy as a whole, and will jeopardize the voluntary, collaborative partnership between the Cities, industry, and the air agencies that has led to the significant emissions reductions achieved to date.

III. Control Measure IND-01 Cannot Be Approved in the Final Rulemaking Because it Was Not Approved by the CARB Board for SIP Adoption, and Has Not Been Properly Submitted to EPA for Approval.

According to the Federal Register Notice (80 Fed. Reg. 63640), the SIP revisions encompassed in the proposed rulemaking are "the 2012 $PM_{2.5}$ Plan, submitted February 13, 2013, and the 2015 Supplement, submitted March 4, 2015." The 2012 $PM_{2.5}$ Plan submitted February 13, 2013, does ***not*** include IND-01 or Proposed Rule 4001. This is because on December 7, 2012, when the SCAQMD Governing Board considered the $PM_{2.5}$ Plan, the Governing Board specifically ***removed*** Control Measure IND-01 from the $PM_{2.5}$ Plan ***before*** adopting the Plan. (See Attachment 16.) On February 13, 2013, the CARB Executive Officer submitted the 2012 $PM_{2.5}$ Plan to EPA without Control Measure IND-01. In fact, the $PM_{2.5}$ Plan in the federal docket for this proposed rulemaking has IND-01 ***crossed out*** to confirm that it was removed from the $PM_{2.5}$ Plan before submittal to CARB and EPA. (See

Attachment 17.) The CARB Board, which is the only entity authorized to make SIP submittals, has never held a public meeting, offered to receive public comment on, or taken a Board vote to authorize the amendment of the SIP to include the submittal of IND-01 or Proposed Rule 4001 to EPA for inclusion as part of California's SIP for the South Coast Air Basin. The EPA Notice is based only on a control measure list with the date and title of Control Measure IND-01 included on Attachment F to the 2015 Supplement, with no evidence of CARB Board approval of its addition as a SIP supplement, which is legally insufficient as a SIP revision. EPA cites no other documents to demonstrate that Control Measure IND-01 was approved by the CARB Board and properly submitted to EPA as a proposed SIP revision.

Further, the 2015 Supplement did not constitute a submittal of Control Measure IND-01 or Proposed Rule 4001. As explained in EPA's proposed rulemaking (80 Fed. Reg. 63641), the 2015 Supplement was submitted in response to the appellate court's decision in *NRDC v. EPA*, 706 F/3d 428 (D.D. Cir. 2013), that EPA must consider the general implementation requirements of subpart 1 with the requirements specific to particulate matter nonattainment areas in subpart 4 of Part D, Title I of the Clean Air Act. The 2015 Supplement was intended to address the subpart 4 issues that had not been included in the $PM_{2.5}$ Plan. (80 Fed. Reg. 63641-63642.) The 2015 Supplement merely provides in Table F-1 a new proposed adoption date for Control Measure IND-01/Proposed Rule 4001 of 2015. (See Attachment 18.) The stated emission reduction "commitment" towards $PM_{2.5}$ attainment for Control Measure IND-01/Proposed Rule 4001 is "N/A" in both the $PM_{2.5}$ Plan and in the 2015 Supplement. The 2015 Supplement only states that Proposed Rule 4001 will not be approved in 2015 as stated in the 2015 Supplement. (See Attachment 19.)

EPA states that the $PM_{2.5}$ Plan or 2015 Supplement are considered complete SIP submittals under section 110(k)(1)(B) by operation of law without the inclusion of Control Measure IND-01 or Proposed Rule 4001. (80 Fed. Reg. 63642.) However, there is no text of either Control Measure IND-01 or Proposed Rule 4001 for EPA to assess in determining whether these actions comply with the applicable requirements of subparts 1 and 4. Since there is no Control Measure IND-01 or Proposed Rule 4001 in the $PM_{2.5}$ Plan or 2015 Supplement, these actions are not properly before EPA, and EPA cannot approve a commitment for SCAQMD to adopt Proposed Rule 4001 in its final rulemaking.

IV. Commitments to Adopt a Rule in the Future Cannot be Approved under Clean Air Act Section 110(k)(3).

To the extent that EPA will issue a final rule on the 2012 $PM_{2.5}$ Plan and 2015 Supplement, approval of SCAQMD's future commitments, specifically Control Measure IND-01 and Proposed Rule 4001, cannot be approved under Clean Air Act section 110(k)(3) as EPA proposes to do in the rulemaking. (80 Fed. Reg. 63650). According to EPA, under Section 110(k)(3), EPA considers three factors in determining whether to approve a control measure as an enforceable commitment. As discussed below, Control measure IND-01 and Proposed Rule 4001 are not enforceable commitments. However, EPA has determined it does not need to consider these factors because "the $PM_{2.5}$ Plan and 2015 Supplement do not rely on either the rule amendment commitments in its impracticability demonstration, RACM demonstration, RFP demonstration, or quantitative milestones, or to meet any other CAA requirement." (80 Fed. Reg. 63652.) Since the three-factor test has not been applied and Control Measure IND-01/Proposed Rule 4001 are not necessary to comply with the Clean Air Act

requirements, there is no basis for approving Control Measure IND-01/Proposed Rule 4001 under Section 110(k)(3).

V. Control Measure IND-01 and Proposed Rule 4001 are Legally Deficient.

If EPA decides that Control Measure IND-01 and Proposed Rule 4001 are properly before the agency, then the ports submit the following comments and concerns.

1. *Clean Air Act Subparts 1 and 4 Requirements Are Not Met.*

In accordance with Clean Air Act section 189(a)(1)(B), modeling is conducted for demonstrating attainment or that attainment by the applicable deadline is not practicable. Through Control Measure IND-01 and Proposed Rule 4001, SCAQMD is inappropriately attempting to enforce the modeling assumptions it utilized in the 2012 $PM_{2.5}$ Plan (that demonstrated attainment[1]) *for the ports only*. There is no justification as to why the port-only assumptions and no others must be enforced to achieve attainment. If EPA approves this novel and significant change in SIPs in its final rulemaking, it will be signaling to states and local agencies that they can enforce assumptions. This will undermine the SIP process and lead to serious disagreements and controversies over all assumptions states and local agencies include in their SIPs because the regulated community will be fearful that any technical assumptions included in the SIP will be enforced in the future. Technical assumptions estimated by scientists will become political decisions. Further, this approach has been disapproved by the Ninth Circuit Court of Appeals in *Bayview Hunters Point Community Advocates v. Metropolitan Transportation Commission*, 366 3d 692 (9th Cir. 2004).

The requirements in subparts 1 and 4 relative to RACM/RACT have not been met for Control Measure IND-01 and Proposed Rule 4001. EPA states that RACM includes any potential control measure for non-road emission sources that is both technologically and economically feasible. (80 Fed. Reg. 63647.) There must be an evaluation of technical feasibility that includes operation conditions, and non-air quality impacts as well as an economic feasibility that includes consideration of cost per ton of pollutant reduced, capital costs and annualized costs. There is no such analysis for Control Measure IND-01 or Proposed Rule 4001. SCAQMD cannot evade these requirements by calling Control Measure IND-01 an indirect source measure or a measure to simply enforce an attainment demonstration assumption.

Clean Air Act section 110(a)(2)(A) requires that control measures in the SIP be enforceable. As discussed herein, Control Measure IND-01 and Proposed Rule 4001 are not enforceable by the designated agencies and cannot be approved as Clean Air Act section 110(k)(3) commitments. As acknowledged by Table 3 in 80 Fed. Reg. 63651 there is no implementation date or emission reductions to be achieved by Control Measure IND-01 or Proposed Rule 4001. Further, EPA proposes to approve Control Measure IND-01 for ***NOx reductions*** in the $PM_{2.5}$ Plan. (80 Fed. Reg. 63652.) Control

[1] 80 Fed. Reg. 63644 incorrectly states that the 2012 PM2.5 Plan demonstrated that attainment by the moderate deadline is impracticable

Measure IND-01 is not evaluated in the attainment demonstration as a NOx control measure necessary to reduce $PM_{2.5}$ precursors. (See 42. U.S.C. § 7502(c).) (See Attachment 20.)

2. *The Ports Cannot Be Legally Responsible for Other Agencies' Actions.*

The CAAP's goals and control measures that SCAQMD seeks to codify as the responsibility of the ports are in fact the responsibility of other government agencies. As stated above, approximately 98% of voluntary CAAP measures have been superseded by state or international regulation, including:

- CARB Truck and Bus Regulation
- CARB Ocean-going Vessel At-Berth Regulation
- CARB and International Ocean-going Vessels Low-Sulfur Fuel Regulations
- CARB Cargo-handling Equipment Regulation
- CARB Commercial Harbor Craft Regulation
- International Maritime Organization North American Emission Control Area

The Cities should not be held legally responsible for or mandated to backfill any potential emissions shortfalls from regulatory agencies not implementing emission reduction regulations as identified within the SIP, even if those regulations are related to equipment operating at or in the vicinity of the ports or were originally identified as voluntary measures.

3. *Control Measure IND-01 and Proposed Rule 4001 are Not Required for Demonstrating Attainment.*

The SCAQMD Governing Board found that without Control Measure IND-01: (1) "the 2012 AQMP, in conjunction with earlier AQMPs contains every feasible control strategy and measure to ensure progress toward attainment…."; (2) "the AQMP satisfies all the attainment deadlines for federal ambient air quality standards for 24-hour $PM_{2.5}$ and 1-hour ozone NAAQS"; (3) "the 2012 AQMP satisfies the planning requirements set forth in the federal and California Clean Air Acts"; and, (4) "the 2012 AQMP includes every feasible measure and an expeditious adoption schedule". (Attachment 21, Resolution, motions, deleted Control Measure IND-01.)

On January 25, 2013, the CARB Board adopted Resolution No. 13-3. (Attachment 22, Resolution.) The CARB Board found that without Control Measure IND-01: (1) "the attainment analysis in the 2012 AQMP demonstrates that the 24-hour $PM_{2.5}$ standard will be met throughout the [South Coast Air] Basin by the proposed attainment date"; (2) the 2012 AQMP demonstrates the [South Coast Air] Basin will attain the 1-hour ozone standard by 2022"; (3) "[t]the 2012 AQMP meets the applicable planning requirements established by the [Clean Air] Act and the Rule for 24-hour $PM_{2.5}$ SIPs, and includes the required air quality and emissions data, modeled attainment demonstrations, RACM/RACT demonstrations, new source review, transportation conformity emission budgets, and contingency measures"; (4) "[t]he 2012 AQMP identifies contingency measures that will achieve additional emission reductions, beyond those relied on in the attainment demonstration, in the event that the South Coast Air Basin does not attain the 24-hour $PM_{2.5}$ standard by 2014"; and, (5) "[t]he 2012 AQMP meets applicable planning requirements established by the [Clean Air] Act for 1-hour ozone SIPs, and includes the required air quality and emissions data, modeled attainment demonstrations, new source review and RACM/RACT demonstrations".

EPA proposes to conclude that RACM/RACT have been met without Control Measure IND-01/Proposed Rule 4001. Because there is no need for Control Measure IND-01/Proposed Rule 4001, there is no basis for approving it as part of the SIP.

4. *Control Measure IND-01 and Proposed Rule 4001 Are Preempted by the Clean Air Act and SCAQMD Lacks Authority to Adopt and Implement these Committments.*

Congress vested the federal government with the authority to set nationwide emissions standards for mobile sources, including nonroad mobile engines and vehicles. (42 U.S.C. §§ 7521, 7547.) Congress expressly and impliedly preempted states from setting standards or other requirements relating to the control of emissions for mobile sources. (42 U.S.C. § 7543, (a) & (e) The goods movement sources that would be regulated by Proposed Rule 4001 are within the express and implied preemption.

The Clean Air Act allows California to seek authorization from the EPA to adopt "standards and other requirements relating to the control of emissions" for some but not all mobile sources that would be covered by Proposed Rule 4001. (42 U.S.C. §§ 7543, (b) & (e)(2)(A).) The Clean Air Act does not allow for California to seek an EPA waiver for every one of the goods movement emission sources, nor has CARB made such a request.

Control Measure IND-01/Proposed Rule 4001 sets standards relating to the control of emissions that are preempted by the Clean Air Act. Control Measure IND-01/Proposed Rule 4001 establishes an emission reduction target of 75% below 2008 emission levels. (See CAAP's goals and control measures above.) The ports do not own or operate the emitting equipment. If business-as-usual does not satisfy this requirement, then the ports' tenants (e.g., shipping companies) and customers (e.g., trucking companies) that own or operate the specific port-related sources will need to modify their current operations – the equivalent of complying with "other requirements."

Control Measure IND-01/Proposed Rule 4001 also sets "other requirements" relating to emissions from mobile sources because it requires the ports to ensure implementation of the rules and regulations of CARB, EPA and MARPOL. Proposed Rule 4001's emission inventory requirement will compel the ports to monitor compliance by mobile sources operating in and around the ports and identify and report reduction shortfalls. If emissions increase, exceeding the 75% emissions cap, the ports will have to identify the emission source and cause in order to adequately prepare a strategy for the Emission Reduction Plan required by the proposed rule to address and reduce these emissions. Yet, the ports have not been granted the authority by CARB, EPA and MARPOL to enforce their rules and regulations.

Under Control Measure IND-01/Proposed Rule 4001, if the Executive Officer decides the emission reduction target is not met, the ports would be required to prepare an Emission Reduction Plan that includes sufficient feasible control strategies expected to eliminate the identified shortfall and maintain the reduction target from maritime goods movement sources through calendar year 2020. This amounts to requiring the ports to impose "other requirements" upon the cargo movement that are more stringent than the requirements of CARB, EPA and MARPOL.

5. *SCAQMD Lacks Authority to Regulate Outside of Jurisdictional Boundaries.*

SCAQMD's authority to regulate is limited to its jurisdictional boundaries. SCAQMD was created by the California Legislature "in those portions of the Counties of Los Angeles, Orange,

Riverside, and San Bernardino included within the area of the South Coast Air Basin, as described in Section 60104 of Title 17 of the California Administrative Code, as now or hereafter amended." (Cal. Health & Safety Code, § 40410.)

The South Coast Air Basin includes the portion of Los Angeles County "[b]eginning at the Los Angeles-San Bernardino County boundary and running west along the township line common to T.3 N and T.2 N, San Bernardino Base and Meridian; then north along the range line common to R.8 W and R.9 W; then west along the township line common to T.4 N and T.3 N; then north along the range line common to R.12 W and R.13 W to the southeast corner of Section 12, T.5 N, R.13 W; then west along the south boundaries of Sections 12, 11, 10, 9, 8, 7, T.5 N, R.13 W to the boundary of the Angeles National Forest which is collinear with the range line common to R.13 W and R.14 W; then north and west along the Angeles National Forest boundary to the point of intersection with the township line common to T.7 N and T.6 N (point is at the northwest corner of Section 4 in T.6 N, R.14 W); then west along the township line common to T.7 N and T.6 N; then north along the range line common to R.15 W and R.16 W to the southeast corner of Section 13, T.7 N, R.16 W; then along the south boundaries of Sections 13, 14, 15, 16, 17, 18, T.7 N, R.16 W; then north along the range line common to R.16 W and R.17 W to the north boundary of the Angeles National Forest (collinear with township line common to T.8 N and T.7 N); then west and north along the Angeles National Forest boundary to the point of intersection with the south boundary of the Rancho La Liebre Land Grant; then west and north along this land grant boundary to the Los Angeles-Kern County boundary. (17 Cal. Code Regs., § 60104(d).)

SCAQMD's 2012 AQMP, which includes Control Measure IND-01 as an indirect source control strategy, applies only to the South Coast Air Basin. The 2012 AQMP acknowledges that SCAQMD's jurisdiction over the South Coast Air Basin "is bounded by the Pacific Ocean to the west and the San Gabriel, San Bernardino, and San Jacinto mountains to the north and east." (See 2012 AQMP, p. 1-2.) SCAQMD lacks authority to adopt and enforce Proposed Rule 4001 because it does not have jurisdiction to regulate emission sources outside of its geographical boundaries as would be required if the CAAP programs become mandatory. The Ocean Going Vessel (OGV) Vessel Speed Reduction program would require OGVs to slow vessel speed to 12 knots during their approach and departure from the ports at a distance of either 20 nm or 40 nm from Point Fermin, which is outside SCAQMD's jurisdictional boundary. The OGV Low Sulfur Fuel for Auxiliary Engines and Auxiliary Boilers program would require OGVs to switch to low sulfur distillate fuel within 40 nm from Point Fermin, which is outside of SCAQMD's jurisdictional boundary. The OGV Low Sulfur Fuel for Main Engines program would require OGVs to switch to low sulfur distillate fuel within 40 nm from Point Fermin, which is outside of SCAQMD's jurisdictional boundary.

This OGV Vessel Speed Reduction program is the only CAAP measure that is not already part of regulations adopted by other agencies. Yet, the ports also lack jurisdiction to mandate any OGV actions of the ship owners if CAAP voluntary incentive targets are not met for the reasons stated below in section V.6.

6. ***Control Measure IND-01 and Proposed Rule 4001 Violate IMO's MARPOL Annex VI and Maritime Pollution Prevention Act of 2008.***

OGVs are regulated by the federal government implementing its treaty obligations under MARPOL, administered by the IMO, specifically MARPOL Annex VI Regulations for the Prevention

of Air Pollution from Ships (Annex VI) which sets global limits for SOx, NOx, and PM emissions from OGVs. Congress vested MARPOL and Annex VI authority with the Secretary of the U.S. Coast Guard (Secretary) and the Administrator (Administrator) of the EPA. (33 U.S.C. § 1903.) The Secretary has exclusive MARPOL administrative and enforcement authority. (33 U.S.C. § 1903(a).) The Administrator has Annex VI administrative, regulatory, investigative, and enforcement authority. (33 U.S.C. §§ 1901 et seq.)

The SCAQMD's ability to adopt, enforce, and require the ports to comply with Control Measure IND-01/Proposed Rule 4001 is precluded and preempted by Annex VI and federal regulations. (40 CFR § 1043.10.) The federal government has historically been the principal regulator of emissions from U.S. and foreign-flagged ships (or OGVs) under Annex VI. (40 C.F.R. § 94; 40 C.F.R. § 1043, 33 C.F.R. § 151).

The ports are located within the North American Environmental Control Area (ECA) established under Annex VI. The North American ECA's limits are much stricter than Annex VI's global requirements. Control Measure IND-01/Proposed Rule 4001 unlawfully requires the ports to collect and report NOx, SOx, and PM emissions information from OGVs subject to Annex VI requirements in the North American ECA. (Proposed Rule 4001(d).) To collect this information, the ports must impose a reporting requirement for OGVs coming and going from the ports– effectively regulating them under Annex VI. The ports lack authority to regulate U.S. and foreign-flagged ships in this manner. (33 U.S.C. §§ 1903, 1907.) Federal recordkeeping and reporting requirements for fuel and marine engines are expressly allowed (40 C.F.R. § 1043.70(b)-(c)), but no other recordkeeping and reporting requirements are authorized by statute or regulation. Control Measure IND-01/Proposed Rule 4001's reporting requirement is thus preempted by both Annex VI's record-keeping requirements for NOx engine standards and sulfur content in fuel (Regulations 13 and 14, Annex VI; incorporated by reference at 40 C.F.R. § 1043.100) and federal regulatory record-keeping and reporting requirements (40 C.F.R. § 1043.70).

Control Measure IND-01/Proposed Rule 4001 is also preempted on enforcement grounds. Congress expressly reserved enforcement authority of Annex VI regulations to the U.S. Coast Guard and EPA. (33 U.S.C. §§ 1903, 1907.) Enforcement inspections will be conducted only by the U.S. Coast Guard and, when referred by the Secretary, investigated by the Administrator. (33 U.S.C. §§ 1907(f)(1)-(2).) The U.S. Coast Guard and EPA are authorized to impose civil penalties for violations of MARPOL (including Annex VI) and 33 U.S.C. §§ 1901 et seq., § 1908(b)(1). The ports and SCAQMD are not so authorized and cannot inspect, penalize, or undertake enforcement actions against OGVs under Annex VI and 33 U.S.C. §§ 1901 et seq.

Control Measure IND-01/Proposed Rule 4001 also gives the Executive Officer of the SCAQMD authority to decide that the emission target is not met. To satisfy the Emission Reduction Plan requirement, the ports may have to impose more stringent emissions requirements on U.S. and foreign-flagged vessels than required by Annex VI. The ports and SCAQMD both lack this authority.

7. ***Control Measure IND-01 and Proposed Rule 4001 Violate the Dormant Commerce Clause.***

Control Measure IND-01/Proposed Rule 4001 violates the dormant Commerce Clause and would impede the free and efficient flow of commerce imposing a heavy burden on ports, the shipping

industry, navigation and commerce without any local environmental benefit, or an insubstantial local benefit at best. Because SCAQMD's attainment demonstration shows the $PM_{2.5}$ NAAQS can be obtained without Control Measure IND-01/Proposed Rule 4001, it is unnecessary to require additional emissions reductions from the maritime goods movement industry to achieve attainment and the burdens on interstate commerce of Control Measure IND-01/Proposed Rule 4001 render it unreasonable and irrational.

8. ***SCAQMD Lacks Authority under the Clean Air Act to Designate and Regulate the Ports as "Indirect Sources."***

The Clean Air Act defines an indirect source as "a facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution." (42 U.S.C. § 7410(a)(5)(C).) An "indirect source review program" is "the facility-by-facility review of indirect sources of air pollution, including such measures as are necessary to assure, or assist in assuring, that a new or modified indirect source will not attract mobile sources of air pollution" that would contribute to the exceedance of the NAAQS. (42 U.S.C. § 7410(a)(5)(D)(i).) "Direct emissions sources or facilities at, within, or associated with, any indirect source shall not be deemed indirect sources for the purpose" of an indirect source review program. (42 U.S.C. § 7410(a)(5)(C).)

The ports are not a "Facility" as required by the Clean Air Act's indirect source provisions. Together, the Port of Los Angeles and Port of Long Beach encompass 10,700 acres, miles of waterfront and features 50 passenger and cargo terminals, including dry and liquid bulk, container, breakbulk, automobile and warehouse facilities, and a cruise passenger complexes. While some U.S. ports are "operating ports" that own and operate their terminals and equipment and hire longshoremen to handle cargo, the ports of Los Angeles and Long Beach are "non-operating" or "landlord" ports that hold the tidelands property in trust for the State of California and lease it out to port tenants that operate the terminals. Each port tenant is treated as an individual stationary source facility by the SCAQMD and their activities are separately regulated and permitted by the SCAQMD.

SCAQMD advances the novel theory in Control Measure IND-01/Proposed Rule 4001 that it can designate a geographic area of a city to be an "indirect source." Further, the geographic line drawn by SCAQMD does not respect political boundaries and lumps portions of the Cities together as a single indirect source. The SCAQMD believes it can draw any geographic boundary it desires and declare that area to be an "indirect source" without regard for whether the landowner operates or controls mobile sources that pass through the area. Under the SCAQMD's theory, a local air district could designate as a stationary source, and an indirect source any city or county that has natural features that attract ships or cars or other mobile sources, even if the city or county does not own, operate or control those sources. Is a city with oil fields a stationary source and indirect source because it attracts refineries, trucks and trains to transport the petroleum products? If Riverside County has increased the numbers of warehouses and distribution centers within its borders, is the governmental agency or county geographical area now a stationary source and indirect source because such distribution centers within their borders attract trucks and trains?

Control Measure IND-01/Proposed Rule 4001 uses the Clean Air Act's indirect source provisions as a guise to impermissibly regulate mobile sources. Proposed Rule 4001 regulates emissions from "***on- and off-road mobile sources operating at, and to and from***, the Ports, which includes ocean-

going vessels, locomotives, heavy duty trucks, harbor craft, trucks, and cargo handling equipment that emit NOx, SOx, or PM2.5." (Proposed Rule 4001(c)(7) [Emphasis added].) Proposed Rule 4001's language clearly regulates emissions from the tailpipes of on-road and off-road mobile sources listed above, which makes Proposed Rule 4001 a mobile source regulation. The language also plainly allows Proposed Rule 4001 to regulate off-site emissions (emissions occurring during transit "to and from" the purported "site"). Proposed Rule 4001 therefore regulates emissions from heavy duty trucks hauling a container from the ports to Oregon or OGVs hauling cargo containers from Asia to the ports – even when that truck or OGV is no longer physically operating within the ports' boundaries. Proposed Rule 4001 is therefore not a site-based program. Congress did not intend or authorize the use of the indirect source provisions of the Clean Air Act as a way to circumvent mobile source preemption.

Control Measure IND-01/Proposed Rule 4001 also fails as an indirect source review program because the ports are not a "new or modified indirect emissions source." The Clean Air Act defines modification as "any physical change in, or change in the method of operation, of a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of an air pollutant not previously emitted." (42 U.S.C. § 7411(a)(4).) The criteria pollutants targeted by Control Measure IND-01/Proposed Rule 4001 are among those that have been identified and reduced for the duration of the CAAP. Because the ports do not qualify as either a new or modified source, any attempt to regulate them as such exceeds the SCAQMD's authority.

Control Measure IND-01/Proposed Rule 4001 also violates the nexus requirement for indirect source review programs. The purpose of an indirect source review program is to ensure that mobile source emissions do not "cause or contribute to air pollution concentrations exceeding any national primary ambient air quality standard for a mobile-source related air pollutant." (42 U.S.C § 7410(a)(5)(D)(i).) SCAQMD's own $PM_{2.5}$ monitors show that emissions from mobile sources operating in and around the ports are not causing or contributing to the South Coast Air Basin's nonattainment of the $PM_{2.5}$ NAAQS. In the 2015 Supplement, SCAQMD attributes nonattainment to a single monitor – Mira Loma (Van Buren) – which is located in Riverside, approximately 60 miles northeast of the ports. This monitor has purportedly failed to attain the $PM_{2.5}$ NAAQS because of drought conditions in Southern California, even though all of the South Coast Air Basin has experienced the drought and none of SCAQMD's other monitors have failed to demonstrate attainment with the $PM_{2.5}$ NAAQS, including the two State and Local Air Monitoring Stations nearest to the Ports – in North and South Long Beach. The Long Beach monitors have consistently demonstrated attainment for at least the last four years and are projected to continue attaining the standard through 2019. The data thus suggest a nexus between nonattainment and a source located near the Mira Loma (Van Buren) monitor – ***not the ports***.

9. *SCAQMD Lacks Authority to Require the Ports to Regulate Air Quality*.

Control Measure IND-01/Proposed Rule 4001 unlawfully compels the Ports to regulate local air quality in violation of California Health and Safety Code sections 40414 and 40440. SCAQMD's authority is confined to air quality and cannot infringe on the land use authority of counties and cities. (42 U.S.C. § 7431; Cal. Health and Safety Code § 40414.) The ports, not SCAQMD, have the authority to determine their own land use needs to advance trade and commerce. The ports play a critical role in facilitating domestic and international maritime commerce. The Los Angeles City Charter charges the Port of Los Angeles with possession, management, and control of all navigable waters, tidelands, submerged lands, and other lands as specified in the City Charter. (City Charter, Sections 602 and 651.)

Similarly, the Long Beach City Charter vests in the Long Beach Harbor Department the authority to control and supervise the Harbor District to provide for the needs of commerce, navigation, recreation and fishery. (Long Beach charter Article X11.) As an exercise of this authority, the ports decided to develop an emission inventory and implement CAAP programs after having weighed the risks of losing business to other ports without a CAAP-equivalent program. These emissions are not caused by the ports' own equipment or operations – they are caused by tenants and other goods movement customers that operate in or near the ports.

The ports are not authorized by state or federal law to carry out the air quality responsibilities of an air district or state. (40 C.F.R. § 51.232(a).) The delegation requirements are also not met. (40 C.F.R. § 51.232(b).) Control Measure IND-01/Proposed Rule 4001 nevertheless requires the ports to conduct regulatory activities, such as developing and adopting emission reduction strategies for maritime goods movement emission sources, which may include retrofit, idling, or fuel requirements; seeking SCAQMD's approval to implement the ERP regulations; and establishing enforcement procedures to ensure that $PM_{2.5}$ emission reductions from mobile sources operating in or near the ports meet the 2012 AQMP assumptions. (See Proposed Rule 4001(f)(1)(C), (f)(1) and (2), and (f)(1)(D).)

10. *There is No Legal Authority for Including Control Measure IND-01 or Proposed Rule 4001 in the SIP*.

Indirect source control measures cannot be required as a condition of SIP approval by EPA or CARB. (42 U.S.C. § 7410(a)(5)(A)(ii); Cal. Health & Safety Code, § 40468.) There are no provisions in the Clean Air Act for including "backstop" measures like Control Measure IND-01 and rules like Proposed Rule 4001 in the California SIP. Only those provisions necessary to meet the requirements of the Clean Air Act can be included in the SIP. (Cal. Health & Safety Code, § 39602.) Control Measure IND-01/Proposed Rule 4001 is not necessary to meet the 24-hour $PM_{2.5}$ NAAQS requirements of Clean Air Act, and there is no emission reduction target for Control Measure IND-01 in the attainment strategy for the 2012 AQMP which Proposed Rule 4001 purports to implement. Thus, Proposed Rule 4001 does not comply with SIP submittal requirements. (See e.g., 40 C.F.R. §§ 51.112-51.114.)

The 2012 AQMP baseline assumptions SCAQMD seeks to enforce by Control Measure IND-01/Proposed Rule 4001 are not credited as emission reductions in the control attainment demonstration for the 2012 AQMP. There is no requirement under the Clean Air Act to enforce baseline assumptions in a SIP. CARB and SCAQMD must have legal authority to adopt, carry out and enforce each SIP measure before EPA can approve the SIP measure. (40 C.F.R. §§ 51.230-51.232; 40 C.F.R. § 51, App. V.) CARB and SCAQMD lack legal authority (preempted) because they cannot require the owners or operators of OGVs, locomotives, harbor craft, and CHE to implement all of the measures set forth in the CAAP, which Control Measure IND-01/Rule Proposed Rule 4001 requires. There is no agreement between CARB or SCAQMD with the Cities for the ports to agree to implement and enforce the sources covered by Proposed Rule 4001. (40 C.F.R. § 51.240.)

11. *Control Measure IND-01 and Proposed Rule 4001 Violate the Tidelands Trust Doctrine*.

The Cities' management of their tidelands is restricted by the public trust doctrine and the legislative acts that granted tidelands to the Cities. As tidelands trustees, the Cities are required to operate and use their tidelands property and revenues solely for the benefit of the entire State of

California, and not for purely local interest or benefit. The Cities have been granted the discretion over how to best fulfill the express trust purposes. SCAQMD cannot compel the ports through Proposed Rule 4001 to violate these Tidelands Trust obligations.

Control Measure IND-01/Proposed Rule 4001 strips the Cities of their discretion in administering the tidelands for the benefit of the State of California and compels the Cities to utilize their revenues for air quality purposes ahead of the purposes expressly set forth in the documents granting tidelands to the Cities. As a practical matter, Control Measure IND-01/Proposed Rule 4001 compliance will depend in part on the Cities providing financial incentives to the owners and operators of mobile sources to incentivize emission reductions. If the SCAQMD Executive Officer requires the ports to develop an Emission Reduction Plan and determines that more generous financial incentives must be offered by the ports to achieve the emission targets (which is permissible under Proposed Rule 4001), this would ultimately diminish the Cities' ability to execute their tidelands trust obligations by forcing revenue to be spent on complying with Proposed Rule 4001, and depleting revenues for express trust purposes.

In their discretion, the ports consider environmental quality to fall within the implied scope of the tidelands trust and have in fact made substantial expenditures when their operating budgets allow. The ports also fully comply with the California Environmental Quality Act when developing their properties for tenants' use, which may include providing mitigation such as air quality reduction measures to address any environmental impacts. However, the tidelands trust does not expressly require revenues be expended for "air quality improvement", and Control Measure IND-01/Proposed Rule 4001 appears to challenge the Cities' jurisdiction over their own funds, if the only way to increase compliance with a CAAP incentive program, for example, is to increase the amount of incentives.

Control Measure IND-01/Proposed Rule 4001 also compels the Cities to violate their Tidelands Trust obligations by mandating that the ports utilize trust funds for an entirely local air regulatory program to reduce PM 2.5, SOx, and NOx emissions. Proposed Rule 4001 applies to "commercial marine ports located in the South Coast Air Quality Management District." (Proposed Rule 4001(b).) The SCAQMD covers a sub-region within Southern California. (Cal. Health and Safety Code, § 40410.) "Commercial marine ports" means "the Port of Los Angeles and the Port of Long Beach." (Proposed Rule 4001(c)(2).) The funding to implement Proposed Rule 4001 will confer only an emission reduction benefit to the South Coast Air Basin and not the entire State of California. Thus, the benefits of Proposed Rule 4001 are strictly localized and conflict with the express terms of the tidelands trust provisions that the ports' property and revenues confer statewide, and not purely local, benefits. The implementation of Proposed Rule 4001 in the South Coast Air Basin will place the ports at a competitive disadvantage to other ports in California. If other ports secure cargo business meant for the Los Angeles or Long Beach ports, the Cities will lose revenues they need to fulfill their tidelands trust obligations.

Conclusion

Again, the ports appreciate the opportunity to comment on EPA's proposed rulemaking and urge the EPA to disapprove and exclude SCAQMD's Control Measure IND-01 and Proposed Rule 4001 from the SIP submittal for the 2006 $PM_{2.5}$ NAAQS in the South Coast Air Basin.

Sincerely,

Heather A. Tomley
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachments

1) March 25, 2014 Letter to Richard Corey, California Air Resources Board from Heather Tomley, Port of Los Angeles and Christopher Cannon, Port of Los Angeles
2) February 24, 2014 Letter from Deborah Jordan, EPA to Christopher Cannon, Port of Los Angeles and Matthew Arms, Port of Long Beach
3) January 31, 2014 Letter to Randall Pasek, Ph.D., South Coast Air Quality Management District from Matthew Arms, Port of Long Beach and Christopher Cannon, Port of Los Angeles
4) January 15, 2014 Letter to Jared Blumenfeld, U.S. Environmental Protection Agency, Region 9 from Matthew Arms, Port of Long Beach and Christopher Cannon, Port of Los Angeles
5) January 15, 2014 Letter to Barbara Radlein, South Coast Air Quality Management District from Matthew Arms, Port of Long Beach and Christopher Cannon, Port of Los Angeles
6) October 2, 2013 Letter to Randall Pasek, South Coast Air Quality Management District from Heather Tomley, Port of Long Beach and Christopher Cannon, Port of Los Angeles
7) August 21, 2013 Letter to Barbara Radlein, South Coast Air Quality Management District from Heather Tomley, Port of Long Beach and Christopher Cannon, Port of Los Angeles
8) November 27, 2012 Letter to Susan Nakamura, South Coast Air Quality Management District from Richard D. Cameron, Port of Long Beach and Christopher Cannon, Port of Los Angeles
9) November 19, 2012 Letter to Barry Wallerstein, South Coast Air Quality Management District from Richard D. Cameron, Port of Long Beach and Christopher Cannon, Port of Los Angeles
10) November 8, 2012 Letter to Barry Wallerstein, South Coast Air Quality Management District from Richard D. Cameron, Port of Long Beach and Christopher Cannon, Port of Los Angeles
11) October 31, 2012 Letter to Barry Wallerstein, South Coast Air Quality Management District from Richard D. Cameron, Port of Long Beach and Christopher Cannon, Port of Los Angeles from Chris Lytle, Port of Long Beach and Michael Christensen, Port of Los Angeles
12) October 22, 2012 Letter to Jeff Inabinet, South Coast Air Quality Management District from Richard D. Cameron, Port of Long Beach and Christopher Cannon, Port of Los Angeles

13) August 30, 2012 Letter to Barry Wallerstein, South Coast Air Quality Management District from Chris Lytle, Port of Long Beach and Geraldine Knatz, Port of Los Angeles

14) July 10, 2012 Letter to Barry Wallerstein, South Coast Air Quality Management District from Chris Lytle, Port of Long Beach and Michael Christensen, Port of Los Angeles

15) May 4, 2010 Letter to Susan Nakamura, South Coast Air Quality Management District, from Richard D. Cameron, Port of Long Beach and Ralph Appy, Port of Los Angeles

16) December 2012, SCAQMD Final 2012 Air Quality Management Plan, pp. 4-8, 4-12 to 4-13; and January 11, 2013 CARB Staff Report on Proposed Revisions to the PM2.5 and Ozone State Implementation Plans for the South Coast Air Basin, pp. 12-13.

17) December 2012, SCAQMD Final 2012 AQMD Appendix IV-A, District's Stationary Source Control Measures, pp. IV-A-2, IV-A-36 to IV-A-43

18) February 2015, SCAQMD Final Supplement to the 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin, Table F-1

19) February 6, 2015, SCAQMD Agenda No. 22, Supplement to 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin, Attachment F, p. F-1

20) February 2015, SCAQMD Final Supplement to the 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin, Table F-1; and February 6, 2015, SCAQMD Agenda No. 22, Supplement to 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin, Attachment E

21) December 7, 2012, SCAQMD Resolution 12-19

22) January 25, 2013, CARB Resolution 13-3

cc: The Honorable Barbara Boxer, United States Senate
The Honorable Janice Hahn, United States House of Representatives
The Honorable Alan Lowenthal, United State House of Representatives
The Honorable Edmund G. Brown, Jr., Governor, State of California
The Honorable Ricardo Lara, California State Senate
The Honorable Patrick O'Donnell, California State Assembly
The Honorable Robert Garcia, Mayor, City of Long Beach
The Honorable Eric Garcetti, Mayor, City of Los Angeles
Jon Slangerup, Chief Executive, Port of Long Beach
Gene Seroka, Executive Director, Port of Los Angeles
Richard Cameron, Managing Director, Port of Long Beach
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Barbara McTigue, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
Jared Blumenfeld, Administrator, EPA, Region 9
Deborah Jordan, Director, Air Division, EPA, Region 9
Elizabeth Adams, Deputy Director, Air Division, EPA, Region 9

Jeanhee Hong, Regional Counsel, EPA Region 9
Richard Corey, Executive Officer, CARB
Cynthia Marvin, Division Chief, Stationary Source Division, CARB
Doug Ito, Chief, Freight Transportation Branch, CARB
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD

ATTACHMENT 1.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

March 26, 2014

Richard Corey
Executive Officer
California Air Resources Board
1001 "I" Street
Sacramento, California 95814

Re: California State Implementation Plan (SIP) for $PM_{2.5}$ for South Coast Air Basin – South Coast 2012 Air Quality Management Plan (AQMP) Control Measure IND-01 *Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities*

Dear Mr. Corey:

The Ports of Long Beach and Los Angeles (Ports) would like to express our concern regarding the California Air Resources Board (ARB) procedure for inclusion of Control Measure IND-01 *Backstop Measure for Indirect Sources of Emissions from Ports and Port-related Facilities* (Measure IND-01) in the California State Implementation Plan (SIP) for particulate matter 2.5 microns or less ($PM_{2.5}$) for the South Coast Air Basin, which is currently pending United States Environmental Protection Agency (EPA) approval.

The Ports believe that ARB failed to follow the process for SIP revision submissions required by Clean Air Act Section 110(1) and California Health and Safety Code Section 41650. Under Clean Air Act Section 110(l), SIP revisions must be adopted by the State, and the State must provide for reasonable public notice and hearing prior to adoption. Pursuant to 40 CFR 52.102(a)(1), the State must hold a public hearing, not only for initial SIP approval, but also for any SIP revision, and must provide notice of the date, place, and time of a public hearing and opportunity to submit written comments. Under 40 CFR 51.102(d), reasonable public notice in this context refers to at least 30 days. Similarly, Health and Safety Code Section 41650 provides for a public hearing that would allow public comment as to whether the SIP meets the requirements of the Clean Air Act. By resolution dated January 25, 2013, the ARB approved the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) and directed the executive officer of the ARB to submit the AQMP to EPA for inclusion in the SIP. However, at the time of the January 25, 2013 ARB action, Measure IND-01 was not part of the AQMP. Because the AQMD Governing Board adopted the AQMP without Measure IND-01 on December 7, 2012 and did not adopt Measure IND-01 until February 1, 2013, the January 25 ARB action did not constitute approval of Measure IND-01 which had not yet been submitted to ARB for consideration. The

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425 S. Palos Verdes Street • San Pedro • CA 90731 • 310-732-3675

Port of Long Beach • Environmental Planning
925 Harbor Plaza • Long Beach • CA 90802 • 562-590-4160

The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

documents attached to the ARB's February 13, 2013 SIP submittal to the EPA include the December 7, 2012 resolution by the AQMD Governing Board and the December 20, 2012 AQMD letter to ARB transmitting the approved SIP, which pre-dated the AQMD Governing Board's approval of Measure IND-01. However, without the required public notice or public hearing and adoption by the ARB Governing Board, the submitted SIP includes the addition of Measure IND-01 by Executive Order S-13-004, dated April 9, 2014.

Furthermore, the Ports were made aware of this Executive Order, which occurred without public hearing or Governing Board approval through a letter from EPA to the Ports dated February 24, 2014. This letter stated that ARB had approved the revised SIP containing Measure IND-01and had forwarded it to EPA under cover of a letter dated April 9, 2013. After a search of the ARB website, however, we were unable to find a copy of the April 9, 2013, submission to the EPA, and the only ARB action posted on the ARB website was the February 13, 2013, SIP submission without Measure IND-01 and the ARB Board's resolution dated January 23, 2013, also without Measure IND-01. We made inquiry to ARB staff and for the first time, on March 18, 2014, received a copy of the April 9, 2013 submission and ARB Executive Order S-13-004, neither of which are available on the ARB website even as of this date.

Perhaps more important than the procedural issue described above, we respectfully request that ARB consider the Ports' many legal, jurisdictional, operational, and technical concerns regarding the substance of Measure IND-01 and its implementing Rule 4001 as set forth in the attached letter to AQMD, dated January 31, 2014, which we hereby incorporate by reference as comments to the ARB on Measure IND-01, since ARB has never formally noticed a public comment period, in violation of the Clean Air Act and Health and Safety Code Section 41650.

The Ports value our partnership with ARB, working together to improve air quality, and we look forward to continuing our collaboration on projects such as ARB's new Sustainable Freight Strategy effort. Rather than introduce counterproductive regulation such as Measure IND-01 or Proposed Rule 4001, the Ports strongly urge ARB to recognize that a multi-agency agreement, using a collaborative process for development of potential programs, is the most effective way to ensure that emission reduction goals continue to be incentivized, and are actually realized. We respectfully request that ARB rescind Executive Order S-13-004, withdraw Measure IND-01 from the SIP, and meet with the Ports to work on a collaborative path forward.

Sincerely,

Heather Tomley
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

LW

Attachment: Port of Long Beach and Port of Los Angeles January 31, 2014 Letter to Mr. Randall Pasek, AQMD, *Re: Comments on South Coast Air Quality Management District Proposed Rule 4001 — Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports*

cc: Al Moro, Acting Executive Director, Port of Long Beach
Gary Lee Moore, Interim Executive Director, Port of Los Angeles
Richard D. Cameron, Managing Director, Port of Long Beach
Michael Christensen, Deputy Executive Director, Port of Los Angeles
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
Mary Nichols, Chairman, ARB
Members of the California Air Resources Board (*c/o Clerk of the Board, Attachment on CD*)
Cynthia Marvin, Division Chief, Stationary Source Division, ARB

ATTACHMENT 2.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

FEB 2 4 2014

Mr. Christopher Cannon
Director of Environmental Management
Port of Los Angeles
425 S. Palos Verdes Street
San Pedro, CA 90731

Mr. Matthew Arms
Acting Director of Environmental Planning
Port of Long Beach
925 Harbor Plaza
Long Beach, CA 90802

Dear Mr. Cannon and Mr. Arms:

Thank you for your letter dated January 15, 2014, to the U.S. Environmental Protection Agency Region 9's Regional Administrator Jared Blumenfeld, expressing your concerns about the South Coast Air Quality Management District's (SCAMQD) Control Measure IND-01, *Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities.* We appreciate the Port of Long Beach's and the Port of Los Angeles' input on Control Measure IND-01.

We agree with your statement that California Air Resources Board's (CARB) January 25, 2013 adoption of the South Coast 2012 Air Quality Management Plan (2012 AQMP) did not include Control Measure IND-01. The SCAQMD Governing Board voted to delay that measure when it adopted the 2012 AQMP pending further work by SCAQMD staff. The measure was approved by the SCAQMD Governing Board in February 2013 and CARB adopted it and submitted it to EPA on April 9, 2013. To date, we have not received South Coast Rule 4001, which will implement Control Measure IND-01, as a revision to the California State Implementation Plan. Once we receive the rule, we are obligated to review and act on the rule.

In the mean time, I propose that my staff schedule a teleconference call with your staff to discuss the concerns you raised in your letter. If you have any questions, please contact Elizabeth Adams, Air Division Deputy Director, at (415) 972-3183.

Sincerely,

Deborah Jordan
Director, Air Division

ATTACHMENT 3.

January 31, 2014

VIA E-MAIL – rpasek@aqmd.gov

Mr. Randall Pasek, Ph.D.
Planning Manager, Off-Road Section
Mobile Source Division
Science and Technology Advancement
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91756-4178

Re: Comments on South Coast Air Quality Management District Proposed Rule 4001 — *Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports*

Dear Mr. Pasek and Staff of the South Coast Air Quality Management District:

On behalf of the City of Long Beach (referred to herein as "COLB") and the City of Los Angeles acting by and through their respective Harbor Departments ("COLA"), and collectively with COLB referred to herein as the "Cities"), we appreciate this opportunity to submit comments on the South Coast Air Quality Management District's ("District") recently published draft "Proposed Rule 4001 – *Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports*" ("PR 4001"), which attempts to implement "Stationary Source Measure IND-01—*Backstop Measures for Indirect Sources of Emissions from Ports and Port-related Facilities*" ("Measure IND-01") in the 2012 Air Quality Management Plan for the South Coast Air Basin ("AQMP").

As the District is well aware, the Cities have been dedicated, innovative, and effective leaders in the efforts of public agencies to improve air quality despite the fact that we have no air quality regulatory authority or control over emissions sources. The potential of additional regulation by the District in the form of PR 4001 on the ports of Long Beach and Los Angeles ("Ports") brings significant uncertainty that will have broad negative effects on the goods movement industry and the economy as a whole, and destroys the voluntary, collaborative partnership among the Cities, industry and all of the air agencies that has led to unparalleled emission reductions. PR 4001 raises questions of fairness and unacceptable delegation of responsibility from federal, state and local air regulators to individual cities.

The Cities have previously commented on, and objected to PR 4001 and Measure IND-01, and have expressed our grave concerns about the District's rulemaking approach, attempting to craft an ostensible "backstop rule" that would regulate the Cities and their respective Ports in an unprecedented manner. This letter provides the Cities' comments on PR 4001 and the District's Preliminary Draft Staff Report ("PDSR") for PR 4001 and concludes that:

I. The substance of Measure IND-01 and PR 4001 is deeply flawed from technical, jurisdictional, legal, and public policy perspectives, in ways that cannot be cured;

II. District is acting beyond its authority to adopt PR 4001;

III. The procedural process for development, public participation and adoption of Measure IND-01 and PR4001 is similarly flawed under both state and federal law; and

IV. Measure IND-01 and PR 4001 fail the requirements for inclusion in a State Implementation Plan (SIP) under the federal Clean Air Act and applicable state law and their existence within the SIP threatens the its success.

Each of these four conclusions is explained in detail below.

I. SUBSTANTIVE FLAWS IN PR 4001

A. There Is No Demonstrated Need for PR 4001

The District has failed to and cannot provide any demonstration of "need" or justification for either Measure IND-01 or PR 4001. The District's persistent demand for the Cities – and the Cities alone – to be subjected to a redundant rule to "backstop" existing and effective emission regulations, reduction plans and policies is arbitrary, discriminatory, and remains unjustified by evidence or legal authority.

We respectfully point out that the District previously proposed a "port backstop rule" as a "Mobile Source Measure MOB-03" ("Measure MOB-03") as part of the District's 2007 Air Quality Management Plan, although Measure MOB-03 included as regulated parties, the port-related emission sources. However, following the Cities' objections to that similarly-unjustified proposal, the California Air Resources Board ("CARB") excluded the Port-related emission reduction targets and the proposed MOB-03 "backstop" measure from the 2007 SIP. Despite that rejection, and despite its repeated and manifest failure to demonstrate any legitimate need the District introduced an even more unjustified form of backstop that targets the Cities alone, in the form of PR 4001.

Implementation of PR 4001 would transform the Cities' voluntary San Pedro Bay Ports Clean Air Action Plan ("CAAP") into the District's mandatory regulation of the Cities. The CAAP was a voluntary cooperative effort of Cities and all of the air regulatory agencies (including the District, CARB and the United States Environmental Protection Agency ("USEPA") designed to encourage the industry operators of emission sources to go beyond regulation. PR 4001 would improperly and illogically subject the Cities to the District's regulation for industry's failure to achieve anticipated emissions reductions from equipment not operated, owned or controlled by the Cities, or even to the potential loss of federal and state funding for emission reduction measures if the PR 4001 is adopted and included in the SIP and approved by the USEPA.

As the Cities have previously shown, there is no demonstrated need for the rule, nor is this rule necessary for regional attainment of the 2014 $PM_{2.5}$ standard. PR 4001 is unnecessarily duplicative of regulations already in place for port-related sources.[1] This violates the federal Clean Air Act and State of California Health & Safety regulations that require SIP provisions to be "necessary." The Ports' 2012 air emissions inventories show that diesel particulate emissions (DPM) have been reduced by 80% over the seven year period between 2005 and 2012, exceeding the commitments we made for 2014 and 2023 in the CAAP. Further, the Cities estimate that by 2014**, 98%** of the $PM_{2.5}$ equivalent emission reduction that PR 4001 seeks to backstop will occur as the result of regulations adopted by CARB and the International Maritime Organization (IMO).[2] The remaining **2%** of $PM_{2.5}$ equivalent emission reductions is primarily attributed to the Cities' successful voluntary vessel speed reduction incentive program which is part of the Cities' CAAP.

B. A VMEP Should Be Used To Achieve Reductions Rather than Rulemaking

To the extent the District may be seeking to ensure the emission benefits of the Cities' voluntary vessel speed reduction incentive program, there is a more appropriate and focused method in the form of the USEPA's policy and guidance for the Voluntary Mobile Source

[1] The term "port-related sources" may occasionally be used in this letter, merely for convenience and consistency with usage of that colloquial term by the District, as shorthand for the range of discrete sources of air emissions, mostly mobile, which happen to operate at or near the geographic boundaries of the respective Ports. The Ports themselves, however, are "non-operating ports" and therefore not "sources" of emissions, and there is no statutory reference to anything called "port-related sources" for purposes of air quality regulation. The Cities are governmental entities having jurisdiction over defined geographic areas, like the District, and are no more the "sources" of emissions than is the District.

[2] CARB Port Drayage Truck Rule, CARB Truck and Bus Rule, CARB Ocean-Going Vessel (OGV) Shore Power Rule, OGV Low-Sulfur Fuel Rule, CARB Cargo-Handling Equipment at Ports Rule, CARB Commercial Harbor Craft Rule, IMO North American Emission Control Area

Emission Reduction Program (VMEP). This USEPA policy provides an established process to grant SIP credit for emission reductions resulting from voluntary mobile source measures that go beyond existing regulations. The VMEP approach was intended for exactly the type of successful voluntary program such as the Cities' landmark CAAP, and should be used to account for the 2% of port-related emissions not currently backstopped by regulation. Use of the VMEP would allow the continuation of a successful voluntary approach that has industry support eliminating the risk of cargo diversion that would be caused by the uncertainty inherent in the ill-conceived regulatory structure of PR 4001.

The USEPA's established VMEP process that was conceptualized for programs such as the Cities' vessel speed reduction incentive program and other CAAP measures is a feasible and preferable alternative to PR 4001 as it will accomplish the objectives sought by Measure IND-01 and PR 4001 and ensure that the emissions reductions achieved by the program are credited in the SIP. Further, a VMEP, which can be implemented by a memorandum of understanding, will achieve the same emissions reductions while allowing grant funds to continue to remain available for actions going beyond regulations and will do so in a collaborative manner. It will also encourage other port partners, as well as cities and regions throughout the nation, to develop and pursue innovative voluntary programs and solutions that best fit their needs to improve air quality and public health. The Cities are open to discussing mechanisms, contractual or otherwise, by which the Cities and the District can formalize a VMEP to ensure the voluntary emission reductions are maintained in future years.

C. PR 4001 Emissions Reduction Target Methodology is Flawed

Table 5 of the District's Preliminary Draft Staff Report shows the overall combined 2014 target emission reduction of 75% resulting from the application of the Cities' CAAP 2014 emissions reduction goals for NOx, SOx, and DPM compared to the CAAP 2005 baseline, but fails to specify a mechanism to harmonize the AQMP inventory values with the Cities' reported air emissions inventories. Furthermore, the use of a fortuitous similarity in 'percent reduction' cannot be the basis of any type of backstop rule.

Since the 2012 Final AQMP emissions inventory uses a baseline year of 2008 that includes the Cities' 2008 emissions inventories, the 2005 baseline emissions should be replaced with the more appropriate 2008 emissions estimates to determine the overall $PM_{2.5}$ equivalent emissions reduction target. Based on the Cities' calculation, using the District staff's methodology, by applying the CAAP reduction factors to the 2008 baseline inventory, the overall combined target $PM_{2.5}$ equivalent emission reduction is 68%, as shown in the following table:

Emissions Inventory	NOx	SOx	$PM_{2.5}$	$PM_{2.5}$Eq
	(tons per day)			
CAAP 2005 Baseline[1, 3]	87.45	33.39	4.73	28.54
Ports Combined 2008 Total Port-Related Emissions[2, 3]	78.6	25.5	3.7	22.7
CAAP 2014 Reduction[4]	22%	93%	72%*	-----
2014 Estimated Inventory[3]	68.21	2.34	1.32	7.34
Overall $PM_{2.5}$ Equivalent Reduction Between 2008 and 2014				68%

[1] From Table 2 of Preliminary Draft Staff Report for PR 4001
[2] From Table 3 of Preliminary Draft Staff Report for PR 4001
[3] 2005 and 2008 emissions are based on the Ports' 2011 emission estimation methodologies.
[4] CAAP 2014 Bay-Wide Standards emission reduction goals for NOx, SOx and DPM
*Please note that that the CAAP 2014 emission reduction goal of 72% is for DPM, not for PM.

In determining the 2014 emission reduction targets for PR 4001, District staff applied the Basin-wide percent reductions from 2008 to 2014 and 2019 to the Cities' 2008 inventory to arrive at the forecasted net emissions reduction percentages of 75% for 2014 and 2019 (page 11 of Preliminary Draft Staff Report). This approach is not appropriate because the Basin-wide percent reductions are based on an inventory of emissions from overall sources (including non-port-related) in the South Coast Air Basin (SCAB). Therefore, the approach taken in PR 4001, is not directly applicable to what the Rule describes as "port-related emissions." Since the SCAB estimates include emissions from what the District erroneously describes as the "port-related source" categories, as well as sources operating elsewhere in the SCAB, the 75% emission reduction target specific to the ports of Long Beach and Los Angeles is questionable. As an example, SCAB-specific emissions from heavy-duty vehicles includes emissions from all heavy-duty trucks operating in the basin, including those associated with construction activities, public fleets, utility, intrastate, interstate, and drayage trucks, while the ports-specific heavy-duty truck emissions inventory only includes activity and emissions associated with port-related drayage trucks.

It is also important to note that the District's December 2013 Preliminary Draft Staff Report for PR 4001 erroneously assumes that $PM_{2.5}$ emissions are equivalent to diesel particulate matter (DPM) emissions. The Cities' 2014 CAAP emission reduction goal of 72% is specific to DPM, not $PM_{2.5}$ as assumed in the calculation of the $PM_{2.5}$ equivalent emissions reduction goal of 75%. Each of the Port's annual air emissions inventories separately estimate DPM and $PM_{2.5}$. As shown in their annual reports, the resulting emissions of DPM and $PM_{2.5}$ **are not equivalent**.

Please refer to Table 8.4 of the Port of Long Beach 2012 Air Emissions Inventory Report[3] and Table 9.4 of the Port of Los Angeles 2012 Inventory of Air Emissions Report[4].

A comparison of the $PM_{2.5}$ equivalent factors used in the 2007 AQMP , 2012 AQMP, and PR 4001 shows that there is inconsistency in how the $PM_{2.5}$ equivalent factors were derived and applied, as shown in the table below:

$PM_{2.5}$ Equivalent Factors

	VOC	NOx	$PM_{2.5}$	SOx
2007 AQMP	0.04	0.10	1.00	1.52
2012 AQMP	0.02	0.07	1.00	0.53
PR 4001	NA	0.07	1.00	0.53

In the 2007 AQMP, emissions reductions were simulated between 2005 and 2014, whereas for the 2012 AQMP, emissions reductions were simulated between 2008 and 2014. In the 2007 AQMP, the effect of each pollutant precursor's reduction on the 2014 $PM_{2.5}$concentration was considered on an annual basis, while the 2012 AQMP considers 24-hour $PM_{2.5}$concentrations. Also, the 2007 AQMP used the annual $PM_{2.5}$ concentration which was based on the average concentrations from all air monitoring stations in the South Coast Air Basin, while the 2012 AQMP only uses the average from six regional locations—Riverside-Rubidoux, Downtown Los Angeles, Fontana, Long Beach, South Long Beach, and Anaheim. The Basin-averaged conversion factors resulting from the 2007 analysis were submitted as part of the 2007 SIP (Appendix C, of the CARB staff report, "$PM_{2.5}$ Reasonable Further Progress Calculations") and were approved by the USEPA.

In addition, PR 4001(c)(6) defines "$PM_{2.5}$ Equivalent" as "the aggregate of the NOx, SOx, and $PM_{2.5}$ emissions (in tons per day) as defined by the following formula provided in the Final 2012 AQMP:

$$PM_{2.5}\text{ Equivalent} = 0.07 * NOx + 0.53 * SOx + 1.0 * PM2.5$$

The formula provided in PR 4001 does not reflect the $PM_{2.5}$ equivalent formula provided in the Final 2012 AQMP, which includes emissions of VOCs in the calculation. In PR 4001, without explanation, the District has erroneously "dropped" the contribution of VOC from the $PM_{2.5}$ equivalent formula, although the District's emissions modeling simulation shows VOCs as a contributing factor.

[3] Port of Long Beach 2012 Air Emissions Inventory. www.polb.com/emissions
[4] Port of Los Angeles 2012 Inventory of Air Emissions. www.portoflosangeles.org/environment/studies_reports.asp

Given that there have been several revisions to the $PM_{2.5}$ equivalent calculations, the text and formulae used in PR 4001 for those calculations do not appear consistent with previous approaches to such determinations. Prior to proceeding any further with PR 4001, the Cities request a scientific technical evaluation and obtain confirmation from the USEPA that the revised $PM_{2.5}$ equivalent factors and formula to calculate $PM_{2.5}$ equivalent emissoins used in the 2012 AQMP and in PR 4001 are appropriate.

D. PR 4001 Fails to Provide an Accurate and Appropriate Definition of Emissions "Shortfall"

PR 4001 would require the Cities to develop and submit an emissions reduction plan ("Plan") identifying control strategies to eliminate some potential future "shortfall" in attainment of reduction targets. The proposed rule, however, fails to identify the environmental baseline or other parameters that would be required in order for the Cities or the District to determine the extent of any emissions "shortfall" to be addressed in the potential Plan. Under PR 4001, the existence of a "shortfall" would appear to be the necessary prerequisite to trigger some responsive action on the part of the Cities, but the draft text of PR 4001 fails to provide for a timely and objective process to ascertain when and whether such a "shortfall" may have arisen.

The term "shortfall" first appears in the proposed rule in paragraph (d)(1)(A), where it appears to call for a Plan to report on progress in "meeting the shortfall." However, that would appear to be inconsistent with the structure of the proposed rule, i.e., under PR 4001, the District cannot require the Cities to submit an emissions reduction plan unless and until the annually-reported emissions reductions "show that the percent reduction in $PM_{2.5}$ from the baseline emissions is less than the reduction target" of 75% (Paragraph (e)(1)B)). There would not be any "shortfall" identified until that time; therefore, it would be premature and illogical to require the Cities to submit a Plan that "reports the progress in meeting the shortfall."

To the limited extent that the draft text of PR 4001 describes the shortfall that might trigger the need to prepare a Plan, the provisions for annual estimating or reporting of the emissions appear imprecise and vague. Also, paragraph (f) appears to contemplate that once a "shortfall" is determined to exist in one year, then the District could demand a revised Plan in following years if targets still are not met. What happens if the shortfall is "corrected" in subsequent years and targets are again being met?

PR 4001 fails to provide for any process for review or appeal of a possible District "determination" that a "shortfall" has occurred. PR 4001 fails to provide adequate time for the Cities to prepare a Plan, if required, or adequate time or procedures for the Cities to study the proposed Plan, to conduct environmental review of the Plan, or to conduct public hearings and gather input on any Plan that may be deemed to be appropriate if PR 4001 is properly triggered.

Development of a Plan should not be mandated if any eventual determination of an emissions "shortfall" is due to reasons outside of the Cities' control. As previously stated, by 2014, the emissions sources ostensibly targeted by PR 4001 are already controlled by state, federal, and international regulations. Should there be a shortfall in attaining the emissions targets, it will likely be due to factors not caused or controlled by the Cities, and not due to any action or derelictions on the part of the Cities or their tenants or users. The obligation to go through a burdensome process to prepare and approve a new Plan or to take active measures to make up for a shortfall in meeting emission reduction targets should not fall on the two Cities. The Cities are independent governmental entities who are not directly producing emissions or otherwise directly responsible for the targeted emissions or for the attainment of emission targets. The Cities are certainly not air agencies created by federal or state law with specific regulatory authority to control emissions.

E. <u>PR 4001 Improperly Provides for Moving Emissions Reduction Targets</u>

PR 4001 paragraph (c)(4) defines the "Emissions Target" as the "emissions forecast that is based on the Ports' 2008 baseline emissions **forecasted** for a specific year as provided in Appendix IV-A page IV-A-36 of the Final 2012 AQMP." This definition is confusing, as it is assumed that this reference is contained in the Final 2012 AQMP. In the description of this measure in Appendix IV, page IV-A-36, only projected levels of NOx, $PM_{2.5}$, and SOx are shown for calendar years 2014 and 2019. However, PR 4001 and the District's Preliminary Draft Staff Report discuss a 75% reduction in $PM_{2.5}$ equivalent emissions in 2014 compared to 2008 baseline levels. Again, there is a clear inconsistency between PR 4001 and the text of Measure IND-01 as actually approved by the District's Governing Board.

PR 4001 paragraph (e)(2) requires the District's Executive Officer to review the reduction target based on the latest information available including future year emission estimates in the 2016 AQMP and purports to allow the Executive Officer, by July 1, 2017 to "update," if necessary, the emission reduction target. This provision is unauthorized by IND-01 or any other rule, regulation, plan or statute, and would unlawfully vest apparently unfettered power on the Executive Officer to **change the previously-approved reduction targets**. By what authority would these targets be "revised" in the future? Under what objective standards? What public process would the District's Executive Officer need to follow in order to "develop" a proposed amendment to PR 4001 changing the targets? What environmental review/public outreach processes would be required before the Executive Officer could change the reduction targets and how would the environmental/socioeconomic impacts of such changes be addressed? How would such a moving target affect the Cities, the port communities, tenants, users, and the existing plans and policies which have proven effective in attaining the agreed and approved reduction targets?

F. The Processes For Development, Approval and Disapproval of Emission Reduction Plans Are Flawed

In the event the emissions reduction targets are not met, PR 4001 requires the Cities to submit an Emissions Reduction Plan "to address the emission reduction 'shortfall'." In addition, PR 4001 dictates the public processes of other government agencies: "…the Ports shall conduct at least one duly noticed public meeting before the Plan is presented to each respective Board of Harbor Commissioners for approval." This is an improper attempt by the District to control and dictate the exercise of "discretion" conferred on the Boards of Harbor Commissioners regarding their own notice, agenda setting, public hearing procedures and substantive decision making processes under their own applicable governing laws and rules. Neither the District's staff nor its Governing Board can require approval of the District's desired measures or override the discretion of the Board of Harbor Commissioners including decisions related to the management of the port or how port resources are allocated.

Moreover, if the Board of Harbor Commissioners disagrees that a Plan is required or specific terms of a Plan requested by the District, what process is provided for resolution of such disagreements? Under what authority would PR 4001 purport to allow the District's Executive Officer, acting alone, without even District Governing Board authority, to "disapprove" a Plan or compel a Plan to be approved by the Cities' own governing authorities? Although the Cities dispute that the District can compel or disapprove a Plan at all due to conflicting governmental authority, certainly such approval or disapproval of any Emission Reduction Plan cannot be at the sole discretion of a single District staff member.

G. PR 4001 Would Violate Constitutional Requirements of Due Process

PR 4001 also raises several questions regarding violations of Due Process. As noted above, PR 4001 would unlawfully purport to vest the District's Executive Officer with unilateral authority to "approve" or "disapprove" a Plan submitted by the Cities, without any process for public hearing, review by the District Board, or other guarantees of procedural due process for those concerned about such actions. PR 4001 also improperly fails to provide any requirement that the Executive Officer must make "findings" of "non-compliance" with some provision of paragraph (f)(1) of PR 4001, or that the Executive Officer's decisions must be based on some reasonable and objective standards.

PR 4001 fails to provide for the District giving the Cities any particular notice or justification for disapproval of a Plan, or any process for the Cities to seek review or appeal of the District's disapproval.

What would be the procedure if the PR 4001 triggered the obligation of the Cities to prepare a Plan, and the Cities duly submitted a Plan, but the District (either by its Executive

Officer or its Hearing Board) "disapproved" the Plan (per paragraph (f)(2)(C))? The Cities would apparently be required to submit a revised Plan within 60 days of the disapproval; however, that time would not be sufficient for the Boards of Harbor Commissioners and their staffs to prepare a new revised Plan, to hold new "public meetings" and gather public input, or otherwise take meaningful action on the revised Plan. PR 4001 fails to provide adequate time or process for the Boards of Harbor Commissioners to prepare, conduct CEQA review and public outreach, or to consider and approve a new revised Plan within the arbitrary 60 day time frame set by the rule.

H. PR 4001 Improperly Changes the Definition of "Feasibility" In Control Strategies and Alternatives

PR 4001 proposes to change the definition of "feasible control strategy" so that it is not consistent with the obligations that could potentially be imposed on the Cities under Measure IND-01 as adopted by the District Governing Board. Instead, PR 4001 (at paragraph (c)(1)) has changed the limitations on the proposed obligations of the Cities to achieve additional emissions reductions under PR 4001. Previously, the proposed rule was described as requiring the Cities to "propose additional emission reduction methods …[but only] *to the extent cost-effective strategies are technically feasible* and within the Ports' authority." PR 4001 has inexplicably omitted (at several points) the prior limitation on the Cities' potential obligations to measures that are "*technically feasible.*" Again, this is not consistent with the text of Measure IND-01 or any other legal or regulatory authority identified by the District.

The Cities assert that feasibility must be defined as technically, operationally, commercially, financially, and legally feasible, and within the legal and jurisdictional authority of the Cities. Further, the District must acknowledge that feasibility is also subject to the Cities' and their Boards of Harbor Commissioners' own legal and trustee obligations as governmental agencies under their City Charters and applicable laws.

The District also fails to show how it expects the Cities as governmental agencies to legally overcome the same doctrines of international and federal preemption that prevent the District from regulating mobile sources such as ocean-going vessels, rail locomotives and trucks. If the District intends that the Cities shall be compelled to pay incentives for District programs if they are unable to legally regulate mobile sources, then again this raises the jurisdictional conflict with the Cities' Boards' independent governmental discretion and legal obligations to manage their properties and revenues to serve Tidelands purposes for the benefit of the State. In this era of ever diminishing resources and increased competition the District is seemingly ignoring the lawful obligations of the Cities' Boards and insisting they place District priorities (which they themselves cannot legally accomplish) before the established responsibilities of the respective City Boards.

I. The PR 4001 Enforcement Scheme is Unconstitutionally Vague and Impermissible

PR 4001 does not describe how the District would determine the "consequences" for violation of PR 4001, nor does it identify how it would determine the sufficiency of the Cities' efforts to manage activities within the Ports. If the Cities were deemed to be in violation simply because the District may choose to "disapprove" a Plan or revised Plan, under what legal authority would the District purport to sanction the Cities in the event of some perceived "violation"?

PR 4001 fails to provide objective standards appropriate for the District to judge the sufficiency of any plans or measures proposed by the Cities to achieve the emission reduction targets. The proposed rule fails to provide sufficient detail at paragraph (f)(2)(F)(iii) as to what the consequence would be if the District were to disapprove a City's revised Plan. Also, the reference here that the Cities "shall be in violation of this Rule…" must be clarified.

Similarly, the terse discussion of the Variance and Appeal Process outlined in paragraph (g)(1) and (2) of PR 4001 is vague and fails to identify criteria or the process for the Cities to petition the District Hearing Board for a variance. PR 4001 also fails to explain the outcome should the District grant a variance.

Both Measure IND-01 and PR 4001 are unconstitutionally vague in their failure to explain exactly what fines, penalties or other administrative enforcement would be imposed on the Cities in the event that targets are missed or the District's Executive Officer disapproves a plan. The District also fails to explain how it purports to impose penalties or corrective action against another governmental entity for failure of private third party emissions sources to achieve emissions reductions that such other governmental entity is also preempted from regulating.

The District has failed to show any constitutional or statutory basis for requiring a governmental entity to devote public resources, pay exactions, administrative fines or suffer penalties for pollution caused by private entities. Similarly, the District has not shown any authority for PR 4001's attempt to shift onto the Cities liability for emission shortfalls by other parties assigned AQMP emissions reduction responsibility. The District has failed to show how PR 4001 would not violate constitutional limitations requiring exactions or penalties imposed on a party to be reasonably related to and proportional to the party's deleterious public impacts. This is especially true when PR 4001 only applies to the Cities, which are non-operating ports, while failing to include all parties involved in the CAAP including the other air agencies that jointly sponsored the CAAP, or actual owners and operators of emission sources. The District also fails to define how it would allocate liability to COLB versus COLA, when they are two separate legal entities with independent Boards as decision makers that may approve different Plans or no Plan at all. In any event, neither City is in direct control of the actual emissions sources and rudimentary principals of justice require that they should not be burdened with

sanctions, penalties, or Plan-writing responsibilities to cure the "shortfalls" of others or to act as a delegated air regulator that has no such authority.

J. PR 4001 Fails to Consider Legal Limits on Grant Funding

In the Cities' actual operating experience, demonstration that proposed activities go beyond, rather than merely comply with, enforceable regulations, is a basic requirement in both state and federal grant funding applications. The District has claimed that its adoption of PR 4001 as an enforceable rule or regulation would not prevent the Cities from continuing to be eligible for the types of grant funding that the Cities have used successfully to fund emission reduction programs. However, the District has failed to provide legal citation in support of how the governmental agencies typically funding such programs might continue to legally fund activities for the purpose of complying with existing mandates, without violating constitutional limits prohibiting payment to comply with the law as "gifts of public funds."

K. Reporting Requirements under PR 4001 are Excessive

PR 4001 paragraph (f) requires annual revisions to the Emission Reduction Plan. This is new and excessive regulation, well beyond backstopping achievement of 2014 targets, and is duplicative, unnecessarily burdensome, and has not been sanctioned or in any way approved by the District's Governing Board. Even CARB in its state oversight over the District's plans, only requires three-year updates to the AQMP. Furthermore, PR 4001 is placing greater air quality regulatory burden on the Cities (and their Ports) than the federal government places on AQMD or other air agencies.

L. Annual Emission Inventory Requirements under PR 4001 are Inappropriate and Vague

PR 4001 paragraph (d) outlines requirements for annual emissions reporting. An initial inventory for 2014 would be required by November 2014 "from all port-related sources for the 2014 calendar year based on actual activity information available prior to November 1st of the calendar year and projected activity information for the remainder of the year." Although Distract staff indicated that specific requirements for this November 2014 submittal would be provided, neither the rule nor the accompanying Staff Report list any specifics. The Cities will incur additional costs based on this requirement to prepare a 2014 inventory based on incomplete data in November 2014.

The majority of the sources tracked in the Cities' current emission inventories of port-related sources are not owned, operated or controlled by the Cities. Therefore, emissions inventories that will be used to evaluate compliance with PR 4001 should only include those port-related sources over which the Cities have direct control.

II. LACK OF AUTHORITY

A. PR 4001 is NOT Consistent with the District's Governing Board Approved Control Measure IND-01

Control Measure IND-01 provided a description of the Cities' successful CAAP and its various emissions reduction goals: "This AQMP Control Measure is designed to provide a "backstop" to the Ports' actions to provide assurance that, if emissions do not continue to meet projections, the Ports will develop and implement plans to get back on track, to the extent that cost effective and feasible strategies are available." (Final 2012 AQMP Appendix IV-A, page 3). PR 4001, by contrast, describes its purpose differently: "The purpose of this rule is to establish actions to be taken in the event that emissions from port-related sources do not meet the emission targets assumed in the Final 2012 Air Quality Management Plan for the purpose of meeting the federal 24-hour $PM_{2.5}$ standard in 2014 and maintenance of attainment in subsequent years" (PR 4001 paragraph (a)). District Staff has apparently drafted PR 4001 so as to eliminate the references in Measure IND-01 as adopted by the District's Governing Board to backstopping the Cities CAAP targets to the extent cost effective and feasible strategies are available and has replaced that "backstop control measure" with a traditional regulation by the District to meet District-set targets.

In addition, the District Staff (apparently without Board approval) has **changed** the concern from assuring "the attainment demonstration" for 2014 $PM_{2.5}$ emission targets (as described in the 2012 AQMP) to add "maintenance of the air quality standard in subsequent years." (PR 4001 paragraph (a)). This change adds a new undefined and open-ended element into PR 4001 that is not consistent with Control Measure IND-01 as publicly adopted by the District's Board in February 2013. Most importantly, to the extent the provisions of PR 4001 vary in purpose and scope from Measure IND-01, they are not authorized by the District Governing Board.

B. The District Fails to Show Any Basis to "Indirectly" Regulate Mobile Sources or Delegate Authority Without Clean Air Act Waivers from the USEPA

The District has failed to show any constitutional or statutory basis for attempting to regulate mobile sources "indirectly" that it is preempted from regulating directly. The District's use of the term "port related sources" appears to be a euphemism for "mobile sources" that may be located at or operate at the areas governed by the Cities. "Mobile sources" of emissions are, of course, generally beyond the limited regulatory authority conferred by the Legislature on local or regional districts. (e.g., Health & Safety Code § 40001(a); also see, 76 Ops. Cal. Atty. Gen. 11 (1993); 75 Ops. Cal. Atty. Gen. 256 (1992); 74 Ops. Cal. Atty. Gen. 196 (1991); 73 Ops. Cal. Atty. Gen. 229, 234-35 (1990).)

The District has failed to show any authority for attempting to regulate mobile sources by making another governmental entity that lacks any air regulatory authority its agent for enforcement of its desired mobile source emission reductions. (See, e.g., *Association of American Railroads et al. v. South Coast Air Quality Management District et al.*, 622 F.3d 1094, 1096 (9th Cir. 2010), invalidating several train-idling emissions rules enacted by the District, on the basis of federal preemption under the Interstate Commerce Termination Act of 1995 (ICCTA).) Moreover, the District does not have mobile source regulatory authority itself to delegate, as it does not have a waiver under the Clean Air Act from the USEPA. The District should instead work on stronger regulations from USEPA or CARB, which does have certain USEPA waivers to regulate mobile sources.

PR 4001 impermissibly requires the Cities to become air pollution control agencies, responsible for "achieving" reductions of emissions that are actually from other private parties that operate or control equipment largely used in goods movement within the geographic boundaries of the Cities. There is no statutory or other legal basis for imposing such a requirement on another governmental agency. For example, does this mean that a city that has a significant number of factories or refineries within its borders becomes a stationary source and indirect source for those emissions? Evidently the District does not distinguish between "operating ports" such as the Port of Charleston, S.C., which actually operates the terminals within the port, and "non-operating ports" such as the Cities, which are landlords that do not operate the marine terminals and other facilities within the harbor districts.

The emission reduction plan required by PR 4001 strongly resembles the State Implementation Plan requirements of the Clean Air Act (42USC§7410). Specifically PR 4001(f)(1)(A)(i) states, "…Ports shall engage [CARB, USEPA and the District] to discuss legal jurisdiction and authority to implement potential strategies to address the shortfall…" Based on the Clean Air Act, the enforcing agency should be the state of California through CARB and the District; however, PR 4001 places the burden of enforcement of emission reductions on the Cities. Based on this, if the port-related sources don't meet the emission reduction target specified by PR 4001, it should be the District and/or CARB that are responsible for preparing and enforcing the emission reduction plan against the emissions sources. If the District insists that the Cities prepare an emission reduction plan, then the plan must be subject to the limits on authority, preemption and feasibility issues described above. Further, USEPA, CARB and the District should provide funding to the Cities to support programs for incentives, since the Cities will no longer have available grant funding for voluntary programs.

C. PR 4001 Violates Cities' Charter Authorities and Tidelands Obligations

Control Measure IND-01 and PR 4001 are illegal, abusing the District's limited statutory power in an unprecedented manner that exceeds its authority. There is no legal precedent or

authority for the District's attempted regulation of the Port Authorities of the Cities, or the District's imposition of an arbitrary, unnecessary and discriminatory rule on the Cities, and thereby dictate the Cities' governing Boards of Harbor Commissioners' ("Boards") decisions regarding the exercise of their police power authority, the management of their respective properties and expenditures of the Cities in order to satisfy the District-defined targets for a single district within the State.

PR 4001 acknowledges that funding will be necessary to implement a plan to satisfy District targets, but fails to provide District funds or specify the source of such funds. The District cannot legally compel the Cities' Boards to make expenditure of Tidelands Trust revenues for the purpose of incentives or funding emission reduction programs as contemplated in District enforcement activity under PR 4001. Such proposed unfettered District authority would unlawfully supplant the trustee judgment and legal obligations of the Cities to operate the port properties and their revenues solely for the benefit of the entire State of California under the Tidelands Trust doctrine (promoting maritime commerce, navigation and fisheries) rather than for limited municipal or a single District's purposes.

Worse yet, PR 4001 proposes that a single District Executive Officer acting alone (rather than the District's full Governing Board) would wield the sole discretion to approve or disapprove the independent jurisdictional decisions of the Boards regarding conditions they impose on their properties or expenditures of their Harbor Revenue Funds, violating the Tidelands Trust and the Cities' charters.

D. <u>There is No Statutory Authority for District to Impose PR 4001 On Cities</u>

The District has failed to cite any statutory authority for regulating the Cities—governmental entities—as purported "sources" of emissions. As the Cities have repeatedly explained, neither the Cities nor the Ports are "sources" of emissions—direct, indirect, or otherwise. The District has not provided any authority that would support the District's attempted characterization of the Cities, or the Ports, as "indirect sources" of emission, solely based on the confluence of distinct privately-owned activities, vessels, vehicles, equipment, and uses within the geographic area and jurisdiction of the respective Ports.

"An air pollution control district, as a special district, 'has only such powers as are given to it by the statute and is an entity, the powers and functions of which are derived entirely from the Legislature.'" (74 Ops. Cal. Atty. Gen. 196 (1991)[citations omitted].) "No matter how altruistic its motives, an administrative agency has no discretion to promulgate a regulation that is inconsistent with the governing statutes." (*Terhune v. Superior Court* (1998) 65 Cal.App.4th 864, 874.) The District has failed to cite any statute or grant of authority from the Legislature for the proposed PR 4001.

Under the District's 2007 Air Quality Management Plan, a proposed "Port Backstop Rule" was proposed as a "Mobile Source Measure MOB-03" that defined the operators of marine terminals and rail yards, as well as the Cities, as indirect sources, Measure IND-01 and PR 4001 inexplicably exclude the operators of the mobile sources that had been in MOB-03 and instead propose to regulate and punish solely the Cities, effectively insulating from responsibility, the private sector entities that do own, operate and control the equipment producing the emissions.

The District Staff has previously referred to a clearly erroneous, overbroad interpretation of Health & Safety Code §§40716 (a)(1); 40440 (b)(3), as potential authority for attempting to justify Measure IND-01 and PR 4001 as forms of indirect source review, as applied to the Cities. However, such lax interpretations apparently ignore the Legislature's explicit limitations on any such "indirect source" regulatory authority—precluding application of PR 4001 against the Cities (e.g., Health & Safety Code § 40716(b): "Nothing in this section constitutes an infringement on the existing authority of counties and cities to plan or control land use, and nothing in this section provides or transfers new authority over such land use to a district.")

Similarly, any District reliance on Health & Safety Code § 40440 is clearly misplaced. The introductory clause of § 40440(b)(3), for example, states that indirect source controls must be "[c]onsistent with Section 40414." Importantly, Health & Safety Code §40414 [specifically governing the District] states: "No provision of this chapter shall constitute an infringement on the existing authority of counties and cities to plan or control land use, and no provision of this chapter shall be interpreted as providing or transferring new authority over such land use to either the south coast district, the Southern California Association of Governments, or the state board." Not only does this provision apply generally to Chapter 5.5 [governing the District] but it is also specifically referenced in § 40440(b)(3), leaving little doubt that any District rule related to indirect source controls may not overreach or infringe on the Cities' police power to control land use in their jurisdictions or Tidelands Trustee duties for benefit of the State.

Finally, the District Staff's reference to two cases involving the very distinct "indirect source review" adopted by the San Joaquin Valley APCD is misplaced. Those cases, *California Building Industry Association v. San Joaquin Valley Air Pollution Control District*, 178 Cal. App. 4th 120 (2009) and *Nat'l Ass'n of Home Builders v. San Joaquin Valley Air Pollution Control District*, 627 F. 3d 730 (9th Cir. 2010), involved quite different circumstances and a distinct and specific statute permitting an indirect source review program and in-lieu fees to be imposed on new construction sites. The holdings of those cases were narrow, and based on the nature of the emission sources being regulated. "Because the court's approval of the rule depended on the nature of the source being regulated, mobile non-road construction equipment, indirect sources are not categorically permissible after NAHB." (39 ECOLOGY LAW QUARTERLY 667 (2012).) Those cases are thus irrelevant, and do not support District Staff's assertion of some authority for the District to impose rules on the Cities under the guise of Measure IND-01 or PR 4001.

III. PROCEDURAL FLAWS

A. General Comments

The PR 4001 developmental and procedural process is on an accelerated timeline that is unusually short for a rule of this unprecedented nature that has generated such controversy and so many unanswered questions from other public agencies and stakeholders. The District should provide a comprehensive rule development schedule, including key milestones of staff report revisions, staff report analyses, workshops, workgroup meetings, etc. and provide the stakeholders, and the public adequate time for review and comment after release of actual substantive information necessary to evaluate the proposed rule.

Instead, the District was late with release of the actual text of PR 4001, not releasing it until November 26, 2013. The text of the PR 4001 is severely lacking explanation of many material elements, leaving continued unanswered questions that had been posed literally for years, even under the development of Measure IND-01 and early working group consultation meetings. The Preliminary Draft Staff Report for PR 4001 offers little help, as the Staff Report does not contain technical data and analyses necessary for a complete review. The PR 4001 Preliminary Staff Report lacks substance and does not meet important specificity requirements (see specific comments below related to the Preliminary Staff Report).

Lastly, the District's environmental assessment of the PR 4001 has also been extremely flawed and we incorporate by reference the comment letters previously submitted by the Cities on the Notice of Preparation and Recirculated Notice of Preparation under the California Environmental Quality Act, which are attached hereto.

B. The District's Preliminary Draft Staff Report on PR 4001 Fails to Comply With Statutory Requirements for Rule Adoption

The District's December 2013 Preliminary Draft Staff Report fails to comply with statutory requirements for rule adoption as discussed below.

1. Non-compliance with Health & Safety Code § 40440.5 – Notice of Proposed Action:

The District must give public notice of the Board hearing to consider PR 4001 not less than 30 days prior to the hearing date, and must include specified information in that Notice:

(a) A "summary description of the effect of the proposal" as required by Section 40725(b);
(b) Description of the air quality objective of the rule, and reasons for the rule;
(c) A list of supporting information and documents relevant to the PR 4001, and any environmental assessment; and
(d) A statement that a staff report on the proposed rule "has been prepared" and the contact information to obtain that staff report.[5]
(e) The statutes further specify the required contents of the Staff Report that must be prepared and made available at least 30 days prior to the hearing date:

Whenever the proposed rule or regulation will significantly affect air quality or emissions limitations, the staff report shall include the full text of the proposed rule or regulations, an analysis of alternative control measures, a list of reference materials used in developing the proposed rule regulation, an environmental assessment, exhibits, and draft findings for consideration by the District Governing Board pursuant to Health & Safety Code §40727. Further, if an environmental assessment is prepared, the staff report shall also include social, economic, and public health analyses.

2. Non-compliance with Health & Safety Code § 40727 – Required Findings:

Before the District's Board could approve the PR 4001, it would need to make the findings required by Section 40727 (and to provide the public with sufficient information/substantial evidence in the record to support those mandatory findings). The District's Preliminary Draft Staff Report (December 2013) fails to satisfy these requirements. The findings must address:

(a) "necessity" – Since PR 4001 is by definition a "backstop" measure intended to address emissions issues that are not currently a problem (and which are not shown to be likely to occur), it is inherently difficult for the District to make such a finding of "necessity" for the rule (also see the detailed discussion demonstrating the District's failure to demonstrate "necessity" for PR 4001 set forth above). Moreover, the District Governing Board found Measure IND-01 necessary in the 2012 AQMP, but not PR 4001, as stated in the Staff Report.

[5] This wording indicates that the Staff Report must already be prepared before the Notice of the Board meeting goes out. If the District intends to rely upon the "Preliminary Draft Staff Report" issued in December 2013, it would be deficient because that PDSR fails to include all of the information required by statute.

(b) "authority" – As pointed out above, the District has failed to demonstrate its legal authority for PR 4001, if any. By what authority can the District "delegate" (or "foist") its own responsibilities for regulating air quality emissions onto the Cities? The District cites no authority for imposing a rule on independent governmental agencies to take specific land use, environmental, or fiscal actions (fees, tariffs, etc.) Also, the District fails to address the statutory limitations on its authority in Health & Safety Code § 40414: the District may not infringe on the existing authority of Cities to plan or control land use.

(c) "clarity" – The lack of clarity in the draft text of PR 4001 is addressed throughout this comment letter. In addition, the lack of clarity in PR 4001 is exemplified in the circular argument of PR 4001(d)(2)(A) and PR 4001(f)(1)(D). PR 4001(d)(2)(A) specifies that that, in the case of triggering an Emission Reduction Plan, the Port shall report the progress in meeting the shortfall "based on the process developed pursuant to subparagraph (f)(1)(D)." However PR 4001(f)(1)(D) specifies the Emission Reduction Plan "shall provide a process for submittal of progress reports toward eliminating the emission reduction shortfall pursuant to subparagraph (d)(2)(A)."

(d) "consistency" –PR 4001 is inconsistent with Measure IND-01; it is also inconsistent with the CAAP and the Cities' general plans, harbor area plans, transportation management plans, etc, as well as state Tidelands Trust policies. In addition, PR 4001 is inconsistent with, and preempted by federal laws (e.g., ICCTA; FAAAA) and regulations of IMO (MARPOL / APPS) as well as federal regulations of trucks, locomotives, etc.. Also, PR 4001 is inconsistent with the California Clean Air Act and the statutory limitations on the regulatory authority of the District, and further is inconsistent with CARB polices.

(e) "nonduplication" – PR 4001 would unnecessarily – by definition – duplicate and "backstop" existing plans and policies such as CAAP and the aforementioned regulations;

(f) "reference" – The District has failed to demonstrate what law or court decision is purportedly being implemented by PR 4001.

3. <u>Non-compliance with Health & Safety Code § 40727.2 – Written Analysis of Rule</u>:

Does the District contend that its Preliminary Draft Staff Report satisfies this requirement that it produce a written analysis of PR 4001? If so, it fails to comply with § 40727.2(e). The Preliminary Draft Staff Report only indicates that the technical impact

assessment is underway. Without the Impact Assessment section, the staff report is incomplete. The Impact Assessment section must include the District's explanation of differences between PR 4001 and existing guidelines, such as in CAAP or AQMP, as well as address regulation cost effectiveness, including costs beyond mere control equipment costs.

4. Non-compliance with Health & Safety Code § 40440.8 – Assessment of Socioeconomic Impacts of PR 4001:

This requirement is also imposed by Section 40428.5, and the need for such a socioeconomic analysis was addressed, at least in brief, in the NOP comment letter. The Preliminary Draft Staff Report (page 18) erroneously describes the likely socioeconomic impacts of PR 4001 as being limited to the Cities' costs incurred for emissions forecasting and reporting. This grossly understates the likely impacts, including impacts of additional control measures that could be required under PR 4001 impacting the entire use and economic viability of the Ports. The staff report must include a socioeconomic assessment and must certainly address the threat of diversion resulting from potential undefined, regulatory-mandated, emission control measures. The Preliminary Draft Staff Report erroneously suggests that "a detailed assessment cannot be made at this time" and should be deferred, which is in violation of the statutory requirement. The Staff Report also indicates that a socioeconomic assessment will be made available 30 days prior to the public hearing. The significant potential impact and novel nature of this rule warrants a 60 day review period of the socioeconomic assessment.

5. Non –compliance with Health & Safety Code § 40440.8(b)(4) – Alternatives to PR 4001:

The socioeconomic assessment must address "the availability and cost-effectiveness of alternatives to the rule." (§ 40440.8(b)(4)) However, the Preliminary Draft Staff Report fails to even mention any "alternatives" to the Rule, much less to evaluate the availability and cost-effectiveness of alternatives, such as VMEP.

6. Non-compliance with Health & Safety Code § 40440(c): "Cost-effectiveness"

The District failed to demonstrate that the adoption of PR 4001 would comply with the requirement of Section 40440(c) that all of the District's rules "are efficient and cost-effective..." Also, Section 40703 requires the District to make available to the public, and requires the Board to make findings, as to the cost effectiveness of control measures, and similarly Section 40922 requires the District to consider "the relative cost effectiveness of the [control] measure..." The District has not done so.

C. Additional Analysis is Required Before Rule Development Can Proceed

The Cities have put into place a voluntary program with documented air quality improvements in the face of economic growth. It is AQMD's responsibility to perform a regulatory impact assessment documenting that PR 4001 will not reverse voluntary gains made by the Cities and endanger future programs. This includes the analysis of lost grant funding that would have otherwise been available to fund equipment replacement and other emissions reductions, due to conversion of voluntary program to regulation.

D. The District Must Acknowledge and Respond to All Comments Submitted on Measure IND-01 and PR 4001

The draft findings in the next staff report must acknowledge and respond to all comments submitted on Measure IND-01 and PR 4001, including all comments on the environmental assessment such as the Notice of Preparation and Initial Study for PR 4001.

IV. FAILED REQUIREMENTS FOR SIP INCLUSION

The District has claimed that adoption of PR 4001 is necessary to ensure SIP credit for the Cities' voluntary emission reduction programs. However, neither this Proposed Rule nor its precursor, "Control Measure IND-01" can be justified on this pretext, and neither PR 4001 nor Measure IND-01 meet the criteria for SIP inclusion. The Cities have raised significant technical, jurisdictional, constitutional and other legal concerns with Measure IND-01 and PR 4001, as set forth in public comment letters sent to the District during the 2012 AQMP adoption process and PR 4001 development process, which are provided as attachments.

A. Measure IND-01 and PR 4001 Violate Health & Safety Code § 39602

Measure IND-01 and PR 4001 violate California Health & Safety Code § 39602, which provides that the SIP shall only include those provisions **necessary** to meet the requirements of the Clean Air Act. The Cities have shown that there is no demonstrated need for the rule, nor is this rule necessary for regional attainment of the 2014 $PM_{2.5}$ standard. PR 4001 is duplicative of regulations already in place and effectively reducing emissions from port-related sources. As noted above, the Cities estimate that in 2014, 98% of the $PM_{2.5}$ equivalent emission reductions that PR 4001 seeks to "backstop" will occur as the result of regulations adopted by CARB and

the IMO.[6] The remaining 2% of $PM_{2.5}$ equivalent emission reductions is primarily attributed to the Cities' successful voluntary vessel speed reduction incentive program which is part of the Cities' Clean Air Action Plan.

More importantly, there are significant legal questions regarding the District's attempt to invoke " indirect source review" as authority to impose a new rule on governmental agencies. PR 4001 clearly infringes upon, and potentially usurps the Cities' authority to plan and control land use and exercise police power, in contravention of Health & Safety Code §§ 40716(b) and 40414, and compels compliance and punishes them for non-achievement of emissions targets for equipment the Cities do not own, control or operate, and are preempted from regulating.

B. <u>The District Failed to Timely Submit Proposed "Control Measure IND-01" to CARB for Public Consideration and Approval As Part of the SIP Submitted to USEPA on January 25, 2013</u>

Under CAA section 110(l), SIP revisions must be adopted by the State, and the State must provide for reasonable public notice and hearing prior to adoption. EPA cannot approve Measure IND-01 as part of the SIP because the District did not approve and forward IND-01 in time for CARB to follow the process for public consideration and State adoption required by CAA Section 110(1) and California Health and Safety Code Section 41650 for SIP submissions, and CARB failed to do so.

Under 40 CFR 51.102(d), reasonable public notice in this context refers to at least 30 days. Similarly, Health and Safety Code Section 41650 provides for a public hearing that would allow public comment as to whether the SIP meets the requirements of the CAA. By resolution dated January 25, 2013, CARB approved the District's 2012 AQMP and directed the executive officer of CARB to submit the AQMP to the USEPA for inclusion in the SIP. However, at the time of the January 25, 2013 CARB action**, Measure IND-01 was not part of the AQMP**. Because the District Governing Board adopted the AQMP without Measure IND-01 on December 7, 2012, and in fact, did not adopt Measure IND-01 until February 1, 2013, the January 25 CARB action did not constitute approval of Measure IND-01 which had not yet been submitted to CARB for consideration.

The documents attached to CARB's February 13, 2013 SIP submittal to the USEPA include the December 7, 2012 resolution by the District Governing Board and the December 20, 2012 District letter to CARB transmitting the approved SIP, which pre-dated the District

[6] CARB Port Drayage Truck Rule, CARB Truck and Bus Rule, CARB Ocean-Going Vessel (OGV) Shore Power Rule, OGV Low-Sulfur Fuel Rule, CARB Cargo-Handling Equipment at Ports Rule, CARB Commercial Harbor Craft Rule, IMO North American Emission Control Area

Governing Board's approval of Measure IND-01. Inexplicably, without the required public notice or public hearing and adoption by the CARB Governing Board, the submitted SIP includes the addition of Measure IND-01. Until this procedural error is corrected, and the Cities and the public are given the opportunity to comment at a public hearing, and CARB is able to properly consider proposed Measure IND-01 at such a properly-noticed public hearing, Measure IND-01 is not properly before the USEPA and cannot be approved as part of the SIP.

C. The Many Flaws of Measure IND-01 and PR 4001 Harm Rather Than Help the SIP

As a result of the above-mentioned extensive technical, jurisdictional, constitutional, statutory and other legal problems, inclusion of IND-01 in the SIP and attempted implementation through PR 4001 creates unnecessary risks of disputes and legal challenges to the AQMP and SIP. The unprecedented nature and legal and jurisdictional conflicts of PR 4001 and Measure IND-01 require significant explanation of the legal underpinnings of the Measure. Instead a single paragraph of generalities ignoring the jurisdictional conflict and lack of legal authority for classification of Cities as stationary sources or indirect sources was produced to justify PR 4001.

Conclusion

The ports of Long Beach and Los Angeles are a major economic engine for the region and nation. PR 4001 and the uncertainty it creates will have a substantial negative impact on the goods movement industry and the local economy, resulting in cargo diversion, job losses and business closures. Moreover, rather than improving air quality, PR 4001 eliminates all incentive for voluntary participation in emission reduction efforts at the Ports that have been so successful.

The Cities have a proven track record of developing and implementing appropriate and effective emission reduction strategies, working with the port industry and the air quality regulatory agencies. Since the CAAP was adopted in 2006, essentially all of the Cities' early actions have been overtaken by regulations from state, federal, and international agencies. The majority of emission reductions are already being achieved by regulations. Therefore, there is clearly no need for additional regulation.

The Cities share the air emission reduction goals of the District, CARB, and USEPA, and strongly believe that the voluntary cooperative CAAP process established by the Cities remains the most appropriate forum to discuss technical and policy issues related to implementing appropriate strategies for reducing emissions from port-related sources. There are feasible alternatives that would effectively ensure emission reduction goals are met, including the USEPA's VMEP that would allow for the small percentage of emissions reductions needed beyond regulations to be credited in the SIP. The Cities hope you will work with us to discuss various mechanisms, contractual or otherwise, by which the VMEP can be implemented in San

Pedro Bay, and move forward as a possible resolution to the issues currently under discussion regarding PR 4001.

We appreciate your consideration. Thank you.

Sincerely,

Matthew Arms
Acting Director of
Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachments:

- January 15, 2014 Letter; Port of Long Beach and Port of Los Angeles to South Coast Air Quality Management District (SCAQMD)*; Comments on Notice of Preparation, Initial Study and Scope of Proposed Program Environmental Assessment*
- August 21, 2013 Letter; Port of Long Beach and Port of Los Angeles to SCAQMD; *Comments on Notice of Preparation, Initial Study, and Scope of Proposed Environmental Assessment*
- October 2, 2013 Letter; Port of Long Beach and Port of Los Angeles to SCAQMD, *Initial Comments for Public Consultation on Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets are Met at Commercial Marine Ports"*

cc: Al Moro, Acting Executive Director, Port of Long Beach
Richard Cameron, Managing Director, Port of Long Beach
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Gary Lee Moore, Interim Executive Director, Port of Los Angeles
Michael Christensen, Deputy Executive Director, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
Barry Wallerstein, Executive Officer, SCAQMD

Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Randall Pasek, Planning and Rules Manager, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Governing Board Members, SCAQMD
Richard Corey, Executive Officer, CARB
Cynthia Marvin, Division Chief, Stationary Source Division, CARB
Doug Ito, Chief, Freight Transportation Branch, CARB
Jared Blumenfeld, Administrator, USEPA, Region 9
Deborah Jordan, Director, Air Division, USEPA, Region 9
Elizabeth Adams, Deputy Director, USEPA, Region 9

ATTACHMENT 4.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

January 15, 2014

Jared Blumenfeld
Regional Administrator
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

Re: California State Implementation Plan for PM2.5 for South Coast Air Basin (SIP) - South Coast 2012 Air Quality Management Plan (AQMP) Control Measure IND-01 *Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities* and EPA *Voluntary Mobile Source Emission Reduction Program* (VMEP)

Dear Mr. Blumenfeld:

On behalf of the City of Long Beach acting by its Harbor Department and the City of Los Angeles acting by its Harbor Department (collectively, the Cities), we raise serious concerns regarding Control Measure IND-01 *Backstop Measure for Indirect Sources of Emissions from Ports and Port-related Facilities* (Measure IND-01) in the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP). The Cities request that the United States Environmental Protection Agency (EPA) disapprove and exclude Measure IND-01 from the California State Implementation Plan (SIP) for particulate matter 2.5 microns or less (PM2.5) for the South Coast Air Basin, which is currently pending EPA approval. As set forth below, both the substance of Measure IND-01 and the California Air Resources Board (ARB) procedure for inclusion of Measure IND-01in the SIP violate all five prongs of the standard test used by EPA to evaluate a SIP's compliance with Clean Air Act (CAA) requirements.[1]

1. Did the State provide adequate public notice and comment periods?

EPA cannot approve Measure IND-01 as part of the SIP because the ARB failed to follow the process for SIP submissions required by CAA Section 110(1) and California Health and Safety Code Section 41650. Under CAA section 110(l), SIP revisions must be adopted by the State, and the State must provide for reasonable public notice and hearing prior to adoption. Under 40 CFR 51.102(d), reasonable public notice in this context refers to at least 30 days. Similarly, Health and Safety Code Section 41650 provides for a public hearing that would allow public comment as to whether the SIP meets the requirements of the CAA. By resolution dated January 25, 2013,

[1] See, e.g., CAA Sections 110(a)(2)(A), 110(a)(2)(E), 110(l).

the ARB approved the AQMD 2012 AQMP and directed the executive officer of the ARB to submit the AQMP to EPA for inclusion in the SIP. However, at the time of the January 25, 2013 ARB action, Measure IND-01 was not part of the AQMP. Because the AQMD Governing Board adopted the AQMP without Measure IND-01 on December 7, 2012 and did not adopt Measure IND-01 until February 1, 2013, the January 25 ARB action did not constitute approval of Measure IND-01 which had not yet been submitted to ARB for consideration. The documents attached to the ARB's February 13, 2013 SIP submittal to the EPA include the December 7, 2012 resolution by the AQMD Governing Board and the December 20, 2012 AQMD letter to ARB transmitting the approved SIP, which pre-dated the AQMD Governing Board's approval of Measure IND-01. Inexplicably, without the required public notice or public hearing and adoption by the ARB Governing Board, the submitted SIP includes the addition of Measure IND-01. Until this procedural error is corrected, and the Cities and the public are given the opportunity to comment at a public hearing, Measure IND-01 is not properly before EPA and cannot be approved as part of the SIP.

2. Does the State have adequate legal authority to implement the regulations?

As you may know, the AQMD is now pursuing adoption of Proposed Rule 4001—*Maintenance of AQMD Emission Reduction Targets at Commercial Marine Ports* (PR 4001) – ostensibly to implement Measure IND-01 and ensure SIP credit for voluntary emission reduction programs of the Cities. The Cities have raised significant technical, jurisdictional, constitutional and other legal concerns with Measure IND-01 and PR 4001, as set forth in public comment letters sent to AQMD during the AQMP adoption process. Measure IND-01 and PR 4001 violate California Health and Safety Code Section 39602, which provides that the State Implementation Plan shall only include those provisions necessary to meet the requirements of the Clean Air Act. The Cities have shown that there is no demonstrated need for the rule, nor is this rule necessary for regional attainment of the 2014 PM2.5 standard. The Cities estimate that by 2014, 99.5 percent of the PM2.5 equivalent emission reduction that PR 4001 seeks to backstop will occur as the result of regulations adopted by ARB and the International Maritime Organization (IMO).[2] The remaining 0.5 percent of PM2.5 equivalent emission reductions is primarily attributed to the Cities' successful voluntary vessel speed reduction incentive program which is part of the Cities' Clean Air Action Plan. More importantly, there are significant legal questions regarding AQMD's attempt to apply an indirect source rule to governmental agencies in a manner that potentially usurps the Cities authority and compels compliance and punishes them for non-achievement of emissions targets for equipment the Cities do not own, control or operate, and are preempted from regulating.

[2] CARB Port Drayage Truck Rule, CARB Truck and Bus Rule, CARB Ocean-Going Vessel (OGV) Shore Power Rule, OGV Low-Sulfur Fuel Rule, CARB Cargo-Handling Equipment at Ports Rule, CARB Commercial Harbor Craft Rule, IMO North American Emission Control Area

3. Are the regulations enforceable as required under CAA section 110(a)(2)?

Because the Cities are not regulatory agencies and, therefore, are limited in their authority to impose requirements on mobile sources operated by the goods movement industry that call at port facilities, IND-01 and PR 4001 are inappropriate and ineffective mechanisms for achieving emission reductions.

4. Will the State have adequate personnel and funding for the regulations?

Measure IND-01 does not specify the source of funding for its regulation of the Cities but implies that it will come from the Cities. However, AQMD and ARB have no authority to require Cities' expenditures which are subject to the Cities' own requirements as governmental agencies. Furthermore, because it converts a voluntary program into enforceable regulation, the financial effect of Measure IND-01 will be to remove previously available funding from Federal and State grants that are only given for voluntary programs that go beyond regulation, making it less likely that the Cities will have funds to assist the goods movement industry with meeting the AQMP targets.[3]

5. Do the regulations interfere with reasonable further progress and attainment or any other applicable requirement of the Act?

Measure IND-01 interferes with reasonable further progress of the Cities' voluntary programs by reduction of available funding as mentioned above, and providing disincentives to Cities and goods movement industry to pursue programs like the voluntary Clean Air Action Plan.

The Solution: Voluntary Mobile Source Emission Reduction Program (VMEP)

To the extent the ARB and AQMD seek to ensure the emission benefits of the Cities' voluntary vessel speed reduction program, there is a more appropriate method in the form of the EPA's policy and guidance for the Voluntary Mobile Source Emission Reduction Program (VMEP), which constitutes an established process to grant SIP credit for emission reductions resulting from voluntary mobile source measures that go beyond existing regulations. The VMEP approach was intended for exactly the type of successful voluntary program such as the Cities' landmark Clean Air Action Plan, and should be used to account for the 0.5 percent of port-related emissions not currently backstopped by regulation. The VMEP would also reduce the industry and jurisdictional uncertainty that could divert cargo away from the Ports and hurt our local economy.

[3] Many of the Cities programs for equipment replacement or emissions reductions projects have been funded by federal and state grants that require funded activities must go beyond regulations. See e.g., California Proposition 1B Goods Movement and federal Diesel Emission Reduction programs.

We urge the EPA to disapprove and exclude the AQMD's Measure IND-01 from the SIP, and insist that the AQMD use the EPA's established VMEP process that was developed for programs such as the Cities' vessel speed reduction program and other Clean Air Action Plan measures. Use of the established VMEP will accomplish the objective sought by Measure IND-01 and PR 4001 and ensure that the emissions reductions achieved by the program are credited in the SIP. Further, the implementation of a VMEP will achieve the same emissions reductions while ensuring that grant funds remain available for actions going beyond regulations and will do so in a collaborative manner. It will also encourage other cities and regions throughout the nation to develop and pursue innovative voluntary programs and solutions that best fit their needs to improve air quality and public health.

The Cities share the air emission reduction goals of the AQMD, ARB, and EPA, and strongly believe that the VMEP is the most effective way to ensure that emission reduction goals are met in a manner that will allow the SIP to move forward without unnecessary disputes or challenges. The Cities look forward to discussing the various mechanisms, contractual or otherwise, by which the VMEP can be implemented in San Pedro Bay.

Sincerely,

Matthew Arms
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

LW

cc: Al Moro, Acting Executive Director, Port of Long Beach
Gary Lee Moore, Interim Executive Director, Port of Los Angeles
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Randall Pasek, Planning and Rules Manager, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Richard Corey, Executive Officer, ARB

Cynthia Marvin, Division Chief, Stationary Source Division, ARB
Doug Ito, Chief, Freight Transportation Branch, ARB
Deborah Jordan, Director, Air Division, EPA, Region 9
Elizabeth Adams, Deputy Director, U.S. EPA, Region 9

ATTACHMENT 5.

January 15, 2014

VIA E-MAIL – bradlein@aqmd.gov
VIA FACSIMILE – (909) 396-3324

Ms. Barbara Radlein
c/o CEQA
SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT
21865 Copley Drive
Diamond Bar, California 91756-4178

Re: Recirculated Notice of Preparation and Initial Study
Proposed Rule 4001— Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports
November 2013

SCAQMD File No. 0722013BAR
SCH No.: 2013071072

Comments on Recirculated Notice of Preparation, Initial Study, and Scope of Proposed Program Environmental Assessment and Alternatives Analysis

Dear Ms. Radlein and Staff of the South Coast Air Quality Management District:

On behalf of the City of Long Beach (referred to herein as "COLB)" and the City of Los Angeles acting by and through their respective Harbor Department ("COLA", and collectively with COLB referred to herein as the "Cities"), we appreciate this opportunity to submit responses and comments on the District's recent "Recirculated Notice of Preparation of a Draft Program Environmental Assessment" ("Recirculated NOP") and the accompanying Initial Study ("IS") prepared in connection with the District's consideration of the proposed project entitled "Rule 4001: Maintenance of AQMP Emission Reduction Targets At Commercial Marine Ports" (the "Project" or "PR 4001"). We appreciate that the District has extended the public comment period to January 16, 2014, in light of the serious and substantial issues raised by this Project and the original comment period scheduled over the holidays limiting stakeholder time for review.

This letter is organized in the following manner:

A. Introductory Comments
B. General Comments on the Recirculated NOP and Initial Study
C. Specific Comments on the Recirculated Initial Study
    1. Comments on Chapter 1
    2. Comments on Chapter 2 (Environmental Checklist)
D. Conclusion

Additionally, the Cities' previous comment letter on the original NOP dated August 21, 2013 has been attached for reference.

A. Introductory Comments:

We have previously commented on, and objected to, Air Quality Management Plan (AQMP) Control Measure IND-01 (Measure IND-01) and have expressed our grave concerns about the District's rulemaking approach to craft a ostensible "backstop rule" that would be applicable only to the Cities and their respective San Pedro Bay Ports ("Ports") such as that embodied in the new draft PR 4001. As the District is well aware, the Cities have been dedicated, innovative, and effective leaders in the efforts of public agencies to improve air quality despite the fact that we have no regulatory authority or control over the emissions sources. Working collaboratively and voluntarily with the District, our efforts have been successful in helping the maritime goods movement industry achieve very substantial reductions in emissions from the wide range of industrial and mobile sources they operate at or near the Ports, and we look forward to continuing to work with the District, other air regulatory agencies, and industry in building on these successes.

While we appreciate that the District staff has finally released the draft text of PR 4001, together with the recirculation of a new NOP and Initial Study, we find that many of the questions and issues raised in our previous comments remain unanswered or contain the same deficiencies in the new description of the "Project" and the Recirculated NOP, and still fail to identify or address feasible alternatives to PR 4001. Therefore, we respectfully reiterate and incorporate by reference all of our previous comments and objections (including, but not limited to, our letter dated August 21, 2013, and comments on the District's 2012 Air Quality Management Plan ("AQMP") and Control Measure IND-01), in addition to our new comments on the Recirculated NOP and IS.

Our responses are submitted in light of the California Environmental Quality Act ("CEQA") which calls for public review, critical evaluation, and comment on the scope of the environmental review proposed to be conducted in response to a Notice of Preparation, including the significant environmental issues, alternatives, and mitigation measures that should be analyzed in the proposed draft EIR (or Environmental Assessment, "EA") (14 CCR

15082(b)(1).) (See, CEQA Guidelines, at Title 14 Cal. Code of Regulations, §§ 15000, *et seq*..) Since it is anticipated that the proposed Project will have substantial impacts on the Cities and other communities served by the Ports, it is particularly important that the scope of this proposed review take into account jurisdictional and legal limitations, established state and local plans and policies, and other potentially feasible and less-impactful alternatives to the Project. In addition, it will be important to consider the impacts of the proposed Project on the important missions, facilities, and operations of the San Pedro Bay Ports.

In that context, we respectfully submit the following comments regarding the Recirculated NOP as well as questions, concerns and objections related to the omissions of critical information, unsupported assumptions, or analytical deficiencies in the Initial Study, and comments as to the scope of the proposed environmental assessment ("EA") as contemplated and invited by the District's Recirculated NOP.

B. General Comments on the Recirculated NOP and Initial Study.

1. **Changed Project Title**: What is the authority of the District to change the proposed Project from a "*Backstop Measure for Indirect Sources of Emissions from Ports and Port-related Facilities*" authorized by the District's Governing Board, to a new Project title of "*Maintenance of AQMP Emission Reduction Targets At Commercial Marine Ports*"? The District inexplicably no longer describes this as "a backstop measure" – although such a "contingency measure" concept has been the basis for District consideration of this type of proposed rule going back to Control Measure IND – 01 and a similar mobile source port backstop rule in the 2007 AQMP/SIP. What is the significance of this change and has the District now moved from a backstop of the voluntary Clean Air Action Plan goals of the Cities, which it sold to its board, to full District regulation setting District targets for the Cities' ports beyond backstopping voluntary programs? Does this change require the approval of the District's board? In any event, the Cities repeat their strong protest of both Project concepts and further comment on this issue below.

2. **Changed Project Description:** The Recirculated NOP/IS cover letter (11/22/2013) acknowledges that "changes were made to the project description *and* the environmental analysis subsequent to release of the original NOP/IS on July 23, 2013." However, the new NOP/IS fails to describe the "changes" in "the Project" and fails to describe or evaluate the significance of those Project changes. We note at least a few changes between the previous Initial Study and this new Recirculated NOP/IS:

(a) The Project Description now includes *the draft text of the Proposed Rule*. The new Initial Study states (p. 1-3) that the prior NOP/IS had tried to use the text of Control Measure IND-01 as a surrogate for the Project, because the rule language for PR 4001 had not been developed. However, **the draft text of PR 4001 is not the same as Control Measure**

IND-01. The distinct jurisdictional, legal, administrative, due process and procedural issues posed by the draft text of PR 4001 (as well as its semantic ambiguities) add new levels of complexity to the evaluation of the environmental impacts of the Project, which are not adequately explained or evaluated in the new Initial Study.

As detailed below, the draft text now creates uncertainty as to how and when the requirements of the new PR 4001 that the Cities "take actions" would be triggered, as well as the scope of their obligations to act under the new Rule. Indeed, the draft text of PR 4001 raises questions as to whether the Project as now described is even consistent with the Final 2012 AQMP, the EIR for that AQMP, or with subsequently-adopted Control Measure IND-01, or other state and regional plans. Most importantly, to the extent the provisions of PR 4001 vary in purpose and scope from Measure IND-01, they are not authorized by the AQMD Governing Board.

(b) The initial Project description (and Control Measure IND-01) would have required "actions to be taken" [by the Cities] only "in the event that emissions from port-related sources *do not meet* the emission targets assumed in the final 2012 AQMP. Similarly, Control Measure IND-01 represented that the "backstop" requirements will be triggered "if the reported aggregate emissions *for 2014* for all port-related sources exceed the 2014 emissions targets." (Final 2012 AQMP, Appendix IV-A-41.) By contrast, however, the new Project description would apparently require the Cities to "take actions" in the event that "port-related sources do not meet *or are not on track to maintain* the emission targets ... *for the purpose of meeting and maintaining the federal 24-hrs PM2.5 standard*." The new version of the Project description appears to have expanded the "triggering" events, and extended the trigger period, beyond those events and time periods contemplated in the 2012 Final AQMP. Accordingly, the new version of PR 4001 may no longer be consistent with the AQMP or with the environmental review of that document.

(c) The new NOP and Initial Study changed the type of CEQA document from an Environmental Assessment to a Program Environmental Assessment for the Project that will be programmatic in nature (as described in 14 CCR 15168) rather than a project-specific environmental review, and suggests that the District may thereby intend to *defer* more detailed CEQA analysis to some undefined future stage of "the Project" (p. 1-2). The District has already prepared and certified a Final Program Environmental Impact Report (Program EIR) for the 2012 AQMP which was considered to be the appropriate document pursuant to CEQA Guidelines Section 15168(a)(3) and included a programmatic analysis of Control Measure IND-01. However, the District has now presented the adoption of PR 4001 as "the Project" but is still preparing yet another Program Environmental Assessment with the same reasoning as it did in the prior CEQA analysis. It is not clear how the District believes two program-level environmental documents can be prepared for the same rule and when, if at all, the District may intend to provide such more specific "project-level" analysis as required under CEQA.

Moreover, this part of the new Initial Study implies a commitment that the "program CEQA document" would include "consideration of broad policy alternatives and program-wide mitigation measures." (*id*.). However, *the new Initial Study fails to identify or discuss any such "policy alternatives" or "program-wide mitigation measures"* and gives no indication that *the scope* of the eventual EA will in fact include any such policy alternatives or mitigation measures.

In their prior comment letter on the Draft 2012 AQMP Program EIR dated October 22, 2012, the Cities expressed very similar concerns over the vague and deficient "project description" of backstop Measure IND-01. In the District's response to comment #5-4 in the Final Program EIR, the District represented that: "*The exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted.*" The District also committed, in its response to the same comment #504 in the AQMP Final Program EIR, that "*further details regarding the future requirements* [a Rule implementing Control Measure IND-01] *will be determined more appropriately* ***during the rule development process***."

The new Initial Study indicates that the District may be reneging on these commitments to provide the necessary analysis of "the exact impacts" of PR 4001 "during the rule-development process, in violation of CEQA and in violation of the District's own Rule 110.

(d) The District also appears to have made other subtle changes to the Project Description, without announcement, which are **not consistent with Control Measure IND-01**, and which may have potentially significant – but unaddressed -- impacts. For example:

i. The new Initial Study has changed the description of the Project from adoption of a "backstop measure" to the adoption of "backstop *requirement*" and has made other changes to the Project which are not consistent with Control Measure IND-01 as adopted (p. 1-1.) Control Measure IND-01 provides a description of the Cities' successful Clean Air Action Plan (CAAP) and its various emissions reductions goals. "This AQMP Control Measure is designed to provide a "backstop" to the Ports' actions to provide assurance that, if emissions do not continue to meet projections, the Ports will develop and implement plans to get back on track, to the extent that cost effective and feasible strategies are available." (Final 2012 AQMP Appendix IV-A, page 3) The Proposed Project describes its purpose as: "The purpose of the rule is to establish actions to be taken in the event that emissions from port-related sources do not meet the emission targets assumed in the Final 2012 Air Quality Management Plan for the purpose of meeting the federal 24-hour $PM_{2.5}$ standard in 2014 and maintenance of attainment in subsequent years." (PR 4001, Section (a)) The proposed

Project has eliminated the references in its Board-adopted IND-01 to backstopping the Ports Clean Air Action Plan targets to the extent cost effective and feasible strategies are available and replaced with a traditional regulation by the District to meet District-set targets.

ii. The new Initial Study has apparently changed the District's concern from assuring "the attainment demonstration" for 2014 PM2.5 emission targets (as embodied in the 2012 AQMP) to add "*maintenance of the air quality standard in subsequent years*." (p. 1-1.) This change in the Project appears to add a new undefined and open-ended element into the Project, not consistent with the District's adopted Control Measure IND-01.

(e) **Changed Definition of "Feasible Control Strategy:"** The draft text for the new PR 4001 proposes to change the definition of "feasible control strategy" so that it is *not consistent with* the obligations that could potentially be imposed on the Cities under *Control Measure IND -01* as adopted by the District Board. Instead, the draft of PR 4001 (at Paragraph (c)(1)) and the new Initial Study have *changed the limitations* on the proposed obligations of the Cities to achieve additional emission reductions under PR 4001. Previously, the Project was described as requiring the Cities to "propose additional emission reduction methods ... [but only] *to the extent cost-effective strategies are technically feasible* and within the Ports' authority." However, new PR 4001, and the new Initial Study (p. 1-1) have inexplicably omitted (at several points*)* the prior limitation on the Cities' potential obligations to measures that are "*technically feasible*." Again, these subtle changes in the Project description are not consistent with the text of IND-01 or any other legal or regulatory authority identified by the District in the new Initial Study. The Initial Study should address (i) whether these changes have been authorized by the District's Board, and (2) what potential environmental impacts (as well as socio-economic impacts) may arise from the changes in the concept of "feasible control strategies."

(f) The District should clearly identify all other "changes" in the Project.

Other comments on the flawed "project description" are set out in Section C(1), below.

3. **Changed Environmental Analysis:** We appreciate that the Recirculated NOP/IS has expanded the range of environmental subjects which it now acknowledges may be subject to the proposed Project's significant adverse environmental impacts, perhaps partly in response to our previous comments. However, the scope of the proposed environmental analysis still does not take into account all of our concerns and still fails to comply with CEQA, e.g., by failing to identify potential significant environmental impacts, failing to propose a range of feasible

alternatives, and failing to evaluate reasonable mitigation measures. We therefore reiterate our prior comments on the scope of the proposed EA.

4. **Reiteration and Incorporation of Prior Comments:** The new NOP/IS states that it "replaces the July 23, 2013 NOP/IS" and that there will be no District responses to previously-submitted comments. We recognize that the Recirculated NOP purports to reflect changes made, in part, to previously submitted comments on the July 2013 NOP/IS. However, the new NOP/IS does not take into account all of our previous comments nor do the changes made in the new NOP/IS necessarily reflect or satisfy the requests made in our previous comments. Accordingly, we incorporate and include our previous comments as detailed in our letter dated August 21, 2013.

5. **Failure to Adequately Identify and Include Feasible Alternatives:** The Recirculated NOP/IS still fails to comply with CEQA's requirements for identification and consideration of all feasible project alternatives. Like the original IS, the new IS fails to identify a single "alternative" to the District Board's adoption of PR 4001. The superficial mention of "alternatives" on page 1-15 of the IS merely recites the legal obligations of the District to "discuss and compare" a range of "reasonable alternatives" to the proposed Project. This fails to fulfill the "scoping" purpose of an Initial Study. The District should analyze, among a range of alternatives, a collaborative Memorandum of Agreement between all of the stakeholders, as previously suggested by the Cities and recommended by the District to its Board (which speaks well to its feasibility as an alternative). The District should also evaluate the use of the EPA's policy and guidance for the Voluntary Mobile Source Emission Reduction Program (VMEP), which was developed for voluntary emission reduction programs of the sort outlined in the CAAP.

"The scoping process is the screening process by which a local agency makes its initial determination as to which alternatives are feasible and merit in-depth consideration, and which do not." (*Goleta II, supra*, 52 Cal.3d at p. 569; see Guidelines §15083.) It involves "consult[ation] directly with any person or organization [the lead agency] believes will be concerned with the environmental effects of the project" in hopes of "solv[ing] many potential problems that would arise in more serious forms later in the review process." (Guidelines, § 15083.)" "The determination of whether to include an alternative during the scoping process is whether the alternative is potentially feasible (*Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 489 (*Mira Mar*)), and the EIR "is required to make an in-depth discussion of those alternatives identified as at least potentially feasible." (*Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1505, fn. 5].)" (*South County Citizens for Smart Growth v. County of Nevada* (3d Dist. 2013) 221 Cal.App.4th 316, 327 (*South County*.)

"A lead agency must give reasons for rejecting an alternative as 'infeasible' during the scoping process (Guidelines, § 15126.6, subd. (c)), the scoping process takes place prior to

completion of the draft EIR. (*Gilroy Citizens for Responsible Planning v. City of Gilroy*, *supra*, 140 Cal.App.4th at p. 917, fn. 5; Guidelines, § 15083.)" (*South County*, p. 328.)[1]

The Initial Study also uses the wrong legal standard in its passing acknowledgement of the District's duty to consider alternatives: the Initial Study must identify "potentially feasible" alternatives ("feasibility" is a defined, and critical, term under CEQA), rather than "reasonable" alternatives (as mis-stated in the IS on page 1-15.)

6. **Deficient Initial Study:** The CEQA Guidelines contemplate that an Initial Study is to be used in defining the scope of environmental review (14 CCR §§ 15006(d), 15063(a), 15143.) However, as a result of the omissions, inconsistencies, and deficiencies in the Initial Study, the District's proposed scope of environmental assessment for this Project will be unduly narrowed and limited, and is likely to erroneously exclude issues, feasible alternatives, and mitigation measures from the proposed Environmental Assessment. (More detailed comments on the deficient Initial Study are set out in Section D, below.)

As detailed below in Section C, the new Initial Study does not provide the information, potentially feasible alternatives, evidence, or analysis required by the CEQA Guidelines (14 C.C.R. §15063, subd. (d)):

(1) A description of the Project including the location of the Project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries . . .

(4) A discussion of ways to mitigate the significant effects identified, if any;

(5) An examination of whether the Project would be consistent with existing zoning, plans, and other applicable land use controls;

(6) The name of the person or persons who prepared or participated in the initial study."

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[1] "Differing factors come into play when the final decision on project approval is made; at that juncture the decisionmaking body evaluates whether the alternatives are actually feasible. (Guidelines, § 15091, subd. (a)(3).) "[T]he decision makers may reject as infeasible alternatives that were identified in the EIR as potentially feasible." (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 981.)" (*South County*, p. 327.)

An Initial Study that fails to provide all of the information, analysis, and evidence called for by CEQA may be deemed to be inadequate and not a valid basis for CEQA review or Project approval (See, e.g., *City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, at pp. 407–408, invalidating the County's proposed general plan amendments because of a deficient initial study: "[T]he initial threshold study is inadequate because it fails to provide sufficient evidence or analysis of the potential environmental effects of the amendments.")

7. **Request for Correction and Recirculation of Corrected NOP and IS:**

For the multiple reasons summarized above, and detailed below, it is essential that the Recirculated NOP and Initial Study be withdrawn and further revised and corrected in order to properly fulfill their role in seeking meaningful public input on the appropriate "scope" of the proposed environmental assessment for the Project. A more accurate, complete, and CEQA-compliant Initial Study that addresses specific project-level impacts should be prepared and released for public review, along with a new set of public meetings, to provide the public with sufficient time and opportunity to comment on the scope and adequacy of the revised NOP/IS.

The District has already commenced its Rule- development process. It appears from the District's records that District staff has already committed to the District Board that the Proposed Rule will be adopted in April of 2014. District documents also indicate that District staff has further committed to shortly thereafter embarking on revisiting and changing the emissions targets that are the subject of this Proposed Rule, likely placing even more burdensome requirements on the Cities It is imperative, not only for Due Process reasons but also for reasons of sound public policy, meaningful community input, and well-informed decision-making, that the District provide adequate, complete, and accurate information – and time -- to allow the Project to be fully vetted before it is rushed to the District's Board for consideration.

It is therefore respectfully urged that the Recirculated Initial Study (and the related NOP) be recalled, corrected, and again be recirculated for public review and comment as corrected before the District proceeds with any further action in connection with the proposed Project.

The comments on the Recirculated Initial Study included in this letter are organized in the same format used by the Initial Study, i.e., comments on "*Chapter 1 – Project Description*" in Section C, below, followed by comments on "*Chapter 2 – Environmental Checklist*" in Section D. The comments are limited to those matters which appear in the Recirculated Initial Study, but we reserve the right to provide further comments in the event that additional or different information about the proposed Project becomes available.

C. Specific Comments on the Recirculated Initial Study:

1. Chapter 1 of the Initial Study -- Inadequate "Project" Description.

(a). Deficient "Project Description" – In General

"A correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA." (*Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 267).

> **The initial study must include a description of the project.**" (*City of Redlands, supra,* 96 Cal.App.4th at pp. 405–406, fns. omitted.) **An accurate and complete project description is necessary** to fully evaluate the project's potential environmental effects. [Citations.]" (*El Dorado County, supra,* 122 Cal.App.4th at p. 1597.) (*Id*.)

As noted above (Section B(2)), the District's cover letter for the Recirculated NOP states that "the Project" has been changed, and that the Project description has been "changed." However, the Recirculated NOP and Initial Study do not explain the "changes" in the Project, and they still fail to provide an accurate and complete description of the Project as mandated by CEQA. The failure of the Initial Study and NOP to provide an accurate, complete, and coherent description of the "Project" is a fundamental deficiency, which permeates the entire document.

The Initial Study fails to describe additional planned or reasonably foreseeable activities or actions by the District (e.g., changes to emissions targets) or by other agencies in response to or associated with the proposed Rule, or to address cumulative impacts of this proposed Project in light of other related actions and plans.

The Initial Study suggests, instead, that the intent of PR 4001 would be to delegate the District's responsibilities for regulating or reducing emissions of NOx, SOx, and PM2.5 air emissions to other agencies, specifically the officials governing the ports of Long Beach and Los Angeles. The Initial Study further 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 Rule 4001 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 entire project*, improper project "segmentation," *improper deferral* of impact analysis and mitigation, failure to identify and evaluate *potentially feasible project alternatives*, etc.)

The absence of such a clear description of the proposed Project inherently prevents the IS from facilitating meaningful review and analysis of the proposed "Project," and violates the requirements of CEQA. (See, e.g., CEQA Guidelines, 14 CCR § 15124; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376.)

The Initial Study falls far short of these requirements in describing the proposed Project, and thus falls short of serving the "public awareness" purposes mandated by CEQA:

> An accurate and complete project description is necessary for an intelligent evaluation of the potential 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, citing *Aberdeen & Rockfish RR. v. SCRAP* (1975) 422 U.S. 289, 322 [an accurate, complete and consistent project description is the sine qua non of informative, legally adequate CEQA review].) (*City of Redlands v. County of San Bernardino, supra,* 96 Cal. App. 4th at pp. 407–408.)

In sum, the Recirculated NOP/IS still erroneously limits the scope of the required environmental analysis and calls for impermissible speculation or impossible prescience on the part of the Cities or other members of the concerned public to undertake effective analysis of the proposed Project, or to provide meaningful comments as to the scope of review of the Project, until and unless the District provides an adequate and complete description of the "Project."

Incomplete Description of Environmental Setting

The Initial Study also fails to provide an adequate description of "the environmental setting" of the proposed Project.

While the CEQA Guidelines do not specifically define "environmental setting" with regard to an initial study, they do explain, in regard to EIR preparation, that the "environmental setting" must be informative: "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." (Guidelines, § 15125, subd. (a).) A description of the environmental setting must be sufficient to allow "an understanding of the significant effects of the proposed projects and its alternatives" but "no longer." (Guidelines, § 15125, subd. (a).) That description should place "[s]pecial emphasis" "on environmental resources that are rare or unique to that region and would be affected by the project" and "must permit the significant effects of the project to be considered in the full environmental context." (Guidelines, § 15125, subd. (c).)

Failure to Examine All Phases of the Entire Project as Proposed

"The Initial Study must include a description of the project, and the scope of the environmental review conducted for the initial study must include the *entire* project." (*Nelson v. County of Kern, supra*, 190 Cal.App.4th at 270, emph. in original.)

The Initial Study here improperly fails to describe "the entire Project" and fails to consider all phases of the proposed Project. The CEQA Guidelines (14 C.C.R §15063(a)(1)) make clear that an initial study must take a comprehensive view of the proposed project *as a whole*. "All phases of project planning, implementation, and operation must be considered in the initial study of the project."

Since the Project also contemplates the possibility of future discretionary actions and measures on the part of the Cities, if compelled under PR 4001, which may in themselves have additional, not-yet-identified environmental impacts, the Initial Study should call for the scope of the EA to be expanded to include such issues.

The scope of the environmental review conducted for the initial study must include the entire project. (*Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1222.) Thus, a correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA. (*Nelson v. County of Kern, supra*, 190 Cal.App.4th at 267.)

The NOP/IS indicates that proposed Rule 4001 is intended to require actions by the Cities, to adopt and implement plans and strategies to address any "shortfall" in emissions reductions. The Initial Study improperly fails, however, to address or to provide information and analysis relating to the environmental impacts of the anticipated "subsequent approvals," "discretionary permits" and amendments to the Cities' plans and regulations that appear to be proposed as parts of the Project, or the physical environmental effects of social or economic impacts that may result from those anticipated changes in land use regulations. (Guidelines § 15063.) Such anticipated and intended actions by other governmental agencies thus appear to be part of this Project, and must be identified and evaluated in the Project EA, along with their potential impacts. As such, we reiterate our prior comment on the Draft 2012 AQMP Program EIR dated October 22, 2012 where it is stated that the District has failed to fully disclose the details of Measure IND-01 and as a result is segmenting or piecemealing its CEQA analysis.

Failure to Describe Existing Land Use Regulations

The Initial Study does not include an examination of whether the Project would be consistent with existing zoning, plans and other applicable land use controls, as required by CEQA Guideline Section 15063. Although the Initial Study includes some background discussion of the CAAP, it provides little or no description of the existing planning and zoning designations applicable to the "Project" location, and relies on (unsupported) assertions that the Project would be in furtherance of the CAAP. It provides no information or analysis of other existing plans or policies applicable in the Harbor Districts, which may be affected or impacted by the Project. Additionally, the Initial Study contemplates impacts beyond the Harbor Districts but does not specifically define these areas nor the applicable land-use regulations.

Uncertain and Inadequate Identification of "Baseline" Used for Review

It is critical under CEQA that any level of environmental review make it clear as to the "baseline" being used as the basis for analysis of the significance of potential Project impacts. (CEQA Guidelines Section 15125(a).) Normally, the "baseline" will be the existing environmental conditions in the vicinity of the Project. (Guideline Section 15125(a); see also, 48 Cal.4th 310, 315 [the baseline for an agency's primary environmental analysis under CEQA must ordinarily be the *actually* existing physical conditions rather than *hypothetical* conditions that could have existed under applicable permits or regulations].) The Supreme Court has explained that the requirement for identification and use of the appropriate "baseline" applies in the context of an Initial Study as well as in an EIR. (*Communities for a Better Environment, supra*, 48 Cal.4th at 512, and n. 5.)

The Initial Study here, however, fails to make it clear as to what "baseline" is being used. In many places the Initial Study compares the anticipated "impacts" of adopting proposed Rule 4001 to the permitted emissions levels anticipated (in the future) under the 2012 AQMP, or alternatively to the (future) emission reduction targets of the CAAP -- rather than to the existing environmental conditions. While the recent Supreme Court decision in *Neighbors for Smart Rail v. Exposition Metroline Constr. Authority* (2013) 57 Cal.4th 439, 451-52 indicates that the baseline need not always be the existing physical conditions, and that "projected future conditions" may be used in rare situations as a baseline "if their use in place of measure existing conditions ... is justified by unusual aspects of the project or the surrounding conditions", it does not detract from the rule that the Initial Study must accurately and consistently describe the baseline being used. Nor does it permit the use of "future conditions" in the absence of a showing of unusual circumstances. The Initial Study in this case does neither.

For each of these fundamental reasons, the Recirculated NOP/IS should be rescinded in order that it may be revised, completed and corrected to meet CEQA requirements.

(b) The Initial Study Improperly Fails to Identify or Address Alternatives to the Proposed Project:

As noted above, CEQA requires that an Initial Study identify a range of "potentially feasible alternatives" to the proposed project which are to be more carefully analyzed in the draft environmental study. (14 CCR § 15083; "The determination of whether to include an alternative during the scoping process is whether the alternative is potentially feasible (*Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 489.)

However, the new Initial Study totally fails to identify any alternatives for study in the eventual EA. Instead, it merely "commits" the District to "discuss and compare alternatives" in the future, as part of the Draft EA. This is insufficient. The Initial Study also suggests the District is looking to the public or other agencies to identify "alternatives" during the scoping process. The Cities previously (January 2013) submitted such a potential alternative to PR 4001, in the form of a proposed Memorandum of Agreement. The District Board directed District staff to follow up and confer with the Cities on that approach. Nevertheless, it is not even mentioned in the Initial Study. Additionally, the EPA's long-established VMEP program is not considered as an alternative although it was developed for this very purpose.

If the District is authorized to prepare a PEA, rather than an EIR, the PEA must at least comply with Guideline Section 15252. Section 15252(a) requires that a substitute document, like a PEA, must include at least – a description of the proposed activity, and "**alternatives** to the activity and **mitigation measures** to avoid or reduce and significant or potentially significant effects that the project may have on the environment."

The No Project Alternative is not defined in the NOP/IS. In accordance with CEQA Guidelines Section 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. Therefore, the Draft EA should consider the impacts that would occur under the existing 2012 AQMP without Control Measure IND-01 or proposed Rule 4001.

As an example, an analysis should be conducted of the grant funding that would be available under the No Project Alternative that would not be available if the proposed Project constitutes regulation, and the environmental impact if grant funding necessary to make certain actions economically feasible is no longer available under the proposed Project. If the District's position is that there is no loss of grant funding in order to comply with Rule 4001 as a regulation that the District purports to make enforceable under the State Implementation Plan and the Clean Air Act, the District must explain in the Rule its basis for this conclusion in the context of why grants made for compliance with a regulation is not a gift of public funds.

Due to the District's failure to satisfy this CEQA requirement of alternatives development, the Cities direct the District to review the feasible alternative to the Project set forth in their January 16, 2014 letter to the United States Environmental Protection Agency Region 9, copied to the District. The Cities have noted the problems with including Measure IND-01 in the California State Implementation Plan (SIP) and recommended to the US EPA to instead apply as an alternative, the Voluntary Mobile Source Emission Reduction Program (VMEP) to grant SIP credit for the small percentage of emission reductions that are not already achieved by other regulations. The VMEP can work with or similarly to the memorandum of agreement approach that was suggested by the Cities to the District as an alternative to Measure IND-01 last year. One additional alternative would be for the District to formulate its own "backstop" measures and strategies for addressing any shortfall in emission reduction targets, relying on the District or CARB regulatory authority, expertise and resources, rather than pursuing proposed Rule 4001, which appears to be an attempt to solely rely upon the Cities, which lack regulatory authority or control over the actual sources, or use of the EPA's VMEP.

(c) Comments on the District's new Proposed Rule 4001:

The "project description" in the Recirculated Initial Study includes the *draft text* of PR 4001, at Appendix B. Notwithstanding the inclusion of a draft of the text of the proposed Rule, the "project description" remains incomplete and deficient. The Initial Study does <u>not</u> provide an adequate description of how the proposed Rule would work in practice (as distinct from the superficial summary of the text at pages 1-7 through 1-10) or how it would be likely to impact the Cities, the tenants and users of the Ports, and the surrounding communities and environments. The Cities anticipate the submission of additional, more detailed, comments on inconsistencies and problems raised by the draft text of PR 4001 itself and additional questions and concerns about the District's "rule-making" process.

Other deficiencies and questions about the draft text of PR 4001 include the following:

<u>What Is the District'scLegal Authority for PR 4001?</u>

The new Initial Study asserts that if the "backstop requirement" of PR 4001 "becomes effective," then the new Rule would require the Cities to submit an Emissions Reduction Plan "to address the emission reduction "shortfall."" Under what legal authority does the District believe that its proposed Rule 4001 may purport to compel distinct governmental bodies (the Cities and the Boards of Harbor Commissioners) to legislate or to exercise their discretion in particular ways to achieve District objectives?

The new NOP continues to dodge the questions (previously raised) about the District's legal authority – if any – to adopt PR 4001 or to compel the Ports to participate in the new backstop planning process contemplated by the rule. The NOP includes only the perfunctory

assertion that PR 4001 would "implement Control Measure IND-01" – as though that were an independent and sufficient source of authority. However, even the District's Final 2012 AQMP document acknowledges that it confers no new authority on the District, and CEQA similarly cautions that it confers no new or additional legal authority on agencies independent of the powers granted to the agency by other laws. (Guidelines, sec. 15040(b).)

Moreover, as noted previously, to the extent that the draft of PR 4001 is not consistent with the Control Measure IND -01 as approved by the District's Board, it is unauthorized.

The source of the District's purported legal authority for processing this PR 4001 is important for determining whether or not the District may claim to be acting within the scope of the District's "Certified Regulatory Program" – and thus outside of CEQA. The CEQA Guidelines limit that "certified regulatory program" exemption to "that portion of the regulatory program of the SCAQMD which involves the adoption, amendment, and repeal of regulations *pursuant to the Health & Safety Code*." (Guideline, sec. 15251(l).)

If the NOP/IS seeks to justify the District preparing an environmental assessment under its "certified regulatory program" rather than an EIR under CEQA, then the District should clearly demonstrate that the PR 4001 would be enacted pursuant to some specific statutory authority in the Health & Safety Code.

The District previously sought to characterize Control Measure IND-01 as an "indirect source rule." The current references to proposed Rule 4001 in the NOP/IS have omitted all mention of an "indirect source rule." However, the new Initial Study does not cite any authority the District is relying on for its processing of the proposed Rule. This should be corrected so that the public can perceive and comment on whatever "legal authority" may be invoked by the District.

Is it anticipated that the "plans" and strategies that would be required to be adopted by the legislative boards of the two Cities under the mandate of proposed Rule 4001 would be within SCAQMD's regulating authority and subject to the District's approval or disapproval? If so, why would SCAQMD not directly adopt such "backstop" strategies and plans itself? If not, is the Rule being proposed in order accomplish something indirectly that SCAQMD itself cannot do directly? (Cf., *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 [same].)

The vague disclaimer in the Initial Study to the effect that proposed Rule 4001 would not require any measure that *lacks legal authority* raises more questions than it answers. (Note also the new Initial Study, and PR 4001, no longer disclaim any intent to require the Cities to adopt measures that are not "*technically feasible*.") Whatever types of "emissions reduction plans"

may be anticipated by PR 4001 should be identified by the District in the NOP/IS so that the feasibility and legality of such approaches can be evaluated as part of the environmental assessment for the Project. (The new Initial Study omitted the examples of 'control strategies' that had been in the previous Initial Study.)

On What Basis Would PR 4001 Impose "Requirements" on the Cities

The NOP/IS states that none of the CAAP strategies would be "prescribed in PR 4001." Instead, the NOP states that if proposed Rule 4001 becomes effective, the Cities (presumably the Boards of Harbor Commissioners) -- "individually or jointly" -- would be required to identify sources that could undergo potential emission reduction to "make up for the shortfall."

Why would/should the obligation to make up for a possible shortfall in meeting emission reduction targets (which are primarily the responsibility of the District to attain) be shifted so as to fall upon two independent governmental entities? The Cities are governmental entities, and are not directly producing emissions or otherwise directly responsible for the targeted emissions or for the attainment of the emissions reduction targets.

Moreover, if there were to be a "shortfall" in attaining the targets, it could well be due to factors not caused or controlled by the Cities, and not due to any actions or derelictions on the part of the Cities or their tenants or users. Would uncontrollable/unforeseeable factors resulting in all or part of a shortfall be excluded from whatever obligation may be imposed on the Cities? Would it be required/permitted that any such "shortfall" be allocated to sources or causes bearing some actual responsibility for the lack of attainment? How would any shortfall be "allocated" between the Cities?

Would proposed Rule 4001 take into account the statutory limits on the jurisdiction and authority of the Cities (i.e, the Boards of Harbor Commissioners) to impose restrictions on most mobile sources of emissions?

The NOP/IS mentions a possible "option" that would "allow" the Cities to reduce emissions from "non-port-related sources." This vague reference requires clarification before it may be evaluated in connection with the Project. Direct and indirect effects would need to be considered that may occur beyond the geographic boundaries of the Harbor Districts. Therefore, it is premature for the District to conclude that any changes based on the working group or public scoping comments will be within the scope of the analysis in the NOP/IS.

What is meant by an "Emissions Shortfall"?

What environmental baseline and other parameters would be required by proposed Rule 4001 in order for the Cities to determine the extent of any "emissions shortfall" that may need to

be addressed in the Cities' plans in the event they were to undertake to submit plans under the Rule?

The term "shortfall" first appears in the Proposed Rule in (d)(1)(A), where it appears to call for a Plan to report on progress in "meeting the shortfall" but that seems logically inconsistent with the structure of the Proposed Rule, i.e., the District can't require the Ports to submit an emissions reduction plan unless and until the annually-reported emissions reductions "show that the percent reduction in PM2.5 from the baseline emissions is less than the reduction target of 75%" (Para (e)(1)B).) So there would not be any "shortfall" identified until that time; and therefore it would seem premature and illogical to require the Ports to submit a Plan that "reports the progress in meeting the shortfall" that was just identified.?

To the limited extent the PR 4001 describes the shortfall that might trigger the need to prepare a Plan, the provisions for annual estimating or reporting of the emissions appear imprecise and vague. Para (f) appears to contemplate that once a 'shortfall' had been determined in one year, then the District could demand a Revised Plan in following years if targets are still not met; but what happens if the shortfall is "corrected" in subsequent years and targets are again being met?

Does an Emissions Reduction Plan, once required by the District, ever go away?

<u>On What Authority Would the District Purport to "Revise the Reduction Target"?</u>

The new Initial Study reports (p. 1-8) that PR 4001 (e)(2) purports to require the District's Executive Officer to review the reduction target before July 2017, and to "develop a proposed amendment to Rule 4001..." that would "revise the reduction target as necessary to conform to the 2016 AQMP reduction target."

By what authority would these targets be "revised" in the future? Under what objective standards? What public process would the Executive Officer need to follow in order to "develop" a proposed "amendment" to PR 4001? How would such a "moving target" affect the Cities and what environmental impacts would be possible consequences of such "revisions"?

<u>Does PR 4001 Provide a Clear and Feasible Process for Cities to Develop a "Plan"?</u>

Para (f) (E) would require that "the Plan shall be approved by the Board of Harbor Commissioners" at each Port, and would require the Port to conduct at least one "public meeting" ... but is this an improper attempt by the District to control and dictate the exercise of discretion" conferred on the Board of Harbor Commissioners? The Board of Harbor Commissioners may in fact disagree that a plan is required or may exercise its own discretion, as required by law, that it cannot commit expenditures to a program desired by the District. Under what authority can the District's Executive Officer, acting alone without even District Governing

Board authority, disapprove a plan or compel a plan to be approved by the Cities' own governing authorities? What is the District's intended mystery penalty or consequence, which the proposed Project still has not revealed to the cities and the public in PR 4001? Furthermore, discretionary action by the Boards of Harbor Commissioners requires compliance with CEQA. What type of CEQA review would be triggered for the emission reduction plans if the Program Environmental Assessment being prepared by the District is only programmatic in nature and how is the timing for either a consistency review or project-specific analysis, if warranted, accounted for in PR 4001?

Would PR 4001 Create Violations of Due Process?

The draft of PR 4001 raises several questions regarding apparent violations of Due Process:

Para (f)(2)(B) -- the District's Executive Officer would be given nearly unfettered discretion to "disapprove" a Plan submitted by the Cities?

There must be some requirement at least that the Executive Officer must make "findings" of "non-compliance" with some provision of (f)(1) of the Rule, based on some objective standards.

What would be the procedure if the Cities submitted a Plan, and the District (either by its Executive Officer or its Hearing Board) "disapproved" the Plan (per Para (f)(2)(C))? The Port would apparently be required to submit a Revised Plan within 60 days of the disapproval. But what about the Harbor Commissioners holding a new "public meeting" for input on the Revised Plan? And would there be any time or procedure for the Harbor Commissioners to consider and approve a new Revised Plan and comply with CEQA within that arbitrary 60 day time frame?

At the end of Para (g)(2) is the threat again that if the District Board denies the Port's appeal from a "disapproval" of the Port's emissions reduction plan, then the "*Ports shall comply* with ... [or subparagraph (f)(2)(F)]" -- which means the Port shall be self-confessed as "in violation" of the Rule? This would appear to inflict a denial of Due Process on the Cities.

Variance: PR 4001 must provide more detail as to what is meant by Para (g) - petitioning for a "variance" ? What are the criteria? What would the process be? What would be the effect of the District granting a variance?

How Would the District Determine the "Consequences" for "Violation" of PR 4001?

By what authority would the District sit in judgment as to the sufficiency of the Cities' efforts to manage activities and uses of the Ports? What might the consequences be if a City were to be deemed to be "in violation" simply because the District may choose to "disapprove" a

Revised Plan, and by what legal authority would the District purport to sanction the Cities in the event of some perceived "violation"?

By what objective standards would the District judge the sufficiency of any plans or measures proposed by the Cities to achieve the emission reduction targets?

What is the consequence of disapproval of a City plan by the District? The rule should provide more detail at Para (f)(2)(F) (iii) -- what is meant by the obscure reference here that the Ports "shall be in violation of this Rule... "?

Does PR 4001 Provide for Judicial Review of District Actions?

Should the Rule make provision for judicial review of the actions of the District in enforcing or interpreting the Proposed Rule?

As drafted, PR 4001, at Para (h): "Severability" appears to contemplate that a "judicial order" could hold some provision of the Rule to be invalid? Otherwise the Rule is silent on Judicial Review.

Are the Cities Supposed to Regulate Off-Site "Sources"?

The Initial Study indicates (p. 1-4) that the District anticipates that the "control strategies" contemplated by this Project "may potentially include" measures for the Cities to adopt and implement policies or programs extending beyond their jurisdictions or to try to reduce emissions from sources *not entering* onto port properties. What does this mean? By what legal authority might the Cities try to regulate *off-site* sources that do not come within the jurisdiction of the respective Harbor Commissions? (Municipal police power authority may generally be exercised only within the territorial boundaries of their jurisdiction, and the Boards of Harbor Commissioners have special Tidelands limits on their authority.)

Would such (unidentified) measures be part of Rule 4001, or would proposed Rule 4001 require that the Cities formulate (unidentified) measures in the future to somehow regulate *off-site* "sources?"

How Does the District Contemplate Funding of Backstop Measures?

The draft of PR 4001 implies that "funding" would be necessary for many of the potential future emission reduction measures that may be compelled under proposed Rule 4001. Would such funding be provided by the District? What other "funding" sources are contemplated?

The conversion of the Cities' voluntary programs into PR 4001 as a district regulation and potentially state and federal law if adopted into an approved SIP, will impose constitutional

or common law "gift of public funds" restrictions on federal and state grant funding currently relied upon by the Cities for emission reduction activities under their CAAP.

To the extent the District expects the Cities to fund future programs, this demonstrates a lack of understanding of the Cities' own governmental authority and obligations. The Boards of Harbor Commissioners of the Cities are trustees for the Tidelands Trust funds they are entrusted to manage and have specific legal obligations to meet, including promotion of maritime commerce, navigation and fisheries and keeping their budgets in balance amidst a current global shipping economy with many dynamic and threatening competitive pressures to retain market share. By what authority may the Harbor Commissioners impose taxes, assessments, and charges on users of the Harbor Districts, given the restrictions of various state laws, including, among others, Proposition 26?

(d) Specific Comments and Questions re "Project Description" and Text

The following comments and questions refer to specific portions or pages of Chapter 1 of the new Initial Study:

Pp. 1-1 - 1-2 – Introduction

(i) *Erroneous Characterization of Existing Emission Reduction Requirements:* The Introduction states, in the first sentence of the third paragraph on page 1-1, that Control Measure IND-01 "...does not call for additional emission reductions beyond those realized with existing regulations and emission reductions programs implemented at the Ports to date." This is an untrue statement. The CAAP is only a planning document which specifically provides for discretionary future decisions to be made regarding implementation by each of the Cities' respective Board of Harbor Commissioners, and the resolution adopting the CAAP update states:

> The CAAP is a living document intended to establish a process to develop solutions, not a static document binding the Ports to particular future actions….The CAAP is a planning document that identifies goals and potential implementation strategies to guide further actions, and as such does not constrain the discretion of either Board of Harbor Commissioners with respect to any particular action.[2]

[2] Los Angeles Resolution No. 10-7041 adopted by the Board of Harbor Commissioners of the City of Los Angeles and Long Beach Resolution No. HD 2600 adopted by the Board of Harbor Commissioners of the City of Long Beach on November 22, 2010.

Not all individual Board actions that may be required in order to achieve the CAAP's goals and activities have been adopted; in fact, many of these goals were stretch targets with uncertainty as to whether they could be achieved. Control Measure IND-01 and Rule 4001 propose to *require* the Cities to potentially adopt future discretionary, quasi-legislative actions that create potentially-conflicting authorities between the District, as regulator, and the Cities, as independent governmental agencies regulated by the District, so as to force the Cities to exercise their discretionary police power authority in a particular way. The Constitution does not permit such usurpation of the Cities' authority.

(ii) *Misleading and Inaccurate References to "Port-Related" Sources of Emissions:* The new Initial Study and Recirculated NOP continue to describe PR 4001 in the misleading context of "port-related sources" of PM2.5 emissions, and as ensuring that emissions from "port-related sources" meet the targets included in the Final 2012 AQMP. The term "port-related sources", however, is not used in the federal Clean Air Act ("CAA") or Health &Safety Code. As described in the NOP, "port related sources" are mobile and vehicular sources ("ocean-going vessels, on-road trucks, locomotives, harbor craft, and cargo-handling equipment"). Those *actual* "sources" of emissions are distinct from the geographic area in which they operate and are generally and comprehensively regulated by other State and federal agencies, not regional air quality districts.

The District's continued references to "port-related sources" of emissions are misleading and are no more accurate or descriptive than would be similarly generic references to "coastal-related sources" or "County-related sources" or "Air District-related sources" of emissions.

(iii). *Misleading Failure of the Project to Limit the Cities' New Obligations to "Technically Feasible" Measures:* The previous Initial Study for PR 4001 at least made it clear that the District only intended to require the Cities to propose additional emission reduction methods for vessels, trucks, locomotives, etc., "to the extent cost-effective strategies are *technically feasible* and within the Ports' authority." (Similar limitations on the Cities' new obligations under the proposed 'backstop measure' are included in IND-01.) However, the new Initial Study no longer includes any limitation to "technically-feasible" measures that could be required of the Cities (p. 1-1.) This omission creates uncertainty about the District's intentions as to the scope of PR 4001, i.e. whether it might be construed to be a "technology-forcing" regulation or not.

(iv). *Inconsistent or Uncertain Emissions Reduction Targets.* The Introduction states, in the last paragraph beginning on Page 1-1, that the emission targets for "port-related sources" are those assumed in the 2012 AQMP emissions inventory. The draft text of PR 4001 now purports to define "emissions target" by reference to page IV-A-36 of Appendix IV to the Final 2012 AQMP. The Cities raised questions during the Measure IND-01 adoption process regarding the District's calculation of these targets, which are *different* from the emissions targets set under the

CAAP. Although the specific emission targets of the proposed Project do not appear at all in the NOP (which omission itself is a defect), the District has verbally advised the Cities and a working group on August 8, 2013, that the Rule will be such as to be triggered on set emission targets for 2014 and 2019. Those comments, however, left the Cities and working group participants with many questions about how the District set the emissions inventory, particularly for 2019, which was not in the CAAP. These examples are provided to illustrate that the Initial Study's description of the applicable emission reduction targets to be covered by PR 4001 are uncertain, or inconsistent.

P. 1-4 - Project Location

The new Initial Study provides no finite "project location." It again refers to the District's jurisdictional boundaries. It then states that "PR 4001 would apply to POLA and POLB, both of which are located within Los Angeles County." It is unclear if this was an attempt to state that the Project location would be Harbor Districts of the Cities. The lack of clarity regarding the Project location is further compounded by the Rule's reference to "sources not entering Port," and by a new but vague reference to the effect that the unidentified "strategies proposed by the Ports" under compulsion of PR 4001 could extend the "project location" beyond Los Angeles County.

Is it the intention that any portion of the Project may be implemented outside the geographic areas of the two Ports? It remains unclear from this description whether the Project may have impacts or foreseeably result in actions being taken outside the geographic areas of the two ports. This may have jurisdictional implications which cannot be evaluated without additional information.

Also, the Initial Study fails to disclose or analyze the possibility that if the option for the Cities to reduce emissions from sources not entering Port properties is included in proposed Rule 4001, even the vague "project location" and geographic scope of the proposed Rule in the Initial Study would not be accurate and would need to be modified in the NOP/IS.

P. 1-5 – Project Background

The new Initial Study appears to recognize that distinct "emission sources at the Ports" such as vehicles, engines, ships, trains, trucks and other cargo-moving equipment operated by distinct tenants, users, and visitors of the ports are the intended targets of the Project's emission reductions requirements. It also acknowledges that the Ports themselves adopted the San Pedro Bay Ports Clean Air Action Plan ("CAAP") in 2006, and further that emissions from these so-called "port-related sources" have been "substantially reduced since 2006" as a result of collaborative and voluntary programs and regulations developed by both Ports. (p. 1-6).

These acknowledgements raise again the question of the need or justification for the Project, or for the attempt by the District to foist the responsibilities for regulating emissions from such mobile or vehicular sources of emissions from state and federal agencies onto the Cities.

Also, on Page 1-6, the new Initial Study states that the intent of PR 4001 is to "provide a backstop to the Ports' actions" in case emission reductions "from port-related sources do not meet *or are not on track to maintain the emissions targets*..." This appears to be an unauthorized change in the Project description and is not consistent with IND-01. Also, notion that the District would be empowered by PR 4001 to enforce sanctions against the Cities if the District somehow deems that they are "not on track" to maintain targets is ambiguous, and without objective standards or legally-necessary procedural protections.

Pp. 1-11 -- Technology Overview/Implementation Strategies

The new Initial Study refers to some emission reduction strategies included in the CAAP, but the Initial Study does not explain how these may relate to proposed Rule 4001, or whether they should be considered as part of the Project.

The suggestion in the Initial Study of possible "tariff changes" or "impact fees" on the activities of users of the Harbor Districts raises other questions (e.g., legal authority, funding for studies and public review processes required before such measures could be considered or adopted, indemnification for costs of defense, etc.) requiring identification and study. Moreover, such measures may themselves be considered as "projects" subject to CEQA review and may have impacts on the activities of Harbor District users that themselves would require analysis or mitigation.

The Initial Study also includes reference to "Port funded incentives" as possible measures to reduce emissions, but also observes that there is not adequate funding for such strategies in the Cities' budgets or other grant programs. The source of funding any "Port-funded" measures contemplated by proposed Rule 4001 should be clearly identified and evaluated.

Any such contemplated implementation strategies should be included in the "Project description" and better identified in a more complete NOP/IS, so that they may be evaluated along with the rest of the Project.

Feasibility: The new Initial Study abjures any consideration of technical feasibility or other concepts of "feasibility" despite CEQA's recognition of feasibility as a critical limitation on environmental regulation. The scope of the EA should be expanded to address the legal, technological and economic feasibility of the seven bulleted items listed in this section.

2. Chapter 2 of the Initial Study – The "Environmental Checklist"

(a) General Comments on the Environmental Checklist

The Recirculated NOP/IS relies on a standard CEQA environmental checklist to identify those "impact areas" it recognizes to be potentially affected by the Project. In several respects, however, the Initial Study appears to merely assume the absence of potentially significant impacts, rather than factually demonstrating that significant impacts will not occur if the Project is adopted and implemented. This is insufficient under CEQA, and under the District's own rules. (SCAQMD Rule 110; *City of Redlands, supra*, 96 Cal.App.4th at 408-09; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296).

The new NOP includes many statements that the PEA will rely on "conservative assumptions" about the possible environmental impacts of the Proposed Rule. Reliance on any assumptions in CEQA analysis is unsound, and if assumptions are to be used, the District must explain why it would rely on "conservative" assumptions about the scope of impacts.

Furthermore, it is contrary to the District's response to comment #5-4 in the Final Program EIR, which indicates that "[t]he exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted."

We appreciate that the new Initial Study has expanded the number of environmental areas to be studied in the eventual EA from the six (6) topics identified in the previous Initial Study to thirteen areas now recognized as being subject to potentially significant impacts if the Project is approved. The new Initial Study now recognizes the following *additional areas* of potential environmental impact to be addressed in the EA: (1) Aesthetics, (2) Biological Resources, (3) Cultural Resources, (4) Land Use and Planning, (5) Noise, (6) Public Services, and (7) *broadened evaluation* of potential impacts and issues in the areas of Energy, Hazards and Hazardous Materials, Air Quality, and Transportation and Traffic.

However, the new Initial Study continues to provide only superficial and inadequate discussion of the areas of environmental impact, and thus fails to properly indicate the necessary scope for the eventual EA. Unless and until those areas are more fully addressed, the new NOP/IS still improperly limits the scope of the proposed EA, and still erroneously exclude areas requiring further assessment.

(b) Specific Comments on the Environmental Checklist

As detailed below, there are numerous areas of potential environmental impact in the checklist as to which the Initial Study either omits required evidence to support its conclusions of "no potential impact" or treats with insufficient detail.

Even as to those areas that are now identified in the new Initial Study as having potential impacts, the new Checklist still errs by limiting the scope of the potential impacts identified for further study based on unfounded assumptions as to the environmentally benign intent behind the Project. However, the law is clear that environmentally "benign" objectives for a project do not excuse non-compliance with CEQA and do not justify reliance on assumptions in lieu of evidence to demonstrate the absence of potential impacts. *See, e.g., California Farm Bureau v. California Wildlife Conservation Board* (2006) 143 Cal.App.4th 173, 196, emph. added [State environmental agency violated CEQA by exempting environmentally beneficial habitat project from review]:

"[I]t cannot be assumed that activities intended to protect or preserve the environment are immune from environmental review. [Citations.]" (*Davidon Homes, supra*, 54 Cal.App.4th 106, at p. 119; see, e.g., *Dunn-Edwards Corp. v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644 (disapproved on other grounds in *Western States Petroleum Assn. v. Superior Court, supra*, 9 Cal.4th 559, 570.) **There may be environmental costs to an environmentally beneficial project, which must be considered and assessed**.

P. 2-4 -- Preliminary Discussion of Checklist

First Paragraph: We reiterate the same comment as noted above, regarding Cities not being the "source" of emissions. It is "the operational activities by the Ports' tenants" [and other users of the area] that produce emissions (as the new Initial Study more accurately recognizes) and which should be the true District targets as the sources of emissions.

First Paragraph, Last Sentence: The Initial Study states that "some emission reductions [assumed by the District's 2012 AQMP] may be contingent upon the Ports taking and maintaining *actions which are not required by air quality regulations*." This suggests that one of the purposes for District proposal of proposed Rule 4001 may be to establish a new regulatory "authority" over the Cities (and the communities served by and dependent upon the Harbor Departments of the Cities) that is not in fact already provided by existing federal, state, or regional air quality regulations. The policy implications of such a Project may well include significant impacts on the environment, if regulatory authority over activities, facilities, and uses of the Harbor Districts is shifted or arrogated to the District. (See, e.g., *City of Redlands, supra,* 96 Cal. App. 4th 398 [proposed new County policy re exercise of County authority over annexations and sphere of influence was not supported by adequate CEQA review].)

Page 2-5: The new Initial Study makes reference to a "survey" of existing CEQA documents to try to identify projects "similar to the types of projects the Ports may choose to implement in an Emission Reduction Plan." It then suggests that "reasonably foreseeable projects" resulting from this survey will be evaluated in the EA. While we respect these goals, we submit that the new Initial Study is vague as to what may be deemed to be "reasonably

foreseeable projects" warranting analysis in the EA, and would request that more objective criteria be provided.

(1) **Aesthetic Impacts:**

The brief discussion of "potentially significant" Aesthetic impacts in the new IS does not address many of the Cities' prior comments on these impacts, and we reincorporate those comments.

(2) **Biological Resources:**

The new discussion of impacts on Biological Resources does not address the Cities' prior comments re possible impacts on migratory birds and least terns, and we reincorporate those comments.

(3) **Energy:**

The new Initial Study section VI (c) must be expanded to also consider and analyze 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 required in the event of a major disaster. Also some types of emission control measures, facilities, or technologies contemplated by the Project could increase or shift demand for different types of energy or fuel usage. Although "risk of upset" is not considered in the new Initial Study checklist. The scope of the proposed EA should be expanded to include this additional analysis.

(4) **Hazards and Hazardous Materials:**

In addition to our comments on the prior Initial Study, the new Initial Study section VIII(f) must be expanded to also consider and analyze the increase reliance on alternative fuels or electrical powered technologies that would require sufficient supply and emergency storage in the event of a major disaster. Although interference with emergency response plans was marginally addressed in this section, "risk of upset" is not considered in the new Initial Study Checklist. The scope of the proposed EA should be expanded to include this additional analysis.

(5) **Land Use & Planning Impacts:**

The new IS now identifies Land Use and Planning as an area involving potential significant impacts, to be studied in the EA. However, the new IS states that such impacts will be considered in the EA only "if the project conflicts with the land use and zoning designations established by local jurisdictions." This is insufficient.

We previously pointed out that the PR would cause conflicts with existing land use plans and policies, circulations plans, congestion management plans, etc. The prior IS itself admitted that the Project would cause potentially significant impacts or conflicts with existing land use plans (but was only going to address them in the Transportation section). This should be a definite area for evaluation in the EA, not a 'conditional' topic of study.

We also note that the new Initial Study is internally inconsistent. It makes the remarkable assertion (inexplicably placed in its discussion of impacts on Biological Resources, at p. 2-18) that "there are no provisions in the proposed project that would adversely affect land use plans, local policies, ordinances or regulations. LAND USE AND OTHER PLANNING CONSIDERATIONS ARE DETERMINED BY LOCAL GOVERNMENTS AND NO LAND USE OR PLANNING REQUIREMENTS WOULD BE ALTERED BY THE PROPOSED PROJECT." We strongly disagree, as pointed out in our prior comments, which are incorporated.

The measures contemplated in the Initial Study include the adoption of new "regulatory requirements," new "impact fees" on the movement of cargo or sources, and changing the tariffs for use of the Harbor Districts – all of which would cause at least potential "conflicts" with applicable plans and policies. (Cf., *Orinda Ass'n v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1169 [the CEQA requirements for initial study examination of non-conformity with existing land use plans are intended to allow lead agency to modify the Project to avoid inconsistencies with existing plans – not vice versa].)

The Initial Study itself acknowledges that the Project is anticipated to cause "potentially significant impacts" or conflicts with "an applicable plan ... for the performance of the circulation system" and conflicts with "an applicable congestion management plan." (Initial Study, p. 2-44.) Although the Initial Study proposes to address those admitted conflicts in the "transportation" section of the EA, these acknowledged conflicts confirm the necessity for including "land use and planning" impacts in the proposed EA as well.

Also, the proposed Project would seemingly create conflicts with the Cities' 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 are detailed in the previous port letters included in Attachment A to this letter. In addition, the proposed Project would create inconsistencies with the Clean Air Action Plan.

The proposed Rule is apparently structured in a way that would impermissibly usurp the (non-delegable) police power authority of the Cities and their respective Boards of Harbor Commissioners to plan, implement, and regulate land use policies and actions in their respective jurisdictions. (This comment has also been raised above, in Project Description comments.)

The numerous inconsistencies between the Project as proposed and the existing plans and policies require identification in the Initial Study and inclusion in the proposed EA. (Guidelines § 15125(d).) The scope of the proposed EA should be expanded to include environmental analysis of all of these potential impacts on land use and planning.

The EA should also include analysis of the impacts of the proposed/anticipated Project-related subsequent amendments to the Cities' plans, policies, and other land use regulations. (See, e.g., *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1197 [CEQA review failed to consider incidental results from adoption of revised policy; incidental impacts could not be disregarded in an initial study based upon "net" environmental impact of the change in policy being benign since CEQA requires each environmental impact of project be discretely evaluated].) "Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project." (Guidelines, § 15064, subd. (e); see §§ 21080, subd. (e)(2), 21082.2, subd. (c).)

The scope of the EIR should be expanded to include analysis of possible physical changes in port facilities and operations that might be caused by economic or social effects of the Project itself or by the anticipated amendments to land use and zoning policies by the Cities subsequent implementation of the Project.

(6) **Transportation and Traffic Impacts**

The new Initial Study fails to adequately describe and analyze potential impacts to rail and marine vessel traffic and ignores the significance criteria identified as "[w]ater borne, rail car or air traffic is substantially altered" on page 2-45. The new Initial Study erroneously considers vehicular traffic impacts to local roadways.

Socioeconomics Analysis

The proposed EA needs to include a broad-based analysis of the socioeconomic effects of Proposed Rule 4001, including the potential for job loss, business closures, and diversion of cargo to other ports due to the potential loss of regional competitiveness. The socioeconomic analysis needs to consider both the existence of the rule, even if not triggered, and the future enforcement of the rule. Because these conditions have the potential to physically change the environment in and around the ports, these impacts should be identified and assessed in the EA. (See CEQA Guidelines §§ 15064€ and 15131; *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3rd433,445 [EIR must consider possibility of economic blight from rezoning].) Moreover, this assessment should not be limited to businesses and operations within the ports, but should extend to those facilities, business and operations that while located outside of the Harbor Districts are dependent upon the flow of cargo for their continued operations.

This CEQA analysis of the socioeconomics effects of PR 4001 in the proposed PEA would be separate from, and in addition to, the assessment of socioeconomic impacts of the proposed Rule that the District is required to prepare in compliance with Health & Safety Code § 40728.5 and § 40440.8.

D. Conclusion:

The current version of the Recirculated NOP/IS still fails to comply with CEQA or with the District's own Rules for environmental review, and fails to properly provide an adequate "scope" for the eventual Environmental Assessment to be prepared for analysis of the Proposed Rule 4001. The Initial Study must therefore be revised, corrected, and re-circulated with all of the descriptions and other content required by CEQA.

While it is clear that an EA is called for in connection with this proposed Project, it is equally clear that the EA should be more complete than what is envisioned by the current NOP/IS. More fundamentally, its scope must be determined by a legally-adequate revised NOP/IS. The EA for the Project must, of course, be supported by credible and substantial evidence, including independent professional analysis.

Even this inadequate NOP/IS makes it clear that **the scope of the proposed EA has been unduly narrowed and fails to identify any potentially feasible alternatives to the Project.** Consequently any ensuing environmental review will be limited in a way that erroneously fails to provide the relevant decision-makers, affected public agencies, residents and the public generally with sufficient evidence and analysis of all potential impacts from the Project as a whole, or of all potentially feasible mitigation measures or appropriate Project alternatives as required by CEQA.

We respectfully request that these comments and questions be considered before the District embarks on preparation of the EA and all of the other required independent studies in connection with the CEQA review of the proposed Project. We therefore look forward to working with the District, and any study teams or working groups tasked with evaluation of the proposed Rule 4001.

The NOP requests that we provide you with a contact person for each responding agency. For the **COLB,** the contact persons are as follows:

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We appreciate your consideration. Thank you.

Sincerely,

Matthew Arms
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachments:

- August 21, 2013 Letter; Port of Long Beach and Port of Los Angeles to SCAQMD; *Comments on Notice of Preparation, Initial Study, and Scope of Proposed Environmental Assessment*

- October 2, 2013 Letter; Port of Long Beach and Port of Los Angeles to SCAQMD, *Initial Comments for Public Consultation on Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets are Met at Commercial Marine Ports"*

cc: Al Moro, Acting Executive Director, Port of Long Beach
Gary Lee Moore, Interim Executive Director, Port of Los Angeles
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
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Cynthia Marvin, Division Chief, Stationary Source Division, CARB
Doug Ito, Chief, Freight Transportation Branch, CARB
Jared Blumenfeld, Administrator, U.S. EPA, Region 9
Deborah Jordan, Director, Air Division, U.S. EPA, Region 9
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ATTACHMENT 6.

October 2, 2013

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Science and Technology Advancement
South Coast Air Quality Management District
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Re: Initial Comments for Public Consultation on Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports"

Dear Mr. Pasek and Staff of the South Coast Air Quality Management District:

We appreciate this opportunity to submit comments during the public consultation period on the South Coast Air Quality Management District's (AQMD's) proposed "Rule 4001: Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports" on behalf of the City of Long Beach acting by and through its Harbor Department (referred to herein as "COLB") and the City of Los Angeles acting by and through its Harbor Department ("COLA," collectively with COLB, the "Cities" or the "Ports").

The Cities take their role as environmental leaders seriously and through the years have achieved tremendous success in obtaining substantial emissions reductions through the efforts guided by the joint San Pedro Bay Ports Clean Air Action Plan ("CAAP"). The Cities continue to support programs that will result in cleaner air for the local communities and the region and have worked aggressively with the port industry to reduce air quality impacts from the equipment they operate. As a result, the recently released emissions inventories have shown that between 2005 and 2012, emissions from sources at both the Port of Long Beach and Port of Los Angeles were reduced by 80% for diesel particulate matter and 55% for nitrogen oxides. However, the Cities continue to disagree with the AQMD's current proposal to inappropriately and unnecessarily regulate the Cities. The Cities have been consistent in our comments to the AQMD about the serious concerns and objections to the proposed rulemaking approach. A compilation of these comments was recently submitted to the AQMD in our comment letter on the Notice of Preparation and Initial Study for Proposed Rule 4001, dated August 21, 2013.

As for the comments the AQMD is currently seeking, we have concerns that the process recently initiated by the AQMD to solicit comments on Proposed Rule 4001 deviates from the rule-

making procedures called for by the Health & Safety Code and by the AQMD's own rules (Rule 110), in several respects. For example, it is essential that a copy of the Proposed Rule, or the text of the Proposed Rule, "be made available to the general public in connection with a request for comments" on a proposed rule in order to commence a legally-compliant rule-making process. (E,g., H & S Code §§ 40727.2, 40727(i).) The Cities have previously pointed out the inherent inconsistency of inviting public comment on Proposed Rule 4001 before the AQMD has publicly-disclosed the text of the Proposed Rule, as well as the resulting limitations on the ability of the Cities and other members of the public to provide specific input on the Proposed Rule. As a result of the failure to provide the text of the Proposed Rule, or necessary information regarding the Proposed Rule, a meaningful and legally valid rule-making procedure has not yet been commenced, and it is premature for the AQMD to demand the submission of comments on the anticipated but still undefined new "backstop" rule.

Further, it appears that the AQMD is attempting to limit comment by setting an agenda for the items on which they are seeking input, as shown on slide 8 "Soliciting Inputs/Comments" of the presentation provided during the CEQA Scoping Meeting on August 14, 2013. In addition, limiting the public process primarily to a small working group with seats set at a small table does not allow for significant input from the broader affected public, including the port tenants and operators. Input could be more meaningfully provided if the Proposed Rule was released with sufficient time for the Cities and the public to review and provide detailed comment.

The Cities are further concerned that not enough time is being included in the schedule for rule development. To date, a draft of the Proposed Rule has not been released, nor is it expected to be released for at least several weeks; however, a hearing date for the AQMD Board to consider approval of the Proposed Rule has already been identified for early December. Well in advance of any such hearing, the AQMD must provide the public with substantial information and analysis of the Proposed Rule as required by the Health & Safety Code and AQMD rules (e.g., H & S Code §§ 40727.2; Rule 110(b), (c), and (d).), as well as responses to the public comments. The AQMD also must provide the comprehensive assessment of socioeconomic impacts required by Section 40728.5.

This timeline for review and comment is unacceptably short for a rule of this magnitude. The failure to provide the draft rule language with adequate time for the public to review and submit comments to AQMD, and for those comments to be meaningfully considered by AQMD staff, is a denial of due process.

In this regard, we also have concerns about the demand that comments be submitted by September 6, 2013. There is no explanation, nor any apparent legal basis, for imposing such a deadline for public comments. It is unreasonable, particularly in light of the absence of text or details regarding the Proposed Rule, and fails to provide due process to the Cities or other members of the public who may be burdened or affected by the Proposed Rule, to demand comments by such an early cut-off. The imposition of such a premature deadline for submission

of comments appears arbitrary, and in conflict with Health & Safety Code § 40726, which states that the AQMD "shall provide for the submission of statements, arguments, or contentions, either oral or written or both," up until the time of the public hearing on the Proposed Rule. We therefore respectfully object to the imposition of a deadline for submission of comments on the Proposed Rule, and reserve all rights to comment on the Proposed Rule in the manner, and at the times, provided by state law and the AQMD rules, and to insist on compliance with the procedures and rights afforded by state law and AQMD rules.

The Cities are therefore providing these comments on a preliminary (and non-binding) basis, considering only the limited information on Proposed Rule 4001 thus far provided by the AQMD, based upon presentations by AQMD staff about the general concepts of the approach. The Cities reserve our rights, however, to make further comments after the September 6 deadline and to continue to provide input throughout the process, including submission of additional or different comments after the draft rule is made available.

First, there is an issue of need. As a rule that is contained in the proposed State Implementation Plan, Proposed Rule 4001 violates Section 39602 of the California Health and Safety Code, which states that the State Implementation Plan shall only include those provisions necessary to meet the requirements of the Clean Air Act. There is no need for Proposed Rule 4001 since the AQMP's emissions targets for port industry equipment in 2014 will be met by United States Environmental Protection Agency (EPA) and California Air Resources Board (CARB) regulations and existing Clean Ocean Vessel Voluntary Incentive Programs. Further, AQMD staff has suggested that Proposed Rule 4001 will require the Ports to develop a "Contingency Plan" immediately following rule adoption, prior to any indication that an emissions shortfall may occur. This approach is punitive, requiring the Ports to invest resources into a type of corrective action, when there is no identified need for that action, and therefore goes against the Act and is inconsistent with due process.

Second, there is an issue of legal authority and jurisdiction. The AQMD has failed to cite any legal authority for characterization of governmental entities as a stationary source, or imposing an indirect source rule on governmental entities that do not own, operate or control the sources of emissions, based merely upon the location of facilities operated by private parties within the government entities' geographic area. The Ports are not "indirect sources" and no authority has been cited to authorize the use of an indirect source rule against fellow governmental agencies that have their own jurisdiction and responsibilities by law and do not have regulatory authority to issue air regulations. The AQMD has failed to cite any legal authority for imposing an indirect source rule on Trustees for the Tidelands of California or how it could legally compel the Ports to make expenditure of Tidelands Trust revenues for the purpose of incentives or to adopt other emission reduction programs to be funded as contemplated in AQMD enforcement activity under Measure IND-01. The AQMD has failed to show any legal authority that would allow it to (1) regulate mobile sources by making another governmental entity, that is not an air regulator, its agent for enforcement of its desired mobile source emission reductions, or (2) "enforce" the

Proposed Rule, which under AQMD administrative rules would eventually mean fines and penalties, against such other governmental entity that does not control the emissions of indirect sources located within its jurisdictional boundaries. The AQMD has failed to show any constitutional or statutory basis for attempting to regulate mobile sources "indirectly" that it is preempted from regulating directly, or to purport to impose penalties or corrective action against another governmental entity for failure of private third party emissions sources to achieve emissions reductions that such other governmental entity is also preempted from regulating.

Third, while the Cities remain firm in our position that the rulemaking is unnecessary, counterproductive and beyond the AQMD's jurisdiction, if AQMD does continue to proceed, the following significant issues must be addressed.

AQMD staff appears to be proceeding with development of the proposed rule in a manner that is inconsistent with the provisions of AQMP Measure IND-01 and the discussion between the AQMD Board and the staff during the approval of AQMP Measure IND-01 at the Board Meeting of February 1, 2013. During that discussion, it was identified that the requirements under any proposed rule would only be triggered if the ports failed to meet their goals for the target year. The proposed rulemaking concepts that have been presented by AQMD staff more recently have indicated that the Ports may be required to develop corrective action plans in advance of any identified shortfall. Further, it appears AQMD staff is considering that the Ports will be required to submit emission inventories to AQMD for approval each year through 2020 and that compliance action may be triggered for any potential shortfalls that may occur during interim years, prior to the target years. These potential requirements are inappropriate and go beyond the direction from the AQMD Board.

Also, because the Cities are not regulatory agencies, have not been granted authority to regulate sources of air pollution, and have limitations on their ability to impose requirements on sources operating within their jurisdiction, AQMD must ensure that Proposed Rule 4001 does not mandate that the Cities implement strategies that are outside of their authority or ability to implement. AQMD must recognize that the Cities do not even have contractual relationships with many of the emissions sources that AQMD has attributed to the Cities' "responsibility" for emissions reductions under Proposed Rule 4001, and that even if Cities have leases with some of the operators, they are negotiated business agreements that constrain the Cities' ability to unilaterally impose new terms in response to whatever new conditions AQMD may desire.

In addition, the Boards of Harbor Commissioners of the Cities have the discretion for making business decisions related to the ports and their tenants, consistent with the Tidelands Trust and California Coastal Act. Neither AQMD staff nor its Board can override the discretion of the Harbor Commissions including decisions related to the management of the port or how port funds are spent. Therefore, AQMD cannot disapprove an Emission Reduction Plan simply because AQMD disagrees with the chosen strategies.

Moreover, approval or disapproval of any Emission Reduction Plan cannot be at the sole discretion of AQMD staff. Any plan development should be coordinated with the agencies involved in the development of the CAAP, specifically EPA, CARB and the AQMD. The partnerships established through the CAAP process, and the actions over the past seven years that have been taken by the regulatory agencies, in addition to the Ports, have been critical in the success that has been achieved. As CARB has stated[1], "[s]uccessful implementation of the CARB emission reduction plan will depend upon actions at all levels of government and partnership with the private sector. No single entity can solve this problem in isolation." Therefore, AQMD staff should not place themselves in a position to be the sole authority to approve or deny plans for emission reductions at the Ports. Any plans should be developed in partnership, with input by all agencies, and final approval on actions to be taken specifically by the Cities should be at the discretion of the Boards of Harbor Commissioners.

Slide 8 of the AQMD presentation at the August 14 Scoping Meeting identified that AQMD is seeking input on "[f]lexibility to garnish emission reductions/air quality benefits off port property". Under the Tidelands Trust, the Boards of Harbor Commissioners are limited in their ability to spend Tidelands funds outside of the Tidelands areas. The Cities cannot be mandated by an AQMD rule to mitigate emissions that are unrelated to port-operations outside of the Harbor Districts and the Tidelands areas.

AQMD has stated that the goal of the Proposed Rule is to ensure that the Cities meet their commitments outlined in the CAAP. The Cities have clearly demonstrated over the past seven years that they are committed to working with the industry and will do what they can to reduce, from port-related sources, the port sector's fair share of regional air emissions. If other non-port related sectors within the region do not achieve their share of emissions reductions, the Cities cannot be held responsible for making up for those shortfalls, regardless of whether or not those shortfalls are anticipated to result in a delay in regional attainment of the $PM_{2.5}$ Standard in 2014.

In addition, the Cities should not be held responsible for any potential emissions shortfalls from regulatory agencies not implementing emission reduction regulations as identified within the SIP, even if those regulations are related to equipment operating at the ports. If an agency makes a decision to delay a regulation schedule, or if a regulation is overturned due to a court decision that the requirements are not within their authority to implement, the Cities should not then be mandated to backfill the potential shortfall.

The last update to the CAAP took over two years to develop and cost over $1 million. The Cities should not be required by the Proposed Rule to prepare an Emission Reduction Plan when no need for such a plan has been identified (e.g. region is anticipated to reach attainment with the $PM_{2.5}$ Standard, emission reductions will be achieved by in-place regulations, no emission shortfall has been identified, etc.). Further, development of a plan should not be mandated if the

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[1] *Emission Reduction Plan for Ports and Goods Movement in California*, Executive Summary, ES-1, CARB, 2006.

reasons for any emissions shortfall are due to reasons outside of the Cities control or if no feasible strategies are available. Any plan that is required by AQMD should be streamlined and focused solely on actions that will be taken by the Ports and/or agencies to make up for any identified shortfall.

As identified in the 2012 Air Quality Management Plan, it was determined that the 2014 $PM_{2.5}$ Standard could be achieved by 2014 and no request for an extension would be needed[2]. Therefore, it is inappropriate for the AQMD to require an emission target year of 2019 in the Proposed Rule.

As stated above, these comments represent the Cities' initial concerns with the AQMD's proposed approach. Further comments will be provided as the process progresses and as more information is made available by AQMD.

We appreciate your consideration. Thank you.

Sincerely,

Heather Tomley
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

cc: Al Moro, Acting Executive Director Port of Long Beach
Geraldine Knatz, Executive Director Port of Los Angeles
Rick Cameron, Acting Managing Director of Environmental Affairs and Planning, POLB
Mike Christensen, Deputy Executive Director, POLA
Dominic Holzhaus, Principal Deputy City Attorney City of Long Beach
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Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Cynthia Marvin, Division Chief, California Air Resources Board
Elizabeth Adams, Deputy Director, U.S. Environmental Protection Agency, Region 9

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[2] *2012 Air Quality Management Plan*, Executive Summary, ES-11, AQMD, 2013.

ATTACHMENT 7.

August 21, 2013

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Re: Notice of Preparation and Initial Study
Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports"

SCAQMD File No. 0722013BAR
SCH No. 2013071072

Comments on Notice of Preparation, Initial Study, and Scope of Proposed Environmental Assessment

Dear Ms. Radlein and Staff of the South Coast Air Quality Management District:

We appreciate this opportunity to submit comments on the Notice of Preparation ("NOP") and the accompanying Initial Study prepared in connection with the District's consideration of the proposed project entitled "Rule 4001: Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports" (the "Project") on behalf of the City of Long Beach acting by and through its Harbor Department (referred to herein as "COLB") and the City of Los Angeles acting by and through its Harbor Department ("COLA", collectively with COLB, the "Cities").

As environmental leaders nationwide, the Cities have achieved tremendous success in obtaining substantial emissions reductions from their joint San Pedro Bay Ports Clean Air Action Plan ("CAAP") and other air quality measures implemented under the Cities' initiatives. The Cities continue to be supportive of projects and programs that are intended to contribute to improvement of air quality and promote other environmental values. However, the Cities must fundamentally disagree with the District's current proposal to unnecessarily convert an effective voluntary plan, built on multi-agency and industry cooperation, into potentially punitive regulations imposed unlawfully on the Cities. The Cities have previously sought to make the District aware of the serious concerns and objections to this approach. The Cities incorporate by reference their previous comments on the 2012 Air Quality Management Plan ("AQMP")

The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

Measure IND-01 Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities ("Measure IND-01") as comments on the proposed Project. The Cities' comments on Measure IND-01 are Attachment "A" to this letter.

We are also mindful that the California Environmental Quality Act ("CEQA") calls for public review, critical evaluation, and comment on the scope of the environmental review to be conducted prior to approval of proposed projects. Such review and critique 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. Thorough identification of the proposed Project, and candid disclosure of all phases of the Project and their potential impacts, is essential to assure 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, mitigation measures, and alternatives. In addition, it will be important to consider the impacts of the proposed Project on the San Pedro Bay Ports' communities, missions, 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 NOP for this "Project" as well as questions, concerns and objections related to the omissions of critical information, unsupported assumptions, or analytical deficiencies in the Initial Study, and comments as to the scope of the proposed environmental assessment ("EA") as contemplated and invited by the District's NOP.

A. General Comments on the Initial Study

While we recognize the effort that has gone into preparation of the current Initial Study, it is apparent that the Initial Study does not provide the information, evidence, or analysis required under CEQA. The Initial Study thus fails to fulfill its critical role as mandated by CEQA in educating the public generally, other affected regulatory agencies and governments, such as the Cities, 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 initial study are described in the CEQA Guidelines (14 C.C.R. §15063, subd. (d)). An initial study must "contain in brief form:

(1) A description of the Project including the location of the Project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries . . . ;

(4) A discussion of ways to mitigate the significant effects identified, if any;

(5) An examination of whether the Project would be consistent with existing zoning, plans, and other applicable land use controls;

(6) The name of the person or persons who prepared or participated in the initial study."

An initial study that fails to provide all of the information, analysis, and evidence called for by CEQA may be deemed to be inadequate and not a valid basis for CEQA review or project approval. (See, e.g., *City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, at pp. 407–408, [invalidating the County's proposed general plan amendments because of a deficient initial study: "[T]he initial threshold study is inadequate because it fails to provide sufficient evidence or analysis of the potential environmental effects of the amendments."].)

It is therefore respectfully urged that the Initial Study (and the related NOP) be revised, corrected, and recirculated for public review and comment before the District proceeds with any further action or EA in connection with the proposed Project.

The CEQA Guidelines contemplate that an initial study is to be used in defining the scope of environmental review (Guidelines, Sections 15006(d), 15063(a), 15143). However, as a result of the omissions, open questions, and deficiencies in the Initial Study as noted below, it appears to have unduly narrowed the District's proposed scope of environmental assessment, and to have caused the NOP to erroneously exclude critical issues and topics from the proposed scope of the EA.

The comments on the current Initial Study included in this letter are organized in the same format used by the Initial Study, i.e., comments on "Chapter 1 – Project Description" followed by comments on "Chapter 2 – Environmental Checklist." The comments are limited to those matters that appear in the current version of the Initial Study, and we reserve the right to provide further comments in the event that additional or different information about the proposed Project becomes available, or the District provides a revised and CEQA-compliant Initial Study.

B. Request for Revision of NOP and Re-Circulation of Revised NOP/IS To Include a Legally-Adequate "Project" Description and Text of Proposed Rule 4001

It is essential that the NOP and the Initial Study be revised to include an adequate "project description" including the text of the proposed Rule that is the "project" before the public, or the Cities, can be expected to provide comments and input.

In their prior comment letter on the Draft 2012 AQMP Program EIR dated October 22, 2012, the Cities expressed the very same concern over the vague and deficient "project description" of backstop Measure IND-01. In the District's response to comment #5-4 in the

Final Program EIR, the District stated: "*The exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted*." The District also committed, in its response to the same comment #5-4 in the AQMP Final Program EIR, that "*further details regarding the future requirements* [a Rule implementing Control Measure IND-01] *will be determined more appropriately during the rule development process.*"

The District has already commenced the rule development process. However, it has not yet provided even a draft of the proposed Rule 4001. To the contrary, at a public meeting held on August 8, 2013, the District's staff announced that the Rule will be developed after various public meetings with a "Rule 4001 working group," with a goal of releasing a draft of the Rule on August 28, 2013. Such a deferred release date for the "draft" of the proposed Rule would be one week after the deadline for comments on this NOP. The details and text of the promised Rule must be developed and disclosed before the "particular methods" and "exact impacts" anticipated may be analyzed or the subject of comment. Accordingly, it is still not possible for the District to proceed with appropriate project-level CEQA review or to issue an accurate NOP/IS at this stage if the details of proposed Rule 4001 are under development.

It is necessary that the current NOP and Initial Study be revised to include a revised "Project" Description, to incorporate the text of the draft Rule 4001 in detail, and to recirculate the revised documents for public review. A new set of public meetings, including a new "scoping meeting" should be scheduled to provide the public with sufficient time and opportunity to comment on the scope and adequacy of the revised NOP/IS.

C. Comments on the Initial Study

1. Chapter 1 of the Initial Study -- Inadequate "Project" Description

(a) Deficient "Project" Description – In General

The failure of the Initial Study and NOP to provide an accurate, complete, and coherent description of the "Project" is a fundamental deficiency, which permeates the entire document. The absence of such a clear description of the proposed Project inherently prevents the Initial Study from facilitating meaningful review and analysis of the proposed Rule 4001, and violates the requirements of CEQA. (See, e.g., CEQA Guidelines, Section 15124; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376.)

The Initial Study does not include or even describe the text of the proposed Rule that is supposed to be the "Project." The section of the Initial Study that purports to "describe" the Project, "PR 4001," includes nothing more than summaries of "key concepts provided in the 2012 AQMP Control Measure IND- 01." Those summaries and "concepts" are insufficient to describe the Project itself, and prevent effective public review and comment. Moreover, since

the 2012 AQMP Control Measure IND- 01 has already been adopted, it is perplexing that the District would use that measure as a substitute for the Project description.

The Initial Study does not provide a description of how the proposed Rule would work. It fails to describe reasonably foreseeable activities or actions of other agencies in response to or associated with the proposed Rule. This Initial Study suggests, instead, that the intent of proposed Rule 4001 would be to delegate the District's responsibilities for regulating or reducing emissions of NOx, SOx, and PM2.5 air emissions to other agencies, specifically the public officials governing the ports of Long Beach and Los Angeles, 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 Rule 4001 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 evaluation project alternatives, etc.).

The importance of providing an accurate and informative project description in an Initial Study was re-emphasized in *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 267, emph. added:

> "**The initial study must include a description of the project.**" (*City of Redlands, supra,* 96 Cal.App.4th at pp. 405–406, fns. omitted.) "Where an agency fails to provide an accurate project description, or fails to gather information and undertake an adequate environmental analysis in its initial study, a negative declaration is inappropriate. [Citation.] An accurate and complete project description is necessary to fully evaluate the project's potential environmental effects. [Citations.]" (*El Dorado County, supra*, 122 Cal.App.4th at p. 1597.)
>
> "**The scope of the environmental review conducted for the initial study must include the entire project**." (*Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1222.) Thus, a correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA. (*Tuolumne County Citizens, supra*, at p. 1222.)

The Initial Study currently falls far short of these requirements in describing the proposed Project, and thus falls equally short of serving the "public awareness" purposes described above and mandated by CEQA:

> An accurate and complete project description is necessary for an intelligent evaluation of the potential 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, citing *Aberdeen & Rockfish RR. v. SCRAP* (1975) 422 U.S. 289, 322 [an accurate, complete and consistent project description is the sine qua non of informative, legally adequate CEQA review].) (*City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, 407–408.)

The Initial Study (p. 1-5) indicates that "the approaches and concepts considered in this NOP/IS may be subject to change" based on comments from the working group. In light of the District's initiative in forming a "working group" of interested participants to help formulate the proposed Rule, and thereby provide an actual "project description," it would be more appropriate to undertake CEQA analysis and compliance after the actual Rule is developed. Furthermore, it is premature for the District to assume or conclude that any changes received from the working group as well as comments received relative to this NOP/IS will all be within the scope of the analysis in the NOP/IS.

In brief, the NOP/IS erroneously limits the scope of the analysis and inherently calls for impermissible speculation or impossible prescience on the part of the Cities or other members of the concerned public to undertake effective analysis of the proposed Project, or to provide meaningful comments as to the scope of review of the Project, until and unless the District provides an adequate description of the "Project."

(b) Specific Comments and Questions re "Project Description" and Text

The following comments and questions refer to specific portions or pages of Chapter 1 of the Initial Study:

Pp. 1-1 - 1-2 – Introduction

The Introduction states, in the first sentence of the third paragraph on page 1-1, that Control Measure IND-01 "...does not call for additional emission reductions beyond those realized with existing regulations and emission reductions programs implemented at the Ports to date." This is an untrue statement. The CAAP is only a planning document which specifically provides for discretionary future decisions to be made regarding implementation by each of the Cities' respective Board of Harbor Commissioners, and resolution adopting the CAAP update states: "The CAAP is a living document intended to establish a process to develop solutions, not a static document binding the Ports to particular future actions….The CAAP is a planning document that identifies goals and potential implementation strategies to guide further actions, and as such does not constrain the discretion of either Board of Harbor Commissioners with

respect to any particular action."[1] Not all individual Board actions that may be required in order to achieve the CAAP's goals and activities have been adopted, many of which goals were stretch targets with uncertainty as to whether they could be achieved. Measure IND-01 and Rule 4001 propose to require the Cities to potentially adopt future actions that create potentially-conflicting authorities between the District, as regulator, and the Cities, as independent governmental agencies regulated by the District, so as to force the Cities to exercise their discretionary police power authority in a particular way. The Constitution does not permit such usurpation of the Cities' authority.

The Introduction states, in the last paragraph beginning on Page 1-1, that the emission targets for port-related sources are those assumed in the 2012 AQMP emissions inventory. The Cities raised questions during the Measure IND-01 adoption process regarding the District's calculation of these targets, which are different from the emissions targets set under the CAAP. Although the specific emission targets of the proposed Project do not appear at all in the NOP (which omission itself is a defect), the District has verbally advised the Cities and a working group on August 8, 2013, that the Rule will be such as to be triggered on set emission targets for 2014 and 2019. Those comments, however, left the Cities and working group participants with many questions about how the District set the emissions inventory, particularly for 2019, which was not in the CAAP. These examples are provided to illustrate that the NOP's description of the proposed Rule is not only flawed but missing altogether.

P. 1-3 - Project Location

The Initial Study provides no finite "project location." It describes the District's jurisdictional boundaries. It then states that "PR 4001 would apply to POLA and POLB, both of which are located within Los Angeles County." It is unclear if this was an attempt to state that the Project location would be Harbor Districts of the Cities. The lack of clarity regarding the Project location is further compounded by the Rule's reference to "sources not entering Port properties." During the August 14th Scoping Meeting, Mr. Hogo attempted to clarify this reference by referencing an undefined area outside of but near the two Harbor Districts. Unfortunately, Mr. Hogo's statement did not clarify the proposed Project's location.

Is it the intention that any portion of the Project may be implemented outside the geographic areas of the Harbor Districts of the Cities? It is unclear from this description whether the Project may have impacts or foreseeably result in actions being taken outside these Harbor Districts. This may have jurisdictional implications which cannot be evaluated without additional information.

[1] Los Angeles Resolution No. 10-7041 adopted by the Board of Harbor Commissioners of the City of Los Angeles and Long Beach Resolution No. HD 2600 adopted by the Board of Harbor Commissioners of the City of Long Beach on November 22, 2010.

Also, the Initial Study fails to disclose or analyze the possibility that if the option for the Cities to reduce emissions from sources not entering Port properties is included in proposed Rule 4001, even the vague "project location" and geographic scope of the proposed Rule in the Initial Study would not be accurate and would need to be modified in the NOP/IS.

P. 1-4 – Project Background

The Initial Study's description of the "Project Background" implies that the two Cities' ports themselves actually conduct cargo operations. For example, the text states that the COLA "serves approximately 80 shipping companies." This illustrates a fundamental lack of understanding by the District of how ports work. There are two types of business models of ports: some are "operating ports," that conduct cargo operations directly, such as the Port of Charleston, South Carolina and some are "landlord ports," such as the Ports of Los Angeles and Long Beach, that merely lease wharves and land to operators who conduct cargo operations.

The Ports of Los Angeles and Long Beach are not, "the single largest fixed source of air pollution in Southern California." The EA should clarify that the referenced sources of air emissions are the vehicles, engines, ships, trains, trucks and other cargo-moving equipment operated by distinct tenants, users, and visitors of the ports, not the Harbor Districts or the Cities.

P. 1-5 – Legal Authority for PR 4001

The Initial Study suggests that if the (unspecified) "backstop measure" that would be mandated under PR 4001 "becomes effective," then the new Rule would require the Cities to take (unspecified) action "to develop and implement plans to get back on track" regarding attainment of emissions targets. Under what legal authority does the District believe that its proposed Rule 4001 may purport to compel distinct governmental bodies (the Cities and the Boards of Harbor Commissioners) to legislate or to exercise their discretion in particular ways to achieve District objectives?

Measure IND-01 was prominently referred to as an "indirect source rule." The current general references to proposed Rule 4001 in the NOP/IS have lost all mention of an "indirect source rule." However, the references to proposed Rule 4001 do not cite to any authority the District is relying on for its processing of the proposed Rule. This should be corrected so that the public can comment on whatever legal authority may be invoked by the District.

Is it anticipated that the "plans" and strategies that would be required to be adopted by the legislative boards of the two Cities under the mandate of proposed Rule 4001 would be within SCAQMD's regulating authority and subject to the District's approval or disapproval? If so, why would SCAQMD not directly adopt such "backstop" strategies and plans itself? If not, is the Rule being proposed in order accomplish something indirectly that SCAQMD itself cannot do directly? (Cf., *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 [same].)

P. 1-5 – Call for Cities to Regulate Off-Site "Sources"

The Initial Study indicates that the District will be inviting and considering proposals, as part of this "Project," regarding potential measures for the Cities to adopt and implement to try to reduce emission from sources *not entering* onto port properties. What does this mean? What legal authority might the Cities have to try to regulate *off-site* sources that do not come within the jurisdiction of the respective Harbor Commissions? (Municipal police power authority may generally be exercised only within the territorial boundaries of their jurisdiction, and the Boards of Harbor Commissioners have special Tidelands limits on their authority.)

Would such (unidentified) measures be part of Rule 4001, or would proposed Rule 4001 require that the Cities formulate (unidentified) measures in the future to somehow regulate *off-site* "sources?"

Until such options are identified, shown to be legally authorized and technically feasible, how can the CEQA analysis for proposed Rule 4001 be undertaken?

P. 1-6 – First Bullet – Imposing "Requirements" on the Cities?

The Initial Study indicates that if proposed Rule 4001 becomes effective the Cities "would be required to submit an emissions reduction plan to address the emissions reduction shortfall."

As noted above, this raises questions as to the intent and legal authority behind the Rule. Has the District identified legal authority for a rule that would require other governmental agencies (the Boards of Harbor Commissioners for the respective Cities) to exercise their legislative discretion/authority in any particular manner? Does the District intend to reserve to itself some authority to approve or disapprove any such plans submitted by the Cities?

What is the consequence of disapproval by the District?

What environmental baseline and other parameters would be required by proposed Rule 4001 in order for the Cities to determine the extent of any "emissions shortfall" that may need to be addressed in the Cities' plans in the event they were to undertake to submit plans under the Rule?

P. 1-6 – Second Bullet -- Funding

This bullet point implies that "funding" would be necessary for many of the potential future emission reduction measures that may be compelled under proposed Rule 4001. Would such funding be provided by the District? What other "funding" sources are contemplated? Will

there be constitutional or common law "gift of public funds" restrictions on funding imposed on the Cities for activities under their CAAP if Rule 4001 makes CAAP compliance a potential state or even federal regulation?

Are the Cities expected to fund these programs from Tidelands Funds? By what authority may the Harbor Commissioners impose taxes, assessments, and charges on users of the Harbor Districts, given the restrictions of various state laws, including, among others, Proposition 26?

The vague disclaimer in the Initial Study to the effect that proposed Rule 4001 would not require any measure that lacks legal authority or feasibility raises more questions than it answers. Whatever types of "emissions reduction plans" may be anticipated by proposed Rule 4001 should identified by the District in the NOP/IS so that the feasibility and legality of such approaches can be evaluated as part of the environmental assessment for the Project.

Pp. 1-6 – 1-7 -- Technology Overview/Implementation Strategies

This refers to some emission reduction strategies included in the CAAP, but the Initial Study does not explain how these may relate to proposed Rule 4001, or whether they should be considered as part of the Project.

The suggestion in the Initial Study of possible "tariff change" or "impact fees" on the activities of users of the Harbor Districts raises other questions (e.g., legal authority, funding for studies and public review processes required before such measures could be considered or adopted, indemnification for costs of defense, etc.) requiring identification and study. Moreover, such measures may themselves be considered as "projects" subject to CEQA review and may have impacts on the activities of Harbor District users that themselves would require analysis or mitigation.

The Initial Study also includes reference to "Port funded incentives" as possible measures to reduce emissions, but also observes that there is not adequate funding for such strategies in the Cities' budgets or other grant program. The source of funding any "Port-funded" measures contemplated by proposed Rule 4001 should be clearly identified and evaluated.

Any such contemplated implementation strategies should be included in the "Project description" and better identified in a more complete NOP/IS, so that they may be evaluated along with the rest of the Project.

Pp. 1-10 – 1-11 -- Imposition of "Requirements" on the Cities

The NOP/IS states that none of the CAAP strategies would be "prescribed in PR 4001." Instead, the NOP states that if proposed Rule 4001 becomes effective, the Cities (presumably the Boards of Harbor Commissioners) -- "individually or jointly" -- would be required to identify sources that could undergo potential emission reduction to "make up for the shortfall."

Why would/should the obligation to make up for a possible shortfall in meeting emission reduction targets (which are primarily the responsibility of the District to attain) be shifted so as to fall upon two independent governmental entities? The Cities are governmental entities, and are not directly producing emissions or otherwise directly responsible for the targeted emissions or for the attainment of the emissions reduction targets. Moreover, if there were to be a "shortfall" in attaining the targets, it could well be due to factors not caused or controlled by the Cities, and not due to any actions or derelictions on the part of the Cities or their tenants or users.

Other issues: How would a "shortfall" be measured or determined? Would any such "shortfall" be allocated to sources or causes bearing some actual responsibility for the lack of attainment? How would it be "allocated" between the Cities? Would uncontrollable/unforeseeable factors resulting in all or part of a shortfall be excluded from whatever obligation may be imposed on the Cities?

Would proposed Rule 4001 take into account the statutory limits on the jurisdiction and authority of the Cities (i.e, the Boards of Harbor Commissioners) to impose restrictions on most mobile sources of emissions?

Footnote 6 (on page 1-11)

The NOP/IS mentions a possible "option" that would "allow" the Cities to reduce emissions from "non-port-related sources." This vague reference requires clarification before it may be evaluated in connection with the Project. Direct and indirect effects would need to be considered that may occur beyond the geographic boundaries of the Harbor Districts. Therefore, it is premature for the District to conclude that any changes based on the working group or public scoping comments will be within the scope of the analysis in the NOP/IS.

P. 1-11 -- Technologies

The EA should be expanded to address the legal, technological and economic feasibility of the seven bulleted items listed in this section.

P. 1-12 -- Alternatives

No alternatives have been identified for study in the NOP/IS. Instead, it merely commits the District to "discuss and compare alternatives" in the future, as part of the Draft EA.

It also suggests the District is looking to the public or other agencies to identify "alternatives" during the scoping process. As previously explained however, how can alternatives realistically be suggested when the Project itself has not been identified or described?

The No Project Alternative is not defined in the NOP/IS. In accordance with CEQA Guidelines Section 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. Therefore, the Draft EA should consider the impacts that would occur under the existing 2012 AQMP without Control Measure IND-01 or proposed Rule 4001. In particular, an analysis should be conducted of the grant funding that would be available under the No Project Alternative that would not be available if the proposed Project constitutes regulation, and the environmental impact if grant funding necessary to make certain actions economically feasible is no longer available under the proposed Project. If the District's position is that there is no loss of grant funding in order to comply with Rule 4001 as a regulation that the District purports to make enforceable under the State Implementation Plan and the Clean Air Act, the District must explain in the Rule its basis for this conclusion in the context of why grants made for compliance with a regulation is not a gift of public funds.

In light of the technical complexities of the issues and the ambiguities as to what the District is actually seeking to accomplish by way of proposed Rule 4001, it seems unreasonable to expect others to develop the project alternatives. One suggested alternative would be for the District to formulate its own "backstop" measures and strategies for addressing any shortfall in emission reduction targets, relying on the District legal authority, expertise and resources, rather than pursuing proposed Rule 4001, which appears to be an attempt to rely upon presumed authority of the Cities. Another suggested alternative would be, the memorandum of understanding approach that was suggested by the Cities and proposed by staff as an alternative to Measure IND-01.

(c) Other Comments on Chapter 1 - "Project Description"

Incomplete Description of Environmental Setting

The Initial Study also fails to provide an adequate description of "the environmental setting" of the proposed Project.

While the CEQA Guidelines do not specially define "environmental setting" with regard to an initial study, they do explain, in regard to EIR preparation, that the "environmental setting" must be informative: "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." (Guidelines, § 15125, subd. (a).) A description of the environmental setting must be sufficient to allow "an understanding of the significant effects of the proposed projects and its alternatives" but "no longer." (Guidelines, § 15125, subd. (a).) That description should place "[s]pecial emphasis" "on environmental resources that are rare or unique to that region and would be affected by the project" and "must permit the significant effects of the project to be considered in the full environmental context." (Guidelines, § 15125, subd. (c).)

Failure to Examine All Phases of the Entire Project as Proposed

"The Initial Study must include a description of the project, and 'the scope of the environmental review conducted for the initial study must include the *entire* project." (*Nelson v. County of Kern, supra*, 190 Cal.App.4th at 270, emph. in original.)

The Initial Study here improperly fails to describe "the entire Project" and fails to consider all phases of the proposed Project. The CEQA Guidelines (14 C.C.R §15063(a)(1)) make clear that an initial study must take a comprehensive view of the proposed project *as a whole*. "All phases of project planning, implementation, and operation must be considered in the initial study of the project."

The NOP/IS indicates that proposed Rule 4001 is intended to require actions by the Cities, to adopt and implement plans and strategies to address any "shortfall" in emissions reductions. The Initial Study improperly fails to address or to provide information and analysis relating to the environmental impacts of the anticipated "subsequent approvals," "discretionary permits" and amendments to the Cities' plans and regulations that appear to be proposed as parts of the Project, or the physical environmental effects of social or economic impacts that may result from those anticipated and apparently necessary changes in land use regulations." (Guidelines § 15063.) Such anticipated and intended actions by other governmental agencies thus appear to be part of this Project, and must be identified and evaluated in the Project EA, along with their potential impacts. As such, we reiterate our prior comment on the Draft 2012 AQMP Program EIR dated October 22, 2012 where it is stated that the District has failed to fully disclose the details of Measure IND-01 and as a result is segmenting or piecemealing its CEQA analysis.

Failure to Describe Existing Land Use Regulations

The Initial Study does not include an examination of whether the Project would be consistent with existing zoning, plans and other applicable land use controls, as required by CEQA Guideline Section 15063. Although the Initial Study includes some background discussion of the CAAP, it provides little or no description of the existing planning and zoning designations applicable to the "Project" location, and relies on (unsupported) assertions that the Project would be in furtherance of the CAAP. It provides no information or analysis of other existing plans or policies applicable in the Harbor Districts, which may be affected or impacted by the Project.

Uncertain and Inadequate Identification of "Baseline" Used for Review

It is critical under CEQA that any level of environmental review make it clear as to the "baseline" being used as the basis for analysis of the significance of potential Project impacts. (CEQA Guidelines Section 15125(a).) Normally, the "baseline" will be the existing environmental conditions in the vicinity of the Project. (Guideline Section 15125(a); see also,

Communities for a Better Environment v. South Coast Air Quality Management District (2010) 48 Cal.4th 310, 315 [the baseline for an agency's primary environmental analysis under CEQA must ordinarily be the *actually* existing physical conditions rather than *hypothetical* conditions that could have existed under applicable permits or regulations].) The Supreme Court has explained that the requirement for identification and use of the appropriate "baseline" applies in the context of an Initial Study as well as in an EIR. (*Communities for a Better Environment, supra*, 48 Cal.4th at 512, and n. 5.)

The Initial Study here, however, fails to make it clear as to what "baseline" is being used. In many places the Initial Study compares the anticipated "impacts" of adopting proposed Rule 4001 to the permitted emissions levels anticipated (in the future) under the 2012 AQMP, or alternatively to the (future) emission reduction targets of the CAAP -- rather than to the existing environmental conditions. While the recent Supreme Court decision in *Neighbors for Smart Rail v. Exposition Metroline Constr. Authority* (8/5/2013, No. S202828) ___ Cal.4th ___, indicates that the baseline need not always be the existing physical conditions, and that "projected future conditions" may be used in rare situations as a baseline "if their use in place of measure existing conditions ... is justified by unusual aspects of the project or the surrounding conditions" (Slip Opinion, p. 11), it does not detract from the rule that the Initial Study must accurately and consistently describe the baseline being used. Nor does it permit the use of "future conditions" in the absence of a showing of unusual circumstances. The Initial Study in this case does neither.

For each of these fundamental reasons, the NOP/IS should be rescinded in order that it may be revised, completed and corrected to meet CEQA requirements.

2. Chapter 2 of the Initial Study – The "Environmental Checklist"

(a) General Comments and Questions on the Environmental Checklist

The NOP/IS apparently relied on a standard CEQA environmental checklist to identify those "impact areas" it recognizes to be potentially affected by the Project. In several respects, however, the Initial Study appears to merely assume 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, supra*, 96 Cal.App.4th at 408-09; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296). Furthermore, it is contrary to the District's response to comment #5-4 in the Final Program EIR, which indicates that "[t]he exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted."

The NOP/IS currently indicates that the scope of the proposed EA for this "Project" will be limited to the six topics listed at p. 2-2. Compliance with CEQA, however, would require not only a new and corrected Initial Study, providing an adequate "Project description" but also a more comprehensive EA that addressed additional areas of potentially significant impact, including (without limitation): (1) Aesthetics, (2) Biological Resources, (3) Cultural Resources, (4) Land Use and Planning, (5) Noise, (6) Public Services, and (7) *broadened evaluation* of potential impacts and issues in the areas of Energy, Hazards and Hazardous Materials, Air Quality, and Transportation and Traffic.

Unless and until those areas are more fully addressed, the NOP/IS appears to improperly limit the scope of the proposed EA, and to erroneously exclude areas requiring further assessment.

(b) Specific Comments and Questions on the Environmental Checklist

As detailed below, there are numerous areas of potential environmental impact in the checklist as to which the Initial Study either omits required evidence to support its conclusions of "no potential impact" or treats with insufficient detail.

More specific questions and comments follow:

P. 2-4 -- Preliminary Discussion of Checklist

First Paragraph: We reiterate the same comment as noted on page 1-4 regarding Cities being the source of emissions. The geographic location itself does not produce emissions. It is the users of the area that produce impacts. The users of the two ports are the owners and operators of the ships, trains, trucks and equipment which the District targets as the sources of emissions.

First Paragraph, Last Sentence: The Initial Study states that "some emission reductions [assumed by the District's 2012 AQMP] may be contingent upon the Ports taking and maintaining *actions which are not required by air quality regulations*." This suggests that one of the purposes for District proposal of proposed Rule 4001 may be to establish a new regulatory "authority" over the Cities (and the communities served by and dependent upon the Harbor Departments of the Cities) that is not in fact already provided by existing federal, state, or regional air quality regulations. The policy implications of such a Project may well include significant impacts on the environment, if regulatory authority over activities, facilities, and uses of the Harbor Districts is shifted or arrogated to the District. (See, e.g., *City of Redlands, supra,* 96 Cal. App. 4th 398 [proposed new County policy re exercise of County authority over annexations and sphere of influence was not supported by adequate CEQA review].)

Second Paragraph, Last Sentence: Same comment as page 1-5.

Third Paragraph. The NOP/IS states that the checklist responses focus on "the above mentioned actions." This is extremely vague. Is the reference intended to be the items referenced in the paragraph immediately above, or in the earlier pages?

Identification of precisely what measures are being assumed or proposed in proposed Rule 4001 is essential to being able to review the Initial Study.

Aesthetics -- P. 2-5

Discussion of I a), b) and c). The Initial Study suggests that "because PR 4001 would implement IND-01" the District may simply assume that this Project would not be expected to generate significant adverse aesthetics impacts. However, given that the measures that would be used to implement IND-01 are not identified, the Initial Study does not provide evidence to demonstrate that proposed Rule 4001 has no potential for impact. To the contrary, the Initial Study admits that "PR 4001 will primarily affect operations at two ports" and but then simply assumes from the industrial and commercial zoning of the Harbor Districts that there could not be a potential for impacts on "scenic vistas" nor any potential degradation of the visual character of the areas around the Harbor Districts.

The Initial Study fails to describe the environmental setting and include any evidence or analysis to support its assumption that whatever is done to implement proposed Rule 4001 would "likely easily blend in" with the surrounding activities, especially since what would be done to implement the Rule is not yet known. Specifically, the Initial Study 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. 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 Harbor Districts and if modified, through obstruction, alteration, or demolition could have a negative aesthetic impact. Without a clearly defined project, project location, or description of the environmental setting, it is not possible to conclude that any port modifications will have little or no noticeable effect on adjacent areas and would blend in with the visual setting.

The Initial Study indicates that "Control devices may include hoods or bonnets on ship exhaust stacks to capture emissions and are expected to be as high as 80 feet (POLB, 2006)" and concludes that "these control devices would be similar to other structures used within the heavily industrialized portions of the Ports…" First, the "POLB" citation is missing in the list of references. Second, it is speculative and erroneous to assume that control devices as high as 80 feet would have "no visual impact" without knowing the location, dimensions, color scheme or critical viewpoints. No such analysis has been considered here and the impact is dismissed with no evidence to support the conclusion.

The last sentence of the first paragraph (on p. 2-6; I. d) suggests there are no residential areas "next to" the Harbor Districts, and thus the Initial Study may dispense with analysis of light and glare impacts. It is evident however that was an inaccurate assumption given the residential communities of San Pedro, Wilmington and Long Beach located adjacent to the Harbor Districts. This is also contradictory to the description of surrounding land uses and setting on page 2-1 which indicates "potentially residential."

The Initial Study further errs by dispensing with environmental analysis or evidence, simply because of the (assumed) beneficial air quality goals of proposed Rule 4001. The law is clear that environmentally "benign" objectives for a project do not excuse non-compliance with CEQA and do not justify reliance on assumptions in lieu of evidence to demonstrate the absence of potential impacts. *See, e.g., California Farm Bureau v. California Wildlife Conservation Board* (2006) 143 Cal.App.4th 173, 196, emph. added [State environmental agency violated CEQA by exempting environmentally beneficial habitat project from review]:

> "[I]t cannot be assumed that activities intended to protect or preserve the environment are immune from environmental review. [Citations.]" (*Davidon Homes, supra*, 54 Cal.App.4th 106, at p. 119; see, e.g., *Dunn-Edwards Corp. v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644 (disapproved on other grounds in *Western States Petroleum Assn. v. Superior Court, supra*, 9 Cal.4th 559, 570.) **There may be environmental costs to an environmentally beneficial project, which must be considered and assessed**.

This topic should not be dismissed. Given the nature of proposed Rule 4001, it cannot be determined that its implementation would have no impact on aesthetics. The EA therefore should include "Aesthetics" as a potentially impacted area of study.

Air Quality -- P. 2-11, Discussion

In the first paragraph (p. 2-11), last sentence, the stated assumption is speculative given there is no information about what physical changes to the environment proposed Rule 4001 will entail. There is no evidence to support the assumption in the Initial Study that proposed Rule 4001 would be identical to Measure IND -01 or have identical (previously-studied) impacts on air quality.

P. 2-11, III.a

The first paragraph, last sentence, again raises the question of why it should become the obligation of the Cities to take actions on their own to fulfill the obligations of the District for reaching emissions reductions targets? What is the legal authority for this shifting (or delegation) of the District's air quality responsibility?

In the second paragraph, the Initial Study relies on an assumption that "the Port" would be installing control equipment. Again, this erroneously confuses the Harbor Departments of the Cities with the operators of vessels, vehicles, and equipment. The Harbor Boards serve as trustees of tideland assets.

The conclusion in this section assumes that the undefined strategies and approaches suggested in conceptual description of proposed Rule 4001 will be successful. That is dependent on the feasibility of the approaches, which must be identified and assessed. Therefore, this topic should be analyzed in the EA.

P. 2-12, III.b, c, and g

Given the total lack of information regarding what proposed Rule 4001 would entail and whether it's implementation is feasible, it is premature to assess impacts in this category. These details must be provided and these topics should also be identified and assessed in the EA.

P. 2-13, III.e

There is no factual basis in the Initial Study upon which to conclude that implementation of proposed Rule 4001 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 Initial Study analysis only applies to construction odors and ignores any potential odors that may occur during long-term operations.

The NOP should be amended to make clear that at least these additional areas of potential impacts on air quality should also be identified and assessed in the EA.

Biological Resources – P. 2-14

The Initial Study fails to adequately describe, and improperly minimizes, possible impacts to biological resources, including least terns and migratory birds.

The scope of the proposed EA should be expanded to include environmental analysis of the Project's potential impacts on biological resources.

Cultural Resources – P. 2-16

The Initial Study fails to adequately describe, and improperly minimizes, possible impacts to cultural resources. Not all areas within the Harbor Districts are devoid of cultural resources or have cultural resources that have been previously disturbed, as concluded in the Initial Study on page 2-18 in section V(b), (c), and (d). There are known recorded historic and prehistoric sites throughout the Harbor Districts. For example, see COLA's website at http://www.portoflosangeles.org/idx_history.asp. Without knowing the location and extent of ground disturbance from possible construction activities associated with proposed Rule 4001, it

is speculative to assume that no significant adverse cultural resources impacts are expected from implementing proposed Rule 4001. The conclusion in the Initial Study is unsupported and lacks evidence or facts to support the findings.

The scope of the proposed EA should be expanded to include environmental analysis of the Project's potential impacts on cultural resources.

Energy – P. 2-18

The Initial Study section VI(c) must be expanded to also consider and analyze 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 required in the event of a major disaster. Also, some types of emissions control measures, facilities, or technologies contemplated by the Project could increase or shift demand for different types of energy or fuel usage. Although "risk of upset" is not considered in the Initial Study checklist, it should be cross referenced here and addressed in the Hazards section of the Initial Study.

The scope of the proposed EA should be expanded to include this additional analysis.

Hazards and Hazardous Materials – P. 2-24

The Initial Study section VIII(f) must be expanded to also consider and analyze the increased reliance on alternative fuels or electrical powered technologies that would require sufficient supply and emergency storage in the event of a major disaster. Although interference with emergency response plans was marginally addressed in this section, "risk of upset" is not considered in the Initial Study checklist.

The scope of the proposed EA should be expanded to include this additional analysis.

Land Use and Planning – P. 2-34

The Initial Study fails to adequately describe, and improperly minimizes, possible inconsistencies between the proposed Project and the existing and applicable land use plans and policies.

The Initial Study erroneously claims that "there are no provisions in PR 4001 that would affect land use plans, policies, or regulations." (P. 2-34.) The Initial Study does not support that conclusion with any substantial evidence.

First, the NOP/IS fails to identify any of "the provisions of PR 4001" so the statement cannot be supported or evaluated.

Second, and more importantly, however, the Initial Study repeatedly references "implementation strategies," "plans" and other new measures that it anticipates the Cities will be required to enact if proposed Rule 4001 becomes effective. Presumably this is because of inconsistencies between the existing plans and policies and the requirements of the new Rule. (See, e.g., pages 1-6 through 1-11.) The measures contemplated in the Initial Study include the adoption of new "regulatory requirements," new "impact fees" on the movement of cargo or sources, and changing the tariffs for use of the Harbor Districts – all of which would cause at least potential "conflicts" with applicable plans and policies. (Cf., *Orinda Ass'n v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1169 [the CEQA requirements for initial study examination of non-conformity with existing land use plans are intended to allow lead agency to modify the Project to avoid inconsistencies with existing plans – not vice versa].)

Third, the Initial Study itself acknowledges that the Project is anticipated to cause "potentially significant impacts" or conflicts with "an applicable plan ... for the performance of the circulation system" and conflicts with "an applicable congestion management plan." (Initial Study, p. 2-44.) Although the Initial Study proposes to address those admitted conflicts in the "transportation" section of the EA, these acknowledged conflicts confirm the necessity for including "land use and planning" impacts in the proposed EA as well.

Fourth, the proposed Project would seemingly create conflicts with the Cities' 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 are detailed in the previous port letters included in Attachment A to this letter. In addition, the proposed Project would create inconsistencies with the Clean Air Action Plan.

Fifth, the proposed Rule is apparently structured in a way that would impermissibly usurp the (non-delegable) police power authority of the Cities and their respective Boards of Harbor Commissioners to plan, implement, and regulate land use policies and actions in their respective jurisdictions. (This comment has also been raised above, in Project Description comments.)

The numerous inconsistencies between the Project as proposed and the existing plans and policies require identification in the Initial Study and inclusion in the proposed EA. (Guidelines § 15125(d).)

The scope of the proposed EA should be expanded to include environmental analysis of the Project's potential impacts on land use and planning.

The EA should also include analysis of the impacts of the proposed/anticipated Project-related subsequent amendments to the Cities' plans, policies, and other land use regulations. (See, e.g., *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1197 [CEQA review failed to consider incidental results from adoption of revised policy; incidental impacts could not be disregarded in an initial study based upon "net" environmental impact of the change in policy being benign since CEQA requires each environmental impact of

project be discretely evaluated].) "Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project." (Guidelines, § 15064, subd. (e); see §§ 21080, subd. (e)(2), 21082.2, subd. (c).)

The scope of the EIR should be expanded to include analysis of possible physical changes in port facilities and operations that might be caused by economic or social effects of the Project itself or by the anticipated amendments to land use and zoning policies by the Cities subsequent implementation of the Project.

Noise – P. 2-36

The NOP/IS acknowledges that approval of the Project and "triggering" of the PR 4001 could result in the construction or installation of new control equipment. The Initial Study improperly dismisses the potential noise impacts from such work as "not expected to be in excess of current operations." There is no substantial evidence in the Initial Study to justify such assumptions.

Similarly, there is no evidence cited in the Initial Study to support its further assumption that additional permanent noise impacts anticipated from the operations of new control equipment would not "substantially increase ambient operational noise levels in the area."

This section of the Initial Study is littered with mere "expectations" unsupported by any evidence regarding the magnitude of new noise impacts, even though such new impacts are anticipated by the Initial Study. Nor is there any analysis of the potential for significant adverse impacts from new noise generators related to the Project.

The NOP/IS must be revised, and the scope of the proposed EA expanded to include a detailed analysis, supported by evidence, regarding these anticipated new noise impacts, alternatives, and possible mitigation measures.

Public Services – P. 2-39

The Initial Study assumes that the Project would not generate any increased need for public services. However, the Initial Study does not provide any substantial evidence to support its assumptions regarding the "absence of impact" on additional public services or facilities.

The Initial Study should be expanded to address potential impacts that may arise from the increased "diversion" of existing "dirty" vehicles and vessels into solid waste sites if proposed Rule 4001 is triggered.

Transportation and Traffic – P. 2-44

The Initial Study fails to adequately describe and analyze potential impacts to rail and marine vessel traffic and ignores the significance criteria identified as "[w]ater borne, rail car or air traffic is substantially altered" on page 2-45. The Initial Study erroneously considers only vehicular traffic impacts to local roadways.

The NOP/IS must be revised, and the scope of the proposed EA expanded to include a detailed analysis, supported by evidence, regarding potential impacts to rail and marine vessel traffic.

Socioeconomics Analysis

The EA needs to include a broad-based analysis of the socioeconomic effects of the proposed Rule 4001, including the potential for job loss, business closures, and diversion of cargo to other ports due to the potential loss of regional competitiveness. The socioeconomic analysis needs to consider both the existence of the rule, even if not triggered, and the future enforcement of the rule. Because these conditions have the potential to physically change the environment in and around the ports, these impacts should be identified and assessed in the EA. (See CEQA Guidelines §§ 15064(e) and 15131; *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3rd 433, 445 [EIR must consider possibility of economic blight from rezoning].) Moreover, this assessment should not be limited to businesses and operations within the ports, but should extend to those facilities, businesses and operations that while located outside of the Harbor Districts are dependent upon the flow of cargo for their continued operations.

Too-Narrowly "Focused" Environmental Review

We note in closing that the Initial Study appears to reflect a preliminary decision to conduct less-than-full disclosure or environmental review of the proposed Project. Although the Initial Study concludes that "the proposed Project may have a significant effect on the environment and an Environmental Assessment will be required," it nevertheless appears that environmental review in the admittedly-required EA is proposed to be curtailed and "focused" on just the six topics listed in the current the NOP. One obvious indication of this is the miniscule list of references that were relied upon to support the Initial Study analysis; the list is limited to three sources.

It is respectfully submitted that such an approach would be too narrow and not in conformance with the requirements of CEQA, or with the District's own policies and rules for environmental analysis. While the CEQA Guidelines call for emphasis and "focus" on the significant environmental impacts of the Project, the authority to use such focus is misapplied in the Initial Study. For example, CEQA Guideline § 15143 explains that such focus may be used to limit the analysis in an EIR [or, in this case, EA] 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 NOP/IS here, by contrast, appears to exclude from consideration in the EA numerous effects that it has not shown to be "clearly insignificant and unlikely to occur."

D. Conclusion

The current version of the NOP/IS fails to adequately describe the "Project" thereby thwarting effective public review and comment on proposed Rule 4001. The Initial Study must therefore be revised, corrected, and re-circulated with all of the descriptions and other content required by CEQA.

Even this inadequate NOP/IS makes it clear that **the scope of the proposed EA has been unduly narrowed**, and that environmental review will be limited in a way that erroneously fails to provide the relevant decision-makers, affected public agencies, residents and the public generally with sufficient evidence and analysis of all anticipated and potential impacts from the Project as a whole, or of all potentially feasible mitigation measures or appropriate Project alternatives as required by CEQA.

While it is clear that an EA is called for in connection with this proposed Project, it is equally clear that the EA should be more complete than what is envisioned by the current NOP/IS. More fundamentally, its scope must be determined by a legally-adequate revised NOP/IS. The EA for the Project must, of course, be supported by credible and substantial evidence, including independent professional analysis.

We respectfully request that these comments and questions be considered before the District embarks on preparation of the EA and all of the other required independent studies in connection with the CEQA review of the proposed Project. We therefore look forward to working with the District, and any study teams or working groups tasked with evaluation of the proposed Rule 4001.

The NOP requests that we provide you with a contact person for each responding agency. For the COLB, the contact persons are as follows:

Heather Tomley
Acting Director of Environmental Planning
Port of Long Beach
925 Harbor Plaza
Long Beach, CA 90802
(562) 283-7100
e-mail: heather.tomley@polb.com

With copies to:

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For COLA, the contact persons are as follows:

Christopher Cannon
Director of Environmental Management
Port of Los Angeles
425 South Palos Verdes Street
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(310) 732-3763
e-mail: ccannon@portla.org

With a copy to:

Joy Crose, Assistant General Counsel
City of Los Angeles, Harbor Division
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San Pedro, CA 90731
(310) 732-3750
e-mail: jcrose@portla.org

We appreciate your consideration. Thank you.

Sincerely,

Heather Tomley
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachment A:

Letters dated July 10, 2012; July 27, 2012; August 30, 2012 (which includes letter dated May 4, 2010); October 22, 2012; October 31, 2012; November 8, 2012; November 19, 2012; and November 27, 2012 from Port of Los Angeles and Port of Long Beach to SCAQMD

cc: Al Moro, Acting Executive Director Port of Long Beach
Geraldine Knatz, Executive Director Port of Los Angeles
Dominic Holzhaus, Principal Deputy City Attorney City of Long Beach
Joy Crose, Assistant General Counsel City of Los Angeles, Harbor Division
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Randall Pasek, Planning and Rules Manager, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Cynthia Marvin, Division Chief, California Air Resources Board
Elizabeth Adams, Deputy Director, U.S. Environmental Protection Agency, Region 9

ATTACHMENT 8.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

November 27, 2012

Ms. Susan Nakamura
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Ports' Comments on South Coast Air Quality Management District (AQMD) Revisions to Measure IND-01 in Draft 2012 Air Quality Management Plan

Dear Ms. Nakamura:

Thank you for the AQMD's proposed revisions to Measure IND-01, "Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities" (IND-01) in the Draft 2012 Air Quality Management Plan (AQMP). We appreciate that efforts were made by AQMD staff to address the concerns that the ports of Long Beach and Los Angeles (Ports) have raised in our various comments letters on the AQMP and in our meeting on November 15, 2012 among the Ports' staff, AQMD staff and AQMD Boardmember Judy Mitchell.

However, the ports are disappointed that the fundamental structure of Measure IND-01, to treat the ports as "stationary sources" and "indirect sources," and convert the ports' voluntary Clean Air Action Plan into enforceable regulation by AQMD, was not altered in any respect. The ports do not own or operate any of the targeted equipment, and the ports are not regulatory agencies. The ports can't accept any regulatory action by the AQMD that will result in AQMD oversight and approvals of port actions, or enforcement actions by AQMD on the ports for failure of the port industry to meet the ports' emission reduction goals. Therefore the Ports continue to object to Measure IND-01's inclusion and request that it be removed from the AQMP. Measure IND-01 contains the fatal flaw of defining the ports as stationary and indirect sources responsible for the emissions from equipment they do not regulate, own, or control. We also believe that this measure is beyond AQMD's authority.

We reiterate our prior requests that AQMD reconsider its approach and allow the continuation of the successful collaborative work by the ports, regulatory agencies and other stakeholders under the voluntary Clean Air Action Plan and San Pedro Bay Standards. Moving forward with Measure IND-01 in this current draft form will actually reduce rather than improve the future success of programs, since conversion of voluntary plans into regulation will reduce voluntary

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

cooperation by the industry with port programs, and will eliminate the ability of the ports, agencies and industry emissions sources to obtain grants to accelerate emission reductions from port industry equipment.

Thank you for your continued attention to this matter and we hope that we can continue with the successful, cooperative partnership that we have built over the past seven years.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

HAT:s

cc: AQMD Boardmember Judy Mitchell
Barry Wallerstein, South Coast Air Quality Management District
Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Chris Lytle, Port of Long Beach
Robert Kanter, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Geraldine Knatz, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 9.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

November 19, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Ports' Proposed Revision and Resolution Language for the Draft 2012 Air Quality Management Plan

Dear Dr. Wallerstein:

On November 15, 2012, staff from the ports of Long Beach and Los Angeles met with AQMD Boardmember Judy Mitchell and AQMD staff to discuss concerns and comments that have been raised by the ports in previous comment letters on the Draft 2012 Air Quality Management Plan (AQMP). At the conclusion of the meeting, it was determined that staff would continue to work together to attempt to resolve the concerns that have been raised.

In that spirit, the ports of Long Beach and Los Angeles propose the following revisions to the 2012 AQMP, consistent with our past comment letters to AQMD:

1. Measure IND-01 must be removed from the 2012 Air Quality Management Plan if it continues to apply or recommend any form of AQMD oversight and approvals of the ports' actions, or enforcement (in terms of fines, penalties, administrative actions) against the Ports for failures of the Port industry to achieve designated emissions reductions. This includes the intent to develop such enforcement actions in later IND-01 rulemaking after adoption of the AQMP, even if such details regarding enforcement activity are absent from the draft AQMP.

2. With the removal of the Measure IND-01, the following language could be added to the adopting resolution for the 2012 Air Quality Management Plan:

   BE IT FURTHER RESOLVED, the District commits to continue working with the Port of Long Beach and the Port of Los Angeles on the implementation of the San Pedro Bay Ports Clean Air Action Plan (CAAP) in order to meet the emission reduction goals identified in the San Pedro Bay Standards, and as a part of the annual report to the Board, District staff will continue to provide information on the progress of the ports in implementing the CAAP.

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BE IT FURTHER RESOLVED, if the ports do not demonstrate sufficient progress for achieving the San Pedro Bay Standards, the District will work with the ports, the other air quality regulatory agencies, and port industry emission sources that are stakeholders under the CAAP, to identify additional feasible strategies for implementation within the ports' jurisdiction.

We look forward to discussing these recommendations with you.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

HAT:s

cc: AQMD Boardmember Judy Mitchell
Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Susan Nakamura, South Coast Air Quality Management District
Robert Kanter, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 10.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

November 8, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Dear Dr. Wallerstein:

SUBJECT: COMMENTS ON THE DRAFT SOCIOECONOMIC REPORT FOR THE DRAFT 2012 AIR QUALITY MANAGEMENT PLAN

The ports of Los Angeles and Long Beach (Ports) appreciate the opportunity to comment on the South Coast Air Quality Management District's (AQMD) Draft Socioeconomic Report for the Draft 2012 Air Quality Management Plan (AQMP).

The Draft Socioeconomic Report states that "District staff performs a socioeconomic analysis of the Draft Plan in order to further inform public discussions and the decision making process of the Draft Plan." However, the Draft Socioeconomic Report shows that no cost data have been developed for Measure IND-01 – Backstop Measures for Indirect Sources of Emissions from the Ports and Port-Related Sources, despite the fact that there are real and significant costs to the Port industry to implement the emission controls that could result from the proposed Backstop Measure. Presentation of this measure to AQMD's Board, as well as the public, is incomplete without an associated socioeconomic analysis. Potential regulation of the Port could have a very significant economic effect on the region that AQMD does not address, and therefore the Ports believe that it is inappropriate to move forward with inclusion of this measure in the Draft AQMP without a full socioeconomic analysis.

By not including a socioeconomic analysis of Measure IND-01, the AQMD is completely ignoring the economic importance of the Ports. The Ports are a major economic engine for the region and nation, and port-related industry generates $5.1 billion and $21.5 billion in state and federal tax revenue, respectively. The Ports account for over 1.1 million jobs in California and 3.3 million jobs in the United States. Additionally, for every one job created by a Port customer, nearly 1.7 additional jobs are created elsewhere in the region.

Even just the potential of additional regulation of the Ports brings with it a significant uncertainty for the Port industry that may result in the diversion of goods to other ports outside of this region. There are more environmental requirements on the Port industry operating in this region than anywhere else in the world. The threat of additional regulatory requirements, especially when no details have been provided as to what those requirements would be, results in significant concerns for these operators and a significant potential for loss of regional economic benefits due to diversion. The Draft Socioeconomic Report fails to analyze this potential impact.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

Additionally, AQMD has indicated that Measure IND-01 does not have a socioeconomic analysis associated with it because there are no emission reductions associated/committed with this measure. As noted in our comment letter on the Draft AQMP dated August 30, 2012, Section 39602 of the California Health and Safety Code states that, the State Implementation Plan (SIP) shall only include those provisions necessary to meet the requirements of the Clean Air Act. Hence, there is no identified need or legal basis for implementing Measure IND-01. AQMD's proposed measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

Finally, as stated in our letter dated October 31, 2012, Measure IND-01 should not move forward because the AQMP makes a commitment to implement it before AQMD has developed or released details of its intended compliance actions against the Ports, or the socioeconomic and other analyses for such actions. Failing to disclose the AQMD's intended actions against the Ports violates due process, depriving the public and the Ports of the opportunity to adequately review and comment on this measure prior to finalizing the AQMP.

For the reasons listed above and those presented in our previous letters, the Ports reiterate our consistent position that Measure IND-01 should be eliminated from the AQMP. Further, we continue to believe that the successful, collaborative approach established by the Ports and the regulatory agencies remains the best mechanism for identifying and implementing strategies to reduce emissions from Port-related sources.

Sincerely,

CHRISTOPHER CANNON
Director of Environmental Management
Port of Los Angeles

RICHARD D. CAMERON
Director of Environmental Planning
Port of Long Beach

CC:CLP:KM:LW:myd
ADP No.: 061024-605

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Robert Kanter, Port of Long Beach
Mike Christensen, City of Los Angeles Harbor Department, Deputy Executive Director
Dominic Holzhaus, City of Long Beach, Deputy City Attorney
Joy Crose, City of Los Angeles Harbor Department, General Counsel

ATTACHMENT 11.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

October 31, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Supplemental Comments on the Revised Draft 2012 Air Quality Management Plan

Dear Dr. Wallerstein:

The Port of Long Beach and Port of Los Angeles (ports) are submitting this comment letter to add to comments previously submitted on August 30, 2012.

As members of the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) Advisory Committee, the ports have worked with AQMD staff to provide comments on the draft plan, including the emissions data being used. Included in this effort, ports' staff provided the 2008 base year emissions inventories for the port sources based on the most recent methodologies agreed upon by the Technical Working Group (TWG) in the ports' 2011 air emissions inventories.

As noted in the Draft AQMP, *"An effective AQMP relies on an adequate emission inventory."* Discrepancies exist between the emissions inventories prepared by the ports and the inventory prepared by the AQMD. The emissions shown in the Draft 2012 AQMP are different from those prepared by the ports in cooperation with the AQMD, California Air Resources Board, and Environmental Protection Agency, during development of the San Pedro Bay Standards. If the AQMD's emissions projections for achieving attainment are incorrect, the concerns expressed in our August 30 comments are greatly increased. The emissions projections drive both the Measure IND-01 analysis and the PM2.5 analysis. The basis for the Draft 2012 AQMP emissions projections is impossible to determine, because the assumptions and methodologies (including control factors and growth factors) are not disclosed.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

Additionally, it concerns the ports that the AQMP has made a commitment to Measure IND-01 before AQMD has released details of its intended implementation actions against the ports, or the socioeconomic and other analyses for such actions. Elaine Chang admitted at the AQMD's October 24, 2012, meeting that it is unknown what a port compliance plan would include and that AQMD would develop it during a future rulemaking process. This violates due process, to commit to implement an AQMP measure without disclosing what AQMD's actions against the ports will be under the backstop measure, as it deprives the public and the ports of the opportunity to review and comment to influence the decision, prior to committing to it in the AQMP.

This further demonstrates that the collaborative process established by the ports and the air quality regulatory agencies remains the most appropriate forum to identify and implement strategies to reduce emissions from port-related sources.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

AT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Randall Pasek, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Robert Kanter, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 12.

October 22, 2012

Jeff Inabinet
c/o Office of Planning, Rule Development, and Area Sources/CEQA Facilities
South Coast Air Quality Management District Development and Planning Branch
21865 Copley Drive
Diamond Bar, CA 91765-4182

Subject: Draft 2012 AQMP Program Environmental Impact Report

Dear Mr. Inabinet:

The Port of Long Beach (POLB) and Port of Los Angeles (POLA) appreciate the opportunity to comment on the Draft Program Environmental Impact Report (Draft EIR) developed for the 2012 Air Quality Management Program (AQMP). The ports appreciate that AQMD staff took steps to address the scoping comments provided by the ports, specifically the inclusion of a transportation and traffic impact analysis as part of the Draft EIR.

However, the ports must reiterate their concerns relating to AQMP Control Measure IND-01 (Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources). As the AQMD knows from prior comment letters submitted by the ports (please see AQMP comment letters dated August 30, 2012; July 10, 2012; and May 4, 2010), the ports believe that Measure IND-01 exceeds the AQMD's authority and should not be included in the AQMP for the reasons set forth in the referenced letters.

Measure IND-01 also contains various flaws which contribute to the inadequacy of the Draft EIR and failure to comply with the California Environmental Quality Act (CEQA). First, Measure IND-01, as described in the project description of the Draft EIR and in the AQMP itself, is unconstitutionally vague and lacks sufficient description of exactly what it proposes to impose on the ports or substantial evidence in support. The Draft EIR's failure to describe the project fully makes it impossible for AQMD, the ports, or the public to assess its 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. Because of the importance and consequences of the AQMP to the State of California's State Implementation Plan (SIP) if adopted by California Air Resources Board (ARB), and to the Federal Clean Air Act enforcement if approved by the U.S. Environmental Protection Agency (EPA), the AQMD is required to fully disclose the details of Measure IND-01 before adoption, and CEQA requires a full disclosure and discussion, which AQMD has failed to do.

Second, to the extent the AQMD intends to approve the Draft EIR and AQMP containing the vague current version of Measure IND-01, and later, as a part of future rulemaking, provide details regarding its proposed actions against the ports including an environmental assessment, that would be segmentation or piecemealing of its CEQA analysis.

Third, Measure IND-01 has serious problems of infeasibility which the Draft EIR has failed to analyze at all. Measure IND-01 in effect attempts to convert the ports' various aspirational goals, set forth in their voluntary Clean Air Action Plan (CAAP), into enforceable regulation against the ports. However, the CAAP goals depend upon future technology advancement which has not yet occurred, all of which are beyond the control of the ports. Therefore, there are technology feasibility issues with the AQMD making the ports' goals into required emissions limits. Further, as the ports are not air regulators and they do not themselves own, operate, or control the emissions equipment operated by the port industry, there are legal feasibility questions over the ports' ability to exercise authority to carry out the actions of Measure IND-01. There are also serious legal feasibility questions including federal preemption asserted by railroads in connection with locomotive specifications and rail operations, and international preemption asserted over ocean vessels. The Draft EIR is flawed in its failure to discuss these infeasibility issues, and had it done so, it would lead to the conclusion that Measure IND-01 should be removed from the AQMP.

Fourth, the AQMD has concluded in the air quality analysis that specific measures associated with Measure IND-01 "are unknown, and therefore the impacts are speculative," (see page 4.2-7 of Draft EIR). This is yet another reason why the Draft EIR is flawed. CEQA Guidelines Section 15145 specifies that if, after thorough investigation, a Lead Agency finds that a particular impact is too speculative for evaluation the agency should note its conclusion and terminate discussion of the impact. Instead, the AQMD proceeded to analyze secondary impacts to air quality that are based on speculative assumptions regarding construction emissions, energy demand, and operations.

Lastly, to the extent that Measure IND-01 proposes to impose upon the ports a form of enforcement for port industry's failure to meet the CAAP's target emissions reduction goals, when the ports do not own, operate, or control the emissions sources, it violates constitutional limitations requiring that exactions imposed on a party must be proportional to the party's contribution, when it fails to include all parties involved in the CAAP, including the actual emissions sources.

Given these deficiencies and speculation under CEQA and with the AQMP rulemaking, Measure IND-01 should be removed from the final EIR and the AQMP, and the analysis should be revised accordingly. With this change, the ports can support the revised AQMP and can continue to work with AQMD, other agencies, and the port industry in the collaborative manner that has made the ports' voluntary CAAP a success.

Thank you for considering the above comments. If you have any questions, please contact Dylan Porter, Port of Long Beach, at (562) 283-7100 or Lisa Wunder, Port of Los Angeles, at (310) 732-7688.

Sincerely,

Richard D. Cameron
Director of Environmental Planning, Port of Long Beach

Christopher Cannon
Director of Environmental Management, Port of Los Angeles

DP:s

cc: Elaine Chang, South Coast Air Quality Management District
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 13.

August 30, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Comments on the Draft 2012 Air Quality Management Plan

Dear Dr. Wallerstein:

The Port of Long Beach and Port of Los Angeles (Ports) appreciate the opportunity to serve on the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) Advisory Committee. We support the AQMD's clean air goals and have a proven leadership record of developing and implementing appropriate and effective strategies that have resulted in the port-related goods movement industry's achievement of real and dramatic emissions reductions. Although the Ports do not own or control the emission sources, the Ports have worked cooperatively with business operators in the port area and the air quality regulatory agencies (i.e. Environmental Protection Agency, California Air Resources Board, and AQMD) to help the port industry reduce its fair share of air quality impacts to the region from port-related operations, as outlined in the San Pedro Bay Ports Clean Air Action Plan (CAAP) and the associated San Pedro Bay Standards. As a result, between 2005 and 2011 emissions from port-related sources were reduced by 73 percent for diesel particulate matter (DPM) and by 50 percent for nitrogen oxides (NOx). The Ports' San Pedro Bay Standards for 2014 established goals to reduce port-related DPM by 72 percent and NOx by 22 percent. Therefore, as a result of implementation of aggressive actions by the port industry, port-related emission reductions have exceeded our goals several years ahead of schedule.

While we remain a committed partner in the effort to improve air quality in the region, we have significant concerns with several proposed control measures in the Draft 2012 AQMP that improperly misclassify the Ports as "stationary sources" or "indirect sources" under AQMP Stationary Source measures, or as "implementing agencies" of specific AQMP mobile source measures. In particular, the proposed Stationary Source Measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources" contains many legal flaws, as explained in greater detail below, and inappropriately proposes to impose enforcement actions on the Ports for emissions generated by emissions sources that the Ports do not own,

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

operate, or control, which is counterproductive to the cooperative relationship that our agencies have established since we began working together on the voluntary CAAP in 2006.

This letter provides the Ports' specific comments on the control measures in the Draft 2012 AQMP that we believe must be addressed prior to finalization and adoption by your agency.

Proposed Stationary Source Measure IND-01

There are three fundamental problems with Proposed Measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources." First, the proposed backstop rule would transform the Ports' voluntary CAAP into the AQMD's mandatory regulation of the Ports. This would jeopardize the Ports and the Port-related emissions sources' grant funding for equipment replacement and modernization if it is now necessary to comply with regulation, while offering nothing to assist the Ports with compliance in terms of additional technologies, facilitating regulations, tools, or funding. Second, although the CAAP was a voluntary cooperative effort of the Ports and the air agencies designed to encourage the industry operators of regulated equipment to go beyond regulation, the proposed backstop rule would improperly subject the Ports to the AQMD's enforcement action for industry's missed emissions reductions by equipment not operated or controlled by the Ports, or even potential loss of federal funding under federal conformity principles if the AQMP is adopted into the State Implementation Plan (SIP) and approved by the U.S. EPA as federal law. Third, the proposed backstop rule exceeds the AQMD's authority and if implemented may violate the State Tidelands Trust. If Measure IND-01 (as well as the Offroad Mobile Source Measures discussed below) are in reality the AQMD's regulation of Port-related mobile emissions sources such as locomotives, ships, rail, and trucks, then this is beyond AQMD's legal authority and AQMD should obtain a waiver under the Clean Air Act from the U.S. EPA. The Ports provide further detailed comments on Proposed Measure IND-01 below, and object to it being included in the 2012 AQMP.

Based upon the AQMD's modeling results, existing control measures are expected to result in attainment of the Federal 24-hour PM2.5 standard by the 2014 deadline without Measure IND-01. Section 39602 of the California Health and Safety Code states that the State Implementation Plan (SIP) shall only include those provisions necessary to meet the requirements of the Clean Air Act. Hence, there is no identified need or legal basis for implementing Measure IND-01. The AQMD's proposed measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

The Ports are neither "direct emissions sources" nor "stationary sources" subject to AQMD permitting, and the AQMD has not complied with requirements for regulation under Health and Safety Code. The Ports are also not "indirect sources" subject to an AQMD indirect source review program within the meaning of the Clean Air Act, and the AQMD has not complied with requirements of the Clean Air Act, 42 U.S.C. §7410 and various other requirements for indirect source classification. The Ports are also not air agency regulators. The Ports do not own, operate, regulate, or control any of the goods movement equipment serving the Ports that are

targeted emissions sources under Measure IND-01. Additionally, the equipment are mobile sources regulated by state, federal, and/or international regulation, sometimes under jurisdiction preempting Port or AQMD action. It is inappropriate for the AQMD to regulate the Ports without the Ports' ownership, operation, or jurisdiction to regulate the various industry businesses actually causing the emissions within our boundaries.

The proposed backstop measure continues to state that if there is a South Coast Air Basin-wide shortfall in emission reductions, then the AQMD will mandate additional emission reductions from the Ports, even if the port-related sources have already met their commitments. This moving target standard is unconstitutionally vague and therefore illegal. The Ports are unfairly targeted, as there are no backstop measures proposed for other entities or source categories should other modeling assumptions not come to pass, such as anticipated natural fleet turnover, or other non-regulated initiatives failing to meet their goals, such as those expected by the Carl Moyer Program. If the AQMD's emissions projections for achieving attainment are incorrect, including control factors and growth rates, this measure appears to imply that the Ports will be specifically tasked with rectifying the shortfall. If the Basin fails to achieve the federal air quality standard, the proper channel to address this is through the established SIP process, not to establish a contingency rule to unfairly burden one specific industry out of the entire Basin.

AQMD staff has indicated that Measure IND-01 is proposed to account for measures that are not backed by enforceable requirements. However, significant programs such as the CAAP's Clean Truck Program, Ocean-going Vessel Low Sulfur Fuel Program, Cargo-handling Equipment requirements, and the Shore-side Power/Alternative Maritime Power programs are currently backstopped by CARB and International Maritime Organization (IMO) regulations. The Ports also require higher rates of vessel or equipment compliance than regulation through terminal leases, when such commercial opportunities are able to be negotiated with tenants. Therefore, Proposed Measure IND-01 is unnecessary.

Measure IND-01 is vague and incomplete. It is unclear whether the AQMD has taken credit for actual/current emission reductions in the baseline only, or if assumptions have been made for future year reductions. We take issue with a measure moving forward where emissions projections are "on-going." Further, no detail is provided on the level of emission reductions that are needing to be maintained. This is further complicated by the differences that exist between the emissions inventories produced by the Ports and the inventory used for the AQMP. It is unclear if a specific emission reduction shortfall will trigger implementation of the measure, or if it is simply left to the discretion of the AQMD. Additionally, the control costs have not yet been developed or justified in a cost-benefit analysis.

The CAAP is a planning document that provides a guideline of strategies and targets that are often "stretch goals," which ultimately are implemented through individual actions adopted by the Long Beach and Los Angeles Boards of Harbor Commissioners (Boards). The Ports are sovereign Tidelands granted to the cities of Los Angeles and Long Beach by the state under the oversight of the State Lands Commission. Each city has been appointed as a trustee and has established their respective Board of Harbor Commissioners with exclusive control and management of the Tidelands and revenues and expenditures from the Tidelands. However,

such discretion must be exercised in accordance with their obligations to prudently manage Tidelands assets and revenues within a nexus and proportionality to the Tidelands Trust interests, as well as in accordance with applicable laws such as the California Environmental Quality Act (CEQA) and principles of federal preemption.[1] The AQMD cannot mandate action by each Port's Board of Harbor Commissioners, nor can the AQMD direct how the Ports obligate state Tidelands money; only the appointed trustee can make discretionary actions to obligate state Tidelands funds. Specifically, the CAAP measures listed in the Draft 2012 AQMP each require the Boards to authorize the expenditure of incentive monies and program costs, or to approve conditions of infrastructure project development in their discretion as CEQA lead agency and as Tidelands trustees.

We strongly believe that the voluntary and cooperative CAAP process established by the Ports remains the most appropriate forum for the Ports and the air regulatory agencies to discuss technical and policy issues related to reducing emissions from port-related sources. As stated above, we remain committed to achieving the clean air goals identified in the CAAP and working with port industry and the air regulatory agencies on implementation of appropriate strategies.

For your reference, attached is our comment letter dated July 10, 2012, expressing our preliminary concerns related to the proposed Measure IND-01 and a comment letter dated May 4, 2010, in which the Ports initially expressed concerns regarding backstop rules.

Proposed Off-Road Mobile Source and Advanced Control Technology Measures

The Draft 2012 AQMP also identifies the San Pedro Bay Ports as "Implementing Agencies" for several of the proposed Off-Road measures (OFFRD-02, OFFRD-04, and OFFRD-05) and Advanced Control Technology measures (ADV-01, ADV-02, ADV-03, ADV-04, and ADV-05). The Ports should not be listed as Implementing Agencies, which the AQMP Appendix IV-A defines as "the agency(ies) responsible for implementing the control measure." While the Ports have been moving forward with voluntary efforts in these areas, as mentioned above, the Ports are not air agency regulators. We also do not own or operate the equipment identified in the proposed measures, and therefore we do not have direct control over any of the sources listed. During the Advisory Committee meetings, AQMD staff has provided clarification that the Ports are listed as Implementing Agencies because of our voluntary commitments to work on these

[1] The Ports' experience with the first phase of the 2006-2010 CAAP showed that in actual implementation, many CAAP measures were carried out in a different manner than originally conceptualized, or not carried out at all, based on limitations on the Boards' opportunities and their exercise of their discretion to manage Tidelands assets and funds under real-world circumstances. Some of the CAAP measures can only be implemented if businesses apply to the Ports for permits to build or expand their lease premises and CEQA mitigation required by law or lease conditions that can be negotiated with a Port tenant. Other CAAP measures involve emissions sources (rail or ocean vessels) that may assert federal preemption against efforts to compel use of specific technology, so the CAAP goals involve the Ports offering economic incentives in voluntary compliance programs, such as the Ocean Vessel incentive programs. However, only the Boards have the legal authority to fund such incentives or impose CEQA mitigation or lease conditions to project approval, which decisions also fall within the Boards' sole discretion regarding their respective Port's properties and their individual Harbor Revenue Fund budgets, which may be affected by the global economy.

efforts, and that being listed as an implementation agency does not obligate the Ports to any specific requirement, however, this is contrary to the language of the AQMP that implementing agencies are "responsible for implementing the control measure." We believe that listing the Ports, and not including all of the other public and private partners that are also working on these efforts, gives the impression that the Ports do have an assigned obligation, or that the Ports must bear a larger burden in the effort to implement these programs. We also repeat our comment stated above that the AQMD cannot mandate in the AQMP that the Ports must expend monies in these voluntary efforts, since most of these Off-Road and Advanced Control Technology measures require incentive monies to fund demonstration projects or accelerated use of new technology.

We believe that the appropriate Implementing Agencies for these measures are the United States Environmental Protection Agency and the California Air Resources Board.

The Ports urge AQMD to make all of the above-requested changes to the draft 2012 AQMP, in particular, to eliminate Measure IND-01 Port Backstop Rule as a legally unnecessary measure exceeding AQMD's authority and violating the State Tidelands Trust. We believe it is much more effective to advance our mutual clean air goals for our agencies to continue working cooperatively together, but if the AQMD takes the above 2012 AQMP measures forward, the Ports will have no choice but to vigorously oppose such action through the administrative and legal process.

Sincerely,

Chris Lytle
Executive Director
Port of Long Beach

Geraldine Knatz
Executive Director
Port of Los Angeles

HAT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Susan Nakamura, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Port of Long Beach Harbor Commission
Port of Los Angeles Harbor Commission
Robert Kanter, Port of Long Beach
Rick Cameron, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Chris Cannon, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles
David Reich, Los Angeles City Mayor's Office

ATTACHMENT 14.

July 10, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Initial Comments on the Proposed 2012 Air Quality Management Plan, Control Measure IND-01

Dear Dr. Wallerstein:

The Port of Long Beach and Port of Los Angeles (Ports) appreciate the opportunity to participate in the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) Advisory Committee. We support the AQMD's clean air goals and have worked aggressively with the port industry to reduce our fair share of air quality impacts to the region from port-related operations, as outlined in the San Pedro Bay Ports Clean Air Action Plan (CAAP) and the associated San Pedro Bay Standards. As a result, between 2005 and 2010, emissions from port-related sources were reduced by 70 percent for diesel particulate matter and by 49 percent for nitrogen oxides. Emissions inventory work currently underway indicates additional, continued emission reductions in 2011.

While we continue to remain a committed partner in the effort to improve air quality in the region, we disagree with AQMD's proposed control strategy for port-related sources in the Draft 2012 AQMP. The inclusion of proposed measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources," is unnecessary and counter-productive.

The two Ports have a proven track record of developing and implementing appropriate and effective emission reduction strategies. These efforts have been entered into voluntarily, working cooperatively with operators in the port area and the air quality regulatory agencies (i.e. Environmental Protection Agency, California Air Resources Board and AQMD). Since the Ports initially implemented the CAAP, many of the port-related control strategies have been or will be superseded by state or international requirements, such as the rules for replacing drayage trucks, switching to cleaner marine fuels, and using shore power while at berth. The Ports' emissions inventories in 2010 show reductions that are meeting or are in excess of the emission reductions that the Ports committed to in the San Pedro Bay Standards. However, it is important to note that in order to remain on track to meet the Standards, a collaborative and concerted effort with our agency partners is essential, with the understanding that while the Ports can achieve significant emission

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

reductions, no single entity can accomplish this task. The previous State Implementation Plan identified several regulatory strategies that have not yet materialized into regulations for various reasons. Moving forward, the Ports will need agency assistance, particularly on the development and deployment of zero-emission technologies and at-berth controls for non-regulated vessels, as well as on the preferential deployment of cleaner vessels to the basin.

The Ports are sustaining and growing long-standing successful CAAP programs, such as the Vessel Speed Reduction Incentive Program and, on July 1, 2012, the Ports implemented new, groundbreaking incentive programs to encourage cleaner ocean-going vessels to call at the Ports. With programs such as these, along with the above-referenced regulatory rules becoming effective and ensuring significant additional emission reductions by 2014, there is no identified need for implementing a backstop measure. The AQMD's proposed backstop measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

It is inappropriate for the AQMD to attempt to regulate the Ports, which are the Harbor Departments of the cities of Long Beach and Los Angeles, in an attempt to control emissions from equipment within our boundaries, but which we do not own or operate. Further, the proposed backstop measure identifies that the "…requirements will be triggered if the reported emissions for 2014 for port-related sources exceed the 2014 target milestone, *or the Basin fails to meet the 24-hour PM2.5 standard as demonstrated in the 2012 AQMP and basin-wide reductions are needed, in which case a new reduction target for each pollutant will be established*." (emphasis added). While clarification has been provided by AQMD staff that any effort to make up for a basin-wide shortfall will be the responsibility of all sectors, not just the Ports, this statement still implies that if the port industry meets their targeted emission reductions, but other sectors fail to meet their fair share obligations, then the AQMD will mandate additional reductions from the Ports. This is counter to the cooperative relationship that our agencies have established since we began working together on the CAAP in 2006, and ignores the tremendous air quality benefits that have been gained from voluntary actions.

Lastly, based on the preliminary calculations by AQMD, the majority of the region is expected to be in attainment for PM2.5 by the target year of 2014, with the remainder anticipated to be in attainment by the expected extension date of 2019. The inclusion of IND-01 is therefore unnecessary for the region to reach attainment. If these emission reductions are needed in the baseline emissions calculation, there is precedent for mechanisms other than control measures to be used for this purpose, and we would like to discuss those options with your staff.

We strongly believe that the voluntary and cooperative CAAP process established by the Ports remains the most appropriate forum for the Ports and the air regulatory agencies to discuss technical and policy issues related to reducing emissions from port-related sources. As stated above, we remain committed to achieving our fair share of clean air goals identified in the CAAP and working with port industry and the air regulatory agencies on implementation of appropriate strategies.

For your reference, attached is a comment letter dated May 4, 2010, in which the Ports initially expressed concerns regarding backstop rules. The letter was submitted as a public comment on the proposed Rules 4010 and 4020, which were proposed backstop rules for health risk and criteria pollutant emissions.

We look forward to working with AQMD on resolving our concerns related to the proposed backstop measure in the Draft 2012 AQMP.

Sincerely,

CHRIS LYTLE
Executive Director
Port of Long Beach

MICHAEL R. CHRISTENSEN
Deputy Executive Director, Development
Port of Los Angeles

HAT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Susan Nakamura, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Robert Kanter, Port of Long Beach
Rick Cameron, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Chris Cannon, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 15.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

San Pedro Bay Ports Clean Air Action Plan

May 4, 2010

Susan Nakamura
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Subject: AQMD Proposed Rules 4010 and 4020

Dear Ms. Nakamura:

This letter is on behalf of the Ports of Long Beach and Los Angeles (Ports) as a preliminary response to the "backstop" Rules 4010 and 4020 (Proposed Rules) proposed by the South Coast Air Quality Management District (AQMD). As will be explained below, based upon the limited amount of information released by the AQMD about the Proposed Rules thus far, the Ports have a number of preliminary questions and concerns at this stage of the first public consultation meeting and will be providing more detailed comments on the Proposed Rules at a later stage.

The Ports have had tremendous success with implementing the San Pedro Bay Port Clean Air Action Plan (CAAP). The development of the original CAAP and the update to the CAAP has been conducted through a cooperative effort with staff from the AQMD, the United States Environmental Protection Agency (EPA), and the California Air Resources Board (CARB). The Ports strongly believe that this partnership of over four years, and the collaboration that has occurred throughout that time, have aided in the success of the CAAP and the emissions reductions that have been achieved.

Since the CAAP was adopted in late 2006, the Ports have exceeded our interim emissions reductions milestones and are well on our way to meeting the original forecasted emissions reductions of at least 45% by 2011, compared to uncontrolled conditions. This has been accomplished through the steadfast implementation of CAAP measures, highlighted as follows:

- Development, approval, and implementation of the Clean Trucks Program in which two major milestones have been achieved resulting in truck pollution reductions of nearly 80% (January 2010), almost two years ahead of schedule (HDV1).
  - October 2008: ban pre-1989 trucks.
  - January 2010: ban pre-1993 trucks; 1994-2003 trucks require Level 3 plus NO_x retrofit.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

- Facilitated construction of an LNG on-road truck fueling station in the port area. Fueling operations have been underway since early 2009. In addition the Ports have contributed to funding the construction of two additional LNG on-road truck fueling stations in the Port area, due to open later in 2010 (HDV2).
- Over $6.5 million in incentives for vessels participating in the voluntary Vessel Speed Reduction Program and Vessel Fuel Incentive Program (OGV1, OGV4).
- Design, construction, and operation of shore power infrastructure completed at 5 berths and underway for over 40 additional berths (OGV2).
- Replaced entire fleet of port switching locomotives with new, cleaner locomotives in 2008, and a subsequent fleet turnover to cleaner locomotives anticipated by end of 2011 (RL1).
- Provided funding of $5.4 million toward projects through our Technology Advancement Program, conducted with input from an Advisory Committee consisting of AQMD, EPA, and CARB.
- The Ports' 2008 Emissions Inventories show combined emission reductions of 20% diesel particulate matter (DPM), 10% nitrogen oxides (NOx) and 24% sulfur oxides (SOx) compared to the 2005 baseline. The 2009 Emissions Inventories, which are expected to be finalized and published in June, will show an even greater level of emission reductions as additional CAAP efforts have come into effect.

In addition to the implementation efforts listed above, the Ports have also worked in coordination with CARB and EPA on development of rules and regulations affecting port sources. These regulatory requirements have helped to ensure that emissions reductions from specific equipment types operating at the Ports will continue into the future. The Ports look forward to continuing these cooperative efforts on regulatory development with CARB and EPA, with the support of AQMD, to ensure that the early action measures being taken by the Ports are supported and implemented more broadly.

Further, as you are aware, the Ports recently released our draft CAAP Update, where we revisited and updated each of the control measures and proposed aggressive, long-term goals for emissions reductions and health risk reductions, titled the San Pedro Bay Standards. Once the CAAP Update is adopted, the Ports will quantitatively measure our progress against these long-term goals and will make adjustments to our implementation efforts over time as necessary to ensure that we remain on track for achieving these goals.

With these demonstrated results carried out voluntarily, and further efforts underway, the Ports regard the AQMD's proposed Rules 4010 and 4020 as unnecessary, and raise several questions regarding the Proposed Rules and the rulemaking process. Below is a list of preliminary questions to help us gain a better understanding of the AQMD's proposed approach:

Emissions and Health Risk Reduction Targets

Proposed Rule 4020 Sections (d) (1) and (2) will include targets for criteria pollutant and health risk reductions to be met by the Ports to avoid triggering the backstop provisions. The Ports have the following concerns and questions regarding the targets:

1. How were the targets developed? In June 2007, the Ports provided AQMD with detailed comments and concerns regarding the methodology and the specific port-related emission reduction targets contained in the 2007 Air Quality Management Plan (AQMP). CARB declined to adopt the port targets into the 2007 State Implementation Plan (SIP). In the AQMD Governing Board's resolution adopting the 2007 AQMP, it committed that AQMD staff would work with the Ports and, based on its technical review, would recommend any appropriate adjustments to the AQMP criteria pollutant targets attributable to the Ports. Although initial coordination efforts have occurred, the AQMD has not completed detailed analyses necessary for the Ports to understand how the AQMP targets and the targets contained in the Proposed Rules have been developed, or to understand how these targets differ from the Emission Reduction Standards contained in the Draft 2010 CAAP Update. We request that the AQMD present the methodology and resulting targets to a Stakeholder Working Group, including the Ports, before progressing further with the rulemaking process. Further, to the extent that the targets in proposed Rule 4020 go beyond the 2007 SIP/AQMP targets to address future regulations that have not yet been adopted, the Ports have even greater concerns.

2. The Emission Reduction Standards contained in the Draft 2010 CAAP Update were developed by the Ports in coordination with the EPA, CARB, and AQMD. Achievement of these Standards will require aggressive implementation of strategies by the Ports and the port operators. Further, the Standards are predicated on a conservative 2007 cargo forecast developed before the recent economic crisis and assume that the Ports reach capacity in 2023. Instead, there has been a significant downturn in cargo volumes from 2008 to present, such that the Ports do not anticipate returning to 2007 cargo throughput levels until 2014-2015, and reaching capacity until approximately 2035. This has reduced the Ports' emissions footprint, as well as potentially reduced the Ports' proportion of basin-wide pollution. Nonetheless, to be conservative and to voluntarily strive to ensure a "fair share" contribution of port-related sources to regional attainment goals, the Ports retained the higher growth forecast in the CAAP. It is important to note that, even with these higher than anticipated rates of future emissions growth, the Ports project DPM reductions greater than 70%, SOx reductions greater than 90%, and NOx reductions of nearly 60% by 2023.

3. The 2007 SIP identified several regulatory and technology strategies to be undertaken by EPA and CARB to contribute to the reduction in port-related emissions. This is consistent with the philosophy that achieving emission reductions from port-related sources must be a cooperative partnership effort, because no one entity can meet the need by itself. Since the 2007 SIP was developed, for various reasons including technical feasibility, technology availability, and cost-effectiveness, several key federal and state regulatory and technology strategies have failed to occur. These include, but are not limited to: commercial availability of Tier 4 line haul and switcher locomotive engines in 2012, implementation of a statewide regulation requiring use of shoreside power for all vessel types while at berth, and implementation of a statewide regulation requiring retrofitting of existing ocean-going vessels and the preferential deployment of progressively cleaner new build vessels to California ports. The Ports are concerned that the emission reductions associated with these proposed EPA and CARB strategies are now being fully assigned to the Ports through the proposed targets in order to make the

SIP "whole," even though the strategies may not be technically feasible and/or cost-effective. Further, as you know, the Ports do not own or operate the emissions sources targeted by this regulation and the Ports may not have implementation mechanisms available within their jurisdiction to implement the controls even if they were deemed feasible and cost-effective.

DISTRICT RULEMAKING PROCESS

The Ports have a number of initial questions geared towards gaining a better understanding of AQMD's intended rulemaking process for the Proposed Rules.

4. As suggested above, will the AQMD form a Stakeholder Working Group, including the Ports, to discuss the AQMD's Proposed Rules and analysis?

5. What is the AQMD's authority for regulating the Ports under the Proposed Rules?

6. The Ports would like to understand what level of CEQA analysis the AQMD is proposing for this rulemaking. Will there be a scoping meeting?

7. When will the AQMD release a Preliminary Draft Staff Report (PDSR)? Given the unprecedented nature and broad technical, practical, regulatory, and legal implications of these Proposed Rules, we believe that the PDSR must be very detailed or the Ports, air agencies, and other stakeholders will not have the information necessary to participate fully in the rule development process. We request that the PDSR include:
    a. Technical analysis of the Proposed Rules, targets, etc.
    b. An analysis of potential Draft Findings required under Health and Safety Code (e.g., Necessity, Authority, Clarity, Consistency, Non-Duplication, and References)
    c. Detailed information on control technologies and programs that the AQMD believes the Ports and affected sources would need to implement to meet the proposed rule reduction requirements.
    d. As part of cost-effectiveness analysis, detailed information on the feasibility, control effectiveness, and costs of these technologies and programs, including who would bear those costs. The AQMD should work with the Ports, their tenants, and others in the goods movement industry to estimate these costs.
    e. A preliminary Socioeconomic Impact Report (SIR) based on input from the Ports, their tenants, and other affected industries. Given the broad implications to the region's economy, the Ports recommend a detailed preliminary SIR be prepared and released with the PDSR.
    f. AQMD's proposal for how it will specifically apply the scheme of fines, penalties, or other enforcement provisions of the Health and Safety Code to the Ports to enforce the Proposed Rules, including providing an understanding of how the enforcement action would be assessed, given that the Ports are two separate and distinct departments of their respective cities.

The Ports look forward to receiving AQMD's responses to these preliminary questions. We will follow up with additional questions and comments later, as more information is provided by AQMD on the proposed rules.

The Ports are committed to achieving aggressive and feasible emissions reductions and health risk reductions from port-related sources, and have already proven that such reductions can be achieved while allowing the Ports to continue to move forward as a strong economic engine for the region. The Ports remain committed to implementing the CAAP and working in cooperation with the agencies and the industry to achieve our goals. We believe the Proposed Rules are unnecessary and that the AQMD should consider alternative mechanisms to achieve the AQMD's goals. We bring to your attention that the Bay Area AQMD initiated a backstop measure but ultimately determined to pursue a Memorandum of Agreement approach for similar work with the Bay Area ports.

If you have any questions regarding this correspondence, please contact Heather Tomley, Assistant Director of Environmental Planning, Port of Long Beach, at (562) 590-4160; or Christopher Patton, Environmental Affairs Officer, Port of Los Angeles, at (310) 732-3677.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Director of Environmental Management
Port of Los Angeles

cc: Dick Steinke, Executive Director, POLB
Geraldine Knatz, Executive Director, POLA
Mike Christensen, Deputy Executive Director, POLA
Robert Kanter, Managing Director, POLB
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 16.

FINAL 2012 AIR QUALITY MANAGEMENT PLAN

DECEMBER 2012

TABLE 4-2

List of District's Adoption/Implementation Dates and Estimated Emission Reductions from Short-Term PM2.5 Control Measures

NUMBER	TITLE	ADOPTION	IMPLEMENTATION PERIOD	REDUCTION (TPD)
CMB-01	Further NOx Reductions from RECLAIM [NOx] –*Phase I (Contingency)*	2013	2014	2-3 [a]
BCM-01	Further Reductions from Residential Wood Burning Devices [PM2.5]	2013	2013-2014	7.1 [b]
BCM-02	Further Reductions from Open Burning [PM2.5]	2013	2013-2014	4.6 [c]
BCM-03 (*formerly BCM-05*)	Emission Reductions from Under-Fired Charbroilers [PM2.5]	Phase I – 2013 (*Tech Assessment*) Phase II - TBD	TBD	1 [d]
BCM-04	Further Ammonia Reductions from Livestock Waste [NH3]	Phase I – 2013-2014 (*Tech Assessment*) Phase II - TBD	TBD	TBD [e]
~~IND-01 (*formerly MOB-03*)~~	~~Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources [NOx, SOx, PM2.5]~~	~~2013~~	~~12 months after trigger~~	~~N/A~~ [f]
EDU-01 (*formerly MCS-02, MCS-03*)	Further Criteria Pollutant Reductions from Education, Outreach and Incentives [All Pollutants]	Ongoing	Ongoing	N/A [f]
MCS-01 (*formerly MCS-07*)	Application of All Feasible Measures Assessment [All Pollutants]	Ongoing	Ongoing	TBD [e]

a. Emission reductions are included in the SIP as a contingency measure.
b. Winter average day reductions based on episodic conditions and 75 percent compliance rate.
c. Reductions based on episodic day conditions.
d. Will submit into SIP once technically feasible and cost effective options are confirmed.
e. TBD are reductions to be determined once the technical assessment is complete, and inventory and control approach are identified.
f. N/A are reductions that cannot be quantified due to the nature of the measure (e.g., outreach, incentive programs) or if the measure is designed to ensure reductions that have been assumed to occur will in fact occur.

requirements regarding manure removal, handling, and composting; however, the rule does not focus on fresh manure, which is one of the largest dairy sources of ammonia emissions. An assessment will be conducted to evaluate the use of sodium bisulfate (SBS) at local dairies to evaluate the technical and economic feasibility of its application, as well as potential impacts to ground water, and the health and safety of both workers and dairy stock. Reducing pH level in manure through the application of acidulant additives (acidifier), such as SBS, is one of the potential mitigations for ammonia. SBS is currently being considered for use in animal housing areas where high concentrations of fresh manure are located. Research indicates that best results occur when SBS is used on "hot spots". SBS can also be applied to manure stock piles and at fencelines, and upon scraping manure to reduce ammonia spiking from the leftover remnants of manure and urine. SBS application may be required seasonally or episodically during times when high ambient PM2.5 levels are forecast.

Multiple Component Sources

There is one short-term control measure for all feasible measures.

MCS-01: APPLICATION OF ALL FEASIBLE MEASURES ASSESSMENT: This control measure is to address the state law requirement for all feasible measures for ozone. Existing rules and regulations for pollutants such as VOC, NOx, SOx and PM reflect current best available retrofit control technology (BARCT). However, BARCT continually evolves as new technology becomes available that is feasible and cost-effective. Through this proposed control measure, the District would commit to the adoption and implementation of the new retrofit control technology standards. Finally, staff will review actions taken by other air districts for applicability in our region.

Indirect Sources

This category includes a proposed control measure carried over from the 2007 AQMP (formerly MOB-03) that establishes a backstop measure for indirect sources of emissions at ports.

~~**IND-01 BACKSTOP MEASURE FOR INDIRECT SOURCES OF EMISSIONS FROM PORTS AND PORT-RELATED SOURCES:** The goal of this measure is to ensure that NOx, SOx and PM2.5 emissions reductions from port-related sources are sufficient to attain the 24-hr federal PM2.5 ambient air quality~~

~~standard. If emission levels projected to result from the current regulatory requirements and voluntary reduction strategies specified by the Ports are not realized, the 24-hr federal PM2.5 ambient air quality standard may not be achieved. This control measure is designed to ensure that the necessary emission reductions from port-related sources projected in the 2012 AQMP milestone years are achieved or if it is later determined through a SIP amendment that additional region-wide reductions are needed due to the change in Basin-wide carrying capacity for PM2.5 attainment. In this case, the ports will be required to further reduce their emissions on a "fair-share" basis.~~

Educational Programs

There is one proposed educational program within this category.

EDU-01: FURTHER CRITERIA POLLUTANT REDUCTIONS FROM EDUCATION, OUTREACH AND INCENTIVES: This proposed control measure seeks to provide educational outreach and incentives for consumers to contribute to clean air efforts. Examples include the usage of energy efficient products, new lighting technology, "super compliant" coatings, tree planting, and the use of lighter colored roofing and paving materials which reduce energy usage by lowering the ambient temperature. In addition, this proposed measure intends to increase the effectiveness of energy conservation programs through public education and awareness as to the environmental and economic benefits of conservation. Educational and incentive tools to be used include social comparison applications (comparing your personal environmental impacts with other individuals), social media, and public/private partnerships.

PROPOSED PM2.5 CONTINGENCY MEASURES

Pursuant to CAA section 172(c)(9), contingency measures are emission reduction measures that are to be automatically triggered and implemented if an area fails to attain the national ambient air quality standard by the applicable attainment date, or fails to make reasonable further progress (RFP) toward attainment. Further detailed descriptions of contingency requirements can be found in Chapter 6 – Clean Air Act Requirements. As discussed in Chapter 6 and consistent with U.S. EPA guidance, the District is proposing to use excess air quality improvement from the proposed control strategy, as well as potential NOx reductions from CMB-01 listed above, to demonstrate compliance with this federal requirement.

The Final 2012 AQMP relies on a set of five years of particulate data centered on 2008, the base year selected for the emissions inventory development and the anchor year for the future year PM2.5 projections. In July, 2010, U.S. EPA proposed revisions to the 24-hour PM2.5 modeling attainment demonstration guidance. The new guidance suggests using five years of data, but instead of directly using quarterly calculated design values, the procedure requires the top 8 daily PM2.5 concentrations days in each quarter to reconstruct the annual 98th percentile. The logic in the analysis is twofold: by selecting the top 8 values in each quarter the 98th percentile concentration is guaranteed to be included in the calculation. Second, the analysis projects future year concentrations for each of the 32 days in a year (160 days over five years) to test the response of future year 24-hour PM2.5 to the proposed control strategy. Since the 32 days in each year include different meteorological conditions and particulate species profiles it is expected those individual days will respond independently to the projected future year emissions profile and that a new distribution of PM2.5 concentrations will result. Overall, the process is more robust in that the analysis is examining the impact of the control strategy implementation for a total of 160 days, covering a wide variety of potential meteorology and emissions combinations.

Table 5-1 provides the weighted 2008 annual and 24-hour average PM2.5 design values for the Basin.

TABLE 5-1

2008 Weighted 24-Hour PM2.5 Design Values ($\mu g/m^3$)

MONITORING SITE	24-HOURS
Anaheim	35.0
Los Angeles	40.1
Fontana	45.6
North Long Beach	34.4
South Long Beach	33.4
Mira Loma	47.9
Rubidoux	44.1

Relative Response Factors and Future Year Design Values

To bridge the gap between air quality model output evaluation and applicability to the health-based air quality standards, U.S. EPA guidance has proposed the use of relative response factors (RRF). The RRF concept was first used in the 2007 AQMP modeling attainment demonstrations. The RRF is simply a ratio of future year predicted air quality

with the control strategy fully implemented to the simulated air quality in the base year. The mechanics of the attainment demonstration are pollutant and averaging period specific. For 24-hour PM2.5, the top 10 percentile of modeled concentrations in each quarter of the simulation year are used to determine the quarterly RRFs. For the annual average PM2.5, the quarterly average RRFs are used for the future year projections. For the 8-hour average ozone simulations, the aggregated response of multiple episode days to the implementation of the control strategy is used to develop an averaged RRF for projecting a future year design value. Simply stated, the future year design value is estimated by multiplying the non-dimensional RRF by the base year design value. Thus, the simulated improvement in air quality, based on multiple meteorological episodes, is translated as a metric that directly determines compliance in the form of the standard.

The modeling analyses described in this chapter use the RRF and design value approach to demonstrate future year attainment of the standards.

PM2.5 Modeling

Within the Basin, PM2.5 particles are either directly emitted into the atmosphere (primary particles), or are formed through atmospheric chemical reactions from precursor gases (secondary particles). Primary PM2.5 includes road dust, diesel soot, combustion products, and other sources of fine particles. Secondary products, such as sulfates, nitrates, and complex carbon compounds are formed from reactions with oxides of sulfur, oxides of nitrogen, VOCs, and ammonia.

The Final 2012 AQMP employs the CMAQ air quality modeling platform with SAPRC99 chemistry and WRF meteorology as the primary tool used to demonstrate future year attainment of the 24-hour average PM2.5 standard. A detailed discussion of the features of the CMAQ approach is presented in Appendix V. The analysis was also conducted using the CAMx modeling platform using the "one atmosphere" approach comprised of the SAPRC99 gas phased chemistry and a static two-mode particle size aerosol module as the particulate modeling platform. Parallel testing was conducted to evaluate the CMAQ performance against CAMx and the results indicated that the two model/chemistry packages had similar performance. The CAMx results are provided in Appendix V as a component of the weight of evidence discussion.

The Final 2012 modeling attainment demonstrations using the CMAQ (and CAMx) platform were conducted in a vastly expanded modeling domain compared with the analysis conducted for the 2007 AQMP modeling attainment demonstration. In this analysis, the PM2.5 and ozone base and future simulations were modeled simultaneously. The simulations were conducted using a Lambert Conformal grid

projection where the western boundary of the domain was extended to 084 UTM, over 100 miles west of the ports of Los Angeles and Long Beach. The eastern boundary extended beyond the Colorado river while the northern and southern boundaries of the domain extend to the San Joaquin Valley and the Northern portions of Mexico (3543 UTM). The grid size has been reduced from 5 kilometers squared to 4 kilometers squared and the vertical resolution has been increased from 11 to 18 layers.

The final WRF meteorological fields were generated for the identical domain, layer structure and grid size. The WRF simulations were initialized from National Centers for Environmental Prediction (NCEP) analyses and run for 3-day increments with the option for four dimensional data assimilation (FDDA). Horizontal and vertical boundary conditions were designated using a "U.S. EPA clean boundary profile."

PM2.5 data measured as individual species at six-sites in the AQMD air monitoring network during 2008 provided the characterization for evaluation and validation of the CMAQ annual and episodic modeling. The six sites include the historical PM2.5 maximum location (Riverside- Rubidoux), the stations experiencing many of the highest county concentrations (among the 4-county jurisdiction including Fontana, North Long Beach and Anaheim) and source oriented key monitoring sites addressing goods movement (South Long Beach) and mobile source impacts (Central Los Angeles). It is important to note that the close proximity of Mira Loma to Rubidoux and the common in-Basin air flow and transport patterns enable the use of the Rubidoux speciated data as representative of the particulate speciation at Mira Loma. Both sites are directly downwind of the dairy production areas in Chino and the warehouse distribution centers located in the northwestern corner of Riverside County. Speciated data monitored at the selected sites for 2006-2007 and 2009-2010 were analyzed to corroborate the applicability of using the 2008 profiles.

Day-specific point source emissions were extracted from the District stationary source and RECLAIM inventories. Mobile source emissions included weekday, Saturday and Sunday profiles based on CARB's EMFAC2011 emissions model, CALTRANS weigh-in-motion profiles, and vehicle population data and transportation analysis zone (TAZ) data provided by SCAG. The mobile source data and selected area source data were subjected to daily temperature corrections to account for enhanced evaporative emissions on warmer days. Gridded daily biogenic VOC emissions were provided by CARB using BEIGIS biogenic emissions model. The simulations benefited from enhancements made to the emissions inventory including an updated ammonia inventory, improved emissions characterization that split organic compounds into coarse, fine and primary

particulate categories, and updated spatial allocation of primary paved road dust emissions.

Model performance was evaluated against speciated particulate PM2.5 air quality data for ammonium, nitrates, sulfates, secondary organic matter, elemental carbon, primary and total particulate mass for the six monitoring sites (Rubidoux, Central Los Angeles, Anaheim, South Long Beach, Long Beach, and Fontana).

The following section summarizes the PM2.5 modeling approach conducted in preparation for this Plan. Details of the PM2.5 modeling are presented in Appendix V.

24-Hour PM2.5 Modeling Approach

CMAQ simulations were conducted for each day in 2008. The simulations included 8784 consecutive hours from which daily 24-hour average PM2.5 concentrations (0000-2300 hours) were calculated. A set of RRFs were generated for each future year simulation. RRFs were generated for the ammonium ion (NH_4), nitrate ion (NO_3), sulfate ion (SO_4), organic carbon (OC), elemental carbon (EC) and a combined grouping of crustal, sea salts and metals (Others). A total of 24 RRFs were generated for each future year simulation (4 seasons and 6 monitoring sites).

Future year concentrations of the six component species were calculated by applying the model generated quarterly RRFs to the speciated 24-hour PM2.5 (FRM) data, sorted by quarter, for each of the five years used in the design value calculation. The 32 days in each year were then re-ranked to establish a new 98^{th} percentile concentration. The resulting future year 98^{th} percentile concentrations for the five years were subjected to weighted averaging for the attainment demonstration.

In this chapter, future year PM2.5 24-hour average design values are presented for 2014, and 2019 to (1) demonstrate the future baseline concentrations if no further controls are implemented; (2) identify the amount of air quality improvement needed to advance the attainment date to 2014; and (3) confirm the attainment demonstration given the proposed PM2.5 control strategy. In addition, Appendix V will include a discussion and demonstration that attainment will be satisfied for the entire modeling domain.

Weight of Evidence

PM2.5 modeling guidance strongly recommends the use of corroborating evidence to support the future year attainment demonstration. The weight of evidence demonstration for the Final 2012 AQMP includes brief discussions of the observed 24-hour PM2.5,

emissions trends, and future year PM2.5 predictions. Detailed discussions of all model results and the weight of evidence demonstration are provided in Appendix V.

FUTURE AIR QUALITY

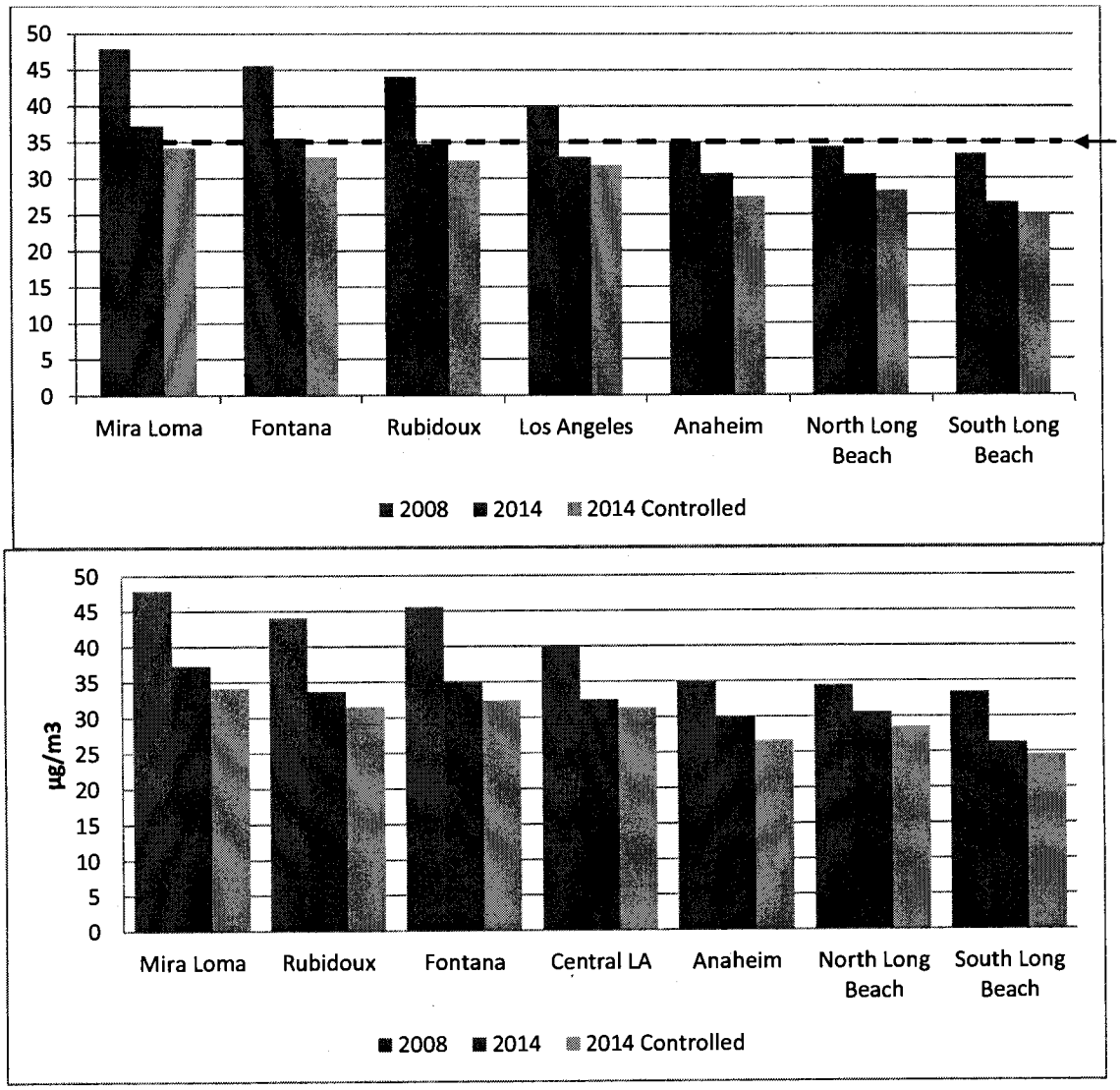
Under the federal Clean Air Act, the Basin must comply with the federal PM2.5 air quality standards by December, 2014 [Section 172(a)(2)(A)]. An extension of up-to five years (until 2019) could be granted if attainment cannot be demonstrated any earlier with all feasible control measures incorporated.

24-Hour PM2.5

A simulation of 2014 baseline emissions was conducted to substantiate the severity of the 24-hour PM2.5 problem in the Basin. The simulation used the projected emissions for 2014 which included all adopted control measures that will be implemented prior to and during 2014, including mobile source incentive projects under contract (Proposition 1B and Carl Moyer Programs). The resulting 2014 future-year Basin design value ($37.3\mu g/m^3$) failed to meet the federal standard. As a consequence additional controls are needed.

Simulation of the 2019 baseline emissions indicates that the Basin PM2.5 will attain the federal 24-hour PM2.5 standard in 2019 without additional controls. With the control program in place, the 24-hour PM2.5 simulations project that the 2014 design value will be 34.3 $\mu g/m^3$ and that the attainment date will advance from 2019 to 2014.

Figure 5-3 depicts future 24-hour PM2.5 air quality projections at the Basin design site (Mira Loma) and six PM2.5 monitoring sites having comprehensive particulate species characterization. Shown in the figure, are the base year design values for 2008 along with projections for 2014 with and without control measures in place. All of the sites with the exception of Mira Loma will meet the 24-hour PM2.5 standard by 2014 without additional controls. With implementation of the control measures, all sites in the Basin demonstrate attainment.



**No such state standard.*

FIGURE 5-3

Maximum 24-Hour Average PM2.5 Design Concentrations:
2008 Baseline, 2014 and 2014 Controlled

Spatial Projections of PM2.5 Design Values

Figure 5-4 provides a perspective of the Basin-wide spatial extent of 24-hour PM2.5 impacts in the base year 2008, with all adopted rules and measures implemented. Figures 5-5 and 5-6 provide a Basin-wide perspective of the spatial extent of 24-hour PM2.5 future impacts for baseline 2014 emissions and 2014 with the proposed control program in place. With no additional controls, several areas around the northwestern portion of Riverside and southwestern portion of San Bernardino Counties depict grid

cells with weighted PM2.5 24-hour design values exceeding 35 $\mu g/m^3$. By 2014, the number of grid cells with concentrations exceeding the federal standard is restricted to a small region surrounding the Mira Loma monitoring station in northwestern Riverside County. With the control program fully implemented in 2014, the Basin does not exhibit any grid cells exceeding the federal standard.

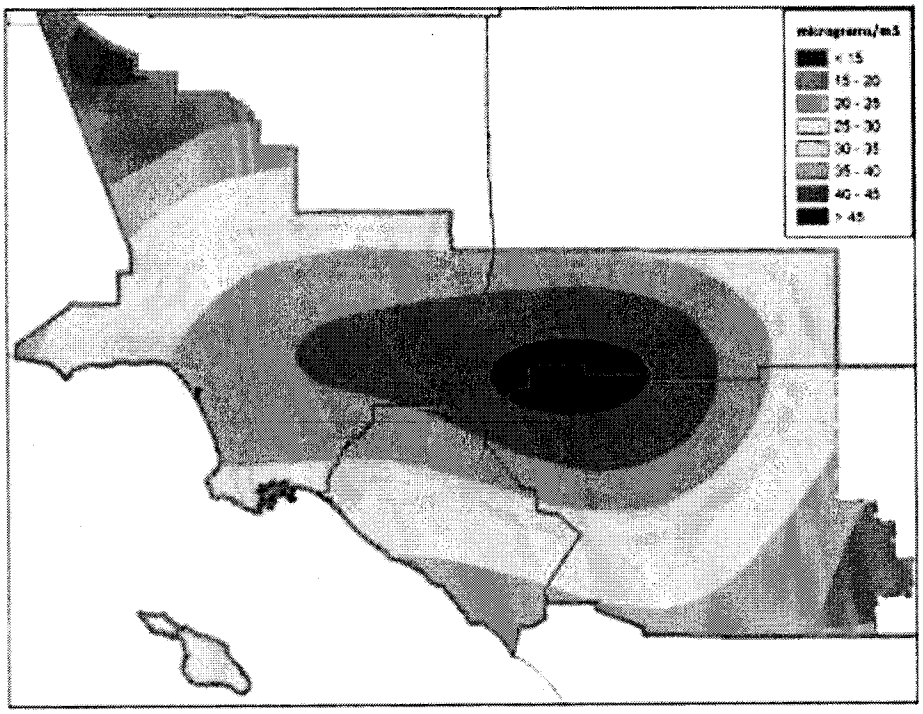


FIGURE 5-4

2008 Baseline 24-Hour PM2.5 Design Concentrations ($\mu g/m^3$)

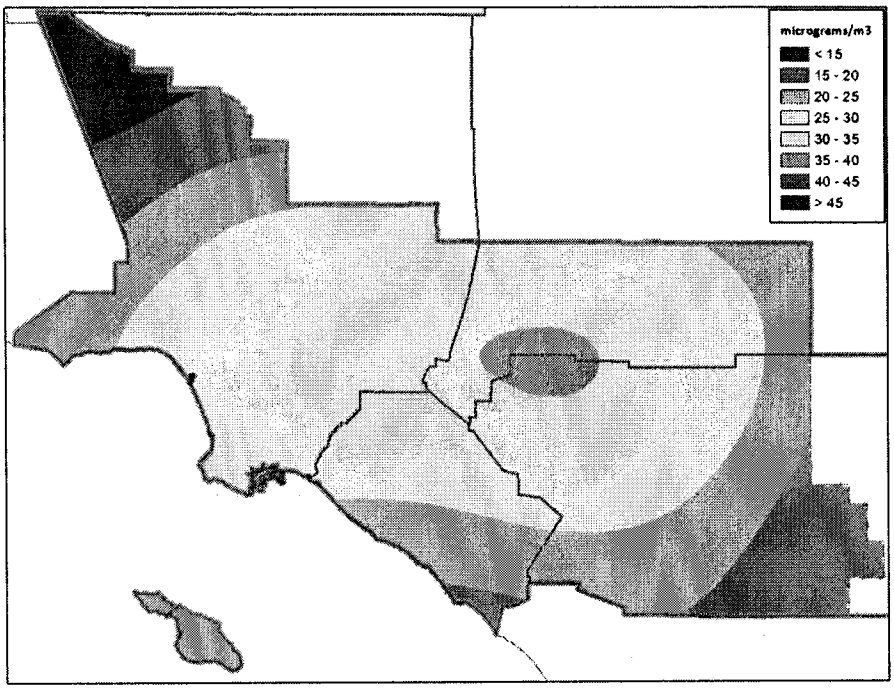


FIGURE 5-5

2014 Baseline 24-Hour PM2.5 Design Concentrations ($\mu g/m^3$)

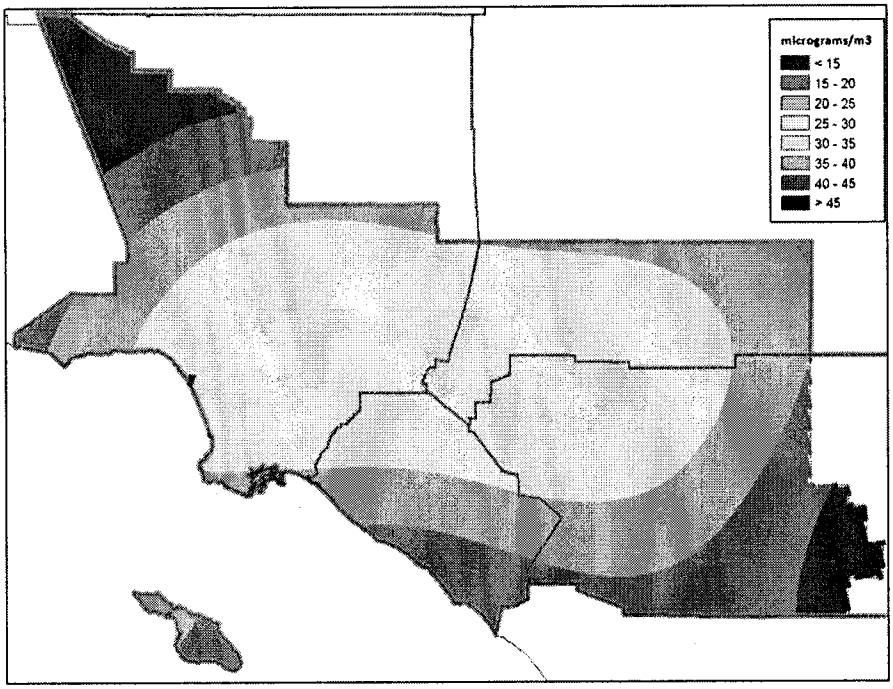


FIGURE 5-6

2014 Controlled 24-Hour PM2.5 Design Concentrations ($\mu g/m^3$)

Weight of Evidence Discussion

The weight of evidence discussion focuses on the trends of 24-hour PM2.5 and key precursor emissions to provide justification and confidence that the Basin will meet the federal standard by 2014.

Figure 5-7 depicts the long term trend of observed Basin 24-hour average PM2.5 design values with the CMAQ projected design value for 2014. Also superimposed on the graph is the linear best-fit trend line for the observed 24-hour average PM2.5 design values. The observed trend depicts a steady 49 percent decrease in observed design value concentrations between 2001 and 2011. The rate of improvement is just under 4 $\mu g/m^3$ per year. If the trend is extended beyond 2011, the projection suggests attainment of the PM2.5 24-hour standard in 2013, one year earlier than determined by the attainment demonstration. While the straight-line future year approximation is aggressive in its projection, it offers insight to the effectiveness of the ongoing control program and is consistent with the attainment demonstration.

Figures 5-8 depicts the long term trend of Basin NOx emissions for the same period. Figure 5-9 provides the corresponding emissions trend for directly emitted PM2.5. Base year NOx inventories between 2002 (from the 2007 AQMP) and 2008 experienced a 31 percent reduction while directly emitted PM2.5 experienced a 19 percent reduction over the 6-year period. The Basin 24-hour average PM2.5 design value experienced a concurrent 27 percent reduction between 2002 and 2008. The projected trend of NOx emissions indicates that the PM2.5 precursor associated with the formation of nitrate will continue to be reduced though 2019 by an additional 48 percent. Similarly, the projected trend of directly emitted PM2.5 projects a more moderate reduction of 13 percent through 2019. However, as discussed in the 2007 AQMP and in a later section of this chapter, directly emitted PM2.5 is a more effective contributor to the formation of ambient PM2.5 compared to NOx. While the projected NOx and direct PM2.5 emissions trends decrease at a reduced rate between 2012 and 2019, it is clearly evident that the overall significant reductions will continue to result in lower nitrate, elemental carbon and direct particulate contributions to 24-hour PM2.5 design values.

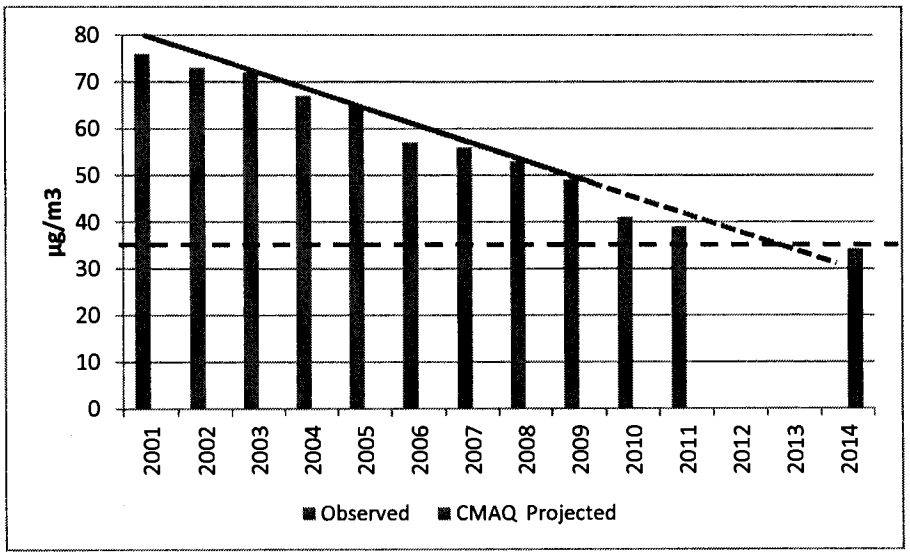


FIGURE 5-7

Basin Observed and CMAQ Projected
Future Year PM2.5 Design Concentrations ($\mu g/m^3$)

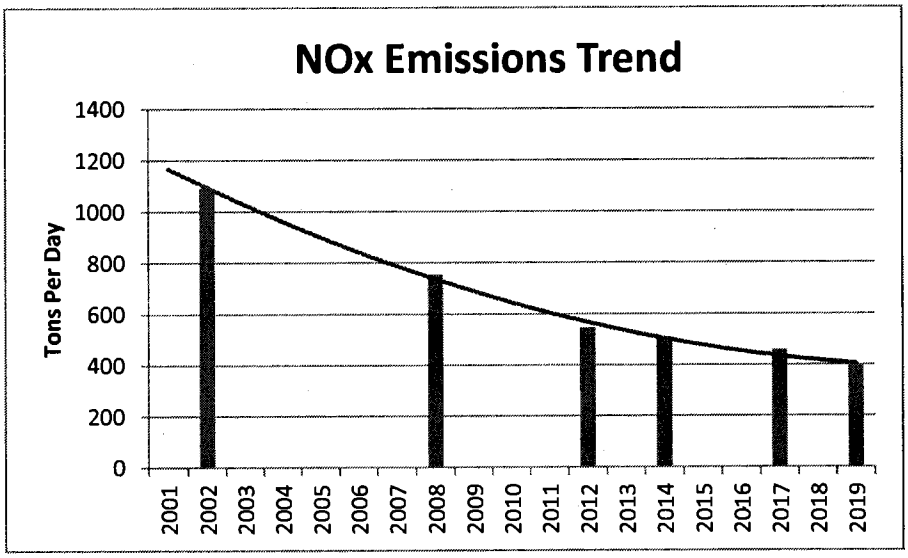


FIGURE 5-8

Trend of Basin NOx Emissions (Controlled)

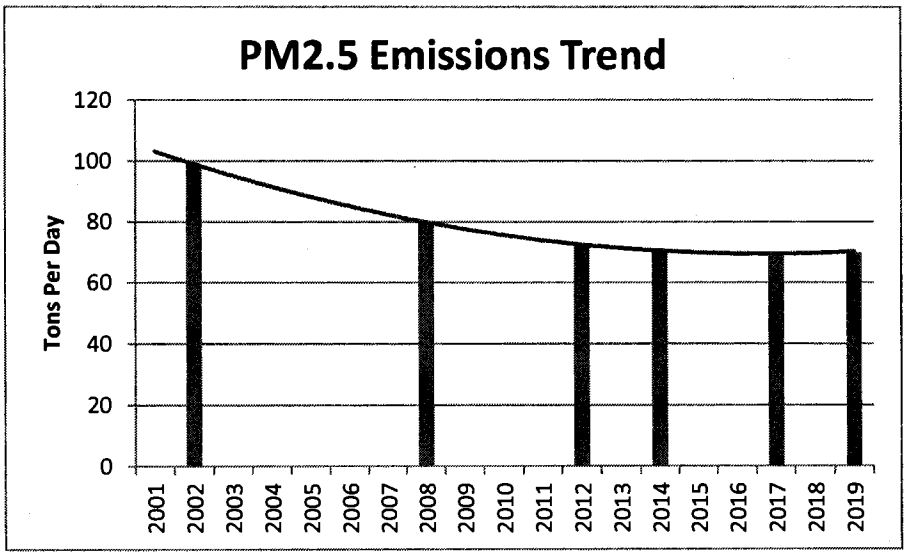


FIGURE 5-9

Trend of Basin PM2.5 Emissions (Controlled)

Control Strategy Choices

PM2.5 has five major precursors that contribute to the development of the ambient aerosol including ammonia, NOx, SOx, VOC, and directly emitted PM2.5. Various combinations of reductions in these pollutants could all provide a path to clean air. The 24-hour PM2.5 attainment strategy presented in this Final 2012 AQMP relies on a dual approach to first demonstrate attainment of the federal standard by 2019 and then focuses on controls that will be most effective in reducing PM2.5 to accelerate attainment to the earliest extent. The 2007 AQMP control measures since implemented will result in substantial reductions of SOx, direct PM2.5, VOC and NOx emissions. Newly proposed short-term measures, discussed in Chapter 4, will provide additional regional emissions reductions targeting directly emitted PM2.5 and NOx.

It is useful to weigh the value of the precursor emissions reductions (on a per ton basis) to microgram per cubic meter improvements in ambient PM2.5 levels. As presented in the weight of evidence discussion, trends of PM2.5 and NOx emissions suggest a direct response between lower emissions and improving air quality. The Final 2007 AQMP established a set of factors to relate regional per ton precursor emissions reductions to PM2.5 air quality improvements based on the annual average concentration. The Final 2012 AQMP CMAQ simulations provided a similar set of factors, but this time directed at 24-hour PM2.5. The analysis determined that VOC emissions reductions have the lowest return in terms of micrograms reduced per ton reduction, one third of the benefit of NOx reductions. SOx emissions were about eight times more effective than NOx

reductions. However, directly emitted PM2.5 reductions were approximately 15 times more effective than NOx reductions. It is important to note that the contribution of ammonia emissions is embedded as a component of the SOx and NOx factors since ammonium nitrate and ammonium sulfate are the resultant particulates formed in the ambient chemical process. Table 5-2 summarizes the relative importance of precursor emissions reductions to 24-hour PM2.5 air quality improvements based on the analysis. . (A comprehensive discussion of the emission reduction factors is presented in Attachment 8 of Appendix V of this document). Emission reductions due to existing programs and implementation of the 2012 AQMP control measures will result in projected 24-hour PM2.5 concentrations throughout the Basin that meet the standard by 2014 at all locations. Basin-wide curtailment of wood burning and open burning when the PM2.5 air quality is projected to exceed 30 $\mu g/m^3$ in Mira Loma will effectively accelerate attainment at Mira Loma from 2019 to 2014. Table 5-3 lists the mix of the four primary precursor's emissions reductions targeted for the staged control measure implementation approach.

TABLE 5-2

Relative Contributions of Precursor Emissions Reductions to Simulated Controlled Future-Year 24-hour PM2.5 Concentrations

PRECURSOR	PM2.5 COMPONENT ($\mu g/m^3$)	STANDARDIZED CONTRIBUTION TO AMBIENT PM2.5 MASS
VOC	Organic Carbon	Factor of 0.3
NOx	Nitrate	Factor of 1
SOx	Sulfate	Factor of 7.8
PM2.5	Elemental Carbon & Others	Factor of 14.8

TABLE 5-3

Final 2012 AQMP
24-hour PM2.5 Attainment Strategy
Allowable Emissions (TPD)

YEAR	SCENARIO	VOC	NOx	SOx	PM2.5
2014	Baseline	451	506	18	70
2014	Controlled	451	490	18	58*

*Winter episodic day emissions

ADDITIONAL MODELING ANALYSES

As a component of the Final 2012 AQMP, concurrent simulations were also conducted to update and assess the impacts to annual average PM2.5 and 8-hour ozone given the new modeling platform and emissions inventory. This update provides a confirmation that the control strategy will continue to move air quality expeditiously towards attainment of the relevant standards.

Annual PM2.5

Annual PM2.5 Modeling Approach

The Final 2012 AQMP annual PM2.5 modeling employs the same approach to estimating the future year annual PM2.5 as was described in the 2007 AQMP attainment demonstrations. Future year PM2.5 annual average air quality is determined using site

and species specific quarterly averaged RRFs applied to the weighted quarterly average 2008 PM2.5 design values per U.S. EPA guidance documents.

In this application, CMAQ and WRF were used to simulate 2008 meteorological and air quality to determine Basin annual average PM2.5 concentrations. The future year attainment demonstration was analyzed for 2015, the target set by the federal CAA. The 2014 simulation relies on implementation of all adopted rules and measures through 2014. This enables a full year-long demonstration based on a control strategy that would be fully implemented by January 1, 2015. It is important to note that the use of the quarterly design values for a 5-year period centered around 2008 (listed in Table 5-4) continue to be used in the projection of the future year annual average PM2.5 concentrations. The future year design reflects the weighted quarterly average concentration calculated from the projections over five years (20 quarters).

TABLE 5-4

2008 Weighted Annual PM2.5 Design Values* ($\mu g/m^3$)

MONITORING SITE	ANNUAL*
Anaheim	13.1
Los Angeles	15.4
Fontana	15.7
North Long Beach	13.6
South Long Beach	13.2
Mira Loma	18.6
Rubidoux	16.7

* Calculated based on quarterly observed data between 2006 – 2010

Future Annual PM2.5 Air Quality

The projections for the annual state and federal standards are shown in Figure 5-10. All areas will be in attainment of the federal annual standard (15.0 $\mu g/m^3$) by 2014. The 2014 design value is projected to be 9 percent below the federal standard. However, as shown in Figure 5-10, the Final 2012 AQMP does not achieve the California standard of 12 $\mu g/m^3$ by 2014. Additional controls would be needed to meet the California annual PM2.5 standard.

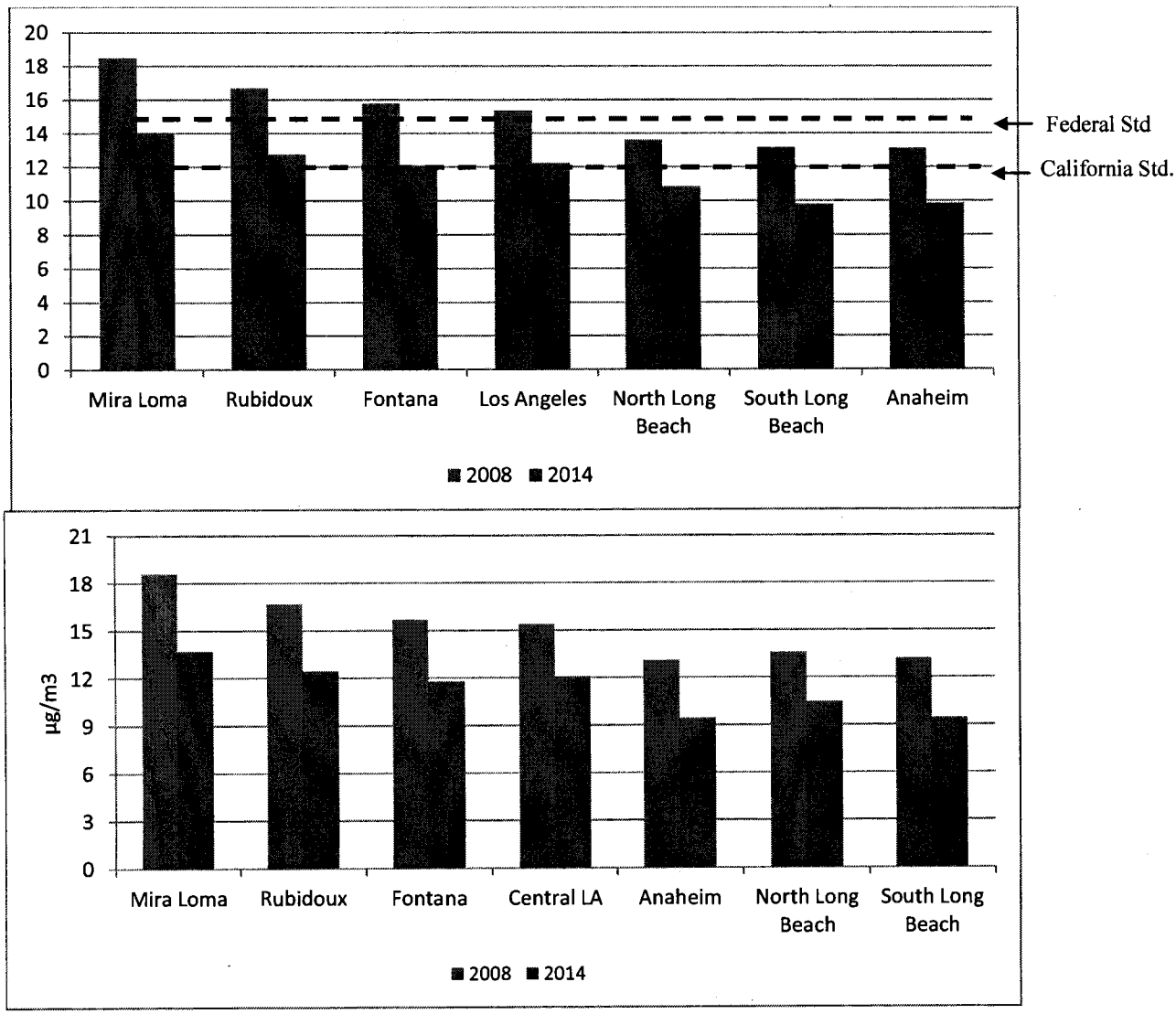


FIGURE 5-10

Annual Average PM2.5 Design Concentrations:
2008 and 2014 Controlled

Ozone Modeling

The 2007 AQMP provided a comprehensive 8-hour ozone analysis that demonstrated future year attainment of the 1997 federal ozone standard (80 ppb) by 2023 with implementation of short-term measures and CAA Section 182(e)(5) long term emissions reductions. The analysis concluded that NOx emissions needed to be reduced approximately 76 percent and VOC 22 percent from the 2023 baseline in order to demonstrate attainment. The 2023 base year VOC and NOx summer planning emissions inventories included 536 and 506 TPD, respectively.

INTRODUCTION

The purpose of the 2012 revision to the AQMP for the South Coast Air Basin is to set forth a comprehensive program that will assist in leading the Basin and those portions of the Salton Sea Air Basin under the District's jurisdiction into compliance with all federal and state air quality planning requirements. Specifically, the Final 2012 AQMP is designed to satisfy the SIP submittal requirements of the federal CAA to demonstrate attainment of the 24-hour PM2.5 ambient air quality standards, the California CAA triennial update requirements, and the District's commitment to update transportation emission budgets based on the latest approved motor vehicle emissions model and planning assumptions. Specific information related to the air quality and planning requirements for portions of the Salton Sea Air Basin under the District's jurisdiction are included in the Final 2012 AQMP and can be found in Chapter 7 – Current and Future Air Quality – Desert Nonattainment Area. The 2012 AQMP will be submitted to U.S. EPA as SIP revisions once approved by the District's Governing Board and CARB.

SPECIFIC 24-HOUR PM2.5 PLANNING REQUIREMENTS

In November 1990, Congress enacted a series of amendments to the CAA intended to intensify air pollution control efforts across the nation. One of the primary goals of the 1990 CAA Amendments was to overhaul the planning provisions for those areas not currently meeting the NAAQS. The CAA identifies specific emission reduction goals, requires both a demonstration of reasonable further progress and an attainment demonstration, and incorporates more stringent sanctions for failure to attain or to meet interim milestones. There are several sets of general planning requirements, both for nonattainment areas [Section 172(c)] and for implementation plans in general [Section 110(a)(2)]. These requirements are listed and briefly described in Chapter 1 (Tables 1-4 and 1-5). The general provisions apply to all applicable criteria pollutants unless superseded by pollutant-specific requirements. The following sections discuss the federal CAA requirements for the 24-hour PM2.5 standards.

FEDERAL AIR QUALITY STANDARDS FOR FINE PARTICULATES

The U.S. EPA promulgated the National Ambient Air Quality Standards for Fine Particles (PM2.5) in July 1997. Following legal actions, the statements were eventually upheld in March 2002. The annual standard was set at a level of 15 micrograms per cubic meter ($\mu g/m^3$), based on the 3-year average of annual mean PM2.5 concentrations. The 24-hour standard was set at a level of 65 $\mu g/m^3$ based on the 3-year average of the

98th percentile of 24-hour concentrations. U.S. EPA issued designations in December 2004, which became effective on April 5, 2005.

In January 2006, U.S. EPA proposed to lower the 24-hour PM2.5 standard. On September 21, 2006, U.S. EPA signed the "Final Revisions to the NAAQS for Particulate Matter." In promulgating the new standards, U.S. EPA followed an elaborate review process which led to the conclusion that existing standards for particulates were not adequate to protect public health. The studies indicated that for PM2.5, short-term exposures at levels below the 24-hour standard of 65 $\mu g/m^3$ were found to cause acute health effects, including asthma attacks and breathing and respiratory problems. As a result, the U.S. EPA established a new, lower 24-hour average standard for PM2.5 at 35 $\mu g/m^3$. No changes were made to the existing annual PM2.5 standard which remained at 15 $\mu g/m^3$ as discussed in Chapter 2. On June 14, 2012, U.S. EPA proposed revisions to this annual standard. The annual component of the standard was set to provide protection against typical day-to-day exposures as well as longer-term exposures, while the daily standard protects against more extreme short-term events. For the 2006 24-hour PM2.5 standard, the form of the standard continues to be based on the 98th percentile of 24-hour PM2.5 concentrations measured in a year (averaged over three years) at the monitoring site with the highest measured values in an area. This form of the standard was set to be health protective while providing a more stable metric to facilitate effective control programs. Table 6-1 summarizes the U.S. EPA's PM2.5 standards.

TABLE 6-1

U.S. EPA's PM2.5 Standards

	1997 STANDARDS		2006 STANDARDS	
	Annual	**24-Hour**	**Annual**	**24-Hour**
PM2.5	15 $\mu g/m^3$ Annual arithmetic mean, averaged over 3 years	65 $\mu g/m^3$ 24-hour average, 98th percentile, averaged over 3 years	15 $\mu g/m^3$ Annual arithmetic mean, averaged over 3 years	35 $\mu g/m^3$ 24-hour average, 98th percentile, averaged over 3 years

On December 14, 2009, the U.S. EPA designated the Basin as nonattainment for the 2006 24-hour PM2.5 NAAQS. A SIP revision is due to U.S. EPA no later than three years from the effective date of designation, December 14, 2012, demonstrating attainment with the standard by 2014. Under Section 172 of the CAA, U.S. EPA may grant an area an extension of the initial attainment date for a period of up to five years.

With implementation of all feasible measures as outlined in this Plan, the Basin will demonstrate attainment with the 24-hour PM2.5 standard by 2014, so no extension is being requested.

FEDERAL CLEAN AIR ACT REQUIREMENTS

For areas such as the Basin that are classified nonattainment for the 2006 24-hour PM2.5 NAAQS, Section 172 of subpart 1 of the CAA applies. Section 172(c) requires states with nonattainment areas to submit an attainment demonstration. Section 172(c)(2) requires that nonattainment areas demonstrate Reasonable Further Progress (RFP). Under subpart I of the CAA, all nonattainment area SIPs must include contingency measures. Section 172(c)(1) of the CAA requires nonattainment areas to provide for implementation of all reasonably available control measures (RACM) as expeditiously as possible, including the adoption of reasonably available control technology (RACT). Section 172 of the CAA requires the implementation of a new source review program including the use of "lowest achievable emission rate" for major sources referred to under state law as "Best Available Control Technology" (BACT) for major sources of PM2.5 and precursor emissions (i.e., precursors of secondary particulates).

This section describes how the Final 2012 AQMP meets the 2006 24-hour PM2.5 planning requirements for the Basin. The requirements specifically addressed for the Basin are:

1. Attainment demonstration and modeling [Section 172(a)(2)(A)];
2. Reasonable further progress [Section 172(c)(2)];
3. Reasonably available control technology (RACT) and Reasonably available control measures (RACM) [Section 172(c)(1)] ;
4. New source review (NSR) [Sections 172(c)(4) and (5)];
5. Contingency measures [Section 172(c)(9)]; and
6. Transportation control measures (as RACM).

Attainment Demonstration and Modeling

Under the CAA Section 172(a)(2)(A), each attainment plan should demonstrate that the area will attain the NAAQS "as expeditiously as practicable," but no later than five years from the effective date of the designation of the area. If attainment within five years is considered impracticable due to the severity of an area's air quality problem and the lack

of available control measures, the state may propose an attainment date of more than five years but not more than ten years from designation.

This attainment demonstration consists of: (1) technical analyses that locate, identify, and quantify sources of emissions that contribute to violations of the PM2.5 standard; (2) analysis of future year emission reductions and air quality improvement resulting from adopted and proposed control measures; (3) proposed emission reduction measures with schedules for implementation; and (4) analysis supporting the region's proposed attainment date by performing a detailed modeling analysis. Chapter 3 and Appendix III of the Final 2012 AQMP present base year and future year emissions inventories in the Basin, while Chapter 4 and Appendix IV provide descriptions of the proposed control measures, the resulting emissions reductions, and schedules for implementation of each measure. The detailed modeling analysis and attainment demonstration are summarized in Chapter 5 and documented in Appendix V.

Reasonable Further Progress (RFP)

The CAA requires SIPs for most nonattainment areas to demonstrate reasonable further progress (RFP) towards attainment through emission reductions phased in from the time of the SIP submission until the attainment date time frame. The RFP requirements in the CAA are intended to ensure that there are sufficient PM2.5 and precursor emission reductions in each nonattainment area to attain the 2006 24-hour PM2.5 NAAQS by December 14, 2014.

Per CAA Section 171(1), RFP is defined as "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." As stated in subsequent federal regulation, the goal of the RFP requirements is for areas to achieve generally linear progress toward attainment. To determine RFP for the 2006 24-hour PM2.5 attainment date, the plan should rely only on emission reductions achieved from sources within the nonattainment area.

Section 172(c)(2) of the CAA requires that nonattainment area plans show ongoing annual incremental emissions reductions toward attainment, which is commonly expressed in terms of benchmark emissions levels or air quality targets to be achieved by certain interim milestone years. The U.S. EPA recommends that the RFP inventories include direct PM2.5, and also PM precursors (such as SOx, NOx, and VOCs) that have been determined to be significant.

40 CFR 51.1009 requires any area that submits an approvable demonstration for an attainment date of more than five years from the effective date of designation to also submit an RFP plan. The Final 2012 AQMP demonstrates attainment with the 24-hour PM2.5 standard in 2014, which is five years from the 2009 designation date. Therefore, no separate RFP plan is required.

Reasonably Available Control Measures (RACM) and Reasonably Available Control Technology (RACT) Requirements

Section 172(c)(1) of the CAA requires nonattainment areas to

> *Provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.*

The District staff has completed its RACM analysis as presented in Appendix VI of the Final 2012 AQMP.

The U.S. EPA provided further guidance on the RACM in the preamble and the final "Clean Air Fine Particle Implementation Rule" to implement the 1997 PM2.5 NAAQS which were published in the Federal Register on November 1, 2005 and April 25, 2007, respectively.[1, 2] The U.S. EPA's long-standing interpretation of the RACM provision stated in the 1997 PM2.5 Implementation Rule is that the non-attainment air districts should consider all candidate measures that are available and technologically and economically feasible to implement within the non-attainment areas, including any measures that have been suggested; however, the districts are not obligated to adopt all measures, but should demonstrate that there are no additional reasonable measures available that would advance the attainment date by at least one year or contribute to reasonable further progress (RFP) for the area.

With regard to the identification of emission reduction programs, the U.S. EPA recommends that non-attainment air districts first identify the emission reduction programs that have already been implemented at the federal level and by other states and local air districts. Next, the U.S. EPA recommends that the air districts examine additional RACM/RACTs adopted for other non-attainment areas to attain the ambient air quality standards as expeditiously as practicable. The U.S. EPA also recommends the

[1] See 70FR 65984 (November 1, 2005)
[2] See 72FR 20586 (April 25, 2007)

air districts evaluate potential measures for sources of direct PM2.5, SOx and NOx first. VOC and ammonia are only considered if the area determines that they significantly contribute to the PM2.5 concentration in the non-attainment area (otherwise they are pressured not to significantly contribute). The PM2.5 Implementation Rule also requires that the air districts establish RACM/RACT emission standards that take into consideration the condensable fraction of direct PM2.5 emissions after January 1, 2011. In addition, the U.S. EPA recognizes that each non-attainment area has its own profile of emitting sources, and thus neither requires specific RACM/RACT to be implemented in every non-attainment area, nor includes a specific source size threshold for the RACM/RACT analysis.

A RACM/RACT demonstration must be provided within the SIP. For areas projected to attain within five years of designation, a limited RACM/RACT analysis including the review of available reasonable measures, the estimation of potential emission reductions, and the evaluation of the time needed to implement these measures is sufficient. The areas that cannot reach attainment within five years must conduct a thorough RACM/RACT analysis to demonstrate that sufficient control measures could not be adopted and implemented cumulatively in a practical manner in order to reach attainment at least one year earlier.

In regard to economic feasibility, the U.S. EPA did not propose a fixed dollar per ton cost threshold and recommended that air districts to include health benefits in the cost analysis. As indicated in the preamble of the 1997 PM2.5 Implementation Rule:

> *In regard to economic feasibility, U.S. EPA is not proposing a fixed dollar per ton cost threshold for RACM, just as it is not doing so for RACT...Where the severity of the non-attainment problem makes reductions more imperative or where essential reductions are more difficult to achieve, the acceptable cost of achieving those reductions could increase. In addition, we believe that in determining what are economically feasible emission reduction levels, the States should also consider the collective health benefits that can be realized in the area due to projected improvements.*

Subsequently, on March 2, 2012, the U.S. EPA issued a memorandum to confirm that the overall framework and policy approach stated in the PM2.5 Implementation Rule for the 1997 PM2.5 standards continues to be relevant and appropriate for addressing the 2006 24-hour PM2.5 standards.

As described in Appendix VI, the District has concluded that all District rules fulfilled RACT for the 2006 24-hour PM2.5 standard. In addition, pursuant to California Health

and Safety Code Section 39614 (SB 656), the District evaluated a statewide list of feasible and cost-effective control measures to reduce directly emitted PM2.5 and its potential precursor emissions (e.g., NOx, SOx, VOCs, and ammonia). The District has concluded that for the majority of stationary and area source categories, the District was identified as having the most stringent rules in California (see Appendix VI). Under the RACM guidelines, transportation control measures must be included in the analysis. Consequently, SCAG has completed a RACM determination for transportation control measures in the Final 2012 AQMP, included in Appendix IV-C.

New Source Review

New source review (NSR) for major and in some cases minor sources of PM2.5 and its precursors are presently addressed through the District's NSR and RECLAIM programs (Regulations XIII and XX). In particular, Rule 1325 has been adopted to satisfy NSR requirements for major sources of directly-emitted PM2.5.

Contingency Measures

Contingency Measure Requirements

Section 172(c)(9) of the CAA requires that SIPs include contingency measures.

> *Such plan shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or the Administrator.*

In subsequent NAAQS implementation regulations and SIP approvals/disapprovals published in the Federal Register, U.S. EPA has repeatedly reaffirmed that SIP contingency measures:

1. Must be fully adopted rules or control measures that are ready to be implemented, without significant additional action (or only minimal action) by the State, as expeditiously as practicable upon a determination by U.S. EPA that the area has failed to achieve, or maintain reasonable further progress, or attain the NAAQS by the applicable statutory attainment date (40 CFR § 51.1012, 73 FR 29184)

2. Must be measures not relied on in the plan to demonstrate RFP or attainment for the time period in which they serve as contingency measures and should provide SIP-creditable emissions reductions equivalent to one year of RFP, based on "generally

linear" progress towards achieving the overall level of reductions needed to demonstrate attainment (76 FR 69947, 73 FR 29184)

3. Should contain trigger mechanisms and specify a schedule for their implementation (72 FR 20642)

Furthermore, U.S. EPA has issued guidance that the contingency measure requirement could be satisfied with already adopted control measures, provided that the controls are above and beyond what is needed to demonstrate attainment with the NAAQS (76 FR 57891).

> *U.S. EPA guidance provides that contingency measures may be implemented early, i.e., prior to the milestone or attainment date. Consistent with this policy, States are allowed to use excess reductions from already adopted measures to meet the CAA sections 172(c)(9) and 182(c)(9)contingency measures requirement. This is because the purpose of contingency measures is to provide extra reductions that are not relied on for RFP or attainment, and that will provide a cushion while the plan is being revised to fully address the failure to meet the required milestone. Nothing in the CAA precludes a State from implementing such measures before they are triggered.*

Thus, an already adopted control measure with an implementation date prior to the milestone year or attainment year would obviate the need for an automatic trigger mechanism.

Air Quality Improvement Scenario

The U.S. EPA Guidance Memo issued March 2, 2012, "Implementation Guidance for the 2006 24-Hour Fine Particle (PM2.5) National Ambient Air Quality Standard (NAAQS)", provides the following discussion of contingency measures:

> *The preamble of the 2007 PM2.5 Implementation Rule (see 79 FR 20642-20645) notes that contingency measures "should provide for emission reductions equivalent to about one year of reductions needed for reasonable further progress (RFP)." The term "one year of reductions needed for RFP" requires clarification. This phrase may be confusing because all areas technically are not required to develop a separate RFP plan under the 2007 PM2.5 Implementation Rule. The basic concept is that an area's set of contingency measures should provide for an amount of emission reductions that would achieve "one year's worth" of air quality improvement proportional to the overall amount of air quality improvement to be achieved by the area's attainment plan; or alternatively, an amount of emission reductions (for all pollutants subject to control measures in the attainment plan) that would achieve one year's worth of emission reductions proportional to the overall amount of emission*

reductions needed to show attainment. Contingency measures can include measures that achieve emission reductions from outside the nonattainment area as well as from within the nonattainment area, provided that the measures produce the appropriate air quality impact within the nonattainment area.

The U.S. EPA believes a similar interpretation of the contingency measures requirements under section 172(c)(9) would be appropriate for the 2006 24-hour PM2.5 NAAQS.

The March 2, 2012 memo then provides an example describing two methods for determining the required magnitude of emissions reductions to be potentially achieved by implementation of contingency measures:

Assume that the state analysis uses a 2008 base year emissions inventory and a future year projection inventory for 2014. To demonstrate attainment, the area needs to reduce its air quality concentration from 41ug/m^3 in 2008 to 35 ug/m^3 in 2014, equal to a rate of change of 1 μg/m^3 per year. The attainment plan demonstrates that this level of air quality improvement would be achieved by reducing emissions between 2008 and 2014 by the following amounts: 1,200 tons of PM2.5; 6,000 tons of NOx; and 6,000 tons of SO2.

Thus, the target level for contingency measures for the area could be identified in two ways:

1) *The area would need to provide an air quality improvement of 1 ug/m^3 in the area, based on an adequate technical demonstration provided in the state plan. The emission reductions to be achieved by the contingency measures can be from any one or a combination of all pollutants addressed in the attainment plan, provided that the state plan shows that the cumulative effect of the adopted contingency measures would result in a 1 ug/m^3 improvement in the fine particle concentration in the nonattainment area; and*

2) *The contingency measures for the area would be one-sixth (or approximately 17%) of the overall emission reductions needed between 2008 and 2014 to show attainment. In this example, these amounts would be the following: 200 tons of PM2.5; 1,000 tons of NOx; and 1,000 tons of SO2.*

The two approaches are explicitly mentioned in regulatory form at 40 CFR § 51.1009:

(g) The RFP plan due three years after designation must demonstrate that emissions for the milestone year are either:

(1) At levels that are roughly equivalent to the benchmark emission levels for direct PM2.5 emissions and each PM2.5 attainment plan precursor to be addressed in the plan; or

(2) At levels included in an alternative scenario that is projected to result in a generally equivalent improvement in air quality by the milestone year as would be achieved under the benchmark RFP plan.

(h) The equivalence of an alternative scenario to the corresponding benchmark plan must be determined by comparing the expected air quality changes of the two scenarios at the design value monitor location. This comparison must use the information developed for the attainment plan to assess the relationship between emissions reductions of the direct PM2.5 emissions and each PM2.5 attainment plan precursor addressed in the attainment strategy and the ambient air quality improvement for the associated ambient species.

The first method in the example and the alternative scenario in the regulation, 40 CFR § 51.1009 (g)(2), base the required amount of contingency measure emission reductions on one year's worth of air quality improvements. The most accurate way of demonstrating that the emissions reductions will lead to air quality improvements is through air quality modeling such as that used in the attainment demonstration (40 CFR § 51.1009 (h) above). If the model results show the required air quality improvements, then the emissions reductions included in the model input are therefore shown to be sufficient to achieve those air quality improvements. The second method in the example, and (g)(1) in the regulation, is based solely on emission reductions, without a direct demonstration that there will be a corresponding improvement in air quality.

Logically, the method based on air quality is more robust than the method based solely on emissions reductions in that it demonstrates that emissions reductions will in fact lead to corresponding air quality improvements, which is the ultimate goal of the CAA and the SIP. The second method relying on overall emissions reductions alone does not account for the spatial and temporal variation of emissions, nor does it account for where and when the reductions will occur. As the relationship between emissions reductions and resulting air quality improvements is complex and not always linear, relying solely on prescribed emission reductions may not ensure that the desired air quality improvements will result when and where they are needed. Therefore, determining the magnitude of reductions required for contingency measures based on air quality improvements, derived from a modeling demonstration, is more effective in achieving the objective of this CAA requirement.

Magnitude of Contingency Measure Air Quality Improvements

The example for determining the required magnitude of air quality improvement to be achieved by contingency measures provided in the March 2, 2012 guidance memo uses the attainment demonstration base year as the base year in the calculation (2008). This is based on the memo's statement that *"contingency measures should provide for an amount of emission reductions that would achieve 'one year's worth' of air quality improvement proportional to the overall amount of air quality improvement to be achieved by the area's attainment plan.* The original preamble (79 FR 20642-20645) states that contingency measures *"should provide for emission reductions equivalent to about one year of reductions needed for reasonable further progress (RFP)."* The term "reasonable further progress" is defined in Section 171(1) of the CAA as *"such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date."*

40 CFR 51.1009 is explicit on how emissions reductions for RFP are to be calculated. In essence, the calculation is a linear interpolation between base-year emissions and attainment-year (full implementation) emissions. The Plan must then show that emissions or air quality in the milestone year (or attainment year) are "roughly equivalent" or "generally equivalent" to the RFP benchmark. As stated earlier in this chapter, given the 2014 attainment year, there are no interim milestone RFP requirements. The contingency measure requirements, therefore, only apply to the 2014 attainment year. In 2014, contingency measures must provide for about one year's worth of reductions or air quality improvement, proportional to the overall amount of air quality improvement to be achieved by the area's attainment plan.

The 2008 base year design value in the 24-hour PM2.5 attainment demonstration is 47.9 $\mu g/m^3$, and the 2014 attainment year design value must be less than 35.5 $\mu g/m^3$ (see Chapter 5). Linear progress towards attainment over the six year period yields one year's worth of air quality improvements equal to approximately 2 $\mu g/m^3$. Thus, contingency measures should provide for approximately 2 $\mu g/m^3$ of air quality improvements to be automatically implemented in 2015 if the Basin fails to attain the 24-hour PM2.5 standard in 2014.

Satisfying the Contingency Measure Requirements

As stated above, the contingency measure requirement can be satisfied by already adopted measures resulting in air quality improvements above and beyond those needed

for attainment. Since the attainment demonstration need only show an attainment year concentration below 35.5 $\mu g/m^3$, any measures leading to improvement in air quality beyond this level can serve as contingency measures. As shown in Chapter 5, the attainment demonstration yields a 2014 design value of 34.28 $\mu g/m^3$. The excess air quality improvement is therefore approximately 1.2 $\mu g/m^3$.

In addition to these air quality improvements beyond those needed for attainment, an additional contingency measure is proposed that will result in emissions reductions beyond those needed for attainment in 2014. Control Measure CMB-01 Phase I seeks to achieve an additional two tons per day of NOx emissions reductions from the RECLAIM market if the Basin fails to achieve the standard by the 2014 attainment date. CMB-01 Phase I is scheduled for near-term adoption and includes the appropriate automatic trigger mechanism and implementation schedule consistent with CAA contingency measure requirements. Taken together with the 1.2 $\mu g/m^3$ of excess air quality improvement described above, this represents a sufficient margin of "about one year's of progress" and "generally linear" progress to satisfy the contingency measure requirements. Note that based on the most recent air quality data at the design value site, Mira Loma, the actual measured air quality is already better (by over 4 $\mu g/m^3$ in 2011) than that projected by modeling based on linear interpolation between base year and attainment year.

To address U.S. EPA's comments regarding contingency measures, the excess air quality improvements beyond those needed to demonstrate attainment should also be expressed in terms of emissions reductions. This will facilitate their enforceability and any future needs to substitute emissions reductions from alternate measures to satisfy contingency measure requirements. For this purpose, Table 6-2 explicitly identifies the portions of emissions reductions from proposed measures that are designated as contingency measures. Table 6-2 also includes the total equivalent basin-wide NOx emissions reductions based on the PM2.5 formation potential ratios described in Chapter 5.

TABLE 6-2

Emissions Reductions for Contingency Measures (2014)

MEASURE	ASSOCIATED EMISSIONS REDUCTIONS FROM CONTINGENCY MEASURES (TONS/DAY)
BCM-01 – Residential Wood Burning[1,2]	2.84(PM2.5)
BCM-02 – Open Burning [1,2]	1.84(PM2.5)
CMB-01 – NOx reductions from RECLAIM	2 (NOx)
Total	71 ($NOx_{(e)}$)[3]

[1]40% of the reductions from these measures, as shown in Table 4-2, are designated for contingency purposes.

[2] Episodic emissions reductions occurring on burning curtailment days.

[3] NOx equivalent emissions based on PM2.5 formation potentials described in Chapter 5 (Table 5-2). The PM2.5:NOx ratio is 14.83:1.

Transportation Control Measures

As part of the requirement to demonstrate that RACM has been implemented, transportation control measures meeting the CAA requirements must be included in the plan. Updated transportation control measures included in this plan attainment of the federal 2006 24-hour PM2.5 standard are described in Appendix IV-C – Regional Transportation Strategy & Control Measures.

Section 182(d)(1)(A) of the CAA requires the District to include transportation control strategies (TCS) and transportation control measures (TCM) in its plans for ozone that offset any growth in emissions from growth in vehicle trips and vehicle miles traveled. Such control measures must be developed in accordance with the guidelines listed in Section 108(f) of the CAA. The programs listed in Section 108(f) of the CAA include, but are not limited to, public transit improvement projects, traffic flow improvement projects, the construction of high occupancy vehicle (HOV) facilities and other mobile source emission reduction programs. While this is not an ozone plan, TCMs may be

ATTACHMENT 17.

FINAL 2012 AQMP
APPENDIX IV-A

DISTRICT'S STATIONARY SOURCE CONTROL MEASURES

DECEMBER 2012

Table of Contents

SECTION 1 - STATIONARY SOURCE CONTROL MEASURES

SECTION 2 - SHORT-TERM PM2.5 CONTROL MEASURES

TABLE IV-A-1 (concluded)

Short-Term PM2.5 Control Measures

NUMBER	TITLE	ADOPTION	IMPLEMENTATION PERIOD	REDUCTION (TPD)
~~IND-01 (formerly MOB-03)~~	~~Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources [NOx, SOx, PM2.5]~~	~~2013~~	~~12 months after trigger~~	~~N/A~~ [f]
EDU-01 *(formerly MCS-02, MCS-03)*	Further Criteria Pollutant Reductions from Education, Outreach and Incentives [All Pollutants]	Ongoing	Ongoing	N/A [f]
MCS-01 *(formerly MCS-07)*	Application of All Feasible Measures Assessment [All Pollutants]	Ongoing	Ongoing	TBD [e]

a. Emission reductions are included in the SIP as a contingency measure.
b. Winter average day reductions based on episodic conditions and 75 percent compliance rate.
c. Reduction based on episodic day conditions.
d. Will submit into SIP once technically feasible and cost effective options are confirmed.
e. TBD are reductions to be determined once the technical assessment is complete, and inventory and control approach are identified.
f. N/A are reductions that cannot be quantified due to the nature of the measure (e.g., outreach, incentive programs) or if the measure is designed to ensure reductions that have been assumed to occur will in fact occur.

It should be noted that the emission reduction targets for the proposed control measures (those with quantified reductions) are established based on available or anticipated control methods or technologies. However, emission reductions associated with implementation of these and other control measures or rules in excess of the AQMP's projected reductions can be credited toward the overall emission reduction targets for the proposed control measures in this appendix.

Emission reductions associated with the District's SIP commitment to adopt and implement emission reductions from sources under the District's jurisdiction are being proposed. Once the SIP commitment is accepted, should there be emission reduction shortfalls in any given year, the District would identify and adopt other measures to make up the shortfall. Similarly, if excess emission reductions are achieved in a year, they can be used in that year or carried over to subsequent years if necessary to meet reduction goals. More detailed discussion on the District's SIP commitment is included in Chapter 4 of the Final 2012 AQMP.

The following sections provide a brief overview of the specific source category types targeted by short-term PM2.5 control measures.

Combustion Sources

This category includes one control measure that seeks further NOx emission reductions from RECLAIM sources.

IND-01: BACKSTOP MEASURE FOR INDIRECT SOURCES OF EMISSIONS FROM PORTS AND PORT-RELATED FACILITIES [NO_x, SO_x, PM2.5]

CONTROL MEASURE SUMMARY

SOURCE CATEGORY:	IF THE BACKSTOP MEASURE BECOMES EFFECTIVE (I.E. IF EMISSIONS FROM PORT-RELATED SOURCES EXCEED TARGETS FOR NOX, SOX, AND PM2.5), AFFECTED SOURCES WOULD BE PROPOSED BY THE PORTS AND COULD INCLUDE SOME OR ALL PORT-RELATED SOURCES (TRUCKS, CARGO HANDLING EQUIPMENT, HARBOR CRAFT, MARINE VESSELS, LOCOMOTIVES, AND STATIONARY EQUIPMENT), TO THE EXTENT COST EFFECTIVE STRATEGIES ARE AVAILABLE
CONTROL METHODS:	IF THE BACKSTOP MEASURE BECOMES EFFECTIVE, EMISSION REDUCTION METHODS WOULD BE PROPOSED BY THE PORTS AND POTENTIALLY COULD INCLUDE CLEAN TECHNOLOGY FUNDING PROGRAMS, LEASE PROVISIONS, PORT TARIFFS, OR INCENTIVES/DISINCENTIVES TO IMPLEMENT MEASURES, TO THE EXTENT COST EFFECTIVE AND FEASIBLE STRATEGIES ARE AVAILABLE

EMISSIONS (TONS/DAY):

ANNUAL AVERAGE	2008	2014	2019	2023
NOx INVENTORY*	78.6	51.2	47.2	39.2
NOx REDUCTION*		N/A	N/A	N/A
NOx REMAINING*		51.2	47.2	39.2
SOx INVENTORY*	25.5	1.8	2.3	2.7
SOx REDUCTION*		N/A	N/A	N/A
SOx REMAINING*		1.8	2.3	2.7
PM2.5 INVENTORY*	3.7	1.0	1.0	1.1
PM2.5 REDUCTION*		N/A	N/A	N/A
PM2.5 REMAINING*		1.0	1.0	1.1

CONTROL COST:	TBD
IMPLEMENTING AGENCY:	SCAQMD

** The purpose of this control measure is to ensure the emissions from port-related sources are at or below the AQMP baseline inventories for PM2.5 attainment demonstration. The emissions presented herein were used for attainment demonstration of the 24-hr PM 2.5 standard by 2014.*

DESCRIPTION OF SOURCE CATEGORY

This control measure is carried over from the 2007 AQMP/SIP. If the backstop measure goes into effect, affected sources would be proposed by the ports and could include some or all port-related sources (trucks, cargo handling equipment, harbor craft, marine vessels, locomotives, and stationary equipment), to the extent cost effective and feasible strategies are available.

Other sources – i.e. sources that are unrelated to the ports – would not in any way be subject to emission reductions under this measure (including through funding of emission reduction measures, or purchase of emission credits, by the ports or port tenants).

Background

Emissions and Progress. The ports of Los Angeles and Long Beach are the largest in the nation in terms of container throughput, and collectively are the single largest fixed source of air pollution in Southern California. Emissions from port-related sources have been reduced significantly since 2006 through efforts by the ports and a wide range of stakeholders. In large part, these emission reductions have resulted from programs developed and implemented by the ports in collaboration with port tenants, marine carriers, trucking interests and railroads. Regulatory agencies, including EPA, CARB and SCAQMD, have participated in these collaborative efforts from the outset, and some measures adopted by the ports have led the way for adoption of analogous regulatory requirements that are now applicable statewide. These port measures include the Clean Truck Program and actions to deploy shore power and low emission cargo handling equipment. The Ports of Los Angeles and Long Beach have also established incentive programs which have not subsequently been adopted as regulations. These include incentives for routing of vessels meeting IMO Tier 2 and 3 NOx standards, and vessel speed reduction. In addition, the ports are, in collaboration with the regulatory agencies, implementing an ambitious Technology Advancement Program to develop and deploy clean technologies of the future.

Port sources such as marine vessels, locomotives, trucks, harbor craft and cargo handling equipment, continue to be among the largest sources of $PM_{2.5}$ and $PM_{2.5}$ precursors in the region. Given the large magnitude of emissions from port-related sources, the substantial efforts described above play a critical part in the ability of the South Coast Air Basin to attain the national $PM_{2.5}$ ambient air standard by federal deadlines. This measure provides assurance that emissions from the Basin's largest fixed emission source will continue to support attainment of the federal 24-hour PM2.5 standard. . Reductions in PM2.5 emissions will also reduce cancer risks from diesel particulate matter.

Clean Air Action Plan. The emission control efforts described above largely began in 2006 when the Ports of Los Angeles and Long Beach, with the participation and cooperation of the staff of the SCAQMD, CARB, and U.S. EPA, adopted the San Pedro Bay Ports Clean Air Action Plan (CAAP). The CAAP was further amended in 2010, updating many of the goals and implementation strategies to reduce air emissions and health risks associated with port

operations while allowing port development to continue. In addition to addressing health risks from port-related sources, the CAAP sought the reduction of criteria pollutant emissions to the levels that assure port-related sources decrease their "fair share" of regional emissions to enable the Basin to attain state and federal ambient air quality standards.

The CAAP focuses primarily on reducing diesel particulate matter (DPM), along with NOx and SOx. The CAAP includes proposed strategies on port-related sources that are implemented through new leases or Port-wide tariffs, Memoranda of Understanding (MOU), voluntary action, grants or incentive programs.

The goals set forth in the CAAP include:

- Health Risk Reduction Standard: 85% reduction in population-weighted cancer risk by 2020
- Emission Reduction Standards:
  - By 2014, reduce emissions by 72% for DPM, 22% for NOx, and 93% for SOx
  - By 2023, reduce emissions by 77% for DPM, 59% for NOx, and 93% for SOx

In addition to the CAAP, the Ports have completed annual inventories of port-related sources since 2005. These inventories have been completed in conjunction with a technical working group composed of the SCAQMD, CARB, and U.S. EPA. Based on the latest inventories, it is estimated that the emissions from port-related sources will meet the 2012 AQMP emission targets necessary for meeting the 24-hr PM2.5 ambient air quality standard. The projected emissions from port related sources are included in the "baseline" emissions assumed in this plan to attain the PM2.5 standards.

While many of the emission reduction targets in the CAAP result from implementation of federal and state regulations (either adopted prior to or after the CAAP), some are contingent upon the Ports taking and maintaining actions which are not required by air quality regulations. These actions include the Expanded Vessel Speed Reduction Incentive Program, lower emission switching locomotives,and incentives for lower emission marine vessels. This AQMP control measure is designed to provide a "backstop" to the Ports' actions to provide assurance that, if emissions do not continue to meet projections, the ports will develop and implement plans to get back on track, to the extent that cost effective and feasible strategies are available. .

Regulatory History

The CAAP sets out the emission control programs and plans that will help mitigate air quality impacts from port-related sources. The CAAP relies on a combination of regulatory requirements and voluntary control strategies which go beyond U.S. EPA or CARB requirements, or are implemented faster than regulatory rules. The regulations which the CAAP relies on include international, federal and state requirements controlling port-related sources such as marine vessels, harbor craft, cargo handling equipment, locomotives, and trucks.

The International Maritime Organization (IMO) MARPOL Annex VI, which came into force in May 2005, set new international NO_x emission limits on Category 3 (>30 liters per cylinder displacement) marine engines installed on new vessels retroactive to the year 2000. In October

~~2008, the IMO adopted an amendment which places a global limit on marine fuel sulfur content of 0.1 percent by 2015 for specific areas known as Emission Control Areas (ECA). The South Coast District waters of the California coast are included in an ECA and ships calling at the Port of Los Angeles and Long Beach have to meet this new fuel standard. In addition, the 2008 IMO amendment required new ships built after January 1, 2016 which will be used in an Emission Control Area (ECA) to meet a Tier III NOx emission standard which is 80 percent lower than the original emission standard.~~

~~To reduce emissions from switch and line-haul locomotives, the U.S. EPA in 2008 established a series of increasingly strict emission standards for new or remanufactured locomotive engines. The emission standards are implemented by "Tier" with Tier 0 as the least stringent and Tier 4 being the most stringent. U.S. EPA also established remanufacture standards for both line haul and switch engines. For Tiers 0, 1, and 2, the remanufacture standards are more stringent than the new manufacture standards for those engines for some pollutants.~~

~~To reduce emissions from on-road, heavy-duty diesel trucks, U.S. EPA established a series of cleaner emission standards for new engines, starting in 1988. The U.S. EPA promulgated the final and cleanest standards with the 2007 Heavy Duty Highway Rule. Starting with model year 2010, all new heavy-duty trucks have to meet the final emission standards specified in the rule.~~

~~On December 8, 2005, CARB approved the Regulation for Mobile Cargo Handling Equipment (CHE) at Ports and Intermodal Rail Yards (Title 13, CCR, Section 2479), which is designed to use best available control technology (BACT) to reduce diesel PM and NO_x emissions from mobile cargo handling equipment at ports and intermodal rail yards. The regulation became effective December 31, 2006. Since January 1, 2007, the regulation imposes emission performance standards on new and in-use terminal equipment that vary by equipment type.~~

~~In 1998, the railroads and CARB entered into an MOU to accelerate the introduction of Tier 2 locomotives into the SCAB. The MOU includes provisions for a fleet average in the SCAB, equivalent to U.S. EPA's Tier 2 locomotive standard by 2010. The MOU addressed NOx emissions from locomotives. Under the MOU, NOx levels from locomotives are reduced by 67 percent.~~

~~On June 30, 2005, Union Pacific Railroad (UP) and Burlington Northern Santa Fe Railroad (BNSF) entered into a Statewide Rail Yard Agreement to Reduce Diesel PM at California Rail Yards with the CARB. The railroads committed to implementing certain actions from rail operations throughout the state. In addition, the railroads prepared equipment inventories and conducted dispersion modeling for Diesel PM.~~

~~In December 2007, CARB adopted a regulation which applies to heavy-duty diesel trucks operating at California ports and intermodal rail yards. This regulation eventually will require all drayage trucks to meet 2007 on-road emission standards by 2014.~~

~~Areas where the CAAP went beyond existing regulatory requirements or accelerated the implementation of current IMO, U.S. EPA, or CARB rules include emissions reductions from ocean-going vessels through lowering vessel speeds, accelerating the introduction of 2007/2010 on-road heavy-duty drayage trucks, maximizing the use of shore-side power for ocean-going~~

vessels while at berth, early use of low-sulfur fuel in ocean-going vessels, and the restriction of high-emitting locomotives on port property. Each of these strategies is highlighted below.

HDV1 – Performance Standards for On-Road Heavy Duty Vehicles (Clean Truck Program) – This control measure requires that all on-road trucks entering the ports comply with the Clean Truck Program. Several milestones occurred early in the program implementation, but the current requirement bans all trucks not meeting the 2007 on-road heavy-duty truck emission standards from port property. This program has the effect of accelerating the introduction of clean trucks sooner than would have occurred under the state-wide drayage truck regulation framework.

OGV1 – Vessel Speed Reduction Program (VSRP): Under this voluntary program, the Port requested that ships coming into the Ports reduce their speed to 12 knots or less within 20nm of the Point Fermin Lighthouse. The program started in May 2001. The Ports expanded the program out to 40 nm from the Point Fermin Lighthouse in 2010.

OGV3/OGV4 – Low Sulfur Fuel for Auxiliary and Main Engines and Auxiliary Boilers: OGV3 reduces emissions for auxiliary engines and auxiliary boilers of OGVs during their approach and departure from the ports, including hoteling, by switching to MGO or MDO with a fuel sulfur content of 0.2 percent or less within 40 nm from Point Fermin. OGV4 Control measure reduces emissions from main engines during their approach and departure from the ports. OGV3 and OVV4 are implemented as terminal leases are renewed.

RL-3 – New and Redeveloped Near-Dock Rail Yards: The Ports have committed to support the goal of accelerating the natural turnover of line-haul locomotive fleet to at least 95 percent Tier 4 by 2020. In addition, this control measure establishes the minimum standard goal that the Class 1 (UP and BNSF) locomotive fleet associated with new and redeveloped near-dock rail yards use 15-minute idle restrictors and ULSD or alternative fuels, and as part of the environmental review process for upcoming rail projects, 40% of line-haul locomotives accessing port property will meet a Tier 3 emission standard and 50% will meet Tier 4.

PROPOSED METHOD OF CONTROL

The goal of this measure is to ensure that NOx, SOx and PM2.5 emissions reductions from port-related sources are sufficient to attain the 24-hr federal PM2.5 ambient air quality standard. This measure would establish targets for NOx, SOx, and PM2.5 for 2014 that are based on emission reductions resulting from adopted rules and other measures such as railroad MOUs and vessel speed reduction that have been adopted and are being implemented. These emissions from port related sources are included in the "baseline" emissions assumed in this plan to attain the 24-hour $PM_{2.5}$ standard. Based on current and future emission inventory projections these rules and measures will be sufficient to achieve attainment of the 24-hr federal PM2.5 ambient air quality standard. Requirements adopted pursuant to this measure will become effective only if emission levels exceed the above targets. Once triggered, the ports will be required to develop and implement a plan to reduce emissions from port related sources to meet the emission targets over a time period. The time period to achieve and maintain emission targets will be established pursuant to procedures and criteria developed during rulemaking and specified in the rule.

~~This control measure will be implemented through a District rule. Through the rule development process the AQMD staff will establish a working group, hold a series of working group meetings, and hold public workshops. The purpose of the rule development process is to allow the AQMD staff to work with a variety of stakeholders such as the Ports, potentially affected industries, other agencies, and environmental and community groups. The rule development process will discuss the terms of the proposed backstop rule and, through an iterative public process, develop proposed rule language. In addition, the emissions inventory and targets will be reviewed and may be refined if necessary. This control measure applies to the Port of Los Angeles and the Port of Long Beach, acting through their respective Boards of Harbor Commissioners. The ports may have the option to comply separately or jointly with provisions of the backstop rule.~~

~~Elements of Backstop Rule~~

~~*Summary*: This control measure will establish enforceable nonattainment pollutant emission reduction targets for the ports in order to ensure implementation of the 24-hr PM2.5 attainment strategy in the 2012 AQMP. The "backstop" rule will go into effect if aggregate emissions from port related sources exceed specified emissions targets. If emissions do not exceed such targets, the ports will have no control obligations under this control measure.~~

~~*Emissions Targets:* The emissions inventories projected for the port related sources in the 2012 AQMP are an integral part of the 24-hr PM2.5 attainment demonstration for 2014 and its maintenance of attainment in subsequent years. These emissions serve as emission targets for meeting the 24-hr PM2.5 standard.~~

~~*Scope of Emissions Included:* Emissions from all sources associated with each port, including equipment on port property, marine vessels traveling to and from the port while in California Coastal Waters, locomotives and trucks traveling to and from port-owned property while within the South Coast Air Basin. This measure will make use of the Port's annual emission inventory, either jointly or individually, as the basis for the emission targets. The inventory methodology to estimate these emissions is consistent with the CAAP methodology. Other sources – i.e. sources that are unrelated to the ports – would not in any way be subject to emission reductions under this measure (including through funding of emission reduction measures, or purchase of emission credits, by the ports or port tenants).~~

~~*Circumstances Causing Backstop Rule Regulatory Requirements to Come Into Effect:* The "backstop" requirements will be triggered if the reported aggregate emissions for 2014 for all port related sources exceed the 2014 emissions targets. The rule may also provide that it will come into effect if the target is met in 2014 but exceeded in a subsequent year. If the target is not exceeded, the ports would have no obligations under this measure.~~

~~*Requirements if Backstop Rule Goes Into Effect:* If the "backstop" rule goes into effect, the Ports would submit an Emission Control Plan to the District. The plan would include measures sufficient to bring the Ports back into compliance with the 2014 emission targets. The Ports may choose which sources would be subject to additional emission controls, and may choose any number of implementation tools that can achieve the necessary reduction. These may include clean technology funding programs, lease provisions, port tariffs, or incentives/disincentives to~~

implement measures. As described below, the ports would have no obligation under this measure to implement measures which are not cost-effective and feasible, or where the ports lack the authority to adopt an implementation mechanism. The District would approve the plan if it met the requirements of the rule.

RULE COMPLIANCE AND TEST METHODS

Compliance with this control measure will depend on the type of control strategy implemented. Compliance will be verified through compliance plans, and enforced through submittal and review of records, reports, and emission inventories. Enforcement provisions will be discussed as part of the rule development process.

COST EFFECTIVENESS AND FEASIBILITY

The cost effectiveness of this measure will be based on the control option selected. A maximum cost-effectiveness threshold will be established for each pollutant during rule development. The rule will not require any additional control strategy to be implemented which exceeds the threshold, or which is not feasible. In addition, the rule would not require any strategy to be implemented if the ports lack authority to implement such strategy. If sufficient cost-effective and feasible measures with implementation authority are not available to achieve the emissions targets by the applicable date, the District will issue an extension of time to achieve the target. It is the District's intent that during such extension, the ports and regulatory agencies would work collaboratively to develop technologies and implementation mechanisms to achieve the target at the earliest date feasible.

IMPLEMENTING AGENCY

The District has authority to adopt regulations to reduce or mitigate emissions from indirect sources, i.e. facilities such as ports that attract on- and off-road mobile sources, and has certain authorities to control emissions from off-road mobile sources themselves. These authorities include the following:

Indirect Source Controls. State law provides the District authority to adopt rules to control emissions from "indirect sources." The Clean Air Act defines an indirect source as a "facility, building, structure, installation, real property, road or highway which attracts, or may attract, mobile sources of pollution." 42 U.S.C. § 7410(a)(5)(C); CAA § 110(a)(5)(C). Districts are authorized to adopt rules to "reduce or mitigate emissions from indirect sources" of pollution. (Health & Safety Code § 40716(a)(1)). The South Coast District is also required to adopt indirect source rules for areas where there are "high-level, localized concentrations of pollutants or with respect to any new source that will have a significant impact on air quality in the South Coast Air Basin." (Health & Safety Code § 40440(b)(3)). The federal Court of Appeals has held that an indirect source rule is not a preempted "emission standard." *National Association of Home Builders v. San Joaquin Valley Unified Air Pollution Control District*, 627 F.3d. 730 (9th Cir. 2010)

Nonvehicular (Off-Road) Source Emissions Standards. Under California law "local and regional authorities," including the ports and the District, have primary responsibility for the control of air pollution from all sources other than motor vehicles. (Health & Safety Code § 40000). Such "nonvehicular" sources include marine vessels, locomotives and other non-road equipment. CARB has concurrent authority under state law to regulate these sources. The federal Clean Air Act preempts states and local governments from adopting emission standards and other requirements for new locomotives (Clean Air Act § 209(e); 42 U.S.C.§ 7543(e)), but California may establish and enforce standards for other non-road sources upon receiving authorization from EPA (*Id.*). No such federal authorization is required for state or local fuel, operational, or mass emission limits for marine vessels, locomotives or other non-road equipment. (40 CFR Pt. 89, Subpt. A, App.A; *Engine Manufacturers Assn. v. Environmental Protection Agency*, 88 F.3d. 1075 (DC Cir. 1996)).

Fuel Sulfur Limits. With respect to non-road engines, including marine vessels and locomotives, the District and CARB have concurrent authority to establish fuel limits, such as those on sulfur content. As was noted above, fuel regulations for non-road equipment are not preempted by the Clean Air Act and do not require EPA authorization.

Operational Limits. The District has authority under state law to establish operational limits for nonvehicular sources such as marine vessels, locomotives, and cargo handling equipment (to the extent cargo handling equipment is "nonvehicular"). As was discussed above, operational limits for non-road equipment are not preempted by the Clean Air Act. In addition, the District may adopt operational limits for motor vehicles such as indirect source controls and transportation controls without receiving an authorization or waiver from U.S. EPA.

REFERENCES

San Pedro Bay Ports Clean Air Action Plan, 2010 Update, October 2010

Southern California International Gateway Project Draft Environmental Impact Report, Port of Los Angeles, September 2011

SCAQMD, 2007 Air Quality Management Plan, Appendix IV-A, June 2007

ATTACHMENT 18.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Final Supplement to the 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin

February 2015

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Barry R. Wallerstein, D. Env.

Deputy Executive Officer
Planning, Rule Development and Area Sources
Elaine Chang, DrPH

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TABLE F-1

Updated 2012 SIP Emission Reduction Commitments to Attain 24-hour PM2.5 NAAQS *(35 μg/m³)*

Control Measure #	CONTROL MEASURE TITLE	2012 AQMP			PROPOSED in SUPPLEMENT		
		Adoption Date	COMMITMENT	ACHIEVED	Adoption Date	COMMITMENT	ACHIEVED
			2014	2014		2015	2015
PM2.5 EMISSIONS							
IND-01	Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Facilities [R4001]	2013	N/A[1]	N/A[1]	**2015**	N/A[1]	N/A[1]
BCM-01	Further Reductions from Residential Wood Burning Devices [R445]	2013	7.1	7.1	2013	7.1	7.1
BCM-02	Further Reductions from Open Burning [R444]	2013	4.6	4.6	2013	4.6	4.6
MCS-01	Application of All Feasible Measures Assessment	Ongoing	TBD[2]	TBD	Ongoing	TBD[2]	TBD
BCM-03	Emission Reductions from Under-Fired Charbroilers [R1138]	2015	TBD[3]	TBD	**2017**	TBD[3]	TBD
EDU-01	Further Criteria Pollutant Reductions from Education, Outreach and Incentives	Ongoing	N/A[4]	N/A	Ongoing	N/A[4]	N/A
	TOTAL PM2.5 EMISSION REDUCTIONS (TPD)		**11.7**	**11.7**	**--**	**11.7**	**11.7**
NOx EMISSIONS							
CMB-01	Further NOx Reductions from RECLAIM [Reg XX]	2013	2.0[5]	--	**2015**	2.0[5]	--
IND-01	Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Facilities [R4001]	2013	N/A[1]	N/A[1]	**2015**	N/A[1]	N/A[1]
	TOTAL NOx EMISSION REDUCTIONS (TPD)		**2.0**	--	--	**2.0**	--
SOx EMISSIONS							
IND-01	Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Facilities [R4001]	2013	N/A[1]	N/A[1]	**2015**	N/A[1]	N/A[1]
	TOTAL SOx EMISSION REDUCTIONS (TPD)		--	**N/A[1]**	--	--	**N/A[1]**
NH3 EMISSIONS							
BCM-04	Further Ammonia Reductions from Livestock Waste [R1127] - Phase I (*Tech Assessment*)	2013-2014	TBD[2]	TBD	**2015 - 2016**	TBD[2]	TBD
	-Phase II (*Rule Amendment*)	TBD	TBD[2]	TBD	TBD	TBD[2]	TBD
	TOTAL NH3 EMISSION REDUCTIONS (TPD)		TBD	TBD	--	--	--

[1] Measure is designed to ensure reductions assumed to occur will in fact occur
[2] Reductions to be determined once the technical assessment is complete, and inventory and control approach are identified
[3] Will submit into SIP once technically feasible and cost effective options are identified
[4] Reductions cannot be quantified due to the nature of the measure (e.g., outreach, incentive programs)
[5] Emission reductions are included in the SIP as a contingency measure, if triggered

ATTACHMENT 19.

BOARD MEETING DATE: February 6, 2015 AGENDA NO. 22

PROPOSAL: Supplement to 24-hour PM2.5 State Implementation Plan for South Coast Air Basin

SYNOPSIS: The purpose of this Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin is to demonstrate attainment of the 2006 24-hour PM2.5 National Ambient Air Quality Standard by 2015 under Clean Air Act, Title 1, Part D, Subpart 4, along with updates to the transportation conformity budgets, analysis of Reasonably Available Control Measures/Reasonably Available Control Technology, control measure commitments submitted in the 2012 AQMP, and other Subpart 4 requirements.

COMMITTEE: Mobile Source Committee, January 23, 2015, Reviewed

RECOMMENDED ACTIONS:
Adopt the attached resolution:

1. Determining that the Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin is exempt from the requirements of CEQA; and
2. Approving the attached Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin for Submittal into the SIP.

Barry R. Wallerstein, D.Env.
Executive Officer

BB EC:PF:MK

Background

The 2012 AQMP was approved by the SCAQMD Board in December 2012, with additional amendments approved in February 2013, and was subsequently submitted to CARB and the U.S. EPA for inclusion into the SIP. That plan demonstrated projected attainment of the 2006 24-hour PM2.5 National Ambient Air Quality Standards (NAAQS) (35 $\mu g/m^3$) by 2014. However, a recent court decision (*Natural Res. Def. Council v. EPA*, 706 F.3d 428 (D.C. Cir. 2013)) compels U.S. EPA to evaluate the 24-

ATTACHMENT B

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Draft Supplement to the 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin

January 2015

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	Megan Lorenz	Senior Deputy District Counsel

ATTACHMENT F

UPDATED LIST OF CONTROL STRATEGY COMMITMENTS

UPDATE OF COMMITMENTS

The short-term PM2.5 control measures in the 2012 AQMP included stationary source control measures, technology assessments, an indirect source measure and one education and outreach measure. The development of the control measures considered the emissions reductions and the adoption and implementation dates that would result in attainment of the 2006 24-hour PM2.5 standard of 35 $\mu g/m^3$. In some cases, only a range of possible emissions reductions could be determined, and for some others, the magnitude of potential reductions could not be determined at that time. The short-term PM2.5 control measures were presented in Table 4-2 (Chapter 4) of the 2012 AQMP, and the following table, Table F-1 updates that information, thus replacing Table 4-2 in the 2012 AQMP for inclusion in the 24-hour PM2.5 SIP. Note that these changes do not affect the magnitude or timing of emission reductions commitments supporting the attainment demonstration in the 2012 AQMP and this Supplement. The emission reduction commitment for CMB-01 (Further NOx Reductions from RECLAIM) was as a contingency measure only for PM2.5, and thus does not affect the attainment demonstrations.

The measures target a variety of source categories: Combustion Sources (CMB), PM Sources (BCM), Indirect Sources (IND), Educational Programs (EDU) and Multiple Component Sources (MCS).

Two PM2.5 control measures, BCM-01 (Further Reductions from Residential Wood Burning Devices) and BCM-02 (Further Reductions from Open Burning), were adopted in 2013 in the form of amendments to Rules 445 (Wood Burning Devices) and 444 (Open Burning), respectively. Together, these amendments generated a total of 11.7 tons of PM2.5 per day reductions on an episodic basis. Control measure CMB-01 (Further NOx Reductions from RECLAIM), which was submitted as a contingency measure, is anticipated to be considered by the SCAQMD Governing Board in the first half of 2015. The rulemaking process for control measure IND-01 (Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities) is underway, with anticipated SCAQMD Governing Board consideration in 2015 and the technology assessment for control measure BCM-04 (Further Ammonia Reductions from Livestock Waste) will now be adopted in the 2015 to 2016 timeframe with rulemaking to follow, if technically feasible and cost-effective. The BCM-03 (Emission Reductions from Under-Fired Charbroilers) technology assessment is ongoing and is expected to be completed by 2015 with rule development to follow by 2017.

Pursuant to CAA Section 172(c)(9), SIPs are required to include contingency measures to be undertaken if the area fails to make reasonable further progress or attain the NAAQS by the attainment date. The contingency measures "should provide for emission reductions equivalent to about one year of reductions needed for reasonable further progress (RFP)" (79 FR 20642-20645) The 2012 AQMP relied on excess air quality improvement from the control strategy as well as potential NOx reductions from control measure CMB-01 (Further NOx Reductions from

ATTACHMENT 20.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Final Supplement to the 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin

February 2015

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TABLE F-1

Updated 2012 SIP Emission Reduction Commitments to Attain 24-hour PM2.5 NAAQS *(35 μg/m³)*

Control Measure #	CONTROL MEASURE TITLE	2012 AQMP			PROPOSED in SUPPLEMENT		
		Adoption Date	COMMITMENT	ACHIEVED	Adoption Date	COMMITMENT	ACHIEVED
			2014	2014		2015	2015
PM2.5 EMISSIONS							
IND-01	Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Facilities [R4001]	2013	N/A[1]	N/A[1]	**2015**	N/A[1]	N/A[1]
BCM-01	Further Reductions from Residential Wood Burning Devices [R445]	2013	7.1	7.1	2013	7.1	7.1
BCM-02	Further Reductions from Open Burning [R444]	2013	4.6	4.6	2013	4.6	4.6
MCS-01	Application of All Feasible Measures Assessment	Ongoing	TBD[2]	TBD	Ongoing	TBD[2]	TBD
BCM-03	Emission Reductions from Under-Fired Charbroilers [R1138]	2015	TBD[3]	TBD	**2017**	TBD[3]	TBD
EDU-01	Further Criteria Pollutant Reductions from Education, Outreach and Incentives	Ongoing	N/A[4]	N/A	Ongoing	N/A[4]	N/A
	TOTAL PM2.5 EMISSION REDUCTIONS (TPD)		**11.7**	**11.7**	--	**11.7**	**11.7**
NOx EMISSIONS							
CMB-01	Further NOx Reductions from RECLAIM [Reg XX]	2013	2.0[5]	--	**2015**	2.0[5]	--
IND-01	Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Facilities [R4001]	2013	N/A[1]	N/A[1]	**2015**	N/A[1]	N/A[1]
	TOTAL NOx EMISSION REDUCTIONS (TPD)		**2.0**	--	--	**2.0**	--
SOx EMISSIONS							
IND-01	Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Facilities [R4001]	2013	N/A[1]	N/A[1]	**2015**	N/A[1]	N/A[1]
	TOTAL SOx EMISSION REDUCTIONS (TPD)		--	**N/A[1]**	--	--	**N/A[1]**
NH3 EMISSIONS							
BCM-04	Further Ammonia Reductions from Livestock Waste [R1127] - Phase I (*Tech Assessment*)	2013-2014	TBD[2]	TBD	**2015 - 2016**	TBD[2]	TBD
	-Phase II (*Rule Amendment*)	TBD	TBD[2]	TBD	TBD	TBD[2]	TBD
	TOTAL NH3 EMISSION REDUCTIONS (TPD)		TBD	TBD	--	--	--

[1] Measure is designed to ensure reductions assumed to occur will in fact occur
[2] Reductions to be determined once the technical assessment is complete, and inventory and control approach are identified
[3] Will submit into SIP once technically feasible and cost effective options are identified
[4] Reductions cannot be quantified due to the nature of the measure (e.g., outreach, incentive programs)
[5] Emission reductions are included in the SIP as a contingency measure, if triggered

BOARD MEETING DATE: February 6, 2015 AGENDA NO. 22

PROPOSAL: Supplement to 24-hour PM2.5 State Implementation Plan for South Coast Air Basin

SYNOPSIS: The purpose of this Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin is to demonstrate attainment of the 2006 24-hour PM2.5 National Ambient Air Quality Standard by 2015 under Clean Air Act, Title 1, Part D, Subpart 4, along with updates to the transportation conformity budgets, analysis of Reasonably Available Control Measures/Reasonably Available Control Technology, control measure commitments submitted in the 2012 AQMP, and other Subpart 4 requirements.

COMMITTEE: Mobile Source Committee, January 23, 2015, Reviewed

RECOMMENDED ACTIONS:
Adopt the attached resolution:
1. Determining that the Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin is exempt from the requirements of CEQA; and
2. Approving the attached Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin for Submittal into the SIP.

Barry R. Wallerstein, D.Env.
Executive Officer

BB EC:PF:MK

Background

The 2012 AQMP was approved by the SCAQMD Board in December 2012, with additional amendments approved in February 2013, and was subsequently submitted to CARB and the U.S. EPA for inclusion into the SIP. That plan demonstrated projected attainment of the 2006 24-hour PM2.5 National Ambient Air Quality Standards (NAAQS) (35 $\mu g/m^3$) by 2014. However, a recent court decision (*Natural Res. Def. Council v. EPA*, 706 F.3d 428 (D.C. Cir. 2013)) compels U.S. EPA to evaluate the 24-

ATTACHMENT E

~~DEMONSTRATION OF COMPLIANCE WITH~~
CLEAN AIR ACT, SUBPART 4, SECTION 189(E)
AND OTHER PRECURSOR REQUIREMENTS

BACKGROUND

PM2.5 has four major precursors, other than direct PM2.5 emissions, that may contribute to the development of the ambient PM2.5: ammonia, NOx, SOx, and VOC. The 2012 AQMP modeling analysis resulted in a set of ratios that reflect the relative amounts of ambient PM2.5 improvements expected from reductions of PM2.5 precursors emissions. For instance, Table 5-2 in Chapter 5 of the 2012 AQMP demonstrates that one ton of VOC emission reductions is only 30 percent as effective as one ton of NOx for lowering 24-hour PM2.5 concentrations. VOC reductions are only four percent and two percent as effective as SOx and direct PM2.5 reductions, respectively, on a per ton basis. Thus, VOC controls have a much less significant impact on ambient 24-hour PM2.5 levels relative to other PM2.5 precursors.

EMISSIONS CONTRIBUTION

While similar relative contributions to PM2.5 have not been developed for ammonia, the mass contributions of ammonium sulfate and ammonium nitrate are accounted for in the SOx and NOx contributions. This essentially assumes that PM2.5 formation in the basin is not ammonia limited with sufficient ammonia in the atmosphere to combine with available nitrates and sulfates. Under these conditions, ammonia controls are much less effective at reducing ambient PM2.5 levels than other precursors.

While the 2012 AQMP ammonia emissions inventory was close to 100 ton per day (TPD), the inventory was highly variable in terms of source contributions and spatial distribution throughout the Basin. As presented in Table E-1, major sources accounted for 1.7 TPD or less than 2 percent of the Basin inventory. Furthermore, only four major source emitters were noted in the inventory with the single highest major source accounting for less than 0.50 TPD direct emissions. All four major sources are located in the western Basin.

TABLE E-1

VOC and Ammonia Emissions Contributions

POLLUTANT	ALL SOURCES *(Tons Per Day)*	MAJOR SOURCES *(Tons Per Day)*	RELATIVE CONTRIBUTION
VOC	451[1]	8.0[2]	1.8%
Ammonia	99[3]	1.7[2]	1.7%

[1] 2012 AQMP - Appendix III: Base and Future Year Emission Inventory; 2014 Annual Average Emissions by Source Category in South Coast Air Basin

[2] 2013 SCAQMD Annual Emission Reporting

[3] ARB Almanac 2013 – Appendix B: County Level Emissions and Air Quality by Air Basin; County Emission Trends

Prior to the 2003 AQMP, significant effort was undertaken to develop inter-pollutant trading ratios to meet NSR emissions reduction goals. The primary mechanism was to reduce SOx to offset PM emissions. Aerosol chemical mechanisms embedded in box and regional modeling platforms where used to estimate the formation rates of ammonium sulfate from local sulfur emissions to establish a SOx emissions to PM formation ratio. The analyses determined that the influence of ammonia emissions was spatially varying where coastal-metro zone (west Basin) trading ratios of SOX to PM valued more than 5:1 per unit SOx emissions to PM. Conversely, eastern Basin ratios valued 1:1 since ammonia emissions were abundant and all SOx emissions were likely to rapidly transform to particulate ammonium sulfate. The inter-pollutant trades made during this time were reviewed by U.S. EPA and were included by reference to the EPA sponsored Inter-Pollutant Trading Working Group[4].

As part of the controls strategy evaluation for future PM2.5 attainment, additional set of analyses were conducted to test the potential impact of the use of SCR as a NOx control mechanism for mobile sources in the Basin. The analyses assumed that light as well as heavy duty diesels would use the control equipment potentially resulting in a 78-85 percent increase in ammonia from those source categories. The results of the analysis, presented at the September 24, 2010 SCAQMD Mobile Source Committee Meeting[5], indicated that a 10 TPD increase in ammonia would result in a net 0.22 $\mu g/m^3$ increase in regional PM2.5 concentrations. The emissions mostly followed heavy traffic corridors including freeways and major arterials. Regardless, the minimal PM2.5 simulated increase from a 10 percent increase in the Basin inventory reflected the degree of saturation of ammonia in the Basin and minimal sensitivity of changes in ammonia emissions to PM2.5 production.

During the development of the 2012 AQMP, a sensitivity analysis was conducted to test the potential impact of using a feed supplement applied to dairy cows on a forecasted basis that would reduce bovine ammonia emissions by 50 percent. The analysis focused on the Mira Loma area where more than 70 percent of the Basin's dairy emissions originate. In the sensitivity analysis a total of 2.9 TPD emissions were reduced from 103 dairy sources, or an average of 0.028 TPD per source (roughly one tenth of major source threshold)[6]. Since the Mira Loma monitoring station was embedded among the dairy sources, the reduction of the ground level emissions resulted in an approximate 0.16 $\mu g/m^3$ reduction in PM2.5. As in the aforementioned analyses, the reduction in regional ammonia emissions resulted in a minimal PM2.5 impact per ton emissions reduced.

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and Forecasts 2012 Emissions. NOTE: 2012 AQMP – Appendix III provides 2014 Annual Average of 102 tpd of NH3; the relative contribution would not change (1.7/102 = 1.7%)

[4] "Preliminary Assessment of Methods for Determining Interpollutant Offsets", Correspondence with Scott Bohning U.S. EPA Region IX, May 6, 2002.

[5] "Impact of Higher On- and Off-road Ammonia Emissions on Regional PM2.5," Item 3, SCAQMD, Mobile Source Committee, September 24, 2010.

[6] "2008 24-hour PM2.5 Model Performance/Preliminary Attainment Demonstration," Item #2, Scientific Technical Modeling Peer Group Advisory Committee, June 14, 2012.

Thus, ammonia controls also have a much less significant impact on 24-hour PM2.5 exceedances than other precursors. Note however, that the effect on annual PM2.5 levels will be further evaluated in the 2016 AQMP.

SECTION 189(E)

Clean Air Act (CAA), Title I, Part D, Subpart 4, Section 189(e) states that control requirements applicable to plans in effect for major stationary PM sources shall also apply to major stationary sources of PM precursors, except where such sources does not contribute significantly to PM levels which exceed the standard in the area. According to the U.S. EPA, a major source in a nonattainment area is a source with emission of any one air pollutant greater than or equal to the major source thresholds in a nonattainment area. This threshold is generally 100 tons per year (tpy) or lower depending on the nonattainment severity for all sources. Emissions are based on "potential to emit" and include the effect of add-on emission control technology, if enforceable (*must be able to show continual compliance with the limitation or requirement*).

Major stationary sources of NOx and SOx are already subject to emission offsets (e.g., Regulation XX (RECLAIM) and Regulation XII (New Source Review)). Thus, to demonstrate compliance with CAA Subpart 4, Section 189(e), an analysis was conducted of the emissions of VOC and ammonia from major stationary sources during rule development of amended Rule 1325 (*Federal PM2.5 New Source Review Program*) approved by the SCAQMD Governing Board on December 5, 2014 (http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2014/2014-dec5-038.pdf?sfvrsn=2). That analysis concluded that VOC and ammonia from major sources (emitting 100 tpy or greater) contribute less than 2% of the overall Basin-wide VOC and ammonia emissions (Table E-1), and by extension, do not contribute significantly to PM levels. Furthermore, both VOC and ammonia are subject to requirements for Best Available Control Technology (BACT) under existing New Source Review (NSR) at a zero threshold, so those emission will still be minimized. This analysis was also included in the final approved staff report for PAR 1325.

~~Thus, the SCAQMD believes the requirements of CAA Subpart 4, Section 189(e) are satisfied and thus request that the Administrator of U.S. EPA makes this determination pursuant to this Section.~~

NEW SOURCE REVIEW

Because ammonia from major stationary sources does not significantly contribute to PM levels (see Table E-1), ammonia emission sources have not historically been subject to NSR offset requirements. However, for permitted ammonia sources, SCAQMD Rule 1303 (*NSR Requirements)* requires denial of "the Permit to Construct for any relocation, or for any new or

modified source which results in an emission increase of any nonattainment air contaminant, any ozone depleting compound, or ammonia, unless BACT is employed for the new or relocated source or for the actual modification to an existing source." No new major stationary source of ammonia is expected to be introduced to the region given that these new sources would be subject to BACT requirements (under SCAQMD Rule 1303 (*NSR Requirements*), BACT shall be at least as stringent as Lowest Achievable Emissions Rate (LAER) as defined in the federal Clean Air Act Section 171(3) [42 U.S.C. Section 7501(3)]). As mentioned above, there are currently only four major sources of ammonia (emitting more than 100 tons per year) in the South Coast Air Basin. If these sources were new to the region, they would be subject to BACT as stringent as LAER and not expected to reach 100 tons per year so as to be classified as a major source, thus not subject to NSR offset requirements.

However unlikely, even if new or modified major sources of ammonia increase ammonia emissions in the Basin, the ammonia contribution from major sources in the South Coast Air Basin will still not be a significant contributor to PM2.5 levels given that all current major sources of ammonia account for less than two percent of the overall ammonia emissions inventory. For instance, in the extremely unlikely event that ammonia emissions from major sources double, they would still contribute less than five percent of the overall ammonia inventory.

ATTACHMENT 21.

ATTACHMENT A
RESOLUTION NO. 12-19

A Resolution of the South Coast Air Quality Management District (AQMD or District) Governing Board Certifying the Final Program Environmental Impact Report for the 2012 Air Quality Management Plan (AQMP), adopting the Draft Final 2012 AQMP, to be referred to after adoption as the Final 2012 AQMP, and to be submitted into the California State Implementation Plan.

WHEREAS, the U.S. Environmental Protection Agency (U.S. EPA) promulgated a 24-hour fine particulate matter (PM2.5) national ambient air quality standard (NAAQS or standard) in 2006, and 8-hour ozone NAAQS in 1997, followed up by implementation rules which set forth the classification and planning requirements for State Implementation Plans (SIP); and

WHEREAS, the South Coast Air Basin was classified as nonattainment for the 2006 24-hour PM2.5 standard on December 14, 2009, with an attainment date by December 14, 2014; and

WHEREAS, the U.S. EPA revoked the 1-hour ozone standard effective June 15, 2005, but on September 19, 2012 issued a proposed call for a California SIP revision for the South Coast to demonstrate attainment of the 1-hour ozone standard; and

WHEREAS, the 1997 8-hour ozone standard became effective on June 15, 2004, with an attainment date for the South Coast of **June 15**, 2024; and amended 12-7-12 sm

WHEREAS, the South Coast Air Basin was classified as "extreme" nonattainment for 8-hour ozone for the 1997 standard with attainment dates by 2024; and

WHEREAS, EPA approved the South Coast SIP for 8-hour ozone on March 1, 2012; and

WHEREAS, the federal Clean Air Act requires SIPs for regions not in attainment with the NAAQS be submitted no later than three years after the nonattainment area was designated, whereby, a SIP for the South Coast Air Basin must be submitted for 24-hour PM2.5 by December 14, 2012; and

WHEREAS, the South Coast Air Quality Management District has jurisdiction over the South Coast Air Basin and the desert portion of Riverside County known as the Coachella Valley; and

WHEREAS, 40 Code of Federal Regulations (CFR) Part 93 requires that transportation emission budgets for certain criteria pollutants be specified in the SIP, and

WHEREAS, 40 CFR Part 93.118(e)(4)(iv) requires a demonstration that transportation emission budgets submitted to U.S. EPA are "consistent with applicable requirements for reasonable further progress, attainment, or" maintenance (whichever is relevant to the given implementation plan submission); and

WHEREAS, the South Coast Air Quality Management District is committed to comply with the requirements of the federal Clean Air Act; and

WHEREAS, the Lewis-Presley Air Quality Management Act requires the District's Governing Board adopt an AQMP to achieve and maintain all state and federal air quality standards; to contain deadlines for compliance with federal primary ambient air quality standards; and to achieve the state standards and federal secondary air quality standards by the application of all reasonably available control measures, by the earliest date achievable (Health and Safety Code Section 40462) and the California Clean Air Act requires the District to endeavor to achieve and maintain state ambient air quality standards for ozone, carbon monoxide, sulfur dioxide, and nitrogen dioxide by the earliest practicable date (Health and Safety Code Section 40910); and

WHEREAS, the California Clean Air Act requires a nonattainment area to evaluate and, if necessary, update its AQMP under Health & Safety Code §40910 triennially to incorporate the most recent available technical information; and

WHEREAS, the South Coast Air Quality Management District Governing Board is committed to comply with the requirements of the California Clean Air Act; and

WHEREAS, the South Coast Air Quality Management District is unable to specify an attainment date for state ambient air quality standards for 8-hour ozone, PM2.5, and PM10, however, the 2012 AQMP, in conjunction with earlier AQMPs contains every feasible control strategy and measure to ensure progress toward attainment and the AQMP will be reviewed and revised to ensure that progress toward all standards is maintained; and

WHEREAS, the 2012 AQMP must meet all applicable requirements of state law and the federal Clean Air Act; and

WHEREAS, the South Coast Air Quality Management District Governing Board is committed to achieving healthful air in the South Coast Air Basin and all other parts of the District at the earliest possible date; and

WHEREAS, the 2012 AQMP is the result of 17 months of staff work, public review and debate, and has been revised in response to public comments; and

WHEREAS, the 2012 AQMP incorporates updated emissions inventories, ambient measurements, new meteorological episodes, improved air quality modeling analyses, and updated control strategies by the District, and the Southern California Association of Governments (SCAG) and will be forwarded to the California Air Resources Board (CARB) for any necessary additions and submission to EPA; and

WHEREAS, as part of the preparation of an AQMP, in conjunction or coordination with public health agencies such as CARB and the Office of Environmental Health Hazard Assessment (OEHHA), a report has been prepared and peer-reviewed by the Advisory Council on the health impacts of particulate matter air pollution in the South Coast Air Basin pursuant to California Health and Safety Code § 40471, which has been included as part of Appendix I (Health Effects) of the 2012 AQMP together with any required appendices; and

WHEREAS, the 2012 AQMP establishes transportation conformity budgets for the 24-hour PM2.5 standard based on the latest planning assumptions; and

WHEREAS, the AQMP satisfies all the attainment deadlines for federal ambient air quality standards for 24-hour PM2.5 and 1-hour ozone NAAQS; and

WHEREAS, the 2012 AQMP satisfies the planning requirements set forth in the federal and California Clean Air Acts; and

WHEREAS, the 2012 AQMP includes the 24-hour PM2.5 attainment demonstration plan, reasonably available control measure (RACM) and reasonably available control technology (RACT) determinations, and transportation conformity budgets for the South Coast Air Basin; and

WHEREAS, the 2012 AQMP updates the U.S. EPA approved 8-hour ozone control plan with new measures designed to reduce reliance on the federal Clean Air Act (CAA) Section 182(e)(5) long-term measures for NOx and VOC reductions; and

WHEREAS, in order to reduce reliance on the CAA Section 182(e)(5) long-term measures, the SCAQMD will need emission reductions from sources outside of its primary regulatory authority and from sources that may lack, in some cases, the financial wherewithal to implement technology with reduced air pollutant emissions; and

WHEREAS, a majority of the measures identified to reduce reliance on the CAA Section 182(e)(5) long-term measures rely on continued and sustained funding to incentivize the deployment of the cleanest on-road vehicles and off-road equipment; and

WHEREAS, the 2012 AQMP includes a new demonstration of 1-hour ozone attainment (Appendix VII) and vehicle miles travelled (VMT) emissions offsets (Appendix VIII), as per recent proposed U.S. EPA requirements; and

WHEREAS, the South Coast Air Quality Management District Governing Board finds and determines with certainty that the 2012 AQMP is considered a "project" pursuant to CEQA; and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA) a Notice of Preparation (NOP) of a Draft Program Environmental Impact Report (PEIR) and Initial Study for the 2012 AQMP was prepared and released for a 30-day public comment period, preliminarily setting forth the potential adverse environmental impacts of adopting and implementing the 2012 AQMP; and

WHEREAS, pursuant to CEQA a Draft PEIR on the 2012 AQMP (State Clearinghouse Number 2012061093), including the NOP and Initial Study and responses to comments on the NOP and Initial Study, was prepared and released for a 45-day public comment period, setting forth the potential adverse environmental impacts of adopting and implementing the 2012 AQMP; and

WHEREAS, the Draft PEIR on the 2012 AQMP included an evaluation of project-specific and cumulative direct and indirect impacts from the proposed project and four project alternatives; and

WHEREAS, the AQMD staff reviewed the 2012 AQMP and determined that it may have the potential to generate significant adverse environmental impacts; and

WHEREAS, the Draft PEIR on the 2012 AQMP has been revised based on comments received and modifications to the draft 2012 AQMP and all comments received were responded to, such that it is now a Final PEIR on the 2012 AQMP; and

WHEREAS, the Governing Board finds and determines, taking into consideration the factors in §(d)(4)(D) of the Governing Board Procedures, that the modifications that have been made to 2012 AQMP, since the Draft PEIR on the 2012 AQMP was made available for public review would not constitute significant new information within the meaning of the CEQA Guidelines; and

WHEREAS, none of the modifications to the 2012 AQMP alter any of the conclusions reached in the Draft PEIR on the 2012 AQMP, nor provide new information of substantial importance that would require recirculation of the Draft PEIR on the 2012 AQMP pursuant to CEQA Guidelines §15088.5; and

WHEREAS, it is necessary that the adequacy of the Final PEIR on the 2012 AQMP be determined by the AQMD Governing Board prior to its certification; and

WHEREAS, it is necessary that the adequacy of responses to all comments received on the Draft PEIR on the 2012 AQMP be determined prior to its certification; and

WHEREAS, it is necessary that the AQMD prepare Findings and a Statement of Overriding Considerations pursuant to CEQA Guidelines §§15091 and 15093, respectively, regarding adverse environmental impacts that cannot be mitigated to insignificance; and,

WHEREAS, Findings and a Statement of Overriding Considerations have been prepared and are included in Attachment 2 to this Resolution, which is attached and incorporated herein by reference; and

WHEREAS, the provisions of Public Resources Code §21081.6 – Mitigation Monitoring and Reporting - require the preparation and adoption of implementation plans for monitoring and reporting measures to mitigate adverse environmental impacts identified in environmental documents; and

WHEREAS, staff has prepared such a plan which sets forth the adverse environmental impacts, mitigation measures, methods, and procedures for monitoring and reporting mitigation measures, and agencies responsible for monitoring mitigation measure, which is included as Attachment 2 to the Resolution and incorporated herein by reference; and

WHEREAS, the South Coast Air Quality Management District Governing Board voting on this Resolution has reviewed and considered the Final Program Environmental Impact Report on the 2012 AQMP, including responses to comments on the Draft Program Environmental Impact Report on the 2012 AQMP, the Statement of Findings, Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting Plan; and

WHEREAS, the Draft Socioeconomic Report on the 2012 AQMP was prepared and released for public review and comment; and

WHEREAS, the Draft Socioeconomic Report for the 2012 AQMP is revised based on comments received and modifications to the Draft 2012 AQMP such that it is now a Draft Final Socioeconomic Report for the 2012 AQMP; and

WHEREAS, the 2012 AQMP includes every feasible measure and an expeditious adoption schedule; and

WHEREAS, the CARB and the U.S. EPA have the responsibility to control emissions from motor vehicles, motor vehicle fuels, and non-road engines and consumer products which are primarily under their jurisdiction representing over 80 percent of ozone precursor emissions in 2023; and

WHEREAS, significant emission reductions must be achieved from sources under state and federal jurisdiction for the South Coast Air Basin to attain the federal air quality standards; and

WHEREAS, the formal deadline for submission of the 24-hour PM2.5 attainment plan is December 14, 2012, and the formal deadline for submission of the 1-hour ozone SIP revision is expected to be late 2013 or early 2014, but since the emissions inventory and control strategy for ozone has already been developed for the 2012 AQMP, and attaining the 1-hour ozone standard can rely on the same strategy for the 8-hour ozone standard, an attainment demonstration for the 1-hour ozone standard is included as an Appendix to the 2012 AQMP; and

WHEREAS, the 1-hour ozone attainment demonstration (Appendix VII) uses the same base year (2008) and future year inventories as presented in Appendix III of the 2012 AQMP and satisfies the pre-base year offset requirement by including pre-base year emissions in the growth projections, consistent with 40 CFR § 51.165(a)(3)(i)(C)(1), as described on page III-2-54 of Appendix III of the 2012 AQMP.

WHEREAS the South Coast Air Quality Management District Governing Board hereby requests that CARB commit to submitting contingency measures as required by Section 182(e)(5) as necessary to meet the requirements for demonstrating attainment of the 1-hr ozone standard; and

WHEREAS, the South Coast Air Quality Management District Governing Board directs staff to move expeditiously to adopt and implement feasible new control measures to achieve long-term reductions while meeting all applicable public notice and other regulatory development requirements; and

WHEREAS, the South Coast Air Quality Management District has held six public workshops on the Draft 2012 AQMP, one public workshop on the Draft Socioeconomic Report, four public hearings throughout the four-county region in September on the Revised Draft 2012 AQMP, 14 AQMP Advisory Group meetings, 11 Scientific, Technical, and Modeling, Peer Review Advisory Group meetings, four public hearings in November throughout the four-county region on the Draft Final 2012 AQMP, and one adoption hearing pursuant to section 40466 of the Health and Safety Code; and

WHEREAS, pursuant to section 40471(b) of the Health and Safety Code, as part of the six public workshops on the Draft 2012 AQMP, four public hearings on the Revised Draft 2012 AQMP, the four public hearings on the Draft Final 2012 AQMP, and adoption hearing, public testimony and input were taken on Appendix I (Health Effects); and

WHEREAS, the record of the public hearing proceedings is located at South Coast Air Quality Management District, 21865 Copley Drive, Diamond Bar, California 91765, and the custodian of the record is the Clerk of the Board; and

WHEREAS, an extensive outreach program took place that included over 75 meetings with local stakeholders, key government agencies, focus groups, topical workshops, and over 65 presentations on the 2012 AQMP provided; and

WHEREAS, the record of the CEQA proceedings is located at South Coast Air Quality Management District, 21865 Copley Drive, Diamond Bar, California 91765, and the custodian of the record is the Assistant Deputy Executive Officer, Planning, Rule Development, and Area Sources.

NOW, THEREFORE BE IT RESOLVED, that the South Coast Air Quality Management District Governing Board does hereby certify that the Final PEIR for the 2012 AQMP including the responses to comments has been completed in compliance with the requirements of CEQA and finds that the Final PEIR on the 2012 AQMP, including responses to comments, was presented to the AQMD Governing Board, whose members reviewed, considered and approved the information therein prior to acting on the 2012 AQMP; and finds that the Final PEIR for the 2012 AQMP reflects the AQMD's independent judgment and analysis; and

BE IT FURTHER RESOLVED, that the District will develop, adopt, submit, and implement the short-term PM2.5 control measures as identified in Table 4-2 and the 8-hour ozone measures in Table 4-4 of Chapter 4 in the 2012 AQMP (Main Document) as expeditiously as possible in order to meet or exceed

the commitments identified in Tables 4-10 and 4-11 of the 2012 AQMP (Main Document), and to substitute any other measures as necessary to make up any emission reduction shortfall.

BE IT FURTHER RESOLVED, the District commits to update AQMP emissions inventories, baseline assumptions and control measures as needed to ensure that the best available data is utilized and attainment needs are met.

BE IT FURTHER RESOLVED, the District commits to conduct a review of its socioeconomic analysis methods during 2013, convene a panel of experts, and update assessment methods and approaches, as appropriate.

BE IT FURTHER RESOLVED, the District commits to continue working with the ports on the implementation of control measure IND-01 (Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Sources).

BE IT FURTHER RESOLVED, that the Executive Officer is hereby directed to enhance outreach and education efforts related to the "Check before you Burn" residential wood burning curtailment program, and to expand the current incentive programs for gas log buydown and to include potentially wood stove replacements working closely with U.S. EPA and other stakeholders.

amended 12-7-12 BA

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board does hereby direct staff to work in conjunction with CARB to provide annual reports to U.S. EPA describing progress towards meeting Section 182(e)(5) emission reduction commitments.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, pursuant to the requirements of Title 14 California Code of Regulations, does hereby adopt the Statement of Findings pursuant to §15091, and adopts the Statement of Overriding Considerations pursuant to §15093, included in Attachment 2 and incorporated by reference; and

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, does hereby adopt the Mitigation Monitoring and Reporting Plan, as required by Public Resources Code, Section 21081.6, attached hereto and incorporated by reference; and

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board finds that the mobile source control measures contained in Appendix IV-B are technically feasible and cost-effective and requests that CARB consider them in any future incentives programs or rulemaking.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board does hereby direct staff to work with state agencies and state legislators, federal agencies and U.S. Congressional and Senate members to identify funding sources and secure funding for the expedited replacement of older existing vehicles and off-road equipment to help reduce the reliance on the CAA Section 182(e)(5) long-term measures.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board finds that transportation emission budgets are "consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to the given implementation plan submission)" pursuant to 40 CFR 93.118(e)(4)(iv).

BE IT FURTHER RESOLVED, that the Executive Officer is hereby directed to finalize the 2012 AQMP including the main document, appendices, and related documents as adopted at the December 7, 2012 public hearing.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, whose members reviewed, considered and approved the information contained in the documents listed herein, adopts the 2012 AQMP dated December 7, 2012 consisting of the document entitled 2012 AQMP as amended by the final changes set forth by the AQMD Governing Board and the associated documents listed in Attachment 1 to this Resolution, the Draft Final Socioeconomic Report for the 2012 AQMP; the Final Program EIR for the 2012 AQMP, and the Statements of Findings and Overriding Considerations and Mitigation Monitoring Plan (Attachment 2 to this Resolution).

BE IT FURTHER RESOLVED, the Executive Officer is hereby directed to work with CARB and the U.S. EPA to ensure expeditious approval of this 2012 AQMP for PM2.5 and 1-hour ozone attainment.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, requests that the 2012 AQMP serve as the SIP revision submittal for the 24-hour PM2.5 attainment demonstration plan including the RACM/RACT determinations for the PM2.5 standard for the South Coast Air Basin, and the PM2.5 Transportation Conformity Budgets for the South Coast Air Basin.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, requests that the 2012 AQMP (Appendix VII) serve as the SIP revision submittal for the 1-hour ozone NAAQS attainment demonstration.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, requests that the 2012 AQMP (Appendix VIII) serve as the SIP revision submittal for a revised VMT emissions offset demonstration as required under Section 182(d)(1)(A) for both the 1-hour ozone and 8-hour ozone SIPs for the South Coast Air Basin.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, requests that the 2012 AQMP serve as an update to the approved 2007 8-hour ozone SIP for the South Coast Air Basin with specific control measures designed to further implement the 8-hour ozone SIP and reduce reliance on Section 182(e)(5) long term measures.

BE IT FURTHER RESOLVED, that the 2012 AQMP does not serve as a revision to the previously approved 8-hour ozone SIP with respect to emissions inventories, attainment demonstration, RFP, and transportation emissions budgets or any other required SIP elements.

BE IT FURTHER RESOLVED, that the Executive Officer is hereby directed to forward a copy of this Resolution, the 2012 AQMP and its appendices as amended by the final changes, to CARB, and to request that these documents be forwarded to the U.S. EPA for approval as part of the California State Implementation Plan. In addition, the Executive Officer is directed to forward a copy of this Resolution, comments on the 2012 AQMP and responses to comments, public notices, and any other information requested by the U.S. EPA for informational purposes.

Attachments

AYES: Benoit, Burke, Cacciotti, Gonzales, Loveridge, Lyou, Mitchell, Nelson, Parker, Pulido, and Yates.

NOES: None.

ABSTAIN: None.

ABSENT: Antonovich and Perry.

Dated: 12-7-2012

Saundra McDaniel
Clerk of the District Board

ATTACHMENT 1

The Final 2012 Air Quality Management Plan submitted for the South Coast Air Quality Management District Governing Board's consideration consists of the documents entitled:

- Draft Final 2012 AQMP (Attachment B) including the following appendices:
  - Appendix I - Health Effects
  - Appendix II - Current Air Quality
  - Appendix III - Base and Future Year Emission Inventory
  - Appendix IV (A) - District's Stationary Source Control Measures
  - Appendix IV (B) - Proposed 8-Hour Ozone Measures
  - Appendix IV (C) - Regional Transportation Strategies & Control Measures
  - Appendix V - Modeling & Attainment Demonstrations
  - Appendix VI - Reasonably Available Control Measures (RACM) Demonstration
  - Appendix VII - 1-Hour Ozone Attainment Demonstration
  - Appendix VIII - VMT Offset Requirement Demonstration
- Comments on the 2012 Air Quality Management Plan, and Responses to Comments (November 2012) – (Attachment C)
- Final Program Environmental Impact Report for the 2012 Air Quality Management Plan (Attachment D)
  - Findings, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Plan (Attachment 2 to the Resolution)
- Draft Final Socioeconomic Report for the 2012 Air Quality Management Plan (Attachment E)
- Changes to Control Measures IND-01, CMB-01, CTS-01 and CTS-04 (Attachment F)

ATTACHMENT 22.

State of California
AIR RESOURCES BOARD

SOUTH COAST AIR BASIN 2012 PM2.5 AND OZONE STATE IMPLEMENTATION PLANS

Resolution 13-3

January 25, 2013

Agenda Item No.: 13-2-2

WHEREAS, the Legislature in Health and Safety Code section 39602 has designated the State Air Resources Board (ARB or Board) as the air pollution control agency for all purposes set forth in federal law;

WHEREAS, the ARB is responsible for preparing the State Implementation Plan (SIP) for attaining and maintaining the National Ambient Air Quality Standards (standards) as required by the federal Clean Air Act (Act) (42 U.S.C. section 7401 et seq.), and to this end is directed by Health and Safety Code section 39602 to coordinate the activities of all local and regional air pollution control and air quality management districts (districts) as necessary to comply with the Act;

WHEREAS, section 41650 of the Health and Safety Code requires the ARB to approve the nonattainment area plan adopted by a district as part of the SIP unless the Board finds, after a public hearing, that the plan does not meet the requirements of the Act;

WHEREAS, the ARB has responsibility for ensuring that the districts meet their responsibilities under the Act pursuant to sections 39002, 39500, 39602, and 41650 of the Health and Safety Code;

WHEREAS, the ARB is authorized by section 39600 of the Health and Safety Code to do such acts as may be necessary for the proper execution of its powers and duties;

WHEREAS, sections 39515 and 39516 of the Health and Safety Code provide that any duty may be delegated to the Board's Executive Officer as the Board deems appropriate;

WHEREAS, the districts have primary responsibility for controlling air pollution from non-vehicular sources and for adopting control measures, rules, and regulations to attain the standards within their boundaries pursuant to sections 39002, 40000, 40001, 40701, 40702, and 41650 of the Health and Safety Code;

WHEREAS, the South Coast Air Basin (SCAB or Basin) includes Orange County, the southwestern two-thirds of Los Angeles County, southwestern San Bernardino County, and western Riverside County;

WHEREAS, the South Coast Air Quality Management District (District) is the local air district with jurisdiction over the SCAB, pursuant to sections 40410 and 40413 of the Health and Safety Code;

WHEREAS, the Southern California Association of Governments (SCAG) is the regional transportation agency for the SCAB and Coachella Valley and has responsibility for preparing and implementing transportation control measures to reduce vehicle trips, vehicle use, vehicle miles traveled, vehicle idling and traffic congestion for the purpose of reducing motor vehicle emissions pursuant to sections 40460(b) and 40465 of the Health and Safety Code;

WHEREAS, section 40463(b) of the Health and Safety Code specifies that the District board must establish a carrying capacity - the maximum level of emissions which would enable the attainment and maintenance of an ambient air quality standard for a pollutant - for the South Coast Air Basin with the active participation of SCAG;

WHEREAS, the South Coast 2012 Air Quality Management Plan (AQMP) includes State Implementation Plan (SIP) amendments for fine particulate matter (PM2.5) and ozone;

WHEREAS, in July 1997, the United States Environmental Protection Agency (U.S. EPA) promulgated 24-hour and annual standards for PM2.5 of 65 micrograms per cubic meter (ug/m^3) and 15 ug/m^3, respectively;

WHEREAS, in December 2004, U.S. EPA designated the South Coast Air Basin as nonattainment for the PM2.5 standards;

WHEREAS, in March 2007, U.S. EPA finalized the PM2.5 implementation rule (Rule) which established the framework and requirements that states must meet to develop annual average PM2.5 SIPs, set an initial attainment date of April 5, 2010, and allowed for an attainment date extension of up to five years;

WHEREAS, the Rule requires that PM2.5 SIPs include air quality and emissions data, a control strategy, a modeled attainment demonstration, transportation conformity emission budgets, reasonably available control measure/reasonably available technology (RACM/RACT) demonstration, and contingency measures;

WHEREAS, in July 1997, the U.S. EPA promulgated an 8-hour standard for ozone of 0.08 parts per million (ppm);

WHEREAS, on April 15, 2004, U.S. EPA designated the South Coast as nonattainment for the 0.08 ppm 8-hour ozone standard;

WHEREAS, in 2007, the District and ARB adopted SIP amendments demonstrating attainment of the annual PM2.5 standard by April 5, 2015, and of the 8-hour ozone standard by December 31, 2023, and submitted the SIP amendments to U.S. EPA;

WHEREAS, in 2009 and 2011, at U.S. EPA's request, ARB provided clarifying amendments to the annual PM2.5 and 8-hour ozone South Coast SIPs submitted in 2007;

WHEREAS, in 2011, U.S. EPA approved the control strategy, emission reduction commitment and attainment demonstration for the annual PM2.5 standard with an attainment date of April 5, 2015;

WHEREAS, in 2012, U.S. EPA approved the control strategy, emission reduction commitment and attainment demonstration for the 8-hour ozone standard with an attainment date of June 15, 2024;

WHEREAS, in December 2006, U.S. EPA lowered the 24-hour PM2.5 standard from 65 ug/m^3 to 35 ug/m^3;

WHEREAS, effective December 14, 2009, U.S. EPA designated the South Coast Air Basin as nonattainment for the 35 ug/m^3 PM2.5 standard;

WHEREAS, on March 12, 2012, U.S. EPA issued a memorandum that provided further guidance on the development of SIPs specific to the 35 ug/m^3 PM2.5 standard and set an initial attainment date of December 14, 2014, with a provision for an attainment date extension of up to five years;

WHEREAS, the 2012 AQMP Plan identifies directly-emitted PM2.5, nitrogen oxides (NOx), sulfur oxides (SOx) and volatile organic compounds (VOC) as PM2.5 attainment plan precursors consistent with the Rule;

WHEREAS, the emission reductions contained in the 2012 AQMP for PM2.5 attainment rely on adopted regulations and on new or revised District control measures;

WHEREAS, the 2012 AQMP's new PM2.5 measures include further strengthening of the District's wood burning curtailment program, outreach, and incentive programs;

WHEREAS, in accordance with section 172(b)(2) of the Act, the 2012 AQMP identifies 2014 as the most expeditious attainment date for the 24-hour PM2.5 standard;

WHEREAS, the attainment analysis in the 2012 AQMP demonstrates that the 24-hour PM2.5 standard will be met throughout the Basin by the proposed 2014 attainment date;

WHEREAS, consistent with section 172(c)(3) of the Act, the 2012 AQMP includes a comprehensive, accurate, current inventory of emissions data for directly emitted PM2.5 and PM2.5 precursors: oxides of nitrogen (NOx), reactive organic gases (ROG), sulfur oxides (SOx), and ammonia (NH3);

WHEREAS, consistent with section 172(c) of the Act, the 2012 AQMP demonstrates the implementation of RACM/RACT for direct PM2.5 and the area's relevant PM2.5 precursors;

WHEREAS, consistent with section 172(c)(9) of the Act, the 2012 AQMP includes contingency measures that provide extra emissions reductions that go into effect without further regulatory action if the area fails to make attainment of the 24-hour PM2.5 standard on time;

WHEREAS, consistent with section 176 of the Act, the 2012 AQMP establishes transportation conformity emission budgets, developed in consultation between the District, ARB staff, transportation agencies, and U.S. EPA, that conform to the attainment emission levels;

WHEREAS, the approved commitment for emission reductions is for total aggregate reductions that may be achieved through the measures identified in the SIP, alternative measures or incentive programs, and actual emission decreases that occur;

WHEREAS, the approved commitment for emission reductions allows for the substitution of reductions of one precursor for another using relative PM2.5 reductions values identified by the District;

WHEREAS, section 182(e)(5) of the Act provides that SIPs for extreme ozone nonattainment areas may rely in part upon the development of new technologies or the improvement of existing technologies;

WHEREAS, the approved SIP includes commitments to achieve additional reductions from advanced technology as provided for in section 182(e)(5) of the Act;

WHEREAS, in the Federal Register (Volume 77 Fed.Reg. 12674 at 12686 (March 1, 2012)) entry approving the ozone elements of the South Coast 8-hour ozone SIP, U.S. EPA stated that measures approved under section 182(e)(5) may include those that anticipate future technological developments as well as those that require complex analyses, decision making and coordination among a number of government agencies;

WHEREAS, the 2011 revision to the 8-hour ozone SIP included State commitments to develop, adopt, and submit contingency measures by 2020 if advanced technology measures do not achieve planned reductions;

WHEREAS, the 2012 AQMP includes actions to develop and put into use advanced transformational technologies to fulfill in part the approved SIP commitment for the Act section 182(e)(5) reductions;

WHEREAS, these actions described in the 2012 AQMP as seventeen mobile measures (five on-road measures, five off-road measures, and seven advanced technology measures), are consistent with U.S. EPA's interpretation of 182(e)(5) used in the approval of the South Coast 8-hour ozone SIP (77 Fed.Reg. 12674 at 12686 (March 1, 2012));

WHEREAS, on November 6, 1991, U.S. EPA designated the South Coast Air Basin an extreme nonattainment area for the 1-hour ozone standard with an attainment date of no later than November 15, 2010;

WHEREAS, in 2000 ARB submitted the 1999 Amendment to the South Coast 1997 AQMP, collectively called the 1997/1999 SIP revision, which included long-term measures pursuant to section 185(e)(5);

WHEREAS, in 2000 U.S. EPA approved the 1997/1999 revision to the South Coast 1-hour ozone SIP;

WHEREAS, in 2003 ARB submitted a revision to the South Coast 1-hour ozone SIP;

WHEREAS, in 2009 U.S. EPA disapproved the attainment demonstration in the 2003 revision;

WHEREAS, on February 2, 2011, the Ninth Circuit Court of Appeals remanded U.S. EPA's 2009 final action on the 2003 South Coast 1-hour ozone SIP and directed U.S. EPA to take further action to ensure that the State develop a plan demonstrating attainment of the 1-hour ozone standard, consistent with Clean Air Act requirements;

WHEREAS, on January 7, 2013, U.S. EPA issued a SIP call for the State to submit, within 12 months of the effective date of the SIP call, a SIP revision demonstrating attainment of the 1-hour ozone standard in the Basin;

WHEREAS, the 2012 AQMP's 1-hour ozone attainment demonstration relies on adopted state and local regulations, along with new local regulations including continued implementation of the approved 8-hour ozone SIP to reduce emissions by 2022;

WHEREAS, the 1-hour ozone attainment demonstration also relies upon section 182(e)(5) provisions for future reductions from developing new technologies or improving existing technologies;

WHEREAS, the actions to implement advanced technology measures for the approved 8-hour ozone SIP also describe actions to implement advanced technology measures for the 1-hour ozone attainment demonstration;

WHEREAS, section 182(e)(5) of the Act requires contingency measures be submitted no later than three years prior to the attainment year in the event that the anticipated long-term measures approved pursuant to section 182(e)(5) do not achieve planned reductions needed for attaining the 1-hour ozone standard;

WHEREAS, section 182(e)(5) contingency measures in the approved SIP meet the requirements for attainment contingency measures because section 182(e)(5) is not relied on for emission reductions prior to November 15, 2000;

WHEREAS, the 2012 AQMP demonstrates the Basin will attain the 1-hour ozone standard by 2022;

WHEREAS, consistent with section 172(c)(3) of the Act, the 2012 AQMP includes a comprehensive, accurate, current inventory of emissions data for precursors of ozone: oxides of nitrogen (NOx) and reactive organic gases (ROG);

WHEREAS, consistent with section 172(c) of the Act, the 2012 AQMP demonstrates the implementation of RACM/RACT for NOx and ROG;

WHEREAS, section 182(d)(1)(a) of the Act requires ozone nonattainment areas classified as severe and extreme to submit a vehicle miles traveled (VMT) offset demonstration showing no increase in motor vehicle emissions between the base year in the Act 1990 Amendments and the area's attainment year;

WHEREAS, in February 2011, the Ninth Circuit Court of Appeals held that section 182(d)(1)(a) of the Act requires additional transportation control strategies and transportation control measures to offset vehicle emissions whenever they are projected to be higher than if base year VMT had not increased;

WHEREAS, the Ninth Circuit Court of Appeals remanded the approval of the 2007 8-hour ozone SIP VMT emissions offsets demonstration to U.S. EPA;

WHEREAS, in September 2012, U.S. EPA proposed to withdraw its final approvals, and then disapprove, SIP revisions submitted to meet the section 182(d)(1)(a) VMT emissions offset requirements for the U.S. EPA approved South Coast Air Basin 1-hour and 8-hour ozone plans;

WHEREAS, in August 2012, U.S. EPA issued guidance entitled "Implementing Clean Air Act Section 182(d)(1)(A): Transportation Control Measures and Transportation Control Strategies to Offset growth in Emissions Due to Growth in Vehicle Miles Traveled";

WHEREAS, consistent with the requirements of section 182(d)(1)(A) as specified by the Ninth Circuit Court of Appeals ruling in 2011 and with U.S. EPA guidance in 2012, and in response to U.S. EPA's September 2012 proposal, the 2012 AQMP includes a VMT offset demonstration for both 1-hour and 8-hour ozone plans;

WHEREAS, the 2012 AQMP also includes a second VMT emissions offset demonstration for 8-hour ozone that meets an alternative VMT offset methodology proposed by U.S. EPA;

WHEREAS, the California Environmental Quality Act (CEQA) requires that no project which may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, pursuant to California Environmental Quality Act (CEQA), the District prepared a Program Environmental Impact Report (EIR) for the 2012 AQMP that was released for a 45-day public review and comment period from September 7, 2012 to October 23, 2012, and in the Final Program EIR the District responded to the 13 comment letters received;

WHEREAS, the District's Final Program EIR identified potentially significant and unavoidable project-specific adverse environmental impacts to air quality (CO and PM10 impacts from construction activities), energy demand, hazards (associated with accidental release of liquefied natural gas during transport), water demand, noise (from construction activities) and traffic (construction activities and operations), as well as potentially significant cumulative adverse impacts to air quality (construction), energy demand, hazards and hazardous materials, hydrology and water quality, noise, and transportation and traffic;

WHEREAS, the District Governing Board adopted a Statement of Findings and a Statement of Overriding Considerations finding the project's benefits outweigh the unavoidable adverse impacts, as well as a Mitigation Monitoring Plan;

WHEREAS, federal law set forth in section 110(l) of the Act and Title 40, Code of Federal Regulations (CFR), section 51.102, requires that one or more public hearings, preceded by at least 30 days notice and opportunity for public review, must be conducted prior to adopting and submitting any SIP revision to U.S. EPA;

WHEREAS, as required by federal law, the District made the 2012 AQMP available for public review at least 30 days before the District hearing;

WHEREAS, following a public hearing on December 7, 2012, the AQMD Governing Board voted to approve the 2012 AQMP including the 24-hour PM2.5 plan, the 8-hour ozone advanced technology actions and the 1-hour ozone plan;

WHEREAS, on December 20, 2012, the District transmitted the 2012 AQMP to ARB as a SIP revision, along with proof of public notice publication, and environmental documents in accordance with State and federal law; and

WHEREAS, the Board finds that:

1. The 2012 AQMP meets the applicable planning requirements established by the Act and the Rule for 24-hour PM2.5 SIPs, and includes the required air quality and emissions data, modeled attainment demonstrations, RACM/RACT demonstrations, new source review, transportation conformity emission budgets, and contingency measures;

2. The existing 2007 PM2.5 SIP, including benefits of ARB's adopted mobile source control measures, combined with the new District control measures identified in the adopted 2012 AQMP will provide the emission reductions needed for meeting the 24-hour PM2.5 standard by the December 14, 2014, attainment date;

3. The 2012 AQMP identifies contingency measures that will achieve additional emission reductions, beyond those relied on in the attainment demonstration, in the event that the South Coast Air Basin does not attain the 24-hour PM2.5 standard by 2014;

4. The 2012 AQMP meets applicable planning requirements established by the Act for 1-hour ozone SIPs, and includes the required air quality and emissions data, modeled attainment demonstrations, new source review and RACM/RACT demonstrations;

5. The 2012 AQMP VMT offset demonstrations meets the section 182(d)(1)(a) VMT offset requirements for both the 1-hour ozone and the 8-hour ozone plans; and

6. ARB has reviewed and considered the Final EIR prepared by the District and comments presented by interested parties, and find there are no additional feasible mitigation measures or alternatives within ARB's powers that would substantially lessen or avoid the project-specific impacts identified.

NOW, THEREFORE, BE IT RESOLVED the Board hereby approves the South Coast 2012 AQMP as an amendment to the SIP, excluding those portions not required to be submitted to U.S. EPA under federal law, and directs the Executive Officer to forward the 2012 AQMP as approved to U.S. EPA for inclusion in the SIP to be effective, for purposes of federal law, upon approval by U.S. EPA.

BE IT FURTHER RESOLVED that the Board commits to develop, adopt, and submit contingency measures by 2019 if advanced technology measures do not achieve planned reductions as required by section 182(e)(5)(B).

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to work with the District and U.S. EPA and take appropriate action to resolve any completeness or approvability issues that may arise regarding the SIP submission.

BE IT FURTHER RESOLVED that the Board authorizes the Executive Officer to include in the SIP submittal any technical corrections, clarifications, or additions that may be necessary to secure U.S. EPA approval.

BE IT FURTHER RESOLVED that the Board hereby certifies pursuant to 40 CFR section 51.102 that the District's 2012 AQMP was adopted after notice and public hearing as required by 40 CFR section 51.102.

I hereby certify that the above is a true and correct copy of Resolution 13-3, as adopted by the Air Resources Board.

Tracy Jensen, Clerk of the Board

SAN PEDRO BAY PORTS

CLEAN AIR ACTION PLAN

November 19, 2015

Ms. Wienke Tax
Air Planning Office (AIR-2)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

Re: Docket No. EPA-R09-OAR-2015-0204
U.S. Environmental Protection Agency
Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; California; South Coast Moderate Area Plan and Reclassification as Serious Nonattainment for the 2006 PM2.5 NAAQS

Dear Ms. Tax:

On behalf of the City of Long Beach acting by its Harbor Department and the City of Los Angeles acting by its Harbor Department (collectively, the Cities or the ports), we appreciate the opportunity to provide comments in response to the U.S. Environmental Protection Agency's (EPA) proposal for *Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; California; South Coast Moderate Area Plan and Reclassification as Serious Nonattainment for the 2006 PM2.5 NAAQS,* as published in the *Federal Register* on October 20, 2015 (Federal Register, Vol. 80. No 202).

I. Summary of Ports' Position.

The Cities urge the EPA to disapprove and exclude the South Coast Air Quality Management District (SCAQMD or District) Control Measure IND-01 and Proposed Rule 4001, *Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities* from the State Implementation Plan (SIP) submittal for the 2006 $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) in the South Coast Air Basin. The Cities recognize that emissions from nearly every business sector, including the maritime goods movement industry, need to be reduced in order for the State of California and SCAQMD to meet the NAAQS. For this reason, the two Cities implemented the highly successful voluntary San Pedro Bay Clean Air Action Plan (CAAP) to encourage the maritime goods movement industry to do its fair share in the South Coast Air Basin to reduce emissions. Most of the strategies included in the CAAP have since been overtaken by regulations enacted by the California Air Resources Board or International Maritime Organization. It is the Cities' understanding that the purpose of Control

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The Green Port
Port of Long Beach | Environmental Planning
4801 Airport Plaza Drive | Long Beach, CA 90815
562.283.7100

THE PORT OF LOS ANGELES
Port of Los Angeles | Environmental Management
425 S. Palos Verdes Street | San Pedro, CA 90731
310.732.3675

The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

Measure IND-01 and Proposed Rule 4001 is to allow the SCAQMD to enforce against the Cities their voluntary CAAP program in the event that the international, federal, and state regulatory programs don't achieve the $PM_{2.5}$ emissions inventory that SCAQMD assumed in the baseline for the years 2014 and 2019 in the 2012 AQMP.

The inclusion of Measure IND-01 and Proposed Rule 4001 in the AQMP and SIP is neither necessary nor legally proper, for reasons that will be explained below. SCAQMD proposes by Control Measure IND-01 to improperly designate the entire harbor districts of the Cities as "stationary sources" and "indirect sources," and then hold the two Cities legally responsible for actions by the maritime industry that the SCAQMD assumed in the $PM_{2.5}$ Plan. The Cities do not operate, own or control the emissions sources.

The Cities have long opposed the inclusion of any form of a "backstop" rule on the ports that would apply SCAQMD oversight and enforcement against the ports for failures of the SCAQMD and CARB in assuming maritime goods movement industry activities in the baseline.. We have also raised significant technical, jurisdictional, constitutional, and legal concerns with Proposed Rule 4001 in a series of comment letters sent to SCAQMD, CARB and EPA regarding the inclusion of Control Measure IND-01 in the 2012 Air Quality Management Plan and SIP, and the subsequent rulemaking process of SCAQMD Rule 4001. (See Attachments 1-15.) These letters are incorporated by reference as a part of this comment letter to EPA as if fully set forth herein. With respect to EPA's present rulemaking, as further discussed below in sections III-IV, the ports do not believe that Control Measure IND-01 and Proposed Rule 4001 are properly before EPA. Even if EPA determines there are no procedural infirmities and proceeds with the proposed rulemaking, there are numerous substantive legal reasons why EPA cannot approve Control Measure IND-01 or Proposed Rule 4001 as part of the SIP. These arguments are discussed below in section V.

II. Background.

The Cities and businesses that move goods in and out of the ports are vital to the regional, state, and national economy. The ports are home to the two busiest container seaports in the United States and, if taken together, are the fifth busiest in the world, moving more than $260 billion a year in trade. The international cargo handled by the ports also accounts for over 1.1 million jobs in California and 3.3 million jobs in the United States; however, competition for much of this cargo is intensifying particularly with other international ports (Panama Canal, Canada, Mexico).

The ports are global leaders, voluntarily working in partnership with several public agencies (EPA, CARB, and SCAQMD) and the maritime goods movement industry to achieve unprecedented success in reducing emissions from goods movement sources (ships, trains, trucks, cargo handling equipment, harbor craft) and improving air quality, while continuing to foster port development that is essential to Southern California's economy. On November 20, 2006, the Cities approved the landmark CAAP, the most comprehensive strategy to cut air pollution and reduce health risks ever adopted for a global seaport complex. The CAAP contained goals to achieve a 45% emissions reduction in diesel particulate matter (DPM), nitrogen oxides (NOx), and sulfur oxides (Sox) by the end of 2011 from the mobile sources operating in and around the ports. In 2007, the ports received the 8th Annual National U.S. EPA Clean Air Excellence Award in recognition of this groundbreaking work and commitment.

The Cities continued their pioneering work and commitment to clean air by adopting an update to the CAAP on November 22, 2010. The 2010 CAAP update established several aggressive goals: (1) by 2014, reduce emissions from mobile sources operating in and around the ports by 22% for NOx, 93% for SOx, and 72% for DPM from baseline emissions; (2) by 2023, reduce emissions from mobile sources operating in and around the ports by 59% for NOx, 92% for SOx and 77% for DPM; and, (3) aim by 2020 to lower the cancer risk related to diesel particulate pollution by 85% in the communities adjacent to the ports. The CAAP was initially developed as a voluntary effort not required by any state, federal or local law or regulation. The voluntary aspect of the CAAP is critical. The ports set stretch goals under an incentive-based and collaborative approach that has resulted in billions of dollars of investment by the Cities and private sector businesses in clean air programs and technology. More importantly, because the goals are in advance of regulations, much of the CAAP success is due to reliance on federal, state and SCAQMD grants that can only be obtained for "surplus" emission reductions that go beyond regulation –which will not be available under a required regulation such as PR 4001.

The Cities remain firm in their position that Control Measure IND-01 and Proposed Rule 4001 are unnecessary and counterproductive to a successful collaborative approach, and should not be included in the SIP. These measures would hold the ports, not the owners or operators of the emission sources, responsible for shortfalls in voluntary CAAP measures. This approach will deter the ports as well as other ports and industries from any type of voluntary emission reduction action in the future. The proposed rule would also unfairly impact only the ports in Southern California; no such rule exists for any other port in the United States or other parts of the world.

In addition, the Cities have shown that there is no demonstrated need for a backstop rule for equipment operating in and around the ports, nor is a ports' backstop rule necessary for the regional attainment of the 2006 $PM_{2.5}$ standard. (See Attachment 3, Cities' Letter to Dr. Randall Pasek, SCAQMD, January 15, 2014].). The attainment demonstration for the 2012 $PM_{2.5}$ Plan did not rely on any emission reductions from Control Measure IND-01. As indicated in SCAQMD's supplement to the 24-hour $PM_{2.5}$ SIP, unanticipated extreme weather conditions, not emissions from the maritime goods movement industry, have made attainment unlikely in 2014, citing the effects of the severe drought on the west coast of the United States.

Because any current shortfall in the regional attainment of the $PM_{2.5}$ emissions targets is not caused or controlled by the Cities, and not due to any actions or omissions on the part of the Cities, it is inappropriate and unnecessary to require Rule 4001 enforcement against the ports. The control measure was intended as a "backstop" that would go into effect only if the emission targets for NOx, SOx, and $PM_{2.5}$ from sources operating in or around the ports exceed the levels projected by the ports and assumed in the 2012 AQMP. In fact, the ports' most recently completed emissions inventories for calendar year 2014 show that the ports have **exceeded** the assumptions SCAQMD included in the 2012 $PM_{2.5}$ Plan.. Diesel particulate matter (DPM) emissions have been reduced by 85% over the 9 year period between 2005 and 2014. In addition, NOx emissions are down by 51%, and SOx emissions have been reduced by 97%. Instead of being rewarded for these extraordinary efforts, the Cities will instead be unnecessarily penalized with a port specific backstop rule. Since 2014 $PM_{2.5}$ CAAP goals were met and the ports are on track to maintain these reductions through 2019, there is no identified need or basis for including Proposed Rule 4001 in the SIP. In fact, the ports would be the *only* entities the SCAQMD regulates in this matter, notwithstanding these unprecedented voluntary efforts.

Table 3 of the Notice does not identify the anticipated implementation date and emissions reductions for Rule 4001, rather, listing "N/A". It is unreasonable to approve the inclusion of the Proposed Rule in the SIP without an indication of the implementation date and necessary emissions reductions from implementation of the rule to bring the South Coast Basin into attainment. A critical aspect of this related to the lack of need for an additional regulation on the ports is that many of the voluntary control strategies implemented under the CAAP have been superseded by source-specific state or international regulation. Approximately 98% of the emissions reductions from maritime goods movement emission sources that have been achieved to date rely on, and are largely the result of regulations at the state and international levels, including:

- CARB Truck and Bus Regulation
- CARB Ocean-going Vessel At-Berth Regulation
- CARB and International Ocean-going Vessels Low-Sulfur Fuel Regulations
- CARB Cargo-handling Equipment Regulation
- CARB Commercial Harbor Craft Regulation
- International Maritime Organization North American Emission Control Area

The Cities should not be held responsible for or mandated to backfill any potential emissions shortfalls from regulatory agencies not implementing emission reduction regulations as identified within the SIP, even if those regulations are related to equipment operating in or around the ports. The backstop measure should instead require EPA or CARB to enact applicable regulations under their air regulatory authority applied uniformly to the national ports or state ports, or to find the shortfall emission reductions from other sources in the SIP.

The Cities continually develop and support emission reduction strategies and programs that will result in cleaner air for the local communities and the region. These efforts have been entered into voluntarily, working cooperatively with the operators in the port area to reduce air quality impacts from the equipment they operate. The potential for additional regulation by the SCAQMD in the form of Rule 4001 on the ports brings significant uncertainty that will have broad negative effects on the goods movement industry and the economy as a whole, and will jeopardize the voluntary, collaborative partnership between the Cities, industry, and the air agencies that has led to the significant emissions reductions achieved to date.

III. Control Measure IND-01 Cannot Be Approved in the Final Rulemaking Because it Was Not Approved by the CARB Board for SIP Adoption, and Has Not Been Properly Submitted to EPA for Approval.

According to the Federal Register Notice (80 Fed. Reg. 63640), the SIP revisions encompassed in the proposed rulemaking are "the 2012 $PM_{2.5}$ Plan, submitted February 13, 2013, and the 2015 Supplement, submitted March 4, 2015." The 2012 $PM_{2.5}$ Plan submitted February 13, 2013, does ***not*** include IND-01 or Proposed Rule 4001. This is because on December 7, 2012, when the SCAQMD Governing Board considered the $PM_{2.5}$ Plan, the Governing Board specifically ***removed*** Control Measure IND-01 from the $PM_{2.5}$ Plan ***before*** adopting the Plan. (See Attachment 16.) On February 13, 2013, the CARB Executive Officer submitted the 2012 $PM_{2.5}$ Plan to EPA without Control Measure IND-01. In fact, the $PM_{2.5}$ Plan in the federal docket for this proposed rulemaking has IND-01 ***crossed out*** to confirm that it was removed from the $PM_{2.5}$ Plan before submittal to CARB and EPA. (See

Attachment 17.) The CARB Board, which is the only entity authorized to make SIP submittals, has never held a public meeting, offered to receive public comment on, or taken a Board vote to authorize the amendment of the SIP to include the submittal of IND-01 or Proposed Rule 4001 to EPA for inclusion as part of California's SIP for the South Coast Air Basin. The EPA Notice is based only on a control measure list with the date and title of Control Measure IND-01 included on Attachment F to the 2015 Supplement, with no evidence of CARB Board approval of its addition as a SIP supplement, which is legally insufficient as a SIP revision. EPA cites no other documents to demonstrate that Control Measure IND-01 was approved by the CARB Board and properly submitted to EPA as a proposed SIP revision.

Further, the 2015 Supplement did not constitute a submittal of Control Measure IND-01 or Proposed Rule 4001. As explained in EPA's proposed rulemaking (80 Fed. Reg. 63641), the 2015 Supplement was submitted in response to the appellate court's decision in *NRDC v. EPA*, 706 F/3d 428 (D.D. Cir. 2013), that EPA must consider the general implementation requirements of subpart 1 with the requirements specific to particulate matter nonattainment areas in subpart 4 of Part D, Title I of the Clean Air Act. The 2015 Supplement was intended to address the subpart 4 issues that had not been included in the $PM_{2.5}$ Plan. (80 Fed. Reg. 63641-63642.) The 2015 Supplement merely provides in Table F-1 a new proposed adoption date for Control Measure IND-01/Proposed Rule 4001 of 2015. (See Attachment 18.) The stated emission reduction "commitment" towards $PM_{2.5}$ attainment for Control Measure IND-01/Proposed Rule 4001 is "N/A" in both the $PM_{2.5}$ Plan and in the 2015 Supplement. The 2015 Supplement only states that Proposed Rule 4001 will not be approved in 2015 as stated in the 2015 Supplement. (See Attachment 19.)

EPA states that the $PM_{2.5}$ Plan or 2015 Supplement are considered complete SIP submittals under section 110(k)(1)(B) by operation of law without the inclusion of Control Measure IND-01 or Proposed Rule 4001. (80 Fed. Reg. 63642.) However, there is no text of either Control Measure IND-01 or Proposed Rule 4001 for EPA to assess in determining whether these actions comply with the applicable requirements of subparts 1 and 4. Since there is no Control Measure IND-01 or Proposed Rule 4001 in the $PM_{2.5}$ Plan or 2015 Supplement, these actions are not properly before EPA, and EPA cannot approve a commitment for SCAQMD to adopt Proposed Rule 4001 in its final rulemaking.

IV. Commitments to Adopt a Rule in the Future Cannot be Approved under Clean Air Act Section 110(k)(3).

To the extent that EPA will issue a final rule on the 2012 $PM_{2.5}$ Plan and 2015 Supplement, approval of SCAQMD's future commitments, specifically Control Measure IND-01 and Proposed Rule 4001, cannot be approved under Clean Air Act section 110(k)(3) as EPA proposes to do in the rulemaking. (80 Fed. Reg. 63650). According to EPA, under Section 110(k)(3), EPA considers three factors in determining whether to approve a control measure as an enforceable commitment. As discussed below, Control measure IND-01 and Proposed Rule 4001 are not enforceable commitments. However, EPA has determined it does not need to consider these factors because "the $PM_{2.5}$ Plan and 2015 Supplement do not rely on either the rule amendment commitments in its impracticability demonstration, RACM demonstration, RFP demonstration, or quantitative milestones, or to meet any other CAA requirement." (80 Fed. Reg. 63652.) Since the three-factor test has not been applied and Control Measure IND-01/Proposed Rule 4001 are not necessary to comply with the Clean Air Act

requirements, there is no basis for approving Control Measure IND-01/Proposed Rule 4001 under Section 110(k)(3).

V. Control Measure IND-01 and Proposed Rule 4001 are Legally Deficient.

If EPA decides that Control Measure IND-01 and Proposed Rule 4001 are properly before the agency, then the ports submit the following comments and concerns.

1. *Clean Air Act Subparts 1 and 4 Requirements Are Not Met.*

In accordance with Clean Air Act section 189(a)(1)(B), modeling is conducted for demonstrating attainment or that attainment by the applicable deadline is not practicable. Through Control Measure IND-01 and Proposed Rule 4001, SCAQMD is inappropriately attempting to enforce the modeling assumptions it utilized in the 2012 $PM_{2.5}$ Plan (that demonstrated attainment[1]) *for the ports only*. There is no justification as to why the port-only assumptions and no others must be enforced to achieve attainment. If EPA approves this novel and significant change in SIPs in its final rulemaking, it will be signaling to states and local agencies that they can enforce assumptions. This will undermine the SIP process and lead to serious disagreements and controversies over all assumptions states and local agencies include in their SIPs because the regulated community will be fearful that any technical assumptions included in the SIP will be enforced in the future. Technical assumptions estimated by scientists will become political decisions. Further, this approach has been disapproved by the Ninth Circuit Court of Appeals in *Bayview Hunters Point Community Advocates v. Metropolitan Transportation Commission*, 366 3d 692 (9th Cir. 2004).

The requirements in subparts 1 and 4 relative to RACM/RACT have not been met for Control Measure IND-01 and Proposed Rule 4001. EPA states that RACM includes any potential control measure for non-road emission sources that is both technologically and economically feasible. (80 Fed. Reg. 63647.) There must be an evaluation of technical feasibility that includes operation conditions, and non-air quality impacts as well as an economic feasibility that includes consideration of cost per ton of pollutant reduced, capital costs and annualized costs. There is no such analysis for Control Measure IND-01 or Proposed Rule 4001. SCAQMD cannot evade these requirements by calling Control Measure IND-01 an indirect source measure or a measure to simply enforce an attainment demonstration assumption.

Clean Air Act section 110(a)(2)(A) requires that control measures in the SIP be enforceable. As discussed herein, Control Measure IND-01 and Proposed Rule 4001 are not enforceable by the designated agencies and cannot be approved as Clean Air Act section 110(k)(3) commitments. As acknowledged by Table 3 in 80 Fed. Reg. 63651 there is no implementation date or emission reductions to be achieved by Control Measure IND-01 or Proposed Rule 4001. Further, EPA proposes to approve Control Measure IND-01 for ***NOx reductions*** in the $PM_{2.5}$ Plan. (80 Fed. Reg. 63652.) Control

[1] 80 Fed. Reg. 63644 incorrectly states that the 2012 PM2.5 Plan demonstrated that attainment by the moderate deadline is impracticable

Measure IND-01 is not evaluated in the attainment demonstration as a NOx control measure necessary to reduce $PM_{2.5}$ precursors. (See 42. U.S.C. § 7502(c).) (See Attachment 20.)

2. *The Ports Cannot Be Legally Responsible for Other Agencies' Actions.*

The CAAP's goals and control measures that SCAQMD seeks to codify as the responsibility of the ports are in fact the responsibility of other government agencies. As stated above, approximately 98% of voluntary CAAP measures have been superseded by state or international regulation, including:

- CARB Truck and Bus Regulation
- CARB Ocean-going Vessel At-Berth Regulation
- CARB and International Ocean-going Vessels Low-Sulfur Fuel Regulations
- CARB Cargo-handling Equipment Regulation
- CARB Commercial Harbor Craft Regulation
- International Maritime Organization North American Emission Control Area

The Cities should not be held legally responsible for or mandated to backfill any potential emissions shortfalls from regulatory agencies not implementing emission reduction regulations as identified within the SIP, even if those regulations are related to equipment operating at or in the vicinity of the ports or were originally identified as voluntary measures.

3. *Control Measure IND-01 and Proposed Rule 4001 are Not Required for Demonstrating Attainment.*

The SCAQMD Governing Board found that without Control Measure IND-01: (1) "the 2012 AQMP, in conjunction with earlier AQMPs contains every feasible control strategy and measure to ensure progress toward attainment…."; (2) "the AQMP satisfies all the attainment deadlines for federal ambient air quality standards for 24-hour $PM_{2.5}$ and 1-hour ozone NAAQS"; (3) "the 2012 AQMP satisfies the planning requirements set forth in the federal and California Clean Air Acts"; and, (4) "the 2012 AQMP includes every feasible measure and an expeditious adoption schedule". (Attachment 21, Resolution, motions, deleted Control Measure IND-01.)

On January 25, 2013, the CARB Board adopted Resolution No. 13-3. (Attachment 22, Resolution.) The CARB Board found that without Control Measure IND-01: (1) "the attainment analysis in the 2012 AQMP demonstrates that the 24-hour $PM_{2.5}$ standard will be met throughout the [South Coast Air] Basin by the proposed attainment date"; (2) the 2012 AQMP demonstrates the [South Coast Air] Basin will attain the 1-hour ozone standard by 2022"; (3) "[t]the 2012 AQMP meets the applicable planning requirements established by the [Clean Air] Act and the Rule for 24-hour $PM_{2.5}$ SIPs, and includes the required air quality and emissions data, modeled attainment demonstrations, RACM/RACT demonstrations, new source review, transportation conformity emission budgets, and contingency measures"; (4) "[t]he 2012 AQMP identifies contingency measures that will achieve additional emission reductions, beyond those relied on in the attainment demonstration, in the event that the South Coast Air Basin does not attain the 24-hour $PM_{2.5}$ standard by 2014"; and, (5) "[t]he 2012 AQMP meets applicable planning requirements established by the [Clean Air] Act for 1-hour ozone SIPs, and includes the required air quality and emissions data, modeled attainment demonstrations, new source review and RACM/RACT demonstrations".

EPA proposes to conclude that RACM/RACT have been met without Control Measure IND-01/Proposed Rule 4001. Because there is no need for Control Measure IND-01/Proposed Rule 4001, there is no basis for approving it as part of the SIP.

4. *Control Measure IND-01 and Proposed Rule 4001 Are Preempted by the Clean Air Act and SCAQMD Lacks Authority to Adopt and Implement these Committments.*

Congress vested the federal government with the authority to set nationwide emissions standards for mobile sources, including nonroad mobile engines and vehicles. (42 U.S.C. §§ 7521, 7547.) Congress expressly and impliedly preempted states from setting standards or other requirements relating to the control of emissions for mobile sources. (42 U.S.C. § 7543, (a) & (e) The goods movement sources that would be regulated by Proposed Rule 4001 are within the express and implied preemption.

The Clean Air Act allows California to seek authorization from the EPA to adopt "standards and other requirements relating to the control of emissions" for some but not all mobile sources that would be covered by Proposed Rule 4001. (42 U.S.C. §§ 7543, (b) & (e)(2)(A).) The Clean Air Act does not allow for California to seek an EPA waiver for every one of the goods movement emission sources, nor has CARB made such a request.

Control Measure IND-01/Proposed Rule 4001 sets standards relating to the control of emissions that are preempted by the Clean Air Act. Control Measure IND-01/Proposed Rule 4001 establishes an emission reduction target of 75% below 2008 emission levels. (See CAAP's goals and control measures above.) The ports do not own or operate the emitting equipment. If business-as-usual does not satisfy this requirement, then the ports' tenants (e.g., shipping companies) and customers (e.g., trucking companies) that own or operate the specific port-related sources will need to modify their current operations – the equivalent of complying with "other requirements."

Control Measure IND-01/Proposed Rule 4001 also sets "other requirements" relating to emissions from mobile sources because it requires the ports to ensure implementation of the rules and regulations of CARB, EPA and MARPOL. Proposed Rule 4001's emission inventory requirement will compel the ports to monitor compliance by mobile sources operating in and around the ports and identify and report reduction shortfalls. If emissions increase, exceeding the 75% emissions cap, the ports will have to identify the emission source and cause in order to adequately prepare a strategy for the Emission Reduction Plan required by the proposed rule to address and reduce these emissions. Yet, the ports have not been granted the authority by CARB, EPA and MARPOL to enforce their rules and regulations.

Under Control Measure IND-01/Proposed Rule 4001, if the Executive Officer decides the emission reduction target is not met, the ports would be required to prepare an Emission Reduction Plan that includes sufficient feasible control strategies expected to eliminate the identified shortfall and maintain the reduction target from maritime goods movement sources through calendar year 2020. This amounts to requiring the ports to impose "other requirements" upon the cargo movement that are more stringent than the requirements of CARB, EPA and MARPOL.

5. *SCAQMD Lacks Authority to Regulate Outside of Jurisdictional Boundaries.*

SCAQMD's authority to regulate is limited to its jurisdictional boundaries. SCAQMD was created by the California Legislature "in those portions of the Counties of Los Angeles, Orange,

Riverside, and San Bernardino included within the area of the South Coast Air Basin, as described in Section 60104 of Title 17 of the California Administrative Code, as now or hereafter amended." (Cal. Health & Safety Code, § 40410.)

The South Coast Air Basin includes the portion of Los Angeles County "[b]eginning at the Los Angeles-San Bernardino County boundary and running west along the township line common to T.3 N and T.2 N, San Bernardino Base and Meridian; then north along the range line common to R.8 W and R.9 W; then west along the township line common to T.4 N and T.3 N; then north along the range line common to R.12 W and R.13 W to the southeast corner of Section 12, T.5 N, R.13 W; then west along the south boundaries of Sections 12, 11, 10, 9, 8, 7, T.5 N, R.13 W to the boundary of the Angeles National Forest which is collinear with the range line common to R.13 W and R.14 W; then north and west along the Angeles National Forest boundary to the point of intersection with the township line common to T.7 N and T.6 N (point is at the northwest corner of Section 4 in T.6 N, R.14 W); then west along the township line common to T.7 N and T.6 N; then north along the range line common to R.15 W and R.16 W to the southeast corner of Section 13, T.7 N, R.16 W; then along the south boundaries of Sections 13, 14, 15, 16, 17, 18, T.7 N, R.16 W; then north along the range line common to R.16 W and R.17 W to the north boundary of the Angeles National Forest (collinear with township line common to T.8 N and T.7 N); then west and north along the Angeles National Forest boundary to the point of intersection with the south boundary of the Rancho La Liebre Land Grant; then west and north along this land grant boundary to the Los Angeles-Kern County boundary. (17 Cal. Code Regs., § 60104(d).)

SCAQMD's 2012 AQMP, which includes Control Measure IND-01 as an indirect source control strategy, applies only to the South Coast Air Basin. The 2012 AQMP acknowledges that SCAQMD's jurisdiction over the South Coast Air Basin "is bounded by the Pacific Ocean to the west and the San Gabriel, San Bernardino, and San Jacinto mountains to the north and east." (See 2012 AQMP, p. 1-2.) SCAQMD lacks authority to adopt and enforce Proposed Rule 4001 because it does not have jurisdiction to regulate emission sources outside of its geographical boundaries as would be required if the CAAP programs become mandatory. The Ocean Going Vessel (OGV) Vessel Speed Reduction program would require OGVs to slow vessel speed to 12 knots during their approach and departure from the ports at a distance of either 20 nm or 40 nm from Point Fermin, which is outside SCAQMD's jurisdictional boundary. The OGV Low Sulfur Fuel for Auxiliary Engines and Auxiliary Boilers program would require OGVs to switch to low sulfur distillate fuel within 40 nm from Point Fermin, which is outside of SCAQMD's jurisdictional boundary. The OGV Low Sulfur Fuel for Main Engines program would require OGVs to switch to low sulfur distillate fuel within 40 nm from Point Fermin, which is outside of SCAQMD's jurisdictional boundary.

This OGV Vessel Speed Reduction program is the only CAAP measure that is not already part of regulations adopted by other agencies. Yet, the ports also lack jurisdiction to mandate any OGV actions of the ship owners if CAAP voluntary incentive targets are not met for the reasons stated below in section V.6.

6. ***Control Measure IND-01 and Proposed Rule 4001 Violate IMO's MARPOL Annex VI and Maritime Pollution Prevention Act of 2008.***

OGVs are regulated by the federal government implementing its treaty obligations under MARPOL, administered by the IMO, specifically MARPOL Annex VI Regulations for the Prevention

of Air Pollution from Ships (Annex VI) which sets global limits for SOx, NOx, and PM emissions from OGVs. Congress vested MARPOL and Annex VI authority with the Secretary of the U.S. Coast Guard (Secretary) and the Administrator (Administrator) of the EPA. (33 U.S.C. § 1903.) The Secretary has exclusive MARPOL administrative and enforcement authority. (33 U.S.C. § 1903(a).) The Administrator has Annex VI administrative, regulatory, investigative, and enforcement authority. (33 U.S.C. §§ 1901 et seq.)

The SCAQMD's ability to adopt, enforce, and require the ports to comply with Control Measure IND-01/Proposed Rule 4001 is precluded and preempted by Annex VI and federal regulations. (40 CFR § 1043.10.) The federal government has historically been the principal regulator of emissions from U.S. and foreign-flagged ships (or OGVs) under Annex VI. (40 C.F.R. § 94; 40 C.F.R. § 1043, 33 C.F.R. § 151).

The ports are located within the North American Environmental Control Area (ECA) established under Annex VI. The North American ECA's limits are much stricter than Annex VI's global requirements. Control Measure IND-01/Proposed Rule 4001 unlawfully requires the ports to collect and report NOx, SOx, and PM emissions information from OGVs subject to Annex VI requirements in the North American ECA. (Proposed Rule 4001(d).) To collect this information, the ports must impose a reporting requirement for OGVs coming and going from the ports– effectively regulating them under Annex VI. The ports lack authority to regulate U.S. and foreign-flagged ships in this manner. (33 U.S.C. §§ 1903, 1907.) Federal recordkeeping and reporting requirements for fuel and marine engines are expressly allowed (40 C.F.R. § 1043.70(b)-(c)), but no other recordkeeping and reporting requirements are authorized by statute or regulation. Control Measure IND-01/Proposed Rule 4001's reporting requirement is thus preempted by both Annex VI's record-keeping requirements for NOx engine standards and sulfur content in fuel (Regulations 13 and 14, Annex VI; incorporated by reference at 40 C.F.R. § 1043.100) and federal regulatory record-keeping and reporting requirements (40 C.F.R. § 1043.70).

Control Measure IND-01/Proposed Rule 4001 is also preempted on enforcement grounds. Congress expressly reserved enforcement authority of Annex VI regulations to the U.S. Coast Guard and EPA. (33 U.S.C. §§ 1903, 1907.) Enforcement inspections will be conducted only by the U.S. Coast Guard and, when referred by the Secretary, investigated by the Administrator. (33 U.S.C. §§ 1907(f)(1)-(2).) The U.S. Coast Guard and EPA are authorized to impose civil penalties for violations of MARPOL (including Annex VI) and 33 U.S.C. §§ 1901 et seq., § 1908(b)(1). The ports and SCAQMD are not so authorized and cannot inspect, penalize, or undertake enforcement actions against OGVs under Annex VI and 33 U.S.C. §§ 1901 et seq.

Control Measure IND-01/Proposed Rule 4001 also gives the Executive Officer of the SCAQMD authority to decide that the emission target is not met. To satisfy the Emission Reduction Plan requirement, the ports may have to impose more stringent emissions requirements on U.S. and foreign-flagged vessels than required by Annex VI. The ports and SCAQMD both lack this authority.

7. ***Control Measure IND-01 and Proposed Rule 4001 Violate the Dormant Commerce Clause.***

Control Measure IND-01/Proposed Rule 4001 violates the dormant Commerce Clause and would impede the free and efficient flow of commerce imposing a heavy burden on ports, the shipping

industry, navigation and commerce without any local environmental benefit, or an insubstantial local benefit at best. Because SCAQMD's attainment demonstration shows the $PM_{2.5}$ NAAQS can be obtained without Control Measure IND-01/Proposed Rule 4001, it is unnecessary to require additional emissions reductions from the maritime goods movement industry to achieve attainment and the burdens on interstate commerce of Control Measure IND-01/Proposed Rule 4001 render it unreasonable and irrational.

8. ***SCAQMD Lacks Authority under the Clean Air Act to Designate and Regulate the Ports as "Indirect Sources."***

The Clean Air Act defines an indirect source as "a facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution." (42 U.S.C. § 7410(a)(5)(C).) An "indirect source review program" is "the facility-by-facility review of indirect sources of air pollution, including such measures as are necessary to assure, or assist in assuring, that a new or modified indirect source will not attract mobile sources of air pollution" that would contribute to the exceedance of the NAAQS. (42 U.S.C. § 7410(a)(5)(D)(i).) "Direct emissions sources or facilities at, within, or associated with, any indirect source shall not be deemed indirect sources for the purpose" of an indirect source review program. (42 U.S.C. § 7410(a)(5)(C).)

The ports are not a "Facility" as required by the Clean Air Act's indirect source provisions. Together, the Port of Los Angeles and Port of Long Beach encompass 10,700 acres, miles of waterfront and features 50 passenger and cargo terminals, including dry and liquid bulk, container, breakbulk, automobile and warehouse facilities, and a cruise passenger complexes. While some U.S. ports are "operating ports" that own and operate their terminals and equipment and hire longshoremen to handle cargo, the ports of Los Angeles and Long Beach are "non-operating" or "landlord" ports that hold the tidelands property in trust for the State of California and lease it out to port tenants that operate the terminals. Each port tenant is treated as an individual stationary source facility by the SCAQMD and their activities are separately regulated and permitted by the SCAQMD.

SCAQMD advances the novel theory in Control Measure IND-01/Proposed Rule 4001 that it can designate a geographic area of a city to be an "indirect source." Further, the geographic line drawn by SCAQMD does not respect political boundaries and lumps portions of the Cities together as a single indirect source. The SCAQMD believes it can draw any geographic boundary it desires and declare that area to be an "indirect source" without regard for whether the landowner operates or controls mobile sources that pass through the area. Under the SCAQMD's theory, a local air district could designate as a stationary source, and an indirect source any city or county that has natural features that attract ships or cars or other mobile sources, even if the city or county does not own, operate or control those sources. Is a city with oil fields a stationary source and indirect source because it attracts refineries, trucks and trains to transport the petroleum products? If Riverside County has increased the numbers of warehouses and distribution centers within its borders, is the governmental agency or county geographical area now a stationary source and indirect source because such distribution centers within their borders attract trucks and trains?

Control Measure IND-01/Proposed Rule 4001 uses the Clean Air Act's indirect source provisions as a guise to impermissibly regulate mobile sources. Proposed Rule 4001 regulates emissions from "***on- and off-road mobile sources operating at, and to and from***, the Ports, which includes ocean-

going vessels, locomotives, heavy duty trucks, harbor craft, trucks, and cargo handling equipment that emit NOx, SOx, or PM2.5." (Proposed Rule 4001(c)(7) [Emphasis added].) Proposed Rule 4001's language clearly regulates emissions from the tailpipes of on-road and off-road mobile sources listed above, which makes Proposed Rule 4001 a mobile source regulation. The language also plainly allows Proposed Rule 4001 to regulate off-site emissions (emissions occurring during transit "to and from" the purported "site"). Proposed Rule 4001 therefore regulates emissions from heavy duty trucks hauling a container from the ports to Oregon or OGVs hauling cargo containers from Asia to the ports – even when that truck or OGV is no longer physically operating within the ports' boundaries. Proposed Rule 4001 is therefore not a site-based program. Congress did not intend or authorize the use of the indirect source provisions of the Clean Air Act as a way to circumvent mobile source preemption.

Control Measure IND-01/Proposed Rule 4001 also fails as an indirect source review program because the ports are not a "new or modified indirect emissions source." The Clean Air Act defines modification as "any physical change in, or change in the method of operation, of a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of an air pollutant not previously emitted." (42 U.S.C. § 7411(a)(4).) The criteria pollutants targeted by Control Measure IND-01/Proposed Rule 4001 are among those that have been identified and reduced for the duration of the CAAP. Because the ports do not qualify as either a new or modified source, any attempt to regulate them as such exceeds the SCAQMD's authority.

Control Measure IND-01/Proposed Rule 4001 also violates the nexus requirement for indirect source review programs. The purpose of an indirect source review program is to ensure that mobile source emissions do not "cause or contribute to air pollution concentrations exceeding any national primary ambient air quality standard for a mobile-source related air pollutant." (42 U.S.C § 7410(a)(5)(D)(i).) SCAQMD's own $PM_{2.5}$ monitors show that emissions from mobile sources operating in and around the ports are not causing or contributing to the South Coast Air Basin's nonattainment of the $PM_{2.5}$ NAAQS. In the 2015 Supplement, SCAQMD attributes nonattainment to a single monitor – Mira Loma (Van Buren) – which is located in Riverside, approximately 60 miles northeast of the ports. This monitor has purportedly failed to attain the $PM_{2.5}$ NAAQS because of drought conditions in Southern California, even though all of the South Coast Air Basin has experienced the drought and none of SCAQMD's other monitors have failed to demonstrate attainment with the $PM_{2.5}$ NAAQS, including the two State and Local Air Monitoring Stations nearest to the Ports – in North and South Long Beach. The Long Beach monitors have consistently demonstrated attainment for at least the last four years and are projected to continue attaining the standard through 2019. The data thus suggest a nexus between nonattainment and a source located near the Mira Loma (Van Buren) monitor – ***not the ports***.

9. *SCAQMD Lacks Authority to Require the Ports to Regulate Air Quality*.

Control Measure IND-01/Proposed Rule 4001 unlawfully compels the Ports to regulate local air quality in violation of California Health and Safety Code sections 40414 and 40440. SCAQMD's authority is confined to air quality and cannot infringe on the land use authority of counties and cities. (42 U.S.C. § 7431; Cal. Health and Safety Code § 40414.) The ports, not SCAQMD, have the authority to determine their own land use needs to advance trade and commerce. The ports play a critical role in facilitating domestic and international maritime commerce. The Los Angeles City Charter charges the Port of Los Angeles with possession, management, and control of all navigable waters, tidelands, submerged lands, and other lands as specified in the City Charter. (City Charter, Sections 602 and 651.)

Similarly, the Long Beach City Charter vests in the Long Beach Harbor Department the authority to control and supervise the Harbor District to provide for the needs of commerce, navigation, recreation and fishery. (Long Beach charter Article X11.) As an exercise of this authority, the ports decided to develop an emission inventory and implement CAAP programs after having weighed the risks of losing business to other ports without a CAAP-equivalent program. These emissions are not caused by the ports' own equipment or operations – they are caused by tenants and other goods movement customers that operate in or near the ports.

The ports are not authorized by state or federal law to carry out the air quality responsibilities of an air district or state. (40 C.F.R. § 51.232(a).) The delegation requirements are also not met. (40 C.F.R. § 51.232(b).) Control Measure IND-01/Proposed Rule 4001 nevertheless requires the ports to conduct regulatory activities, such as developing and adopting emission reduction strategies for maritime goods movement emission sources, which may include retrofit, idling, or fuel requirements; seeking SCAQMD's approval to implement the ERP regulations; and establishing enforcement procedures to ensure that $PM_{2.5}$ emission reductions from mobile sources operating in or near the ports meet the 2012 AQMP assumptions. (See Proposed Rule 4001(f)(1)(C), (f)(1) and (2), and (f)(1)(D).)

10. *There is No Legal Authority for Including Control Measure IND-01 or Proposed Rule 4001 in the SIP*.

Indirect source control measures cannot be required as a condition of SIP approval by EPA or CARB. (42 U.S.C. § 7410(a)(5)(A)(ii); Cal. Health & Safety Code, § 40468.) There are no provisions in the Clean Air Act for including "backstop" measures like Control Measure IND-01 and rules like Proposed Rule 4001 in the California SIP. Only those provisions necessary to meet the requirements of the Clean Air Act can be included in the SIP. (Cal. Health & Safety Code, § 39602.) Control Measure IND-01/Proposed Rule 4001 is not necessary to meet the 24-hour $PM_{2.5}$ NAAQS requirements of Clean Air Act, and there is no emission reduction target for Control Measure IND-01 in the attainment strategy for the 2012 AQMP which Proposed Rule 4001 purports to implement. Thus, Proposed Rule 4001 does not comply with SIP submittal requirements. (See e.g., 40 C.F.R. §§ 51.112-51.114.)

The 2012 AQMP baseline assumptions SCAQMD seeks to enforce by Control Measure IND-01/Proposed Rule 4001 are not credited as emission reductions in the control attainment demonstration for the 2012 AQMP. There is no requirement under the Clean Air Act to enforce baseline assumptions in a SIP. CARB and SCAQMD must have legal authority to adopt, carry out and enforce each SIP measure before EPA can approve the SIP measure. (40 C.F.R. §§ 51.230-51.232; 40 C.F.R. § 51, App. V.) CARB and SCAQMD lack legal authority (preempted) because they cannot require the owners or operators of OGVs, locomotives, harbor craft, and CHE to implement all of the measures set forth in the CAAP, which Control Measure IND-01/Rule Proposed Rule 4001 requires. There is no agreement between CARB or SCAQMD with the Cities for the ports to agree to implement and enforce the sources covered by Proposed Rule 4001. (40 C.F.R. § 51.240.)

11. *Control Measure IND-01 and Proposed Rule 4001 Violate the Tidelands Trust Doctrine*.

The Cities' management of their tidelands is restricted by the public trust doctrine and the legislative acts that granted tidelands to the Cities. As tidelands trustees, the Cities are required to operate and use their tidelands property and revenues solely for the benefit of the entire State of

California, and not for purely local interest or benefit. The Cities have been granted the discretion over how to best fulfill the express trust purposes. SCAQMD cannot compel the ports through Proposed Rule 4001 to violate these Tidelands Trust obligations.

Control Measure IND-01/Proposed Rule 4001 strips the Cities of their discretion in administering the tidelands for the benefit of the State of California and compels the Cities to utilize their revenues for air quality purposes ahead of the purposes expressly set forth in the documents granting tidelands to the Cities. As a practical matter, Control Measure IND-01/Proposed Rule 4001 compliance will depend in part on the Cities providing financial incentives to the owners and operators of mobile sources to incentivize emission reductions. If the SCAQMD Executive Officer requires the ports to develop an Emission Reduction Plan and determines that more generous financial incentives must be offered by the ports to achieve the emission targets (which is permissible under Proposed Rule 4001), this would ultimately diminish the Cities' ability to execute their tidelands trust obligations by forcing revenue to be spent on complying with Proposed Rule 4001, and depleting revenues for express trust purposes.

In their discretion, the ports consider environmental quality to fall within the implied scope of the tidelands trust and have in fact made substantial expenditures when their operating budgets allow. The ports also fully comply with the California Environmental Quality Act when developing their properties for tenants' use, which may include providing mitigation such as air quality reduction measures to address any environmental impacts. However, the tidelands trust does not expressly require revenues be expended for "air quality improvement", and Control Measure IND-01/Proposed Rule 4001 appears to challenge the Cities' jurisdiction over their own funds, if the only way to increase compliance with a CAAP incentive program, for example, is to increase the amount of incentives.

Control Measure IND-01/Proposed Rule 4001 also compels the Cities to violate their Tidelands Trust obligations by mandating that the ports utilize trust funds for an entirely local air regulatory program to reduce PM 2.5, SOx, and NOx emissions. Proposed Rule 4001 applies to "commercial marine ports located in the South Coast Air Quality Management District." (Proposed Rule 4001(b).) The SCAQMD covers a sub-region within Southern California. (Cal. Health and Safety Code, § 40410.) "Commercial marine ports" means "the Port of Los Angeles and the Port of Long Beach." (Proposed Rule 4001(c)(2).) The funding to implement Proposed Rule 4001 will confer only an emission reduction benefit to the South Coast Air Basin and not the entire State of California. Thus, the benefits of Proposed Rule 4001 are strictly localized and conflict with the express terms of the tidelands trust provisions that the ports' property and revenues confer statewide, and not purely local, benefits. The implementation of Proposed Rule 4001 in the South Coast Air Basin will place the ports at a competitive disadvantage to other ports in California. If other ports secure cargo business meant for the Los Angeles or Long Beach ports, the Cities will lose revenues they need to fulfill their tidelands trust obligations.

Conclusion

Again, the ports appreciate the opportunity to comment on EPA's proposed rulemaking and urge the EPA to disapprove and exclude SCAQMD's Control Measure IND-01 and Proposed Rule 4001 from the SIP submittal for the 2006 $PM_{2.5}$ NAAQS in the South Coast Air Basin.

Sincerely,

Heather A. Tomley
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachments

1) March 25, 2014 Letter to Richard Corey, California Air Resources Board from Heather Tomley, Port of Los Angeles and Christopher Cannon, Port of Los Angeles
2) February 24, 2014 Letter from Deborah Jordan, EPA to Christopher Cannon, Port of Los Angeles and Matthew Arms, Port of Long Beach
3) January 31, 2014 Letter to Randall Pasek, Ph.D., South Coast Air Quality Management District from Matthew Arms, Port of Long Beach and Christopher Cannon, Port of Los Angeles
4) January 15, 2014 Letter to Jared Blumenfeld, U.S. Environmental Protection Agency, Region 9 from Matthew Arms, Port of Long Beach and Christopher Cannon, Port of Los Angeles
5) January 15, 2014 Letter to Barbara Radlein, South Coast Air Quality Management District from Matthew Arms, Port of Long Beach and Christopher Cannon, Port of Los Angeles
6) October 2, 2013 Letter to Randall Pasek, South Coast Air Quality Management District from Heather Tomley, Port of Long Beach and Christopher Cannon, Port of Los Angeles
7) August 21, 2013 Letter to Barbara Radlein, South Coast Air Quality Management District from Heather Tomley, Port of Long Beach and Christopher Cannon, Port of Los Angeles
8) November 27, 2012 Letter to Susan Nakamura, South Coast Air Quality Management District from Richard D. Cameron, Port of Long Beach and Christopher Cannon, Port of Los Angeles
9) November 19, 2012 Letter to Barry Wallerstein, South Coast Air Quality Management District from Richard D. Cameron, Port of Long Beach and Christopher Cannon, Port of Los Angeles
10) November 8, 2012 Letter to Barry Wallerstein, South Coast Air Quality Management District from Richard D. Cameron, Port of Long Beach and Christopher Cannon, Port of Los Angeles
11) October 31, 2012 Letter to Barry Wallerstein, South Coast Air Quality Management District from Richard D. Cameron, Port of Long Beach and Christopher Cannon, Port of Los Angeles from Chris Lytle, Port of Long Beach and Michael Christensen, Port of Los Angeles
12) October 22, 2012 Letter to Jeff Inabinet, South Coast Air Quality Management District from Richard D. Cameron, Port of Long Beach and Christopher Cannon, Port of Los Angeles

13) August 30, 2012 Letter to Barry Wallerstein, South Coast Air Quality Management District from Chris Lytle, Port of Long Beach and Geraldine Knatz, Port of Los Angeles

14) July 10, 2012 Letter to Barry Wallerstein, South Coast Air Quality Management District from Chris Lytle, Port of Long Beach and Michael Christensen, Port of Los Angeles

15) May 4, 2010 Letter to Susan Nakamura, South Coast Air Quality Management District, from Richard D. Cameron, Port of Long Beach and Ralph Appy, Port of Los Angeles

16) December 2012, SCAQMD Final 2012 Air Quality Management Plan, pp. 4-8, 4-12 to 4-13; and January 11, 2013 CARB Staff Report on Proposed Revisions to the PM2.5 and Ozone State Implementation Plans for the South Coast Air Basin, pp. 12-13.

17) December 2012, SCAQMD Final 2012 AQMD Appendix IV-A, District's Stationary Source Control Measures, pp. IV-A-2, IV-A-36 to IV-A-43

18) February 2015, SCAQMD Final Supplement to the 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin, Table F-1

19) February 6, 2015, SCAQMD Agenda No. 22, Supplement to 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin, Attachment F, p. F-1

20) February 2015, SCAQMD Final Supplement to the 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin, Table F-1; and February 6, 2015, SCAQMD Agenda No. 22, Supplement to 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin, Attachment E

21) December 7, 2012, SCAQMD Resolution 12-19

22) January 25, 2013, CARB Resolution 13-3

cc: The Honorable Barbara Boxer, United States Senate
The Honorable Janice Hahn, United States House of Representatives
The Honorable Alan Lowenthal, United State House of Representatives
The Honorable Edmund G. Brown, Jr., Governor, State of California
The Honorable Ricardo Lara, California State Senate
The Honorable Patrick O'Donnell, California State Assembly
The Honorable Robert Garcia, Mayor, City of Long Beach
The Honorable Eric Garcetti, Mayor, City of Los Angeles
Jon Slangerup, Chief Executive, Port of Long Beach
Gene Seroka, Executive Director, Port of Los Angeles
Richard Cameron, Managing Director, Port of Long Beach
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Barbara McTigue, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
Jared Blumenfeld, Administrator, EPA, Region 9
Deborah Jordan, Director, Air Division, EPA, Region 9
Elizabeth Adams, Deputy Director, Air Division, EPA, Region 9

Jeanhee Hong, Regional Counsel, EPA Region 9
Richard Corey, Executive Officer, CARB
Cynthia Marvin, Division Chief, Stationary Source Division, CARB
Doug Ito, Chief, Freight Transportation Branch, CARB
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD

ATTACHMENT 1.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

March 26, 2014

Richard Corey
Executive Officer
California Air Resources Board
1001 "I" Street
Sacramento, California 95814

Re: California State Implementation Plan (SIP) for $PM_{2.5}$ for South Coast Air Basin – South Coast 2012 Air Quality Management Plan (AQMP) Control Measure IND-01 *Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities*

Dear Mr. Corey:

The Ports of Long Beach and Los Angeles (Ports) would like to express our concern regarding the California Air Resources Board (ARB) procedure for inclusion of Control Measure IND-01 *Backstop Measure for Indirect Sources of Emissions from Ports and Port-related Facilities* (Measure IND-01) in the California State Implementation Plan (SIP) for particulate matter 2.5 microns or less ($PM_{2.5}$) for the South Coast Air Basin, which is currently pending United States Environmental Protection Agency (EPA) approval.

The Ports believe that ARB failed to follow the process for SIP revision submissions required by Clean Air Act Section 110(1) and California Health and Safety Code Section 41650. Under Clean Air Act Section 110(l), SIP revisions must be adopted by the State, and the State must provide for reasonable public notice and hearing prior to adoption. Pursuant to 40 CFR 52.102(a)(1), the State must hold a public hearing, not only for initial SIP approval, but also for any SIP revision, and must provide notice of the date, place, and time of a public hearing and opportunity to submit written comments. Under 40 CFR 51.102(d), reasonable public notice in this context refers to at least 30 days. Similarly, Health and Safety Code Section 41650 provides for a public hearing that would allow public comment as to whether the SIP meets the requirements of the Clean Air Act. By resolution dated January 25, 2013, the ARB approved the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) and directed the executive officer of the ARB to submit the AQMP to EPA for inclusion in the SIP. However, at the time of the January 25, 2013 ARB action, Measure IND-01 was not part of the AQMP. Because the AQMD Governing Board adopted the AQMP without Measure IND-01 on December 7, 2012 and did not adopt Measure IND-01 until February 1, 2013, the January 25 ARB action did not constitute approval of Measure IND-01 which had not yet been submitted to ARB for consideration. The

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425 S. Palos Verdes Street • San Pedro • CA 90731 • 310-732-3675

Port of Long Beach • Environmental Planning
925 Harbor Plaza • Long Beach • CA 90802 • 562-590-4160

The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

documents attached to the ARB's February 13, 2013 SIP submittal to the EPA include the December 7, 2012 resolution by the AQMD Governing Board and the December 20, 2012 AQMD letter to ARB transmitting the approved SIP, which pre-dated the AQMD Governing Board's approval of Measure IND-01. However, without the required public notice or public hearing and adoption by the ARB Governing Board, the submitted SIP includes the addition of Measure IND-01 by Executive Order S-13-004, dated April 9, 2014.

Furthermore, the Ports were made aware of this Executive Order, which occurred without public hearing or Governing Board approval through a letter from EPA to the Ports dated February 24, 2014. This letter stated that ARB had approved the revised SIP containing Measure IND-01and had forwarded it to EPA under cover of a letter dated April 9, 2013. After a search of the ARB website, however, we were unable to find a copy of the April 9, 2013, submission to the EPA, and the only ARB action posted on the ARB website was the February 13, 2013, SIP submission without Measure IND-01 and the ARB Board's resolution dated January 23, 2013, also without Measure IND-01. We made inquiry to ARB staff and for the first time, on March 18, 2014, received a copy of the April 9, 2013 submission and ARB Executive Order S-13-004, neither of which are available on the ARB website even as of this date.

Perhaps more important than the procedural issue described above, we respectfully request that ARB consider the Ports' many legal, jurisdictional, operational, and technical concerns regarding the substance of Measure IND-01 and its implementing Rule 4001 as set forth in the attached letter to AQMD, dated January 31, 2014, which we hereby incorporate by reference as comments to the ARB on Measure IND-01, since ARB has never formally noticed a public comment period, in violation of the Clean Air Act and Health and Safety Code Section 41650.

The Ports value our partnership with ARB, working together to improve air quality, and we look forward to continuing our collaboration on projects such as ARB's new Sustainable Freight Strategy effort. Rather than introduce counterproductive regulation such as Measure IND-01 or Proposed Rule 4001, the Ports strongly urge ARB to recognize that a multi-agency agreement, using a collaborative process for development of potential programs, is the most effective way to ensure that emission reduction goals continue to be incentivized, and are actually realized. We respectfully request that ARB rescind Executive Order S-13-004, withdraw Measure IND-01 from the SIP, and meet with the Ports to work on a collaborative path forward.

Sincerely,

Heather Tomley
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

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Attachment: Port of Long Beach and Port of Los Angeles January 31, 2014 Letter to Mr. Randall Pasek, AQMD, *Re: Comments on South Coast Air Quality Management District Proposed Rule 4001 — Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports*

cc: Al Moro, Acting Executive Director, Port of Long Beach
Gary Lee Moore, Interim Executive Director, Port of Los Angeles
Richard D. Cameron, Managing Director, Port of Long Beach
Michael Christensen, Deputy Executive Director, Port of Los Angeles
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
Mary Nichols, Chairman, ARB
Members of the California Air Resources Board (*c/o Clerk of the Board, Attachment on CD*)
Cynthia Marvin, Division Chief, Stationary Source Division, ARB

ATTACHMENT 2.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

FEB 2 4 2014

Mr. Christopher Cannon
Director of Environmental Management
Port of Los Angeles
425 S. Palos Verdes Street
San Pedro, CA 90731

Mr. Matthew Arms
Acting Director of Environmental Planning
Port of Long Beach
925 Harbor Plaza
Long Beach, CA 90802

Dear Mr. Cannon and Mr. Arms:

Thank you for your letter dated January 15, 2014, to the U.S. Environmental Protection Agency Region 9's Regional Administrator Jared Blumenfeld, expressing your concerns about the South Coast Air Quality Management District's (SCAMQD) Control Measure IND-01, *Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities.* We appreciate the Port of Long Beach's and the Port of Los Angeles' input on Control Measure IND-01.

We agree with your statement that California Air Resources Board's (CARB) January 25, 2013 adoption of the South Coast 2012 Air Quality Management Plan (2012 AQMP) did not include Control Measure IND-01. The SCAQMD Governing Board voted to delay that measure when it adopted the 2012 AQMP pending further work by SCAQMD staff. The measure was approved by the SCAQMD Governing Board in February 2013 and CARB adopted it and submitted it to EPA on April 9, 2013. To date, we have not received South Coast Rule 4001, which will implement Control Measure IND-01, as a revision to the California State Implementation Plan. Once we receive the rule, we are obligated to review and act on the rule.

In the mean time, I propose that my staff schedule a teleconference call with your staff to discuss the concerns you raised in your letter. If you have any questions, please contact Elizabeth Adams, Air Division Deputy Director, at (415) 972-3183.

Sincerely,

Deborah Jordan
Director, Air Division

ATTACHMENT 3.

January 31, 2014

VIA E-MAIL – rpasek@aqmd.gov

Mr. Randall Pasek, Ph.D.
Planning Manager, Off-Road Section
Mobile Source Division
Science and Technology Advancement
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91756-4178

Re: Comments on South Coast Air Quality Management District Proposed Rule 4001 — *Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports*

Dear Mr. Pasek and Staff of the South Coast Air Quality Management District:

On behalf of the City of Long Beach (referred to herein as "COLB") and the City of Los Angeles acting by and through their respective Harbor Departments ("COLA"), and collectively with COLB referred to herein as the "Cities"), we appreciate this opportunity to submit comments on the South Coast Air Quality Management District's ("District") recently published draft "Proposed Rule 4001 – *Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports*" ("PR 4001"), which attempts to implement "Stationary Source Measure IND-01—*Backstop Measures for Indirect Sources of Emissions from Ports and Port-related Facilities*" ("Measure IND-01") in the 2012 Air Quality Management Plan for the South Coast Air Basin ("AQMP").

As the District is well aware, the Cities have been dedicated, innovative, and effective leaders in the efforts of public agencies to improve air quality despite the fact that we have no air quality regulatory authority or control over emissions sources. The potential of additional regulation by the District in the form of PR 4001 on the ports of Long Beach and Los Angeles ("Ports") brings significant uncertainty that will have broad negative effects on the goods movement industry and the economy as a whole, and destroys the voluntary, collaborative partnership among the Cities, industry and all of the air agencies that has led to unparalleled emission reductions. PR 4001 raises questions of fairness and unacceptable delegation of responsibility from federal, state and local air regulators to individual cities.

The Cities have previously commented on, and objected to PR 4001 and Measure IND-01, and have expressed our grave concerns about the District's rulemaking approach, attempting to craft an ostensible "backstop rule" that would regulate the Cities and their respective Ports in an unprecedented manner. This letter provides the Cities' comments on PR 4001 and the District's Preliminary Draft Staff Report ("PDSR") for PR 4001 and concludes that:

I. The substance of Measure IND-01 and PR 4001 is deeply flawed from technical, jurisdictional, legal, and public policy perspectives, in ways that cannot be cured;

II. District is acting beyond its authority to adopt PR 4001;

III. The procedural process for development, public participation and adoption of Measure IND-01 and PR4001 is similarly flawed under both state and federal law; and

IV. Measure IND-01 and PR 4001 fail the requirements for inclusion in a State Implementation Plan (SIP) under the federal Clean Air Act and applicable state law and their existence within the SIP threatens the its success.

Each of these four conclusions is explained in detail below.

I. SUBSTANTIVE FLAWS IN PR 4001

A. There Is No Demonstrated Need for PR 4001

The District has failed to and cannot provide any demonstration of "need" or justification for either Measure IND-01 or PR 4001. The District's persistent demand for the Cities – and the Cities alone – to be subjected to a redundant rule to "backstop" existing and effective emission regulations, reduction plans and policies is arbitrary, discriminatory, and remains unjustified by evidence or legal authority.

We respectfully point out that the District previously proposed a "port backstop rule" as a "Mobile Source Measure MOB-03" ("Measure MOB-03") as part of the District's 2007 Air Quality Management Plan, although Measure MOB-03 included as regulated parties, the port-related emission sources. However, following the Cities' objections to that similarly-unjustified proposal, the California Air Resources Board ("CARB") excluded the Port-related emission reduction targets and the proposed MOB-03 "backstop" measure from the 2007 SIP. Despite that rejection, and despite its repeated and manifest failure to demonstrate any legitimate need the District introduced an even more unjustified form of backstop that targets the Cities alone, in the form of PR 4001.

Implementation of PR 4001 would transform the Cities' voluntary San Pedro Bay Ports Clean Air Action Plan ("CAAP") into the District's mandatory regulation of the Cities. The CAAP was a voluntary cooperative effort of Cities and all of the air regulatory agencies (including the District, CARB and the United States Environmental Protection Agency ("USEPA") designed to encourage the industry operators of emission sources to go beyond regulation. PR 4001 would improperly and illogically subject the Cities to the District's regulation for industry's failure to achieve anticipated emissions reductions from equipment not operated, owned or controlled by the Cities, or even to the potential loss of federal and state funding for emission reduction measures if the PR 4001 is adopted and included in the SIP and approved by the USEPA.

As the Cities have previously shown, there is no demonstrated need for the rule, nor is this rule necessary for regional attainment of the 2014 $PM_{2.5}$ standard. PR 4001 is unnecessarily duplicative of regulations already in place for port-related sources.[1] This violates the federal Clean Air Act and State of California Health & Safety regulations that require SIP provisions to be "necessary." The Ports' 2012 air emissions inventories show that diesel particulate emissions (DPM) have been reduced by 80% over the seven year period between 2005 and 2012, exceeding the commitments we made for 2014 and 2023 in the CAAP. Further, the Cities estimate that by 2014**, 98%** of the $PM_{2.5}$ equivalent emission reduction that PR 4001 seeks to backstop will occur as the result of regulations adopted by CARB and the International Maritime Organization (IMO).[2] The remaining **2%** of $PM_{2.5}$ equivalent emission reductions is primarily attributed to the Cities' successful voluntary vessel speed reduction incentive program which is part of the Cities' CAAP.

B. A VMEP Should Be Used To Achieve Reductions Rather than Rulemaking

To the extent the District may be seeking to ensure the emission benefits of the Cities' voluntary vessel speed reduction incentive program, there is a more appropriate and focused method in the form of the USEPA's policy and guidance for the Voluntary Mobile Source

[1] The term "port-related sources" may occasionally be used in this letter, merely for convenience and consistency with usage of that colloquial term by the District, as shorthand for the range of discrete sources of air emissions, mostly mobile, which happen to operate at or near the geographic boundaries of the respective Ports. The Ports themselves, however, are "non-operating ports" and therefore not "sources" of emissions, and there is no statutory reference to anything called "port-related sources" for purposes of air quality regulation. The Cities are governmental entities having jurisdiction over defined geographic areas, like the District, and are no more the "sources" of emissions than is the District.

[2] CARB Port Drayage Truck Rule, CARB Truck and Bus Rule, CARB Ocean-Going Vessel (OGV) Shore Power Rule, OGV Low-Sulfur Fuel Rule, CARB Cargo-Handling Equipment at Ports Rule, CARB Commercial Harbor Craft Rule, IMO North American Emission Control Area

Emission Reduction Program (VMEP). This USEPA policy provides an established process to grant SIP credit for emission reductions resulting from voluntary mobile source measures that go beyond existing regulations. The VMEP approach was intended for exactly the type of successful voluntary program such as the Cities' landmark CAAP, and should be used to account for the 2% of port-related emissions not currently backstopped by regulation. Use of the VMEP would allow the continuation of a successful voluntary approach that has industry support eliminating the risk of cargo diversion that would be caused by the uncertainty inherent in the ill-conceived regulatory structure of PR 4001.

The USEPA's established VMEP process that was conceptualized for programs such as the Cities' vessel speed reduction incentive program and other CAAP measures is a feasible and preferable alternative to PR 4001 as it will accomplish the objectives sought by Measure IND-01 and PR 4001 and ensure that the emissions reductions achieved by the program are credited in the SIP. Further, a VMEP, which can be implemented by a memorandum of understanding, will achieve the same emissions reductions while allowing grant funds to continue to remain available for actions going beyond regulations and will do so in a collaborative manner. It will also encourage other port partners, as well as cities and regions throughout the nation, to develop and pursue innovative voluntary programs and solutions that best fit their needs to improve air quality and public health. The Cities are open to discussing mechanisms, contractual or otherwise, by which the Cities and the District can formalize a VMEP to ensure the voluntary emission reductions are maintained in future years.

C. PR 4001 Emissions Reduction Target Methodology is Flawed

Table 5 of the District's Preliminary Draft Staff Report shows the overall combined 2014 target emission reduction of 75% resulting from the application of the Cities' CAAP 2014 emissions reduction goals for NOx, SOx, and DPM compared to the CAAP 2005 baseline, but fails to specify a mechanism to harmonize the AQMP inventory values with the Cities' reported air emissions inventories. Furthermore, the use of a fortuitous similarity in 'percent reduction' cannot be the basis of any type of backstop rule.

Since the 2012 Final AQMP emissions inventory uses a baseline year of 2008 that includes the Cities' 2008 emissions inventories, the 2005 baseline emissions should be replaced with the more appropriate 2008 emissions estimates to determine the overall $PM_{2.5}$ equivalent emissions reduction target. Based on the Cities' calculation, using the District staff's methodology, by applying the CAAP reduction factors to the 2008 baseline inventory, the overall combined target $PM_{2.5}$ equivalent emission reduction is 68%, as shown in the following table:

Emissions Inventory	NOx	SOx	$PM_{2.5}$	$PM_{2.5}$Eq
	(tons per day)			
CAAP 2005 Baseline[1, 3]	87.45	33.39	4.73	28.54
Ports Combined 2008 Total Port-Related Emissions[2, 3]	78.6	25.5	3.7	22.7
CAAP 2014 Reduction[4]	22%	93%	72%*	-----
2014 Estimated Inventory[3]	68.21	2.34	1.32	7.34
Overall $PM_{2.5}$ Equivalent Reduction Between 2008 and 2014				68%

[1] From Table 2 of Preliminary Draft Staff Report for PR 4001
[2] From Table 3 of Preliminary Draft Staff Report for PR 4001
[3] 2005 and 2008 emissions are based on the Ports' 2011 emission estimation methodologies.
[4] CAAP 2014 Bay-Wide Standards emission reduction goals for NOx, SOx and DPM
*Please note that that the CAAP 2014 emission reduction goal of 72% is for DPM, not for PM.

In determining the 2014 emission reduction targets for PR 4001, District staff applied the Basin-wide percent reductions from 2008 to 2014 and 2019 to the Cities' 2008 inventory to arrive at the forecasted net emissions reduction percentages of 75% for 2014 and 2019 (page 11 of Preliminary Draft Staff Report). This approach is not appropriate because the Basin-wide percent reductions are based on an inventory of emissions from overall sources (including non-port-related) in the South Coast Air Basin (SCAB). Therefore, the approach taken in PR 4001, is not directly applicable to what the Rule describes as "port-related emissions." Since the SCAB estimates include emissions from what the District erroneously describes as the "port-related source" categories, as well as sources operating elsewhere in the SCAB, the 75% emission reduction target specific to the ports of Long Beach and Los Angeles is questionable. As an example, SCAB-specific emissions from heavy-duty vehicles includes emissions from all heavy-duty trucks operating in the basin, including those associated with construction activities, public fleets, utility, intrastate, interstate, and drayage trucks, while the ports-specific heavy-duty truck emissions inventory only includes activity and emissions associated with port-related drayage trucks.

It is also important to note that the District's December 2013 Preliminary Draft Staff Report for PR 4001 erroneously assumes that $PM_{2.5}$ emissions are equivalent to diesel particulate matter (DPM) emissions. The Cities' 2014 CAAP emission reduction goal of 72% is specific to DPM, not $PM_{2.5}$ as assumed in the calculation of the $PM_{2.5}$ equivalent emissions reduction goal of 75%. Each of the Port's annual air emissions inventories separately estimate DPM and $PM_{2.5}$. As shown in their annual reports, the resulting emissions of DPM and $PM_{2.5}$ **are not equivalent**.

Please refer to Table 8.4 of the Port of Long Beach 2012 Air Emissions Inventory Report[3] and Table 9.4 of the Port of Los Angeles 2012 Inventory of Air Emissions Report[4].

A comparison of the $PM_{2.5}$ equivalent factors used in the 2007 AQMP , 2012 AQMP, and PR 4001 shows that there is inconsistency in how the $PM_{2.5}$ equivalent factors were derived and applied, as shown in the table below:

$PM_{2.5}$ Equivalent Factors

	VOC	NOx	$PM_{2.5}$	SOx
2007 AQMP	0.04	0.10	1.00	1.52
2012 AQMP	0.02	0.07	1.00	0.53
PR 4001	NA	0.07	1.00	0.53

In the 2007 AQMP, emissions reductions were simulated between 2005 and 2014, whereas for the 2012 AQMP, emissions reductions were simulated between 2008 and 2014. In the 2007 AQMP, the effect of each pollutant precursor's reduction on the 2014 $PM_{2.5}$concentration was considered on an annual basis, while the 2012 AQMP considers 24-hour $PM_{2.5}$concentrations. Also, the 2007 AQMP used the annual $PM_{2.5}$ concentration which was based on the average concentrations from all air monitoring stations in the South Coast Air Basin, while the 2012 AQMP only uses the average from six regional locations—Riverside-Rubidoux, Downtown Los Angeles, Fontana, Long Beach, South Long Beach, and Anaheim. The Basin-averaged conversion factors resulting from the 2007 analysis were submitted as part of the 2007 SIP (Appendix C, of the CARB staff report, "$PM_{2.5}$ Reasonable Further Progress Calculations") and were approved by the USEPA.

In addition, PR 4001(c)(6) defines "$PM_{2.5}$ Equivalent" as "the aggregate of the NOx, SOx, and $PM_{2.5}$ emissions (in tons per day) as defined by the following formula provided in the Final 2012 AQMP:

$$PM_{2.5}\text{ Equivalent} = 0.07 * NOx + 0.53 * SOx + 1.0 * PM2.5$$

The formula provided in PR 4001 does not reflect the $PM_{2.5}$ equivalent formula provided in the Final 2012 AQMP, which includes emissions of VOCs in the calculation. In PR 4001, without explanation, the District has erroneously "dropped" the contribution of VOC from the $PM_{2.5}$ equivalent formula, although the District's emissions modeling simulation shows VOCs as a contributing factor.

[3] Port of Long Beach 2012 Air Emissions Inventory. www.polb.com/emissions
[4] Port of Los Angeles 2012 Inventory of Air Emissions. www.portoflosangeles.org/environment/studies_reports.asp

Given that there have been several revisions to the $PM_{2.5}$ equivalent calculations, the text and formulae used in PR 4001 for those calculations do not appear consistent with previous approaches to such determinations. Prior to proceeding any further with PR 4001, the Cities request a scientific technical evaluation and obtain confirmation from the USEPA that the revised $PM_{2.5}$ equivalent factors and formula to calculate $PM_{2.5}$ equivalent emissoins used in the 2012 AQMP and in PR 4001 are appropriate.

D. PR 4001 Fails to Provide an Accurate and Appropriate Definition of Emissions "Shortfall"

PR 4001 would require the Cities to develop and submit an emissions reduction plan ("Plan") identifying control strategies to eliminate some potential future "shortfall" in attainment of reduction targets. The proposed rule, however, fails to identify the environmental baseline or other parameters that would be required in order for the Cities or the District to determine the extent of any emissions "shortfall" to be addressed in the potential Plan. Under PR 4001, the existence of a "shortfall" would appear to be the necessary prerequisite to trigger some responsive action on the part of the Cities, but the draft text of PR 4001 fails to provide for a timely and objective process to ascertain when and whether such a "shortfall" may have arisen.

The term "shortfall" first appears in the proposed rule in paragraph (d)(1)(A), where it appears to call for a Plan to report on progress in "meeting the shortfall." However, that would appear to be inconsistent with the structure of the proposed rule, i.e., under PR 4001, the District cannot require the Cities to submit an emissions reduction plan unless and until the annually-reported emissions reductions "show that the percent reduction in $PM_{2.5}$ from the baseline emissions is less than the reduction target" of 75% (Paragraph (e)(1)B)). There would not be any "shortfall" identified until that time; therefore, it would be premature and illogical to require the Cities to submit a Plan that "reports the progress in meeting the shortfall."

To the limited extent that the draft text of PR 4001 describes the shortfall that might trigger the need to prepare a Plan, the provisions for annual estimating or reporting of the emissions appear imprecise and vague. Also, paragraph (f) appears to contemplate that once a "shortfall" is determined to exist in one year, then the District could demand a revised Plan in following years if targets still are not met. What happens if the shortfall is "corrected" in subsequent years and targets are again being met?

PR 4001 fails to provide for any process for review or appeal of a possible District "determination" that a "shortfall" has occurred. PR 4001 fails to provide adequate time for the Cities to prepare a Plan, if required, or adequate time or procedures for the Cities to study the proposed Plan, to conduct environmental review of the Plan, or to conduct public hearings and gather input on any Plan that may be deemed to be appropriate if PR 4001 is properly triggered.

Development of a Plan should not be mandated if any eventual determination of an emissions "shortfall" is due to reasons outside of the Cities' control. As previously stated, by 2014, the emissions sources ostensibly targeted by PR 4001 are already controlled by state, federal, and international regulations. Should there be a shortfall in attaining the emissions targets, it will likely be due to factors not caused or controlled by the Cities, and not due to any action or derelictions on the part of the Cities or their tenants or users. The obligation to go through a burdensome process to prepare and approve a new Plan or to take active measures to make up for a shortfall in meeting emission reduction targets should not fall on the two Cities. The Cities are independent governmental entities who are not directly producing emissions or otherwise directly responsible for the targeted emissions or for the attainment of emission targets. The Cities are certainly not air agencies created by federal or state law with specific regulatory authority to control emissions.

E. <u>PR 4001 Improperly Provides for Moving Emissions Reduction Targets</u>

PR 4001 paragraph (c)(4) defines the "Emissions Target" as the "emissions forecast that is based on the Ports' 2008 baseline emissions **forecasted** for a specific year as provided in Appendix IV-A page IV-A-36 of the Final 2012 AQMP." This definition is confusing, as it is assumed that this reference is contained in the Final 2012 AQMP. In the description of this measure in Appendix IV, page IV-A-36, only projected levels of NOx, $PM_{2.5}$, and SOx are shown for calendar years 2014 and 2019. However, PR 4001 and the District's Preliminary Draft Staff Report discuss a 75% reduction in $PM_{2.5}$ equivalent emissions in 2014 compared to 2008 baseline levels. Again, there is a clear inconsistency between PR 4001 and the text of Measure IND-01 as actually approved by the District's Governing Board.

PR 4001 paragraph (e)(2) requires the District's Executive Officer to review the reduction target based on the latest information available including future year emission estimates in the 2016 AQMP and purports to allow the Executive Officer, by July 1, 2017 to "update," if necessary, the emission reduction target. This provision is unauthorized by IND-01 or any other rule, regulation, plan or statute, and would unlawfully vest apparently unfettered power on the Executive Officer to **change the previously-approved reduction targets**. By what authority would these targets be "revised" in the future? Under what objective standards? What public process would the District's Executive Officer need to follow in order to "develop" a proposed amendment to PR 4001 changing the targets? What environmental review/public outreach processes would be required before the Executive Officer could change the reduction targets and how would the environmental/socioeconomic impacts of such changes be addressed? How would such a moving target affect the Cities, the port communities, tenants, users, and the existing plans and policies which have proven effective in attaining the agreed and approved reduction targets?

F. The Processes For Development, Approval and Disapproval of Emission Reduction Plans Are Flawed

In the event the emissions reduction targets are not met, PR 4001 requires the Cities to submit an Emissions Reduction Plan "to address the emission reduction 'shortfall'." In addition, PR 4001 dictates the public processes of other government agencies: "…the Ports shall conduct at least one duly noticed public meeting before the Plan is presented to each respective Board of Harbor Commissioners for approval." This is an improper attempt by the District to control and dictate the exercise of "discretion" conferred on the Boards of Harbor Commissioners regarding their own notice, agenda setting, public hearing procedures and substantive decision making processes under their own applicable governing laws and rules. Neither the District's staff nor its Governing Board can require approval of the District's desired measures or override the discretion of the Board of Harbor Commissioners including decisions related to the management of the port or how port resources are allocated.

Moreover, if the Board of Harbor Commissioners disagrees that a Plan is required or specific terms of a Plan requested by the District, what process is provided for resolution of such disagreements? Under what authority would PR 4001 purport to allow the District's Executive Officer, acting alone, without even District Governing Board authority, to "disapprove" a Plan or compel a Plan to be approved by the Cities' own governing authorities? Although the Cities dispute that the District can compel or disapprove a Plan at all due to conflicting governmental authority, certainly such approval or disapproval of any Emission Reduction Plan cannot be at the sole discretion of a single District staff member.

G. PR 4001 Would Violate Constitutional Requirements of Due Process

PR 4001 also raises several questions regarding violations of Due Process. As noted above, PR 4001 would unlawfully purport to vest the District's Executive Officer with unilateral authority to "approve" or "disapprove" a Plan submitted by the Cities, without any process for public hearing, review by the District Board, or other guarantees of procedural due process for those concerned about such actions. PR 4001 also improperly fails to provide any requirement that the Executive Officer must make "findings" of "non-compliance" with some provision of paragraph (f)(1) of PR 4001, or that the Executive Officer's decisions must be based on some reasonable and objective standards.

PR 4001 fails to provide for the District giving the Cities any particular notice or justification for disapproval of a Plan, or any process for the Cities to seek review or appeal of the District's disapproval.

What would be the procedure if the PR 4001 triggered the obligation of the Cities to prepare a Plan, and the Cities duly submitted a Plan, but the District (either by its Executive

Officer or its Hearing Board) "disapproved" the Plan (per paragraph (f)(2)(C))? The Cities would apparently be required to submit a revised Plan within 60 days of the disapproval; however, that time would not be sufficient for the Boards of Harbor Commissioners and their staffs to prepare a new revised Plan, to hold new "public meetings" and gather public input, or otherwise take meaningful action on the revised Plan. PR 4001 fails to provide adequate time or process for the Boards of Harbor Commissioners to prepare, conduct CEQA review and public outreach, or to consider and approve a new revised Plan within the arbitrary 60 day time frame set by the rule.

H. PR 4001 Improperly Changes the Definition of "Feasibility" In Control Strategies and Alternatives

PR 4001 proposes to change the definition of "feasible control strategy" so that it is not consistent with the obligations that could potentially be imposed on the Cities under Measure IND-01 as adopted by the District Governing Board. Instead, PR 4001 (at paragraph (c)(1)) has changed the limitations on the proposed obligations of the Cities to achieve additional emissions reductions under PR 4001. Previously, the proposed rule was described as requiring the Cities to "propose additional emission reduction methods …[but only] *to the extent cost-effective strategies are technically feasible* and within the Ports' authority." PR 4001 has inexplicably omitted (at several points) the prior limitation on the Cities' potential obligations to measures that are "*technically feasible.*" Again, this is not consistent with the text of Measure IND-01 or any other legal or regulatory authority identified by the District.

The Cities assert that feasibility must be defined as technically, operationally, commercially, financially, and legally feasible, and within the legal and jurisdictional authority of the Cities. Further, the District must acknowledge that feasibility is also subject to the Cities' and their Boards of Harbor Commissioners' own legal and trustee obligations as governmental agencies under their City Charters and applicable laws.

The District also fails to show how it expects the Cities as governmental agencies to legally overcome the same doctrines of international and federal preemption that prevent the District from regulating mobile sources such as ocean-going vessels, rail locomotives and trucks. If the District intends that the Cities shall be compelled to pay incentives for District programs if they are unable to legally regulate mobile sources, then again this raises the jurisdictional conflict with the Cities' Boards' independent governmental discretion and legal obligations to manage their properties and revenues to serve Tidelands purposes for the benefit of the State. In this era of ever diminishing resources and increased competition the District is seemingly ignoring the lawful obligations of the Cities' Boards and insisting they place District priorities (which they themselves cannot legally accomplish) before the established responsibilities of the respective City Boards.

I. The PR 4001 Enforcement Scheme is Unconstitutionally Vague and Impermissible

PR 4001 does not describe how the District would determine the "consequences" for violation of PR 4001, nor does it identify how it would determine the sufficiency of the Cities' efforts to manage activities within the Ports. If the Cities were deemed to be in violation simply because the District may choose to "disapprove" a Plan or revised Plan, under what legal authority would the District purport to sanction the Cities in the event of some perceived "violation"?

PR 4001 fails to provide objective standards appropriate for the District to judge the sufficiency of any plans or measures proposed by the Cities to achieve the emission reduction targets. The proposed rule fails to provide sufficient detail at paragraph (f)(2)(F)(iii) as to what the consequence would be if the District were to disapprove a City's revised Plan. Also, the reference here that the Cities "shall be in violation of this Rule…" must be clarified.

Similarly, the terse discussion of the Variance and Appeal Process outlined in paragraph (g)(1) and (2) of PR 4001 is vague and fails to identify criteria or the process for the Cities to petition the District Hearing Board for a variance. PR 4001 also fails to explain the outcome should the District grant a variance.

Both Measure IND-01 and PR 4001 are unconstitutionally vague in their failure to explain exactly what fines, penalties or other administrative enforcement would be imposed on the Cities in the event that targets are missed or the District's Executive Officer disapproves a plan. The District also fails to explain how it purports to impose penalties or corrective action against another governmental entity for failure of private third party emissions sources to achieve emissions reductions that such other governmental entity is also preempted from regulating.

The District has failed to show any constitutional or statutory basis for requiring a governmental entity to devote public resources, pay exactions, administrative fines or suffer penalties for pollution caused by private entities. Similarly, the District has not shown any authority for PR 4001's attempt to shift onto the Cities liability for emission shortfalls by other parties assigned AQMP emissions reduction responsibility. The District has failed to show how PR 4001 would not violate constitutional limitations requiring exactions or penalties imposed on a party to be reasonably related to and proportional to the party's deleterious public impacts. This is especially true when PR 4001 only applies to the Cities, which are non-operating ports, while failing to include all parties involved in the CAAP including the other air agencies that jointly sponsored the CAAP, or actual owners and operators of emission sources. The District also fails to define how it would allocate liability to COLB versus COLA, when they are two separate legal entities with independent Boards as decision makers that may approve different Plans or no Plan at all. In any event, neither City is in direct control of the actual emissions sources and rudimentary principals of justice require that they should not be burdened with

sanctions, penalties, or Plan-writing responsibilities to cure the "shortfalls" of others or to act as a delegated air regulator that has no such authority.

J. PR 4001 Fails to Consider Legal Limits on Grant Funding

In the Cities' actual operating experience, demonstration that proposed activities go beyond, rather than merely comply with, enforceable regulations, is a basic requirement in both state and federal grant funding applications. The District has claimed that its adoption of PR 4001 as an enforceable rule or regulation would not prevent the Cities from continuing to be eligible for the types of grant funding that the Cities have used successfully to fund emission reduction programs. However, the District has failed to provide legal citation in support of how the governmental agencies typically funding such programs might continue to legally fund activities for the purpose of complying with existing mandates, without violating constitutional limits prohibiting payment to comply with the law as "gifts of public funds."

K. Reporting Requirements under PR 4001 are Excessive

PR 4001 paragraph (f) requires annual revisions to the Emission Reduction Plan. This is new and excessive regulation, well beyond backstopping achievement of 2014 targets, and is duplicative, unnecessarily burdensome, and has not been sanctioned or in any way approved by the District's Governing Board. Even CARB in its state oversight over the District's plans, only requires three-year updates to the AQMP. Furthermore, PR 4001 is placing greater air quality regulatory burden on the Cities (and their Ports) than the federal government places on AQMD or other air agencies.

L. Annual Emission Inventory Requirements under PR 4001 are Inappropriate and Vague

PR 4001 paragraph (d) outlines requirements for annual emissions reporting. An initial inventory for 2014 would be required by November 2014 "from all port-related sources for the 2014 calendar year based on actual activity information available prior to November 1st of the calendar year and projected activity information for the remainder of the year." Although Distract staff indicated that specific requirements for this November 2014 submittal would be provided, neither the rule nor the accompanying Staff Report list any specifics. The Cities will incur additional costs based on this requirement to prepare a 2014 inventory based on incomplete data in November 2014.

The majority of the sources tracked in the Cities' current emission inventories of port-related sources are not owned, operated or controlled by the Cities. Therefore, emissions inventories that will be used to evaluate compliance with PR 4001 should only include those port-related sources over which the Cities have direct control.

II. LACK OF AUTHORITY

A. PR 4001 is NOT Consistent with the District's Governing Board Approved Control Measure IND-01

Control Measure IND-01 provided a description of the Cities' successful CAAP and its various emissions reduction goals: "This AQMP Control Measure is designed to provide a "backstop" to the Ports' actions to provide assurance that, if emissions do not continue to meet projections, the Ports will develop and implement plans to get back on track, to the extent that cost effective and feasible strategies are available." (Final 2012 AQMP Appendix IV-A, page 3). PR 4001, by contrast, describes its purpose differently: "The purpose of this rule is to establish actions to be taken in the event that emissions from port-related sources do not meet the emission targets assumed in the Final 2012 Air Quality Management Plan for the purpose of meeting the federal 24-hour $PM_{2.5}$ standard in 2014 and maintenance of attainment in subsequent years" (PR 4001 paragraph (a)). District Staff has apparently drafted PR 4001 so as to eliminate the references in Measure IND-01 as adopted by the District's Governing Board to backstopping the Cities CAAP targets to the extent cost effective and feasible strategies are available and has replaced that "backstop control measure" with a traditional regulation by the District to meet District-set targets.

In addition, the District Staff (apparently without Board approval) has **changed** the concern from assuring "the attainment demonstration" for 2014 $PM_{2.5}$ emission targets (as described in the 2012 AQMP) to add "maintenance of the air quality standard in subsequent years." (PR 4001 paragraph (a)). This change adds a new undefined and open-ended element into PR 4001 that is not consistent with Control Measure IND-01 as publicly adopted by the District's Board in February 2013. Most importantly, to the extent the provisions of PR 4001 vary in purpose and scope from Measure IND-01, they are not authorized by the District Governing Board.

B. The District Fails to Show Any Basis to "Indirectly" Regulate Mobile Sources or Delegate Authority Without Clean Air Act Waivers from the USEPA

The District has failed to show any constitutional or statutory basis for attempting to regulate mobile sources "indirectly" that it is preempted from regulating directly. The District's use of the term "port related sources" appears to be a euphemism for "mobile sources" that may be located at or operate at the areas governed by the Cities. "Mobile sources" of emissions are, of course, generally beyond the limited regulatory authority conferred by the Legislature on local or regional districts. (e.g., Health & Safety Code § 40001(a); also see, 76 Ops. Cal. Atty. Gen. 11 (1993); 75 Ops. Cal. Atty. Gen. 256 (1992); 74 Ops. Cal. Atty. Gen. 196 (1991); 73 Ops. Cal. Atty. Gen. 229, 234-35 (1990).)

The District has failed to show any authority for attempting to regulate mobile sources by making another governmental entity that lacks any air regulatory authority its agent for enforcement of its desired mobile source emission reductions. (See, e.g., *Association of American Railroads et al. v. South Coast Air Quality Management District et al.*, 622 F.3d 1094, 1096 (9th Cir. 2010), invalidating several train-idling emissions rules enacted by the District, on the basis of federal preemption under the Interstate Commerce Termination Act of 1995 (ICCTA).) Moreover, the District does not have mobile source regulatory authority itself to delegate, as it does not have a waiver under the Clean Air Act from the USEPA. The District should instead work on stronger regulations from USEPA or CARB, which does have certain USEPA waivers to regulate mobile sources.

PR 4001 impermissibly requires the Cities to become air pollution control agencies, responsible for "achieving" reductions of emissions that are actually from other private parties that operate or control equipment largely used in goods movement within the geographic boundaries of the Cities. There is no statutory or other legal basis for imposing such a requirement on another governmental agency. For example, does this mean that a city that has a significant number of factories or refineries within its borders becomes a stationary source and indirect source for those emissions? Evidently the District does not distinguish between "operating ports" such as the Port of Charleston, S.C., which actually operates the terminals within the port, and "non-operating ports" such as the Cities, which are landlords that do not operate the marine terminals and other facilities within the harbor districts.

The emission reduction plan required by PR 4001 strongly resembles the State Implementation Plan requirements of the Clean Air Act (42USC§7410). Specifically PR 4001(f)(1)(A)(i) states, "…Ports shall engage [CARB, USEPA and the District] to discuss legal jurisdiction and authority to implement potential strategies to address the shortfall…" Based on the Clean Air Act, the enforcing agency should be the state of California through CARB and the District; however, PR 4001 places the burden of enforcement of emission reductions on the Cities. Based on this, if the port-related sources don't meet the emission reduction target specified by PR 4001, it should be the District and/or CARB that are responsible for preparing and enforcing the emission reduction plan against the emissions sources. If the District insists that the Cities prepare an emission reduction plan, then the plan must be subject to the limits on authority, preemption and feasibility issues described above. Further, USEPA, CARB and the District should provide funding to the Cities to support programs for incentives, since the Cities will no longer have available grant funding for voluntary programs.

C. PR 4001 Violates Cities' Charter Authorities and Tidelands Obligations

Control Measure IND-01 and PR 4001 are illegal, abusing the District's limited statutory power in an unprecedented manner that exceeds its authority. There is no legal precedent or

authority for the District's attempted regulation of the Port Authorities of the Cities, or the District's imposition of an arbitrary, unnecessary and discriminatory rule on the Cities, and thereby dictate the Cities' governing Boards of Harbor Commissioners' ("Boards") decisions regarding the exercise of their police power authority, the management of their respective properties and expenditures of the Cities in order to satisfy the District-defined targets for a single district within the State.

PR 4001 acknowledges that funding will be necessary to implement a plan to satisfy District targets, but fails to provide District funds or specify the source of such funds. The District cannot legally compel the Cities' Boards to make expenditure of Tidelands Trust revenues for the purpose of incentives or funding emission reduction programs as contemplated in District enforcement activity under PR 4001. Such proposed unfettered District authority would unlawfully supplant the trustee judgment and legal obligations of the Cities to operate the port properties and their revenues solely for the benefit of the entire State of California under the Tidelands Trust doctrine (promoting maritime commerce, navigation and fisheries) rather than for limited municipal or a single District's purposes.

Worse yet, PR 4001 proposes that a single District Executive Officer acting alone (rather than the District's full Governing Board) would wield the sole discretion to approve or disapprove the independent jurisdictional decisions of the Boards regarding conditions they impose on their properties or expenditures of their Harbor Revenue Funds, violating the Tidelands Trust and the Cities' charters.

D. <u>There is No Statutory Authority for District to Impose PR 4001 On Cities</u>

The District has failed to cite any statutory authority for regulating the Cities—governmental entities—as purported "sources" of emissions. As the Cities have repeatedly explained, neither the Cities nor the Ports are "sources" of emissions—direct, indirect, or otherwise. The District has not provided any authority that would support the District's attempted characterization of the Cities, or the Ports, as "indirect sources" of emission, solely based on the confluence of distinct privately-owned activities, vessels, vehicles, equipment, and uses within the geographic area and jurisdiction of the respective Ports.

"An air pollution control district, as a special district, 'has only such powers as are given to it by the statute and is an entity, the powers and functions of which are derived entirely from the Legislature.'" (74 Ops. Cal. Atty. Gen. 196 (1991)[citations omitted].) "No matter how altruistic its motives, an administrative agency has no discretion to promulgate a regulation that is inconsistent with the governing statutes." (*Terhune v. Superior Court* (1998) 65 Cal.App.4th 864, 874.) The District has failed to cite any statute or grant of authority from the Legislature for the proposed PR 4001.

Under the District's 2007 Air Quality Management Plan, a proposed "Port Backstop Rule" was proposed as a "Mobile Source Measure MOB-03" that defined the operators of marine terminals and rail yards, as well as the Cities, as indirect sources, Measure IND-01 and PR 4001 inexplicably exclude the operators of the mobile sources that had been in MOB-03 and instead propose to regulate and punish solely the Cities, effectively insulating from responsibility, the private sector entities that do own, operate and control the equipment producing the emissions.

The District Staff has previously referred to a clearly erroneous, overbroad interpretation of Health & Safety Code §§40716 (a)(1); 40440 (b)(3), as potential authority for attempting to justify Measure IND-01 and PR 4001 as forms of indirect source review, as applied to the Cities. However, such lax interpretations apparently ignore the Legislature's explicit limitations on any such "indirect source" regulatory authority—precluding application of PR 4001 against the Cities (e.g., Health & Safety Code § 40716(b): "Nothing in this section constitutes an infringement on the existing authority of counties and cities to plan or control land use, and nothing in this section provides or transfers new authority over such land use to a district.")

Similarly, any District reliance on Health & Safety Code § 40440 is clearly misplaced. The introductory clause of § 40440(b)(3), for example, states that indirect source controls must be "[c]onsistent with Section 40414." Importantly, Health & Safety Code §40414 [specifically governing the District] states: "No provision of this chapter shall constitute an infringement on the existing authority of counties and cities to plan or control land use, and no provision of this chapter shall be interpreted as providing or transferring new authority over such land use to either the south coast district, the Southern California Association of Governments, or the state board." Not only does this provision apply generally to Chapter 5.5 [governing the District] but it is also specifically referenced in § 40440(b)(3), leaving little doubt that any District rule related to indirect source controls may not overreach or infringe on the Cities' police power to control land use in their jurisdictions or Tidelands Trustee duties for benefit of the State.

Finally, the District Staff's reference to two cases involving the very distinct "indirect source review" adopted by the San Joaquin Valley APCD is misplaced. Those cases, *California Building Industry Association v. San Joaquin Valley Air Pollution Control District*, 178 Cal. App. 4th 120 (2009) and *Nat'l Ass'n of Home Builders v. San Joaquin Valley Air Pollution Control District*, 627 F. 3d 730 (9th Cir. 2010), involved quite different circumstances and a distinct and specific statute permitting an indirect source review program and in-lieu fees to be imposed on new construction sites. The holdings of those cases were narrow, and based on the nature of the emission sources being regulated. "Because the court's approval of the rule depended on the nature of the source being regulated, mobile non-road construction equipment, indirect sources are not categorically permissible after NAHB." (39 ECOLOGY LAW QUARTERLY 667 (2012).) Those cases are thus irrelevant, and do not support District Staff's assertion of some authority for the District to impose rules on the Cities under the guise of Measure IND-01 or PR 4001.

III. PROCEDURAL FLAWS

A. General Comments

The PR 4001 developmental and procedural process is on an accelerated timeline that is unusually short for a rule of this unprecedented nature that has generated such controversy and so many unanswered questions from other public agencies and stakeholders. The District should provide a comprehensive rule development schedule, including key milestones of staff report revisions, staff report analyses, workshops, workgroup meetings, etc. and provide the stakeholders, and the public adequate time for review and comment after release of actual substantive information necessary to evaluate the proposed rule.

Instead, the District was late with release of the actual text of PR 4001, not releasing it until November 26, 2013. The text of the PR 4001 is severely lacking explanation of many material elements, leaving continued unanswered questions that had been posed literally for years, even under the development of Measure IND-01 and early working group consultation meetings. The Preliminary Draft Staff Report for PR 4001 offers little help, as the Staff Report does not contain technical data and analyses necessary for a complete review. The PR 4001 Preliminary Staff Report lacks substance and does not meet important specificity requirements (see specific comments below related to the Preliminary Staff Report).

Lastly, the District's environmental assessment of the PR 4001 has also been extremely flawed and we incorporate by reference the comment letters previously submitted by the Cities on the Notice of Preparation and Recirculated Notice of Preparation under the California Environmental Quality Act, which are attached hereto.

B. The District's Preliminary Draft Staff Report on PR 4001 Fails to Comply With Statutory Requirements for Rule Adoption

The District's December 2013 Preliminary Draft Staff Report fails to comply with statutory requirements for rule adoption as discussed below.

1. Non-compliance with Health & Safety Code § 40440.5 – Notice of Proposed Action:

The District must give public notice of the Board hearing to consider PR 4001 not less than 30 days prior to the hearing date, and must include specified information in that Notice:

(a) A "summary description of the effect of the proposal" as required by Section 40725(b);
(b) Description of the air quality objective of the rule, and reasons for the rule;
(c) A list of supporting information and documents relevant to the PR 4001, and any environmental assessment; and
(d) A statement that a staff report on the proposed rule "has been prepared" and the contact information to obtain that staff report.[5]
(e) The statutes further specify the required contents of the Staff Report that must be prepared and made available at least 30 days prior to the hearing date:

Whenever the proposed rule or regulation will significantly affect air quality or emissions limitations, the staff report shall include the full text of the proposed rule or regulations, an analysis of alternative control measures, a list of reference materials used in developing the proposed rule regulation, an environmental assessment, exhibits, and draft findings for consideration by the District Governing Board pursuant to Health & Safety Code §40727. Further, if an environmental assessment is prepared, the staff report shall also include social, economic, and public health analyses.

2. Non-compliance with Health & Safety Code § 40727 – Required Findings:

Before the District's Board could approve the PR 4001, it would need to make the findings required by Section 40727 (and to provide the public with sufficient information/substantial evidence in the record to support those mandatory findings). The District's Preliminary Draft Staff Report (December 2013) fails to satisfy these requirements. The findings must address:

(a) "necessity" – Since PR 4001 is by definition a "backstop" measure intended to address emissions issues that are not currently a problem (and which are not shown to be likely to occur), it is inherently difficult for the District to make such a finding of "necessity" for the rule (also see the detailed discussion demonstrating the District's failure to demonstrate "necessity" for PR 4001 set forth above). Moreover, the District Governing Board found Measure IND-01 necessary in the 2012 AQMP, but not PR 4001, as stated in the Staff Report.

[5] This wording indicates that the Staff Report must already be prepared before the Notice of the Board meeting goes out. If the District intends to rely upon the "Preliminary Draft Staff Report" issued in December 2013, it would be deficient because that PDSR fails to include all of the information required by statute.

(b) "authority" – As pointed out above, the District has failed to demonstrate its legal authority for PR 4001, if any. By what authority can the District "delegate" (or "foist") its own responsibilities for regulating air quality emissions onto the Cities? The District cites no authority for imposing a rule on independent governmental agencies to take specific land use, environmental, or fiscal actions (fees, tariffs, etc.) Also, the District fails to address the statutory limitations on its authority in Health & Safety Code § 40414: the District may not infringe on the existing authority of Cities to plan or control land use.

(c) "clarity" – The lack of clarity in the draft text of PR 4001 is addressed throughout this comment letter. In addition, the lack of clarity in PR 4001 is exemplified in the circular argument of PR 4001(d)(2)(A) and PR 4001(f)(1)(D). PR 4001(d)(2)(A) specifies that that, in the case of triggering an Emission Reduction Plan, the Port shall report the progress in meeting the shortfall "based on the process developed pursuant to subparagraph (f)(1)(D)." However PR 4001(f)(1)(D) specifies the Emission Reduction Plan "shall provide a process for submittal of progress reports toward eliminating the emission reduction shortfall pursuant to subparagraph (d)(2)(A)."

(d) "consistency" –PR 4001 is inconsistent with Measure IND-01; it is also inconsistent with the CAAP and the Cities' general plans, harbor area plans, transportation management plans, etc, as well as state Tidelands Trust policies. In addition, PR 4001 is inconsistent with, and preempted by federal laws (e.g., ICCTA; FAAAA) and regulations of IMO (MARPOL / APPS) as well as federal regulations of trucks, locomotives, etc.. Also, PR 4001 is inconsistent with the California Clean Air Act and the statutory limitations on the regulatory authority of the District, and further is inconsistent with CARB polices.

(e) "nonduplication" – PR 4001 would unnecessarily – by definition – duplicate and "backstop" existing plans and policies such as CAAP and the aforementioned regulations;

(f) "reference" – The District has failed to demonstrate what law or court decision is purportedly being implemented by PR 4001.

3. <u>Non-compliance with Health & Safety Code § 40727.2 – Written Analysis of Rule</u>:

Does the District contend that its Preliminary Draft Staff Report satisfies this requirement that it produce a written analysis of PR 4001? If so, it fails to comply with § 40727.2(e). The Preliminary Draft Staff Report only indicates that the technical impact

assessment is underway. Without the Impact Assessment section, the staff report is incomplete. The Impact Assessment section must include the District's explanation of differences between PR 4001 and existing guidelines, such as in CAAP or AQMP, as well as address regulation cost effectiveness, including costs beyond mere control equipment costs.

4. Non-compliance with Health & Safety Code § 40440.8 – Assessment of Socioeconomic Impacts of PR 4001:

This requirement is also imposed by Section 40428.5, and the need for such a socioeconomic analysis was addressed, at least in brief, in the NOP comment letter. The Preliminary Draft Staff Report (page 18) erroneously describes the likely socioeconomic impacts of PR 4001 as being limited to the Cities' costs incurred for emissions forecasting and reporting. This grossly understates the likely impacts, including impacts of additional control measures that could be required under PR 4001 impacting the entire use and economic viability of the Ports. The staff report must include a socioeconomic assessment and must certainly address the threat of diversion resulting from potential undefined, regulatory-mandated, emission control measures. The Preliminary Draft Staff Report erroneously suggests that "a detailed assessment cannot be made at this time" and should be deferred, which is in violation of the statutory requirement. The Staff Report also indicates that a socioeconomic assessment will be made available 30 days prior to the public hearing. The significant potential impact and novel nature of this rule warrants a 60 day review period of the socioeconomic assessment.

5. Non –compliance with Health & Safety Code § 40440.8(b)(4) – Alternatives to PR 4001:

The socioeconomic assessment must address "the availability and cost-effectiveness of alternatives to the rule." (§ 40440.8(b)(4)) However, the Preliminary Draft Staff Report fails to even mention any "alternatives" to the Rule, much less to evaluate the availability and cost-effectiveness of alternatives, such as VMEP.

6. Non-compliance with Health & Safety Code § 40440(c): "Cost-effectiveness"

The District failed to demonstrate that the adoption of PR 4001 would comply with the requirement of Section 40440(c) that all of the District's rules "are efficient and cost-effective..." Also, Section 40703 requires the District to make available to the public, and requires the Board to make findings, as to the cost effectiveness of control measures, and similarly Section 40922 requires the District to consider "the relative cost effectiveness of the [control] measure..." The District has not done so.

C. Additional Analysis is Required Before Rule Development Can Proceed

The Cities have put into place a voluntary program with documented air quality improvements in the face of economic growth. It is AQMD's responsibility to perform a regulatory impact assessment documenting that PR 4001 will not reverse voluntary gains made by the Cities and endanger future programs. This includes the analysis of lost grant funding that would have otherwise been available to fund equipment replacement and other emissions reductions, due to conversion of voluntary program to regulation.

D. The District Must Acknowledge and Respond to All Comments Submitted on Measure IND-01 and PR 4001

The draft findings in the next staff report must acknowledge and respond to all comments submitted on Measure IND-01 and PR 4001, including all comments on the environmental assessment such as the Notice of Preparation and Initial Study for PR 4001.

IV. FAILED REQUIREMENTS FOR SIP INCLUSION

The District has claimed that adoption of PR 4001 is necessary to ensure SIP credit for the Cities' voluntary emission reduction programs. However, neither this Proposed Rule nor its precursor, "Control Measure IND-01" can be justified on this pretext, and neither PR 4001 nor Measure IND-01 meet the criteria for SIP inclusion. The Cities have raised significant technical, jurisdictional, constitutional and other legal concerns with Measure IND-01 and PR 4001, as set forth in public comment letters sent to the District during the 2012 AQMP adoption process and PR 4001 development process, which are provided as attachments.

A. Measure IND-01 and PR 4001 Violate Health & Safety Code § 39602

Measure IND-01 and PR 4001 violate California Health & Safety Code § 39602, which provides that the SIP shall only include those provisions **necessary** to meet the requirements of the Clean Air Act. The Cities have shown that there is no demonstrated need for the rule, nor is this rule necessary for regional attainment of the 2014 $PM_{2.5}$ standard. PR 4001 is duplicative of regulations already in place and effectively reducing emissions from port-related sources. As noted above, the Cities estimate that in 2014, 98% of the $PM_{2.5}$ equivalent emission reductions that PR 4001 seeks to "backstop" will occur as the result of regulations adopted by CARB and

the IMO.[6] The remaining 2% of $PM_{2.5}$ equivalent emission reductions is primarily attributed to the Cities' successful voluntary vessel speed reduction incentive program which is part of the Cities' Clean Air Action Plan.

More importantly, there are significant legal questions regarding the District's attempt to invoke " indirect source review" as authority to impose a new rule on governmental agencies. PR 4001 clearly infringes upon, and potentially usurps the Cities' authority to plan and control land use and exercise police power, in contravention of Health & Safety Code §§ 40716(b) and 40414, and compels compliance and punishes them for non-achievement of emissions targets for equipment the Cities do not own, control or operate, and are preempted from regulating.

B. <u>The District Failed to Timely Submit Proposed "Control Measure IND-01" to CARB for Public Consideration and Approval As Part of the SIP Submitted to USEPA on January 25, 2013</u>

Under CAA section 110(l), SIP revisions must be adopted by the State, and the State must provide for reasonable public notice and hearing prior to adoption. EPA cannot approve Measure IND-01 as part of the SIP because the District did not approve and forward IND-01 in time for CARB to follow the process for public consideration and State adoption required by CAA Section 110(1) and California Health and Safety Code Section 41650 for SIP submissions, and CARB failed to do so.

Under 40 CFR 51.102(d), reasonable public notice in this context refers to at least 30 days. Similarly, Health and Safety Code Section 41650 provides for a public hearing that would allow public comment as to whether the SIP meets the requirements of the CAA. By resolution dated January 25, 2013, CARB approved the District's 2012 AQMP and directed the executive officer of CARB to submit the AQMP to the USEPA for inclusion in the SIP. However, at the time of the January 25, 2013 CARB action**, Measure IND-01 was not part of the AQMP**. Because the District Governing Board adopted the AQMP without Measure IND-01 on December 7, 2012, and in fact, did not adopt Measure IND-01 until February 1, 2013, the January 25 CARB action did not constitute approval of Measure IND-01 which had not yet been submitted to CARB for consideration.

The documents attached to CARB's February 13, 2013 SIP submittal to the USEPA include the December 7, 2012 resolution by the District Governing Board and the December 20, 2012 District letter to CARB transmitting the approved SIP, which pre-dated the District

[6] CARB Port Drayage Truck Rule, CARB Truck and Bus Rule, CARB Ocean-Going Vessel (OGV) Shore Power Rule, OGV Low-Sulfur Fuel Rule, CARB Cargo-Handling Equipment at Ports Rule, CARB Commercial Harbor Craft Rule, IMO North American Emission Control Area

Governing Board's approval of Measure IND-01. Inexplicably, without the required public notice or public hearing and adoption by the CARB Governing Board, the submitted SIP includes the addition of Measure IND-01. Until this procedural error is corrected, and the Cities and the public are given the opportunity to comment at a public hearing, and CARB is able to properly consider proposed Measure IND-01 at such a properly-noticed public hearing, Measure IND-01 is not properly before the USEPA and cannot be approved as part of the SIP.

C. The Many Flaws of Measure IND-01 and PR 4001 Harm Rather Than Help the SIP

As a result of the above-mentioned extensive technical, jurisdictional, constitutional, statutory and other legal problems, inclusion of IND-01 in the SIP and attempted implementation through PR 4001 creates unnecessary risks of disputes and legal challenges to the AQMP and SIP. The unprecedented nature and legal and jurisdictional conflicts of PR 4001 and Measure IND-01 require significant explanation of the legal underpinnings of the Measure. Instead a single paragraph of generalities ignoring the jurisdictional conflict and lack of legal authority for classification of Cities as stationary sources or indirect sources was produced to justify PR 4001.

Conclusion

The ports of Long Beach and Los Angeles are a major economic engine for the region and nation. PR 4001 and the uncertainty it creates will have a substantial negative impact on the goods movement industry and the local economy, resulting in cargo diversion, job losses and business closures. Moreover, rather than improving air quality, PR 4001 eliminates all incentive for voluntary participation in emission reduction efforts at the Ports that have been so successful.

The Cities have a proven track record of developing and implementing appropriate and effective emission reduction strategies, working with the port industry and the air quality regulatory agencies. Since the CAAP was adopted in 2006, essentially all of the Cities' early actions have been overtaken by regulations from state, federal, and international agencies. The majority of emission reductions are already being achieved by regulations. Therefore, there is clearly no need for additional regulation.

The Cities share the air emission reduction goals of the District, CARB, and USEPA, and strongly believe that the voluntary cooperative CAAP process established by the Cities remains the most appropriate forum to discuss technical and policy issues related to implementing appropriate strategies for reducing emissions from port-related sources. There are feasible alternatives that would effectively ensure emission reduction goals are met, including the USEPA's VMEP that would allow for the small percentage of emissions reductions needed beyond regulations to be credited in the SIP. The Cities hope you will work with us to discuss various mechanisms, contractual or otherwise, by which the VMEP can be implemented in San

Pedro Bay, and move forward as a possible resolution to the issues currently under discussion regarding PR 4001.

We appreciate your consideration. Thank you.

Sincerely,

Matthew Arms
Acting Director of
Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachments:

- January 15, 2014 Letter; Port of Long Beach and Port of Los Angeles to South Coast Air Quality Management District (SCAQMD)*; Comments on Notice of Preparation, Initial Study and Scope of Proposed Program Environmental Assessment*
- August 21, 2013 Letter; Port of Long Beach and Port of Los Angeles to SCAQMD; *Comments on Notice of Preparation, Initial Study, and Scope of Proposed Environmental Assessment*
- October 2, 2013 Letter; Port of Long Beach and Port of Los Angeles to SCAQMD, *Initial Comments for Public Consultation on Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets are Met at Commercial Marine Ports"*

cc: Al Moro, Acting Executive Director, Port of Long Beach
Richard Cameron, Managing Director, Port of Long Beach
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Gary Lee Moore, Interim Executive Director, Port of Los Angeles
Michael Christensen, Deputy Executive Director, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
Barry Wallerstein, Executive Officer, SCAQMD

Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Randall Pasek, Planning and Rules Manager, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Governing Board Members, SCAQMD
Richard Corey, Executive Officer, CARB
Cynthia Marvin, Division Chief, Stationary Source Division, CARB
Doug Ito, Chief, Freight Transportation Branch, CARB
Jared Blumenfeld, Administrator, USEPA, Region 9
Deborah Jordan, Director, Air Division, USEPA, Region 9
Elizabeth Adams, Deputy Director, USEPA, Region 9

ATTACHMENT 4.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

January 15, 2014

Jared Blumenfeld
Regional Administrator
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

Re: California State Implementation Plan for PM2.5 for South Coast Air Basin (SIP) - South Coast 2012 Air Quality Management Plan (AQMP) Control Measure IND-01 *Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities* and EPA *Voluntary Mobile Source Emission Reduction Program* (VMEP)

Dear Mr. Blumenfeld:

On behalf of the City of Long Beach acting by its Harbor Department and the City of Los Angeles acting by its Harbor Department (collectively, the Cities), we raise serious concerns regarding Control Measure IND-01 *Backstop Measure for Indirect Sources of Emissions from Ports and Port-related Facilities* (Measure IND-01) in the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP). The Cities request that the United States Environmental Protection Agency (EPA) disapprove and exclude Measure IND-01 from the California State Implementation Plan (SIP) for particulate matter 2.5 microns or less (PM2.5) for the South Coast Air Basin, which is currently pending EPA approval. As set forth below, both the substance of Measure IND-01 and the California Air Resources Board (ARB) procedure for inclusion of Measure IND-01in the SIP violate all five prongs of the standard test used by EPA to evaluate a SIP's compliance with Clean Air Act (CAA) requirements.[1]

1. Did the State provide adequate public notice and comment periods?

EPA cannot approve Measure IND-01 as part of the SIP because the ARB failed to follow the process for SIP submissions required by CAA Section 110(1) and California Health and Safety Code Section 41650. Under CAA section 110(l), SIP revisions must be adopted by the State, and the State must provide for reasonable public notice and hearing prior to adoption. Under 40 CFR 51.102(d), reasonable public notice in this context refers to at least 30 days. Similarly, Health and Safety Code Section 41650 provides for a public hearing that would allow public comment as to whether the SIP meets the requirements of the CAA. By resolution dated January 25, 2013,

[1] See, e.g., CAA Sections 110(a)(2)(A), 110(a)(2)(E), 110(l).

the ARB approved the AQMD 2012 AQMP and directed the executive officer of the ARB to submit the AQMP to EPA for inclusion in the SIP. However, at the time of the January 25, 2013 ARB action, Measure IND-01 was not part of the AQMP. Because the AQMD Governing Board adopted the AQMP without Measure IND-01 on December 7, 2012 and did not adopt Measure IND-01 until February 1, 2013, the January 25 ARB action did not constitute approval of Measure IND-01 which had not yet been submitted to ARB for consideration. The documents attached to the ARB's February 13, 2013 SIP submittal to the EPA include the December 7, 2012 resolution by the AQMD Governing Board and the December 20, 2012 AQMD letter to ARB transmitting the approved SIP, which pre-dated the AQMD Governing Board's approval of Measure IND-01. Inexplicably, without the required public notice or public hearing and adoption by the ARB Governing Board, the submitted SIP includes the addition of Measure IND-01. Until this procedural error is corrected, and the Cities and the public are given the opportunity to comment at a public hearing, Measure IND-01 is not properly before EPA and cannot be approved as part of the SIP.

2. Does the State have adequate legal authority to implement the regulations?

As you may know, the AQMD is now pursuing adoption of Proposed Rule 4001—*Maintenance of AQMD Emission Reduction Targets at Commercial Marine Ports* (PR 4001) – ostensibly to implement Measure IND-01 and ensure SIP credit for voluntary emission reduction programs of the Cities. The Cities have raised significant technical, jurisdictional, constitutional and other legal concerns with Measure IND-01 and PR 4001, as set forth in public comment letters sent to AQMD during the AQMP adoption process. Measure IND-01 and PR 4001 violate California Health and Safety Code Section 39602, which provides that the State Implementation Plan shall only include those provisions necessary to meet the requirements of the Clean Air Act. The Cities have shown that there is no demonstrated need for the rule, nor is this rule necessary for regional attainment of the 2014 PM2.5 standard. The Cities estimate that by 2014, 99.5 percent of the PM2.5 equivalent emission reduction that PR 4001 seeks to backstop will occur as the result of regulations adopted by ARB and the International Maritime Organization (IMO).[2] The remaining 0.5 percent of PM2.5 equivalent emission reductions is primarily attributed to the Cities' successful voluntary vessel speed reduction incentive program which is part of the Cities' Clean Air Action Plan. More importantly, there are significant legal questions regarding AQMD's attempt to apply an indirect source rule to governmental agencies in a manner that potentially usurps the Cities authority and compels compliance and punishes them for non-achievement of emissions targets for equipment the Cities do not own, control or operate, and are preempted from regulating.

[2] CARB Port Drayage Truck Rule, CARB Truck and Bus Rule, CARB Ocean-Going Vessel (OGV) Shore Power Rule, OGV Low-Sulfur Fuel Rule, CARB Cargo-Handling Equipment at Ports Rule, CARB Commercial Harbor Craft Rule, IMO North American Emission Control Area

3. Are the regulations enforceable as required under CAA section 110(a)(2)?

Because the Cities are not regulatory agencies and, therefore, are limited in their authority to impose requirements on mobile sources operated by the goods movement industry that call at port facilities, IND-01 and PR 4001 are inappropriate and ineffective mechanisms for achieving emission reductions.

4. Will the State have adequate personnel and funding for the regulations?

Measure IND-01 does not specify the source of funding for its regulation of the Cities but implies that it will come from the Cities. However, AQMD and ARB have no authority to require Cities' expenditures which are subject to the Cities' own requirements as governmental agencies. Furthermore, because it converts a voluntary program into enforceable regulation, the financial effect of Measure IND-01 will be to remove previously available funding from Federal and State grants that are only given for voluntary programs that go beyond regulation, making it less likely that the Cities will have funds to assist the goods movement industry with meeting the AQMP targets.[3]

5. Do the regulations interfere with reasonable further progress and attainment or any other applicable requirement of the Act?

Measure IND-01 interferes with reasonable further progress of the Cities' voluntary programs by reduction of available funding as mentioned above, and providing disincentives to Cities and goods movement industry to pursue programs like the voluntary Clean Air Action Plan.

The Solution: Voluntary Mobile Source Emission Reduction Program (VMEP)

To the extent the ARB and AQMD seek to ensure the emission benefits of the Cities' voluntary vessel speed reduction program, there is a more appropriate method in the form of the EPA's policy and guidance for the Voluntary Mobile Source Emission Reduction Program (VMEP), which constitutes an established process to grant SIP credit for emission reductions resulting from voluntary mobile source measures that go beyond existing regulations. The VMEP approach was intended for exactly the type of successful voluntary program such as the Cities' landmark Clean Air Action Plan, and should be used to account for the 0.5 percent of port-related emissions not currently backstopped by regulation. The VMEP would also reduce the industry and jurisdictional uncertainty that could divert cargo away from the Ports and hurt our local economy.

[3] Many of the Cities programs for equipment replacement or emissions reductions projects have been funded by federal and state grants that require funded activities must go beyond regulations. See e.g., California Proposition 1B Goods Movement and federal Diesel Emission Reduction programs.

We urge the EPA to disapprove and exclude the AQMD's Measure IND-01 from the SIP, and insist that the AQMD use the EPA's established VMEP process that was developed for programs such as the Cities' vessel speed reduction program and other Clean Air Action Plan measures. Use of the established VMEP will accomplish the objective sought by Measure IND-01 and PR 4001 and ensure that the emissions reductions achieved by the program are credited in the SIP. Further, the implementation of a VMEP will achieve the same emissions reductions while ensuring that grant funds remain available for actions going beyond regulations and will do so in a collaborative manner. It will also encourage other cities and regions throughout the nation to develop and pursue innovative voluntary programs and solutions that best fit their needs to improve air quality and public health.

The Cities share the air emission reduction goals of the AQMD, ARB, and EPA, and strongly believe that the VMEP is the most effective way to ensure that emission reduction goals are met in a manner that will allow the SIP to move forward without unnecessary disputes or challenges. The Cities look forward to discussing the various mechanisms, contractual or otherwise, by which the VMEP can be implemented in San Pedro Bay.

Sincerely,

Matthew Arms
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

LW

cc: Al Moro, Acting Executive Director, Port of Long Beach
Gary Lee Moore, Interim Executive Director, Port of Los Angeles
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Randall Pasek, Planning and Rules Manager, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Richard Corey, Executive Officer, ARB

Cynthia Marvin, Division Chief, Stationary Source Division, ARB
Doug Ito, Chief, Freight Transportation Branch, ARB
Deborah Jordan, Director, Air Division, EPA, Region 9
Elizabeth Adams, Deputy Director, U.S. EPA, Region 9

ATTACHMENT 5.

January 15, 2014

VIA E-MAIL – bradlein@aqmd.gov
VIA FACSIMILE – (909) 396-3324

Ms. Barbara Radlein
c/o CEQA
SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT
21865 Copley Drive
Diamond Bar, California 91756-4178

Re: Recirculated Notice of Preparation and Initial Study
Proposed Rule 4001— Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports
November 2013

SCAQMD File No. 0722013BAR
SCH No.: 2013071072

Comments on Recirculated Notice of Preparation, Initial Study, and Scope of Proposed Program Environmental Assessment and Alternatives Analysis

Dear Ms. Radlein and Staff of the South Coast Air Quality Management District:

On behalf of the City of Long Beach (referred to herein as "COLB)" and the City of Los Angeles acting by and through their respective Harbor Department ("COLA", and collectively with COLB referred to herein as the "Cities"), we appreciate this opportunity to submit responses and comments on the District's recent "Recirculated Notice of Preparation of a Draft Program Environmental Assessment" ("Recirculated NOP") and the accompanying Initial Study ("IS") prepared in connection with the District's consideration of the proposed project entitled "Rule 4001: Maintenance of AQMP Emission Reduction Targets At Commercial Marine Ports" (the "Project" or "PR 4001"). We appreciate that the District has extended the public comment period to January 16, 2014, in light of the serious and substantial issues raised by this Project and the original comment period scheduled over the holidays limiting stakeholder time for review.

This letter is organized in the following manner:

A. Introductory Comments
B. General Comments on the Recirculated NOP and Initial Study
C. Specific Comments on the Recirculated Initial Study
    1. Comments on Chapter 1
    2. Comments on Chapter 2 (Environmental Checklist)
D. Conclusion

Additionally, the Cities' previous comment letter on the original NOP dated August 21, 2013 has been attached for reference.

A. Introductory Comments:

We have previously commented on, and objected to, Air Quality Management Plan (AQMP) Control Measure IND-01 (Measure IND-01) and have expressed our grave concerns about the District's rulemaking approach to craft a ostensible "backstop rule" that would be applicable only to the Cities and their respective San Pedro Bay Ports ("Ports") such as that embodied in the new draft PR 4001. As the District is well aware, the Cities have been dedicated, innovative, and effective leaders in the efforts of public agencies to improve air quality despite the fact that we have no regulatory authority or control over the emissions sources. Working collaboratively and voluntarily with the District, our efforts have been successful in helping the maritime goods movement industry achieve very substantial reductions in emissions from the wide range of industrial and mobile sources they operate at or near the Ports, and we look forward to continuing to work with the District, other air regulatory agencies, and industry in building on these successes.

While we appreciate that the District staff has finally released the draft text of PR 4001, together with the recirculation of a new NOP and Initial Study, we find that many of the questions and issues raised in our previous comments remain unanswered or contain the same deficiencies in the new description of the "Project" and the Recirculated NOP, and still fail to identify or address feasible alternatives to PR 4001. Therefore, we respectfully reiterate and incorporate by reference all of our previous comments and objections (including, but not limited to, our letter dated August 21, 2013, and comments on the District's 2012 Air Quality Management Plan ("AQMP") and Control Measure IND-01), in addition to our new comments on the Recirculated NOP and IS.

Our responses are submitted in light of the California Environmental Quality Act ("CEQA") which calls for public review, critical evaluation, and comment on the scope of the environmental review proposed to be conducted in response to a Notice of Preparation, including the significant environmental issues, alternatives, and mitigation measures that should be analyzed in the proposed draft EIR (or Environmental Assessment, "EA") (14 CCR

15082(b)(1).) (See, CEQA Guidelines, at Title 14 Cal. Code of Regulations, §§ 15000, *et seq*..) Since it is anticipated that the proposed Project will have substantial impacts on the Cities and other communities served by the Ports, it is particularly important that the scope of this proposed review take into account jurisdictional and legal limitations, established state and local plans and policies, and other potentially feasible and less-impactful alternatives to the Project. In addition, it will be important to consider the impacts of the proposed Project on the important missions, facilities, and operations of the San Pedro Bay Ports.

In that context, we respectfully submit the following comments regarding the Recirculated NOP as well as questions, concerns and objections related to the omissions of critical information, unsupported assumptions, or analytical deficiencies in the Initial Study, and comments as to the scope of the proposed environmental assessment ("EA") as contemplated and invited by the District's Recirculated NOP.

B. General Comments on the Recirculated NOP and Initial Study.

1. **Changed Project Title**: What is the authority of the District to change the proposed Project from a "*Backstop Measure for Indirect Sources of Emissions from Ports and Port-related Facilities*" authorized by the District's Governing Board, to a new Project title of "*Maintenance of AQMP Emission Reduction Targets At Commercial Marine Ports*"? The District inexplicably no longer describes this as "a backstop measure" – although such a "contingency measure" concept has been the basis for District consideration of this type of proposed rule going back to Control Measure IND – 01 and a similar mobile source port backstop rule in the 2007 AQMP/SIP. What is the significance of this change and has the District now moved from a backstop of the voluntary Clean Air Action Plan goals of the Cities, which it sold to its board, to full District regulation setting District targets for the Cities' ports beyond backstopping voluntary programs? Does this change require the approval of the District's board? In any event, the Cities repeat their strong protest of both Project concepts and further comment on this issue below.

2. **Changed Project Description:** The Recirculated NOP/IS cover letter (11/22/2013) acknowledges that "changes were made to the project description *and* the environmental analysis subsequent to release of the original NOP/IS on July 23, 2013." However, the new NOP/IS fails to describe the "changes" in "the Project" and fails to describe or evaluate the significance of those Project changes. We note at least a few changes between the previous Initial Study and this new Recirculated NOP/IS:

(a) The Project Description now includes *the draft text of the Proposed Rule*. The new Initial Study states (p. 1-3) that the prior NOP/IS had tried to use the text of Control Measure IND-01 as a surrogate for the Project, because the rule language for PR 4001 had not been developed. However, **the draft text of PR 4001 is not the same as Control Measure**

IND-01. The distinct jurisdictional, legal, administrative, due process and procedural issues posed by the draft text of PR 4001 (as well as its semantic ambiguities) add new levels of complexity to the evaluation of the environmental impacts of the Project, which are not adequately explained or evaluated in the new Initial Study.

As detailed below, the draft text now creates uncertainty as to how and when the requirements of the new PR 4001 that the Cities "take actions" would be triggered, as well as the scope of their obligations to act under the new Rule. Indeed, the draft text of PR 4001 raises questions as to whether the Project as now described is even consistent with the Final 2012 AQMP, the EIR for that AQMP, or with subsequently-adopted Control Measure IND-01, or other state and regional plans. Most importantly, to the extent the provisions of PR 4001 vary in purpose and scope from Measure IND-01, they are not authorized by the AQMD Governing Board.

(b) The initial Project description (and Control Measure IND-01) would have required "actions to be taken" [by the Cities] only "in the event that emissions from port-related sources *do not meet* the emission targets assumed in the final 2012 AQMP. Similarly, Control Measure IND-01 represented that the "backstop" requirements will be triggered "if the reported aggregate emissions *for 2014* for all port-related sources exceed the 2014 emissions targets." (Final 2012 AQMP, Appendix IV-A-41.) By contrast, however, the new Project description would apparently require the Cities to "take actions" in the event that "port-related sources do not meet *or are not on track to maintain* the emission targets ... *for the purpose of meeting and maintaining the federal 24-hrs PM2.5 standard*." The new version of the Project description appears to have expanded the "triggering" events, and extended the trigger period, beyond those events and time periods contemplated in the 2012 Final AQMP. Accordingly, the new version of PR 4001 may no longer be consistent with the AQMP or with the environmental review of that document.

(c) The new NOP and Initial Study changed the type of CEQA document from an Environmental Assessment to a Program Environmental Assessment for the Project that will be programmatic in nature (as described in 14 CCR 15168) rather than a project-specific environmental review, and suggests that the District may thereby intend to *defer* more detailed CEQA analysis to some undefined future stage of "the Project" (p. 1-2). The District has already prepared and certified a Final Program Environmental Impact Report (Program EIR) for the 2012 AQMP which was considered to be the appropriate document pursuant to CEQA Guidelines Section 15168(a)(3) and included a programmatic analysis of Control Measure IND-01. However, the District has now presented the adoption of PR 4001 as "the Project" but is still preparing yet another Program Environmental Assessment with the same reasoning as it did in the prior CEQA analysis. It is not clear how the District believes two program-level environmental documents can be prepared for the same rule and when, if at all, the District may intend to provide such more specific "project-level" analysis as required under CEQA.

Moreover, this part of the new Initial Study implies a commitment that the "program CEQA document" would include "consideration of broad policy alternatives and program-wide mitigation measures." (*id*.). However, *the new Initial Study fails to identify or discuss any such "policy alternatives" or "program-wide mitigation measures"* and gives no indication that *the scope* of the eventual EA will in fact include any such policy alternatives or mitigation measures.

In their prior comment letter on the Draft 2012 AQMP Program EIR dated October 22, 2012, the Cities expressed very similar concerns over the vague and deficient "project description" of backstop Measure IND-01. In the District's response to comment #5-4 in the Final Program EIR, the District represented that: "*The exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted.*" The District also committed, in its response to the same comment #504 in the AQMP Final Program EIR, that "*further details regarding the future requirements* [a Rule implementing Control Measure IND-01] *will be determined more appropriately* ***during the rule development process***."

The new Initial Study indicates that the District may be reneging on these commitments to provide the necessary analysis of "the exact impacts" of PR 4001 "during the rule-development process, in violation of CEQA and in violation of the District's own Rule 110.

(d) The District also appears to have made other subtle changes to the Project Description, without announcement, which are **not consistent with Control Measure IND-01**, and which may have potentially significant – but unaddressed -- impacts. For example:

i. The new Initial Study has changed the description of the Project from adoption of a "backstop measure" to the adoption of "backstop *requirement*" and has made other changes to the Project which are not consistent with Control Measure IND-01 as adopted (p. 1-1.) Control Measure IND-01 provides a description of the Cities' successful Clean Air Action Plan (CAAP) and its various emissions reductions goals. "This AQMP Control Measure is designed to provide a "backstop" to the Ports' actions to provide assurance that, if emissions do not continue to meet projections, the Ports will develop and implement plans to get back on track, to the extent that cost effective and feasible strategies are available." (Final 2012 AQMP Appendix IV-A, page 3) The Proposed Project describes its purpose as: "The purpose of the rule is to establish actions to be taken in the event that emissions from port-related sources do not meet the emission targets assumed in the Final 2012 Air Quality Management Plan for the purpose of meeting the federal 24-hour $PM_{2.5}$ standard in 2014 and maintenance of attainment in subsequent years." (PR 4001, Section (a)) The proposed

Project has eliminated the references in its Board-adopted IND-01 to backstopping the Ports Clean Air Action Plan targets to the extent cost effective and feasible strategies are available and replaced with a traditional regulation by the District to meet District-set targets.

ii. The new Initial Study has apparently changed the District's concern from assuring "the attainment demonstration" for 2014 PM2.5 emission targets (as embodied in the 2012 AQMP) to add "*maintenance of the air quality standard in subsequent years*." (p. 1-1.) This change in the Project appears to add a new undefined and open-ended element into the Project, not consistent with the District's adopted Control Measure IND-01.

(e) **Changed Definition of "Feasible Control Strategy:"** The draft text for the new PR 4001 proposes to change the definition of "feasible control strategy" so that it is *not consistent with* the obligations that could potentially be imposed on the Cities under *Control Measure IND -01* as adopted by the District Board. Instead, the draft of PR 4001 (at Paragraph (c)(1)) and the new Initial Study have *changed the limitations* on the proposed obligations of the Cities to achieve additional emission reductions under PR 4001. Previously, the Project was described as requiring the Cities to "propose additional emission reduction methods ... [but only] *to the extent cost-effective strategies are technically feasible* and within the Ports' authority." However, new PR 4001, and the new Initial Study (p. 1-1) have inexplicably omitted (at several points*)* the prior limitation on the Cities' potential obligations to measures that are "*technically feasible*." Again, these subtle changes in the Project description are not consistent with the text of IND-01 or any other legal or regulatory authority identified by the District in the new Initial Study. The Initial Study should address (i) whether these changes have been authorized by the District's Board, and (2) what potential environmental impacts (as well as socio-economic impacts) may arise from the changes in the concept of "feasible control strategies."

(f) The District should clearly identify all other "changes" in the Project.

Other comments on the flawed "project description" are set out in Section C(1), below.

3. **Changed Environmental Analysis:** We appreciate that the Recirculated NOP/IS has expanded the range of environmental subjects which it now acknowledges may be subject to the proposed Project's significant adverse environmental impacts, perhaps partly in response to our previous comments. However, the scope of the proposed environmental analysis still does not take into account all of our concerns and still fails to comply with CEQA, e.g., by failing to identify potential significant environmental impacts, failing to propose a range of feasible

alternatives, and failing to evaluate reasonable mitigation measures. We therefore reiterate our prior comments on the scope of the proposed EA.

4. **Reiteration and Incorporation of Prior Comments:** The new NOP/IS states that it "replaces the July 23, 2013 NOP/IS" and that there will be no District responses to previously-submitted comments. We recognize that the Recirculated NOP purports to reflect changes made, in part, to previously submitted comments on the July 2013 NOP/IS. However, the new NOP/IS does not take into account all of our previous comments nor do the changes made in the new NOP/IS necessarily reflect or satisfy the requests made in our previous comments. Accordingly, we incorporate and include our previous comments as detailed in our letter dated August 21, 2013.

5. **Failure to Adequately Identify and Include Feasible Alternatives:** The Recirculated NOP/IS still fails to comply with CEQA's requirements for identification and consideration of all feasible project alternatives. Like the original IS, the new IS fails to identify a single "alternative" to the District Board's adoption of PR 4001. The superficial mention of "alternatives" on page 1-15 of the IS merely recites the legal obligations of the District to "discuss and compare" a range of "reasonable alternatives" to the proposed Project. This fails to fulfill the "scoping" purpose of an Initial Study. The District should analyze, among a range of alternatives, a collaborative Memorandum of Agreement between all of the stakeholders, as previously suggested by the Cities and recommended by the District to its Board (which speaks well to its feasibility as an alternative). The District should also evaluate the use of the EPA's policy and guidance for the Voluntary Mobile Source Emission Reduction Program (VMEP), which was developed for voluntary emission reduction programs of the sort outlined in the CAAP.

"The scoping process is the screening process by which a local agency makes its initial determination as to which alternatives are feasible and merit in-depth consideration, and which do not." (*Goleta II, supra*, 52 Cal.3d at p. 569; see Guidelines §15083.) It involves "consult[ation] directly with any person or organization [the lead agency] believes will be concerned with the environmental effects of the project" in hopes of "solv[ing] many potential problems that would arise in more serious forms later in the review process." (Guidelines, § 15083.)" "The determination of whether to include an alternative during the scoping process is whether the alternative is potentially feasible (*Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 489 (*Mira Mar*)), and the EIR "is required to make an in-depth discussion of those alternatives identified as at least potentially feasible." (*Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1505, fn. 5].)" (*South County Citizens for Smart Growth v. County of Nevada* (3d Dist. 2013) 221 Cal.App.4th 316, 327 (*South County*.)

"A lead agency must give reasons for rejecting an alternative as 'infeasible' during the scoping process (Guidelines, § 15126.6, subd. (c)), the scoping process takes place prior to

completion of the draft EIR. (*Gilroy Citizens for Responsible Planning v. City of Gilroy*, *supra*, 140 Cal.App.4th at p. 917, fn. 5; Guidelines, § 15083.)" (*South County*, p. 328.)[1]

The Initial Study also uses the wrong legal standard in its passing acknowledgement of the District's duty to consider alternatives: the Initial Study must identify "potentially feasible" alternatives ("feasibility" is a defined, and critical, term under CEQA), rather than "reasonable" alternatives (as mis-stated in the IS on page 1-15.)

6. **Deficient Initial Study:** The CEQA Guidelines contemplate that an Initial Study is to be used in defining the scope of environmental review (14 CCR §§ 15006(d), 15063(a), 15143.) However, as a result of the omissions, inconsistencies, and deficiencies in the Initial Study, the District's proposed scope of environmental assessment for this Project will be unduly narrowed and limited, and is likely to erroneously exclude issues, feasible alternatives, and mitigation measures from the proposed Environmental Assessment. (More detailed comments on the deficient Initial Study are set out in Section D, below.)

As detailed below in Section C, the new Initial Study does not provide the information, potentially feasible alternatives, evidence, or analysis required by the CEQA Guidelines (14 C.C.R. §15063, subd. (d)):

(1) A description of the Project including the location of the Project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries . . .

(4) A discussion of ways to mitigate the significant effects identified, if any;

(5) An examination of whether the Project would be consistent with existing zoning, plans, and other applicable land use controls;

(6) The name of the person or persons who prepared or participated in the initial study."

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[1] "Differing factors come into play when the final decision on project approval is made; at that juncture the decisionmaking body evaluates whether the alternatives are actually feasible. (Guidelines, § 15091, subd. (a)(3).) "[T]he decision makers may reject as infeasible alternatives that were identified in the EIR as potentially feasible." (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 981.)" (*South County*, p. 327.)

An Initial Study that fails to provide all of the information, analysis, and evidence called for by CEQA may be deemed to be inadequate and not a valid basis for CEQA review or Project approval (See, e.g., *City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, at pp. 407–408, invalidating the County's proposed general plan amendments because of a deficient initial study: "[T]he initial threshold study is inadequate because it fails to provide sufficient evidence or analysis of the potential environmental effects of the amendments.")

7. **Request for Correction and Recirculation of Corrected NOP and IS:**

For the multiple reasons summarized above, and detailed below, it is essential that the Recirculated NOP and Initial Study be withdrawn and further revised and corrected in order to properly fulfill their role in seeking meaningful public input on the appropriate "scope" of the proposed environmental assessment for the Project. A more accurate, complete, and CEQA-compliant Initial Study that addresses specific project-level impacts should be prepared and released for public review, along with a new set of public meetings, to provide the public with sufficient time and opportunity to comment on the scope and adequacy of the revised NOP/IS.

The District has already commenced its Rule- development process. It appears from the District's records that District staff has already committed to the District Board that the Proposed Rule will be adopted in April of 2014. District documents also indicate that District staff has further committed to shortly thereafter embarking on revisiting and changing the emissions targets that are the subject of this Proposed Rule, likely placing even more burdensome requirements on the Cities It is imperative, not only for Due Process reasons but also for reasons of sound public policy, meaningful community input, and well-informed decision-making, that the District provide adequate, complete, and accurate information – and time -- to allow the Project to be fully vetted before it is rushed to the District's Board for consideration.

It is therefore respectfully urged that the Recirculated Initial Study (and the related NOP) be recalled, corrected, and again be recirculated for public review and comment as corrected before the District proceeds with any further action in connection with the proposed Project.

The comments on the Recirculated Initial Study included in this letter are organized in the same format used by the Initial Study, i.e., comments on "*Chapter 1 – Project Description*" in Section C, below, followed by comments on "*Chapter 2 – Environmental Checklist*" in Section D. The comments are limited to those matters which appear in the Recirculated Initial Study, but we reserve the right to provide further comments in the event that additional or different information about the proposed Project becomes available.

C. Specific Comments on the Recirculated Initial Study:

1. Chapter 1 of the Initial Study -- Inadequate "Project" Description.

(a). Deficient "Project Description" – In General

"A correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA." (*Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 267).

> **The initial study must include a description of the project.**" (*City of Redlands, supra,* 96 Cal.App.4th at pp. 405–406, fns. omitted.) **An accurate and complete project description is necessary** to fully evaluate the project's potential environmental effects. [Citations.]" (*El Dorado County, supra,* 122 Cal.App.4th at p. 1597.) (*Id*.)

As noted above (Section B(2)), the District's cover letter for the Recirculated NOP states that "the Project" has been changed, and that the Project description has been "changed." However, the Recirculated NOP and Initial Study do not explain the "changes" in the Project, and they still fail to provide an accurate and complete description of the Project as mandated by CEQA. The failure of the Initial Study and NOP to provide an accurate, complete, and coherent description of the "Project" is a fundamental deficiency, which permeates the entire document.

The Initial Study fails to describe additional planned or reasonably foreseeable activities or actions by the District (e.g., changes to emissions targets) or by other agencies in response to or associated with the proposed Rule, or to address cumulative impacts of this proposed Project in light of other related actions and plans.

The Initial Study suggests, instead, that the intent of PR 4001 would be to delegate the District's responsibilities for regulating or reducing emissions of NOx, SOx, and PM2.5 air emissions to other agencies, specifically the officials governing the ports of Long Beach and Los Angeles. The Initial Study further 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 Rule 4001 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 entire project*, improper project "segmentation," *improper deferral* of impact analysis and mitigation, failure to identify and evaluate *potentially feasible project alternatives*, etc.)

The absence of such a clear description of the proposed Project inherently prevents the IS from facilitating meaningful review and analysis of the proposed "Project," and violates the requirements of CEQA. (See, e.g., CEQA Guidelines, 14 CCR § 15124; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376.)

The Initial Study falls far short of these requirements in describing the proposed Project, and thus falls short of serving the "public awareness" purposes mandated by CEQA:

> An accurate and complete project description is necessary for an intelligent evaluation of the potential 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, citing *Aberdeen & Rockfish RR. v. SCRAP* (1975) 422 U.S. 289, 322 [an accurate, complete and consistent project description is the sine qua non of informative, legally adequate CEQA review].) (*City of Redlands v. County of San Bernardino, supra,* 96 Cal. App. 4th at pp. 407–408.)

In sum, the Recirculated NOP/IS still erroneously limits the scope of the required environmental analysis and calls for impermissible speculation or impossible prescience on the part of the Cities or other members of the concerned public to undertake effective analysis of the proposed Project, or to provide meaningful comments as to the scope of review of the Project, until and unless the District provides an adequate and complete description of the "Project."

Incomplete Description of Environmental Setting

The Initial Study also fails to provide an adequate description of "the environmental setting" of the proposed Project.

While the CEQA Guidelines do not specifically define "environmental setting" with regard to an initial study, they do explain, in regard to EIR preparation, that the "environmental setting" must be informative: "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." (Guidelines, § 15125, subd. (a).) A description of the environmental setting must be sufficient to allow "an understanding of the significant effects of the proposed projects and its alternatives" but "no longer." (Guidelines, § 15125, subd. (a).) That description should place "[s]pecial emphasis" "on environmental resources that are rare or unique to that region and would be affected by the project" and "must permit the significant effects of the project to be considered in the full environmental context." (Guidelines, § 15125, subd. (c).)

Failure to Examine All Phases of the Entire Project as Proposed

"The Initial Study must include a description of the project, and the scope of the environmental review conducted for the initial study must include the *entire* project." (*Nelson v. County of Kern, supra*, 190 Cal.App.4th at 270, emph. in original.)

The Initial Study here improperly fails to describe "the entire Project" and fails to consider all phases of the proposed Project. The CEQA Guidelines (14 C.C.R §15063(a)(1)) make clear that an initial study must take a comprehensive view of the proposed project *as a whole*. "All phases of project planning, implementation, and operation must be considered in the initial study of the project."

Since the Project also contemplates the possibility of future discretionary actions and measures on the part of the Cities, if compelled under PR 4001, which may in themselves have additional, not-yet-identified environmental impacts, the Initial Study should call for the scope of the EA to be expanded to include such issues.

The scope of the environmental review conducted for the initial study must include the entire project. (*Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1222.) Thus, a correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA. (*Nelson v. County of Kern, supra*, 190 Cal.App.4th at 267.)

The NOP/IS indicates that proposed Rule 4001 is intended to require actions by the Cities, to adopt and implement plans and strategies to address any "shortfall" in emissions reductions. The Initial Study improperly fails, however, to address or to provide information and analysis relating to the environmental impacts of the anticipated "subsequent approvals," "discretionary permits" and amendments to the Cities' plans and regulations that appear to be proposed as parts of the Project, or the physical environmental effects of social or economic impacts that may result from those anticipated changes in land use regulations. (Guidelines § 15063.) Such anticipated and intended actions by other governmental agencies thus appear to be part of this Project, and must be identified and evaluated in the Project EA, along with their potential impacts. As such, we reiterate our prior comment on the Draft 2012 AQMP Program EIR dated October 22, 2012 where it is stated that the District has failed to fully disclose the details of Measure IND-01 and as a result is segmenting or piecemealing its CEQA analysis.

Failure to Describe Existing Land Use Regulations

The Initial Study does not include an examination of whether the Project would be consistent with existing zoning, plans and other applicable land use controls, as required by CEQA Guideline Section 15063. Although the Initial Study includes some background discussion of the CAAP, it provides little or no description of the existing planning and zoning designations applicable to the "Project" location, and relies on (unsupported) assertions that the Project would be in furtherance of the CAAP. It provides no information or analysis of other existing plans or policies applicable in the Harbor Districts, which may be affected or impacted by the Project. Additionally, the Initial Study contemplates impacts beyond the Harbor Districts but does not specifically define these areas nor the applicable land-use regulations.

Uncertain and Inadequate Identification of "Baseline" Used for Review

It is critical under CEQA that any level of environmental review make it clear as to the "baseline" being used as the basis for analysis of the significance of potential Project impacts. (CEQA Guidelines Section 15125(a).) Normally, the "baseline" will be the existing environmental conditions in the vicinity of the Project. (Guideline Section 15125(a); see also, 48 Cal.4th 310, 315 [the baseline for an agency's primary environmental analysis under CEQA must ordinarily be the *actually* existing physical conditions rather than *hypothetical* conditions that could have existed under applicable permits or regulations].) The Supreme Court has explained that the requirement for identification and use of the appropriate "baseline" applies in the context of an Initial Study as well as in an EIR. (*Communities for a Better Environment, supra*, 48 Cal.4th at 512, and n. 5.)

The Initial Study here, however, fails to make it clear as to what "baseline" is being used. In many places the Initial Study compares the anticipated "impacts" of adopting proposed Rule 4001 to the permitted emissions levels anticipated (in the future) under the 2012 AQMP, or alternatively to the (future) emission reduction targets of the CAAP -- rather than to the existing environmental conditions. While the recent Supreme Court decision in *Neighbors for Smart Rail v. Exposition Metroline Constr. Authority* (2013) 57 Cal.4th 439, 451-52 indicates that the baseline need not always be the existing physical conditions, and that "projected future conditions" may be used in rare situations as a baseline "if their use in place of measure existing conditions ... is justified by unusual aspects of the project or the surrounding conditions", it does not detract from the rule that the Initial Study must accurately and consistently describe the baseline being used. Nor does it permit the use of "future conditions" in the absence of a showing of unusual circumstances. The Initial Study in this case does neither.

For each of these fundamental reasons, the Recirculated NOP/IS should be rescinded in order that it may be revised, completed and corrected to meet CEQA requirements.

(b) The Initial Study Improperly Fails to Identify or Address Alternatives to the Proposed Project:

As noted above, CEQA requires that an Initial Study identify a range of "potentially feasible alternatives" to the proposed project which are to be more carefully analyzed in the draft environmental study. (14 CCR § 15083; "The determination of whether to include an alternative during the scoping process is whether the alternative is potentially feasible (*Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 489.)

However, the new Initial Study totally fails to identify any alternatives for study in the eventual EA. Instead, it merely "commits" the District to "discuss and compare alternatives" in the future, as part of the Draft EA. This is insufficient. The Initial Study also suggests the District is looking to the public or other agencies to identify "alternatives" during the scoping process. The Cities previously (January 2013) submitted such a potential alternative to PR 4001, in the form of a proposed Memorandum of Agreement. The District Board directed District staff to follow up and confer with the Cities on that approach. Nevertheless, it is not even mentioned in the Initial Study. Additionally, the EPA's long-established VMEP program is not considered as an alternative although it was developed for this very purpose.

If the District is authorized to prepare a PEA, rather than an EIR, the PEA must at least comply with Guideline Section 15252. Section 15252(a) requires that a substitute document, like a PEA, must include at least – a description of the proposed activity, and "**alternatives** to the activity and **mitigation measures** to avoid or reduce and significant or potentially significant effects that the project may have on the environment."

The No Project Alternative is not defined in the NOP/IS. In accordance with CEQA Guidelines Section 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. Therefore, the Draft EA should consider the impacts that would occur under the existing 2012 AQMP without Control Measure IND-01 or proposed Rule 4001.

As an example, an analysis should be conducted of the grant funding that would be available under the No Project Alternative that would not be available if the proposed Project constitutes regulation, and the environmental impact if grant funding necessary to make certain actions economically feasible is no longer available under the proposed Project. If the District's position is that there is no loss of grant funding in order to comply with Rule 4001 as a regulation that the District purports to make enforceable under the State Implementation Plan and the Clean Air Act, the District must explain in the Rule its basis for this conclusion in the context of why grants made for compliance with a regulation is not a gift of public funds.

Due to the District's failure to satisfy this CEQA requirement of alternatives development, the Cities direct the District to review the feasible alternative to the Project set forth in their January 16, 2014 letter to the United States Environmental Protection Agency Region 9, copied to the District. The Cities have noted the problems with including Measure IND-01 in the California State Implementation Plan (SIP) and recommended to the US EPA to instead apply as an alternative, the Voluntary Mobile Source Emission Reduction Program (VMEP) to grant SIP credit for the small percentage of emission reductions that are not already achieved by other regulations. The VMEP can work with or similarly to the memorandum of agreement approach that was suggested by the Cities to the District as an alternative to Measure IND-01 last year. One additional alternative would be for the District to formulate its own "backstop" measures and strategies for addressing any shortfall in emission reduction targets, relying on the District or CARB regulatory authority, expertise and resources, rather than pursuing proposed Rule 4001, which appears to be an attempt to solely rely upon the Cities, which lack regulatory authority or control over the actual sources, or use of the EPA's VMEP.

(c) Comments on the District's new Proposed Rule 4001:

The "project description" in the Recirculated Initial Study includes the *draft text* of PR 4001, at Appendix B. Notwithstanding the inclusion of a draft of the text of the proposed Rule, the "project description" remains incomplete and deficient. The Initial Study does <u>not</u> provide an adequate description of how the proposed Rule would work in practice (as distinct from the superficial summary of the text at pages 1-7 through 1-10) or how it would be likely to impact the Cities, the tenants and users of the Ports, and the surrounding communities and environments. The Cities anticipate the submission of additional, more detailed, comments on inconsistencies and problems raised by the draft text of PR 4001 itself and additional questions and concerns about the District's "rule-making" process.

Other deficiencies and questions about the draft text of PR 4001 include the following:

<u>What Is the District'scLegal Authority for PR 4001?</u>

The new Initial Study asserts that if the "backstop requirement" of PR 4001 "becomes effective," then the new Rule would require the Cities to submit an Emissions Reduction Plan "to address the emission reduction "shortfall."" Under what legal authority does the District believe that its proposed Rule 4001 may purport to compel distinct governmental bodies (the Cities and the Boards of Harbor Commissioners) to legislate or to exercise their discretion in particular ways to achieve District objectives?

The new NOP continues to dodge the questions (previously raised) about the District's legal authority – if any – to adopt PR 4001 or to compel the Ports to participate in the new backstop planning process contemplated by the rule. The NOP includes only the perfunctory

assertion that PR 4001 would "implement Control Measure IND-01" – as though that were an independent and sufficient source of authority. However, even the District's Final 2012 AQMP document acknowledges that it confers no new authority on the District, and CEQA similarly cautions that it confers no new or additional legal authority on agencies independent of the powers granted to the agency by other laws. (Guidelines, sec. 15040(b).)

Moreover, as noted previously, to the extent that the draft of PR 4001 is not consistent with the Control Measure IND -01 as approved by the District's Board, it is unauthorized.

The source of the District's purported legal authority for processing this PR 4001 is important for determining whether or not the District may claim to be acting within the scope of the District's "Certified Regulatory Program" – and thus outside of CEQA. The CEQA Guidelines limit that "certified regulatory program" exemption to "that portion of the regulatory program of the SCAQMD which involves the adoption, amendment, and repeal of regulations *pursuant to the Health & Safety Code*." (Guideline, sec. 15251(l).)

If the NOP/IS seeks to justify the District preparing an environmental assessment under its "certified regulatory program" rather than an EIR under CEQA, then the District should clearly demonstrate that the PR 4001 would be enacted pursuant to some specific statutory authority in the Health & Safety Code.

The District previously sought to characterize Control Measure IND-01 as an "indirect source rule." The current references to proposed Rule 4001 in the NOP/IS have omitted all mention of an "indirect source rule." However, the new Initial Study does not cite any authority the District is relying on for its processing of the proposed Rule. This should be corrected so that the public can perceive and comment on whatever "legal authority" may be invoked by the District.

Is it anticipated that the "plans" and strategies that would be required to be adopted by the legislative boards of the two Cities under the mandate of proposed Rule 4001 would be within SCAQMD's regulating authority and subject to the District's approval or disapproval? If so, why would SCAQMD not directly adopt such "backstop" strategies and plans itself? If not, is the Rule being proposed in order accomplish something indirectly that SCAQMD itself cannot do directly? (Cf., *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 [same].)

The vague disclaimer in the Initial Study to the effect that proposed Rule 4001 would not require any measure that *lacks legal authority* raises more questions than it answers. (Note also the new Initial Study, and PR 4001, no longer disclaim any intent to require the Cities to adopt measures that are not "*technically feasible*.") Whatever types of "emissions reduction plans"

may be anticipated by PR 4001 should be identified by the District in the NOP/IS so that the feasibility and legality of such approaches can be evaluated as part of the environmental assessment for the Project. (The new Initial Study omitted the examples of 'control strategies' that had been in the previous Initial Study.)

On What Basis Would PR 4001 Impose "Requirements" on the Cities

The NOP/IS states that none of the CAAP strategies would be "prescribed in PR 4001." Instead, the NOP states that if proposed Rule 4001 becomes effective, the Cities (presumably the Boards of Harbor Commissioners) -- "individually or jointly" -- would be required to identify sources that could undergo potential emission reduction to "make up for the shortfall."

Why would/should the obligation to make up for a possible shortfall in meeting emission reduction targets (which are primarily the responsibility of the District to attain) be shifted so as to fall upon two independent governmental entities? The Cities are governmental entities, and are not directly producing emissions or otherwise directly responsible for the targeted emissions or for the attainment of the emissions reduction targets.

Moreover, if there were to be a "shortfall" in attaining the targets, it could well be due to factors not caused or controlled by the Cities, and not due to any actions or derelictions on the part of the Cities or their tenants or users. Would uncontrollable/unforeseeable factors resulting in all or part of a shortfall be excluded from whatever obligation may be imposed on the Cities? Would it be required/permitted that any such "shortfall" be allocated to sources or causes bearing some actual responsibility for the lack of attainment? How would any shortfall be "allocated" between the Cities?

Would proposed Rule 4001 take into account the statutory limits on the jurisdiction and authority of the Cities (i.e, the Boards of Harbor Commissioners) to impose restrictions on most mobile sources of emissions?

The NOP/IS mentions a possible "option" that would "allow" the Cities to reduce emissions from "non-port-related sources." This vague reference requires clarification before it may be evaluated in connection with the Project. Direct and indirect effects would need to be considered that may occur beyond the geographic boundaries of the Harbor Districts. Therefore, it is premature for the District to conclude that any changes based on the working group or public scoping comments will be within the scope of the analysis in the NOP/IS.

What is meant by an "Emissions Shortfall"?

What environmental baseline and other parameters would be required by proposed Rule 4001 in order for the Cities to determine the extent of any "emissions shortfall" that may need to

be addressed in the Cities' plans in the event they were to undertake to submit plans under the Rule?

The term "shortfall" first appears in the Proposed Rule in (d)(1)(A), where it appears to call for a Plan to report on progress in "meeting the shortfall" but that seems logically inconsistent with the structure of the Proposed Rule, i.e., the District can't require the Ports to submit an emissions reduction plan unless and until the annually-reported emissions reductions "show that the percent reduction in PM2.5 from the baseline emissions is less than the reduction target of 75%" (Para (e)(1)B).) So there would not be any "shortfall" identified until that time; and therefore it would seem premature and illogical to require the Ports to submit a Plan that "reports the progress in meeting the shortfall" that was just identified.?

To the limited extent the PR 4001 describes the shortfall that might trigger the need to prepare a Plan, the provisions for annual estimating or reporting of the emissions appear imprecise and vague. Para (f) appears to contemplate that once a 'shortfall' had been determined in one year, then the District could demand a Revised Plan in following years if targets are still not met; but what happens if the shortfall is "corrected" in subsequent years and targets are again being met?

Does an Emissions Reduction Plan, once required by the District, ever go away?

<u>On What Authority Would the District Purport to "Revise the Reduction Target"?</u>

The new Initial Study reports (p. 1-8) that PR 4001 (e)(2) purports to require the District's Executive Officer to review the reduction target before July 2017, and to "develop a proposed amendment to Rule 4001..." that would "revise the reduction target as necessary to conform to the 2016 AQMP reduction target."

By what authority would these targets be "revised" in the future? Under what objective standards? What public process would the Executive Officer need to follow in order to "develop" a proposed "amendment" to PR 4001? How would such a "moving target" affect the Cities and what environmental impacts would be possible consequences of such "revisions"?

<u>Does PR 4001 Provide a Clear and Feasible Process for Cities to Develop a "Plan"?</u>

Para (f) (E) would require that "the Plan shall be approved by the Board of Harbor Commissioners" at each Port, and would require the Port to conduct at least one "public meeting" ... but is this an improper attempt by the District to control and dictate the exercise of discretion" conferred on the Board of Harbor Commissioners? The Board of Harbor Commissioners may in fact disagree that a plan is required or may exercise its own discretion, as required by law, that it cannot commit expenditures to a program desired by the District. Under what authority can the District's Executive Officer, acting alone without even District Governing

Board authority, disapprove a plan or compel a plan to be approved by the Cities' own governing authorities? What is the District's intended mystery penalty or consequence, which the proposed Project still has not revealed to the cities and the public in PR 4001? Furthermore, discretionary action by the Boards of Harbor Commissioners requires compliance with CEQA. What type of CEQA review would be triggered for the emission reduction plans if the Program Environmental Assessment being prepared by the District is only programmatic in nature and how is the timing for either a consistency review or project-specific analysis, if warranted, accounted for in PR 4001?

Would PR 4001 Create Violations of Due Process?

The draft of PR 4001 raises several questions regarding apparent violations of Due Process:

Para (f)(2)(B) -- the District's Executive Officer would be given nearly unfettered discretion to "disapprove" a Plan submitted by the Cities?

There must be some requirement at least that the Executive Officer must make "findings" of "non-compliance" with some provision of (f)(1) of the Rule, based on some objective standards.

What would be the procedure if the Cities submitted a Plan, and the District (either by its Executive Officer or its Hearing Board) "disapproved" the Plan (per Para (f)(2)(C))? The Port would apparently be required to submit a Revised Plan within 60 days of the disapproval. But what about the Harbor Commissioners holding a new "public meeting" for input on the Revised Plan? And would there be any time or procedure for the Harbor Commissioners to consider and approve a new Revised Plan and comply with CEQA within that arbitrary 60 day time frame?

At the end of Para (g)(2) is the threat again that if the District Board denies the Port's appeal from a "disapproval" of the Port's emissions reduction plan, then the "*Ports shall comply* with ... [or subparagraph (f)(2)(F)]" -- which means the Port shall be self-confessed as "in violation" of the Rule? This would appear to inflict a denial of Due Process on the Cities.

Variance: PR 4001 must provide more detail as to what is meant by Para (g) - petitioning for a "variance" ? What are the criteria? What would the process be? What would be the effect of the District granting a variance?

How Would the District Determine the "Consequences" for "Violation" of PR 4001?

By what authority would the District sit in judgment as to the sufficiency of the Cities' efforts to manage activities and uses of the Ports? What might the consequences be if a City were to be deemed to be "in violation" simply because the District may choose to "disapprove" a

Revised Plan, and by what legal authority would the District purport to sanction the Cities in the event of some perceived "violation"?

By what objective standards would the District judge the sufficiency of any plans or measures proposed by the Cities to achieve the emission reduction targets?

What is the consequence of disapproval of a City plan by the District? The rule should provide more detail at Para (f)(2)(F) (iii) -- what is meant by the obscure reference here that the Ports "shall be in violation of this Rule... "?

Does PR 4001 Provide for Judicial Review of District Actions?

Should the Rule make provision for judicial review of the actions of the District in enforcing or interpreting the Proposed Rule?

As drafted, PR 4001, at Para (h): "Severability" appears to contemplate that a "judicial order" could hold some provision of the Rule to be invalid? Otherwise the Rule is silent on Judicial Review.

Are the Cities Supposed to Regulate Off-Site "Sources"?

The Initial Study indicates (p. 1-4) that the District anticipates that the "control strategies" contemplated by this Project "may potentially include" measures for the Cities to adopt and implement policies or programs extending beyond their jurisdictions or to try to reduce emissions from sources *not entering* onto port properties. What does this mean? By what legal authority might the Cities try to regulate *off-site* sources that do not come within the jurisdiction of the respective Harbor Commissions? (Municipal police power authority may generally be exercised only within the territorial boundaries of their jurisdiction, and the Boards of Harbor Commissioners have special Tidelands limits on their authority.)

Would such (unidentified) measures be part of Rule 4001, or would proposed Rule 4001 require that the Cities formulate (unidentified) measures in the future to somehow regulate *off-site* "sources?"

How Does the District Contemplate Funding of Backstop Measures?

The draft of PR 4001 implies that "funding" would be necessary for many of the potential future emission reduction measures that may be compelled under proposed Rule 4001. Would such funding be provided by the District? What other "funding" sources are contemplated?

The conversion of the Cities' voluntary programs into PR 4001 as a district regulation and potentially state and federal law if adopted into an approved SIP, will impose constitutional

or common law "gift of public funds" restrictions on federal and state grant funding currently relied upon by the Cities for emission reduction activities under their CAAP.

To the extent the District expects the Cities to fund future programs, this demonstrates a lack of understanding of the Cities' own governmental authority and obligations. The Boards of Harbor Commissioners of the Cities are trustees for the Tidelands Trust funds they are entrusted to manage and have specific legal obligations to meet, including promotion of maritime commerce, navigation and fisheries and keeping their budgets in balance amidst a current global shipping economy with many dynamic and threatening competitive pressures to retain market share. By what authority may the Harbor Commissioners impose taxes, assessments, and charges on users of the Harbor Districts, given the restrictions of various state laws, including, among others, Proposition 26?

(d) Specific Comments and Questions re "Project Description" and Text

The following comments and questions refer to specific portions or pages of Chapter 1 of the new Initial Study:

Pp. 1-1 - 1-2 – Introduction

(i) *Erroneous Characterization of Existing Emission Reduction Requirements:* The Introduction states, in the first sentence of the third paragraph on page 1-1, that Control Measure IND-01 "...does not call for additional emission reductions beyond those realized with existing regulations and emission reductions programs implemented at the Ports to date." This is an untrue statement. The CAAP is only a planning document which specifically provides for discretionary future decisions to be made regarding implementation by each of the Cities' respective Board of Harbor Commissioners, and the resolution adopting the CAAP update states:

> The CAAP is a living document intended to establish a process to develop solutions, not a static document binding the Ports to particular future actions….The CAAP is a planning document that identifies goals and potential implementation strategies to guide further actions, and as such does not constrain the discretion of either Board of Harbor Commissioners with respect to any particular action.[2]

[2] Los Angeles Resolution No. 10-7041 adopted by the Board of Harbor Commissioners of the City of Los Angeles and Long Beach Resolution No. HD 2600 adopted by the Board of Harbor Commissioners of the City of Long Beach on November 22, 2010.

Not all individual Board actions that may be required in order to achieve the CAAP's goals and activities have been adopted; in fact, many of these goals were stretch targets with uncertainty as to whether they could be achieved. Control Measure IND-01 and Rule 4001 propose to *require* the Cities to potentially adopt future discretionary, quasi-legislative actions that create potentially-conflicting authorities between the District, as regulator, and the Cities, as independent governmental agencies regulated by the District, so as to force the Cities to exercise their discretionary police power authority in a particular way. The Constitution does not permit such usurpation of the Cities' authority.

(ii) *Misleading and Inaccurate References to "Port-Related" Sources of Emissions:* The new Initial Study and Recirculated NOP continue to describe PR 4001 in the misleading context of "port-related sources" of PM2.5 emissions, and as ensuring that emissions from "port-related sources" meet the targets included in the Final 2012 AQMP. The term "port-related sources", however, is not used in the federal Clean Air Act ("CAA") or Health &Safety Code. As described in the NOP, "port related sources" are mobile and vehicular sources ("ocean-going vessels, on-road trucks, locomotives, harbor craft, and cargo-handling equipment"). Those *actual* "sources" of emissions are distinct from the geographic area in which they operate and are generally and comprehensively regulated by other State and federal agencies, not regional air quality districts.

The District's continued references to "port-related sources" of emissions are misleading and are no more accurate or descriptive than would be similarly generic references to "coastal-related sources" or "County-related sources" or "Air District-related sources" of emissions.

(iii). *Misleading Failure of the Project to Limit the Cities' New Obligations to "Technically Feasible" Measures:* The previous Initial Study for PR 4001 at least made it clear that the District only intended to require the Cities to propose additional emission reduction methods for vessels, trucks, locomotives, etc., "to the extent cost-effective strategies are *technically feasible* and within the Ports' authority." (Similar limitations on the Cities' new obligations under the proposed 'backstop measure' are included in IND-01.) However, the new Initial Study no longer includes any limitation to "technically-feasible" measures that could be required of the Cities (p. 1-1.) This omission creates uncertainty about the District's intentions as to the scope of PR 4001, i.e. whether it might be construed to be a "technology-forcing" regulation or not.

(iv). *Inconsistent or Uncertain Emissions Reduction Targets.* The Introduction states, in the last paragraph beginning on Page 1-1, that the emission targets for "port-related sources" are those assumed in the 2012 AQMP emissions inventory. The draft text of PR 4001 now purports to define "emissions target" by reference to page IV-A-36 of Appendix IV to the Final 2012 AQMP. The Cities raised questions during the Measure IND-01 adoption process regarding the District's calculation of these targets, which are *different* from the emissions targets set under the

CAAP. Although the specific emission targets of the proposed Project do not appear at all in the NOP (which omission itself is a defect), the District has verbally advised the Cities and a working group on August 8, 2013, that the Rule will be such as to be triggered on set emission targets for 2014 and 2019. Those comments, however, left the Cities and working group participants with many questions about how the District set the emissions inventory, particularly for 2019, which was not in the CAAP. These examples are provided to illustrate that the Initial Study's description of the applicable emission reduction targets to be covered by PR 4001 are uncertain, or inconsistent.

P. 1-4 - Project Location

The new Initial Study provides no finite "project location." It again refers to the District's jurisdictional boundaries. It then states that "PR 4001 would apply to POLA and POLB, both of which are located within Los Angeles County." It is unclear if this was an attempt to state that the Project location would be Harbor Districts of the Cities. The lack of clarity regarding the Project location is further compounded by the Rule's reference to "sources not entering Port," and by a new but vague reference to the effect that the unidentified "strategies proposed by the Ports" under compulsion of PR 4001 could extend the "project location" beyond Los Angeles County.

Is it the intention that any portion of the Project may be implemented outside the geographic areas of the two Ports? It remains unclear from this description whether the Project may have impacts or foreseeably result in actions being taken outside the geographic areas of the two ports. This may have jurisdictional implications which cannot be evaluated without additional information.

Also, the Initial Study fails to disclose or analyze the possibility that if the option for the Cities to reduce emissions from sources not entering Port properties is included in proposed Rule 4001, even the vague "project location" and geographic scope of the proposed Rule in the Initial Study would not be accurate and would need to be modified in the NOP/IS.

P. 1-5 – Project Background

The new Initial Study appears to recognize that distinct "emission sources at the Ports" such as vehicles, engines, ships, trains, trucks and other cargo-moving equipment operated by distinct tenants, users, and visitors of the ports are the intended targets of the Project's emission reductions requirements. It also acknowledges that the Ports themselves adopted the San Pedro Bay Ports Clean Air Action Plan ("CAAP") in 2006, and further that emissions from these so-called "port-related sources" have been "substantially reduced since 2006" as a result of collaborative and voluntary programs and regulations developed by both Ports. (p. 1-6).

These acknowledgements raise again the question of the need or justification for the Project, or for the attempt by the District to foist the responsibilities for regulating emissions from such mobile or vehicular sources of emissions from state and federal agencies onto the Cities.

Also, on Page 1-6, the new Initial Study states that the intent of PR 4001 is to "provide a backstop to the Ports' actions" in case emission reductions "from port-related sources do not meet *or are not on track to maintain the emissions targets*..." This appears to be an unauthorized change in the Project description and is not consistent with IND-01. Also, notion that the District would be empowered by PR 4001 to enforce sanctions against the Cities if the District somehow deems that they are "not on track" to maintain targets is ambiguous, and without objective standards or legally-necessary procedural protections.

Pp. 1-11 -- Technology Overview/Implementation Strategies

The new Initial Study refers to some emission reduction strategies included in the CAAP, but the Initial Study does not explain how these may relate to proposed Rule 4001, or whether they should be considered as part of the Project.

The suggestion in the Initial Study of possible "tariff changes" or "impact fees" on the activities of users of the Harbor Districts raises other questions (e.g., legal authority, funding for studies and public review processes required before such measures could be considered or adopted, indemnification for costs of defense, etc.) requiring identification and study. Moreover, such measures may themselves be considered as "projects" subject to CEQA review and may have impacts on the activities of Harbor District users that themselves would require analysis or mitigation.

The Initial Study also includes reference to "Port funded incentives" as possible measures to reduce emissions, but also observes that there is not adequate funding for such strategies in the Cities' budgets or other grant programs. The source of funding any "Port-funded" measures contemplated by proposed Rule 4001 should be clearly identified and evaluated.

Any such contemplated implementation strategies should be included in the "Project description" and better identified in a more complete NOP/IS, so that they may be evaluated along with the rest of the Project.

Feasibility: The new Initial Study abjures any consideration of technical feasibility or other concepts of "feasibility" despite CEQA's recognition of feasibility as a critical limitation on environmental regulation. The scope of the EA should be expanded to address the legal, technological and economic feasibility of the seven bulleted items listed in this section.

2. Chapter 2 of the Initial Study – The "Environmental Checklist"

(a) General Comments on the Environmental Checklist

The Recirculated NOP/IS relies on a standard CEQA environmental checklist to identify those "impact areas" it recognizes to be potentially affected by the Project. In several respects, however, the Initial Study appears to merely assume the absence of potentially significant impacts, rather than factually demonstrating that significant impacts will not occur if the Project is adopted and implemented. This is insufficient under CEQA, and under the District's own rules. (SCAQMD Rule 110; *City of Redlands, supra*, 96 Cal.App.4th at 408-09; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296).

The new NOP includes many statements that the PEA will rely on "conservative assumptions" about the possible environmental impacts of the Proposed Rule. Reliance on any assumptions in CEQA analysis is unsound, and if assumptions are to be used, the District must explain why it would rely on "conservative" assumptions about the scope of impacts.

Furthermore, it is contrary to the District's response to comment #5-4 in the Final Program EIR, which indicates that "[t]he exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted."

We appreciate that the new Initial Study has expanded the number of environmental areas to be studied in the eventual EA from the six (6) topics identified in the previous Initial Study to thirteen areas now recognized as being subject to potentially significant impacts if the Project is approved. The new Initial Study now recognizes the following *additional areas* of potential environmental impact to be addressed in the EA: (1) Aesthetics, (2) Biological Resources, (3) Cultural Resources, (4) Land Use and Planning, (5) Noise, (6) Public Services, and (7) *broadened evaluation* of potential impacts and issues in the areas of Energy, Hazards and Hazardous Materials, Air Quality, and Transportation and Traffic.

However, the new Initial Study continues to provide only superficial and inadequate discussion of the areas of environmental impact, and thus fails to properly indicate the necessary scope for the eventual EA. Unless and until those areas are more fully addressed, the new NOP/IS still improperly limits the scope of the proposed EA, and still erroneously exclude areas requiring further assessment.

(b) Specific Comments on the Environmental Checklist

As detailed below, there are numerous areas of potential environmental impact in the checklist as to which the Initial Study either omits required evidence to support its conclusions of "no potential impact" or treats with insufficient detail.

Even as to those areas that are now identified in the new Initial Study as having potential impacts, the new Checklist still errs by limiting the scope of the potential impacts identified for further study based on unfounded assumptions as to the environmentally benign intent behind the Project. However, the law is clear that environmentally "benign" objectives for a project do not excuse non-compliance with CEQA and do not justify reliance on assumptions in lieu of evidence to demonstrate the absence of potential impacts. *See, e.g., California Farm Bureau v. California Wildlife Conservation Board* (2006) 143 Cal.App.4th 173, 196, emph. added [State environmental agency violated CEQA by exempting environmentally beneficial habitat project from review]:

"[I]t cannot be assumed that activities intended to protect or preserve the environment are immune from environmental review. [Citations.]" (*Davidon Homes, supra*, 54 Cal.App.4th 106, at p. 119; see, e.g., *Dunn-Edwards Corp. v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644 (disapproved on other grounds in *Western States Petroleum Assn. v. Superior Court, supra*, 9 Cal.4th 559, 570.) **There may be environmental costs to an environmentally beneficial project, which must be considered and assessed**.

P. 2-4 -- Preliminary Discussion of Checklist

First Paragraph: We reiterate the same comment as noted above, regarding Cities not being the "source" of emissions. It is "the operational activities by the Ports' tenants" [and other users of the area] that produce emissions (as the new Initial Study more accurately recognizes) and which should be the true District targets as the sources of emissions.

First Paragraph, Last Sentence: The Initial Study states that "some emission reductions [assumed by the District's 2012 AQMP] may be contingent upon the Ports taking and maintaining *actions which are not required by air quality regulations*." This suggests that one of the purposes for District proposal of proposed Rule 4001 may be to establish a new regulatory "authority" over the Cities (and the communities served by and dependent upon the Harbor Departments of the Cities) that is not in fact already provided by existing federal, state, or regional air quality regulations. The policy implications of such a Project may well include significant impacts on the environment, if regulatory authority over activities, facilities, and uses of the Harbor Districts is shifted or arrogated to the District. (See, e.g., *City of Redlands, supra,* 96 Cal. App. 4th 398 [proposed new County policy re exercise of County authority over annexations and sphere of influence was not supported by adequate CEQA review].)

Page 2-5: The new Initial Study makes reference to a "survey" of existing CEQA documents to try to identify projects "similar to the types of projects the Ports may choose to implement in an Emission Reduction Plan." It then suggests that "reasonably foreseeable projects" resulting from this survey will be evaluated in the EA. While we respect these goals, we submit that the new Initial Study is vague as to what may be deemed to be "reasonably

foreseeable projects" warranting analysis in the EA, and would request that more objective criteria be provided.

(1) **Aesthetic Impacts:**

The brief discussion of "potentially significant" Aesthetic impacts in the new IS does not address many of the Cities' prior comments on these impacts, and we reincorporate those comments.

(2) **Biological Resources:**

The new discussion of impacts on Biological Resources does not address the Cities' prior comments re possible impacts on migratory birds and least terns, and we reincorporate those comments.

(3) **Energy:**

The new Initial Study section VI (c) must be expanded to also consider and analyze 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 required in the event of a major disaster. Also some types of emission control measures, facilities, or technologies contemplated by the Project could increase or shift demand for different types of energy or fuel usage. Although "risk of upset" is not considered in the new Initial Study checklist. The scope of the proposed EA should be expanded to include this additional analysis.

(4) **Hazards and Hazardous Materials:**

In addition to our comments on the prior Initial Study, the new Initial Study section VIII(f) must be expanded to also consider and analyze the increase reliance on alternative fuels or electrical powered technologies that would require sufficient supply and emergency storage in the event of a major disaster. Although interference with emergency response plans was marginally addressed in this section, "risk of upset" is not considered in the new Initial Study Checklist. The scope of the proposed EA should be expanded to include this additional analysis.

(5) **Land Use & Planning Impacts:**

The new IS now identifies Land Use and Planning as an area involving potential significant impacts, to be studied in the EA. However, the new IS states that such impacts will be considered in the EA only "if the project conflicts with the land use and zoning designations established by local jurisdictions." This is insufficient.

We previously pointed out that the PR would cause conflicts with existing land use plans and policies, circulations plans, congestion management plans, etc. The prior IS itself admitted that the Project would cause potentially significant impacts or conflicts with existing land use plans (but was only going to address them in the Transportation section). This should be a definite area for evaluation in the EA, not a 'conditional' topic of study.

We also note that the new Initial Study is internally inconsistent. It makes the remarkable assertion (inexplicably placed in its discussion of impacts on Biological Resources, at p. 2-18) that "there are no provisions in the proposed project that would adversely affect land use plans, local policies, ordinances or regulations. LAND USE AND OTHER PLANNING CONSIDERATIONS ARE DETERMINED BY LOCAL GOVERNMENTS AND NO LAND USE OR PLANNING REQUIREMENTS WOULD BE ALTERED BY THE PROPOSED PROJECT." We strongly disagree, as pointed out in our prior comments, which are incorporated.

The measures contemplated in the Initial Study include the adoption of new "regulatory requirements," new "impact fees" on the movement of cargo or sources, and changing the tariffs for use of the Harbor Districts – all of which would cause at least potential "conflicts" with applicable plans and policies. (Cf., *Orinda Ass'n v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1169 [the CEQA requirements for initial study examination of non-conformity with existing land use plans are intended to allow lead agency to modify the Project to avoid inconsistencies with existing plans – not vice versa].)

The Initial Study itself acknowledges that the Project is anticipated to cause "potentially significant impacts" or conflicts with "an applicable plan ... for the performance of the circulation system" and conflicts with "an applicable congestion management plan." (Initial Study, p. 2-44.) Although the Initial Study proposes to address those admitted conflicts in the "transportation" section of the EA, these acknowledged conflicts confirm the necessity for including "land use and planning" impacts in the proposed EA as well.

Also, the proposed Project would seemingly create conflicts with the Cities' 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 are detailed in the previous port letters included in Attachment A to this letter. In addition, the proposed Project would create inconsistencies with the Clean Air Action Plan.

The proposed Rule is apparently structured in a way that would impermissibly usurp the (non-delegable) police power authority of the Cities and their respective Boards of Harbor Commissioners to plan, implement, and regulate land use policies and actions in their respective jurisdictions. (This comment has also been raised above, in Project Description comments.)

The numerous inconsistencies between the Project as proposed and the existing plans and policies require identification in the Initial Study and inclusion in the proposed EA. (Guidelines § 15125(d).) The scope of the proposed EA should be expanded to include environmental analysis of all of these potential impacts on land use and planning.

The EA should also include analysis of the impacts of the proposed/anticipated Project-related subsequent amendments to the Cities' plans, policies, and other land use regulations. (See, e.g., *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1197 [CEQA review failed to consider incidental results from adoption of revised policy; incidental impacts could not be disregarded in an initial study based upon "net" environmental impact of the change in policy being benign since CEQA requires each environmental impact of project be discretely evaluated].) "Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project." (Guidelines, § 15064, subd. (e); see §§ 21080, subd. (e)(2), 21082.2, subd. (c).)

The scope of the EIR should be expanded to include analysis of possible physical changes in port facilities and operations that might be caused by economic or social effects of the Project itself or by the anticipated amendments to land use and zoning policies by the Cities subsequent implementation of the Project.

(6) **Transportation and Traffic Impacts**

The new Initial Study fails to adequately describe and analyze potential impacts to rail and marine vessel traffic and ignores the significance criteria identified as "[w]ater borne, rail car or air traffic is substantially altered" on page 2-45. The new Initial Study erroneously considers vehicular traffic impacts to local roadways.

Socioeconomics Analysis

The proposed EA needs to include a broad-based analysis of the socioeconomic effects of Proposed Rule 4001, including the potential for job loss, business closures, and diversion of cargo to other ports due to the potential loss of regional competitiveness. The socioeconomic analysis needs to consider both the existence of the rule, even if not triggered, and the future enforcement of the rule. Because these conditions have the potential to physically change the environment in and around the ports, these impacts should be identified and assessed in the EA. (See CEQA Guidelines §§ 15064€ and 15131; *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3rd433,445 [EIR must consider possibility of economic blight from rezoning].) Moreover, this assessment should not be limited to businesses and operations within the ports, but should extend to those facilities, business and operations that while located outside of the Harbor Districts are dependent upon the flow of cargo for their continued operations.

This CEQA analysis of the socioeconomics effects of PR 4001 in the proposed PEA would be separate from, and in addition to, the assessment of socioeconomic impacts of the proposed Rule that the District is required to prepare in compliance with Health & Safety Code § 40728.5 and § 40440.8.

D. Conclusion:

The current version of the Recirculated NOP/IS still fails to comply with CEQA or with the District's own Rules for environmental review, and fails to properly provide an adequate "scope" for the eventual Environmental Assessment to be prepared for analysis of the Proposed Rule 4001. The Initial Study must therefore be revised, corrected, and re-circulated with all of the descriptions and other content required by CEQA.

While it is clear that an EA is called for in connection with this proposed Project, it is equally clear that the EA should be more complete than what is envisioned by the current NOP/IS. More fundamentally, its scope must be determined by a legally-adequate revised NOP/IS. The EA for the Project must, of course, be supported by credible and substantial evidence, including independent professional analysis.

Even this inadequate NOP/IS makes it clear that **the scope of the proposed EA has been unduly narrowed and fails to identify any potentially feasible alternatives to the Project.** Consequently any ensuing environmental review will be limited in a way that erroneously fails to provide the relevant decision-makers, affected public agencies, residents and the public generally with sufficient evidence and analysis of all potential impacts from the Project as a whole, or of all potentially feasible mitigation measures or appropriate Project alternatives as required by CEQA.

We respectfully request that these comments and questions be considered before the District embarks on preparation of the EA and all of the other required independent studies in connection with the CEQA review of the proposed Project. We therefore look forward to working with the District, and any study teams or working groups tasked with evaluation of the proposed Rule 4001.

The NOP requests that we provide you with a contact person for each responding agency. For the **COLB,** the contact persons are as follows:

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For **COLA**, the contact persons are as follows:
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With a copy to:

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We appreciate your consideration. Thank you.

Sincerely,

Matthew Arms
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachments:

- August 21, 2013 Letter; Port of Long Beach and Port of Los Angeles to SCAQMD; *Comments on Notice of Preparation, Initial Study, and Scope of Proposed Environmental Assessment*

- October 2, 2013 Letter; Port of Long Beach and Port of Los Angeles to SCAQMD, *Initial Comments for Public Consultation on Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets are Met at Commercial Marine Ports"*

cc: Al Moro, Acting Executive Director, Port of Long Beach
Gary Lee Moore, Interim Executive Director, Port of Los Angeles
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
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Jared Blumenfeld, Administrator, U.S. EPA, Region 9
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ATTACHMENT 6.

October 2, 2013

VIA ELECTRONIC MAIL – rpasek@aqmd.gov
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South Coast Air Quality Management District
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Re: Initial Comments for Public Consultation on Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports"

Dear Mr. Pasek and Staff of the South Coast Air Quality Management District:

We appreciate this opportunity to submit comments during the public consultation period on the South Coast Air Quality Management District's (AQMD's) proposed "Rule 4001: Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports" on behalf of the City of Long Beach acting by and through its Harbor Department (referred to herein as "COLB") and the City of Los Angeles acting by and through its Harbor Department ("COLA," collectively with COLB, the "Cities" or the "Ports").

The Cities take their role as environmental leaders seriously and through the years have achieved tremendous success in obtaining substantial emissions reductions through the efforts guided by the joint San Pedro Bay Ports Clean Air Action Plan ("CAAP"). The Cities continue to support programs that will result in cleaner air for the local communities and the region and have worked aggressively with the port industry to reduce air quality impacts from the equipment they operate. As a result, the recently released emissions inventories have shown that between 2005 and 2012, emissions from sources at both the Port of Long Beach and Port of Los Angeles were reduced by 80% for diesel particulate matter and 55% for nitrogen oxides. However, the Cities continue to disagree with the AQMD's current proposal to inappropriately and unnecessarily regulate the Cities. The Cities have been consistent in our comments to the AQMD about the serious concerns and objections to the proposed rulemaking approach. A compilation of these comments was recently submitted to the AQMD in our comment letter on the Notice of Preparation and Initial Study for Proposed Rule 4001, dated August 21, 2013.

As for the comments the AQMD is currently seeking, we have concerns that the process recently initiated by the AQMD to solicit comments on Proposed Rule 4001 deviates from the rule-

making procedures called for by the Health & Safety Code and by the AQMD's own rules (Rule 110), in several respects. For example, it is essential that a copy of the Proposed Rule, or the text of the Proposed Rule, "be made available to the general public in connection with a request for comments" on a proposed rule in order to commence a legally-compliant rule-making process. (E,g., H & S Code §§ 40727.2, 40727(i).) The Cities have previously pointed out the inherent inconsistency of inviting public comment on Proposed Rule 4001 before the AQMD has publicly-disclosed the text of the Proposed Rule, as well as the resulting limitations on the ability of the Cities and other members of the public to provide specific input on the Proposed Rule. As a result of the failure to provide the text of the Proposed Rule, or necessary information regarding the Proposed Rule, a meaningful and legally valid rule-making procedure has not yet been commenced, and it is premature for the AQMD to demand the submission of comments on the anticipated but still undefined new "backstop" rule.

Further, it appears that the AQMD is attempting to limit comment by setting an agenda for the items on which they are seeking input, as shown on slide 8 "Soliciting Inputs/Comments" of the presentation provided during the CEQA Scoping Meeting on August 14, 2013. In addition, limiting the public process primarily to a small working group with seats set at a small table does not allow for significant input from the broader affected public, including the port tenants and operators. Input could be more meaningfully provided if the Proposed Rule was released with sufficient time for the Cities and the public to review and provide detailed comment.

The Cities are further concerned that not enough time is being included in the schedule for rule development. To date, a draft of the Proposed Rule has not been released, nor is it expected to be released for at least several weeks; however, a hearing date for the AQMD Board to consider approval of the Proposed Rule has already been identified for early December. Well in advance of any such hearing, the AQMD must provide the public with substantial information and analysis of the Proposed Rule as required by the Health & Safety Code and AQMD rules (e.g., H & S Code §§ 40727.2; Rule 110(b), (c), and (d).), as well as responses to the public comments. The AQMD also must provide the comprehensive assessment of socioeconomic impacts required by Section 40728.5.

This timeline for review and comment is unacceptably short for a rule of this magnitude. The failure to provide the draft rule language with adequate time for the public to review and submit comments to AQMD, and for those comments to be meaningfully considered by AQMD staff, is a denial of due process.

In this regard, we also have concerns about the demand that comments be submitted by September 6, 2013. There is no explanation, nor any apparent legal basis, for imposing such a deadline for public comments. It is unreasonable, particularly in light of the absence of text or details regarding the Proposed Rule, and fails to provide due process to the Cities or other members of the public who may be burdened or affected by the Proposed Rule, to demand comments by such an early cut-off. The imposition of such a premature deadline for submission

of comments appears arbitrary, and in conflict with Health & Safety Code § 40726, which states that the AQMD "shall provide for the submission of statements, arguments, or contentions, either oral or written or both," up until the time of the public hearing on the Proposed Rule. We therefore respectfully object to the imposition of a deadline for submission of comments on the Proposed Rule, and reserve all rights to comment on the Proposed Rule in the manner, and at the times, provided by state law and the AQMD rules, and to insist on compliance with the procedures and rights afforded by state law and AQMD rules.

The Cities are therefore providing these comments on a preliminary (and non-binding) basis, considering only the limited information on Proposed Rule 4001 thus far provided by the AQMD, based upon presentations by AQMD staff about the general concepts of the approach. The Cities reserve our rights, however, to make further comments after the September 6 deadline and to continue to provide input throughout the process, including submission of additional or different comments after the draft rule is made available.

First, there is an issue of need. As a rule that is contained in the proposed State Implementation Plan, Proposed Rule 4001 violates Section 39602 of the California Health and Safety Code, which states that the State Implementation Plan shall only include those provisions necessary to meet the requirements of the Clean Air Act. There is no need for Proposed Rule 4001 since the AQMP's emissions targets for port industry equipment in 2014 will be met by United States Environmental Protection Agency (EPA) and California Air Resources Board (CARB) regulations and existing Clean Ocean Vessel Voluntary Incentive Programs. Further, AQMD staff has suggested that Proposed Rule 4001 will require the Ports to develop a "Contingency Plan" immediately following rule adoption, prior to any indication that an emissions shortfall may occur. This approach is punitive, requiring the Ports to invest resources into a type of corrective action, when there is no identified need for that action, and therefore goes against the Act and is inconsistent with due process.

Second, there is an issue of legal authority and jurisdiction. The AQMD has failed to cite any legal authority for characterization of governmental entities as a stationary source, or imposing an indirect source rule on governmental entities that do not own, operate or control the sources of emissions, based merely upon the location of facilities operated by private parties within the government entities' geographic area. The Ports are not "indirect sources" and no authority has been cited to authorize the use of an indirect source rule against fellow governmental agencies that have their own jurisdiction and responsibilities by law and do not have regulatory authority to issue air regulations. The AQMD has failed to cite any legal authority for imposing an indirect source rule on Trustees for the Tidelands of California or how it could legally compel the Ports to make expenditure of Tidelands Trust revenues for the purpose of incentives or to adopt other emission reduction programs to be funded as contemplated in AQMD enforcement activity under Measure IND-01. The AQMD has failed to show any legal authority that would allow it to (1) regulate mobile sources by making another governmental entity, that is not an air regulator, its agent for enforcement of its desired mobile source emission reductions, or (2) "enforce" the

Proposed Rule, which under AQMD administrative rules would eventually mean fines and penalties, against such other governmental entity that does not control the emissions of indirect sources located within its jurisdictional boundaries. The AQMD has failed to show any constitutional or statutory basis for attempting to regulate mobile sources "indirectly" that it is preempted from regulating directly, or to purport to impose penalties or corrective action against another governmental entity for failure of private third party emissions sources to achieve emissions reductions that such other governmental entity is also preempted from regulating.

Third, while the Cities remain firm in our position that the rulemaking is unnecessary, counterproductive and beyond the AQMD's jurisdiction, if AQMD does continue to proceed, the following significant issues must be addressed.

AQMD staff appears to be proceeding with development of the proposed rule in a manner that is inconsistent with the provisions of AQMP Measure IND-01 and the discussion between the AQMD Board and the staff during the approval of AQMP Measure IND-01 at the Board Meeting of February 1, 2013. During that discussion, it was identified that the requirements under any proposed rule would only be triggered if the ports failed to meet their goals for the target year. The proposed rulemaking concepts that have been presented by AQMD staff more recently have indicated that the Ports may be required to develop corrective action plans in advance of any identified shortfall. Further, it appears AQMD staff is considering that the Ports will be required to submit emission inventories to AQMD for approval each year through 2020 and that compliance action may be triggered for any potential shortfalls that may occur during interim years, prior to the target years. These potential requirements are inappropriate and go beyond the direction from the AQMD Board.

Also, because the Cities are not regulatory agencies, have not been granted authority to regulate sources of air pollution, and have limitations on their ability to impose requirements on sources operating within their jurisdiction, AQMD must ensure that Proposed Rule 4001 does not mandate that the Cities implement strategies that are outside of their authority or ability to implement. AQMD must recognize that the Cities do not even have contractual relationships with many of the emissions sources that AQMD has attributed to the Cities' "responsibility" for emissions reductions under Proposed Rule 4001, and that even if Cities have leases with some of the operators, they are negotiated business agreements that constrain the Cities' ability to unilaterally impose new terms in response to whatever new conditions AQMD may desire.

In addition, the Boards of Harbor Commissioners of the Cities have the discretion for making business decisions related to the ports and their tenants, consistent with the Tidelands Trust and California Coastal Act. Neither AQMD staff nor its Board can override the discretion of the Harbor Commissions including decisions related to the management of the port or how port funds are spent. Therefore, AQMD cannot disapprove an Emission Reduction Plan simply because AQMD disagrees with the chosen strategies.

Moreover, approval or disapproval of any Emission Reduction Plan cannot be at the sole discretion of AQMD staff. Any plan development should be coordinated with the agencies involved in the development of the CAAP, specifically EPA, CARB and the AQMD. The partnerships established through the CAAP process, and the actions over the past seven years that have been taken by the regulatory agencies, in addition to the Ports, have been critical in the success that has been achieved. As CARB has stated[1], "[s]uccessful implementation of the CARB emission reduction plan will depend upon actions at all levels of government and partnership with the private sector. No single entity can solve this problem in isolation." Therefore, AQMD staff should not place themselves in a position to be the sole authority to approve or deny plans for emission reductions at the Ports. Any plans should be developed in partnership, with input by all agencies, and final approval on actions to be taken specifically by the Cities should be at the discretion of the Boards of Harbor Commissioners.

Slide 8 of the AQMD presentation at the August 14 Scoping Meeting identified that AQMD is seeking input on "[f]lexibility to garnish emission reductions/air quality benefits off port property". Under the Tidelands Trust, the Boards of Harbor Commissioners are limited in their ability to spend Tidelands funds outside of the Tidelands areas. The Cities cannot be mandated by an AQMD rule to mitigate emissions that are unrelated to port-operations outside of the Harbor Districts and the Tidelands areas.

AQMD has stated that the goal of the Proposed Rule is to ensure that the Cities meet their commitments outlined in the CAAP. The Cities have clearly demonstrated over the past seven years that they are committed to working with the industry and will do what they can to reduce, from port-related sources, the port sector's fair share of regional air emissions. If other non-port related sectors within the region do not achieve their share of emissions reductions, the Cities cannot be held responsible for making up for those shortfalls, regardless of whether or not those shortfalls are anticipated to result in a delay in regional attainment of the $PM_{2.5}$ Standard in 2014.

In addition, the Cities should not be held responsible for any potential emissions shortfalls from regulatory agencies not implementing emission reduction regulations as identified within the SIP, even if those regulations are related to equipment operating at the ports. If an agency makes a decision to delay a regulation schedule, or if a regulation is overturned due to a court decision that the requirements are not within their authority to implement, the Cities should not then be mandated to backfill the potential shortfall.

The last update to the CAAP took over two years to develop and cost over $1 million. The Cities should not be required by the Proposed Rule to prepare an Emission Reduction Plan when no need for such a plan has been identified (e.g. region is anticipated to reach attainment with the $PM_{2.5}$ Standard, emission reductions will be achieved by in-place regulations, no emission shortfall has been identified, etc.). Further, development of a plan should not be mandated if the

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[1] *Emission Reduction Plan for Ports and Goods Movement in California*, Executive Summary, ES-1, CARB, 2006.

reasons for any emissions shortfall are due to reasons outside of the Cities control or if no feasible strategies are available. Any plan that is required by AQMD should be streamlined and focused solely on actions that will be taken by the Ports and/or agencies to make up for any identified shortfall.

As identified in the 2012 Air Quality Management Plan, it was determined that the 2014 $PM_{2.5}$ Standard could be achieved by 2014 and no request for an extension would be needed[2]. Therefore, it is inappropriate for the AQMD to require an emission target year of 2019 in the Proposed Rule.

As stated above, these comments represent the Cities' initial concerns with the AQMD's proposed approach. Further comments will be provided as the process progresses and as more information is made available by AQMD.

We appreciate your consideration. Thank you.

Sincerely,

Heather Tomley
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

cc: Al Moro, Acting Executive Director Port of Long Beach
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Peter Greenwald, Senior Policy Advisor, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Cynthia Marvin, Division Chief, California Air Resources Board
Elizabeth Adams, Deputy Director, U.S. Environmental Protection Agency, Region 9

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[2] *2012 Air Quality Management Plan*, Executive Summary, ES-11, AQMD, 2013.

ATTACHMENT 7.

August 21, 2013

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Ms. Barbara Radlein
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Re: Notice of Preparation and Initial Study
Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports"

SCAQMD File No. 0722013BAR
SCH No. 2013071072

Comments on Notice of Preparation, Initial Study, and Scope of Proposed Environmental Assessment

Dear Ms. Radlein and Staff of the South Coast Air Quality Management District:

We appreciate this opportunity to submit comments on the Notice of Preparation ("NOP") and the accompanying Initial Study prepared in connection with the District's consideration of the proposed project entitled "Rule 4001: Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports" (the "Project") on behalf of the City of Long Beach acting by and through its Harbor Department (referred to herein as "COLB") and the City of Los Angeles acting by and through its Harbor Department ("COLA", collectively with COLB, the "Cities").

As environmental leaders nationwide, the Cities have achieved tremendous success in obtaining substantial emissions reductions from their joint San Pedro Bay Ports Clean Air Action Plan ("CAAP") and other air quality measures implemented under the Cities' initiatives. The Cities continue to be supportive of projects and programs that are intended to contribute to improvement of air quality and promote other environmental values. However, the Cities must fundamentally disagree with the District's current proposal to unnecessarily convert an effective voluntary plan, built on multi-agency and industry cooperation, into potentially punitive regulations imposed unlawfully on the Cities. The Cities have previously sought to make the District aware of the serious concerns and objections to this approach. The Cities incorporate by reference their previous comments on the 2012 Air Quality Management Plan ("AQMP")

The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

Measure IND-01 Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities ("Measure IND-01") as comments on the proposed Project. The Cities' comments on Measure IND-01 are Attachment "A" to this letter.

We are also mindful that the California Environmental Quality Act ("CEQA") calls for public review, critical evaluation, and comment on the scope of the environmental review to be conducted prior to approval of proposed projects. Such review and critique 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. Thorough identification of the proposed Project, and candid disclosure of all phases of the Project and their potential impacts, is essential to assure 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, mitigation measures, and alternatives. In addition, it will be important to consider the impacts of the proposed Project on the San Pedro Bay Ports' communities, missions, 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 NOP for this "Project" as well as questions, concerns and objections related to the omissions of critical information, unsupported assumptions, or analytical deficiencies in the Initial Study, and comments as to the scope of the proposed environmental assessment ("EA") as contemplated and invited by the District's NOP.

A. General Comments on the Initial Study

While we recognize the effort that has gone into preparation of the current Initial Study, it is apparent that the Initial Study does not provide the information, evidence, or analysis required under CEQA. The Initial Study thus fails to fulfill its critical role as mandated by CEQA in educating the public generally, other affected regulatory agencies and governments, such as the Cities, 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 initial study are described in the CEQA Guidelines (14 C.C.R. §15063, subd. (d)). An initial study must "contain in brief form:

(1) A description of the Project including the location of the Project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries . . . ;

(4) A discussion of ways to mitigate the significant effects identified, if any;

(5) An examination of whether the Project would be consistent with existing zoning, plans, and other applicable land use controls;

(6) The name of the person or persons who prepared or participated in the initial study."

An initial study that fails to provide all of the information, analysis, and evidence called for by CEQA may be deemed to be inadequate and not a valid basis for CEQA review or project approval. (See, e.g., *City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, at pp. 407–408, [invalidating the County's proposed general plan amendments because of a deficient initial study: "[T]he initial threshold study is inadequate because it fails to provide sufficient evidence or analysis of the potential environmental effects of the amendments."].)

It is therefore respectfully urged that the Initial Study (and the related NOP) be revised, corrected, and recirculated for public review and comment before the District proceeds with any further action or EA in connection with the proposed Project.

The CEQA Guidelines contemplate that an initial study is to be used in defining the scope of environmental review (Guidelines, Sections 15006(d), 15063(a), 15143). However, as a result of the omissions, open questions, and deficiencies in the Initial Study as noted below, it appears to have unduly narrowed the District's proposed scope of environmental assessment, and to have caused the NOP to erroneously exclude critical issues and topics from the proposed scope of the EA.

The comments on the current Initial Study included in this letter are organized in the same format used by the Initial Study, i.e., comments on "Chapter 1 – Project Description" followed by comments on "Chapter 2 – Environmental Checklist." The comments are limited to those matters that appear in the current version of the Initial Study, and we reserve the right to provide further comments in the event that additional or different information about the proposed Project becomes available, or the District provides a revised and CEQA-compliant Initial Study.

B. Request for Revision of NOP and Re-Circulation of Revised NOP/IS To Include a Legally-Adequate "Project" Description and Text of Proposed Rule 4001

It is essential that the NOP and the Initial Study be revised to include an adequate "project description" including the text of the proposed Rule that is the "project" before the public, or the Cities, can be expected to provide comments and input.

In their prior comment letter on the Draft 2012 AQMP Program EIR dated October 22, 2012, the Cities expressed the very same concern over the vague and deficient "project description" of backstop Measure IND-01. In the District's response to comment #5-4 in the

Final Program EIR, the District stated: "*The exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted*." The District also committed, in its response to the same comment #5-4 in the AQMP Final Program EIR, that "*further details regarding the future requirements* [a Rule implementing Control Measure IND-01] *will be determined more appropriately during the rule development process.*"

The District has already commenced the rule development process. However, it has not yet provided even a draft of the proposed Rule 4001. To the contrary, at a public meeting held on August 8, 2013, the District's staff announced that the Rule will be developed after various public meetings with a "Rule 4001 working group," with a goal of releasing a draft of the Rule on August 28, 2013. Such a deferred release date for the "draft" of the proposed Rule would be one week after the deadline for comments on this NOP. The details and text of the promised Rule must be developed and disclosed before the "particular methods" and "exact impacts" anticipated may be analyzed or the subject of comment. Accordingly, it is still not possible for the District to proceed with appropriate project-level CEQA review or to issue an accurate NOP/IS at this stage if the details of proposed Rule 4001 are under development.

It is necessary that the current NOP and Initial Study be revised to include a revised "Project" Description, to incorporate the text of the draft Rule 4001 in detail, and to recirculate the revised documents for public review. A new set of public meetings, including a new "scoping meeting" should be scheduled to provide the public with sufficient time and opportunity to comment on the scope and adequacy of the revised NOP/IS.

C. Comments on the Initial Study

1. Chapter 1 of the Initial Study -- Inadequate "Project" Description

(a) Deficient "Project" Description – In General

The failure of the Initial Study and NOP to provide an accurate, complete, and coherent description of the "Project" is a fundamental deficiency, which permeates the entire document. The absence of such a clear description of the proposed Project inherently prevents the Initial Study from facilitating meaningful review and analysis of the proposed Rule 4001, and violates the requirements of CEQA. (See, e.g., CEQA Guidelines, Section 15124; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376.)

The Initial Study does not include or even describe the text of the proposed Rule that is supposed to be the "Project." The section of the Initial Study that purports to "describe" the Project, "PR 4001," includes nothing more than summaries of "key concepts provided in the 2012 AQMP Control Measure IND- 01." Those summaries and "concepts" are insufficient to describe the Project itself, and prevent effective public review and comment. Moreover, since

the 2012 AQMP Control Measure IND- 01 has already been adopted, it is perplexing that the District would use that measure as a substitute for the Project description.

The Initial Study does not provide a description of how the proposed Rule would work. It fails to describe reasonably foreseeable activities or actions of other agencies in response to or associated with the proposed Rule. This Initial Study suggests, instead, that the intent of proposed Rule 4001 would be to delegate the District's responsibilities for regulating or reducing emissions of NOx, SOx, and PM2.5 air emissions to other agencies, specifically the public officials governing the ports of Long Beach and Los Angeles, 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 Rule 4001 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 evaluation project alternatives, etc.).

The importance of providing an accurate and informative project description in an Initial Study was re-emphasized in *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 267, emph. added:

> "**The initial study must include a description of the project.**" (*City of Redlands, supra,* 96 Cal.App.4th at pp. 405–406, fns. omitted.) "Where an agency fails to provide an accurate project description, or fails to gather information and undertake an adequate environmental analysis in its initial study, a negative declaration is inappropriate. [Citation.] An accurate and complete project description is necessary to fully evaluate the project's potential environmental effects. [Citations.]" (*El Dorado County, supra*, 122 Cal.App.4th at p. 1597.)
>
> "**The scope of the environmental review conducted for the initial study must include the entire project**." (*Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1222.) Thus, a correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA. (*Tuolumne County Citizens, supra*, at p. 1222.)

The Initial Study currently falls far short of these requirements in describing the proposed Project, and thus falls equally short of serving the "public awareness" purposes described above and mandated by CEQA:

> An accurate and complete project description is necessary for an intelligent evaluation of the potential 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, citing *Aberdeen & Rockfish RR. v. SCRAP* (1975) 422 U.S. 289, 322 [an accurate, complete and consistent project description is the sine qua non of informative, legally adequate CEQA review].) (*City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, 407–408.)

The Initial Study (p. 1-5) indicates that "the approaches and concepts considered in this NOP/IS may be subject to change" based on comments from the working group. In light of the District's initiative in forming a "working group" of interested participants to help formulate the proposed Rule, and thereby provide an actual "project description," it would be more appropriate to undertake CEQA analysis and compliance after the actual Rule is developed. Furthermore, it is premature for the District to assume or conclude that any changes received from the working group as well as comments received relative to this NOP/IS will all be within the scope of the analysis in the NOP/IS.

In brief, the NOP/IS erroneously limits the scope of the analysis and inherently calls for impermissible speculation or impossible prescience on the part of the Cities or other members of the concerned public to undertake effective analysis of the proposed Project, or to provide meaningful comments as to the scope of review of the Project, until and unless the District provides an adequate description of the "Project."

(b) Specific Comments and Questions re "Project Description" and Text

The following comments and questions refer to specific portions or pages of Chapter 1 of the Initial Study:

Pp. 1-1 - 1-2 – Introduction

The Introduction states, in the first sentence of the third paragraph on page 1-1, that Control Measure IND-01 "...does not call for additional emission reductions beyond those realized with existing regulations and emission reductions programs implemented at the Ports to date." This is an untrue statement. The CAAP is only a planning document which specifically provides for discretionary future decisions to be made regarding implementation by each of the Cities' respective Board of Harbor Commissioners, and resolution adopting the CAAP update states: "The CAAP is a living document intended to establish a process to develop solutions, not a static document binding the Ports to particular future actions….The CAAP is a planning document that identifies goals and potential implementation strategies to guide further actions, and as such does not constrain the discretion of either Board of Harbor Commissioners with

respect to any particular action."[1] Not all individual Board actions that may be required in order to achieve the CAAP's goals and activities have been adopted, many of which goals were stretch targets with uncertainty as to whether they could be achieved. Measure IND-01 and Rule 4001 propose to require the Cities to potentially adopt future actions that create potentially-conflicting authorities between the District, as regulator, and the Cities, as independent governmental agencies regulated by the District, so as to force the Cities to exercise their discretionary police power authority in a particular way. The Constitution does not permit such usurpation of the Cities' authority.

The Introduction states, in the last paragraph beginning on Page 1-1, that the emission targets for port-related sources are those assumed in the 2012 AQMP emissions inventory. The Cities raised questions during the Measure IND-01 adoption process regarding the District's calculation of these targets, which are different from the emissions targets set under the CAAP. Although the specific emission targets of the proposed Project do not appear at all in the NOP (which omission itself is a defect), the District has verbally advised the Cities and a working group on August 8, 2013, that the Rule will be such as to be triggered on set emission targets for 2014 and 2019. Those comments, however, left the Cities and working group participants with many questions about how the District set the emissions inventory, particularly for 2019, which was not in the CAAP. These examples are provided to illustrate that the NOP's description of the proposed Rule is not only flawed but missing altogether.

P. 1-3 - Project Location

The Initial Study provides no finite "project location." It describes the District's jurisdictional boundaries. It then states that "PR 4001 would apply to POLA and POLB, both of which are located within Los Angeles County." It is unclear if this was an attempt to state that the Project location would be Harbor Districts of the Cities. The lack of clarity regarding the Project location is further compounded by the Rule's reference to "sources not entering Port properties." During the August 14th Scoping Meeting, Mr. Hogo attempted to clarify this reference by referencing an undefined area outside of but near the two Harbor Districts. Unfortunately, Mr. Hogo's statement did not clarify the proposed Project's location.

Is it the intention that any portion of the Project may be implemented outside the geographic areas of the Harbor Districts of the Cities? It is unclear from this description whether the Project may have impacts or foreseeably result in actions being taken outside these Harbor Districts. This may have jurisdictional implications which cannot be evaluated without additional information.

[1] Los Angeles Resolution No. 10-7041 adopted by the Board of Harbor Commissioners of the City of Los Angeles and Long Beach Resolution No. HD 2600 adopted by the Board of Harbor Commissioners of the City of Long Beach on November 22, 2010.

Also, the Initial Study fails to disclose or analyze the possibility that if the option for the Cities to reduce emissions from sources not entering Port properties is included in proposed Rule 4001, even the vague "project location" and geographic scope of the proposed Rule in the Initial Study would not be accurate and would need to be modified in the NOP/IS.

P. 1-4 – Project Background

The Initial Study's description of the "Project Background" implies that the two Cities' ports themselves actually conduct cargo operations. For example, the text states that the COLA "serves approximately 80 shipping companies." This illustrates a fundamental lack of understanding by the District of how ports work. There are two types of business models of ports: some are "operating ports," that conduct cargo operations directly, such as the Port of Charleston, South Carolina and some are "landlord ports," such as the Ports of Los Angeles and Long Beach, that merely lease wharves and land to operators who conduct cargo operations.

The Ports of Los Angeles and Long Beach are not, "the single largest fixed source of air pollution in Southern California." The EA should clarify that the referenced sources of air emissions are the vehicles, engines, ships, trains, trucks and other cargo-moving equipment operated by distinct tenants, users, and visitors of the ports, not the Harbor Districts or the Cities.

P. 1-5 – Legal Authority for PR 4001

The Initial Study suggests that if the (unspecified) "backstop measure" that would be mandated under PR 4001 "becomes effective," then the new Rule would require the Cities to take (unspecified) action "to develop and implement plans to get back on track" regarding attainment of emissions targets. Under what legal authority does the District believe that its proposed Rule 4001 may purport to compel distinct governmental bodies (the Cities and the Boards of Harbor Commissioners) to legislate or to exercise their discretion in particular ways to achieve District objectives?

Measure IND-01 was prominently referred to as an "indirect source rule." The current general references to proposed Rule 4001 in the NOP/IS have lost all mention of an "indirect source rule." However, the references to proposed Rule 4001 do not cite to any authority the District is relying on for its processing of the proposed Rule. This should be corrected so that the public can comment on whatever legal authority may be invoked by the District.

Is it anticipated that the "plans" and strategies that would be required to be adopted by the legislative boards of the two Cities under the mandate of proposed Rule 4001 would be within SCAQMD's regulating authority and subject to the District's approval or disapproval? If so, why would SCAQMD not directly adopt such "backstop" strategies and plans itself? If not, is the Rule being proposed in order accomplish something indirectly that SCAQMD itself cannot do directly? (Cf., *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 [same].)

P. 1-5 – Call for Cities to Regulate Off-Site "Sources"

The Initial Study indicates that the District will be inviting and considering proposals, as part of this "Project," regarding potential measures for the Cities to adopt and implement to try to reduce emission from sources *not entering* onto port properties. What does this mean? What legal authority might the Cities have to try to regulate *off-site* sources that do not come within the jurisdiction of the respective Harbor Commissions? (Municipal police power authority may generally be exercised only within the territorial boundaries of their jurisdiction, and the Boards of Harbor Commissioners have special Tidelands limits on their authority.)

Would such (unidentified) measures be part of Rule 4001, or would proposed Rule 4001 require that the Cities formulate (unidentified) measures in the future to somehow regulate *off-site* "sources?"

Until such options are identified, shown to be legally authorized and technically feasible, how can the CEQA analysis for proposed Rule 4001 be undertaken?

P. 1-6 – First Bullet – Imposing "Requirements" on the Cities?

The Initial Study indicates that if proposed Rule 4001 becomes effective the Cities "would be required to submit an emissions reduction plan to address the emissions reduction shortfall."

As noted above, this raises questions as to the intent and legal authority behind the Rule. Has the District identified legal authority for a rule that would require other governmental agencies (the Boards of Harbor Commissioners for the respective Cities) to exercise their legislative discretion/authority in any particular manner? Does the District intend to reserve to itself some authority to approve or disapprove any such plans submitted by the Cities?

What is the consequence of disapproval by the District?

What environmental baseline and other parameters would be required by proposed Rule 4001 in order for the Cities to determine the extent of any "emissions shortfall" that may need to be addressed in the Cities' plans in the event they were to undertake to submit plans under the Rule?

P. 1-6 – Second Bullet -- Funding

This bullet point implies that "funding" would be necessary for many of the potential future emission reduction measures that may be compelled under proposed Rule 4001. Would such funding be provided by the District? What other "funding" sources are contemplated? Will

there be constitutional or common law "gift of public funds" restrictions on funding imposed on the Cities for activities under their CAAP if Rule 4001 makes CAAP compliance a potential state or even federal regulation?

Are the Cities expected to fund these programs from Tidelands Funds? By what authority may the Harbor Commissioners impose taxes, assessments, and charges on users of the Harbor Districts, given the restrictions of various state laws, including, among others, Proposition 26?

The vague disclaimer in the Initial Study to the effect that proposed Rule 4001 would not require any measure that lacks legal authority or feasibility raises more questions than it answers. Whatever types of "emissions reduction plans" may be anticipated by proposed Rule 4001 should identified by the District in the NOP/IS so that the feasibility and legality of such approaches can be evaluated as part of the environmental assessment for the Project.

Pp. 1-6 – 1-7 -- Technology Overview/Implementation Strategies

This refers to some emission reduction strategies included in the CAAP, but the Initial Study does not explain how these may relate to proposed Rule 4001, or whether they should be considered as part of the Project.

The suggestion in the Initial Study of possible "tariff change" or "impact fees" on the activities of users of the Harbor Districts raises other questions (e.g., legal authority, funding for studies and public review processes required before such measures could be considered or adopted, indemnification for costs of defense, etc.) requiring identification and study. Moreover, such measures may themselves be considered as "projects" subject to CEQA review and may have impacts on the activities of Harbor District users that themselves would require analysis or mitigation.

The Initial Study also includes reference to "Port funded incentives" as possible measures to reduce emissions, but also observes that there is not adequate funding for such strategies in the Cities' budgets or other grant program. The source of funding any "Port-funded" measures contemplated by proposed Rule 4001 should be clearly identified and evaluated.

Any such contemplated implementation strategies should be included in the "Project description" and better identified in a more complete NOP/IS, so that they may be evaluated along with the rest of the Project.

Pp. 1-10 – 1-11 -- Imposition of "Requirements" on the Cities

The NOP/IS states that none of the CAAP strategies would be "prescribed in PR 4001." Instead, the NOP states that if proposed Rule 4001 becomes effective, the Cities (presumably the Boards of Harbor Commissioners) -- "individually or jointly" -- would be required to identify sources that could undergo potential emission reduction to "make up for the shortfall."

Why would/should the obligation to make up for a possible shortfall in meeting emission reduction targets (which are primarily the responsibility of the District to attain) be shifted so as to fall upon two independent governmental entities? The Cities are governmental entities, and are not directly producing emissions or otherwise directly responsible for the targeted emissions or for the attainment of the emissions reduction targets. Moreover, if there were to be a "shortfall" in attaining the targets, it could well be due to factors not caused or controlled by the Cities, and not due to any actions or derelictions on the part of the Cities or their tenants or users.

Other issues: How would a "shortfall" be measured or determined? Would any such "shortfall" be allocated to sources or causes bearing some actual responsibility for the lack of attainment? How would it be "allocated" between the Cities? Would uncontrollable/unforeseeable factors resulting in all or part of a shortfall be excluded from whatever obligation may be imposed on the Cities?

Would proposed Rule 4001 take into account the statutory limits on the jurisdiction and authority of the Cities (i.e, the Boards of Harbor Commissioners) to impose restrictions on most mobile sources of emissions?

Footnote 6 (on page 1-11)

The NOP/IS mentions a possible "option" that would "allow" the Cities to reduce emissions from "non-port-related sources." This vague reference requires clarification before it may be evaluated in connection with the Project. Direct and indirect effects would need to be considered that may occur beyond the geographic boundaries of the Harbor Districts. Therefore, it is premature for the District to conclude that any changes based on the working group or public scoping comments will be within the scope of the analysis in the NOP/IS.

P. 1-11 -- Technologies

The EA should be expanded to address the legal, technological and economic feasibility of the seven bulleted items listed in this section.

P. 1-12 -- Alternatives

No alternatives have been identified for study in the NOP/IS. Instead, it merely commits the District to "discuss and compare alternatives" in the future, as part of the Draft EA.

It also suggests the District is looking to the public or other agencies to identify "alternatives" during the scoping process. As previously explained however, how can alternatives realistically be suggested when the Project itself has not been identified or described?

The No Project Alternative is not defined in the NOP/IS. In accordance with CEQA Guidelines Section 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. Therefore, the Draft EA should consider the impacts that would occur under the existing 2012 AQMP without Control Measure IND-01 or proposed Rule 4001. In particular, an analysis should be conducted of the grant funding that would be available under the No Project Alternative that would not be available if the proposed Project constitutes regulation, and the environmental impact if grant funding necessary to make certain actions economically feasible is no longer available under the proposed Project. If the District's position is that there is no loss of grant funding in order to comply with Rule 4001 as a regulation that the District purports to make enforceable under the State Implementation Plan and the Clean Air Act, the District must explain in the Rule its basis for this conclusion in the context of why grants made for compliance with a regulation is not a gift of public funds.

In light of the technical complexities of the issues and the ambiguities as to what the District is actually seeking to accomplish by way of proposed Rule 4001, it seems unreasonable to expect others to develop the project alternatives. One suggested alternative would be for the District to formulate its own "backstop" measures and strategies for addressing any shortfall in emission reduction targets, relying on the District legal authority, expertise and resources, rather than pursuing proposed Rule 4001, which appears to be an attempt to rely upon presumed authority of the Cities. Another suggested alternative would be, the memorandum of understanding approach that was suggested by the Cities and proposed by staff as an alternative to Measure IND-01.

(c) Other Comments on Chapter 1 - "Project Description"

Incomplete Description of Environmental Setting

The Initial Study also fails to provide an adequate description of "the environmental setting" of the proposed Project.

While the CEQA Guidelines do not specially define "environmental setting" with regard to an initial study, they do explain, in regard to EIR preparation, that the "environmental setting" must be informative: "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." (Guidelines, § 15125, subd. (a).) A description of the environmental setting must be sufficient to allow "an understanding of the significant effects of the proposed projects and its alternatives" but "no longer." (Guidelines, § 15125, subd. (a).) That description should place "[s]pecial emphasis" "on environmental resources that are rare or unique to that region and would be affected by the project" and "must permit the significant effects of the project to be considered in the full environmental context." (Guidelines, § 15125, subd. (c).)

Failure to Examine All Phases of the Entire Project as Proposed

"The Initial Study must include a description of the project, and 'the scope of the environmental review conducted for the initial study must include the *entire* project." (*Nelson v. County of Kern, supra*, 190 Cal.App.4th at 270, emph. in original.)

The Initial Study here improperly fails to describe "the entire Project" and fails to consider all phases of the proposed Project. The CEQA Guidelines (14 C.C.R §15063(a)(1)) make clear that an initial study must take a comprehensive view of the proposed project *as a whole*. "All phases of project planning, implementation, and operation must be considered in the initial study of the project."

The NOP/IS indicates that proposed Rule 4001 is intended to require actions by the Cities, to adopt and implement plans and strategies to address any "shortfall" in emissions reductions. The Initial Study improperly fails to address or to provide information and analysis relating to the environmental impacts of the anticipated "subsequent approvals," "discretionary permits" and amendments to the Cities' plans and regulations that appear to be proposed as parts of the Project, or the physical environmental effects of social or economic impacts that may result from those anticipated and apparently necessary changes in land use regulations." (Guidelines § 15063.) Such anticipated and intended actions by other governmental agencies thus appear to be part of this Project, and must be identified and evaluated in the Project EA, along with their potential impacts. As such, we reiterate our prior comment on the Draft 2012 AQMP Program EIR dated October 22, 2012 where it is stated that the District has failed to fully disclose the details of Measure IND-01 and as a result is segmenting or piecemealing its CEQA analysis.

Failure to Describe Existing Land Use Regulations

The Initial Study does not include an examination of whether the Project would be consistent with existing zoning, plans and other applicable land use controls, as required by CEQA Guideline Section 15063. Although the Initial Study includes some background discussion of the CAAP, it provides little or no description of the existing planning and zoning designations applicable to the "Project" location, and relies on (unsupported) assertions that the Project would be in furtherance of the CAAP. It provides no information or analysis of other existing plans or policies applicable in the Harbor Districts, which may be affected or impacted by the Project.

Uncertain and Inadequate Identification of "Baseline" Used for Review

It is critical under CEQA that any level of environmental review make it clear as to the "baseline" being used as the basis for analysis of the significance of potential Project impacts. (CEQA Guidelines Section 15125(a).) Normally, the "baseline" will be the existing environmental conditions in the vicinity of the Project. (Guideline Section 15125(a); see also,

Communities for a Better Environment v. South Coast Air Quality Management District (2010) 48 Cal.4th 310, 315 [the baseline for an agency's primary environmental analysis under CEQA must ordinarily be the *actually* existing physical conditions rather than *hypothetical* conditions that could have existed under applicable permits or regulations].) The Supreme Court has explained that the requirement for identification and use of the appropriate "baseline" applies in the context of an Initial Study as well as in an EIR. (*Communities for a Better Environment, supra*, 48 Cal.4th at 512, and n. 5.)

The Initial Study here, however, fails to make it clear as to what "baseline" is being used. In many places the Initial Study compares the anticipated "impacts" of adopting proposed Rule 4001 to the permitted emissions levels anticipated (in the future) under the 2012 AQMP, or alternatively to the (future) emission reduction targets of the CAAP -- rather than to the existing environmental conditions. While the recent Supreme Court decision in *Neighbors for Smart Rail v. Exposition Metroline Constr. Authority* (8/5/2013, No. S202828) ___ Cal.4th ___, indicates that the baseline need not always be the existing physical conditions, and that "projected future conditions" may be used in rare situations as a baseline "if their use in place of measure existing conditions ... is justified by unusual aspects of the project or the surrounding conditions" (Slip Opinion, p. 11), it does not detract from the rule that the Initial Study must accurately and consistently describe the baseline being used. Nor does it permit the use of "future conditions" in the absence of a showing of unusual circumstances. The Initial Study in this case does neither.

For each of these fundamental reasons, the NOP/IS should be rescinded in order that it may be revised, completed and corrected to meet CEQA requirements.

2. Chapter 2 of the Initial Study – The "Environmental Checklist"

(a) General Comments and Questions on the Environmental Checklist

The NOP/IS apparently relied on a standard CEQA environmental checklist to identify those "impact areas" it recognizes to be potentially affected by the Project. In several respects, however, the Initial Study appears to merely assume 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, supra*, 96 Cal.App.4th at 408-09; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296). Furthermore, it is contrary to the District's response to comment #5-4 in the Final Program EIR, which indicates that "[t]he exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted."

The NOP/IS currently indicates that the scope of the proposed EA for this "Project" will be limited to the six topics listed at p. 2-2. Compliance with CEQA, however, would require not only a new and corrected Initial Study, providing an adequate "Project description" but also a more comprehensive EA that addressed additional areas of potentially significant impact, including (without limitation): (1) Aesthetics, (2) Biological Resources, (3) Cultural Resources, (4) Land Use and Planning, (5) Noise, (6) Public Services, and (7) *broadened evaluation* of potential impacts and issues in the areas of Energy, Hazards and Hazardous Materials, Air Quality, and Transportation and Traffic.

Unless and until those areas are more fully addressed, the NOP/IS appears to improperly limit the scope of the proposed EA, and to erroneously exclude areas requiring further assessment.

(b) Specific Comments and Questions on the Environmental Checklist

As detailed below, there are numerous areas of potential environmental impact in the checklist as to which the Initial Study either omits required evidence to support its conclusions of "no potential impact" or treats with insufficient detail.

More specific questions and comments follow:

P. 2-4 -- Preliminary Discussion of Checklist

First Paragraph: We reiterate the same comment as noted on page 1-4 regarding Cities being the source of emissions. The geographic location itself does not produce emissions. It is the users of the area that produce impacts. The users of the two ports are the owners and operators of the ships, trains, trucks and equipment which the District targets as the sources of emissions.

First Paragraph, Last Sentence: The Initial Study states that "some emission reductions [assumed by the District's 2012 AQMP] may be contingent upon the Ports taking and maintaining *actions which are not required by air quality regulations*." This suggests that one of the purposes for District proposal of proposed Rule 4001 may be to establish a new regulatory "authority" over the Cities (and the communities served by and dependent upon the Harbor Departments of the Cities) that is not in fact already provided by existing federal, state, or regional air quality regulations. The policy implications of such a Project may well include significant impacts on the environment, if regulatory authority over activities, facilities, and uses of the Harbor Districts is shifted or arrogated to the District. (See, e.g., *City of Redlands, supra,* 96 Cal. App. 4th 398 [proposed new County policy re exercise of County authority over annexations and sphere of influence was not supported by adequate CEQA review].)

Second Paragraph, Last Sentence: Same comment as page 1-5.

Third Paragraph. The NOP/IS states that the checklist responses focus on "the above mentioned actions." This is extremely vague. Is the reference intended to be the items referenced in the paragraph immediately above, or in the earlier pages?

Identification of precisely what measures are being assumed or proposed in proposed Rule 4001 is essential to being able to review the Initial Study.

Aesthetics -- P. 2-5

Discussion of I a), b) and c). The Initial Study suggests that "because PR 4001 would implement IND-01" the District may simply assume that this Project would not be expected to generate significant adverse aesthetics impacts. However, given that the measures that would be used to implement IND-01 are not identified, the Initial Study does not provide evidence to demonstrate that proposed Rule 4001 has no potential for impact. To the contrary, the Initial Study admits that "PR 4001 will primarily affect operations at two ports" and but then simply assumes from the industrial and commercial zoning of the Harbor Districts that there could not be a potential for impacts on "scenic vistas" nor any potential degradation of the visual character of the areas around the Harbor Districts.

The Initial Study fails to describe the environmental setting and include any evidence or analysis to support its assumption that whatever is done to implement proposed Rule 4001 would "likely easily blend in" with the surrounding activities, especially since what would be done to implement the Rule is not yet known. Specifically, the Initial Study 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. 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 Harbor Districts and if modified, through obstruction, alteration, or demolition could have a negative aesthetic impact. Without a clearly defined project, project location, or description of the environmental setting, it is not possible to conclude that any port modifications will have little or no noticeable effect on adjacent areas and would blend in with the visual setting.

The Initial Study indicates that "Control devices may include hoods or bonnets on ship exhaust stacks to capture emissions and are expected to be as high as 80 feet (POLB, 2006)" and concludes that "these control devices would be similar to other structures used within the heavily industrialized portions of the Ports…" First, the "POLB" citation is missing in the list of references. Second, it is speculative and erroneous to assume that control devices as high as 80 feet would have "no visual impact" without knowing the location, dimensions, color scheme or critical viewpoints. No such analysis has been considered here and the impact is dismissed with no evidence to support the conclusion.

The last sentence of the first paragraph (on p. 2-6; I. d) suggests there are no residential areas "next to" the Harbor Districts, and thus the Initial Study may dispense with analysis of light and glare impacts. It is evident however that was an inaccurate assumption given the residential communities of San Pedro, Wilmington and Long Beach located adjacent to the Harbor Districts. This is also contradictory to the description of surrounding land uses and setting on page 2-1 which indicates "potentially residential."

The Initial Study further errs by dispensing with environmental analysis or evidence, simply because of the (assumed) beneficial air quality goals of proposed Rule 4001. The law is clear that environmentally "benign" objectives for a project do not excuse non-compliance with CEQA and do not justify reliance on assumptions in lieu of evidence to demonstrate the absence of potential impacts. *See, e.g., California Farm Bureau v. California Wildlife Conservation Board* (2006) 143 Cal.App.4th 173, 196, emph. added [State environmental agency violated CEQA by exempting environmentally beneficial habitat project from review]:

> "[I]t cannot be assumed that activities intended to protect or preserve the environment are immune from environmental review. [Citations.]" (*Davidon Homes, supra*, 54 Cal.App.4th 106, at p. 119; see, e.g., *Dunn-Edwards Corp. v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644 (disapproved on other grounds in *Western States Petroleum Assn. v. Superior Court, supra*, 9 Cal.4th 559, 570.) **There may be environmental costs to an environmentally beneficial project, which must be considered and assessed**.

This topic should not be dismissed. Given the nature of proposed Rule 4001, it cannot be determined that its implementation would have no impact on aesthetics. The EA therefore should include "Aesthetics" as a potentially impacted area of study.

Air Quality -- P. 2-11, Discussion

In the first paragraph (p. 2-11), last sentence, the stated assumption is speculative given there is no information about what physical changes to the environment proposed Rule 4001 will entail. There is no evidence to support the assumption in the Initial Study that proposed Rule 4001 would be identical to Measure IND -01 or have identical (previously-studied) impacts on air quality.

P. 2-11, III.a

The first paragraph, last sentence, again raises the question of why it should become the obligation of the Cities to take actions on their own to fulfill the obligations of the District for reaching emissions reductions targets? What is the legal authority for this shifting (or delegation) of the District's air quality responsibility?

In the second paragraph, the Initial Study relies on an assumption that "the Port" would be installing control equipment. Again, this erroneously confuses the Harbor Departments of the Cities with the operators of vessels, vehicles, and equipment. The Harbor Boards serve as trustees of tideland assets.

The conclusion in this section assumes that the undefined strategies and approaches suggested in conceptual description of proposed Rule 4001 will be successful. That is dependent on the feasibility of the approaches, which must be identified and assessed. Therefore, this topic should be analyzed in the EA.

P. 2-12, III.b, c, and g

Given the total lack of information regarding what proposed Rule 4001 would entail and whether it's implementation is feasible, it is premature to assess impacts in this category. These details must be provided and these topics should also be identified and assessed in the EA.

P. 2-13, III.e

There is no factual basis in the Initial Study upon which to conclude that implementation of proposed Rule 4001 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 Initial Study analysis only applies to construction odors and ignores any potential odors that may occur during long-term operations.

The NOP should be amended to make clear that at least these additional areas of potential impacts on air quality should also be identified and assessed in the EA.

Biological Resources – P. 2-14

The Initial Study fails to adequately describe, and improperly minimizes, possible impacts to biological resources, including least terns and migratory birds.

The scope of the proposed EA should be expanded to include environmental analysis of the Project's potential impacts on biological resources.

Cultural Resources – P. 2-16

The Initial Study fails to adequately describe, and improperly minimizes, possible impacts to cultural resources. Not all areas within the Harbor Districts are devoid of cultural resources or have cultural resources that have been previously disturbed, as concluded in the Initial Study on page 2-18 in section V(b), (c), and (d). There are known recorded historic and prehistoric sites throughout the Harbor Districts. For example, see COLA's website at http://www.portoflosangeles.org/idx_history.asp. Without knowing the location and extent of ground disturbance from possible construction activities associated with proposed Rule 4001, it

is speculative to assume that no significant adverse cultural resources impacts are expected from implementing proposed Rule 4001. The conclusion in the Initial Study is unsupported and lacks evidence or facts to support the findings.

The scope of the proposed EA should be expanded to include environmental analysis of the Project's potential impacts on cultural resources.

Energy – P. 2-18

The Initial Study section VI(c) must be expanded to also consider and analyze 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 required in the event of a major disaster. Also, some types of emissions control measures, facilities, or technologies contemplated by the Project could increase or shift demand for different types of energy or fuel usage. Although "risk of upset" is not considered in the Initial Study checklist, it should be cross referenced here and addressed in the Hazards section of the Initial Study.

The scope of the proposed EA should be expanded to include this additional analysis.

Hazards and Hazardous Materials – P. 2-24

The Initial Study section VIII(f) must be expanded to also consider and analyze the increased reliance on alternative fuels or electrical powered technologies that would require sufficient supply and emergency storage in the event of a major disaster. Although interference with emergency response plans was marginally addressed in this section, "risk of upset" is not considered in the Initial Study checklist.

The scope of the proposed EA should be expanded to include this additional analysis.

Land Use and Planning – P. 2-34

The Initial Study fails to adequately describe, and improperly minimizes, possible inconsistencies between the proposed Project and the existing and applicable land use plans and policies.

The Initial Study erroneously claims that "there are no provisions in PR 4001 that would affect land use plans, policies, or regulations." (P. 2-34.) The Initial Study does not support that conclusion with any substantial evidence.

First, the NOP/IS fails to identify any of "the provisions of PR 4001" so the statement cannot be supported or evaluated.

Second, and more importantly, however, the Initial Study repeatedly references "implementation strategies," "plans" and other new measures that it anticipates the Cities will be required to enact if proposed Rule 4001 becomes effective. Presumably this is because of inconsistencies between the existing plans and policies and the requirements of the new Rule. (See, e.g., pages 1-6 through 1-11.) The measures contemplated in the Initial Study include the adoption of new "regulatory requirements," new "impact fees" on the movement of cargo or sources, and changing the tariffs for use of the Harbor Districts – all of which would cause at least potential "conflicts" with applicable plans and policies. (Cf., *Orinda Ass'n v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1169 [the CEQA requirements for initial study examination of non-conformity with existing land use plans are intended to allow lead agency to modify the Project to avoid inconsistencies with existing plans – not vice versa].)

Third, the Initial Study itself acknowledges that the Project is anticipated to cause "potentially significant impacts" or conflicts with "an applicable plan ... for the performance of the circulation system" and conflicts with "an applicable congestion management plan." (Initial Study, p. 2-44.) Although the Initial Study proposes to address those admitted conflicts in the "transportation" section of the EA, these acknowledged conflicts confirm the necessity for including "land use and planning" impacts in the proposed EA as well.

Fourth, the proposed Project would seemingly create conflicts with the Cities' 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 are detailed in the previous port letters included in Attachment A to this letter. In addition, the proposed Project would create inconsistencies with the Clean Air Action Plan.

Fifth, the proposed Rule is apparently structured in a way that would impermissibly usurp the (non-delegable) police power authority of the Cities and their respective Boards of Harbor Commissioners to plan, implement, and regulate land use policies and actions in their respective jurisdictions. (This comment has also been raised above, in Project Description comments.)

The numerous inconsistencies between the Project as proposed and the existing plans and policies require identification in the Initial Study and inclusion in the proposed EA. (Guidelines § 15125(d).)

The scope of the proposed EA should be expanded to include environmental analysis of the Project's potential impacts on land use and planning.

The EA should also include analysis of the impacts of the proposed/anticipated Project-related subsequent amendments to the Cities' plans, policies, and other land use regulations. (See, e.g., *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1197 [CEQA review failed to consider incidental results from adoption of revised policy; incidental impacts could not be disregarded in an initial study based upon "net" environmental impact of the change in policy being benign since CEQA requires each environmental impact of

project be discretely evaluated].) "Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project." (Guidelines, § 15064, subd. (e); see §§ 21080, subd. (e)(2), 21082.2, subd. (c).)

The scope of the EIR should be expanded to include analysis of possible physical changes in port facilities and operations that might be caused by economic or social effects of the Project itself or by the anticipated amendments to land use and zoning policies by the Cities subsequent implementation of the Project.

Noise – P. 2-36

The NOP/IS acknowledges that approval of the Project and "triggering" of the PR 4001 could result in the construction or installation of new control equipment. The Initial Study improperly dismisses the potential noise impacts from such work as "not expected to be in excess of current operations." There is no substantial evidence in the Initial Study to justify such assumptions.

Similarly, there is no evidence cited in the Initial Study to support its further assumption that additional permanent noise impacts anticipated from the operations of new control equipment would not "substantially increase ambient operational noise levels in the area."

This section of the Initial Study is littered with mere "expectations" unsupported by any evidence regarding the magnitude of new noise impacts, even though such new impacts are anticipated by the Initial Study. Nor is there any analysis of the potential for significant adverse impacts from new noise generators related to the Project.

The NOP/IS must be revised, and the scope of the proposed EA expanded to include a detailed analysis, supported by evidence, regarding these anticipated new noise impacts, alternatives, and possible mitigation measures.

Public Services – P. 2-39

The Initial Study assumes that the Project would not generate any increased need for public services. However, the Initial Study does not provide any substantial evidence to support its assumptions regarding the "absence of impact" on additional public services or facilities.

The Initial Study should be expanded to address potential impacts that may arise from the increased "diversion" of existing "dirty" vehicles and vessels into solid waste sites if proposed Rule 4001 is triggered.

Transportation and Traffic – P. 2-44

The Initial Study fails to adequately describe and analyze potential impacts to rail and marine vessel traffic and ignores the significance criteria identified as "[w]ater borne, rail car or air traffic is substantially altered" on page 2-45. The Initial Study erroneously considers only vehicular traffic impacts to local roadways.

The NOP/IS must be revised, and the scope of the proposed EA expanded to include a detailed analysis, supported by evidence, regarding potential impacts to rail and marine vessel traffic.

Socioeconomics Analysis

The EA needs to include a broad-based analysis of the socioeconomic effects of the proposed Rule 4001, including the potential for job loss, business closures, and diversion of cargo to other ports due to the potential loss of regional competitiveness. The socioeconomic analysis needs to consider both the existence of the rule, even if not triggered, and the future enforcement of the rule. Because these conditions have the potential to physically change the environment in and around the ports, these impacts should be identified and assessed in the EA. (See CEQA Guidelines §§ 15064(e) and 15131; *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3rd 433, 445 [EIR must consider possibility of economic blight from rezoning].) Moreover, this assessment should not be limited to businesses and operations within the ports, but should extend to those facilities, businesses and operations that while located outside of the Harbor Districts are dependent upon the flow of cargo for their continued operations.

Too-Narrowly "Focused" Environmental Review

We note in closing that the Initial Study appears to reflect a preliminary decision to conduct less-than-full disclosure or environmental review of the proposed Project. Although the Initial Study concludes that "the proposed Project may have a significant effect on the environment and an Environmental Assessment will be required," it nevertheless appears that environmental review in the admittedly-required EA is proposed to be curtailed and "focused" on just the six topics listed in the current the NOP. One obvious indication of this is the miniscule list of references that were relied upon to support the Initial Study analysis; the list is limited to three sources.

It is respectfully submitted that such an approach would be too narrow and not in conformance with the requirements of CEQA, or with the District's own policies and rules for environmental analysis. While the CEQA Guidelines call for emphasis and "focus" on the significant environmental impacts of the Project, the authority to use such focus is misapplied in the Initial Study. For example, CEQA Guideline § 15143 explains that such focus may be used to limit the analysis in an EIR [or, in this case, EA] 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 NOP/IS here, by contrast, appears to exclude from consideration in the EA numerous effects that it has not shown to be "clearly insignificant and unlikely to occur."

D. Conclusion

The current version of the NOP/IS fails to adequately describe the "Project" thereby thwarting effective public review and comment on proposed Rule 4001. The Initial Study must therefore be revised, corrected, and re-circulated with all of the descriptions and other content required by CEQA.

Even this inadequate NOP/IS makes it clear that **the scope of the proposed EA has been unduly narrowed**, and that environmental review will be limited in a way that erroneously fails to provide the relevant decision-makers, affected public agencies, residents and the public generally with sufficient evidence and analysis of all anticipated and potential impacts from the Project as a whole, or of all potentially feasible mitigation measures or appropriate Project alternatives as required by CEQA.

While it is clear that an EA is called for in connection with this proposed Project, it is equally clear that the EA should be more complete than what is envisioned by the current NOP/IS. More fundamentally, its scope must be determined by a legally-adequate revised NOP/IS. The EA for the Project must, of course, be supported by credible and substantial evidence, including independent professional analysis.

We respectfully request that these comments and questions be considered before the District embarks on preparation of the EA and all of the other required independent studies in connection with the CEQA review of the proposed Project. We therefore look forward to working with the District, and any study teams or working groups tasked with evaluation of the proposed Rule 4001.

The NOP requests that we provide you with a contact person for each responding agency. For the COLB, the contact persons are as follows:

Heather Tomley
Acting Director of Environmental Planning
Port of Long Beach
925 Harbor Plaza
Long Beach, CA 90802
(562) 283-7100
e-mail: heather.tomley@polb.com

With copies to:

Dominic Holzhaus, Principal Deputy City Attorney
Long Beach City Hall
333 West Ocean Boulevard
Long Beach, California 90802
(562) 570-2212
e-mail: dominic.holzhaus@longbeach.gov

M. Katherine Jenson
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611 Anton Boulevard, St. 1400
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David P. Lanferman
Rutan & Tucker, LLP
Five Palo Alto Square
3000 El Camino Real, #3000
Palo Alto, California 94306
(650) 320-1507
e-mail: dlanferman@rutan.com

For COLA, the contact persons are as follows:

Christopher Cannon
Director of Environmental Management
Port of Los Angeles
425 South Palos Verdes Street
San Pedro, CA 90731
(310) 732-3763
e-mail: ccannon@portla.org

With a copy to:

Joy Crose, Assistant General Counsel
City of Los Angeles, Harbor Division
425 South Palos Verdes Street
San Pedro, CA 90731
(310) 732-3750
e-mail: jcrose@portla.org

We appreciate your consideration. Thank you.

Sincerely,

Heather Tomley
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachment A:

Letters dated July 10, 2012; July 27, 2012; August 30, 2012 (which includes letter dated May 4, 2010); October 22, 2012; October 31, 2012; November 8, 2012; November 19, 2012; and November 27, 2012 from Port of Los Angeles and Port of Long Beach to SCAQMD

cc: Al Moro, Acting Executive Director Port of Long Beach
Geraldine Knatz, Executive Director Port of Los Angeles
Dominic Holzhaus, Principal Deputy City Attorney City of Long Beach
Joy Crose, Assistant General Counsel City of Los Angeles, Harbor Division
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Randall Pasek, Planning and Rules Manager, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Cynthia Marvin, Division Chief, California Air Resources Board
Elizabeth Adams, Deputy Director, U.S. Environmental Protection Agency, Region 9

ATTACHMENT 8.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

November 27, 2012

Ms. Susan Nakamura
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Ports' Comments on South Coast Air Quality Management District (AQMD) Revisions to Measure IND-01 in Draft 2012 Air Quality Management Plan

Dear Ms. Nakamura:

Thank you for the AQMD's proposed revisions to Measure IND-01, "Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities" (IND-01) in the Draft 2012 Air Quality Management Plan (AQMP). We appreciate that efforts were made by AQMD staff to address the concerns that the ports of Long Beach and Los Angeles (Ports) have raised in our various comments letters on the AQMP and in our meeting on November 15, 2012 among the Ports' staff, AQMD staff and AQMD Boardmember Judy Mitchell.

However, the ports are disappointed that the fundamental structure of Measure IND-01, to treat the ports as "stationary sources" and "indirect sources," and convert the ports' voluntary Clean Air Action Plan into enforceable regulation by AQMD, was not altered in any respect. The ports do not own or operate any of the targeted equipment, and the ports are not regulatory agencies. The ports can't accept any regulatory action by the AQMD that will result in AQMD oversight and approvals of port actions, or enforcement actions by AQMD on the ports for failure of the port industry to meet the ports' emission reduction goals. Therefore the Ports continue to object to Measure IND-01's inclusion and request that it be removed from the AQMP. Measure IND-01 contains the fatal flaw of defining the ports as stationary and indirect sources responsible for the emissions from equipment they do not regulate, own, or control. We also believe that this measure is beyond AQMD's authority.

We reiterate our prior requests that AQMD reconsider its approach and allow the continuation of the successful collaborative work by the ports, regulatory agencies and other stakeholders under the voluntary Clean Air Action Plan and San Pedro Bay Standards. Moving forward with Measure IND-01 in this current draft form will actually reduce rather than improve the future success of programs, since conversion of voluntary plans into regulation will reduce voluntary

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

cooperation by the industry with port programs, and will eliminate the ability of the ports, agencies and industry emissions sources to obtain grants to accelerate emission reductions from port industry equipment.

Thank you for your continued attention to this matter and we hope that we can continue with the successful, cooperative partnership that we have built over the past seven years.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

HAT:s

cc: AQMD Boardmember Judy Mitchell
Barry Wallerstein, South Coast Air Quality Management District
Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Chris Lytle, Port of Long Beach
Robert Kanter, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Geraldine Knatz, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 9.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

November 19, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Ports' Proposed Revision and Resolution Language for the Draft 2012 Air Quality Management Plan

Dear Dr. Wallerstein:

On November 15, 2012, staff from the ports of Long Beach and Los Angeles met with AQMD Boardmember Judy Mitchell and AQMD staff to discuss concerns and comments that have been raised by the ports in previous comment letters on the Draft 2012 Air Quality Management Plan (AQMP). At the conclusion of the meeting, it was determined that staff would continue to work together to attempt to resolve the concerns that have been raised.

In that spirit, the ports of Long Beach and Los Angeles propose the following revisions to the 2012 AQMP, consistent with our past comment letters to AQMD:

1. Measure IND-01 must be removed from the 2012 Air Quality Management Plan if it continues to apply or recommend any form of AQMD oversight and approvals of the ports' actions, or enforcement (in terms of fines, penalties, administrative actions) against the Ports for failures of the Port industry to achieve designated emissions reductions. This includes the intent to develop such enforcement actions in later IND-01 rulemaking after adoption of the AQMP, even if such details regarding enforcement activity are absent from the draft AQMP.

2. With the removal of the Measure IND-01, the following language could be added to the adopting resolution for the 2012 Air Quality Management Plan:

   BE IT FURTHER RESOLVED, the District commits to continue working with the Port of Long Beach and the Port of Los Angeles on the implementation of the San Pedro Bay Ports Clean Air Action Plan (CAAP) in order to meet the emission reduction goals identified in the San Pedro Bay Standards, and as a part of the annual report to the Board, District staff will continue to provide information on the progress of the ports in implementing the CAAP.

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BE IT FURTHER RESOLVED, if the ports do not demonstrate sufficient progress for achieving the San Pedro Bay Standards, the District will work with the ports, the other air quality regulatory agencies, and port industry emission sources that are stakeholders under the CAAP, to identify additional feasible strategies for implementation within the ports' jurisdiction.

We look forward to discussing these recommendations with you.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

HAT:s

cc: AQMD Boardmember Judy Mitchell
Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Susan Nakamura, South Coast Air Quality Management District
Robert Kanter, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 10.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

November 8, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Dear Dr. Wallerstein:

SUBJECT: COMMENTS ON THE DRAFT SOCIOECONOMIC REPORT FOR THE DRAFT 2012 AIR QUALITY MANAGEMENT PLAN

The ports of Los Angeles and Long Beach (Ports) appreciate the opportunity to comment on the South Coast Air Quality Management District's (AQMD) Draft Socioeconomic Report for the Draft 2012 Air Quality Management Plan (AQMP).

The Draft Socioeconomic Report states that "District staff performs a socioeconomic analysis of the Draft Plan in order to further inform public discussions and the decision making process of the Draft Plan." However, the Draft Socioeconomic Report shows that no cost data have been developed for Measure IND-01 – Backstop Measures for Indirect Sources of Emissions from the Ports and Port-Related Sources, despite the fact that there are real and significant costs to the Port industry to implement the emission controls that could result from the proposed Backstop Measure. Presentation of this measure to AQMD's Board, as well as the public, is incomplete without an associated socioeconomic analysis. Potential regulation of the Port could have a very significant economic effect on the region that AQMD does not address, and therefore the Ports believe that it is inappropriate to move forward with inclusion of this measure in the Draft AQMP without a full socioeconomic analysis.

By not including a socioeconomic analysis of Measure IND-01, the AQMD is completely ignoring the economic importance of the Ports. The Ports are a major economic engine for the region and nation, and port-related industry generates $5.1 billion and $21.5 billion in state and federal tax revenue, respectively. The Ports account for over 1.1 million jobs in California and 3.3 million jobs in the United States. Additionally, for every one job created by a Port customer, nearly 1.7 additional jobs are created elsewhere in the region.

Even just the potential of additional regulation of the Ports brings with it a significant uncertainty for the Port industry that may result in the diversion of goods to other ports outside of this region. There are more environmental requirements on the Port industry operating in this region than anywhere else in the world. The threat of additional regulatory requirements, especially when no details have been provided as to what those requirements would be, results in significant concerns for these operators and a significant potential for loss of regional economic benefits due to diversion. The Draft Socioeconomic Report fails to analyze this potential impact.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

Additionally, AQMD has indicated that Measure IND-01 does not have a socioeconomic analysis associated with it because there are no emission reductions associated/committed with this measure. As noted in our comment letter on the Draft AQMP dated August 30, 2012, Section 39602 of the California Health and Safety Code states that, the State Implementation Plan (SIP) shall only include those provisions necessary to meet the requirements of the Clean Air Act. Hence, there is no identified need or legal basis for implementing Measure IND-01. AQMD's proposed measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

Finally, as stated in our letter dated October 31, 2012, Measure IND-01 should not move forward because the AQMP makes a commitment to implement it before AQMD has developed or released details of its intended compliance actions against the Ports, or the socioeconomic and other analyses for such actions. Failing to disclose the AQMD's intended actions against the Ports violates due process, depriving the public and the Ports of the opportunity to adequately review and comment on this measure prior to finalizing the AQMP.

For the reasons listed above and those presented in our previous letters, the Ports reiterate our consistent position that Measure IND-01 should be eliminated from the AQMP. Further, we continue to believe that the successful, collaborative approach established by the Ports and the regulatory agencies remains the best mechanism for identifying and implementing strategies to reduce emissions from Port-related sources.

Sincerely,

CHRISTOPHER CANNON
Director of Environmental Management
Port of Los Angeles

RICHARD D. CAMERON
Director of Environmental Planning
Port of Long Beach

CC:CLP:KM:LW:myd
ADP No.: 061024-605

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Robert Kanter, Port of Long Beach
Mike Christensen, City of Los Angeles Harbor Department, Deputy Executive Director
Dominic Holzhaus, City of Long Beach, Deputy City Attorney
Joy Crose, City of Los Angeles Harbor Department, General Counsel

ATTACHMENT 11.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

October 31, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Supplemental Comments on the Revised Draft 2012 Air Quality Management Plan

Dear Dr. Wallerstein:

The Port of Long Beach and Port of Los Angeles (ports) are submitting this comment letter to add to comments previously submitted on August 30, 2012.

As members of the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) Advisory Committee, the ports have worked with AQMD staff to provide comments on the draft plan, including the emissions data being used. Included in this effort, ports' staff provided the 2008 base year emissions inventories for the port sources based on the most recent methodologies agreed upon by the Technical Working Group (TWG) in the ports' 2011 air emissions inventories.

As noted in the Draft AQMP, *"An effective AQMP relies on an adequate emission inventory."* Discrepancies exist between the emissions inventories prepared by the ports and the inventory prepared by the AQMD. The emissions shown in the Draft 2012 AQMP are different from those prepared by the ports in cooperation with the AQMD, California Air Resources Board, and Environmental Protection Agency, during development of the San Pedro Bay Standards. If the AQMD's emissions projections for achieving attainment are incorrect, the concerns expressed in our August 30 comments are greatly increased. The emissions projections drive both the Measure IND-01 analysis and the PM2.5 analysis. The basis for the Draft 2012 AQMP emissions projections is impossible to determine, because the assumptions and methodologies (including control factors and growth factors) are not disclosed.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

Additionally, it concerns the ports that the AQMP has made a commitment to Measure IND-01 before AQMD has released details of its intended implementation actions against the ports, or the socioeconomic and other analyses for such actions. Elaine Chang admitted at the AQMD's October 24, 2012, meeting that it is unknown what a port compliance plan would include and that AQMD would develop it during a future rulemaking process. This violates due process, to commit to implement an AQMP measure without disclosing what AQMD's actions against the ports will be under the backstop measure, as it deprives the public and the ports of the opportunity to review and comment to influence the decision, prior to committing to it in the AQMP.

This further demonstrates that the collaborative process established by the ports and the air quality regulatory agencies remains the most appropriate forum to identify and implement strategies to reduce emissions from port-related sources.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

AT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Randall Pasek, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Robert Kanter, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 12.

October 22, 2012

Jeff Inabinet
c/o Office of Planning, Rule Development, and Area Sources/CEQA Facilities
South Coast Air Quality Management District Development and Planning Branch
21865 Copley Drive
Diamond Bar, CA 91765-4182

Subject: Draft 2012 AQMP Program Environmental Impact Report

Dear Mr. Inabinet:

The Port of Long Beach (POLB) and Port of Los Angeles (POLA) appreciate the opportunity to comment on the Draft Program Environmental Impact Report (Draft EIR) developed for the 2012 Air Quality Management Program (AQMP). The ports appreciate that AQMD staff took steps to address the scoping comments provided by the ports, specifically the inclusion of a transportation and traffic impact analysis as part of the Draft EIR.

However, the ports must reiterate their concerns relating to AQMP Control Measure IND-01 (Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources). As the AQMD knows from prior comment letters submitted by the ports (please see AQMP comment letters dated August 30, 2012; July 10, 2012; and May 4, 2010), the ports believe that Measure IND-01 exceeds the AQMD's authority and should not be included in the AQMP for the reasons set forth in the referenced letters.

Measure IND-01 also contains various flaws which contribute to the inadequacy of the Draft EIR and failure to comply with the California Environmental Quality Act (CEQA). First, Measure IND-01, as described in the project description of the Draft EIR and in the AQMP itself, is unconstitutionally vague and lacks sufficient description of exactly what it proposes to impose on the ports or substantial evidence in support. The Draft EIR's failure to describe the project fully makes it impossible for AQMD, the ports, or the public to assess its 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. Because of the importance and consequences of the AQMP to the State of California's State Implementation Plan (SIP) if adopted by California Air Resources Board (ARB), and to the Federal Clean Air Act enforcement if approved by the U.S. Environmental Protection Agency (EPA), the AQMD is required to fully disclose the details of Measure IND-01 before adoption, and CEQA requires a full disclosure and discussion, which AQMD has failed to do.

Second, to the extent the AQMD intends to approve the Draft EIR and AQMP containing the vague current version of Measure IND-01, and later, as a part of future rulemaking, provide details regarding its proposed actions against the ports including an environmental assessment, that would be segmentation or piecemealing of its CEQA analysis.

Third, Measure IND-01 has serious problems of infeasibility which the Draft EIR has failed to analyze at all. Measure IND-01 in effect attempts to convert the ports' various aspirational goals, set forth in their voluntary Clean Air Action Plan (CAAP), into enforceable regulation against the ports. However, the CAAP goals depend upon future technology advancement which has not yet occurred, all of which are beyond the control of the ports. Therefore, there are technology feasibility issues with the AQMD making the ports' goals into required emissions limits. Further, as the ports are not air regulators and they do not themselves own, operate, or control the emissions equipment operated by the port industry, there are legal feasibility questions over the ports' ability to exercise authority to carry out the actions of Measure IND-01. There are also serious legal feasibility questions including federal preemption asserted by railroads in connection with locomotive specifications and rail operations, and international preemption asserted over ocean vessels. The Draft EIR is flawed in its failure to discuss these infeasibility issues, and had it done so, it would lead to the conclusion that Measure IND-01 should be removed from the AQMP.

Fourth, the AQMD has concluded in the air quality analysis that specific measures associated with Measure IND-01 "are unknown, and therefore the impacts are speculative," (see page 4.2-7 of Draft EIR). This is yet another reason why the Draft EIR is flawed. CEQA Guidelines Section 15145 specifies that if, after thorough investigation, a Lead Agency finds that a particular impact is too speculative for evaluation the agency should note its conclusion and terminate discussion of the impact. Instead, the AQMD proceeded to analyze secondary impacts to air quality that are based on speculative assumptions regarding construction emissions, energy demand, and operations.

Lastly, to the extent that Measure IND-01 proposes to impose upon the ports a form of enforcement for port industry's failure to meet the CAAP's target emissions reduction goals, when the ports do not own, operate, or control the emissions sources, it violates constitutional limitations requiring that exactions imposed on a party must be proportional to the party's contribution, when it fails to include all parties involved in the CAAP, including the actual emissions sources.

Given these deficiencies and speculation under CEQA and with the AQMP rulemaking, Measure IND-01 should be removed from the final EIR and the AQMP, and the analysis should be revised accordingly. With this change, the ports can support the revised AQMP and can continue to work with AQMD, other agencies, and the port industry in the collaborative manner that has made the ports' voluntary CAAP a success.

Thank you for considering the above comments. If you have any questions, please contact Dylan Porter, Port of Long Beach, at (562) 283-7100 or Lisa Wunder, Port of Los Angeles, at (310) 732-7688.

Sincerely,

Richard D. Cameron
Director of Environmental Planning, Port of Long Beach

Christopher Cannon
Director of Environmental Management, Port of Los Angeles

DP:s

cc: Elaine Chang, South Coast Air Quality Management District
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 13.

August 30, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Comments on the Draft 2012 Air Quality Management Plan

Dear Dr. Wallerstein:

The Port of Long Beach and Port of Los Angeles (Ports) appreciate the opportunity to serve on the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) Advisory Committee. We support the AQMD's clean air goals and have a proven leadership record of developing and implementing appropriate and effective strategies that have resulted in the port-related goods movement industry's achievement of real and dramatic emissions reductions. Although the Ports do not own or control the emission sources, the Ports have worked cooperatively with business operators in the port area and the air quality regulatory agencies (i.e. Environmental Protection Agency, California Air Resources Board, and AQMD) to help the port industry reduce its fair share of air quality impacts to the region from port-related operations, as outlined in the San Pedro Bay Ports Clean Air Action Plan (CAAP) and the associated San Pedro Bay Standards. As a result, between 2005 and 2011 emissions from port-related sources were reduced by 73 percent for diesel particulate matter (DPM) and by 50 percent for nitrogen oxides (NOx). The Ports' San Pedro Bay Standards for 2014 established goals to reduce port-related DPM by 72 percent and NOx by 22 percent. Therefore, as a result of implementation of aggressive actions by the port industry, port-related emission reductions have exceeded our goals several years ahead of schedule.

While we remain a committed partner in the effort to improve air quality in the region, we have significant concerns with several proposed control measures in the Draft 2012 AQMP that improperly misclassify the Ports as "stationary sources" or "indirect sources" under AQMP Stationary Source measures, or as "implementing agencies" of specific AQMP mobile source measures. In particular, the proposed Stationary Source Measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources" contains many legal flaws, as explained in greater detail below, and inappropriately proposes to impose enforcement actions on the Ports for emissions generated by emissions sources that the Ports do not own,

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operate, or control, which is counterproductive to the cooperative relationship that our agencies have established since we began working together on the voluntary CAAP in 2006.

This letter provides the Ports' specific comments on the control measures in the Draft 2012 AQMP that we believe must be addressed prior to finalization and adoption by your agency.

Proposed Stationary Source Measure IND-01

There are three fundamental problems with Proposed Measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources." First, the proposed backstop rule would transform the Ports' voluntary CAAP into the AQMD's mandatory regulation of the Ports. This would jeopardize the Ports and the Port-related emissions sources' grant funding for equipment replacement and modernization if it is now necessary to comply with regulation, while offering nothing to assist the Ports with compliance in terms of additional technologies, facilitating regulations, tools, or funding. Second, although the CAAP was a voluntary cooperative effort of the Ports and the air agencies designed to encourage the industry operators of regulated equipment to go beyond regulation, the proposed backstop rule would improperly subject the Ports to the AQMD's enforcement action for industry's missed emissions reductions by equipment not operated or controlled by the Ports, or even potential loss of federal funding under federal conformity principles if the AQMP is adopted into the State Implementation Plan (SIP) and approved by the U.S. EPA as federal law. Third, the proposed backstop rule exceeds the AQMD's authority and if implemented may violate the State Tidelands Trust. If Measure IND-01 (as well as the Offroad Mobile Source Measures discussed below) are in reality the AQMD's regulation of Port-related mobile emissions sources such as locomotives, ships, rail, and trucks, then this is beyond AQMD's legal authority and AQMD should obtain a waiver under the Clean Air Act from the U.S. EPA. The Ports provide further detailed comments on Proposed Measure IND-01 below, and object to it being included in the 2012 AQMP.

Based upon the AQMD's modeling results, existing control measures are expected to result in attainment of the Federal 24-hour PM2.5 standard by the 2014 deadline without Measure IND-01. Section 39602 of the California Health and Safety Code states that the State Implementation Plan (SIP) shall only include those provisions necessary to meet the requirements of the Clean Air Act. Hence, there is no identified need or legal basis for implementing Measure IND-01. The AQMD's proposed measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

The Ports are neither "direct emissions sources" nor "stationary sources" subject to AQMD permitting, and the AQMD has not complied with requirements for regulation under Health and Safety Code. The Ports are also not "indirect sources" subject to an AQMD indirect source review program within the meaning of the Clean Air Act, and the AQMD has not complied with requirements of the Clean Air Act, 42 U.S.C. §7410 and various other requirements for indirect source classification. The Ports are also not air agency regulators. The Ports do not own, operate, regulate, or control any of the goods movement equipment serving the Ports that are

targeted emissions sources under Measure IND-01. Additionally, the equipment are mobile sources regulated by state, federal, and/or international regulation, sometimes under jurisdiction preempting Port or AQMD action. It is inappropriate for the AQMD to regulate the Ports without the Ports' ownership, operation, or jurisdiction to regulate the various industry businesses actually causing the emissions within our boundaries.

The proposed backstop measure continues to state that if there is a South Coast Air Basin-wide shortfall in emission reductions, then the AQMD will mandate additional emission reductions from the Ports, even if the port-related sources have already met their commitments. This moving target standard is unconstitutionally vague and therefore illegal. The Ports are unfairly targeted, as there are no backstop measures proposed for other entities or source categories should other modeling assumptions not come to pass, such as anticipated natural fleet turnover, or other non-regulated initiatives failing to meet their goals, such as those expected by the Carl Moyer Program. If the AQMD's emissions projections for achieving attainment are incorrect, including control factors and growth rates, this measure appears to imply that the Ports will be specifically tasked with rectifying the shortfall. If the Basin fails to achieve the federal air quality standard, the proper channel to address this is through the established SIP process, not to establish a contingency rule to unfairly burden one specific industry out of the entire Basin.

AQMD staff has indicated that Measure IND-01 is proposed to account for measures that are not backed by enforceable requirements. However, significant programs such as the CAAP's Clean Truck Program, Ocean-going Vessel Low Sulfur Fuel Program, Cargo-handling Equipment requirements, and the Shore-side Power/Alternative Maritime Power programs are currently backstopped by CARB and International Maritime Organization (IMO) regulations. The Ports also require higher rates of vessel or equipment compliance than regulation through terminal leases, when such commercial opportunities are able to be negotiated with tenants. Therefore, Proposed Measure IND-01 is unnecessary.

Measure IND-01 is vague and incomplete. It is unclear whether the AQMD has taken credit for actual/current emission reductions in the baseline only, or if assumptions have been made for future year reductions. We take issue with a measure moving forward where emissions projections are "on-going." Further, no detail is provided on the level of emission reductions that are needing to be maintained. This is further complicated by the differences that exist between the emissions inventories produced by the Ports and the inventory used for the AQMP. It is unclear if a specific emission reduction shortfall will trigger implementation of the measure, or if it is simply left to the discretion of the AQMD. Additionally, the control costs have not yet been developed or justified in a cost-benefit analysis.

The CAAP is a planning document that provides a guideline of strategies and targets that are often "stretch goals," which ultimately are implemented through individual actions adopted by the Long Beach and Los Angeles Boards of Harbor Commissioners (Boards). The Ports are sovereign Tidelands granted to the cities of Los Angeles and Long Beach by the state under the oversight of the State Lands Commission. Each city has been appointed as a trustee and has established their respective Board of Harbor Commissioners with exclusive control and management of the Tidelands and revenues and expenditures from the Tidelands. However,

such discretion must be exercised in accordance with their obligations to prudently manage Tidelands assets and revenues within a nexus and proportionality to the Tidelands Trust interests, as well as in accordance with applicable laws such as the California Environmental Quality Act (CEQA) and principles of federal preemption.[1] The AQMD cannot mandate action by each Port's Board of Harbor Commissioners, nor can the AQMD direct how the Ports obligate state Tidelands money; only the appointed trustee can make discretionary actions to obligate state Tidelands funds. Specifically, the CAAP measures listed in the Draft 2012 AQMP each require the Boards to authorize the expenditure of incentive monies and program costs, or to approve conditions of infrastructure project development in their discretion as CEQA lead agency and as Tidelands trustees.

We strongly believe that the voluntary and cooperative CAAP process established by the Ports remains the most appropriate forum for the Ports and the air regulatory agencies to discuss technical and policy issues related to reducing emissions from port-related sources. As stated above, we remain committed to achieving the clean air goals identified in the CAAP and working with port industry and the air regulatory agencies on implementation of appropriate strategies.

For your reference, attached is our comment letter dated July 10, 2012, expressing our preliminary concerns related to the proposed Measure IND-01 and a comment letter dated May 4, 2010, in which the Ports initially expressed concerns regarding backstop rules.

Proposed Off-Road Mobile Source and Advanced Control Technology Measures

The Draft 2012 AQMP also identifies the San Pedro Bay Ports as "Implementing Agencies" for several of the proposed Off-Road measures (OFFRD-02, OFFRD-04, and OFFRD-05) and Advanced Control Technology measures (ADV-01, ADV-02, ADV-03, ADV-04, and ADV-05). The Ports should not be listed as Implementing Agencies, which the AQMP Appendix IV-A defines as "the agency(ies) responsible for implementing the control measure." While the Ports have been moving forward with voluntary efforts in these areas, as mentioned above, the Ports are not air agency regulators. We also do not own or operate the equipment identified in the proposed measures, and therefore we do not have direct control over any of the sources listed. During the Advisory Committee meetings, AQMD staff has provided clarification that the Ports are listed as Implementing Agencies because of our voluntary commitments to work on these

[1] The Ports' experience with the first phase of the 2006-2010 CAAP showed that in actual implementation, many CAAP measures were carried out in a different manner than originally conceptualized, or not carried out at all, based on limitations on the Boards' opportunities and their exercise of their discretion to manage Tidelands assets and funds under real-world circumstances. Some of the CAAP measures can only be implemented if businesses apply to the Ports for permits to build or expand their lease premises and CEQA mitigation required by law or lease conditions that can be negotiated with a Port tenant. Other CAAP measures involve emissions sources (rail or ocean vessels) that may assert federal preemption against efforts to compel use of specific technology, so the CAAP goals involve the Ports offering economic incentives in voluntary compliance programs, such as the Ocean Vessel incentive programs. However, only the Boards have the legal authority to fund such incentives or impose CEQA mitigation or lease conditions to project approval, which decisions also fall within the Boards' sole discretion regarding their respective Port's properties and their individual Harbor Revenue Fund budgets, which may be affected by the global economy.

efforts, and that being listed as an implementation agency does not obligate the Ports to any specific requirement, however, this is contrary to the language of the AQMP that implementing agencies are "responsible for implementing the control measure." We believe that listing the Ports, and not including all of the other public and private partners that are also working on these efforts, gives the impression that the Ports do have an assigned obligation, or that the Ports must bear a larger burden in the effort to implement these programs. We also repeat our comment stated above that the AQMD cannot mandate in the AQMP that the Ports must expend monies in these voluntary efforts, since most of these Off-Road and Advanced Control Technology measures require incentive monies to fund demonstration projects or accelerated use of new technology.

We believe that the appropriate Implementing Agencies for these measures are the United States Environmental Protection Agency and the California Air Resources Board.

The Ports urge AQMD to make all of the above-requested changes to the draft 2012 AQMP, in particular, to eliminate Measure IND-01 Port Backstop Rule as a legally unnecessary measure exceeding AQMD's authority and violating the State Tidelands Trust. We believe it is much more effective to advance our mutual clean air goals for our agencies to continue working cooperatively together, but if the AQMD takes the above 2012 AQMP measures forward, the Ports will have no choice but to vigorously oppose such action through the administrative and legal process.

Sincerely,

Chris Lytle
Executive Director
Port of Long Beach

Geraldine Knatz
Executive Director
Port of Los Angeles

HAT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Susan Nakamura, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Port of Long Beach Harbor Commission
Port of Los Angeles Harbor Commission
Robert Kanter, Port of Long Beach
Rick Cameron, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Chris Cannon, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles
David Reich, Los Angeles City Mayor's Office

ATTACHMENT 14.

July 10, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Initial Comments on the Proposed 2012 Air Quality Management Plan, Control Measure IND-01

Dear Dr. Wallerstein:

The Port of Long Beach and Port of Los Angeles (Ports) appreciate the opportunity to participate in the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) Advisory Committee. We support the AQMD's clean air goals and have worked aggressively with the port industry to reduce our fair share of air quality impacts to the region from port-related operations, as outlined in the San Pedro Bay Ports Clean Air Action Plan (CAAP) and the associated San Pedro Bay Standards. As a result, between 2005 and 2010, emissions from port-related sources were reduced by 70 percent for diesel particulate matter and by 49 percent for nitrogen oxides. Emissions inventory work currently underway indicates additional, continued emission reductions in 2011.

While we continue to remain a committed partner in the effort to improve air quality in the region, we disagree with AQMD's proposed control strategy for port-related sources in the Draft 2012 AQMP. The inclusion of proposed measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources," is unnecessary and counter-productive.

The two Ports have a proven track record of developing and implementing appropriate and effective emission reduction strategies. These efforts have been entered into voluntarily, working cooperatively with operators in the port area and the air quality regulatory agencies (i.e. Environmental Protection Agency, California Air Resources Board and AQMD). Since the Ports initially implemented the CAAP, many of the port-related control strategies have been or will be superseded by state or international requirements, such as the rules for replacing drayage trucks, switching to cleaner marine fuels, and using shore power while at berth. The Ports' emissions inventories in 2010 show reductions that are meeting or are in excess of the emission reductions that the Ports committed to in the San Pedro Bay Standards. However, it is important to note that in order to remain on track to meet the Standards, a collaborative and concerted effort with our agency partners is essential, with the understanding that while the Ports can achieve significant emission

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

reductions, no single entity can accomplish this task. The previous State Implementation Plan identified several regulatory strategies that have not yet materialized into regulations for various reasons. Moving forward, the Ports will need agency assistance, particularly on the development and deployment of zero-emission technologies and at-berth controls for non-regulated vessels, as well as on the preferential deployment of cleaner vessels to the basin.

The Ports are sustaining and growing long-standing successful CAAP programs, such as the Vessel Speed Reduction Incentive Program and, on July 1, 2012, the Ports implemented new, groundbreaking incentive programs to encourage cleaner ocean-going vessels to call at the Ports. With programs such as these, along with the above-referenced regulatory rules becoming effective and ensuring significant additional emission reductions by 2014, there is no identified need for implementing a backstop measure. The AQMD's proposed backstop measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

It is inappropriate for the AQMD to attempt to regulate the Ports, which are the Harbor Departments of the cities of Long Beach and Los Angeles, in an attempt to control emissions from equipment within our boundaries, but which we do not own or operate. Further, the proposed backstop measure identifies that the "…requirements will be triggered if the reported emissions for 2014 for port-related sources exceed the 2014 target milestone, *or the Basin fails to meet the 24-hour PM2.5 standard as demonstrated in the 2012 AQMP and basin-wide reductions are needed, in which case a new reduction target for each pollutant will be established*." (emphasis added). While clarification has been provided by AQMD staff that any effort to make up for a basin-wide shortfall will be the responsibility of all sectors, not just the Ports, this statement still implies that if the port industry meets their targeted emission reductions, but other sectors fail to meet their fair share obligations, then the AQMD will mandate additional reductions from the Ports. This is counter to the cooperative relationship that our agencies have established since we began working together on the CAAP in 2006, and ignores the tremendous air quality benefits that have been gained from voluntary actions.

Lastly, based on the preliminary calculations by AQMD, the majority of the region is expected to be in attainment for PM2.5 by the target year of 2014, with the remainder anticipated to be in attainment by the expected extension date of 2019. The inclusion of IND-01 is therefore unnecessary for the region to reach attainment. If these emission reductions are needed in the baseline emissions calculation, there is precedent for mechanisms other than control measures to be used for this purpose, and we would like to discuss those options with your staff.

We strongly believe that the voluntary and cooperative CAAP process established by the Ports remains the most appropriate forum for the Ports and the air regulatory agencies to discuss technical and policy issues related to reducing emissions from port-related sources. As stated above, we remain committed to achieving our fair share of clean air goals identified in the CAAP and working with port industry and the air regulatory agencies on implementation of appropriate strategies.

For your reference, attached is a comment letter dated May 4, 2010, in which the Ports initially expressed concerns regarding backstop rules. The letter was submitted as a public comment on the proposed Rules 4010 and 4020, which were proposed backstop rules for health risk and criteria pollutant emissions.

We look forward to working with AQMD on resolving our concerns related to the proposed backstop measure in the Draft 2012 AQMP.

Sincerely,

CHRIS LYTLE
Executive Director
Port of Long Beach

MICHAEL R. CHRISTENSEN
Deputy Executive Director, Development
Port of Los Angeles

HAT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Susan Nakamura, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Robert Kanter, Port of Long Beach
Rick Cameron, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Chris Cannon, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 15.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

San Pedro Bay Ports Clean Air Action Plan

May 4, 2010

Susan Nakamura
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Subject: AQMD Proposed Rules 4010 and 4020

Dear Ms. Nakamura:

This letter is on behalf of the Ports of Long Beach and Los Angeles (Ports) as a preliminary response to the "backstop" Rules 4010 and 4020 (Proposed Rules) proposed by the South Coast Air Quality Management District (AQMD). As will be explained below, based upon the limited amount of information released by the AQMD about the Proposed Rules thus far, the Ports have a number of preliminary questions and concerns at this stage of the first public consultation meeting and will be providing more detailed comments on the Proposed Rules at a later stage.

The Ports have had tremendous success with implementing the San Pedro Bay Port Clean Air Action Plan (CAAP). The development of the original CAAP and the update to the CAAP has been conducted through a cooperative effort with staff from the AQMD, the United States Environmental Protection Agency (EPA), and the California Air Resources Board (CARB). The Ports strongly believe that this partnership of over four years, and the collaboration that has occurred throughout that time, have aided in the success of the CAAP and the emissions reductions that have been achieved.

Since the CAAP was adopted in late 2006, the Ports have exceeded our interim emissions reductions milestones and are well on our way to meeting the original forecasted emissions reductions of at least 45% by 2011, compared to uncontrolled conditions. This has been accomplished through the steadfast implementation of CAAP measures, highlighted as follows:

- Development, approval, and implementation of the Clean Trucks Program in which two major milestones have been achieved resulting in truck pollution reductions of nearly 80% (January 2010), almost two years ahead of schedule (HDV1).
  - October 2008: ban pre-1989 trucks.
  - January 2010: ban pre-1993 trucks; 1994-2003 trucks require Level 3 plus NO_x retrofit.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

- Facilitated construction of an LNG on-road truck fueling station in the port area. Fueling operations have been underway since early 2009. In addition the Ports have contributed to funding the construction of two additional LNG on-road truck fueling stations in the Port area, due to open later in 2010 (HDV2).
- Over $6.5 million in incentives for vessels participating in the voluntary Vessel Speed Reduction Program and Vessel Fuel Incentive Program (OGV1, OGV4).
- Design, construction, and operation of shore power infrastructure completed at 5 berths and underway for over 40 additional berths (OGV2).
- Replaced entire fleet of port switching locomotives with new, cleaner locomotives in 2008, and a subsequent fleet turnover to cleaner locomotives anticipated by end of 2011 (RL1).
- Provided funding of $5.4 million toward projects through our Technology Advancement Program, conducted with input from an Advisory Committee consisting of AQMD, EPA, and CARB.
- The Ports' 2008 Emissions Inventories show combined emission reductions of 20% diesel particulate matter (DPM), 10% nitrogen oxides (NOx) and 24% sulfur oxides (SOx) compared to the 2005 baseline. The 2009 Emissions Inventories, which are expected to be finalized and published in June, will show an even greater level of emission reductions as additional CAAP efforts have come into effect.

In addition to the implementation efforts listed above, the Ports have also worked in coordination with CARB and EPA on development of rules and regulations affecting port sources. These regulatory requirements have helped to ensure that emissions reductions from specific equipment types operating at the Ports will continue into the future. The Ports look forward to continuing these cooperative efforts on regulatory development with CARB and EPA, with the support of AQMD, to ensure that the early action measures being taken by the Ports are supported and implemented more broadly.

Further, as you are aware, the Ports recently released our draft CAAP Update, where we revisited and updated each of the control measures and proposed aggressive, long-term goals for emissions reductions and health risk reductions, titled the San Pedro Bay Standards. Once the CAAP Update is adopted, the Ports will quantitatively measure our progress against these long-term goals and will make adjustments to our implementation efforts over time as necessary to ensure that we remain on track for achieving these goals.

With these demonstrated results carried out voluntarily, and further efforts underway, the Ports regard the AQMD's proposed Rules 4010 and 4020 as unnecessary, and raise several questions regarding the Proposed Rules and the rulemaking process. Below is a list of preliminary questions to help us gain a better understanding of the AQMD's proposed approach:

Emissions and Health Risk Reduction Targets

Proposed Rule 4020 Sections (d) (1) and (2) will include targets for criteria pollutant and health risk reductions to be met by the Ports to avoid triggering the backstop provisions. The Ports have the following concerns and questions regarding the targets:

1. How were the targets developed? In June 2007, the Ports provided AQMD with detailed comments and concerns regarding the methodology and the specific port-related emission reduction targets contained in the 2007 Air Quality Management Plan (AQMP). CARB declined to adopt the port targets into the 2007 State Implementation Plan (SIP). In the AQMD Governing Board's resolution adopting the 2007 AQMP, it committed that AQMD staff would work with the Ports and, based on its technical review, would recommend any appropriate adjustments to the AQMP criteria pollutant targets attributable to the Ports. Although initial coordination efforts have occurred, the AQMD has not completed detailed analyses necessary for the Ports to understand how the AQMP targets and the targets contained in the Proposed Rules have been developed, or to understand how these targets differ from the Emission Reduction Standards contained in the Draft 2010 CAAP Update. We request that the AQMD present the methodology and resulting targets to a Stakeholder Working Group, including the Ports, before progressing further with the rulemaking process. Further, to the extent that the targets in proposed Rule 4020 go beyond the 2007 SIP/AQMP targets to address future regulations that have not yet been adopted, the Ports have even greater concerns.

2. The Emission Reduction Standards contained in the Draft 2010 CAAP Update were developed by the Ports in coordination with the EPA, CARB, and AQMD. Achievement of these Standards will require aggressive implementation of strategies by the Ports and the port operators. Further, the Standards are predicated on a conservative 2007 cargo forecast developed before the recent economic crisis and assume that the Ports reach capacity in 2023. Instead, there has been a significant downturn in cargo volumes from 2008 to present, such that the Ports do not anticipate returning to 2007 cargo throughput levels until 2014-2015, and reaching capacity until approximately 2035. This has reduced the Ports' emissions footprint, as well as potentially reduced the Ports' proportion of basin-wide pollution. Nonetheless, to be conservative and to voluntarily strive to ensure a "fair share" contribution of port-related sources to regional attainment goals, the Ports retained the higher growth forecast in the CAAP. It is important to note that, even with these higher than anticipated rates of future emissions growth, the Ports project DPM reductions greater than 70%, SOx reductions greater than 90%, and NOx reductions of nearly 60% by 2023.

3. The 2007 SIP identified several regulatory and technology strategies to be undertaken by EPA and CARB to contribute to the reduction in port-related emissions. This is consistent with the philosophy that achieving emission reductions from port-related sources must be a cooperative partnership effort, because no one entity can meet the need by itself. Since the 2007 SIP was developed, for various reasons including technical feasibility, technology availability, and cost-effectiveness, several key federal and state regulatory and technology strategies have failed to occur. These include, but are not limited to: commercial availability of Tier 4 line haul and switcher locomotive engines in 2012, implementation of a statewide regulation requiring use of shoreside power for all vessel types while at berth, and implementation of a statewide regulation requiring retrofitting of existing ocean-going vessels and the preferential deployment of progressively cleaner new build vessels to California ports. The Ports are concerned that the emission reductions associated with these proposed EPA and CARB strategies are now being fully assigned to the Ports through the proposed targets in order to make the

SIP "whole," even though the strategies may not be technically feasible and/or cost-effective. Further, as you know, the Ports do not own or operate the emissions sources targeted by this regulation and the Ports may not have implementation mechanisms available within their jurisdiction to implement the controls even if they were deemed feasible and cost-effective.

DISTRICT RULEMAKING PROCESS

The Ports have a number of initial questions geared towards gaining a better understanding of AQMD's intended rulemaking process for the Proposed Rules.

4. As suggested above, will the AQMD form a Stakeholder Working Group, including the Ports, to discuss the AQMD's Proposed Rules and analysis?

5. What is the AQMD's authority for regulating the Ports under the Proposed Rules?

6. The Ports would like to understand what level of CEQA analysis the AQMD is proposing for this rulemaking. Will there be a scoping meeting?

7. When will the AQMD release a Preliminary Draft Staff Report (PDSR)? Given the unprecedented nature and broad technical, practical, regulatory, and legal implications of these Proposed Rules, we believe that the PDSR must be very detailed or the Ports, air agencies, and other stakeholders will not have the information necessary to participate fully in the rule development process. We request that the PDSR include:
    a. Technical analysis of the Proposed Rules, targets, etc.
    b. An analysis of potential Draft Findings required under Health and Safety Code (e.g., Necessity, Authority, Clarity, Consistency, Non-Duplication, and References)
    c. Detailed information on control technologies and programs that the AQMD believes the Ports and affected sources would need to implement to meet the proposed rule reduction requirements.
    d. As part of cost-effectiveness analysis, detailed information on the feasibility, control effectiveness, and costs of these technologies and programs, including who would bear those costs. The AQMD should work with the Ports, their tenants, and others in the goods movement industry to estimate these costs.
    e. A preliminary Socioeconomic Impact Report (SIR) based on input from the Ports, their tenants, and other affected industries. Given the broad implications to the region's economy, the Ports recommend a detailed preliminary SIR be prepared and released with the PDSR.
    f. AQMD's proposal for how it will specifically apply the scheme of fines, penalties, or other enforcement provisions of the Health and Safety Code to the Ports to enforce the Proposed Rules, including providing an understanding of how the enforcement action would be assessed, given that the Ports are two separate and distinct departments of their respective cities.

The Ports look forward to receiving AQMD's responses to these preliminary questions. We will follow up with additional questions and comments later, as more information is provided by AQMD on the proposed rules.

The Ports are committed to achieving aggressive and feasible emissions reductions and health risk reductions from port-related sources, and have already proven that such reductions can be achieved while allowing the Ports to continue to move forward as a strong economic engine for the region. The Ports remain committed to implementing the CAAP and working in cooperation with the agencies and the industry to achieve our goals. We believe the Proposed Rules are unnecessary and that the AQMD should consider alternative mechanisms to achieve the AQMD's goals. We bring to your attention that the Bay Area AQMD initiated a backstop measure but ultimately determined to pursue a Memorandum of Agreement approach for similar work with the Bay Area ports.

If you have any questions regarding this correspondence, please contact Heather Tomley, Assistant Director of Environmental Planning, Port of Long Beach, at (562) 590-4160; or Christopher Patton, Environmental Affairs Officer, Port of Los Angeles, at (310) 732-3677.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Director of Environmental Management
Port of Los Angeles

cc: Dick Steinke, Executive Director, POLB
Geraldine Knatz, Executive Director, POLA
Mike Christensen, Deputy Executive Director, POLA
Robert Kanter, Managing Director, POLB
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 16.

FINAL 2012 AIR QUALITY MANAGEMENT PLAN

DECEMBER 2012

TABLE 4-2

List of District's Adoption/Implementation Dates and Estimated Emission Reductions from Short-Term PM2.5 Control Measures

NUMBER	TITLE	ADOPTION	IMPLEMENTATION PERIOD	REDUCTION (TPD)
CMB-01	Further NOx Reductions from RECLAIM [NOx] –*Phase I (Contingency)*	2013	2014	2-3 [a]
BCM-01	Further Reductions from Residential Wood Burning Devices [PM2.5]	2013	2013-2014	7.1 [b]
BCM-02	Further Reductions from Open Burning [PM2.5]	2013	2013-2014	4.6 [c]
BCM-03 (*formerly BCM-05*)	Emission Reductions from Under-Fired Charbroilers [PM2.5]	Phase I – 2013 (*Tech Assessment*) Phase II - TBD	TBD	1 [d]
BCM-04	Further Ammonia Reductions from Livestock Waste [NH3]	Phase I – 2013-2014 (*Tech Assessment*) Phase II - TBD	TBD	TBD [e]
~~IND-01 (*formerly MOB-03*)~~	~~Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources [NOx, SOx, PM2.5]~~	~~2013~~	~~12 months after trigger~~	~~N/A~~ [f]
EDU-01 (*formerly MCS-02, MCS-03*)	Further Criteria Pollutant Reductions from Education, Outreach and Incentives [All Pollutants]	Ongoing	Ongoing	N/A [f]
MCS-01 (*formerly MCS-07*)	Application of All Feasible Measures Assessment [All Pollutants]	Ongoing	Ongoing	TBD [e]

a. Emission reductions are included in the SIP as a contingency measure.
b. Winter average day reductions based on episodic conditions and 75 percent compliance rate.
c. Reductions based on episodic day conditions.
d. Will submit into SIP once technically feasible and cost effective options are confirmed.
e. TBD are reductions to be determined once the technical assessment is complete, and inventory and control approach are identified.
f. N/A are reductions that cannot be quantified due to the nature of the measure (e.g., outreach, incentive programs) or if the measure is designed to ensure reductions that have been assumed to occur will in fact occur.

requirements regarding manure removal, handling, and composting; however, the rule does not focus on fresh manure, which is one of the largest dairy sources of ammonia emissions. An assessment will be conducted to evaluate the use of sodium bisulfate (SBS) at local dairies to evaluate the technical and economic feasibility of its application, as well as potential impacts to ground water, and the health and safety of both workers and dairy stock. Reducing pH level in manure through the application of acidulant additives (acidifier), such as SBS, is one of the potential mitigations for ammonia. SBS is currently being considered for use in animal housing areas where high concentrations of fresh manure are located. Research indicates that best results occur when SBS is used on "hot spots". SBS can also be applied to manure stock piles and at fencelines, and upon scraping manure to reduce ammonia spiking from the leftover remnants of manure and urine. SBS application may be required seasonally or episodically during times when high ambient PM2.5 levels are forecast.

Multiple Component Sources

There is one short-term control measure for all feasible measures.

MCS-01: APPLICATION OF ALL FEASIBLE MEASURES ASSESSMENT: This control measure is to address the state law requirement for all feasible measures for ozone. Existing rules and regulations for pollutants such as VOC, NOx, SOx and PM reflect current best available retrofit control technology (BARCT). However, BARCT continually evolves as new technology becomes available that is feasible and cost-effective. Through this proposed control measure, the District would commit to the adoption and implementation of the new retrofit control technology standards. Finally, staff will review actions taken by other air districts for applicability in our region.

Indirect Sources

This category includes a proposed control measure carried over from the 2007 AQMP (formerly MOB-03) that establishes a backstop measure for indirect sources of emissions at ports.

~~**IND-01 BACKSTOP MEASURE FOR INDIRECT SOURCES OF EMISSIONS FROM PORTS AND PORT-RELATED SOURCES:** The goal of this measure is to ensure that NOx, SOx and PM2.5 emissions reductions from port-related sources are sufficient to attain the 24-hr federal PM2.5 ambient air quality~~

~~standard. If emission levels projected to result from the current regulatory requirements and voluntary reduction strategies specified by the Ports are not realized, the 24-hr federal PM2.5 ambient air quality standard may not be achieved. This control measure is designed to ensure that the necessary emission reductions from port-related sources projected in the 2012 AQMP milestone years are achieved or if it is later determined through a SIP amendment that additional region-wide reductions are needed due to the change in Basin-wide carrying capacity for PM2.5 attainment. In this case, the ports will be required to further reduce their emissions on a "fair-share" basis.~~

Educational Programs

There is one proposed educational program within this category.

EDU-01: FURTHER CRITERIA POLLUTANT REDUCTIONS FROM EDUCATION, OUTREACH AND INCENTIVES: This proposed control measure seeks to provide educational outreach and incentives for consumers to contribute to clean air efforts. Examples include the usage of energy efficient products, new lighting technology, "super compliant" coatings, tree planting, and the use of lighter colored roofing and paving materials which reduce energy usage by lowering the ambient temperature. In addition, this proposed measure intends to increase the effectiveness of energy conservation programs through public education and awareness as to the environmental and economic benefits of conservation. Educational and incentive tools to be used include social comparison applications (comparing your personal environmental impacts with other individuals), social media, and public/private partnerships.

PROPOSED PM2.5 CONTINGENCY MEASURES

Pursuant to CAA section 172(c)(9), contingency measures are emission reduction measures that are to be automatically triggered and implemented if an area fails to attain the national ambient air quality standard by the applicable attainment date, or fails to make reasonable further progress (RFP) toward attainment. Further detailed descriptions of contingency requirements can be found in Chapter 6 – Clean Air Act Requirements. As discussed in Chapter 6 and consistent with U.S. EPA guidance, the District is proposing to use excess air quality improvement from the proposed control strategy, as well as potential NOx reductions from CMB-01 listed above, to demonstrate compliance with this federal requirement.

The Final 2012 AQMP relies on a set of five years of particulate data centered on 2008, the base year selected for the emissions inventory development and the anchor year for the future year PM2.5 projections. In July, 2010, U.S. EPA proposed revisions to the 24-hour PM2.5 modeling attainment demonstration guidance. The new guidance suggests using five years of data, but instead of directly using quarterly calculated design values, the procedure requires the top 8 daily PM2.5 concentrations days in each quarter to reconstruct the annual 98th percentile. The logic in the analysis is twofold: by selecting the top 8 values in each quarter the 98th percentile concentration is guaranteed to be included in the calculation. Second, the analysis projects future year concentrations for each of the 32 days in a year (160 days over five years) to test the response of future year 24-hour PM2.5 to the proposed control strategy. Since the 32 days in each year include different meteorological conditions and particulate species profiles it is expected those individual days will respond independently to the projected future year emissions profile and that a new distribution of PM2.5 concentrations will result. Overall, the process is more robust in that the analysis is examining the impact of the control strategy implementation for a total of 160 days, covering a wide variety of potential meteorology and emissions combinations.

Table 5-1 provides the weighted 2008 annual and 24-hour average PM2.5 design values for the Basin.

TABLE 5-1

2008 Weighted 24-Hour PM2.5 Design Values ($\mu g/m^3$)

MONITORING SITE	24-HOURS
Anaheim	35.0
Los Angeles	40.1
Fontana	45.6
North Long Beach	34.4
South Long Beach	33.4
Mira Loma	47.9
Rubidoux	44.1

Relative Response Factors and Future Year Design Values

To bridge the gap between air quality model output evaluation and applicability to the health-based air quality standards, U.S. EPA guidance has proposed the use of relative response factors (RRF). The RRF concept was first used in the 2007 AQMP modeling attainment demonstrations. The RRF is simply a ratio of future year predicted air quality

with the control strategy fully implemented to the simulated air quality in the base year. The mechanics of the attainment demonstration are pollutant and averaging period specific. For 24-hour PM2.5, the top 10 percentile of modeled concentrations in each quarter of the simulation year are used to determine the quarterly RRFs. For the annual average PM2.5, the quarterly average RRFs are used for the future year projections. For the 8-hour average ozone simulations, the aggregated response of multiple episode days to the implementation of the control strategy is used to develop an averaged RRF for projecting a future year design value. Simply stated, the future year design value is estimated by multiplying the non-dimensional RRF by the base year design value. Thus, the simulated improvement in air quality, based on multiple meteorological episodes, is translated as a metric that directly determines compliance in the form of the standard.

The modeling analyses described in this chapter use the RRF and design value approach to demonstrate future year attainment of the standards.

PM2.5 Modeling

Within the Basin, PM2.5 particles are either directly emitted into the atmosphere (primary particles), or are formed through atmospheric chemical reactions from precursor gases (secondary particles). Primary PM2.5 includes road dust, diesel soot, combustion products, and other sources of fine particles. Secondary products, such as sulfates, nitrates, and complex carbon compounds are formed from reactions with oxides of sulfur, oxides of nitrogen, VOCs, and ammonia.

The Final 2012 AQMP employs the CMAQ air quality modeling platform with SAPRC99 chemistry and WRF meteorology as the primary tool used to demonstrate future year attainment of the 24-hour average PM2.5 standard. A detailed discussion of the features of the CMAQ approach is presented in Appendix V. The analysis was also conducted using the CAMx modeling platform using the "one atmosphere" approach comprised of the SAPRC99 gas phased chemistry and a static two-mode particle size aerosol module as the particulate modeling platform. Parallel testing was conducted to evaluate the CMAQ performance against CAMx and the results indicated that the two model/chemistry packages had similar performance. The CAMx results are provided in Appendix V as a component of the weight of evidence discussion.

The Final 2012 modeling attainment demonstrations using the CMAQ (and CAMx) platform were conducted in a vastly expanded modeling domain compared with the analysis conducted for the 2007 AQMP modeling attainment demonstration. In this analysis, the PM2.5 and ozone base and future simulations were modeled simultaneously. The simulations were conducted using a Lambert Conformal grid

projection where the western boundary of the domain was extended to 084 UTM, over 100 miles west of the ports of Los Angeles and Long Beach. The eastern boundary extended beyond the Colorado river while the northern and southern boundaries of the domain extend to the San Joaquin Valley and the Northern portions of Mexico (3543 UTM). The grid size has been reduced from 5 kilometers squared to 4 kilometers squared and the vertical resolution has been increased from 11 to 18 layers.

The final WRF meteorological fields were generated for the identical domain, layer structure and grid size. The WRF simulations were initialized from National Centers for Environmental Prediction (NCEP) analyses and run for 3-day increments with the option for four dimensional data assimilation (FDDA). Horizontal and vertical boundary conditions were designated using a "U.S. EPA clean boundary profile."

PM2.5 data measured as individual species at six-sites in the AQMD air monitoring network during 2008 provided the characterization for evaluation and validation of the CMAQ annual and episodic modeling. The six sites include the historical PM2.5 maximum location (Riverside- Rubidoux), the stations experiencing many of the highest county concentrations (among the 4-county jurisdiction including Fontana, North Long Beach and Anaheim) and source oriented key monitoring sites addressing goods movement (South Long Beach) and mobile source impacts (Central Los Angeles). It is important to note that the close proximity of Mira Loma to Rubidoux and the common in-Basin air flow and transport patterns enable the use of the Rubidoux speciated data as representative of the particulate speciation at Mira Loma. Both sites are directly downwind of the dairy production areas in Chino and the warehouse distribution centers located in the northwestern corner of Riverside County. Speciated data monitored at the selected sites for 2006-2007 and 2009-2010 were analyzed to corroborate the applicability of using the 2008 profiles.

Day-specific point source emissions were extracted from the District stationary source and RECLAIM inventories. Mobile source emissions included weekday, Saturday and Sunday profiles based on CARB's EMFAC2011 emissions model, CALTRANS weigh-in-motion profiles, and vehicle population data and transportation analysis zone (TAZ) data provided by SCAG. The mobile source data and selected area source data were subjected to daily temperature corrections to account for enhanced evaporative emissions on warmer days. Gridded daily biogenic VOC emissions were provided by CARB using BEIGIS biogenic emissions model. The simulations benefited from enhancements made to the emissions inventory including an updated ammonia inventory, improved emissions characterization that split organic compounds into coarse, fine and primary

particulate categories, and updated spatial allocation of primary paved road dust emissions.

Model performance was evaluated against speciated particulate PM2.5 air quality data for ammonium, nitrates, sulfates, secondary organic matter, elemental carbon, primary and total particulate mass for the six monitoring sites (Rubidoux, Central Los Angeles, Anaheim, South Long Beach, Long Beach, and Fontana).

The following section summarizes the PM2.5 modeling approach conducted in preparation for this Plan. Details of the PM2.5 modeling are presented in Appendix V.

24-Hour PM2.5 Modeling Approach

CMAQ simulations were conducted for each day in 2008. The simulations included 8784 consecutive hours from which daily 24-hour average PM2.5 concentrations (0000-2300 hours) were calculated. A set of RRFs were generated for each future year simulation. RRFs were generated for the ammonium ion (NH_4), nitrate ion (NO_3), sulfate ion (SO_4), organic carbon (OC), elemental carbon (EC) and a combined grouping of crustal, sea salts and metals (Others). A total of 24 RRFs were generated for each future year simulation (4 seasons and 6 monitoring sites).

Future year concentrations of the six component species were calculated by applying the model generated quarterly RRFs to the speciated 24-hour PM2.5 (FRM) data, sorted by quarter, for each of the five years used in the design value calculation. The 32 days in each year were then re-ranked to establish a new 98^{th} percentile concentration. The resulting future year 98^{th} percentile concentrations for the five years were subjected to weighted averaging for the attainment demonstration.

In this chapter, future year PM2.5 24-hour average design values are presented for 2014, and 2019 to (1) demonstrate the future baseline concentrations if no further controls are implemented; (2) identify the amount of air quality improvement needed to advance the attainment date to 2014; and (3) confirm the attainment demonstration given the proposed PM2.5 control strategy. In addition, Appendix V will include a discussion and demonstration that attainment will be satisfied for the entire modeling domain.

Weight of Evidence

PM2.5 modeling guidance strongly recommends the use of corroborating evidence to support the future year attainment demonstration. The weight of evidence demonstration for the Final 2012 AQMP includes brief discussions of the observed 24-hour PM2.5,

emissions trends, and future year PM2.5 predictions. Detailed discussions of all model results and the weight of evidence demonstration are provided in Appendix V.

FUTURE AIR QUALITY

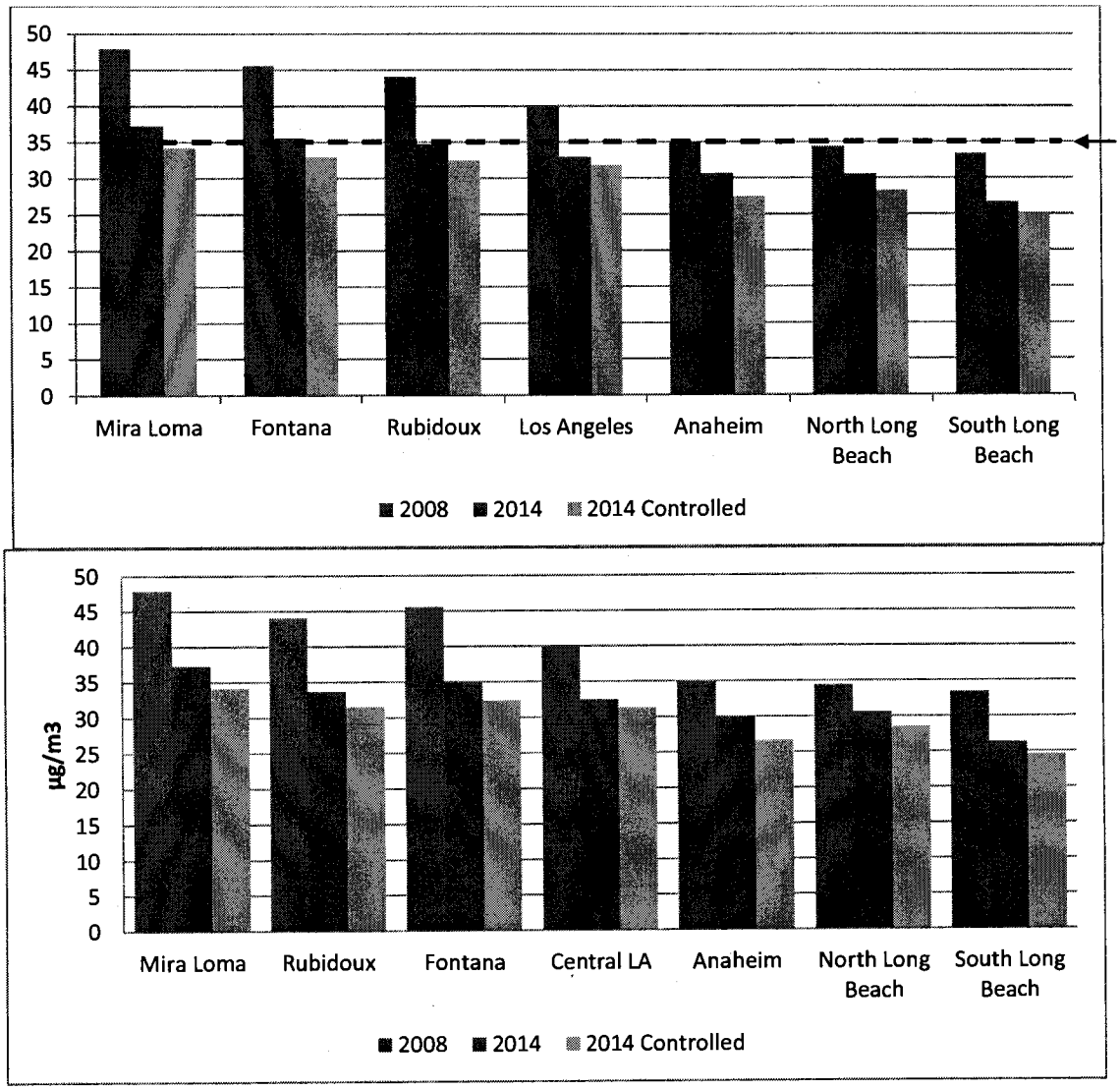
Under the federal Clean Air Act, the Basin must comply with the federal PM2.5 air quality standards by December, 2014 [Section 172(a)(2)(A)]. An extension of up-to five years (until 2019) could be granted if attainment cannot be demonstrated any earlier with all feasible control measures incorporated.

24-Hour PM2.5

A simulation of 2014 baseline emissions was conducted to substantiate the severity of the 24-hour PM2.5 problem in the Basin. The simulation used the projected emissions for 2014 which included all adopted control measures that will be implemented prior to and during 2014, including mobile source incentive projects under contract (Proposition 1B and Carl Moyer Programs). The resulting 2014 future-year Basin design value ($37.3\mu g/m^3$) failed to meet the federal standard. As a consequence additional controls are needed.

Simulation of the 2019 baseline emissions indicates that the Basin PM2.5 will attain the federal 24-hour PM2.5 standard in 2019 without additional controls. With the control program in place, the 24-hour PM2.5 simulations project that the 2014 design value will be 34.3 $\mu g/m^3$ and that the attainment date will advance from 2019 to 2014.

Figure 5-3 depicts future 24-hour PM2.5 air quality projections at the Basin design site (Mira Loma) and six PM2.5 monitoring sites having comprehensive particulate species characterization. Shown in the figure, are the base year design values for 2008 along with projections for 2014 with and without control measures in place. All of the sites with the exception of Mira Loma will meet the 24-hour PM2.5 standard by 2014 without additional controls. With implementation of the control measures, all sites in the Basin demonstrate attainment.



**No such state standard.*

FIGURE 5-3

Maximum 24-Hour Average PM2.5 Design Concentrations:
2008 Baseline, 2014 and 2014 Controlled

Spatial Projections of PM2.5 Design Values

Figure 5-4 provides a perspective of the Basin-wide spatial extent of 24-hour PM2.5 impacts in the base year 2008, with all adopted rules and measures implemented. Figures 5-5 and 5-6 provide a Basin-wide perspective of the spatial extent of 24-hour PM2.5 future impacts for baseline 2014 emissions and 2014 with the proposed control program in place. With no additional controls, several areas around the northwestern portion of Riverside and southwestern portion of San Bernardino Counties depict grid

cells with weighted PM2.5 24-hour design values exceeding 35 $\mu g/m^3$. By 2014, the number of grid cells with concentrations exceeding the federal standard is restricted to a small region surrounding the Mira Loma monitoring station in northwestern Riverside County. With the control program fully implemented in 2014, the Basin does not exhibit any grid cells exceeding the federal standard.

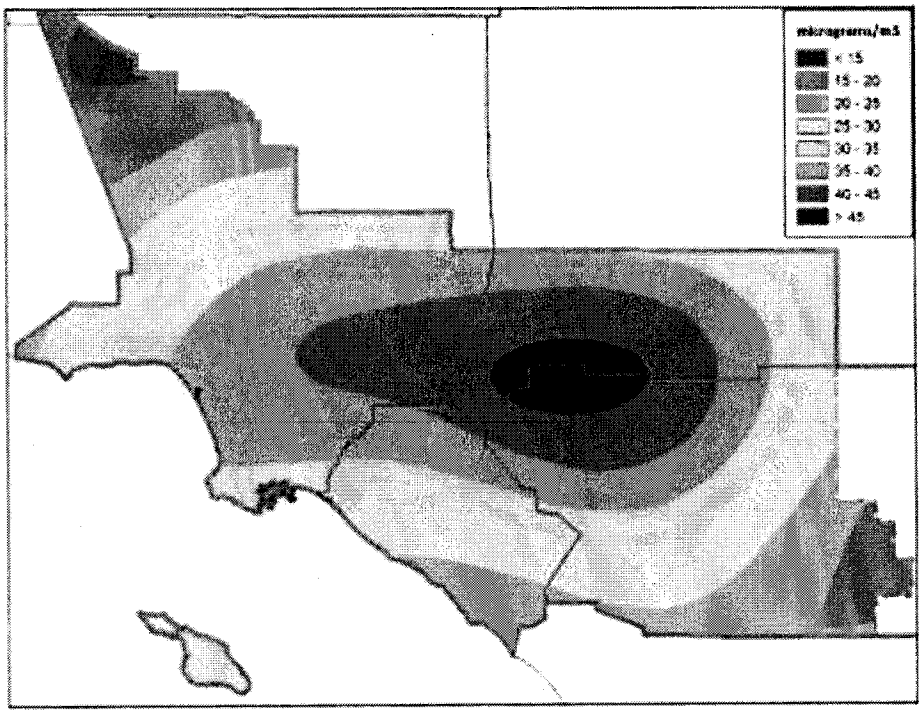


FIGURE 5-4

2008 Baseline 24-Hour PM2.5 Design Concentrations ($\mu g/m^3$)

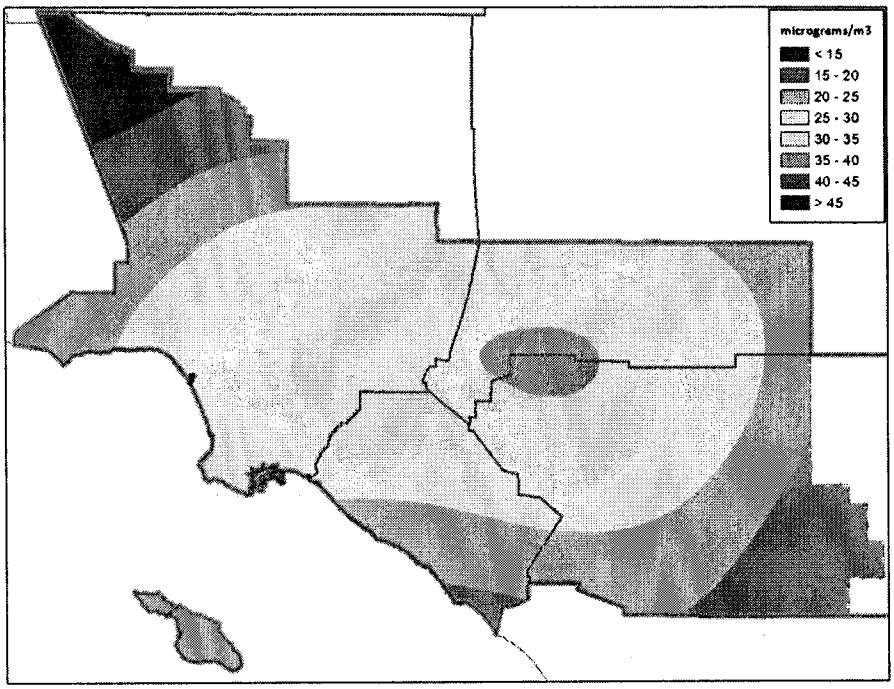


FIGURE 5-5

2014 Baseline 24-Hour PM2.5 Design Concentrations ($\mu g/m^3$)

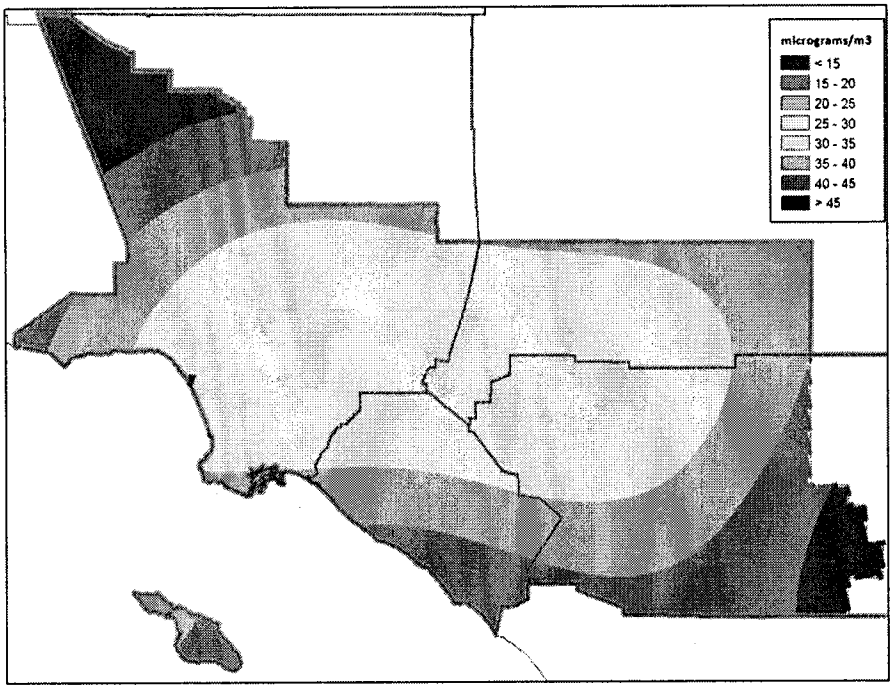


FIGURE 5-6

2014 Controlled 24-Hour PM2.5 Design Concentrations ($\mu g/m^3$)

Weight of Evidence Discussion

The weight of evidence discussion focuses on the trends of 24-hour PM2.5 and key precursor emissions to provide justification and confidence that the Basin will meet the federal standard by 2014.

Figure 5-7 depicts the long term trend of observed Basin 24-hour average PM2.5 design values with the CMAQ projected design value for 2014. Also superimposed on the graph is the linear best-fit trend line for the observed 24-hour average PM2.5 design values. The observed trend depicts a steady 49 percent decrease in observed design value concentrations between 2001 and 2011. The rate of improvement is just under 4 $\mu g/m^3$ per year. If the trend is extended beyond 2011, the projection suggests attainment of the PM2.5 24-hour standard in 2013, one year earlier than determined by the attainment demonstration. While the straight-line future year approximation is aggressive in its projection, it offers insight to the effectiveness of the ongoing control program and is consistent with the attainment demonstration.

Figures 5-8 depicts the long term trend of Basin NOx emissions for the same period. Figure 5-9 provides the corresponding emissions trend for directly emitted PM2.5. Base year NOx inventories between 2002 (from the 2007 AQMP) and 2008 experienced a 31 percent reduction while directly emitted PM2.5 experienced a 19 percent reduction over the 6-year period. The Basin 24-hour average PM2.5 design value experienced a concurrent 27 percent reduction between 2002 and 2008. The projected trend of NOx emissions indicates that the PM2.5 precursor associated with the formation of nitrate will continue to be reduced though 2019 by an additional 48 percent. Similarly, the projected trend of directly emitted PM2.5 projects a more moderate reduction of 13 percent through 2019. However, as discussed in the 2007 AQMP and in a later section of this chapter, directly emitted PM2.5 is a more effective contributor to the formation of ambient PM2.5 compared to NOx. While the projected NOx and direct PM2.5 emissions trends decrease at a reduced rate between 2012 and 2019, it is clearly evident that the overall significant reductions will continue to result in lower nitrate, elemental carbon and direct particulate contributions to 24-hour PM2.5 design values.

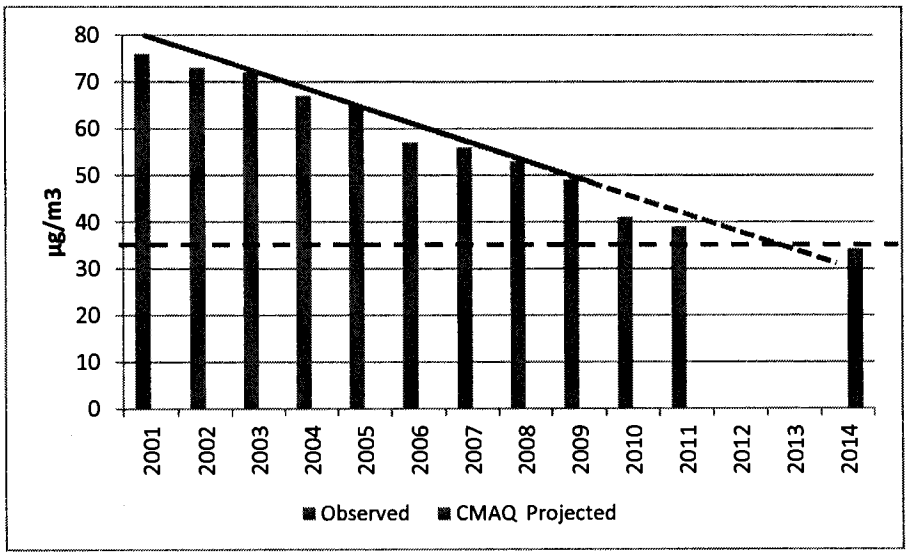


FIGURE 5-7

Basin Observed and CMAQ Projected
Future Year PM2.5 Design Concentrations ($\mu g/m^3$)

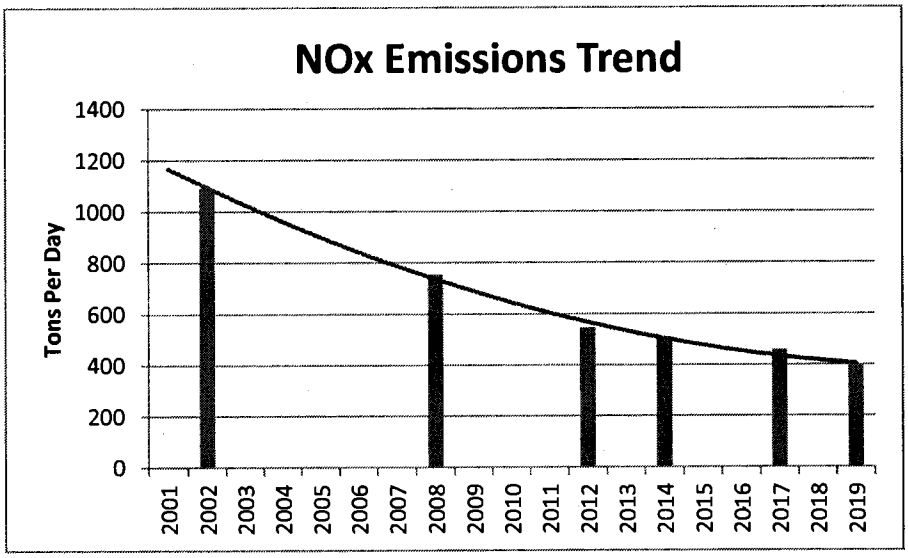


FIGURE 5-8

Trend of Basin NOx Emissions (Controlled)

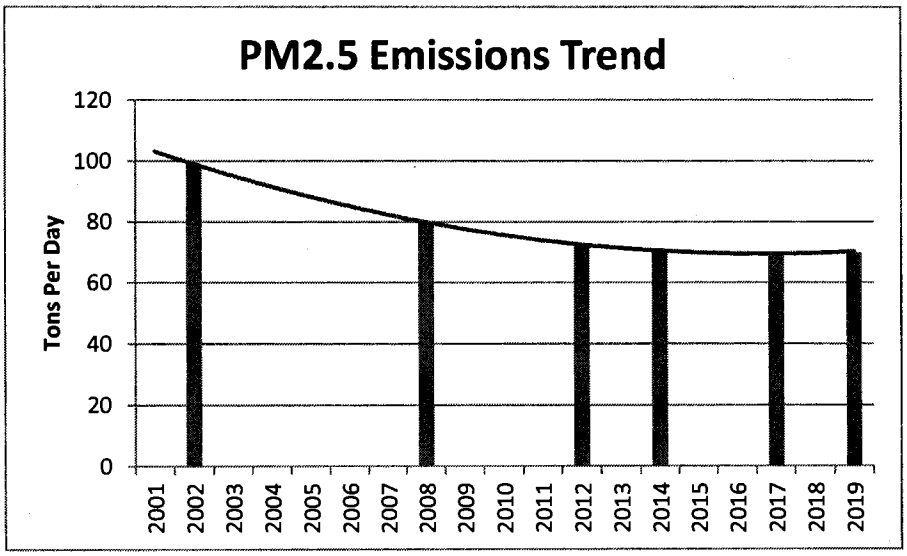


FIGURE 5-9

Trend of Basin PM2.5 Emissions (Controlled)

Control Strategy Choices

PM2.5 has five major precursors that contribute to the development of the ambient aerosol including ammonia, NOx, SOx, VOC, and directly emitted PM2.5. Various combinations of reductions in these pollutants could all provide a path to clean air. The 24-hour PM2.5 attainment strategy presented in this Final 2012 AQMP relies on a dual approach to first demonstrate attainment of the federal standard by 2019 and then focuses on controls that will be most effective in reducing PM2.5 to accelerate attainment to the earliest extent. The 2007 AQMP control measures since implemented will result in substantial reductions of SOx, direct PM2.5, VOC and NOx emissions. Newly proposed short-term measures, discussed in Chapter 4, will provide additional regional emissions reductions targeting directly emitted PM2.5 and NOx.

It is useful to weigh the value of the precursor emissions reductions (on a per ton basis) to microgram per cubic meter improvements in ambient PM2.5 levels. As presented in the weight of evidence discussion, trends of PM2.5 and NOx emissions suggest a direct response between lower emissions and improving air quality. The Final 2007 AQMP established a set of factors to relate regional per ton precursor emissions reductions to PM2.5 air quality improvements based on the annual average concentration. The Final 2012 AQMP CMAQ simulations provided a similar set of factors, but this time directed at 24-hour PM2.5. The analysis determined that VOC emissions reductions have the lowest return in terms of micrograms reduced per ton reduction, one third of the benefit of NOx reductions. SOx emissions were about eight times more effective than NOx

reductions. However, directly emitted PM2.5 reductions were approximately 15 times more effective than NOx reductions. It is important to note that the contribution of ammonia emissions is embedded as a component of the SOx and NOx factors since ammonium nitrate and ammonium sulfate are the resultant particulates formed in the ambient chemical process. Table 5-2 summarizes the relative importance of precursor emissions reductions to 24-hour PM2.5 air quality improvements based on the analysis. . (A comprehensive discussion of the emission reduction factors is presented in Attachment 8 of Appendix V of this document). Emission reductions due to existing programs and implementation of the 2012 AQMP control measures will result in projected 24-hour PM2.5 concentrations throughout the Basin that meet the standard by 2014 at all locations. Basin-wide curtailment of wood burning and open burning when the PM2.5 air quality is projected to exceed 30 $\mu g/m^3$ in Mira Loma will effectively accelerate attainment at Mira Loma from 2019 to 2014. Table 5-3 lists the mix of the four primary precursor's emissions reductions targeted for the staged control measure implementation approach.

TABLE 5-2

Relative Contributions of Precursor Emissions Reductions to Simulated Controlled Future-Year 24-hour PM2.5 Concentrations

PRECURSOR	PM2.5 COMPONENT ($\mu g/m^3$)	STANDARDIZED CONTRIBUTION TO AMBIENT PM2.5 MASS
VOC	Organic Carbon	Factor of 0.3
NOx	Nitrate	Factor of 1
SOx	Sulfate	Factor of 7.8
PM2.5	Elemental Carbon & Others	Factor of 14.8

TABLE 5-3

Final 2012 AQMP
24-hour PM2.5 Attainment Strategy
Allowable Emissions (TPD)

YEAR	SCENARIO	VOC	NOx	SOx	PM2.5
2014	Baseline	451	506	18	70
2014	Controlled	451	490	18	58*

*Winter episodic day emissions

ADDITIONAL MODELING ANALYSES

As a component of the Final 2012 AQMP, concurrent simulations were also conducted to update and assess the impacts to annual average PM2.5 and 8-hour ozone given the new modeling platform and emissions inventory. This update provides a confirmation that the control strategy will continue to move air quality expeditiously towards attainment of the relevant standards.

Annual PM2.5

Annual PM2.5 Modeling Approach

The Final 2012 AQMP annual PM2.5 modeling employs the same approach to estimating the future year annual PM2.5 as was described in the 2007 AQMP attainment demonstrations. Future year PM2.5 annual average air quality is determined using site

and species specific quarterly averaged RRFs applied to the weighted quarterly average 2008 PM2.5 design values per U.S. EPA guidance documents.

In this application, CMAQ and WRF were used to simulate 2008 meteorological and air quality to determine Basin annual average PM2.5 concentrations. The future year attainment demonstration was analyzed for 2015, the target set by the federal CAA. The 2014 simulation relies on implementation of all adopted rules and measures through 2014. This enables a full year-long demonstration based on a control strategy that would be fully implemented by January 1, 2015. It is important to note that the use of the quarterly design values for a 5-year period centered around 2008 (listed in Table 5-4) continue to be used in the projection of the future year annual average PM2.5 concentrations. The future year design reflects the weighted quarterly average concentration calculated from the projections over five years (20 quarters).

TABLE 5-4

2008 Weighted Annual PM2.5 Design Values* ($\mu g/m^3$)

MONITORING SITE	ANNUAL*
Anaheim	13.1
Los Angeles	15.4
Fontana	15.7
North Long Beach	13.6
South Long Beach	13.2
Mira Loma	18.6
Rubidoux	16.7

* Calculated based on quarterly observed data between 2006 – 2010

Future Annual PM2.5 Air Quality

The projections for the annual state and federal standards are shown in Figure 5-10. All areas will be in attainment of the federal annual standard (15.0 $\mu g/m^3$) by 2014. The 2014 design value is projected to be 9 percent below the federal standard. However, as shown in Figure 5-10, the Final 2012 AQMP does not achieve the California standard of 12 $\mu g/m^3$ by 2014. Additional controls would be needed to meet the California annual PM2.5 standard.

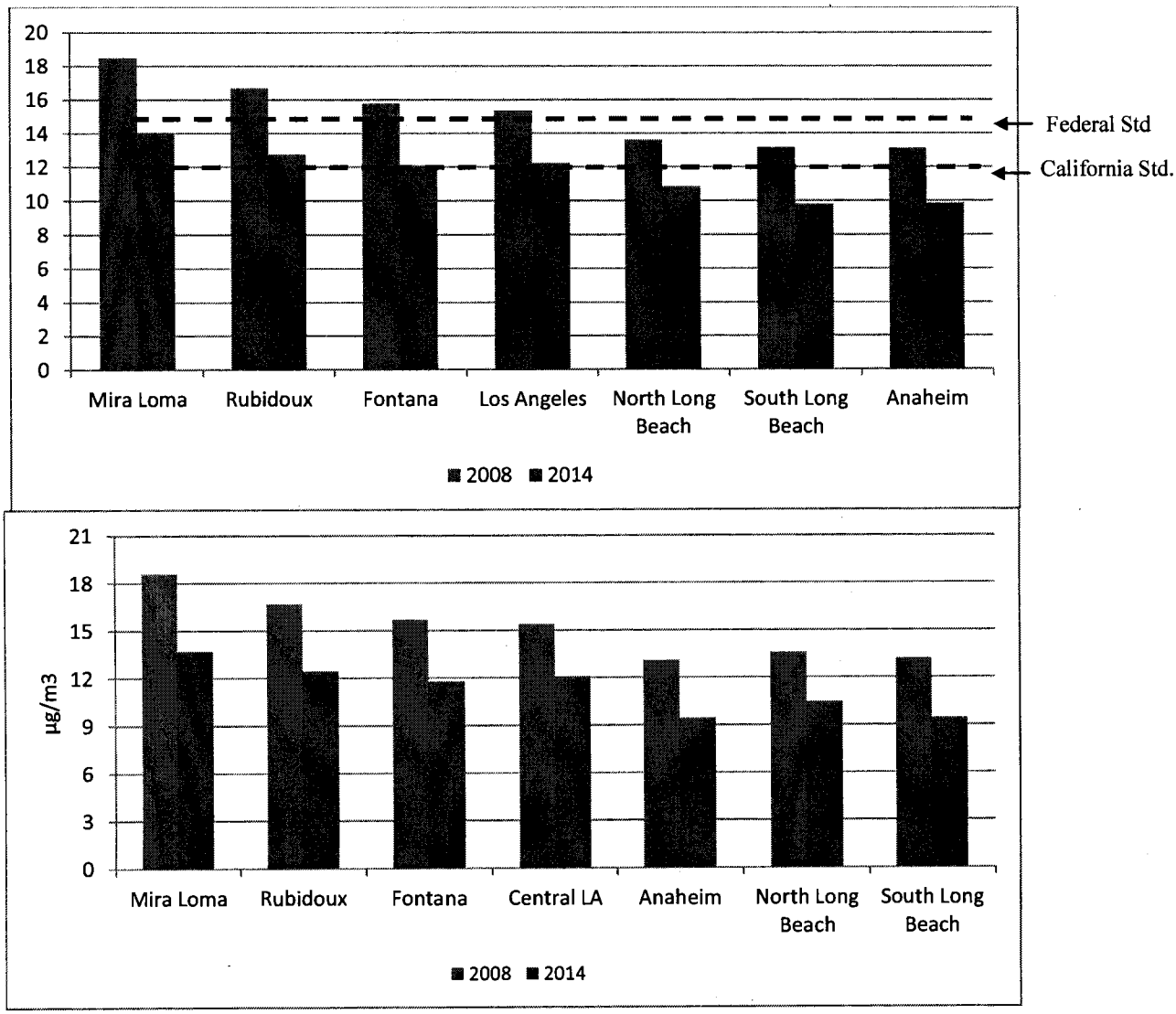


FIGURE 5-10

Annual Average PM2.5 Design Concentrations:
2008 and 2014 Controlled

Ozone Modeling

The 2007 AQMP provided a comprehensive 8-hour ozone analysis that demonstrated future year attainment of the 1997 federal ozone standard (80 ppb) by 2023 with implementation of short-term measures and CAA Section 182(e)(5) long term emissions reductions. The analysis concluded that NOx emissions needed to be reduced approximately 76 percent and VOC 22 percent from the 2023 baseline in order to demonstrate attainment. The 2023 base year VOC and NOx summer planning emissions inventories included 536 and 506 TPD, respectively.

INTRODUCTION

The purpose of the 2012 revision to the AQMP for the South Coast Air Basin is to set forth a comprehensive program that will assist in leading the Basin and those portions of the Salton Sea Air Basin under the District's jurisdiction into compliance with all federal and state air quality planning requirements. Specifically, the Final 2012 AQMP is designed to satisfy the SIP submittal requirements of the federal CAA to demonstrate attainment of the 24-hour PM2.5 ambient air quality standards, the California CAA triennial update requirements, and the District's commitment to update transportation emission budgets based on the latest approved motor vehicle emissions model and planning assumptions. Specific information related to the air quality and planning requirements for portions of the Salton Sea Air Basin under the District's jurisdiction are included in the Final 2012 AQMP and can be found in Chapter 7 – Current and Future Air Quality – Desert Nonattainment Area. The 2012 AQMP will be submitted to U.S. EPA as SIP revisions once approved by the District's Governing Board and CARB.

SPECIFIC 24-HOUR PM2.5 PLANNING REQUIREMENTS

In November 1990, Congress enacted a series of amendments to the CAA intended to intensify air pollution control efforts across the nation. One of the primary goals of the 1990 CAA Amendments was to overhaul the planning provisions for those areas not currently meeting the NAAQS. The CAA identifies specific emission reduction goals, requires both a demonstration of reasonable further progress and an attainment demonstration, and incorporates more stringent sanctions for failure to attain or to meet interim milestones. There are several sets of general planning requirements, both for nonattainment areas [Section 172(c)] and for implementation plans in general [Section 110(a)(2)]. These requirements are listed and briefly described in Chapter 1 (Tables 1-4 and 1-5). The general provisions apply to all applicable criteria pollutants unless superseded by pollutant-specific requirements. The following sections discuss the federal CAA requirements for the 24-hour PM2.5 standards.

FEDERAL AIR QUALITY STANDARDS FOR FINE PARTICULATES

The U.S. EPA promulgated the National Ambient Air Quality Standards for Fine Particles (PM2.5) in July 1997. Following legal actions, the statements were eventually upheld in March 2002. The annual standard was set at a level of 15 micrograms per cubic meter ($\mu g/m^3$), based on the 3-year average of annual mean PM2.5 concentrations. The 24-hour standard was set at a level of 65 $\mu g/m^3$ based on the 3-year average of the

98th percentile of 24-hour concentrations. U.S. EPA issued designations in December 2004, which became effective on April 5, 2005.

In January 2006, U.S. EPA proposed to lower the 24-hour PM2.5 standard. On September 21, 2006, U.S. EPA signed the "Final Revisions to the NAAQS for Particulate Matter." In promulgating the new standards, U.S. EPA followed an elaborate review process which led to the conclusion that existing standards for particulates were not adequate to protect public health. The studies indicated that for PM2.5, short-term exposures at levels below the 24-hour standard of 65 $\mu g/m^3$ were found to cause acute health effects, including asthma attacks and breathing and respiratory problems. As a result, the U.S. EPA established a new, lower 24-hour average standard for PM2.5 at 35 $\mu g/m^3$. No changes were made to the existing annual PM2.5 standard which remained at 15 $\mu g/m^3$ as discussed in Chapter 2. On June 14, 2012, U.S. EPA proposed revisions to this annual standard. The annual component of the standard was set to provide protection against typical day-to-day exposures as well as longer-term exposures, while the daily standard protects against more extreme short-term events. For the 2006 24-hour PM2.5 standard, the form of the standard continues to be based on the 98th percentile of 24-hour PM2.5 concentrations measured in a year (averaged over three years) at the monitoring site with the highest measured values in an area. This form of the standard was set to be health protective while providing a more stable metric to facilitate effective control programs. Table 6-1 summarizes the U.S. EPA's PM2.5 standards.

TABLE 6-1

U.S. EPA's PM2.5 Standards

	1997 STANDARDS		2006 STANDARDS	
	Annual	**24-Hour**	**Annual**	**24-Hour**
PM2.5	15 $\mu g/m^3$ Annual arithmetic mean, averaged over 3 years	65 $\mu g/m^3$ 24-hour average, 98th percentile, averaged over 3 years	15 $\mu g/m^3$ Annual arithmetic mean, averaged over 3 years	35 $\mu g/m^3$ 24-hour average, 98th percentile, averaged over 3 years

On December 14, 2009, the U.S. EPA designated the Basin as nonattainment for the 2006 24-hour PM2.5 NAAQS. A SIP revision is due to U.S. EPA no later than three years from the effective date of designation, December 14, 2012, demonstrating attainment with the standard by 2014. Under Section 172 of the CAA, U.S. EPA may grant an area an extension of the initial attainment date for a period of up to five years.

With implementation of all feasible measures as outlined in this Plan, the Basin will demonstrate attainment with the 24-hour PM2.5 standard by 2014, so no extension is being requested.

FEDERAL CLEAN AIR ACT REQUIREMENTS

For areas such as the Basin that are classified nonattainment for the 2006 24-hour PM2.5 NAAQS, Section 172 of subpart 1 of the CAA applies. Section 172(c) requires states with nonattainment areas to submit an attainment demonstration. Section 172(c)(2) requires that nonattainment areas demonstrate Reasonable Further Progress (RFP). Under subpart I of the CAA, all nonattainment area SIPs must include contingency measures. Section 172(c)(1) of the CAA requires nonattainment areas to provide for implementation of all reasonably available control measures (RACM) as expeditiously as possible, including the adoption of reasonably available control technology (RACT). Section 172 of the CAA requires the implementation of a new source review program including the use of "lowest achievable emission rate" for major sources referred to under state law as "Best Available Control Technology" (BACT) for major sources of PM2.5 and precursor emissions (i.e., precursors of secondary particulates).

This section describes how the Final 2012 AQMP meets the 2006 24-hour PM2.5 planning requirements for the Basin. The requirements specifically addressed for the Basin are:

1. Attainment demonstration and modeling [Section 172(a)(2)(A)];
2. Reasonable further progress [Section 172(c)(2)];
3. Reasonably available control technology (RACT) and Reasonably available control measures (RACM) [Section 172(c)(1)] ;
4. New source review (NSR) [Sections 172(c)(4) and (5)];
5. Contingency measures [Section 172(c)(9)]; and
6. Transportation control measures (as RACM).

Attainment Demonstration and Modeling

Under the CAA Section 172(a)(2)(A), each attainment plan should demonstrate that the area will attain the NAAQS "as expeditiously as practicable," but no later than five years from the effective date of the designation of the area. If attainment within five years is considered impracticable due to the severity of an area's air quality problem and the lack

of available control measures, the state may propose an attainment date of more than five years but not more than ten years from designation.

This attainment demonstration consists of: (1) technical analyses that locate, identify, and quantify sources of emissions that contribute to violations of the PM2.5 standard; (2) analysis of future year emission reductions and air quality improvement resulting from adopted and proposed control measures; (3) proposed emission reduction measures with schedules for implementation; and (4) analysis supporting the region's proposed attainment date by performing a detailed modeling analysis. Chapter 3 and Appendix III of the Final 2012 AQMP present base year and future year emissions inventories in the Basin, while Chapter 4 and Appendix IV provide descriptions of the proposed control measures, the resulting emissions reductions, and schedules for implementation of each measure. The detailed modeling analysis and attainment demonstration are summarized in Chapter 5 and documented in Appendix V.

Reasonable Further Progress (RFP)

The CAA requires SIPs for most nonattainment areas to demonstrate reasonable further progress (RFP) towards attainment through emission reductions phased in from the time of the SIP submission until the attainment date time frame. The RFP requirements in the CAA are intended to ensure that there are sufficient PM2.5 and precursor emission reductions in each nonattainment area to attain the 2006 24-hour PM2.5 NAAQS by December 14, 2014.

Per CAA Section 171(1), RFP is defined as "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." As stated in subsequent federal regulation, the goal of the RFP requirements is for areas to achieve generally linear progress toward attainment. To determine RFP for the 2006 24-hour PM2.5 attainment date, the plan should rely only on emission reductions achieved from sources within the nonattainment area.

Section 172(c)(2) of the CAA requires that nonattainment area plans show ongoing annual incremental emissions reductions toward attainment, which is commonly expressed in terms of benchmark emissions levels or air quality targets to be achieved by certain interim milestone years. The U.S. EPA recommends that the RFP inventories include direct PM2.5, and also PM precursors (such as SOx, NOx, and VOCs) that have been determined to be significant.

40 CFR 51.1009 requires any area that submits an approvable demonstration for an attainment date of more than five years from the effective date of designation to also submit an RFP plan. The Final 2012 AQMP demonstrates attainment with the 24-hour PM2.5 standard in 2014, which is five years from the 2009 designation date. Therefore, no separate RFP plan is required.

Reasonably Available Control Measures (RACM) and Reasonably Available Control Technology (RACT) Requirements

Section 172(c)(1) of the CAA requires nonattainment areas to

> *Provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.*

The District staff has completed its RACM analysis as presented in Appendix VI of the Final 2012 AQMP.

The U.S. EPA provided further guidance on the RACM in the preamble and the final "Clean Air Fine Particle Implementation Rule" to implement the 1997 PM2.5 NAAQS which were published in the Federal Register on November 1, 2005 and April 25, 2007, respectively.[1, 2] The U.S. EPA's long-standing interpretation of the RACM provision stated in the 1997 PM2.5 Implementation Rule is that the non-attainment air districts should consider all candidate measures that are available and technologically and economically feasible to implement within the non-attainment areas, including any measures that have been suggested; however, the districts are not obligated to adopt all measures, but should demonstrate that there are no additional reasonable measures available that would advance the attainment date by at least one year or contribute to reasonable further progress (RFP) for the area.

With regard to the identification of emission reduction programs, the U.S. EPA recommends that non-attainment air districts first identify the emission reduction programs that have already been implemented at the federal level and by other states and local air districts. Next, the U.S. EPA recommends that the air districts examine additional RACM/RACTs adopted for other non-attainment areas to attain the ambient air quality standards as expeditiously as practicable. The U.S. EPA also recommends the

[1] See 70FR 65984 (November 1, 2005)
[2] See 72FR 20586 (April 25, 2007)

air districts evaluate potential measures for sources of direct PM2.5, SOx and NOx first. VOC and ammonia are only considered if the area determines that they significantly contribute to the PM2.5 concentration in the non-attainment area (otherwise they are pressured not to significantly contribute). The PM2.5 Implementation Rule also requires that the air districts establish RACM/RACT emission standards that take into consideration the condensable fraction of direct PM2.5 emissions after January 1, 2011. In addition, the U.S. EPA recognizes that each non-attainment area has its own profile of emitting sources, and thus neither requires specific RACM/RACT to be implemented in every non-attainment area, nor includes a specific source size threshold for the RACM/RACT analysis.

A RACM/RACT demonstration must be provided within the SIP. For areas projected to attain within five years of designation, a limited RACM/RACT analysis including the review of available reasonable measures, the estimation of potential emission reductions, and the evaluation of the time needed to implement these measures is sufficient. The areas that cannot reach attainment within five years must conduct a thorough RACM/RACT analysis to demonstrate that sufficient control measures could not be adopted and implemented cumulatively in a practical manner in order to reach attainment at least one year earlier.

In regard to economic feasibility, the U.S. EPA did not propose a fixed dollar per ton cost threshold and recommended that air districts to include health benefits in the cost analysis. As indicated in the preamble of the 1997 PM2.5 Implementation Rule:

> *In regard to economic feasibility, U.S. EPA is not proposing a fixed dollar per ton cost threshold for RACM, just as it is not doing so for RACT...Where the severity of the non-attainment problem makes reductions more imperative or where essential reductions are more difficult to achieve, the acceptable cost of achieving those reductions could increase. In addition, we believe that in determining what are economically feasible emission reduction levels, the States should also consider the collective health benefits that can be realized in the area due to projected improvements.*

Subsequently, on March 2, 2012, the U.S. EPA issued a memorandum to confirm that the overall framework and policy approach stated in the PM2.5 Implementation Rule for the 1997 PM2.5 standards continues to be relevant and appropriate for addressing the 2006 24-hour PM2.5 standards.

As described in Appendix VI, the District has concluded that all District rules fulfilled RACT for the 2006 24-hour PM2.5 standard. In addition, pursuant to California Health

and Safety Code Section 39614 (SB 656), the District evaluated a statewide list of feasible and cost-effective control measures to reduce directly emitted PM2.5 and its potential precursor emissions (e.g., NOx, SOx, VOCs, and ammonia). The District has concluded that for the majority of stationary and area source categories, the District was identified as having the most stringent rules in California (see Appendix VI). Under the RACM guidelines, transportation control measures must be included in the analysis. Consequently, SCAG has completed a RACM determination for transportation control measures in the Final 2012 AQMP, included in Appendix IV-C.

New Source Review

New source review (NSR) for major and in some cases minor sources of PM2.5 and its precursors are presently addressed through the District's NSR and RECLAIM programs (Regulations XIII and XX). In particular, Rule 1325 has been adopted to satisfy NSR requirements for major sources of directly-emitted PM2.5.

Contingency Measures

Contingency Measure Requirements

Section 172(c)(9) of the CAA requires that SIPs include contingency measures.

> *Such plan shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or the Administrator.*

In subsequent NAAQS implementation regulations and SIP approvals/disapprovals published in the Federal Register, U.S. EPA has repeatedly reaffirmed that SIP contingency measures:

1. Must be fully adopted rules or control measures that are ready to be implemented, without significant additional action (or only minimal action) by the State, as expeditiously as practicable upon a determination by U.S. EPA that the area has failed to achieve, or maintain reasonable further progress, or attain the NAAQS by the applicable statutory attainment date (40 CFR § 51.1012, 73 FR 29184)

2. Must be measures not relied on in the plan to demonstrate RFP or attainment for the time period in which they serve as contingency measures and should provide SIP-creditable emissions reductions equivalent to one year of RFP, based on "generally

linear" progress towards achieving the overall level of reductions needed to demonstrate attainment (76 FR 69947, 73 FR 29184)

3. Should contain trigger mechanisms and specify a schedule for their implementation (72 FR 20642)

Furthermore, U.S. EPA has issued guidance that the contingency measure requirement could be satisfied with already adopted control measures, provided that the controls are above and beyond what is needed to demonstrate attainment with the NAAQS (76 FR 57891).

> *U.S. EPA guidance provides that contingency measures may be implemented early, i.e., prior to the milestone or attainment date. Consistent with this policy, States are allowed to use excess reductions from already adopted measures to meet the CAA sections 172(c)(9) and 182(c)(9)contingency measures requirement. This is because the purpose of contingency measures is to provide extra reductions that are not relied on for RFP or attainment, and that will provide a cushion while the plan is being revised to fully address the failure to meet the required milestone. Nothing in the CAA precludes a State from implementing such measures before they are triggered.*

Thus, an already adopted control measure with an implementation date prior to the milestone year or attainment year would obviate the need for an automatic trigger mechanism.

Air Quality Improvement Scenario

The U.S. EPA Guidance Memo issued March 2, 2012, "Implementation Guidance for the 2006 24-Hour Fine Particle (PM2.5) National Ambient Air Quality Standard (NAAQS)", provides the following discussion of contingency measures:

> *The preamble of the 2007 PM2.5 Implementation Rule (see 79 FR 20642-20645) notes that contingency measures "should provide for emission reductions equivalent to about one year of reductions needed for reasonable further progress (RFP)." The term "one year of reductions needed for RFP" requires clarification. This phrase may be confusing because all areas technically are not required to develop a separate RFP plan under the 2007 PM2.5 Implementation Rule. The basic concept is that an area's set of contingency measures should provide for an amount of emission reductions that would achieve "one year's worth" of air quality improvement proportional to the overall amount of air quality improvement to be achieved by the area's attainment plan; or alternatively, an amount of emission reductions (for all pollutants subject to control measures in the attainment plan) that would achieve one year's worth of emission reductions proportional to the overall amount of emission*

reductions needed to show attainment. Contingency measures can include measures that achieve emission reductions from outside the nonattainment area as well as from within the nonattainment area, provided that the measures produce the appropriate air quality impact within the nonattainment area.

The U.S. EPA believes a similar interpretation of the contingency measures requirements under section 172(c)(9) would be appropriate for the 2006 24-hour PM2.5 NAAQS.

The March 2, 2012 memo then provides an example describing two methods for determining the required magnitude of emissions reductions to be potentially achieved by implementation of contingency measures:

Assume that the state analysis uses a 2008 base year emissions inventory and a future year projection inventory for 2014. To demonstrate attainment, the area needs to reduce its air quality concentration from 41ug/m^3 in 2008 to 35 ug/m^3 in 2014, equal to a rate of change of 1 μg/m^3 per year. The attainment plan demonstrates that this level of air quality improvement would be achieved by reducing emissions between 2008 and 2014 by the following amounts: 1,200 tons of PM2.5; 6,000 tons of NOx; and 6,000 tons of SO2.

Thus, the target level for contingency measures for the area could be identified in two ways:

1) *The area would need to provide an air quality improvement of 1 ug/m^3 in the area, based on an adequate technical demonstration provided in the state plan. The emission reductions to be achieved by the contingency measures can be from any one or a combination of all pollutants addressed in the attainment plan, provided that the state plan shows that the cumulative effect of the adopted contingency measures would result in a 1 ug/m^3 improvement in the fine particle concentration in the nonattainment area; and*

2) *The contingency measures for the area would be one-sixth (or approximately 17%) of the overall emission reductions needed between 2008 and 2014 to show attainment. In this example, these amounts would be the following: 200 tons of PM2.5; 1,000 tons of NOx; and 1,000 tons of SO2.*

The two approaches are explicitly mentioned in regulatory form at 40 CFR § 51.1009:

(g) The RFP plan due three years after designation must demonstrate that emissions for the milestone year are either:

(1) At levels that are roughly equivalent to the benchmark emission levels for direct PM2.5 emissions and each PM2.5 attainment plan precursor to be addressed in the plan; or

(2) At levels included in an alternative scenario that is projected to result in a generally equivalent improvement in air quality by the milestone year as would be achieved under the benchmark RFP plan.

(h) The equivalence of an alternative scenario to the corresponding benchmark plan must be determined by comparing the expected air quality changes of the two scenarios at the design value monitor location. This comparison must use the information developed for the attainment plan to assess the relationship between emissions reductions of the direct PM2.5 emissions and each PM2.5 attainment plan precursor addressed in the attainment strategy and the ambient air quality improvement for the associated ambient species.

The first method in the example and the alternative scenario in the regulation, 40 CFR § 51.1009 (g)(2), base the required amount of contingency measure emission reductions on one year's worth of air quality improvements. The most accurate way of demonstrating that the emissions reductions will lead to air quality improvements is through air quality modeling such as that used in the attainment demonstration (40 CFR § 51.1009 (h) above). If the model results show the required air quality improvements, then the emissions reductions included in the model input are therefore shown to be sufficient to achieve those air quality improvements. The second method in the example, and (g)(1) in the regulation, is based solely on emission reductions, without a direct demonstration that there will be a corresponding improvement in air quality.

Logically, the method based on air quality is more robust than the method based solely on emissions reductions in that it demonstrates that emissions reductions will in fact lead to corresponding air quality improvements, which is the ultimate goal of the CAA and the SIP. The second method relying on overall emissions reductions alone does not account for the spatial and temporal variation of emissions, nor does it account for where and when the reductions will occur. As the relationship between emissions reductions and resulting air quality improvements is complex and not always linear, relying solely on prescribed emission reductions may not ensure that the desired air quality improvements will result when and where they are needed. Therefore, determining the magnitude of reductions required for contingency measures based on air quality improvements, derived from a modeling demonstration, is more effective in achieving the objective of this CAA requirement.

Magnitude of Contingency Measure Air Quality Improvements

The example for determining the required magnitude of air quality improvement to be achieved by contingency measures provided in the March 2, 2012 guidance memo uses the attainment demonstration base year as the base year in the calculation (2008). This is based on the memo's statement that *"contingency measures should provide for an amount of emission reductions that would achieve 'one year's worth' of air quality improvement proportional to the overall amount of air quality improvement to be achieved by the area's attainment plan.* The original preamble (79 FR 20642-20645) states that contingency measures *"should provide for emission reductions equivalent to about one year of reductions needed for reasonable further progress (RFP)."* The term "reasonable further progress" is defined in Section 171(1) of the CAA as *"such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date."*

40 CFR 51.1009 is explicit on how emissions reductions for RFP are to be calculated. In essence, the calculation is a linear interpolation between base-year emissions and attainment-year (full implementation) emissions. The Plan must then show that emissions or air quality in the milestone year (or attainment year) are "roughly equivalent" or "generally equivalent" to the RFP benchmark. As stated earlier in this chapter, given the 2014 attainment year, there are no interim milestone RFP requirements. The contingency measure requirements, therefore, only apply to the 2014 attainment year. In 2014, contingency measures must provide for about one year's worth of reductions or air quality improvement, proportional to the overall amount of air quality improvement to be achieved by the area's attainment plan.

The 2008 base year design value in the 24-hour PM2.5 attainment demonstration is 47.9 $\mu g/m^3$, and the 2014 attainment year design value must be less than 35.5 $\mu g/m^3$ (see Chapter 5). Linear progress towards attainment over the six year period yields one year's worth of air quality improvements equal to approximately 2 $\mu g/m^3$. Thus, contingency measures should provide for approximately 2 $\mu g/m^3$ of air quality improvements to be automatically implemented in 2015 if the Basin fails to attain the 24-hour PM2.5 standard in 2014.

Satisfying the Contingency Measure Requirements

As stated above, the contingency measure requirement can be satisfied by already adopted measures resulting in air quality improvements above and beyond those needed

for attainment. Since the attainment demonstration need only show an attainment year concentration below 35.5 $\mu g/m^3$, any measures leading to improvement in air quality beyond this level can serve as contingency measures. As shown in Chapter 5, the attainment demonstration yields a 2014 design value of 34.28 $\mu g/m^3$. The excess air quality improvement is therefore approximately 1.2 $\mu g/m^3$.

In addition to these air quality improvements beyond those needed for attainment, an additional contingency measure is proposed that will result in emissions reductions beyond those needed for attainment in 2014. Control Measure CMB-01 Phase I seeks to achieve an additional two tons per day of NOx emissions reductions from the RECLAIM market if the Basin fails to achieve the standard by the 2014 attainment date. CMB-01 Phase I is scheduled for near-term adoption and includes the appropriate automatic trigger mechanism and implementation schedule consistent with CAA contingency measure requirements. Taken together with the 1.2 $\mu g/m^3$ of excess air quality improvement described above, this represents a sufficient margin of "about one year's of progress" and "generally linear" progress to satisfy the contingency measure requirements. Note that based on the most recent air quality data at the design value site, Mira Loma, the actual measured air quality is already better (by over 4 $\mu g/m^3$ in 2011) than that projected by modeling based on linear interpolation between base year and attainment year.

To address U.S. EPA's comments regarding contingency measures, the excess air quality improvements beyond those needed to demonstrate attainment should also be expressed in terms of emissions reductions. This will facilitate their enforceability and any future needs to substitute emissions reductions from alternate measures to satisfy contingency measure requirements. For this purpose, Table 6-2 explicitly identifies the portions of emissions reductions from proposed measures that are designated as contingency measures. Table 6-2 also includes the total equivalent basin-wide NOx emissions reductions based on the PM2.5 formation potential ratios described in Chapter 5.

TABLE 6-2

Emissions Reductions for Contingency Measures (2014)

MEASURE	ASSOCIATED EMISSIONS REDUCTIONS FROM CONTINGENCY MEASURES (TONS/DAY)
BCM-01 – Residential Wood Burning[1,2]	2.84(PM2.5)
BCM-02 – Open Burning [1,2]	1.84(PM2.5)
CMB-01 – NOx reductions from RECLAIM	2 (NOx)
Total	71 ($NOx_{(e)}$)[3]

[1]40% of the reductions from these measures, as shown in Table 4-2, are designated for contingency purposes.

[2] Episodic emissions reductions occurring on burning curtailment days.

[3] NOx equivalent emissions based on PM2.5 formation potentials described in Chapter 5 (Table 5-2). The PM2.5:NOx ratio is 14.83:1.

Transportation Control Measures

As part of the requirement to demonstrate that RACM has been implemented, transportation control measures meeting the CAA requirements must be included in the plan. Updated transportation control measures included in this plan attainment of the federal 2006 24-hour PM2.5 standard are described in Appendix IV-C – Regional Transportation Strategy & Control Measures.

Section 182(d)(1)(A) of the CAA requires the District to include transportation control strategies (TCS) and transportation control measures (TCM) in its plans for ozone that offset any growth in emissions from growth in vehicle trips and vehicle miles traveled. Such control measures must be developed in accordance with the guidelines listed in Section 108(f) of the CAA. The programs listed in Section 108(f) of the CAA include, but are not limited to, public transit improvement projects, traffic flow improvement projects, the construction of high occupancy vehicle (HOV) facilities and other mobile source emission reduction programs. While this is not an ozone plan, TCMs may be

ATTACHMENT 17.

FINAL 2012 AQMP
APPENDIX IV-A

DISTRICT'S STATIONARY SOURCE CONTROL MEASURES

DECEMBER 2012

Table of Contents

SECTION 1 - STATIONARY SOURCE CONTROL MEASURES

SECTION 2 - SHORT-TERM PM2.5 CONTROL MEASURES

TABLE IV-A-1 (concluded)

Short-Term PM2.5 Control Measures

NUMBER	TITLE	ADOPTION	IMPLEMENTATION PERIOD	REDUCTION (TPD)
~~IND-01 (formerly MOB-03)~~	~~Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources [NOx, SOx, PM2.5]~~	~~2013~~	~~12 months after trigger~~	~~N/A~~ [f]
EDU-01 *(formerly MCS-02, MCS-03)*	Further Criteria Pollutant Reductions from Education, Outreach and Incentives [All Pollutants]	Ongoing	Ongoing	N/A [f]
MCS-01 *(formerly MCS-07)*	Application of All Feasible Measures Assessment [All Pollutants]	Ongoing	Ongoing	TBD [e]

a. Emission reductions are included in the SIP as a contingency measure.
b. Winter average day reductions based on episodic conditions and 75 percent compliance rate.
c. Reduction based on episodic day conditions.
d. Will submit into SIP once technically feasible and cost effective options are confirmed.
e. TBD are reductions to be determined once the technical assessment is complete, and inventory and control approach are identified.
f. N/A are reductions that cannot be quantified due to the nature of the measure (e.g., outreach, incentive programs) or if the measure is designed to ensure reductions that have been assumed to occur will in fact occur.

It should be noted that the emission reduction targets for the proposed control measures (those with quantified reductions) are established based on available or anticipated control methods or technologies. However, emission reductions associated with implementation of these and other control measures or rules in excess of the AQMP's projected reductions can be credited toward the overall emission reduction targets for the proposed control measures in this appendix.

Emission reductions associated with the District's SIP commitment to adopt and implement emission reductions from sources under the District's jurisdiction are being proposed. Once the SIP commitment is accepted, should there be emission reduction shortfalls in any given year, the District would identify and adopt other measures to make up the shortfall. Similarly, if excess emission reductions are achieved in a year, they can be used in that year or carried over to subsequent years if necessary to meet reduction goals. More detailed discussion on the District's SIP commitment is included in Chapter 4 of the Final 2012 AQMP.

The following sections provide a brief overview of the specific source category types targeted by short-term PM2.5 control measures.

Combustion Sources

This category includes one control measure that seeks further NOx emission reductions from RECLAIM sources.

IND-01: BACKSTOP MEASURE FOR INDIRECT SOURCES OF EMISSIONS FROM PORTS AND PORT-RELATED FACILITIES [NO_x, SO_x, PM2.5]

CONTROL MEASURE SUMMARY

SOURCE CATEGORY:	IF THE BACKSTOP MEASURE BECOMES EFFECTIVE (I.E. IF EMISSIONS FROM PORT-RELATED SOURCES EXCEED TARGETS FOR NOX, SOX, AND PM2.5), AFFECTED SOURCES WOULD BE PROPOSED BY THE PORTS AND COULD INCLUDE SOME OR ALL PORT-RELATED SOURCES (TRUCKS, CARGO HANDLING EQUIPMENT, HARBOR CRAFT, MARINE VESSELS, LOCOMOTIVES, AND STATIONARY EQUIPMENT), TO THE EXTENT COST EFFECTIVE STRATEGIES ARE AVAILABLE
CONTROL METHODS:	IF THE BACKSTOP MEASURE BECOMES EFFECTIVE, EMISSION REDUCTION METHODS WOULD BE PROPOSED BY THE PORTS AND POTENTIALLY COULD INCLUDE CLEAN TECHNOLOGY FUNDING PROGRAMS, LEASE PROVISIONS, PORT TARIFFS, OR INCENTIVES/DISINCENTIVES TO IMPLEMENT MEASURES, TO THE EXTENT COST EFFECTIVE AND FEASIBLE STRATEGIES ARE AVAILABLE

EMISSIONS (TONS/DAY):

ANNUAL AVERAGE	2008	2014	2019	2023
NOx INVENTORY*	78.6	51.2	47.2	39.2
NOx REDUCTION*		N/A	N/A	N/A
NOx REMAINING*		51.2	47.2	39.2
SOx INVENTORY*	25.5	1.8	2.3	2.7
SOx REDUCTION*		N/A	N/A	N/A
SOx REMAINING*		1.8	2.3	2.7
PM2.5 INVENTORY*	3.7	1.0	1.0	1.1
PM2.5 REDUCTION*		N/A	N/A	N/A
PM2.5 REMAINING*		1.0	1.0	1.1

CONTROL COST:	TBD
IMPLEMENTING AGENCY:	SCAQMD

** The purpose of this control measure is to ensure the emissions from port-related sources are at or below the AQMP baseline inventories for PM2.5 attainment demonstration. The emissions presented herein were used for attainment demonstration of the 24-hr PM 2.5 standard by 2014.*

DESCRIPTION OF SOURCE CATEGORY

This control measure is carried over from the 2007 AQMP/SIP. If the backstop measure goes into effect, affected sources would be proposed by the ports and could include some or all port-related sources (trucks, cargo handling equipment, harbor craft, marine vessels, locomotives, and stationary equipment), to the extent cost effective and feasible strategies are available.

Other sources – i.e. sources that are unrelated to the ports – would not in any way be subject to emission reductions under this measure (including through funding of emission reduction measures, or purchase of emission credits, by the ports or port tenants).

Background

Emissions and Progress. The ports of Los Angeles and Long Beach are the largest in the nation in terms of container throughput, and collectively are the single largest fixed source of air pollution in Southern California. Emissions from port-related sources have been reduced significantly since 2006 through efforts by the ports and a wide range of stakeholders. In large part, these emission reductions have resulted from programs developed and implemented by the ports in collaboration with port tenants, marine carriers, trucking interests and railroads. Regulatory agencies, including EPA, CARB and SCAQMD, have participated in these collaborative efforts from the outset, and some measures adopted by the ports have led the way for adoption of analogous regulatory requirements that are now applicable statewide. These port measures include the Clean Truck Program and actions to deploy shore power and low emission cargo handling equipment. The Ports of Los Angeles and Long Beach have also established incentive programs which have not subsequently been adopted as regulations. These include incentives for routing of vessels meeting IMO Tier 2 and 3 NOx standards, and vessel speed reduction. In addition, the ports are, in collaboration with the regulatory agencies, implementing an ambitious Technology Advancement Program to develop and deploy clean technologies of the future.

Port sources such as marine vessels, locomotives, trucks, harbor craft and cargo handling equipment, continue to be among the largest sources of $PM_{2.5}$ and $PM_{2.5}$ precursors in the region. Given the large magnitude of emissions from port-related sources, the substantial efforts described above play a critical part in the ability of the South Coast Air Basin to attain the national $PM_{2.5}$ ambient air standard by federal deadlines. This measure provides assurance that emissions from the Basin's largest fixed emission source will continue to support attainment of the federal 24-hour PM2.5 standard. . Reductions in PM2.5 emissions will also reduce cancer risks from diesel particulate matter.

Clean Air Action Plan. The emission control efforts described above largely began in 2006 when the Ports of Los Angeles and Long Beach, with the participation and cooperation of the staff of the SCAQMD, CARB, and U.S. EPA, adopted the San Pedro Bay Ports Clean Air Action Plan (CAAP). The CAAP was further amended in 2010, updating many of the goals and implementation strategies to reduce air emissions and health risks associated with port

operations while allowing port development to continue. In addition to addressing health risks from port-related sources, the CAAP sought the reduction of criteria pollutant emissions to the levels that assure port-related sources decrease their "fair share" of regional emissions to enable the Basin to attain state and federal ambient air quality standards.

The CAAP focuses primarily on reducing diesel particulate matter (DPM), along with NOx and SOx. The CAAP includes proposed strategies on port-related sources that are implemented through new leases or Port-wide tariffs, Memoranda of Understanding (MOU), voluntary action, grants or incentive programs.

The goals set forth in the CAAP include:

- Health Risk Reduction Standard: 85% reduction in population-weighted cancer risk by 2020
- Emission Reduction Standards:
  - By 2014, reduce emissions by 72% for DPM, 22% for NOx, and 93% for SOx
  - By 2023, reduce emissions by 77% for DPM, 59% for NOx, and 93% for SOx

In addition to the CAAP, the Ports have completed annual inventories of port-related sources since 2005. These inventories have been completed in conjunction with a technical working group composed of the SCAQMD, CARB, and U.S. EPA. Based on the latest inventories, it is estimated that the emissions from port-related sources will meet the 2012 AQMP emission targets necessary for meeting the 24-hr PM2.5 ambient air quality standard. The projected emissions from port related sources are included in the "baseline" emissions assumed in this plan to attain the PM2.5 standards.

While many of the emission reduction targets in the CAAP result from implementation of federal and state regulations (either adopted prior to or after the CAAP), some are contingent upon the Ports taking and maintaining actions which are not required by air quality regulations. These actions include the Expanded Vessel Speed Reduction Incentive Program, lower emission switching locomotives,and incentives for lower emission marine vessels. This AQMP control measure is designed to provide a "backstop" to the Ports' actions to provide assurance that, if emissions do not continue to meet projections, the ports will develop and implement plans to get back on track, to the extent that cost effective and feasible strategies are available. .

Regulatory History

The CAAP sets out the emission control programs and plans that will help mitigate air quality impacts from port-related sources. The CAAP relies on a combination of regulatory requirements and voluntary control strategies which go beyond U.S. EPA or CARB requirements, or are implemented faster than regulatory rules. The regulations which the CAAP relies on include international, federal and state requirements controlling port-related sources such as marine vessels, harbor craft, cargo handling equipment, locomotives, and trucks.

The International Maritime Organization (IMO) MARPOL Annex VI, which came into force in May 2005, set new international NO_x emission limits on Category 3 (>30 liters per cylinder displacement) marine engines installed on new vessels retroactive to the year 2000. In October

~~2008, the IMO adopted an amendment which places a global limit on marine fuel sulfur content of 0.1 percent by 2015 for specific areas known as Emission Control Areas (ECA). The South Coast District waters of the California coast are included in an ECA and ships calling at the Port of Los Angeles and Long Beach have to meet this new fuel standard. In addition, the 2008 IMO amendment required new ships built after January 1, 2016 which will be used in an Emission Control Area (ECA) to meet a Tier III NOx emission standard which is 80 percent lower than the original emission standard.~~

~~To reduce emissions from switch and line-haul locomotives, the U.S. EPA in 2008 established a series of increasingly strict emission standards for new or remanufactured locomotive engines. The emission standards are implemented by "Tier" with Tier 0 as the least stringent and Tier 4 being the most stringent. U.S. EPA also established remanufacture standards for both line haul and switch engines. For Tiers 0, 1, and 2, the remanufacture standards are more stringent than the new manufacture standards for those engines for some pollutants.~~

~~To reduce emissions from on-road, heavy-duty diesel trucks, U.S. EPA established a series of cleaner emission standards for new engines, starting in 1988. The U.S. EPA promulgated the final and cleanest standards with the 2007 Heavy Duty Highway Rule. Starting with model year 2010, all new heavy-duty trucks have to meet the final emission standards specified in the rule.~~

~~On December 8, 2005, CARB approved the Regulation for Mobile Cargo Handling Equipment (CHE) at Ports and Intermodal Rail Yards (Title 13, CCR, Section 2479), which is designed to use best available control technology (BACT) to reduce diesel PM and NO_x emissions from mobile cargo handling equipment at ports and intermodal rail yards. The regulation became effective December 31, 2006. Since January 1, 2007, the regulation imposes emission performance standards on new and in-use terminal equipment that vary by equipment type.~~

~~In 1998, the railroads and CARB entered into an MOU to accelerate the introduction of Tier 2 locomotives into the SCAB. The MOU includes provisions for a fleet average in the SCAB, equivalent to U.S. EPA's Tier 2 locomotive standard by 2010. The MOU addressed NOx emissions from locomotives. Under the MOU, NOx levels from locomotives are reduced by 67 percent.~~

~~On June 30, 2005, Union Pacific Railroad (UP) and Burlington Northern Santa Fe Railroad (BNSF) entered into a Statewide Rail Yard Agreement to Reduce Diesel PM at California Rail Yards with the CARB. The railroads committed to implementing certain actions from rail operations throughout the state. In addition, the railroads prepared equipment inventories and conducted dispersion modeling for Diesel PM.~~

~~In December 2007, CARB adopted a regulation which applies to heavy-duty diesel trucks operating at California ports and intermodal rail yards. This regulation eventually will require all drayage trucks to meet 2007 on-road emission standards by 2014.~~

~~Areas where the CAAP went beyond existing regulatory requirements or accelerated the implementation of current IMO, U.S. EPA, or CARB rules include emissions reductions from ocean-going vessels through lowering vessel speeds, accelerating the introduction of 2007/2010 on-road heavy-duty drayage trucks, maximizing the use of shore-side power for ocean-going~~

vessels while at berth, early use of low-sulfur fuel in ocean-going vessels, and the restriction of high-emitting locomotives on port property. Each of these strategies is highlighted below.

HDV1 – Performance Standards for On-Road Heavy Duty Vehicles (Clean Truck Program) – This control measure requires that all on-road trucks entering the ports comply with the Clean Truck Program. Several milestones occurred early in the program implementation, but the current requirement bans all trucks not meeting the 2007 on-road heavy-duty truck emission standards from port property. This program has the effect of accelerating the introduction of clean trucks sooner than would have occurred under the state-wide drayage truck regulation framework.

OGV1 – Vessel Speed Reduction Program (VSRP): Under this voluntary program, the Port requested that ships coming into the Ports reduce their speed to 12 knots or less within 20nm of the Point Fermin Lighthouse. The program started in May 2001. The Ports expanded the program out to 40 nm from the Point Fermin Lighthouse in 2010.

OGV3/OGV4 – Low Sulfur Fuel for Auxiliary and Main Engines and Auxiliary Boilers: OGV3 reduces emissions for auxiliary engines and auxiliary boilers of OGVs during their approach and departure from the ports, including hoteling, by switching to MGO or MDO with a fuel sulfur content of 0.2 percent or less within 40 nm from Point Fermin. OGV4 Control measure reduces emissions from main engines during their approach and departure from the ports. OGV3 and OVV4 are implemented as terminal leases are renewed.

RL-3 – New and Redeveloped Near-Dock Rail Yards: The Ports have committed to support the goal of accelerating the natural turnover of line-haul locomotive fleet to at least 95 percent Tier 4 by 2020. In addition, this control measure establishes the minimum standard goal that the Class 1 (UP and BNSF) locomotive fleet associated with new and redeveloped near-dock rail yards use 15-minute idle restrictors and ULSD or alternative fuels, and as part of the environmental review process for upcoming rail projects, 40% of line-haul locomotives accessing port property will meet a Tier 3 emission standard and 50% will meet Tier 4.

PROPOSED METHOD OF CONTROL

The goal of this measure is to ensure that NOx, SOx and PM2.5 emissions reductions from port-related sources are sufficient to attain the 24-hr federal PM2.5 ambient air quality standard. This measure would establish targets for NOx, SOx, and PM2.5 for 2014 that are based on emission reductions resulting from adopted rules and other measures such as railroad MOUs and vessel speed reduction that have been adopted and are being implemented. These emissions from port related sources are included in the "baseline" emissions assumed in this plan to attain the 24-hour $PM_{2.5}$ standard. Based on current and future emission inventory projections these rules and measures will be sufficient to achieve attainment of the 24-hr federal PM2.5 ambient air quality standard. Requirements adopted pursuant to this measure will become effective only if emission levels exceed the above targets. Once triggered, the ports will be required to develop and implement a plan to reduce emissions from port related sources to meet the emission targets over a time period. The time period to achieve and maintain emission targets will be established pursuant to procedures and criteria developed during rulemaking and specified in the rule.

~~This control measure will be implemented through a District rule. Through the rule development process the AQMD staff will establish a working group, hold a series of working group meetings, and hold public workshops. The purpose of the rule development process is to allow the AQMD staff to work with a variety of stakeholders such as the Ports, potentially affected industries, other agencies, and environmental and community groups. The rule development process will discuss the terms of the proposed backstop rule and, through an iterative public process, develop proposed rule language. In addition, the emissions inventory and targets will be reviewed and may be refined if necessary. This control measure applies to the Port of Los Angeles and the Port of Long Beach, acting through their respective Boards of Harbor Commissioners. The ports may have the option to comply separately or jointly with provisions of the backstop rule.~~

~~Elements of Backstop Rule~~

~~*Summary*: This control measure will establish enforceable nonattainment pollutant emission reduction targets for the ports in order to ensure implementation of the 24-hr PM2.5 attainment strategy in the 2012 AQMP. The "backstop" rule will go into effect if aggregate emissions from port related sources exceed specified emissions targets. If emissions do not exceed such targets, the ports will have no control obligations under this control measure.~~

~~*Emissions Targets:* The emissions inventories projected for the port related sources in the 2012 AQMP are an integral part of the 24-hr PM2.5 attainment demonstration for 2014 and its maintenance of attainment in subsequent years. These emissions serve as emission targets for meeting the 24-hr PM2.5 standard.~~

~~*Scope of Emissions Included:* Emissions from all sources associated with each port, including equipment on port property, marine vessels traveling to and from the port while in California Coastal Waters, locomotives and trucks traveling to and from port-owned property while within the South Coast Air Basin. This measure will make use of the Port's annual emission inventory, either jointly or individually, as the basis for the emission targets. The inventory methodology to estimate these emissions is consistent with the CAAP methodology. Other sources – i.e. sources that are unrelated to the ports – would not in any way be subject to emission reductions under this measure (including through funding of emission reduction measures, or purchase of emission credits, by the ports or port tenants).~~

~~*Circumstances Causing Backstop Rule Regulatory Requirements to Come Into Effect:* The "backstop" requirements will be triggered if the reported aggregate emissions for 2014 for all port related sources exceed the 2014 emissions targets. The rule may also provide that it will come into effect if the target is met in 2014 but exceeded in a subsequent year. If the target is not exceeded, the ports would have no obligations under this measure.~~

~~*Requirements if Backstop Rule Goes Into Effect:* If the "backstop" rule goes into effect, the Ports would submit an Emission Control Plan to the District. The plan would include measures sufficient to bring the Ports back into compliance with the 2014 emission targets. The Ports may choose which sources would be subject to additional emission controls, and may choose any number of implementation tools that can achieve the necessary reduction. These may include clean technology funding programs, lease provisions, port tariffs, or incentives/disincentives to~~

implement measures. As described below, the ports would have no obligation under this measure to implement measures which are not cost-effective and feasible, or where the ports lack the authority to adopt an implementation mechanism. The District would approve the plan if it met the requirements of the rule.

RULE COMPLIANCE AND TEST METHODS

Compliance with this control measure will depend on the type of control strategy implemented. Compliance will be verified through compliance plans, and enforced through submittal and review of records, reports, and emission inventories. Enforcement provisions will be discussed as part of the rule development process.

COST EFFECTIVENESS AND FEASIBILITY

The cost effectiveness of this measure will be based on the control option selected. A maximum cost-effectiveness threshold will be established for each pollutant during rule development. The rule will not require any additional control strategy to be implemented which exceeds the threshold, or which is not feasible. In addition, the rule would not require any strategy to be implemented if the ports lack authority to implement such strategy. If sufficient cost-effective and feasible measures with implementation authority are not available to achieve the emissions targets by the applicable date, the District will issue an extension of time to achieve the target. It is the District's intent that during such extension, the ports and regulatory agencies would work collaboratively to develop technologies and implementation mechanisms to achieve the target at the earliest date feasible.

IMPLEMENTING AGENCY

The District has authority to adopt regulations to reduce or mitigate emissions from indirect sources, i.e. facilities such as ports that attract on- and off-road mobile sources, and has certain authorities to control emissions from off-road mobile sources themselves. These authorities include the following:

Indirect Source Controls. State law provides the District authority to adopt rules to control emissions from "indirect sources." The Clean Air Act defines an indirect source as a "facility, building, structure, installation, real property, road or highway which attracts, or may attract, mobile sources of pollution." 42 U.S.C. § 7410(a)(5)(C); CAA § 110(a)(5)(C). Districts are authorized to adopt rules to "reduce or mitigate emissions from indirect sources" of pollution. (Health & Safety Code § 40716(a)(1)). The South Coast District is also required to adopt indirect source rules for areas where there are "high-level, localized concentrations of pollutants or with respect to any new source that will have a significant impact on air quality in the South Coast Air Basin." (Health & Safety Code § 40440(b)(3)). The federal Court of Appeals has held that an indirect source rule is not a preempted "emission standard." *National Association of Home Builders v. San Joaquin Valley Unified Air Pollution Control District*, 627 F.3d. 730 (9th Cir. 2010)

Nonvehicular (Off-Road) Source Emissions Standards. Under California law "local and regional authorities," including the ports and the District, have primary responsibility for the control of air pollution from all sources other than motor vehicles. (Health & Safety Code § 40000). Such "nonvehicular" sources include marine vessels, locomotives and other non-road equipment. CARB has concurrent authority under state law to regulate these sources. The federal Clean Air Act preempts states and local governments from adopting emission standards and other requirements for new locomotives (Clean Air Act § 209(e); 42 U.S.C.§ 7543(e)), but California may establish and enforce standards for other non-road sources upon receiving authorization from EPA (*Id.*). No such federal authorization is required for state or local fuel, operational, or mass emission limits for marine vessels, locomotives or other non-road equipment. (40 CFR Pt. 89, Subpt. A, App.A; *Engine Manufacturers Assn. v. Environmental Protection Agency*, 88 F.3d. 1075 (DC Cir. 1996)).

Fuel Sulfur Limits. With respect to non-road engines, including marine vessels and locomotives, the District and CARB have concurrent authority to establish fuel limits, such as those on sulfur content. As was noted above, fuel regulations for non-road equipment are not preempted by the Clean Air Act and do not require EPA authorization.

Operational Limits. The District has authority under state law to establish operational limits for nonvehicular sources such as marine vessels, locomotives, and cargo handling equipment (to the extent cargo handling equipment is "nonvehicular"). As was discussed above, operational limits for non-road equipment are not preempted by the Clean Air Act. In addition, the District may adopt operational limits for motor vehicles such as indirect source controls and transportation controls without receiving an authorization or waiver from U.S. EPA.

REFERENCES

San Pedro Bay Ports Clean Air Action Plan, 2010 Update, October 2010

Southern California International Gateway Project Draft Environmental Impact Report, Port of Los Angeles, September 2011

SCAQMD, 2007 Air Quality Management Plan, Appendix IV-A, June 2007

ATTACHMENT 18.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Final Supplement to the 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin

February 2015

Executive Officer
Barry R. Wallerstein, D. Env.

Deputy Executive Officer
Planning, Rule Development and Area Sources
Elaine Chang, DrPH

Assistant Deputy Executive Officer
Planning, Rule Development and Area Sources
Philip Fine, Ph.D.

Author:	Joseph Cassmassi	Planning and Rules Manager
	Sang-Mi Lee, Ph.D.	Program Supervisor
	Kalam Cheung, Ph.D.	Air Quality Specialist
	Michael Krause	Program Supervisor
Reviewed By:	Barbara Baird	Chief Deputy Counsel
	Megan Lorenz	Senior Deputy District Counsel

TABLE F-1

Updated 2012 SIP Emission Reduction Commitments to Attain 24-hour PM2.5 NAAQS *(35 μg/m³)*

Control Measure #	CONTROL MEASURE TITLE	2012 AQMP			PROPOSED in SUPPLEMENT		
		Adoption Date	COMMITMENT	ACHIEVED	Adoption Date	COMMITMENT	ACHIEVED
			2014	2014		2015	2015
PM2.5 EMISSIONS							
IND-01	Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Facilities [R4001]	2013	N/A[1]	N/A[1]	**2015**	N/A[1]	N/A[1]
BCM-01	Further Reductions from Residential Wood Burning Devices [R445]	2013	7.1	7.1	2013	7.1	7.1
BCM-02	Further Reductions from Open Burning [R444]	2013	4.6	4.6	2013	4.6	4.6
MCS-01	Application of All Feasible Measures Assessment	Ongoing	TBD[2]	TBD	Ongoing	TBD[2]	TBD
BCM-03	Emission Reductions from Under-Fired Charbroilers [R1138]	2015	TBD[3]	TBD	**2017**	TBD[3]	TBD
EDU-01	Further Criteria Pollutant Reductions from Education, Outreach and Incentives	Ongoing	N/A[4]	N/A	Ongoing	N/A[4]	N/A
	TOTAL PM2.5 EMISSION REDUCTIONS (TPD)		**11.7**	**11.7**	**--**	**11.7**	**11.7**
NOx EMISSIONS							
CMB-01	Further NOx Reductions from RECLAIM [Reg XX]	2013	2.0[5]	--	**2015**	2.0[5]	--
IND-01	Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Facilities [R4001]	2013	N/A[1]	N/A[1]	**2015**	N/A[1]	N/A[1]
	TOTAL NOx EMISSION REDUCTIONS (TPD)		**2.0**	--	--	**2.0**	--
SOx EMISSIONS							
IND-01	Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Facilities [R4001]	2013	N/A[1]	N/A[1]	**2015**	N/A[1]	N/A[1]
	TOTAL SOx EMISSION REDUCTIONS (TPD)		--	**N/A[1]**	--	--	**N/A[1]**
NH3 EMISSIONS							
BCM-04	Further Ammonia Reductions from Livestock Waste [R1127] - Phase I (*Tech Assessment*)	2013-2014	TBD[2]	TBD	**2015 - 2016**	TBD[2]	TBD
	-Phase II (*Rule Amendment*)	TBD	TBD[2]	TBD	TBD	TBD[2]	TBD
	TOTAL NH3 EMISSION REDUCTIONS (TPD)		TBD	TBD	--	--	--

[1] Measure is designed to ensure reductions assumed to occur will in fact occur
[2] Reductions to be determined once the technical assessment is complete, and inventory and control approach are identified
[3] Will submit into SIP once technically feasible and cost effective options are identified
[4] Reductions cannot be quantified due to the nature of the measure (e.g., outreach, incentive programs)
[5] Emission reductions are included in the SIP as a contingency measure, if triggered

ATTACHMENT 19.

BOARD MEETING DATE: February 6, 2015 AGENDA NO. 22

PROPOSAL: Supplement to 24-hour PM2.5 State Implementation Plan for South Coast Air Basin

SYNOPSIS: The purpose of this Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin is to demonstrate attainment of the 2006 24-hour PM2.5 National Ambient Air Quality Standard by 2015 under Clean Air Act, Title 1, Part D, Subpart 4, along with updates to the transportation conformity budgets, analysis of Reasonably Available Control Measures/Reasonably Available Control Technology, control measure commitments submitted in the 2012 AQMP, and other Subpart 4 requirements.

COMMITTEE: Mobile Source Committee, January 23, 2015, Reviewed

RECOMMENDED ACTIONS:
Adopt the attached resolution:

1. Determining that the Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin is exempt from the requirements of CEQA; and
2. Approving the attached Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin for Submittal into the SIP.

Barry R. Wallerstein, D.Env.
Executive Officer

BB EC:PF:MK

Background

The 2012 AQMP was approved by the SCAQMD Board in December 2012, with additional amendments approved in February 2013, and was subsequently submitted to CARB and the U.S. EPA for inclusion into the SIP. That plan demonstrated projected attainment of the 2006 24-hour PM2.5 National Ambient Air Quality Standards (NAAQS) (35 $\mu g/m^3$) by 2014. However, a recent court decision (*Natural Res. Def. Council v. EPA*, 706 F.3d 428 (D.C. Cir. 2013)) compels U.S. EPA to evaluate the 24-

ATTACHMENT B

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Draft Supplement to the 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin

January 2015

Executive Officer
Barry R. Wallerstein, D. Env.

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Elaine Chang, DrPH

Assistant Deputy Executive Officer
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	Michael Krause	Program Supervisor
Reviewed By:	Barbara Baird	Chief Deputy Counsel
	Megan Lorenz	Senior Deputy District Counsel

ATTACHMENT F

UPDATED LIST OF CONTROL STRATEGY COMMITMENTS

UPDATE OF COMMITMENTS

The short-term PM2.5 control measures in the 2012 AQMP included stationary source control measures, technology assessments, an indirect source measure and one education and outreach measure. The development of the control measures considered the emissions reductions and the adoption and implementation dates that would result in attainment of the 2006 24-hour PM2.5 standard of 35 $\mu g/m^3$. In some cases, only a range of possible emissions reductions could be determined, and for some others, the magnitude of potential reductions could not be determined at that time. The short-term PM2.5 control measures were presented in Table 4-2 (Chapter 4) of the 2012 AQMP, and the following table, Table F-1 updates that information, thus replacing Table 4-2 in the 2012 AQMP for inclusion in the 24-hour PM2.5 SIP. Note that these changes do not affect the magnitude or timing of emission reductions commitments supporting the attainment demonstration in the 2012 AQMP and this Supplement. The emission reduction commitment for CMB-01 (Further NOx Reductions from RECLAIM) was as a contingency measure only for PM2.5, and thus does not affect the attainment demonstrations.

The measures target a variety of source categories: Combustion Sources (CMB), PM Sources (BCM), Indirect Sources (IND), Educational Programs (EDU) and Multiple Component Sources (MCS).

Two PM2.5 control measures, BCM-01 (Further Reductions from Residential Wood Burning Devices) and BCM-02 (Further Reductions from Open Burning), were adopted in 2013 in the form of amendments to Rules 445 (Wood Burning Devices) and 444 (Open Burning), respectively. Together, these amendments generated a total of 11.7 tons of PM2.5 per day reductions on an episodic basis. Control measure CMB-01 (Further NOx Reductions from RECLAIM), which was submitted as a contingency measure, is anticipated to be considered by the SCAQMD Governing Board in the first half of 2015. The rulemaking process for control measure IND-01 (Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities) is underway, with anticipated SCAQMD Governing Board consideration in 2015 and the technology assessment for control measure BCM-04 (Further Ammonia Reductions from Livestock Waste) will now be adopted in the 2015 to 2016 timeframe with rulemaking to follow, if technically feasible and cost-effective. The BCM-03 (Emission Reductions from Under-Fired Charbroilers) technology assessment is ongoing and is expected to be completed by 2015 with rule development to follow by 2017.

Pursuant to CAA Section 172(c)(9), SIPs are required to include contingency measures to be undertaken if the area fails to make reasonable further progress or attain the NAAQS by the attainment date. The contingency measures "should provide for emission reductions equivalent to about one year of reductions needed for reasonable further progress (RFP)" (79 FR 20642-20645) The 2012 AQMP relied on excess air quality improvement from the control strategy as well as potential NOx reductions from control measure CMB-01 (Further NOx Reductions from

ATTACHMENT 20.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Final Supplement to the 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin

February 2015

Executive Officer
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	TOTAL NOx EMISSION REDUCTIONS (TPD)		**2.0**	--	--	**2.0**	--
SOx EMISSIONS							
IND-01	Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Facilities [R4001]	2013	N/A[1]	N/A[1]	**2015**	N/A[1]	N/A[1]
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BCM-04	Further Ammonia Reductions from Livestock Waste [R1127] - Phase I (*Tech Assessment*)	2013-2014	TBD[2]	TBD	**2015 - 2016**	TBD[2]	TBD
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	TOTAL NH3 EMISSION REDUCTIONS (TPD)		TBD	TBD	--	--	--

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[3] Will submit into SIP once technically feasible and cost effective options are identified
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BOARD MEETING DATE: February 6, 2015 AGENDA NO. 22

PROPOSAL: Supplement to 24-hour PM2.5 State Implementation Plan for South Coast Air Basin

SYNOPSIS: The purpose of this Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin is to demonstrate attainment of the 2006 24-hour PM2.5 National Ambient Air Quality Standard by 2015 under Clean Air Act, Title 1, Part D, Subpart 4, along with updates to the transportation conformity budgets, analysis of Reasonably Available Control Measures/Reasonably Available Control Technology, control measure commitments submitted in the 2012 AQMP, and other Subpart 4 requirements.

COMMITTEE: Mobile Source Committee, January 23, 2015, Reviewed

RECOMMENDED ACTIONS:
Adopt the attached resolution:
1. Determining that the Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin is exempt from the requirements of CEQA; and
2. Approving the attached Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin for Submittal into the SIP.

Barry R. Wallerstein, D.Env.
Executive Officer

BB EC:PF:MK

Background

The 2012 AQMP was approved by the SCAQMD Board in December 2012, with additional amendments approved in February 2013, and was subsequently submitted to CARB and the U.S. EPA for inclusion into the SIP. That plan demonstrated projected attainment of the 2006 24-hour PM2.5 National Ambient Air Quality Standards (NAAQS) (35 $\mu g/m^3$) by 2014. However, a recent court decision (*Natural Res. Def. Council v. EPA*, 706 F.3d 428 (D.C. Cir. 2013)) compels U.S. EPA to evaluate the 24-

ATTACHMENT E

~~DEMONSTRATION OF COMPLIANCE WITH~~
CLEAN AIR ACT, SUBPART 4, SECTION 189(E)
AND OTHER PRECURSOR REQUIREMENTS

BACKGROUND

PM2.5 has four major precursors, other than direct PM2.5 emissions, that may contribute to the development of the ambient PM2.5: ammonia, NOx, SOx, and VOC. The 2012 AQMP modeling analysis resulted in a set of ratios that reflect the relative amounts of ambient PM2.5 improvements expected from reductions of PM2.5 precursors emissions. For instance, Table 5-2 in Chapter 5 of the 2012 AQMP demonstrates that one ton of VOC emission reductions is only 30 percent as effective as one ton of NOx for lowering 24-hour PM2.5 concentrations. VOC reductions are only four percent and two percent as effective as SOx and direct PM2.5 reductions, respectively, on a per ton basis. Thus, VOC controls have a much less significant impact on ambient 24-hour PM2.5 levels relative to other PM2.5 precursors.

EMISSIONS CONTRIBUTION

While similar relative contributions to PM2.5 have not been developed for ammonia, the mass contributions of ammonium sulfate and ammonium nitrate are accounted for in the SOx and NOx contributions. This essentially assumes that PM2.5 formation in the basin is not ammonia limited with sufficient ammonia in the atmosphere to combine with available nitrates and sulfates. Under these conditions, ammonia controls are much less effective at reducing ambient PM2.5 levels than other precursors.

While the 2012 AQMP ammonia emissions inventory was close to 100 ton per day (TPD), the inventory was highly variable in terms of source contributions and spatial distribution throughout the Basin. As presented in Table E-1, major sources accounted for 1.7 TPD or less than 2 percent of the Basin inventory. Furthermore, only four major source emitters were noted in the inventory with the single highest major source accounting for less than 0.50 TPD direct emissions. All four major sources are located in the western Basin.

TABLE E-1

VOC and Ammonia Emissions Contributions

POLLUTANT	ALL SOURCES *(Tons Per Day)*	MAJOR SOURCES *(Tons Per Day)*	RELATIVE CONTRIBUTION
VOC	451[1]	8.0[2]	1.8%
Ammonia	99[3]	1.7[2]	1.7%

[1] 2012 AQMP - Appendix III: Base and Future Year Emission Inventory; 2014 Annual Average Emissions by Source Category in South Coast Air Basin

[2] 2013 SCAQMD Annual Emission Reporting

[3] ARB Almanac 2013 – Appendix B: County Level Emissions and Air Quality by Air Basin; County Emission Trends

Prior to the 2003 AQMP, significant effort was undertaken to develop inter-pollutant trading ratios to meet NSR emissions reduction goals. The primary mechanism was to reduce SOx to offset PM emissions. Aerosol chemical mechanisms embedded in box and regional modeling platforms where used to estimate the formation rates of ammonium sulfate from local sulfur emissions to establish a SOx emissions to PM formation ratio. The analyses determined that the influence of ammonia emissions was spatially varying where coastal-metro zone (west Basin) trading ratios of SOX to PM valued more than 5:1 per unit SOx emissions to PM. Conversely, eastern Basin ratios valued 1:1 since ammonia emissions were abundant and all SOx emissions were likely to rapidly transform to particulate ammonium sulfate. The inter-pollutant trades made during this time were reviewed by U.S. EPA and were included by reference to the EPA sponsored Inter-Pollutant Trading Working Group[4].

As part of the controls strategy evaluation for future PM2.5 attainment, additional set of analyses were conducted to test the potential impact of the use of SCR as a NOx control mechanism for mobile sources in the Basin. The analyses assumed that light as well as heavy duty diesels would use the control equipment potentially resulting in a 78-85 percent increase in ammonia from those source categories. The results of the analysis, presented at the September 24, 2010 SCAQMD Mobile Source Committee Meeting[5], indicated that a 10 TPD increase in ammonia would result in a net 0.22 $\mu g/m^3$ increase in regional PM2.5 concentrations. The emissions mostly followed heavy traffic corridors including freeways and major arterials. Regardless, the minimal PM2.5 simulated increase from a 10 percent increase in the Basin inventory reflected the degree of saturation of ammonia in the Basin and minimal sensitivity of changes in ammonia emissions to PM2.5 production.

During the development of the 2012 AQMP, a sensitivity analysis was conducted to test the potential impact of using a feed supplement applied to dairy cows on a forecasted basis that would reduce bovine ammonia emissions by 50 percent. The analysis focused on the Mira Loma area where more than 70 percent of the Basin's dairy emissions originate. In the sensitivity analysis a total of 2.9 TPD emissions were reduced from 103 dairy sources, or an average of 0.028 TPD per source (roughly one tenth of major source threshold)[6]. Since the Mira Loma monitoring station was embedded among the dairy sources, the reduction of the ground level emissions resulted in an approximate 0.16 $\mu g/m^3$ reduction in PM2.5. As in the aforementioned analyses, the reduction in regional ammonia emissions resulted in a minimal PM2.5 impact per ton emissions reduced.

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and Forecasts 2012 Emissions. NOTE: 2012 AQMP – Appendix III provides 2014 Annual Average of 102 tpd of NH3; the relative contribution would not change (1.7/102 = 1.7%)

[4] "Preliminary Assessment of Methods for Determining Interpollutant Offsets", Correspondence with Scott Bohning U.S. EPA Region IX, May 6, 2002.

[5] "Impact of Higher On- and Off-road Ammonia Emissions on Regional PM2.5," Item 3, SCAQMD, Mobile Source Committee, September 24, 2010.

[6] "2008 24-hour PM2.5 Model Performance/Preliminary Attainment Demonstration," Item #2, Scientific Technical Modeling Peer Group Advisory Committee, June 14, 2012.

Thus, ammonia controls also have a much less significant impact on 24-hour PM2.5 exceedances than other precursors. Note however, that the effect on annual PM2.5 levels will be further evaluated in the 2016 AQMP.

SECTION 189(E)

Clean Air Act (CAA), Title I, Part D, Subpart 4, Section 189(e) states that control requirements applicable to plans in effect for major stationary PM sources shall also apply to major stationary sources of PM precursors, except where such sources does not contribute significantly to PM levels which exceed the standard in the area. According to the U.S. EPA, a major source in a nonattainment area is a source with emission of any one air pollutant greater than or equal to the major source thresholds in a nonattainment area. This threshold is generally 100 tons per year (tpy) or lower depending on the nonattainment severity for all sources. Emissions are based on "potential to emit" and include the effect of add-on emission control technology, if enforceable (*must be able to show continual compliance with the limitation or requirement*).

Major stationary sources of NOx and SOx are already subject to emission offsets (e.g., Regulation XX (RECLAIM) and Regulation XII (New Source Review)). Thus, to demonstrate compliance with CAA Subpart 4, Section 189(e), an analysis was conducted of the emissions of VOC and ammonia from major stationary sources during rule development of amended Rule 1325 (*Federal PM2.5 New Source Review Program*) approved by the SCAQMD Governing Board on December 5, 2014 (http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2014/2014-dec5-038.pdf?sfvrsn=2). That analysis concluded that VOC and ammonia from major sources (emitting 100 tpy or greater) contribute less than 2% of the overall Basin-wide VOC and ammonia emissions (Table E-1), and by extension, do not contribute significantly to PM levels. Furthermore, both VOC and ammonia are subject to requirements for Best Available Control Technology (BACT) under existing New Source Review (NSR) at a zero threshold, so those emission will still be minimized. This analysis was also included in the final approved staff report for PAR 1325.

~~Thus, the SCAQMD believes the requirements of CAA Subpart 4, Section 189(e) are satisfied and thus request that the Administrator of U.S. EPA makes this determination pursuant to this Section.~~

NEW SOURCE REVIEW

Because ammonia from major stationary sources does not significantly contribute to PM levels (see Table E-1), ammonia emission sources have not historically been subject to NSR offset requirements. However, for permitted ammonia sources, SCAQMD Rule 1303 (*NSR Requirements)* requires denial of "the Permit to Construct for any relocation, or for any new or

modified source which results in an emission increase of any nonattainment air contaminant, any ozone depleting compound, or ammonia, unless BACT is employed for the new or relocated source or for the actual modification to an existing source." No new major stationary source of ammonia is expected to be introduced to the region given that these new sources would be subject to BACT requirements (under SCAQMD Rule 1303 (*NSR Requirements*), BACT shall be at least as stringent as Lowest Achievable Emissions Rate (LAER) as defined in the federal Clean Air Act Section 171(3) [42 U.S.C. Section 7501(3)]). As mentioned above, there are currently only four major sources of ammonia (emitting more than 100 tons per year) in the South Coast Air Basin. If these sources were new to the region, they would be subject to BACT as stringent as LAER and not expected to reach 100 tons per year so as to be classified as a major source, thus not subject to NSR offset requirements.

However unlikely, even if new or modified major sources of ammonia increase ammonia emissions in the Basin, the ammonia contribution from major sources in the South Coast Air Basin will still not be a significant contributor to PM2.5 levels given that all current major sources of ammonia account for less than two percent of the overall ammonia emissions inventory. For instance, in the extremely unlikely event that ammonia emissions from major sources double, they would still contribute less than five percent of the overall ammonia inventory.

ATTACHMENT 21.

ATTACHMENT A
RESOLUTION NO. 12-19

A Resolution of the South Coast Air Quality Management District (AQMD or District) Governing Board Certifying the Final Program Environmental Impact Report for the 2012 Air Quality Management Plan (AQMP), adopting the Draft Final 2012 AQMP, to be referred to after adoption as the Final 2012 AQMP, and to be submitted into the California State Implementation Plan.

WHEREAS, the U.S. Environmental Protection Agency (U.S. EPA) promulgated a 24-hour fine particulate matter (PM2.5) national ambient air quality standard (NAAQS or standard) in 2006, and 8-hour ozone NAAQS in 1997, followed up by implementation rules which set forth the classification and planning requirements for State Implementation Plans (SIP); and

WHEREAS, the South Coast Air Basin was classified as nonattainment for the 2006 24-hour PM2.5 standard on December 14, 2009, with an attainment date by December 14, 2014; and

WHEREAS, the U.S. EPA revoked the 1-hour ozone standard effective June 15, 2005, but on September 19, 2012 issued a proposed call for a California SIP revision for the South Coast to demonstrate attainment of the 1-hour ozone standard; and

WHEREAS, the 1997 8-hour ozone standard became effective on June 15, 2004, with an attainment date for the South Coast of **June 15**, 2024; and amended 12-7-12 sm

WHEREAS, the South Coast Air Basin was classified as "extreme" nonattainment for 8-hour ozone for the 1997 standard with attainment dates by 2024; and

WHEREAS, EPA approved the South Coast SIP for 8-hour ozone on March 1, 2012; and

WHEREAS, the federal Clean Air Act requires SIPs for regions not in attainment with the NAAQS be submitted no later than three years after the nonattainment area was designated, whereby, a SIP for the South Coast Air Basin must be submitted for 24-hour PM2.5 by December 14, 2012; and

WHEREAS, the South Coast Air Quality Management District has jurisdiction over the South Coast Air Basin and the desert portion of Riverside County known as the Coachella Valley; and

WHEREAS, 40 Code of Federal Regulations (CFR) Part 93 requires that transportation emission budgets for certain criteria pollutants be specified in the SIP, and

WHEREAS, 40 CFR Part 93.118(e)(4)(iv) requires a demonstration that transportation emission budgets submitted to U.S. EPA are "consistent with applicable requirements for reasonable further progress, attainment, or" maintenance (whichever is relevant to the given implementation plan submission); and

WHEREAS, the South Coast Air Quality Management District is committed to comply with the requirements of the federal Clean Air Act; and

WHEREAS, the Lewis-Presley Air Quality Management Act requires the District's Governing Board adopt an AQMP to achieve and maintain all state and federal air quality standards; to contain deadlines for compliance with federal primary ambient air quality standards; and to achieve the state standards and federal secondary air quality standards by the application of all reasonably available control measures, by the earliest date achievable (Health and Safety Code Section 40462) and the California Clean Air Act requires the District to endeavor to achieve and maintain state ambient air quality standards for ozone, carbon monoxide, sulfur dioxide, and nitrogen dioxide by the earliest practicable date (Health and Safety Code Section 40910); and

WHEREAS, the California Clean Air Act requires a nonattainment area to evaluate and, if necessary, update its AQMP under Health & Safety Code §40910 triennially to incorporate the most recent available technical information; and

WHEREAS, the South Coast Air Quality Management District Governing Board is committed to comply with the requirements of the California Clean Air Act; and

WHEREAS, the South Coast Air Quality Management District is unable to specify an attainment date for state ambient air quality standards for 8-hour ozone, PM2.5, and PM10, however, the 2012 AQMP, in conjunction with earlier AQMPs contains every feasible control strategy and measure to ensure progress toward attainment and the AQMP will be reviewed and revised to ensure that progress toward all standards is maintained; and

WHEREAS, the 2012 AQMP must meet all applicable requirements of state law and the federal Clean Air Act; and

WHEREAS, the South Coast Air Quality Management District Governing Board is committed to achieving healthful air in the South Coast Air Basin and all other parts of the District at the earliest possible date; and

WHEREAS, the 2012 AQMP is the result of 17 months of staff work, public review and debate, and has been revised in response to public comments; and

WHEREAS, the 2012 AQMP incorporates updated emissions inventories, ambient measurements, new meteorological episodes, improved air quality modeling analyses, and updated control strategies by the District, and the Southern California Association of Governments (SCAG) and will be forwarded to the California Air Resources Board (CARB) for any necessary additions and submission to EPA; and

WHEREAS, as part of the preparation of an AQMP, in conjunction or coordination with public health agencies such as CARB and the Office of Environmental Health Hazard Assessment (OEHHA), a report has been prepared and peer-reviewed by the Advisory Council on the health impacts of particulate matter air pollution in the South Coast Air Basin pursuant to California Health and Safety Code § 40471, which has been included as part of Appendix I (Health Effects) of the 2012 AQMP together with any required appendices; and

WHEREAS, the 2012 AQMP establishes transportation conformity budgets for the 24-hour PM2.5 standard based on the latest planning assumptions; and

WHEREAS, the AQMP satisfies all the attainment deadlines for federal ambient air quality standards for 24-hour PM2.5 and 1-hour ozone NAAQS; and

WHEREAS, the 2012 AQMP satisfies the planning requirements set forth in the federal and California Clean Air Acts; and

WHEREAS, the 2012 AQMP includes the 24-hour PM2.5 attainment demonstration plan, reasonably available control measure (RACM) and reasonably available control technology (RACT) determinations, and transportation conformity budgets for the South Coast Air Basin; and

WHEREAS, the 2012 AQMP updates the U.S. EPA approved 8-hour ozone control plan with new measures designed to reduce reliance on the federal Clean Air Act (CAA) Section 182(e)(5) long-term measures for NOx and VOC reductions; and

WHEREAS, in order to reduce reliance on the CAA Section 182(e)(5) long-term measures, the SCAQMD will need emission reductions from sources outside of its primary regulatory authority and from sources that may lack, in some cases, the financial wherewithal to implement technology with reduced air pollutant emissions; and

WHEREAS, a majority of the measures identified to reduce reliance on the CAA Section 182(e)(5) long-term measures rely on continued and sustained funding to incentivize the deployment of the cleanest on-road vehicles and off-road equipment; and

WHEREAS, the 2012 AQMP includes a new demonstration of 1-hour ozone attainment (Appendix VII) and vehicle miles travelled (VMT) emissions offsets (Appendix VIII), as per recent proposed U.S. EPA requirements; and

WHEREAS, the South Coast Air Quality Management District Governing Board finds and determines with certainty that the 2012 AQMP is considered a "project" pursuant to CEQA; and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA) a Notice of Preparation (NOP) of a Draft Program Environmental Impact Report (PEIR) and Initial Study for the 2012 AQMP was prepared and released for a 30-day public comment period, preliminarily setting forth the potential adverse environmental impacts of adopting and implementing the 2012 AQMP; and

WHEREAS, pursuant to CEQA a Draft PEIR on the 2012 AQMP (State Clearinghouse Number 2012061093), including the NOP and Initial Study and responses to comments on the NOP and Initial Study, was prepared and released for a 45-day public comment period, setting forth the potential adverse environmental impacts of adopting and implementing the 2012 AQMP; and

WHEREAS, the Draft PEIR on the 2012 AQMP included an evaluation of project-specific and cumulative direct and indirect impacts from the proposed project and four project alternatives; and

WHEREAS, the AQMD staff reviewed the 2012 AQMP and determined that it may have the potential to generate significant adverse environmental impacts; and

WHEREAS, the Draft PEIR on the 2012 AQMP has been revised based on comments received and modifications to the draft 2012 AQMP and all comments received were responded to, such that it is now a Final PEIR on the 2012 AQMP; and

WHEREAS, the Governing Board finds and determines, taking into consideration the factors in §(d)(4)(D) of the Governing Board Procedures, that the modifications that have been made to 2012 AQMP, since the Draft PEIR on the 2012 AQMP was made available for public review would not constitute significant new information within the meaning of the CEQA Guidelines; and

WHEREAS, none of the modifications to the 2012 AQMP alter any of the conclusions reached in the Draft PEIR on the 2012 AQMP, nor provide new information of substantial importance that would require recirculation of the Draft PEIR on the 2012 AQMP pursuant to CEQA Guidelines §15088.5; and

WHEREAS, it is necessary that the adequacy of the Final PEIR on the 2012 AQMP be determined by the AQMD Governing Board prior to its certification; and

WHEREAS, it is necessary that the adequacy of responses to all comments received on the Draft PEIR on the 2012 AQMP be determined prior to its certification; and

WHEREAS, it is necessary that the AQMD prepare Findings and a Statement of Overriding Considerations pursuant to CEQA Guidelines §§15091 and 15093, respectively, regarding adverse environmental impacts that cannot be mitigated to insignificance; and,

WHEREAS, Findings and a Statement of Overriding Considerations have been prepared and are included in Attachment 2 to this Resolution, which is attached and incorporated herein by reference; and

WHEREAS, the provisions of Public Resources Code §21081.6 – Mitigation Monitoring and Reporting - require the preparation and adoption of implementation plans for monitoring and reporting measures to mitigate adverse environmental impacts identified in environmental documents; and

WHEREAS, staff has prepared such a plan which sets forth the adverse environmental impacts, mitigation measures, methods, and procedures for monitoring and reporting mitigation measures, and agencies responsible for monitoring mitigation measure, which is included as Attachment 2 to the Resolution and incorporated herein by reference; and

WHEREAS, the South Coast Air Quality Management District Governing Board voting on this Resolution has reviewed and considered the Final Program Environmental Impact Report on the 2012 AQMP, including responses to comments on the Draft Program Environmental Impact Report on the 2012 AQMP, the Statement of Findings, Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting Plan; and

WHEREAS, the Draft Socioeconomic Report on the 2012 AQMP was prepared and released for public review and comment; and

WHEREAS, the Draft Socioeconomic Report for the 2012 AQMP is revised based on comments received and modifications to the Draft 2012 AQMP such that it is now a Draft Final Socioeconomic Report for the 2012 AQMP; and

WHEREAS, the 2012 AQMP includes every feasible measure and an expeditious adoption schedule; and

WHEREAS, the CARB and the U.S. EPA have the responsibility to control emissions from motor vehicles, motor vehicle fuels, and non-road engines and consumer products which are primarily under their jurisdiction representing over 80 percent of ozone precursor emissions in 2023; and

WHEREAS, significant emission reductions must be achieved from sources under state and federal jurisdiction for the South Coast Air Basin to attain the federal air quality standards; and

WHEREAS, the formal deadline for submission of the 24-hour PM2.5 attainment plan is December 14, 2012, and the formal deadline for submission of the 1-hour ozone SIP revision is expected to be late 2013 or early 2014, but since the emissions inventory and control strategy for ozone has already been developed for the 2012 AQMP, and attaining the 1-hour ozone standard can rely on the same strategy for the 8-hour ozone standard, an attainment demonstration for the 1-hour ozone standard is included as an Appendix to the 2012 AQMP; and

WHEREAS, the 1-hour ozone attainment demonstration (Appendix VII) uses the same base year (2008) and future year inventories as presented in Appendix III of the 2012 AQMP and satisfies the pre-base year offset requirement by including pre-base year emissions in the growth projections, consistent with 40 CFR § 51.165(a)(3)(i)(C)(1), as described on page III-2-54 of Appendix III of the 2012 AQMP.

WHEREAS the South Coast Air Quality Management District Governing Board hereby requests that CARB commit to submitting contingency measures as required by Section 182(e)(5) as necessary to meet the requirements for demonstrating attainment of the 1-hr ozone standard; and

WHEREAS, the South Coast Air Quality Management District Governing Board directs staff to move expeditiously to adopt and implement feasible new control measures to achieve long-term reductions while meeting all applicable public notice and other regulatory development requirements; and

WHEREAS, the South Coast Air Quality Management District has held six public workshops on the Draft 2012 AQMP, one public workshop on the Draft Socioeconomic Report, four public hearings throughout the four-county region in September on the Revised Draft 2012 AQMP, 14 AQMP Advisory Group meetings, 11 Scientific, Technical, and Modeling, Peer Review Advisory Group meetings, four public hearings in November throughout the four-county region on the Draft Final 2012 AQMP, and one adoption hearing pursuant to section 40466 of the Health and Safety Code; and

WHEREAS, pursuant to section 40471(b) of the Health and Safety Code, as part of the six public workshops on the Draft 2012 AQMP, four public hearings on the Revised Draft 2012 AQMP, the four public hearings on the Draft Final 2012 AQMP, and adoption hearing, public testimony and input were taken on Appendix I (Health Effects); and

WHEREAS, the record of the public hearing proceedings is located at South Coast Air Quality Management District, 21865 Copley Drive, Diamond Bar, California 91765, and the custodian of the record is the Clerk of the Board; and

WHEREAS, an extensive outreach program took place that included over 75 meetings with local stakeholders, key government agencies, focus groups, topical workshops, and over 65 presentations on the 2012 AQMP provided; and

WHEREAS, the record of the CEQA proceedings is located at South Coast Air Quality Management District, 21865 Copley Drive, Diamond Bar, California 91765, and the custodian of the record is the Assistant Deputy Executive Officer, Planning, Rule Development, and Area Sources.

NOW, THEREFORE BE IT RESOLVED, that the South Coast Air Quality Management District Governing Board does hereby certify that the Final PEIR for the 2012 AQMP including the responses to comments has been completed in compliance with the requirements of CEQA and finds that the Final PEIR on the 2012 AQMP, including responses to comments, was presented to the AQMD Governing Board, whose members reviewed, considered and approved the information therein prior to acting on the 2012 AQMP; and finds that the Final PEIR for the 2012 AQMP reflects the AQMD's independent judgment and analysis; and

BE IT FURTHER RESOLVED, that the District will develop, adopt, submit, and implement the short-term PM2.5 control measures as identified in Table 4-2 and the 8-hour ozone measures in Table 4-4 of Chapter 4 in the 2012 AQMP (Main Document) as expeditiously as possible in order to meet or exceed

the commitments identified in Tables 4-10 and 4-11 of the 2012 AQMP (Main Document), and to substitute any other measures as necessary to make up any emission reduction shortfall.

BE IT FURTHER RESOLVED, the District commits to update AQMP emissions inventories, baseline assumptions and control measures as needed to ensure that the best available data is utilized and attainment needs are met.

BE IT FURTHER RESOLVED, the District commits to conduct a review of its socioeconomic analysis methods during 2013, convene a panel of experts, and update assessment methods and approaches, as appropriate.

BE IT FURTHER RESOLVED, the District commits to continue working with the ports on the implementation of control measure IND-01 (Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Sources).

BE IT FURTHER RESOLVED, that the Executive Officer is hereby directed to enhance outreach and education efforts related to the "Check before you Burn" residential wood burning curtailment program, and to expand the current incentive programs for gas log buydown and to include potentially wood stove replacements working closely with U.S. EPA and other stakeholders.

amended 12-7-12 BA

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board does hereby direct staff to work in conjunction with CARB to provide annual reports to U.S. EPA describing progress towards meeting Section 182(e)(5) emission reduction commitments.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, pursuant to the requirements of Title 14 California Code of Regulations, does hereby adopt the Statement of Findings pursuant to §15091, and adopts the Statement of Overriding Considerations pursuant to §15093, included in Attachment 2 and incorporated by reference; and

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, does hereby adopt the Mitigation Monitoring and Reporting Plan, as required by Public Resources Code, Section 21081.6, attached hereto and incorporated by reference; and

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board finds that the mobile source control measures contained in Appendix IV-B are technically feasible and cost-effective and requests that CARB consider them in any future incentives programs or rulemaking.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board does hereby direct staff to work with state agencies and state legislators, federal agencies and U.S. Congressional and Senate members to identify funding sources and secure funding for the expedited replacement of older existing vehicles and off-road equipment to help reduce the reliance on the CAA Section 182(e)(5) long-term measures.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board finds that transportation emission budgets are "consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to the given implementation plan submission)" pursuant to 40 CFR 93.118(e)(4)(iv).

BE IT FURTHER RESOLVED, that the Executive Officer is hereby directed to finalize the 2012 AQMP including the main document, appendices, and related documents as adopted at the December 7, 2012 public hearing.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, whose members reviewed, considered and approved the information contained in the documents listed herein, adopts the 2012 AQMP dated December 7, 2012 consisting of the document entitled 2012 AQMP as amended by the final changes set forth by the AQMD Governing Board and the associated documents listed in Attachment 1 to this Resolution, the Draft Final Socioeconomic Report for the 2012 AQMP; the Final Program EIR for the 2012 AQMP, and the Statements of Findings and Overriding Considerations and Mitigation Monitoring Plan (Attachment 2 to this Resolution).

BE IT FURTHER RESOLVED, the Executive Officer is hereby directed to work with CARB and the U.S. EPA to ensure expeditious approval of this 2012 AQMP for PM2.5 and 1-hour ozone attainment.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, requests that the 2012 AQMP serve as the SIP revision submittal for the 24-hour PM2.5 attainment demonstration plan including the RACM/RACT determinations for the PM2.5 standard for the South Coast Air Basin, and the PM2.5 Transportation Conformity Budgets for the South Coast Air Basin.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, requests that the 2012 AQMP (Appendix VII) serve as the SIP revision submittal for the 1-hour ozone NAAQS attainment demonstration.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, requests that the 2012 AQMP (Appendix VIII) serve as the SIP revision submittal for a revised VMT emissions offset demonstration as required under Section 182(d)(1)(A) for both the 1-hour ozone and 8-hour ozone SIPs for the South Coast Air Basin.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, requests that the 2012 AQMP serve as an update to the approved 2007 8-hour ozone SIP for the South Coast Air Basin with specific control measures designed to further implement the 8-hour ozone SIP and reduce reliance on Section 182(e)(5) long term measures.

BE IT FURTHER RESOLVED, that the 2012 AQMP does not serve as a revision to the previously approved 8-hour ozone SIP with respect to emissions inventories, attainment demonstration, RFP, and transportation emissions budgets or any other required SIP elements.

BE IT FURTHER RESOLVED, that the Executive Officer is hereby directed to forward a copy of this Resolution, the 2012 AQMP and its appendices as amended by the final changes, to CARB, and to request that these documents be forwarded to the U.S. EPA for approval as part of the California State Implementation Plan. In addition, the Executive Officer is directed to forward a copy of this Resolution, comments on the 2012 AQMP and responses to comments, public notices, and any other information requested by the U.S. EPA for informational purposes.

Attachments

AYES: Benoit, Burke, Cacciotti, Gonzales, Loveridge, Lyou, Mitchell, Nelson, Parker, Pulido, and Yates.

NOES: None.

ABSTAIN: None.

ABSENT: Antonovich and Perry.

Dated: 12-7-2012

Saundra McDaniel
Clerk of the District Board

ATTACHMENT 1

The Final 2012 Air Quality Management Plan submitted for the South Coast Air Quality Management District Governing Board's consideration consists of the documents entitled:

- Draft Final 2012 AQMP (Attachment B) including the following appendices:
  - Appendix I - Health Effects
  - Appendix II - Current Air Quality
  - Appendix III - Base and Future Year Emission Inventory
  - Appendix IV (A) - District's Stationary Source Control Measures
  - Appendix IV (B) - Proposed 8-Hour Ozone Measures
  - Appendix IV (C) - Regional Transportation Strategies & Control Measures
  - Appendix V - Modeling & Attainment Demonstrations
  - Appendix VI - Reasonably Available Control Measures (RACM) Demonstration
  - Appendix VII - 1-Hour Ozone Attainment Demonstration
  - Appendix VIII - VMT Offset Requirement Demonstration
- Comments on the 2012 Air Quality Management Plan, and Responses to Comments (November 2012) – (Attachment C)
- Final Program Environmental Impact Report for the 2012 Air Quality Management Plan (Attachment D)
  - Findings, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Plan (Attachment 2 to the Resolution)
- Draft Final Socioeconomic Report for the 2012 Air Quality Management Plan (Attachment E)
- Changes to Control Measures IND-01, CMB-01, CTS-01 and CTS-04 (Attachment F)

ATTACHMENT 22.

State of California
AIR RESOURCES BOARD

SOUTH COAST AIR BASIN 2012 PM2.5 AND OZONE STATE IMPLEMENTATION PLANS

Resolution 13-3

January 25, 2013

Agenda Item No.: 13-2-2

WHEREAS, the Legislature in Health and Safety Code section 39602 has designated the State Air Resources Board (ARB or Board) as the air pollution control agency for all purposes set forth in federal law;

WHEREAS, the ARB is responsible for preparing the State Implementation Plan (SIP) for attaining and maintaining the National Ambient Air Quality Standards (standards) as required by the federal Clean Air Act (Act) (42 U.S.C. section 7401 et seq.), and to this end is directed by Health and Safety Code section 39602 to coordinate the activities of all local and regional air pollution control and air quality management districts (districts) as necessary to comply with the Act;

WHEREAS, section 41650 of the Health and Safety Code requires the ARB to approve the nonattainment area plan adopted by a district as part of the SIP unless the Board finds, after a public hearing, that the plan does not meet the requirements of the Act;

WHEREAS, the ARB has responsibility for ensuring that the districts meet their responsibilities under the Act pursuant to sections 39002, 39500, 39602, and 41650 of the Health and Safety Code;

WHEREAS, the ARB is authorized by section 39600 of the Health and Safety Code to do such acts as may be necessary for the proper execution of its powers and duties;

WHEREAS, sections 39515 and 39516 of the Health and Safety Code provide that any duty may be delegated to the Board's Executive Officer as the Board deems appropriate;

WHEREAS, the districts have primary responsibility for controlling air pollution from non-vehicular sources and for adopting control measures, rules, and regulations to attain the standards within their boundaries pursuant to sections 39002, 40000, 40001, 40701, 40702, and 41650 of the Health and Safety Code;

WHEREAS, the South Coast Air Basin (SCAB or Basin) includes Orange County, the southwestern two-thirds of Los Angeles County, southwestern San Bernardino County, and western Riverside County;

WHEREAS, the South Coast Air Quality Management District (District) is the local air district with jurisdiction over the SCAB, pursuant to sections 40410 and 40413 of the Health and Safety Code;

WHEREAS, the Southern California Association of Governments (SCAG) is the regional transportation agency for the SCAB and Coachella Valley and has responsibility for preparing and implementing transportation control measures to reduce vehicle trips, vehicle use, vehicle miles traveled, vehicle idling and traffic congestion for the purpose of reducing motor vehicle emissions pursuant to sections 40460(b) and 40465 of the Health and Safety Code;

WHEREAS, section 40463(b) of the Health and Safety Code specifies that the District board must establish a carrying capacity - the maximum level of emissions which would enable the attainment and maintenance of an ambient air quality standard for a pollutant - for the South Coast Air Basin with the active participation of SCAG;

WHEREAS, the South Coast 2012 Air Quality Management Plan (AQMP) includes State Implementation Plan (SIP) amendments for fine particulate matter (PM2.5) and ozone;

WHEREAS, in July 1997, the United States Environmental Protection Agency (U.S. EPA) promulgated 24-hour and annual standards for PM2.5 of 65 micrograms per cubic meter (ug/m^3) and 15 ug/m^3, respectively;

WHEREAS, in December 2004, U.S. EPA designated the South Coast Air Basin as nonattainment for the PM2.5 standards;

WHEREAS, in March 2007, U.S. EPA finalized the PM2.5 implementation rule (Rule) which established the framework and requirements that states must meet to develop annual average PM2.5 SIPs, set an initial attainment date of April 5, 2010, and allowed for an attainment date extension of up to five years;

WHEREAS, the Rule requires that PM2.5 SIPs include air quality and emissions data, a control strategy, a modeled attainment demonstration, transportation conformity emission budgets, reasonably available control measure/reasonably available technology (RACM/RACT) demonstration, and contingency measures;

WHEREAS, in July 1997, the U.S. EPA promulgated an 8-hour standard for ozone of 0.08 parts per million (ppm);

WHEREAS, on April 15, 2004, U.S. EPA designated the South Coast as nonattainment for the 0.08 ppm 8-hour ozone standard;

WHEREAS, in 2007, the District and ARB adopted SIP amendments demonstrating attainment of the annual PM2.5 standard by April 5, 2015, and of the 8-hour ozone standard by December 31, 2023, and submitted the SIP amendments to U.S. EPA;

WHEREAS, in 2009 and 2011, at U.S. EPA's request, ARB provided clarifying amendments to the annual PM2.5 and 8-hour ozone South Coast SIPs submitted in 2007;

WHEREAS, in 2011, U.S. EPA approved the control strategy, emission reduction commitment and attainment demonstration for the annual PM2.5 standard with an attainment date of April 5, 2015;

WHEREAS, in 2012, U.S. EPA approved the control strategy, emission reduction commitment and attainment demonstration for the 8-hour ozone standard with an attainment date of June 15, 2024;

WHEREAS, in December 2006, U.S. EPA lowered the 24-hour PM2.5 standard from 65 ug/m^3 to 35 ug/m^3;

WHEREAS, effective December 14, 2009, U.S. EPA designated the South Coast Air Basin as nonattainment for the 35 ug/m^3 PM2.5 standard;

WHEREAS, on March 12, 2012, U.S. EPA issued a memorandum that provided further guidance on the development of SIPs specific to the 35 ug/m^3 PM2.5 standard and set an initial attainment date of December 14, 2014, with a provision for an attainment date extension of up to five years;

WHEREAS, the 2012 AQMP Plan identifies directly-emitted PM2.5, nitrogen oxides (NOx), sulfur oxides (SOx) and volatile organic compounds (VOC) as PM2.5 attainment plan precursors consistent with the Rule;

WHEREAS, the emission reductions contained in the 2012 AQMP for PM2.5 attainment rely on adopted regulations and on new or revised District control measures;

WHEREAS, the 2012 AQMP's new PM2.5 measures include further strengthening of the District's wood burning curtailment program, outreach, and incentive programs;

WHEREAS, in accordance with section 172(b)(2) of the Act, the 2012 AQMP identifies 2014 as the most expeditious attainment date for the 24-hour PM2.5 standard;

WHEREAS, the attainment analysis in the 2012 AQMP demonstrates that the 24-hour PM2.5 standard will be met throughout the Basin by the proposed 2014 attainment date;

WHEREAS, consistent with section 172(c)(3) of the Act, the 2012 AQMP includes a comprehensive, accurate, current inventory of emissions data for directly emitted PM2.5 and PM2.5 precursors: oxides of nitrogen (NOx), reactive organic gases (ROG), sulfur oxides (SOx), and ammonia (NH3);

WHEREAS, consistent with section 172(c) of the Act, the 2012 AQMP demonstrates the implementation of RACM/RACT for direct PM2.5 and the area's relevant PM2.5 precursors;

WHEREAS, consistent with section 172(c)(9) of the Act, the 2012 AQMP includes contingency measures that provide extra emissions reductions that go into effect without further regulatory action if the area fails to make attainment of the 24-hour PM2.5 standard on time;

WHEREAS, consistent with section 176 of the Act, the 2012 AQMP establishes transportation conformity emission budgets, developed in consultation between the District, ARB staff, transportation agencies, and U.S. EPA, that conform to the attainment emission levels;

WHEREAS, the approved commitment for emission reductions is for total aggregate reductions that may be achieved through the measures identified in the SIP, alternative measures or incentive programs, and actual emission decreases that occur;

WHEREAS, the approved commitment for emission reductions allows for the substitution of reductions of one precursor for another using relative PM2.5 reductions values identified by the District;

WHEREAS, section 182(e)(5) of the Act provides that SIPs for extreme ozone nonattainment areas may rely in part upon the development of new technologies or the improvement of existing technologies;

WHEREAS, the approved SIP includes commitments to achieve additional reductions from advanced technology as provided for in section 182(e)(5) of the Act;

WHEREAS, in the Federal Register (Volume 77 Fed.Reg. 12674 at 12686 (March 1, 2012)) entry approving the ozone elements of the South Coast 8-hour ozone SIP, U.S. EPA stated that measures approved under section 182(e)(5) may include those that anticipate future technological developments as well as those that require complex analyses, decision making and coordination among a number of government agencies;

WHEREAS, the 2011 revision to the 8-hour ozone SIP included State commitments to develop, adopt, and submit contingency measures by 2020 if advanced technology measures do not achieve planned reductions;

WHEREAS, the 2012 AQMP includes actions to develop and put into use advanced transformational technologies to fulfill in part the approved SIP commitment for the Act section 182(e)(5) reductions;

WHEREAS, these actions described in the 2012 AQMP as seventeen mobile measures (five on-road measures, five off-road measures, and seven advanced technology measures), are consistent with U.S. EPA's interpretation of 182(e)(5) used in the approval of the South Coast 8-hour ozone SIP (77 Fed.Reg. 12674 at 12686 (March 1, 2012));

WHEREAS, on November 6, 1991, U.S. EPA designated the South Coast Air Basin an extreme nonattainment area for the 1-hour ozone standard with an attainment date of no later than November 15, 2010;

WHEREAS, in 2000 ARB submitted the 1999 Amendment to the South Coast 1997 AQMP, collectively called the 1997/1999 SIP revision, which included long-term measures pursuant to section 185(e)(5);

WHEREAS, in 2000 U.S. EPA approved the 1997/1999 revision to the South Coast 1-hour ozone SIP;

WHEREAS, in 2003 ARB submitted a revision to the South Coast 1-hour ozone SIP;

WHEREAS, in 2009 U.S. EPA disapproved the attainment demonstration in the 2003 revision;

WHEREAS, on February 2, 2011, the Ninth Circuit Court of Appeals remanded U.S. EPA's 2009 final action on the 2003 South Coast 1-hour ozone SIP and directed U.S. EPA to take further action to ensure that the State develop a plan demonstrating attainment of the 1-hour ozone standard, consistent with Clean Air Act requirements;

WHEREAS, on January 7, 2013, U.S. EPA issued a SIP call for the State to submit, within 12 months of the effective date of the SIP call, a SIP revision demonstrating attainment of the 1-hour ozone standard in the Basin;

WHEREAS, the 2012 AQMP's 1-hour ozone attainment demonstration relies on adopted state and local regulations, along with new local regulations including continued implementation of the approved 8-hour ozone SIP to reduce emissions by 2022;

WHEREAS, the 1-hour ozone attainment demonstration also relies upon section 182(e)(5) provisions for future reductions from developing new technologies or improving existing technologies;

WHEREAS, the actions to implement advanced technology measures for the approved 8-hour ozone SIP also describe actions to implement advanced technology measures for the 1-hour ozone attainment demonstration;

WHEREAS, section 182(e)(5) of the Act requires contingency measures be submitted no later than three years prior to the attainment year in the event that the anticipated long-term measures approved pursuant to section 182(e)(5) do not achieve planned reductions needed for attaining the 1-hour ozone standard;

WHEREAS, section 182(e)(5) contingency measures in the approved SIP meet the requirements for attainment contingency measures because section 182(e)(5) is not relied on for emission reductions prior to November 15, 2000;

WHEREAS, the 2012 AQMP demonstrates the Basin will attain the 1-hour ozone standard by 2022;

WHEREAS, consistent with section 172(c)(3) of the Act, the 2012 AQMP includes a comprehensive, accurate, current inventory of emissions data for precursors of ozone: oxides of nitrogen (NOx) and reactive organic gases (ROG);

WHEREAS, consistent with section 172(c) of the Act, the 2012 AQMP demonstrates the implementation of RACM/RACT for NOx and ROG;

WHEREAS, section 182(d)(1)(a) of the Act requires ozone nonattainment areas classified as severe and extreme to submit a vehicle miles traveled (VMT) offset demonstration showing no increase in motor vehicle emissions between the base year in the Act 1990 Amendments and the area's attainment year;

WHEREAS, in February 2011, the Ninth Circuit Court of Appeals held that section 182(d)(1)(a) of the Act requires additional transportation control strategies and transportation control measures to offset vehicle emissions whenever they are projected to be higher than if base year VMT had not increased;

WHEREAS, the Ninth Circuit Court of Appeals remanded the approval of the 2007 8-hour ozone SIP VMT emissions offsets demonstration to U.S. EPA;

WHEREAS, in September 2012, U.S. EPA proposed to withdraw its final approvals, and then disapprove, SIP revisions submitted to meet the section 182(d)(1)(a) VMT emissions offset requirements for the U.S. EPA approved South Coast Air Basin 1-hour and 8-hour ozone plans;

WHEREAS, in August 2012, U.S. EPA issued guidance entitled "Implementing Clean Air Act Section 182(d)(1)(A): Transportation Control Measures and Transportation Control Strategies to Offset growth in Emissions Due to Growth in Vehicle Miles Traveled";

WHEREAS, consistent with the requirements of section 182(d)(1)(A) as specified by the Ninth Circuit Court of Appeals ruling in 2011 and with U.S. EPA guidance in 2012, and in response to U.S. EPA's September 2012 proposal, the 2012 AQMP includes a VMT offset demonstration for both 1-hour and 8-hour ozone plans;

WHEREAS, the 2012 AQMP also includes a second VMT emissions offset demonstration for 8-hour ozone that meets an alternative VMT offset methodology proposed by U.S. EPA;

WHEREAS, the California Environmental Quality Act (CEQA) requires that no project which may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, pursuant to California Environmental Quality Act (CEQA), the District prepared a Program Environmental Impact Report (EIR) for the 2012 AQMP that was released for a 45-day public review and comment period from September 7, 2012 to October 23, 2012, and in the Final Program EIR the District responded to the 13 comment letters received;

WHEREAS, the District's Final Program EIR identified potentially significant and unavoidable project-specific adverse environmental impacts to air quality (CO and PM10 impacts from construction activities), energy demand, hazards (associated with accidental release of liquefied natural gas during transport), water demand, noise (from construction activities) and traffic (construction activities and operations), as well as potentially significant cumulative adverse impacts to air quality (construction), energy demand, hazards and hazardous materials, hydrology and water quality, noise, and transportation and traffic;

WHEREAS, the District Governing Board adopted a Statement of Findings and a Statement of Overriding Considerations finding the project's benefits outweigh the unavoidable adverse impacts, as well as a Mitigation Monitoring Plan;

WHEREAS, federal law set forth in section 110(l) of the Act and Title 40, Code of Federal Regulations (CFR), section 51.102, requires that one or more public hearings, preceded by at least 30 days notice and opportunity for public review, must be conducted prior to adopting and submitting any SIP revision to U.S. EPA;

WHEREAS, as required by federal law, the District made the 2012 AQMP available for public review at least 30 days before the District hearing;

WHEREAS, following a public hearing on December 7, 2012, the AQMD Governing Board voted to approve the 2012 AQMP including the 24-hour PM2.5 plan, the 8-hour ozone advanced technology actions and the 1-hour ozone plan;

WHEREAS, on December 20, 2012, the District transmitted the 2012 AQMP to ARB as a SIP revision, along with proof of public notice publication, and environmental documents in accordance with State and federal law; and

WHEREAS, the Board finds that:

1. The 2012 AQMP meets the applicable planning requirements established by the Act and the Rule for 24-hour PM2.5 SIPs, and includes the required air quality and emissions data, modeled attainment demonstrations, RACM/RACT demonstrations, new source review, transportation conformity emission budgets, and contingency measures;

2. The existing 2007 PM2.5 SIP, including benefits of ARB's adopted mobile source control measures, combined with the new District control measures identified in the adopted 2012 AQMP will provide the emission reductions needed for meeting the 24-hour PM2.5 standard by the December 14, 2014, attainment date;

3. The 2012 AQMP identifies contingency measures that will achieve additional emission reductions, beyond those relied on in the attainment demonstration, in the event that the South Coast Air Basin does not attain the 24-hour PM2.5 standard by 2014;

4. The 2012 AQMP meets applicable planning requirements established by the Act for 1-hour ozone SIPs, and includes the required air quality and emissions data, modeled attainment demonstrations, new source review and RACM/RACT demonstrations;

5. The 2012 AQMP VMT offset demonstrations meets the section 182(d)(1)(a) VMT offset requirements for both the 1-hour ozone and the 8-hour ozone plans; and

6. ARB has reviewed and considered the Final EIR prepared by the District and comments presented by interested parties, and find there are no additional feasible mitigation measures or alternatives within ARB's powers that would substantially lessen or avoid the project-specific impacts identified.

NOW, THEREFORE, BE IT RESOLVED the Board hereby approves the South Coast 2012 AQMP as an amendment to the SIP, excluding those portions not required to be submitted to U.S. EPA under federal law, and directs the Executive Officer to forward the 2012 AQMP as approved to U.S. EPA for inclusion in the SIP to be effective, for purposes of federal law, upon approval by U.S. EPA.

BE IT FURTHER RESOLVED that the Board commits to develop, adopt, and submit contingency measures by 2019 if advanced technology measures do not achieve planned reductions as required by section 182(e)(5)(B).

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to work with the District and U.S. EPA and take appropriate action to resolve any completeness or approvability issues that may arise regarding the SIP submission.

BE IT FURTHER RESOLVED that the Board authorizes the Executive Officer to include in the SIP submittal any technical corrections, clarifications, or additions that may be necessary to secure U.S. EPA approval.

BE IT FURTHER RESOLVED that the Board hereby certifies pursuant to 40 CFR section 51.102 that the District's 2012 AQMP was adopted after notice and public hearing as required by 40 CFR section 51.102.

I hereby certify that the above is a true and correct copy of Resolution 13-3, as adopted by the Air Resources Board.

Tracy Jensen, Clerk of the Board

SAN PEDRO BAY PORTS

CLEAN AIR ACTION PLAN

January 20, 2016

Geoffrey L. Wilcox, Esq.
EPA Docket Center
U.S. Environmental Protection Agency
Mailcode: 2822T
1200 Pennsylvania Avenue, NW.
Washington, DC 20460-0001

Re: Docket No. EPA-HQ-OGC-2015-0677
U.S. Environmental Protection Agency
Proposed Consent Decree, Clean Air Act Citizen Suit:
Sierra Club, et al. v. EPA, No. 2:15-cv-3798-ODW (ASx) (C.D. CA.)

Dear Mr. Wilcox:

On behalf of the City of Long Beach acting by its Harbor Department and the City of Los Angeles acting by its Harbor Department (collectively, the Cities or the ports), we appreciate the opportunity to provide comments in response to the U.S. Environmental Protection Agency's (EPA) *Proposed Consent Decree, Clean Air Act Citizen Suit: Sierra Club, et al. v. EPA, No. 2:15-cv-3798-ODW (ASx) (C.D. CA.)* (Proposed Consent Decree), as re-published in the *Federal Register* on December 21, 2015 (Federal Register, Vol. 80. No 244) (the Notice).

I. The Proposed Consent Decree Does Not and Cannot Compel EPA to Take Final Action on Control Measure IND-01 Because It Is Not Properly Before EPA.

The Cities reiterate our initial comments submitted on November 20, 2015 that the Proposed Consent Decree does not and cannot incorporate South Coast Air Quality Management District's (SCAQMD) Control Measure IND-01: Backstop Measure for Indirect Source of Emissions (IND-01) (November 20, 2015 Letter to EPA re: Docket No. EPA-HQ-OGC-2015-0677, attached hereto as Attachment 1 and incorporated as if fully set forth). Control Measure IND-01 would unlawfully designate the port portions of the Cities as "indirect sources," and then codify the voluntary San Pedro Bay Ports Clean Air Action Plan (CAAP) program into law as Rule 4001. As explained further below, Control Measure IND-01 and its proposed implementing Rule 4001 are not properly before EPA for approval (80 FR 63640). Therefore the Proposed Consent Decree must be modified to expressly

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

indicate that EPA's final action on SCAQMD's 2012 Air Quality Management Plan regarding attainment of the 2006 fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard (2012 $PM_{2.5}$ AQMP) does not include Control Measure IND-01. In addition, EPA must expressly state in any final approval, disapproval, or conditional approval pursuant to the Proposed Consent Decree that its action does not include Control Measure IND-01.

The Notice and terms of the Proposed Consent Decree (¶ 1) require EPA, by March 15, 2016, to take final action on the portions of the February 13, 2013 submission of SCAQMD's 2012 $PM_{2.5}$ AQMP. The Cities previously submitted a Comment Letter on November 19, 2015 to EPA re: Docket No. EPA-R09-OAR-2015-0204 (November 19, 2015 Letter), which is attached hereto as Attachment 2 and incorporated as if fully set forth. Both the November 19 and November 20, 2015 Letters explain that Control Measure IND-01 is not properly before EPA for approval (80 FR 63640) because it was expressly ***removed*** from the 2012 $PM_{2.5}$ AQMP during the SCAQMD Governing Board's public hearing on December 7, 2012. (Proof of this fact is shown in Attachment 2, Exhibit 17.) SCAQMD subsequently submitted this version of the 2012 $PM_{2.5}$ Plan to the California Air Resources Board (CARB). The CARB Board, which is the only entity authorized to make State Implementation Plan (SIP) submittals, has never authorized the submittal of Control Measure IND-01 or Proposed Rule 4001 to EPA for inclusion as part of California's SIP for the South Coast Air Basin. On February 13, 2013, the CARB Executive Officer submitted the 2012 $PM_{2.5}$ AQMP to EPA ***without*** Control Measure IND-01. In fact, the 2012 $PM_{2.5}$ AQMP contained in federal Docket No. EPA-R09-OAR-2015-0204 has Control Measure IND-01 ***crossed out*** and thus confirms that it was removed from the 2012 $PM_{2.5}$ AQMP before submittal to CARB and EPA. (See Attachment 2, Exhibit 17.) Therefore, ***the version of the 2012 $PM_{2.5}$ AQMP that is subject to EPA's Proposed Consent Decree rulemaking plainly excludes Control Measure IND-01***. (80 FR 63640). The record upon which EPA is relying upon for the rulemaking does not include Control Measure IND-01. Accordingly, the Proposed Consent Decree must be amended to clearly indicate that EPA's final action does not include Control Measure IND-01. Further, EPA's final approval, disapproval, or conditional approval must expressly state that its action does not include Control Measure IND-01.

Thank you again for the opportunity to comment on the proposed action.

Sincerely,

Heather A. Tomley
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

CC:TD:yo
APP No.: 160114-500 SCAQMD Indirect Source Rule

Attachments

1) November 20, 2015 Letter from City of Long Beach acting by its Harbor Department and City of Los Angeles acting by its Harbor Department to U.S. Environmental Protection Agency Re: Docket No. EPA-HQ-OGC-2015-0677-

2) November 19, 2015 Letter from City of Long Beach acting by its Harbor Department and City of Los Angeles acting by its Harbor Department to U.S. Environmental Protection Agency Re: Docket No. EPA-R09-OAR-2015-0204

cc: Jon Slangerup, Chief Executive, Port of Long Beach
Gene Seroka, Executive Director, Port of Los Angeles
Richard Cameron, Managing Director, Port of Long Beach
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Barbara McTigue, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
Jared Blumenfeld, Administrator, EPA, Region 9
Deborah Jordan, Director, Air Division, EPA, Region 9
Elizabeth Adams, Deputy Director, Air Division, EPA, Region 9
Richard Corey, Executive Officer, CARB
Cynthia Marvin, Division Chief, Stationary Source Division, CARB
Doug Ito, Chief, Freight Transportation Branch, CARB
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD

November 19, 2015

Geoffrey L. Wilcox, Esq.
EPA Docket Center
U.S. Environmental Protection Agency
Mailcode: 2822T
1200 Pennsylvania Avenue, NW.
Washington, DC 20460-0001

Re: Docket No. EPA-HQ-OGC-2015-0677
U.S. Environmental Protection Agency
Proposed Consent Decree, Clean Air Act Citizen Suit:
Sierra Club, et al. v. EPA, No. 2:15-cv-3798-ODW (ASx) (C.D. CA.)

Dear Mr. Wilcox:

On behalf of the City of Long Beach acting by its Harbor Department and the City of Los Angeles acting by its Harbor Department (collectively, the Cities or the ports), we appreciate the opportunity to provide comments in response to the U.S. Environmental Protection Agency's (EPA) *Proposed Consent Decree, Clean Air Act Citizen Suit: Sierra Club, et al. v. EPA, No. 2:15-cv-3798-ODW (ASx) (C.D. CA.)*, as published in the *Federal Register* on October 21, 2015 (Federal Register, Vol. 80. No 203).

I. The Proposed Consent Decree Should Be Re-Noticed.

Clean Air Act section 113(g) (42 U.S.C. § 7413(g)) requires public notice of proposed consent decrees to be published in the federal register for 30 days before becoming final or filed with the court. The Notice for the Proposed Consent Decree must be re-noticed to ensure meaningful public review and comment. First, the Notice indicates that the proposed "partial" Consent Decree is available for public review on the website, www.regulations.gov, under docket number EPA-OGC-2015-0677. (80 FR 63783.) However, the docket failed to contain the Proposed Consent Decree. As of the date of this letter, the Proposed Consent Decree is still not available in the docket. Second, the Cities understand from discussions with EPA that the Proposed Consent Decree would provide a full instead of "partial" resolution of the *Sierra Club* litigation as erroneously stated in the federal register notice. The Notice was therefore vague and misleading. Third, while the Cities were ultimately able to locate the docket with EPA's assistance, the Cities experienced considerable problems accessing the docket using

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

the docket number provided in the Notice. This problem may have also affected other public members seeking to comment and who were unable to do so. We therefore request that EPA re-issue the notice.

II. The Proposed Consent Decree Does and Cannot Compel EPA to Take Final Action on Control Measure IND-01 Because It Is Not Properly Before EPA.

According to the Notice and terms of the Proposed Consent Decree (¶ 1), the final rulemaking would require EPA, by March 15, 2016, to take final action on the portions of the February 13, 2013 submission of South Coast Air Quality Management District's (SCAQMD) 2012 Air Quality Management Plan that address attainment of the 2006 fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard (2012 $PM_{2.5}$ Plan). The Consent Decree cannot address Control Measure IND-01 because Control Measure IND-01 is not before EPA for approval (80 FR 63640). (See Cities' November 19, 2015 Letter to EPA re: Docket No. EPA-R09-OAR-2015-0204, which is attached hereto and incorporated as if fully set forth.) On December 7, 2012, when the SCAQMD Governing Board considered the $PM_{2.5}$ Plan, the Governing Board specifically ***removed*** Control Measure IND-01 from the $PM_{2.5}$ Plan ***before*** adoption. On February 13, 2013, the CARB Executive Officer submitted the 2012 $PM_{2.5}$ Plan to EPA without Control Measure IND-01. This is the version that is subject to EPA's proposed rulemaking. (80 FR 63640).

Thank you again for the opportunity to comment on the proposed action.

Sincerely,

Heather A. Tomley
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachments

1) November 19, 2015 Letter from City of Long Beach acting by its Harbor Department and City of Los Angeles acting by its Harbor Department to U.S. Environmental Protection Agency Re: Docket No. EPA-R09-OAR-2015-0204

cc:

The Honorable Barbara Boxer, United States Senate
The Honorable Janice Hahn, United States House of Representatives
The Honorable Alan Lowenthal, United State House of Representatives
The Honorable Edmund G. Brown, Jr., Governor, State of California
The Honorable Ricardo Lara, California State Senate
The Honorable Patrick O'Donnell, California State Assembly
The Honorable Robert Garcia, Mayor, City of Long Beach

The Honorable Eric Garcetti, Mayor, City of Los Angeles
Jon Slangerup, Chief Executive, Port of Long Beach
Gene Seroka, Executive Director, Port of Los Angeles
Richard Cameron, Managing Director, Port of Long Beach
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Barbara McTigue, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
Jared Blumenfeld, Administrator, EPA, Region 9
Deborah Jordan, Director, Air Division, EPA, Region 9
Elizabeth Adams, Deputy Director, Air Division, EPA, Region 9
Jeanhee Hong, Regional Counsel, EPA Region 9
Richard Corey, Executive Officer, CARB
Cynthia Marvin, Division Chief, Stationary Source Division, CARB
Doug Ito, Chief, Freight Transportation Branch, CARB
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD

ATTACHMENT

SAN PEDRO BAY PORTS

CLEAN AIR ACTION PLAN

November 19, 2015

Ms. Wienke Tax
Air Planning Office (AIR-2)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

Re: Docket No. EPA-R09-OAR-2015-0204
U.S. Environmental Protection Agency
Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; California; South Coast Moderate Area Plan and Reclassification as Serious Nonattainment for the 2006 PM2.5 NAAQS

Dear Ms. Tax:

On behalf of the City of Long Beach acting by its Harbor Department and the City of Los Angeles acting by its Harbor Department (collectively, the Cities or the ports), we appreciate the opportunity to provide comments in response to the U.S. Environmental Protection Agency's (EPA) proposal for *Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; California; South Coast Moderate Area Plan and Reclassification as Serious Nonattainment for the 2006 PM2.5 NAAQS,* as published in the *Federal Register* on October 20, 2015 (Federal Register, Vol. 80. No 202).

I. Summary of Ports' Position.

The Cities urge the EPA to disapprove and exclude the South Coast Air Quality Management District (SCAQMD or District) Control Measure IND-01 and Proposed Rule 4001, *Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities* from the State Implementation Plan (SIP) submittal for the 2006 $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) in the South Coast Air Basin. The Cities recognize that emissions from nearly every business sector, including the maritime goods movement industry, need to be reduced in order for the State of California and SCAQMD to meet the NAAQS. For this reason, the two Cities implemented the highly successful voluntary San Pedro Bay Clean Air Action Plan (CAAP) to encourage the maritime goods movement industry to do its fair share in the South Coast Air Basin to reduce emissions. Most of the strategies included in the CAAP have since been overtaken by regulations enacted by the California Air Resources Board or International Maritime Organization. It is the Cities' understanding that the purpose of Control

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

Measure IND-01 and Proposed Rule 4001 is to allow the SCAQMD to enforce against the Cities their voluntary CAAP program in the event that the international, federal, and state regulatory programs don't achieve the $PM_{2.5}$ emissions inventory that SCAQMD assumed in the baseline for the years 2014 and 2019 in the 2012 AQMP.

The inclusion of Measure IND-01 and Proposed Rule 4001 in the AQMP and SIP is neither necessary nor legally proper, for reasons that will be explained below. SCAQMD proposes by Control Measure IND-01 to improperly designate the entire harbor districts of the Cities as "stationary sources" and "indirect sources," and then hold the two Cities legally responsible for actions by the maritime industry that the SCAQMD assumed in the $PM_{2.5}$ Plan. The Cities do not operate, own or control the emissions sources.

The Cities have long opposed the inclusion of any form of a "backstop" rule on the ports that would apply SCAQMD oversight and enforcement against the ports for failures of the SCAQMD and CARB in assuming maritime goods movement industry activities in the baseline.. We have also raised significant technical, jurisdictional, constitutional, and legal concerns with Proposed Rule 4001 in a series of comment letters sent to SCAQMD, CARB and EPA regarding the inclusion of Control Measure IND-01 in the 2012 Air Quality Management Plan and SIP, and the subsequent rulemaking process of SCAQMD Rule 4001. (See Attachments 1-15.) These letters are incorporated by reference as a part of this comment letter to EPA as if fully set forth herein. With respect to EPA's present rulemaking, as further discussed below in sections III-IV, the ports do not believe that Control Measure IND-01 and Proposed Rule 4001 are properly before EPA. Even if EPA determines there are no procedural infirmities and proceeds with the proposed rulemaking, there are numerous substantive legal reasons why EPA cannot approve Control Measure IND-01 or Proposed Rule 4001 as part of the SIP. These arguments are discussed below in section V.

II. Background.

The Cities and businesses that move goods in and out of the ports are vital to the regional, state, and national economy. The ports are home to the two busiest container seaports in the United States and, if taken together, are the fifth busiest in the world, moving more than $260 billion a year in trade. The international cargo handled by the ports also accounts for over 1.1 million jobs in California and 3.3 million jobs in the United States; however, competition for much of this cargo is intensifying particularly with other international ports (Panama Canal, Canada, Mexico).

The ports are global leaders, voluntarily working in partnership with several public agencies (EPA, CARB, and SCAQMD) and the maritime goods movement industry to achieve unprecedented success in reducing emissions from goods movement sources (ships, trains, trucks, cargo handling equipment, harbor craft) and improving air quality, while continuing to foster port development that is essential to Southern California's economy. On November 20, 2006, the Cities approved the landmark CAAP, the most comprehensive strategy to cut air pollution and reduce health risks ever adopted for a global seaport complex. The CAAP contained goals to achieve a 45% emissions reduction in diesel particulate matter (DPM), nitrogen oxides (NOx), and sulfur oxides (Sox) by the end of 2011 from the mobile sources operating in and around the ports. In 2007, the ports received the 8th Annual National U.S. EPA Clean Air Excellence Award in recognition of this groundbreaking work and commitment.

The Cities continued their pioneering work and commitment to clean air by adopting an update to the CAAP on November 22, 2010. The 2010 CAAP update established several aggressive goals: (1) by 2014, reduce emissions from mobile sources operating in and around the ports by 22% for NOx, 93% for SOx, and 72% for DPM from baseline emissions; (2) by 2023, reduce emissions from mobile sources operating in and around the ports by 59% for NOx, 92% for SOx and 77% for DPM; and, (3) aim by 2020 to lower the cancer risk related to diesel particulate pollution by 85% in the communities adjacent to the ports. The CAAP was initially developed as a voluntary effort not required by any state, federal or local law or regulation. The voluntary aspect of the CAAP is critical. The ports set stretch goals under an incentive-based and collaborative approach that has resulted in billions of dollars of investment by the Cities and private sector businesses in clean air programs and technology. More importantly, because the goals are in advance of regulations, much of the CAAP success is due to reliance on federal, state and SCAQMD grants that can only be obtained for "surplus" emission reductions that go beyond regulation –which will not be available under a required regulation such as PR 4001.

The Cities remain firm in their position that Control Measure IND-01 and Proposed Rule 4001 are unnecessary and counterproductive to a successful collaborative approach, and should not be included in the SIP. These measures would hold the ports, not the owners or operators of the emission sources, responsible for shortfalls in voluntary CAAP measures. This approach will deter the ports as well as other ports and industries from any type of voluntary emission reduction action in the future. The proposed rule would also unfairly impact only the ports in Southern California; no such rule exists for any other port in the United States or other parts of the world.

In addition, the Cities have shown that there is no demonstrated need for a backstop rule for equipment operating in and around the ports, nor is a ports' backstop rule necessary for the regional attainment of the 2006 $PM_{2.5}$ standard. (See Attachment 3, Cities' Letter to Dr. Randall Pasek, SCAQMD, January 15, 2014].). The attainment demonstration for the 2012 $PM_{2.5}$ Plan did not rely on any emission reductions from Control Measure IND-01. As indicated in SCAQMD's supplement to the 24-hour $PM_{2.5}$ SIP, unanticipated extreme weather conditions, not emissions from the maritime goods movement industry, have made attainment unlikely in 2014, citing the effects of the severe drought on the west coast of the United States.

Because any current shortfall in the regional attainment of the $PM_{2.5}$ emissions targets is not caused or controlled by the Cities, and not due to any actions or omissions on the part of the Cities, it is inappropriate and unnecessary to require Rule 4001 enforcement against the ports. The control measure was intended as a "backstop" that would go into effect only if the emission targets for NOx, SOx, and $PM_{2.5}$ from sources operating in or around the ports exceed the levels projected by the ports and assumed in the 2012 AQMP. In fact, the ports' most recently completed emissions inventories for calendar year 2014 show that the ports have **exceeded** the assumptions SCAQMD included in the 2012 $PM_{2.5}$ Plan.. Diesel particulate matter (DPM) emissions have been reduced by 85% over the 9 year period between 2005 and 2014. In addition, NOx emissions are down by 51%, and SOx emissions have been reduced by 97%. Instead of being rewarded for these extraordinary efforts, the Cities will instead be unnecessarily penalized with a port specific backstop rule. Since 2014 $PM_{2.5}$ CAAP goals were met and the ports are on track to maintain these reductions through 2019, there is no identified need or basis for including Proposed Rule 4001 in the SIP. In fact, the ports would be the *only* entities the SCAQMD regulates in this matter, notwithstanding these unprecedented voluntary efforts.

Table 3 of the Notice does not identify the anticipated implementation date and emissions reductions for Rule 4001, rather, listing "N/A". It is unreasonable to approve the inclusion of the Proposed Rule in the SIP without an indication of the implementation date and necessary emissions reductions from implementation of the rule to bring the South Coast Basin into attainment. A critical aspect of this related to the lack of need for an additional regulation on the ports is that many of the voluntary control strategies implemented under the CAAP have been superseded by source-specific state or international regulation. Approximately 98% of the emissions reductions from maritime goods movement emission sources that have been achieved to date rely on, and are largely the result of regulations at the state and international levels, including:

- CARB Truck and Bus Regulation
- CARB Ocean-going Vessel At-Berth Regulation
- CARB and International Ocean-going Vessels Low-Sulfur Fuel Regulations
- CARB Cargo-handling Equipment Regulation
- CARB Commercial Harbor Craft Regulation
- International Maritime Organization North American Emission Control Area

The Cities should not be held responsible for or mandated to backfill any potential emissions shortfalls from regulatory agencies not implementing emission reduction regulations as identified within the SIP, even if those regulations are related to equipment operating in or around the ports. The backstop measure should instead require EPA or CARB to enact applicable regulations under their air regulatory authority applied uniformly to the national ports or state ports, or to find the shortfall emission reductions from other sources in the SIP.

The Cities continually develop and support emission reduction strategies and programs that will result in cleaner air for the local communities and the region. These efforts have been entered into voluntarily, working cooperatively with the operators in the port area to reduce air quality impacts from the equipment they operate. The potential for additional regulation by the SCAQMD in the form of Rule 4001 on the ports brings significant uncertainty that will have broad negative effects on the goods movement industry and the economy as a whole, and will jeopardize the voluntary, collaborative partnership between the Cities, industry, and the air agencies that has led to the significant emissions reductions achieved to date.

III. Control Measure IND-01 Cannot Be Approved in the Final Rulemaking Because it Was Not Approved by the CARB Board for SIP Adoption, and Has Not Been Properly Submitted to EPA for Approval.

According to the Federal Register Notice (80 Fed. Reg. 63640), the SIP revisions encompassed in the proposed rulemaking are "the 2012 $PM_{2.5}$ Plan, submitted February 13, 2013, and the 2015 Supplement, submitted March 4, 2015." The 2012 $PM_{2.5}$ Plan submitted February 13, 2013, does ***not*** include IND-01 or Proposed Rule 4001. This is because on December 7, 2012, when the SCAQMD Governing Board considered the $PM_{2.5}$ Plan, the Governing Board specifically ***removed*** Control Measure IND-01 from the $PM_{2.5}$ Plan ***before*** adopting the Plan. (See Attachment 16.) On February 13, 2013, the CARB Executive Officer submitted the 2012 $PM_{2.5}$ Plan to EPA without Control Measure IND-01. In fact, the $PM_{2.5}$ Plan in the federal docket for this proposed rulemaking has IND-01 ***crossed out*** to confirm that it was removed from the $PM_{2.5}$ Plan before submittal to CARB and EPA. (See

Attachment 17.) The CARB Board, which is the only entity authorized to make SIP submittals, has never held a public meeting, offered to receive public comment on, or taken a Board vote to authorize the amendment of the SIP to include the submittal of IND-01 or Proposed Rule 4001 to EPA for inclusion as part of California's SIP for the South Coast Air Basin. The EPA Notice is based only on a control measure list with the date and title of Control Measure IND-01 included on Attachment F to the 2015 Supplement, with no evidence of CARB Board approval of its addition as a SIP supplement, which is legally insufficient as a SIP revision. EPA cites no other documents to demonstrate that Control Measure IND-01 was approved by the CARB Board and properly submitted to EPA as a proposed SIP revision.

Further, the 2015 Supplement did not constitute a submittal of Control Measure IND-01 or Proposed Rule 4001. As explained in EPA's proposed rulemaking (80 Fed. Reg. 63641), the 2015 Supplement was submitted in response to the appellate court's decision in *NRDC v. EPA*, 706 F/3d 428 (D.D. Cir. 2013), that EPA must consider the general implementation requirements of subpart 1 with the requirements specific to particulate matter nonattainment areas in subpart 4 of Part D, Title I of the Clean Air Act. The 2015 Supplement was intended to address the subpart 4 issues that had not been included in the $PM_{2.5}$ Plan. (80 Fed. Reg. 63641-63642.) The 2015 Supplement merely provides in Table F-1 a new proposed adoption date for Control Measure IND-01/Proposed Rule 4001 of 2015. (See Attachment 18.) The stated emission reduction "commitment" towards $PM_{2.5}$ attainment for Control Measure IND-01/Proposed Rule 4001 is "N/A" in both the $PM_{2.5}$ Plan and in the 2015 Supplement. The 2015 Supplement only states that Proposed Rule 4001 will not be approved in 2015 as stated in the 2015 Supplement. (See Attachment 19.)

EPA states that the $PM_{2.5}$ Plan or 2015 Supplement are considered complete SIP submittals under section 110(k)(1)(B) by operation of law without the inclusion of Control Measure IND-01 or Proposed Rule 4001. (80 Fed. Reg. 63642.) However, there is no text of either Control Measure IND-01 or Proposed Rule 4001 for EPA to assess in determining whether these actions comply with the applicable requirements of subparts 1 and 4. Since there is no Control Measure IND-01 or Proposed Rule 4001 in the $PM_{2.5}$ Plan or 2015 Supplement, these actions are not properly before EPA, and EPA cannot approve a commitment for SCAQMD to adopt Proposed Rule 4001 in its final rulemaking.

IV. Commitments to Adopt a Rule in the Future Cannot be Approved under Clean Air Act Section 110(k)(3).

To the extent that EPA will issue a final rule on the 2012 $PM_{2.5}$ Plan and 2015 Supplement, approval of SCAQMD's future commitments, specifically Control Measure IND-01 and Proposed Rule 4001, cannot be approved under Clean Air Act section 110(k)(3) as EPA proposes to do in the rulemaking. (80 Fed. Reg. 63650). According to EPA, under Section 110(k)(3), EPA considers three factors in determining whether to approve a control measure as an enforceable commitment. As discussed below, Control measure IND-01 and Proposed Rule 4001 are not enforceable commitments. However, EPA has determined it does not need to consider these factors because "the $PM_{2.5}$ Plan and 2015 Supplement do not rely on either the rule amendment commitments in its impracticability demonstration, RACM demonstration, RFP demonstration, or quantitative milestones, or to meet any other CAA requirement." (80 Fed. Reg. 63652.) Since the three-factor test has not been applied and Control Measure IND-01/Proposed Rule 4001 are not necessary to comply with the Clean Air Act

requirements, there is no basis for approving Control Measure IND-01/Proposed Rule 4001 under Section 110(k)(3).

V. Control Measure IND-01 and Proposed Rule 4001 are Legally Deficient.

If EPA decides that Control Measure IND-01 and Proposed Rule 4001 are properly before the agency, then the ports submit the following comments and concerns.

1. *Clean Air Act Subparts 1 and 4 Requirements Are Not Met.*

In accordance with Clean Air Act section 189(a)(1)(B), modeling is conducted for demonstrating attainment or that attainment by the applicable deadline is not practicable. Through Control Measure IND-01 and Proposed Rule 4001, SCAQMD is inappropriately attempting to enforce the modeling assumptions it utilized in the 2012 $PM_{2.5}$ Plan (that demonstrated attainment[1]) *for the ports only*. There is no justification as to why the port-only assumptions and no others must be enforced to achieve attainment. If EPA approves this novel and significant change in SIPs in its final rulemaking, it will be signaling to states and local agencies that they can enforce assumptions. This will undermine the SIP process and lead to serious disagreements and controversies over all assumptions states and local agencies include in their SIPs because the regulated community will be fearful that any technical assumptions included in the SIP will be enforced in the future. Technical assumptions estimated by scientists will become political decisions. Further, this approach has been disapproved by the Ninth Circuit Court of Appeals in *Bayview Hunters Point Community Advocates v. Metropolitan Transportation Commission*, 366 3d 692 (9th Cir. 2004).

The requirements in subparts 1 and 4 relative to RACM/RACT have not been met for Control Measure IND-01 and Proposed Rule 4001. EPA states that RACM includes any potential control measure for non-road emission sources that is both technologically and economically feasible. (80 Fed. Reg. 63647.) There must be an evaluation of technical feasibility that includes operation conditions, and non-air quality impacts as well as an economic feasibility that includes consideration of cost per ton of pollutant reduced, capital costs and annualized costs. There is no such analysis for Control Measure IND-01 or Proposed Rule 4001. SCAQMD cannot evade these requirements by calling Control Measure IND-01 an indirect source measure or a measure to simply enforce an attainment demonstration assumption.

Clean Air Act section 110(a)(2)(A) requires that control measures in the SIP be enforceable. As discussed herein, Control Measure IND-01 and Proposed Rule 4001 are not enforceable by the designated agencies and cannot be approved as Clean Air Act section 110(k)(3) commitments. As acknowledged by Table 3 in 80 Fed. Reg. 63651 there is no implementation date or emission reductions to be achieved by Control Measure IND-01 or Proposed Rule 4001. Further, EPA proposes to approve Control Measure IND-01 for ***NOx reductions*** in the $PM_{2.5}$ Plan. (80 Fed. Reg. 63652.) Control

[1] 80 Fed. Reg. 63644 incorrectly states that the 2012 PM2.5 Plan demonstrated that attainment by the moderate deadline is impracticable

Measure IND-01 is not evaluated in the attainment demonstration as a NOx control measure necessary to reduce $PM_{2.5}$ precursors. (See 42. U.S.C. § 7502(c).) (See Attachment 20.)

2. *The Ports Cannot Be Legally Responsible for Other Agencies' Actions.*

The CAAP's goals and control measures that SCAQMD seeks to codify as the responsibility of the ports are in fact the responsibility of other government agencies. As stated above, approximately 98% of voluntary CAAP measures have been superseded by state or international regulation, including:

- CARB Truck and Bus Regulation
- CARB Ocean-going Vessel At-Berth Regulation
- CARB and International Ocean-going Vessels Low-Sulfur Fuel Regulations
- CARB Cargo-handling Equipment Regulation
- CARB Commercial Harbor Craft Regulation
- International Maritime Organization North American Emission Control Area

The Cities should not be held legally responsible for or mandated to backfill any potential emissions shortfalls from regulatory agencies not implementing emission reduction regulations as identified within the SIP, even if those regulations are related to equipment operating at or in the vicinity of the ports or were originally identified as voluntary measures.

3. *Control Measure IND-01 and Proposed Rule 4001 are Not Required for Demonstrating Attainment.*

The SCAQMD Governing Board found that without Control Measure IND-01: (1) "the 2012 AQMP, in conjunction with earlier AQMPs contains every feasible control strategy and measure to ensure progress toward attainment…."; (2) "the AQMP satisfies all the attainment deadlines for federal ambient air quality standards for 24-hour $PM_{2.5}$ and 1-hour ozone NAAQS"; (3) "the 2012 AQMP satisfies the planning requirements set forth in the federal and California Clean Air Acts"; and, (4) "the 2012 AQMP includes every feasible measure and an expeditious adoption schedule". (Attachment 21, Resolution, motions, deleted Control Measure IND-01.)

On January 25, 2013, the CARB Board adopted Resolution No. 13-3. (Attachment 22, Resolution.) The CARB Board found that without Control Measure IND-01: (1) "the attainment analysis in the 2012 AQMP demonstrates that the 24-hour $PM_{2.5}$ standard will be met throughout the [South Coast Air] Basin by the proposed attainment date"; (2) the 2012 AQMP demonstrates the [South Coast Air] Basin will attain the 1-hour ozone standard by 2022"; (3) "[t]the 2012 AQMP meets the applicable planning requirements established by the [Clean Air] Act and the Rule for 24-hour $PM_{2.5}$ SIPs, and includes the required air quality and emissions data, modeled attainment demonstrations, RACM/RACT demonstrations, new source review, transportation conformity emission budgets, and contingency measures"; (4) "[t]he 2012 AQMP identifies contingency measures that will achieve additional emission reductions, beyond those relied on in the attainment demonstration, in the event that the South Coast Air Basin does not attain the 24-hour $PM_{2.5}$ standard by 2014"; and, (5) "[t]he 2012 AQMP meets applicable planning requirements established by the [Clean Air] Act for 1-hour ozone SIPs, and includes the required air quality and emissions data, modeled attainment demonstrations, new source review and RACM/RACT demonstrations".

EPA proposes to conclude that RACM/RACT have been met without Control Measure IND-01/Proposed Rule 4001. Because there is no need for Control Measure IND-01/Proposed Rule 4001, there is no basis for approving it as part of the SIP.

4. *Control Measure IND-01 and Proposed Rule 4001 Are Preempted by the Clean Air Act and SCAQMD Lacks Authority to Adopt and Implement these Committments.*

Congress vested the federal government with the authority to set nationwide emissions standards for mobile sources, including nonroad mobile engines and vehicles. (42 U.S.C. §§ 7521, 7547.) Congress expressly and impliedly preempted states from setting standards or other requirements relating to the control of emissions for mobile sources. (42 U.S.C. § 7543, (a) & (e) The goods movement sources that would be regulated by Proposed Rule 4001 are within the express and implied preemption.

The Clean Air Act allows California to seek authorization from the EPA to adopt "standards and other requirements relating to the control of emissions" for some but not all mobile sources that would be covered by Proposed Rule 4001. (42 U.S.C. §§ 7543, (b) & (e)(2)(A).) The Clean Air Act does not allow for California to seek an EPA waiver for every one of the goods movement emission sources, nor has CARB made such a request.

Control Measure IND-01/Proposed Rule 4001 sets standards relating to the control of emissions that are preempted by the Clean Air Act. Control Measure IND-01/Proposed Rule 4001 establishes an emission reduction target of 75% below 2008 emission levels. (See CAAP's goals and control measures above.) The ports do not own or operate the emitting equipment. If business-as-usual does not satisfy this requirement, then the ports' tenants (e.g., shipping companies) and customers (e.g., trucking companies) that own or operate the specific port-related sources will need to modify their current operations – the equivalent of complying with "other requirements."

Control Measure IND-01/Proposed Rule 4001 also sets "other requirements" relating to emissions from mobile sources because it requires the ports to ensure implementation of the rules and regulations of CARB, EPA and MARPOL. Proposed Rule 4001's emission inventory requirement will compel the ports to monitor compliance by mobile sources operating in and around the ports and identify and report reduction shortfalls. If emissions increase, exceeding the 75% emissions cap, the ports will have to identify the emission source and cause in order to adequately prepare a strategy for the Emission Reduction Plan required by the proposed rule to address and reduce these emissions. Yet, the ports have not been granted the authority by CARB, EPA and MARPOL to enforce their rules and regulations.

Under Control Measure IND-01/Proposed Rule 4001, if the Executive Officer decides the emission reduction target is not met, the ports would be required to prepare an Emission Reduction Plan that includes sufficient feasible control strategies expected to eliminate the identified shortfall and maintain the reduction target from maritime goods movement sources through calendar year 2020. This amounts to requiring the ports to impose "other requirements" upon the cargo movement that are more stringent than the requirements of CARB, EPA and MARPOL.

5. *SCAQMD Lacks Authority to Regulate Outside of Jurisdictional Boundaries.*

SCAQMD's authority to regulate is limited to its jurisdictional boundaries. SCAQMD was created by the California Legislature "in those portions of the Counties of Los Angeles, Orange,

Riverside, and San Bernardino included within the area of the South Coast Air Basin, as described in Section 60104 of Title 17 of the California Administrative Code, as now or hereafter amended." (Cal. Health & Safety Code, § 40410.)

The South Coast Air Basin includes the portion of Los Angeles County "[b]eginning at the Los Angeles-San Bernardino County boundary and running west along the township line common to T.3 N and T.2 N, San Bernardino Base and Meridian; then north along the range line common to R.8 W and R.9 W; then west along the township line common to T.4 N and T.3 N; then north along the range line common to R.12 W and R.13 W to the southeast corner of Section 12, T.5 N, R.13 W; then west along the south boundaries of Sections 12, 11, 10, 9, 8, 7, T.5 N, R.13 W to the boundary of the Angeles National Forest which is collinear with the range line common to R.13 W and R.14 W; then north and west along the Angeles National Forest boundary to the point of intersection with the township line common to T.7 N and T.6 N (point is at the northwest corner of Section 4 in T.6 N, R.14 W); then west along the township line common to T.7 N and T.6 N; then north along the range line common to R.15 W and R.16 W to the southeast corner of Section 13, T.7 N, R.16 W; then along the south boundaries of Sections 13, 14, 15, 16, 17, 18, T.7 N, R.16 W; then north along the range line common to R.16 W and R.17 W to the north boundary of the Angeles National Forest (collinear with township line common to T.8 N and T.7 N); then west and north along the Angeles National Forest boundary to the point of intersection with the south boundary of the Rancho La Liebre Land Grant; then west and north along this land grant boundary to the Los Angeles-Kern County boundary. (17 Cal. Code Regs., § 60104(d).)

SCAQMD's 2012 AQMP, which includes Control Measure IND-01 as an indirect source control strategy, applies only to the South Coast Air Basin. The 2012 AQMP acknowledges that SCAQMD's jurisdiction over the South Coast Air Basin "is bounded by the Pacific Ocean to the west and the San Gabriel, San Bernardino, and San Jacinto mountains to the north and east." (See 2012 AQMP, p. 1-2.) SCAQMD lacks authority to adopt and enforce Proposed Rule 4001 because it does not have jurisdiction to regulate emission sources outside of its geographical boundaries as would be required if the CAAP programs become mandatory. The Ocean Going Vessel (OGV) Vessel Speed Reduction program would require OGVs to slow vessel speed to 12 knots during their approach and departure from the ports at a distance of either 20 nm or 40 nm from Point Fermin, which is outside SCAQMD's jurisdictional boundary. The OGV Low Sulfur Fuel for Auxiliary Engines and Auxiliary Boilers program would require OGVs to switch to low sulfur distillate fuel within 40 nm from Point Fermin, which is outside of SCAQMD's jurisdictional boundary. The OGV Low Sulfur Fuel for Main Engines program would require OGVs to switch to low sulfur distillate fuel within 40 nm from Point Fermin, which is outside of SCAQMD's jurisdictional boundary.

This OGV Vessel Speed Reduction program is the only CAAP measure that is not already part of regulations adopted by other agencies. Yet, the ports also lack jurisdiction to mandate any OGV actions of the ship owners if CAAP voluntary incentive targets are not met for the reasons stated below in section V.6.

6. ***Control Measure IND-01 and Proposed Rule 4001 Violate IMO's MARPOL Annex VI and Maritime Pollution Prevention Act of 2008.***

OGVs are regulated by the federal government implementing its treaty obligations under MARPOL, administered by the IMO, specifically MARPOL Annex VI Regulations for the Prevention

of Air Pollution from Ships (Annex VI) which sets global limits for SOx, NOx, and PM emissions from OGVs. Congress vested MARPOL and Annex VI authority with the Secretary of the U.S. Coast Guard (Secretary) and the Administrator (Administrator) of the EPA. (33 U.S.C. § 1903.) The Secretary has exclusive MARPOL administrative and enforcement authority. (33 U.S.C. § 1903(a).) The Administrator has Annex VI administrative, regulatory, investigative, and enforcement authority. (33 U.S.C. §§ 1901 et seq.)

The SCAQMD's ability to adopt, enforce, and require the ports to comply with Control Measure IND-01/Proposed Rule 4001 is precluded and preempted by Annex VI and federal regulations. (40 CFR § 1043.10.) The federal government has historically been the principal regulator of emissions from U.S. and foreign-flagged ships (or OGVs) under Annex VI. (40 C.F.R. § 94; 40 C.F.R. § 1043, 33 C.F.R. § 151).

The ports are located within the North American Environmental Control Area (ECA) established under Annex VI. The North American ECA's limits are much stricter than Annex VI's global requirements. Control Measure IND-01/Proposed Rule 4001 unlawfully requires the ports to collect and report NOx, SOx, and PM emissions information from OGVs subject to Annex VI requirements in the North American ECA. (Proposed Rule 4001(d).) To collect this information, the ports must impose a reporting requirement for OGVs coming and going from the ports– effectively regulating them under Annex VI. The ports lack authority to regulate U.S. and foreign-flagged ships in this manner. (33 U.S.C. §§ 1903, 1907.) Federal recordkeeping and reporting requirements for fuel and marine engines are expressly allowed (40 C.F.R. § 1043.70(b)-(c)), but no other recordkeeping and reporting requirements are authorized by statute or regulation. Control Measure IND-01/Proposed Rule 4001's reporting requirement is thus preempted by both Annex VI's record-keeping requirements for NOx engine standards and sulfur content in fuel (Regulations 13 and 14, Annex VI; incorporated by reference at 40 C.F.R. § 1043.100) and federal regulatory record-keeping and reporting requirements (40 C.F.R. § 1043.70).

Control Measure IND-01/Proposed Rule 4001 is also preempted on enforcement grounds. Congress expressly reserved enforcement authority of Annex VI regulations to the U.S. Coast Guard and EPA. (33 U.S.C. §§ 1903, 1907.) Enforcement inspections will be conducted only by the U.S. Coast Guard and, when referred by the Secretary, investigated by the Administrator. (33 U.S.C. §§ 1907(f)(1)-(2).) The U.S. Coast Guard and EPA are authorized to impose civil penalties for violations of MARPOL (including Annex VI) and 33 U.S.C. §§ 1901 et seq., § 1908(b)(1). The ports and SCAQMD are not so authorized and cannot inspect, penalize, or undertake enforcement actions against OGVs under Annex VI and 33 U.S.C. §§ 1901 et seq.

Control Measure IND-01/Proposed Rule 4001 also gives the Executive Officer of the SCAQMD authority to decide that the emission target is not met. To satisfy the Emission Reduction Plan requirement, the ports may have to impose more stringent emissions requirements on U.S. and foreign-flagged vessels than required by Annex VI. The ports and SCAQMD both lack this authority.

7. ***Control Measure IND-01 and Proposed Rule 4001 Violate the Dormant Commerce Clause.***

Control Measure IND-01/Proposed Rule 4001 violates the dormant Commerce Clause and would impede the free and efficient flow of commerce imposing a heavy burden on ports, the shipping

industry, navigation and commerce without any local environmental benefit, or an insubstantial local benefit at best. Because SCAQMD's attainment demonstration shows the $PM_{2.5}$ NAAQS can be obtained without Control Measure IND-01/Proposed Rule 4001, it is unnecessary to require additional emissions reductions from the maritime goods movement industry to achieve attainment and the burdens on interstate commerce of Control Measure IND-01/Proposed Rule 4001 render it unreasonable and irrational.

8. ***SCAQMD Lacks Authority under the Clean Air Act to Designate and Regulate the Ports as "Indirect Sources."***

The Clean Air Act defines an indirect source as "a facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution." (42 U.S.C. § 7410(a)(5)(C).) An "indirect source review program" is "the facility-by-facility review of indirect sources of air pollution, including such measures as are necessary to assure, or assist in assuring, that a new or modified indirect source will not attract mobile sources of air pollution" that would contribute to the exceedance of the NAAQS. (42 U.S.C. § 7410(a)(5)(D)(i).) "Direct emissions sources or facilities at, within, or associated with, any indirect source shall not be deemed indirect sources for the purpose" of an indirect source review program. (42 U.S.C. § 7410(a)(5)(C).)

The ports are not a "Facility" as required by the Clean Air Act's indirect source provisions. Together, the Port of Los Angeles and Port of Long Beach encompass 10,700 acres, miles of waterfront and features 50 passenger and cargo terminals, including dry and liquid bulk, container, breakbulk, automobile and warehouse facilities, and a cruise passenger complexes. While some U.S. ports are "operating ports" that own and operate their terminals and equipment and hire longshoremen to handle cargo, the ports of Los Angeles and Long Beach are "non-operating" or "landlord" ports that hold the tidelands property in trust for the State of California and lease it out to port tenants that operate the terminals. Each port tenant is treated as an individual stationary source facility by the SCAQMD and their activities are separately regulated and permitted by the SCAQMD.

SCAQMD advances the novel theory in Control Measure IND-01/Proposed Rule 4001 that it can designate a geographic area of a city to be an "indirect source." Further, the geographic line drawn by SCAQMD does not respect political boundaries and lumps portions of the Cities together as a single indirect source. The SCAQMD believes it can draw any geographic boundary it desires and declare that area to be an "indirect source" without regard for whether the landowner operates or controls mobile sources that pass through the area. Under the SCAQMD's theory, a local air district could designate as a stationary source, and an indirect source any city or county that has natural features that attract ships or cars or other mobile sources, even if the city or county does not own, operate or control those sources. Is a city with oil fields a stationary source and indirect source because it attracts refineries, trucks and trains to transport the petroleum products? If Riverside County has increased the numbers of warehouses and distribution centers within its borders, is the governmental agency or county geographical area now a stationary source and indirect source because such distribution centers within their borders attract trucks and trains?

Control Measure IND-01/Proposed Rule 4001 uses the Clean Air Act's indirect source provisions as a guise to impermissibly regulate mobile sources. Proposed Rule 4001 regulates emissions from "***on- and off-road mobile sources operating at, and to and from***, the Ports, which includes ocean-

going vessels, locomotives, heavy duty trucks, harbor craft, trucks, and cargo handling equipment that emit NOx, SOx, or PM2.5." (Proposed Rule 4001(c)(7) [Emphasis added].) Proposed Rule 4001's language clearly regulates emissions from the tailpipes of on-road and off-road mobile sources listed above, which makes Proposed Rule 4001 a mobile source regulation. The language also plainly allows Proposed Rule 4001 to regulate off-site emissions (emissions occurring during transit "to and from" the purported "site"). Proposed Rule 4001 therefore regulates emissions from heavy duty trucks hauling a container from the ports to Oregon or OGVs hauling cargo containers from Asia to the ports – even when that truck or OGV is no longer physically operating within the ports' boundaries. Proposed Rule 4001 is therefore not a site-based program. Congress did not intend or authorize the use of the indirect source provisions of the Clean Air Act as a way to circumvent mobile source preemption.

Control Measure IND-01/Proposed Rule 4001 also fails as an indirect source review program because the ports are not a "new or modified indirect emissions source." The Clean Air Act defines modification as "any physical change in, or change in the method of operation, of a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of an air pollutant not previously emitted." (42 U.S.C. § 7411(a)(4).) The criteria pollutants targeted by Control Measure IND-01/Proposed Rule 4001 are among those that have been identified and reduced for the duration of the CAAP. Because the ports do not qualify as either a new or modified source, any attempt to regulate them as such exceeds the SCAQMD's authority.

Control Measure IND-01/Proposed Rule 4001 also violates the nexus requirement for indirect source review programs. The purpose of an indirect source review program is to ensure that mobile source emissions do not "cause or contribute to air pollution concentrations exceeding any national primary ambient air quality standard for a mobile-source related air pollutant." (42 U.S.C § 7410(a)(5)(D)(i).) SCAQMD's own $PM_{2.5}$ monitors show that emissions from mobile sources operating in and around the ports are not causing or contributing to the South Coast Air Basin's nonattainment of the $PM_{2.5}$ NAAQS. In the 2015 Supplement, SCAQMD attributes nonattainment to a single monitor – Mira Loma (Van Buren) – which is located in Riverside, approximately 60 miles northeast of the ports. This monitor has purportedly failed to attain the $PM_{2.5}$ NAAQS because of drought conditions in Southern California, even though all of the South Coast Air Basin has experienced the drought and none of SCAQMD's other monitors have failed to demonstrate attainment with the $PM_{2.5}$ NAAQS, including the two State and Local Air Monitoring Stations nearest to the Ports – in North and South Long Beach. The Long Beach monitors have consistently demonstrated attainment for at least the last four years and are projected to continue attaining the standard through 2019. The data thus suggest a nexus between nonattainment and a source located near the Mira Loma (Van Buren) monitor – ***not the ports***.

9. *SCAQMD Lacks Authority to Require the Ports to Regulate Air Quality*.

Control Measure IND-01/Proposed Rule 4001 unlawfully compels the Ports to regulate local air quality in violation of California Health and Safety Code sections 40414 and 40440. SCAQMD's authority is confined to air quality and cannot infringe on the land use authority of counties and cities. (42 U.S.C. § 7431; Cal. Health and Safety Code § 40414.) The ports, not SCAQMD, have the authority to determine their own land use needs to advance trade and commerce. The ports play a critical role in facilitating domestic and international maritime commerce. The Los Angeles City Charter charges the Port of Los Angeles with possession, management, and control of all navigable waters, tidelands, submerged lands, and other lands as specified in the City Charter. (City Charter, Sections 602 and 651.)

Similarly, the Long Beach City Charter vests in the Long Beach Harbor Department the authority to control and supervise the Harbor District to provide for the needs of commerce, navigation, recreation and fishery. (Long Beach charter Article X11.) As an exercise of this authority, the ports decided to develop an emission inventory and implement CAAP programs after having weighed the risks of losing business to other ports without a CAAP-equivalent program. These emissions are not caused by the ports' own equipment or operations – they are caused by tenants and other goods movement customers that operate in or near the ports.

The ports are not authorized by state or federal law to carry out the air quality responsibilities of an air district or state. (40 C.F.R. § 51.232(a).) The delegation requirements are also not met. (40 C.F.R. § 51.232(b).) Control Measure IND-01/Proposed Rule 4001 nevertheless requires the ports to conduct regulatory activities, such as developing and adopting emission reduction strategies for maritime goods movement emission sources, which may include retrofit, idling, or fuel requirements; seeking SCAQMD's approval to implement the ERP regulations; and establishing enforcement procedures to ensure that $PM_{2.5}$ emission reductions from mobile sources operating in or near the ports meet the 2012 AQMP assumptions. (See Proposed Rule 4001(f)(1)(C), (f)(1) and (2), and (f)(1)(D).)

10. *There is No Legal Authority for Including Control Measure IND-01 or Proposed Rule 4001 in the SIP*.

Indirect source control measures cannot be required as a condition of SIP approval by EPA or CARB. (42 U.S.C. § 7410(a)(5)(A)(ii); Cal. Health & Safety Code, § 40468.) There are no provisions in the Clean Air Act for including "backstop" measures like Control Measure IND-01 and rules like Proposed Rule 4001 in the California SIP. Only those provisions necessary to meet the requirements of the Clean Air Act can be included in the SIP. (Cal. Health & Safety Code, § 39602.) Control Measure IND-01/Proposed Rule 4001 is not necessary to meet the 24-hour $PM_{2.5}$ NAAQS requirements of Clean Air Act, and there is no emission reduction target for Control Measure IND-01 in the attainment strategy for the 2012 AQMP which Proposed Rule 4001 purports to implement. Thus, Proposed Rule 4001 does not comply with SIP submittal requirements. (See e.g., 40 C.F.R. §§ 51.112-51.114.)

The 2012 AQMP baseline assumptions SCAQMD seeks to enforce by Control Measure IND-01/Proposed Rule 4001 are not credited as emission reductions in the control attainment demonstration for the 2012 AQMP. There is no requirement under the Clean Air Act to enforce baseline assumptions in a SIP. CARB and SCAQMD must have legal authority to adopt, carry out and enforce each SIP measure before EPA can approve the SIP measure. (40 C.F.R. §§ 51.230-51.232; 40 C.F.R. § 51, App. V.) CARB and SCAQMD lack legal authority (preempted) because they cannot require the owners or operators of OGVs, locomotives, harbor craft, and CHE to implement all of the measures set forth in the CAAP, which Control Measure IND-01/Rule Proposed Rule 4001 requires. There is no agreement between CARB or SCAQMD with the Cities for the ports to agree to implement and enforce the sources covered by Proposed Rule 4001. (40 C.F.R. § 51.240.)

11. *Control Measure IND-01 and Proposed Rule 4001 Violate the Tidelands Trust Doctrine*.

The Cities' management of their tidelands is restricted by the public trust doctrine and the legislative acts that granted tidelands to the Cities. As tidelands trustees, the Cities are required to operate and use their tidelands property and revenues solely for the benefit of the entire State of

California, and not for purely local interest or benefit. The Cities have been granted the discretion over how to best fulfill the express trust purposes. SCAQMD cannot compel the ports through Proposed Rule 4001 to violate these Tidelands Trust obligations.

Control Measure IND-01/Proposed Rule 4001 strips the Cities of their discretion in administering the tidelands for the benefit of the State of California and compels the Cities to utilize their revenues for air quality purposes ahead of the purposes expressly set forth in the documents granting tidelands to the Cities. As a practical matter, Control Measure IND-01/Proposed Rule 4001 compliance will depend in part on the Cities providing financial incentives to the owners and operators of mobile sources to incentivize emission reductions. If the SCAQMD Executive Officer requires the ports to develop an Emission Reduction Plan and determines that more generous financial incentives must be offered by the ports to achieve the emission targets (which is permissible under Proposed Rule 4001), this would ultimately diminish the Cities' ability to execute their tidelands trust obligations by forcing revenue to be spent on complying with Proposed Rule 4001, and depleting revenues for express trust purposes.

In their discretion, the ports consider environmental quality to fall within the implied scope of the tidelands trust and have in fact made substantial expenditures when their operating budgets allow. The ports also fully comply with the California Environmental Quality Act when developing their properties for tenants' use, which may include providing mitigation such as air quality reduction measures to address any environmental impacts. However, the tidelands trust does not expressly require revenues be expended for "air quality improvement", and Control Measure IND-01/Proposed Rule 4001 appears to challenge the Cities' jurisdiction over their own funds, if the only way to increase compliance with a CAAP incentive program, for example, is to increase the amount of incentives.

Control Measure IND-01/Proposed Rule 4001 also compels the Cities to violate their Tidelands Trust obligations by mandating that the ports utilize trust funds for an entirely local air regulatory program to reduce PM 2.5, SOx, and NOx emissions. Proposed Rule 4001 applies to "commercial marine ports located in the South Coast Air Quality Management District." (Proposed Rule 4001(b).) The SCAQMD covers a sub-region within Southern California. (Cal. Health and Safety Code, § 40410.) "Commercial marine ports" means "the Port of Los Angeles and the Port of Long Beach." (Proposed Rule 4001(c)(2).) The funding to implement Proposed Rule 4001 will confer only an emission reduction benefit to the South Coast Air Basin and not the entire State of California. Thus, the benefits of Proposed Rule 4001 are strictly localized and conflict with the express terms of the tidelands trust provisions that the ports' property and revenues confer statewide, and not purely local, benefits. The implementation of Proposed Rule 4001 in the South Coast Air Basin will place the ports at a competitive disadvantage to other ports in California. If other ports secure cargo business meant for the Los Angeles or Long Beach ports, the Cities will lose revenues they need to fulfill their tidelands trust obligations.

Conclusion

Again, the ports appreciate the opportunity to comment on EPA's proposed rulemaking and urge the EPA to disapprove and exclude SCAQMD's Control Measure IND-01 and Proposed Rule 4001 from the SIP submittal for the 2006 $PM_{2.5}$ NAAQS in the South Coast Air Basin.

Sincerely,

Heather A. Tomley
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachments

1) March 25, 2014 Letter to Richard Corey, California Air Resources Board from Heather Tomley, Port of Los Angeles and Christopher Cannon, Port of Los Angeles
2) February 24, 2014 Letter from Deborah Jordan, EPA to Christopher Cannon, Port of Los Angeles and Matthew Arms, Port of Long Beach
3) January 31, 2014 Letter to Randall Pasek, Ph.D., South Coast Air Quality Management District from Matthew Arms, Port of Long Beach and Christopher Cannon, Port of Los Angeles
4) January 15, 2014 Letter to Jared Blumenfeld, U.S. Environmental Protection Agency, Region 9 from Matthew Arms, Port of Long Beach and Christopher Cannon, Port of Los Angeles
5) January 15, 2014 Letter to Barbara Radlein, South Coast Air Quality Management District from Matthew Arms, Port of Long Beach and Christopher Cannon, Port of Los Angeles
6) October 2, 2013 Letter to Randall Pasek, South Coast Air Quality Management District from Heather Tomley, Port of Long Beach and Christopher Cannon, Port of Los Angeles
7) August 21, 2013 Letter to Barbara Radlein, South Coast Air Quality Management District from Heather Tomley, Port of Long Beach and Christopher Cannon, Port of Los Angeles
8) November 27, 2012 Letter to Susan Nakamura, South Coast Air Quality Management District from Richard D. Cameron, Port of Long Beach and Christopher Cannon, Port of Los Angeles
9) November 19, 2012 Letter to Barry Wallerstein, South Coast Air Quality Management District from Richard D. Cameron, Port of Long Beach and Christopher Cannon, Port of Los Angeles
10) November 8, 2012 Letter to Barry Wallerstein, South Coast Air Quality Management District from Richard D. Cameron, Port of Long Beach and Christopher Cannon, Port of Los Angeles
11) October 31, 2012 Letter to Barry Wallerstein, South Coast Air Quality Management District from Richard D. Cameron, Port of Long Beach and Christopher Cannon, Port of Los Angeles from Chris Lytle, Port of Long Beach and Michael Christensen, Port of Los Angeles
12) October 22, 2012 Letter to Jeff Inabinet, South Coast Air Quality Management District from Richard D. Cameron, Port of Long Beach and Christopher Cannon, Port of Los Angeles

13) August 30, 2012 Letter to Barry Wallerstein, South Coast Air Quality Management District from Chris Lytle, Port of Long Beach and Geraldine Knatz, Port of Los Angeles

14) July 10, 2012 Letter to Barry Wallerstein, South Coast Air Quality Management District from Chris Lytle, Port of Long Beach and Michael Christensen, Port of Los Angeles

15) May 4, 2010 Letter to Susan Nakamura, South Coast Air Quality Management District, from Richard D. Cameron, Port of Long Beach and Ralph Appy, Port of Los Angeles

16) December 2012, SCAQMD Final 2012 Air Quality Management Plan, pp. 4-8, 4-12 to 4-13; and January 11, 2013 CARB Staff Report on Proposed Revisions to the PM2.5 and Ozone State Implementation Plans for the South Coast Air Basin, pp. 12-13.

17) December 2012, SCAQMD Final 2012 AQMD Appendix IV-A, District's Stationary Source Control Measures, pp. IV-A-2, IV-A-36 to IV-A-43

18) February 2015, SCAQMD Final Supplement to the 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin, Table F-1

19) February 6, 2015, SCAQMD Agenda No. 22, Supplement to 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin, Attachment F, p. F-1

20) February 2015, SCAQMD Final Supplement to the 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin, Table F-1; and February 6, 2015, SCAQMD Agenda No. 22, Supplement to 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin, Attachment E

21) December 7, 2012, SCAQMD Resolution 12-19

22) January 25, 2013, CARB Resolution 13-3

cc: The Honorable Barbara Boxer, United States Senate
The Honorable Janice Hahn, United States House of Representatives
The Honorable Alan Lowenthal, United State House of Representatives
The Honorable Edmund G. Brown, Jr., Governor, State of California
The Honorable Ricardo Lara, California State Senate
The Honorable Patrick O'Donnell, California State Assembly
The Honorable Robert Garcia, Mayor, City of Long Beach
The Honorable Eric Garcetti, Mayor, City of Los Angeles
Jon Slangerup, Chief Executive, Port of Long Beach
Gene Seroka, Executive Director, Port of Los Angeles
Richard Cameron, Managing Director, Port of Long Beach
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Barbara McTigue, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
Jared Blumenfeld, Administrator, EPA, Region 9
Deborah Jordan, Director, Air Division, EPA, Region 9
Elizabeth Adams, Deputy Director, Air Division, EPA, Region 9

Jeanhee Hong, Regional Counsel, EPA Region 9
Richard Corey, Executive Officer, CARB
Cynthia Marvin, Division Chief, Stationary Source Division, CARB
Doug Ito, Chief, Freight Transportation Branch, CARB
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD

ATTACHMENT 1.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

March 26, 2014

Richard Corey
Executive Officer
California Air Resources Board
1001 "I" Street
Sacramento, California 95814

Re: California State Implementation Plan (SIP) for $PM_{2.5}$ for South Coast Air Basin – South Coast 2012 Air Quality Management Plan (AQMP) Control Measure IND-01 *Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities*

Dear Mr. Corey:

The Ports of Long Beach and Los Angeles (Ports) would like to express our concern regarding the California Air Resources Board (ARB) procedure for inclusion of Control Measure IND-01 *Backstop Measure for Indirect Sources of Emissions from Ports and Port-related Facilities* (Measure IND-01) in the California State Implementation Plan (SIP) for particulate matter 2.5 microns or less ($PM_{2.5}$) for the South Coast Air Basin, which is currently pending United States Environmental Protection Agency (EPA) approval.

The Ports believe that ARB failed to follow the process for SIP revision submissions required by Clean Air Act Section 110(1) and California Health and Safety Code Section 41650. Under Clean Air Act Section 110(l), SIP revisions must be adopted by the State, and the State must provide for reasonable public notice and hearing prior to adoption. Pursuant to 40 CFR 52.102(a)(1), the State must hold a public hearing, not only for initial SIP approval, but also for any SIP revision, and must provide notice of the date, place, and time of a public hearing and opportunity to submit written comments. Under 40 CFR 51.102(d), reasonable public notice in this context refers to at least 30 days. Similarly, Health and Safety Code Section 41650 provides for a public hearing that would allow public comment as to whether the SIP meets the requirements of the Clean Air Act. By resolution dated January 25, 2013, the ARB approved the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) and directed the executive officer of the ARB to submit the AQMP to EPA for inclusion in the SIP. However, at the time of the January 25, 2013 ARB action, Measure IND-01 was not part of the AQMP. Because the AQMD Governing Board adopted the AQMP without Measure IND-01 on December 7, 2012 and did not adopt Measure IND-01 until February 1, 2013, the January 25 ARB action did not constitute approval of Measure IND-01 which had not yet been submitted to ARB for consideration. The

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425 S. Palos Verdes Street • San Pedro • CA 90731 • 310-732-3675

Port of Long Beach • Environmental Planning
925 Harbor Plaza • Long Beach • CA 90802 • 562-590-4160

The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

documents attached to the ARB's February 13, 2013 SIP submittal to the EPA include the December 7, 2012 resolution by the AQMD Governing Board and the December 20, 2012 AQMD letter to ARB transmitting the approved SIP, which pre-dated the AQMD Governing Board's approval of Measure IND-01. However, without the required public notice or public hearing and adoption by the ARB Governing Board, the submitted SIP includes the addition of Measure IND-01 by Executive Order S-13-004, dated April 9, 2014.

Furthermore, the Ports were made aware of this Executive Order, which occurred without public hearing or Governing Board approval through a letter from EPA to the Ports dated February 24, 2014. This letter stated that ARB had approved the revised SIP containing Measure IND-01and had forwarded it to EPA under cover of a letter dated April 9, 2013. After a search of the ARB website, however, we were unable to find a copy of the April 9, 2013, submission to the EPA, and the only ARB action posted on the ARB website was the February 13, 2013, SIP submission without Measure IND-01 and the ARB Board's resolution dated January 23, 2013, also without Measure IND-01. We made inquiry to ARB staff and for the first time, on March 18, 2014, received a copy of the April 9, 2013 submission and ARB Executive Order S-13-004, neither of which are available on the ARB website even as of this date.

Perhaps more important than the procedural issue described above, we respectfully request that ARB consider the Ports' many legal, jurisdictional, operational, and technical concerns regarding the substance of Measure IND-01 and its implementing Rule 4001 as set forth in the attached letter to AQMD, dated January 31, 2014, which we hereby incorporate by reference as comments to the ARB on Measure IND-01, since ARB has never formally noticed a public comment period, in violation of the Clean Air Act and Health and Safety Code Section 41650.

The Ports value our partnership with ARB, working together to improve air quality, and we look forward to continuing our collaboration on projects such as ARB's new Sustainable Freight Strategy effort. Rather than introduce counterproductive regulation such as Measure IND-01 or Proposed Rule 4001, the Ports strongly urge ARB to recognize that a multi-agency agreement, using a collaborative process for development of potential programs, is the most effective way to ensure that emission reduction goals continue to be incentivized, and are actually realized. We respectfully request that ARB rescind Executive Order S-13-004, withdraw Measure IND-01 from the SIP, and meet with the Ports to work on a collaborative path forward.

Sincerely,

Heather Tomley
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

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Attachment: Port of Long Beach and Port of Los Angeles January 31, 2014 Letter to Mr. Randall Pasek, AQMD, *Re: Comments on South Coast Air Quality Management District Proposed Rule 4001 — Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports*

cc: Al Moro, Acting Executive Director, Port of Long Beach
Gary Lee Moore, Interim Executive Director, Port of Los Angeles
Richard D. Cameron, Managing Director, Port of Long Beach
Michael Christensen, Deputy Executive Director, Port of Los Angeles
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
Mary Nichols, Chairman, ARB
Members of the California Air Resources Board (*c/o Clerk of the Board, Attachment on CD*)
Cynthia Marvin, Division Chief, Stationary Source Division, ARB

ATTACHMENT 2.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

FEB 2 4 2014

Mr. Christopher Cannon
Director of Environmental Management
Port of Los Angeles
425 S. Palos Verdes Street
San Pedro, CA 90731

Mr. Matthew Arms
Acting Director of Environmental Planning
Port of Long Beach
925 Harbor Plaza
Long Beach, CA 90802

Dear Mr. Cannon and Mr. Arms:

Thank you for your letter dated January 15, 2014, to the U.S. Environmental Protection Agency Region 9's Regional Administrator Jared Blumenfeld, expressing your concerns about the South Coast Air Quality Management District's (SCAMQD) Control Measure IND-01, *Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities.* We appreciate the Port of Long Beach's and the Port of Los Angeles' input on Control Measure IND-01.

We agree with your statement that California Air Resources Board's (CARB) January 25, 2013 adoption of the South Coast 2012 Air Quality Management Plan (2012 AQMP) did not include Control Measure IND-01. The SCAQMD Governing Board voted to delay that measure when it adopted the 2012 AQMP pending further work by SCAQMD staff. The measure was approved by the SCAQMD Governing Board in February 2013 and CARB adopted it and submitted it to EPA on April 9, 2013. To date, we have not received South Coast Rule 4001, which will implement Control Measure IND-01, as a revision to the California State Implementation Plan. Once we receive the rule, we are obligated to review and act on the rule.

In the mean time, I propose that my staff schedule a teleconference call with your staff to discuss the concerns you raised in your letter. If you have any questions, please contact Elizabeth Adams, Air Division Deputy Director, at (415) 972-3183.

Sincerely,

Deborah Jordan
Director, Air Division

ATTACHMENT 3.

January 31, 2014

VIA E-MAIL – rpasek@aqmd.gov

Mr. Randall Pasek, Ph.D.
Planning Manager, Off-Road Section
Mobile Source Division
Science and Technology Advancement
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91756-4178

Re: Comments on South Coast Air Quality Management District Proposed Rule 4001 — *Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports*

Dear Mr. Pasek and Staff of the South Coast Air Quality Management District:

On behalf of the City of Long Beach (referred to herein as "COLB") and the City of Los Angeles acting by and through their respective Harbor Departments ("COLA"), and collectively with COLB referred to herein as the "Cities"), we appreciate this opportunity to submit comments on the South Coast Air Quality Management District's ("District") recently published draft "Proposed Rule 4001 – *Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports*" ("PR 4001"), which attempts to implement "Stationary Source Measure IND-01—*Backstop Measures for Indirect Sources of Emissions from Ports and Port-related Facilities*" ("Measure IND-01") in the 2012 Air Quality Management Plan for the South Coast Air Basin ("AQMP").

As the District is well aware, the Cities have been dedicated, innovative, and effective leaders in the efforts of public agencies to improve air quality despite the fact that we have no air quality regulatory authority or control over emissions sources. The potential of additional regulation by the District in the form of PR 4001 on the ports of Long Beach and Los Angeles ("Ports") brings significant uncertainty that will have broad negative effects on the goods movement industry and the economy as a whole, and destroys the voluntary, collaborative partnership among the Cities, industry and all of the air agencies that has led to unparalleled emission reductions. PR 4001 raises questions of fairness and unacceptable delegation of responsibility from federal, state and local air regulators to individual cities.

The Cities have previously commented on, and objected to PR 4001 and Measure IND-01, and have expressed our grave concerns about the District's rulemaking approach, attempting to craft an ostensible "backstop rule" that would regulate the Cities and their respective Ports in an unprecedented manner. This letter provides the Cities' comments on PR 4001 and the District's Preliminary Draft Staff Report ("PDSR") for PR 4001 and concludes that:

I. The substance of Measure IND-01 and PR 4001 is deeply flawed from technical, jurisdictional, legal, and public policy perspectives, in ways that cannot be cured;

II. District is acting beyond its authority to adopt PR 4001;

III. The procedural process for development, public participation and adoption of Measure IND-01 and PR4001 is similarly flawed under both state and federal law; and

IV. Measure IND-01 and PR 4001 fail the requirements for inclusion in a State Implementation Plan (SIP) under the federal Clean Air Act and applicable state law and their existence within the SIP threatens the its success.

Each of these four conclusions is explained in detail below.

I. SUBSTANTIVE FLAWS IN PR 4001

A. There Is No Demonstrated Need for PR 4001

The District has failed to and cannot provide any demonstration of "need" or justification for either Measure IND-01 or PR 4001. The District's persistent demand for the Cities – and the Cities alone – to be subjected to a redundant rule to "backstop" existing and effective emission regulations, reduction plans and policies is arbitrary, discriminatory, and remains unjustified by evidence or legal authority.

We respectfully point out that the District previously proposed a "port backstop rule" as a "Mobile Source Measure MOB-03" ("Measure MOB-03") as part of the District's 2007 Air Quality Management Plan, although Measure MOB-03 included as regulated parties, the port-related emission sources. However, following the Cities' objections to that similarly-unjustified proposal, the California Air Resources Board ("CARB") excluded the Port-related emission reduction targets and the proposed MOB-03 "backstop" measure from the 2007 SIP. Despite that rejection, and despite its repeated and manifest failure to demonstrate any legitimate need the District introduced an even more unjustified form of backstop that targets the Cities alone, in the form of PR 4001.

Implementation of PR 4001 would transform the Cities' voluntary San Pedro Bay Ports Clean Air Action Plan ("CAAP") into the District's mandatory regulation of the Cities. The CAAP was a voluntary cooperative effort of Cities and all of the air regulatory agencies (including the District, CARB and the United States Environmental Protection Agency ("USEPA") designed to encourage the industry operators of emission sources to go beyond regulation. PR 4001 would improperly and illogically subject the Cities to the District's regulation for industry's failure to achieve anticipated emissions reductions from equipment not operated, owned or controlled by the Cities, or even to the potential loss of federal and state funding for emission reduction measures if the PR 4001 is adopted and included in the SIP and approved by the USEPA.

As the Cities have previously shown, there is no demonstrated need for the rule, nor is this rule necessary for regional attainment of the 2014 $PM_{2.5}$ standard. PR 4001 is unnecessarily duplicative of regulations already in place for port-related sources.[1] This violates the federal Clean Air Act and State of California Health & Safety regulations that require SIP provisions to be "necessary." The Ports' 2012 air emissions inventories show that diesel particulate emissions (DPM) have been reduced by 80% over the seven year period between 2005 and 2012, exceeding the commitments we made for 2014 and 2023 in the CAAP. Further, the Cities estimate that by 2014**, 98%** of the $PM_{2.5}$ equivalent emission reduction that PR 4001 seeks to backstop will occur as the result of regulations adopted by CARB and the International Maritime Organization (IMO).[2] The remaining **2%** of $PM_{2.5}$ equivalent emission reductions is primarily attributed to the Cities' successful voluntary vessel speed reduction incentive program which is part of the Cities' CAAP.

B. A VMEP Should Be Used To Achieve Reductions Rather than Rulemaking

To the extent the District may be seeking to ensure the emission benefits of the Cities' voluntary vessel speed reduction incentive program, there is a more appropriate and focused method in the form of the USEPA's policy and guidance for the Voluntary Mobile Source

[1] The term "port-related sources" may occasionally be used in this letter, merely for convenience and consistency with usage of that colloquial term by the District, as shorthand for the range of discrete sources of air emissions, mostly mobile, which happen to operate at or near the geographic boundaries of the respective Ports. The Ports themselves, however, are "non-operating ports" and therefore not "sources" of emissions, and there is no statutory reference to anything called "port-related sources" for purposes of air quality regulation. The Cities are governmental entities having jurisdiction over defined geographic areas, like the District, and are no more the "sources" of emissions than is the District.

[2] CARB Port Drayage Truck Rule, CARB Truck and Bus Rule, CARB Ocean-Going Vessel (OGV) Shore Power Rule, OGV Low-Sulfur Fuel Rule, CARB Cargo-Handling Equipment at Ports Rule, CARB Commercial Harbor Craft Rule, IMO North American Emission Control Area

Emission Reduction Program (VMEP). This USEPA policy provides an established process to grant SIP credit for emission reductions resulting from voluntary mobile source measures that go beyond existing regulations. The VMEP approach was intended for exactly the type of successful voluntary program such as the Cities' landmark CAAP, and should be used to account for the 2% of port-related emissions not currently backstopped by regulation. Use of the VMEP would allow the continuation of a successful voluntary approach that has industry support eliminating the risk of cargo diversion that would be caused by the uncertainty inherent in the ill-conceived regulatory structure of PR 4001.

The USEPA's established VMEP process that was conceptualized for programs such as the Cities' vessel speed reduction incentive program and other CAAP measures is a feasible and preferable alternative to PR 4001 as it will accomplish the objectives sought by Measure IND-01 and PR 4001 and ensure that the emissions reductions achieved by the program are credited in the SIP. Further, a VMEP, which can be implemented by a memorandum of understanding, will achieve the same emissions reductions while allowing grant funds to continue to remain available for actions going beyond regulations and will do so in a collaborative manner. It will also encourage other port partners, as well as cities and regions throughout the nation, to develop and pursue innovative voluntary programs and solutions that best fit their needs to improve air quality and public health. The Cities are open to discussing mechanisms, contractual or otherwise, by which the Cities and the District can formalize a VMEP to ensure the voluntary emission reductions are maintained in future years.

C. PR 4001 Emissions Reduction Target Methodology is Flawed

Table 5 of the District's Preliminary Draft Staff Report shows the overall combined 2014 target emission reduction of 75% resulting from the application of the Cities' CAAP 2014 emissions reduction goals for NOx, SOx, and DPM compared to the CAAP 2005 baseline, but fails to specify a mechanism to harmonize the AQMP inventory values with the Cities' reported air emissions inventories. Furthermore, the use of a fortuitous similarity in 'percent reduction' cannot be the basis of any type of backstop rule.

Since the 2012 Final AQMP emissions inventory uses a baseline year of 2008 that includes the Cities' 2008 emissions inventories, the 2005 baseline emissions should be replaced with the more appropriate 2008 emissions estimates to determine the overall $PM_{2.5}$ equivalent emissions reduction target. Based on the Cities' calculation, using the District staff's methodology, by applying the CAAP reduction factors to the 2008 baseline inventory, the overall combined target $PM_{2.5}$ equivalent emission reduction is 68%, as shown in the following table:

Emissions Inventory	NOx	SOx	$PM_{2.5}$	$PM_{2.5}$Eq
	(tons per day)			
CAAP 2005 Baseline[1, 3]	87.45	33.39	4.73	28.54
Ports Combined 2008 Total Port-Related Emissions[2, 3]	78.6	25.5	3.7	22.7
CAAP 2014 Reduction[4]	22%	93%	72%*	-----
2014 Estimated Inventory[3]	68.21	2.34	1.32	7.34
Overall $PM_{2.5}$ Equivalent Reduction Between 2008 and 2014				68%

[1] From Table 2 of Preliminary Draft Staff Report for PR 4001
[2] From Table 3 of Preliminary Draft Staff Report for PR 4001
[3] 2005 and 2008 emissions are based on the Ports' 2011 emission estimation methodologies.
[4] CAAP 2014 Bay-Wide Standards emission reduction goals for NOx, SOx and DPM
*Please note that that the CAAP 2014 emission reduction goal of 72% is for DPM, not for PM.

In determining the 2014 emission reduction targets for PR 4001, District staff applied the Basin-wide percent reductions from 2008 to 2014 and 2019 to the Cities' 2008 inventory to arrive at the forecasted net emissions reduction percentages of 75% for 2014 and 2019 (page 11 of Preliminary Draft Staff Report). This approach is not appropriate because the Basin-wide percent reductions are based on an inventory of emissions from overall sources (including non-port-related) in the South Coast Air Basin (SCAB). Therefore, the approach taken in PR 4001, is not directly applicable to what the Rule describes as "port-related emissions." Since the SCAB estimates include emissions from what the District erroneously describes as the "port-related source" categories, as well as sources operating elsewhere in the SCAB, the 75% emission reduction target specific to the ports of Long Beach and Los Angeles is questionable. As an example, SCAB-specific emissions from heavy-duty vehicles includes emissions from all heavy-duty trucks operating in the basin, including those associated with construction activities, public fleets, utility, intrastate, interstate, and drayage trucks, while the ports-specific heavy-duty truck emissions inventory only includes activity and emissions associated with port-related drayage trucks.

It is also important to note that the District's December 2013 Preliminary Draft Staff Report for PR 4001 erroneously assumes that $PM_{2.5}$ emissions are equivalent to diesel particulate matter (DPM) emissions. The Cities' 2014 CAAP emission reduction goal of 72% is specific to DPM, not $PM_{2.5}$ as assumed in the calculation of the $PM_{2.5}$ equivalent emissions reduction goal of 75%. Each of the Port's annual air emissions inventories separately estimate DPM and $PM_{2.5}$. As shown in their annual reports, the resulting emissions of DPM and $PM_{2.5}$ **are not equivalent**.

Please refer to Table 8.4 of the Port of Long Beach 2012 Air Emissions Inventory Report[3] and Table 9.4 of the Port of Los Angeles 2012 Inventory of Air Emissions Report[4].

A comparison of the $PM_{2.5}$ equivalent factors used in the 2007 AQMP , 2012 AQMP, and PR 4001 shows that there is inconsistency in how the $PM_{2.5}$ equivalent factors were derived and applied, as shown in the table below:

$PM_{2.5}$ Equivalent Factors

	VOC	NOx	$PM_{2.5}$	SOx
2007 AQMP	0.04	0.10	1.00	1.52
2012 AQMP	0.02	0.07	1.00	0.53
PR 4001	NA	0.07	1.00	0.53

In the 2007 AQMP, emissions reductions were simulated between 2005 and 2014, whereas for the 2012 AQMP, emissions reductions were simulated between 2008 and 2014. In the 2007 AQMP, the effect of each pollutant precursor's reduction on the 2014 $PM_{2.5}$concentration was considered on an annual basis, while the 2012 AQMP considers 24-hour $PM_{2.5}$concentrations. Also, the 2007 AQMP used the annual $PM_{2.5}$ concentration which was based on the average concentrations from all air monitoring stations in the South Coast Air Basin, while the 2012 AQMP only uses the average from six regional locations—Riverside-Rubidoux, Downtown Los Angeles, Fontana, Long Beach, South Long Beach, and Anaheim. The Basin-averaged conversion factors resulting from the 2007 analysis were submitted as part of the 2007 SIP (Appendix C, of the CARB staff report, "$PM_{2.5}$ Reasonable Further Progress Calculations") and were approved by the USEPA.

In addition, PR 4001(c)(6) defines "$PM_{2.5}$ Equivalent" as "the aggregate of the NOx, SOx, and $PM_{2.5}$ emissions (in tons per day) as defined by the following formula provided in the Final 2012 AQMP:

$$PM_{2.5}\text{ Equivalent} = 0.07 * NOx + 0.53 * SOx + 1.0 * PM2.5$$

The formula provided in PR 4001 does not reflect the $PM_{2.5}$ equivalent formula provided in the Final 2012 AQMP, which includes emissions of VOCs in the calculation. In PR 4001, without explanation, the District has erroneously "dropped" the contribution of VOC from the $PM_{2.5}$ equivalent formula, although the District's emissions modeling simulation shows VOCs as a contributing factor.

[3] Port of Long Beach 2012 Air Emissions Inventory. www.polb.com/emissions
[4] Port of Los Angeles 2012 Inventory of Air Emissions. www.portoflosangeles.org/environment/studies_reports.asp

Given that there have been several revisions to the $PM_{2.5}$ equivalent calculations, the text and formulae used in PR 4001 for those calculations do not appear consistent with previous approaches to such determinations. Prior to proceeding any further with PR 4001, the Cities request a scientific technical evaluation and obtain confirmation from the USEPA that the revised $PM_{2.5}$ equivalent factors and formula to calculate $PM_{2.5}$ equivalent emissoins used in the 2012 AQMP and in PR 4001 are appropriate.

D. PR 4001 Fails to Provide an Accurate and Appropriate Definition of Emissions "Shortfall"

PR 4001 would require the Cities to develop and submit an emissions reduction plan ("Plan") identifying control strategies to eliminate some potential future "shortfall" in attainment of reduction targets. The proposed rule, however, fails to identify the environmental baseline or other parameters that would be required in order for the Cities or the District to determine the extent of any emissions "shortfall" to be addressed in the potential Plan. Under PR 4001, the existence of a "shortfall" would appear to be the necessary prerequisite to trigger some responsive action on the part of the Cities, but the draft text of PR 4001 fails to provide for a timely and objective process to ascertain when and whether such a "shortfall" may have arisen.

The term "shortfall" first appears in the proposed rule in paragraph (d)(1)(A), where it appears to call for a Plan to report on progress in "meeting the shortfall." However, that would appear to be inconsistent with the structure of the proposed rule, i.e., under PR 4001, the District cannot require the Cities to submit an emissions reduction plan unless and until the annually-reported emissions reductions "show that the percent reduction in $PM_{2.5}$ from the baseline emissions is less than the reduction target" of 75% (Paragraph (e)(1)B)). There would not be any "shortfall" identified until that time; therefore, it would be premature and illogical to require the Cities to submit a Plan that "reports the progress in meeting the shortfall."

To the limited extent that the draft text of PR 4001 describes the shortfall that might trigger the need to prepare a Plan, the provisions for annual estimating or reporting of the emissions appear imprecise and vague. Also, paragraph (f) appears to contemplate that once a "shortfall" is determined to exist in one year, then the District could demand a revised Plan in following years if targets still are not met. What happens if the shortfall is "corrected" in subsequent years and targets are again being met?

PR 4001 fails to provide for any process for review or appeal of a possible District "determination" that a "shortfall" has occurred. PR 4001 fails to provide adequate time for the Cities to prepare a Plan, if required, or adequate time or procedures for the Cities to study the proposed Plan, to conduct environmental review of the Plan, or to conduct public hearings and gather input on any Plan that may be deemed to be appropriate if PR 4001 is properly triggered.

Development of a Plan should not be mandated if any eventual determination of an emissions "shortfall" is due to reasons outside of the Cities' control. As previously stated, by 2014, the emissions sources ostensibly targeted by PR 4001 are already controlled by state, federal, and international regulations. Should there be a shortfall in attaining the emissions targets, it will likely be due to factors not caused or controlled by the Cities, and not due to any action or derelictions on the part of the Cities or their tenants or users. The obligation to go through a burdensome process to prepare and approve a new Plan or to take active measures to make up for a shortfall in meeting emission reduction targets should not fall on the two Cities. The Cities are independent governmental entities who are not directly producing emissions or otherwise directly responsible for the targeted emissions or for the attainment of emission targets. The Cities are certainly not air agencies created by federal or state law with specific regulatory authority to control emissions.

E. <u>PR 4001 Improperly Provides for Moving Emissions Reduction Targets</u>

PR 4001 paragraph (c)(4) defines the "Emissions Target" as the "emissions forecast that is based on the Ports' 2008 baseline emissions **forecasted** for a specific year as provided in Appendix IV-A page IV-A-36 of the Final 2012 AQMP." This definition is confusing, as it is assumed that this reference is contained in the Final 2012 AQMP. In the description of this measure in Appendix IV, page IV-A-36, only projected levels of NOx, $PM_{2.5}$, and SOx are shown for calendar years 2014 and 2019. However, PR 4001 and the District's Preliminary Draft Staff Report discuss a 75% reduction in $PM_{2.5}$ equivalent emissions in 2014 compared to 2008 baseline levels. Again, there is a clear inconsistency between PR 4001 and the text of Measure IND-01 as actually approved by the District's Governing Board.

PR 4001 paragraph (e)(2) requires the District's Executive Officer to review the reduction target based on the latest information available including future year emission estimates in the 2016 AQMP and purports to allow the Executive Officer, by July 1, 2017 to "update," if necessary, the emission reduction target. This provision is unauthorized by IND-01 or any other rule, regulation, plan or statute, and would unlawfully vest apparently unfettered power on the Executive Officer to **change the previously-approved reduction targets**. By what authority would these targets be "revised" in the future? Under what objective standards? What public process would the District's Executive Officer need to follow in order to "develop" a proposed amendment to PR 4001 changing the targets? What environmental review/public outreach processes would be required before the Executive Officer could change the reduction targets and how would the environmental/socioeconomic impacts of such changes be addressed? How would such a moving target affect the Cities, the port communities, tenants, users, and the existing plans and policies which have proven effective in attaining the agreed and approved reduction targets?

F. The Processes For Development, Approval and Disapproval of Emission Reduction Plans Are Flawed

In the event the emissions reduction targets are not met, PR 4001 requires the Cities to submit an Emissions Reduction Plan "to address the emission reduction 'shortfall'." In addition, PR 4001 dictates the public processes of other government agencies: "…the Ports shall conduct at least one duly noticed public meeting before the Plan is presented to each respective Board of Harbor Commissioners for approval." This is an improper attempt by the District to control and dictate the exercise of "discretion" conferred on the Boards of Harbor Commissioners regarding their own notice, agenda setting, public hearing procedures and substantive decision making processes under their own applicable governing laws and rules. Neither the District's staff nor its Governing Board can require approval of the District's desired measures or override the discretion of the Board of Harbor Commissioners including decisions related to the management of the port or how port resources are allocated.

Moreover, if the Board of Harbor Commissioners disagrees that a Plan is required or specific terms of a Plan requested by the District, what process is provided for resolution of such disagreements? Under what authority would PR 4001 purport to allow the District's Executive Officer, acting alone, without even District Governing Board authority, to "disapprove" a Plan or compel a Plan to be approved by the Cities' own governing authorities? Although the Cities dispute that the District can compel or disapprove a Plan at all due to conflicting governmental authority, certainly such approval or disapproval of any Emission Reduction Plan cannot be at the sole discretion of a single District staff member.

G. PR 4001 Would Violate Constitutional Requirements of Due Process

PR 4001 also raises several questions regarding violations of Due Process. As noted above, PR 4001 would unlawfully purport to vest the District's Executive Officer with unilateral authority to "approve" or "disapprove" a Plan submitted by the Cities, without any process for public hearing, review by the District Board, or other guarantees of procedural due process for those concerned about such actions. PR 4001 also improperly fails to provide any requirement that the Executive Officer must make "findings" of "non-compliance" with some provision of paragraph (f)(1) of PR 4001, or that the Executive Officer's decisions must be based on some reasonable and objective standards.

PR 4001 fails to provide for the District giving the Cities any particular notice or justification for disapproval of a Plan, or any process for the Cities to seek review or appeal of the District's disapproval.

What would be the procedure if the PR 4001 triggered the obligation of the Cities to prepare a Plan, and the Cities duly submitted a Plan, but the District (either by its Executive

Officer or its Hearing Board) "disapproved" the Plan (per paragraph (f)(2)(C))? The Cities would apparently be required to submit a revised Plan within 60 days of the disapproval; however, that time would not be sufficient for the Boards of Harbor Commissioners and their staffs to prepare a new revised Plan, to hold new "public meetings" and gather public input, or otherwise take meaningful action on the revised Plan. PR 4001 fails to provide adequate time or process for the Boards of Harbor Commissioners to prepare, conduct CEQA review and public outreach, or to consider and approve a new revised Plan within the arbitrary 60 day time frame set by the rule.

H. PR 4001 Improperly Changes the Definition of "Feasibility" In Control Strategies and Alternatives

PR 4001 proposes to change the definition of "feasible control strategy" so that it is not consistent with the obligations that could potentially be imposed on the Cities under Measure IND-01 as adopted by the District Governing Board. Instead, PR 4001 (at paragraph (c)(1)) has changed the limitations on the proposed obligations of the Cities to achieve additional emissions reductions under PR 4001. Previously, the proposed rule was described as requiring the Cities to "propose additional emission reduction methods …[but only] *to the extent cost-effective strategies are technically feasible* and within the Ports' authority." PR 4001 has inexplicably omitted (at several points) the prior limitation on the Cities' potential obligations to measures that are "*technically feasible.*" Again, this is not consistent with the text of Measure IND-01 or any other legal or regulatory authority identified by the District.

The Cities assert that feasibility must be defined as technically, operationally, commercially, financially, and legally feasible, and within the legal and jurisdictional authority of the Cities. Further, the District must acknowledge that feasibility is also subject to the Cities' and their Boards of Harbor Commissioners' own legal and trustee obligations as governmental agencies under their City Charters and applicable laws.

The District also fails to show how it expects the Cities as governmental agencies to legally overcome the same doctrines of international and federal preemption that prevent the District from regulating mobile sources such as ocean-going vessels, rail locomotives and trucks. If the District intends that the Cities shall be compelled to pay incentives for District programs if they are unable to legally regulate mobile sources, then again this raises the jurisdictional conflict with the Cities' Boards' independent governmental discretion and legal obligations to manage their properties and revenues to serve Tidelands purposes for the benefit of the State. In this era of ever diminishing resources and increased competition the District is seemingly ignoring the lawful obligations of the Cities' Boards and insisting they place District priorities (which they themselves cannot legally accomplish) before the established responsibilities of the respective City Boards.

I. The PR 4001 Enforcement Scheme is Unconstitutionally Vague and Impermissible

PR 4001 does not describe how the District would determine the "consequences" for violation of PR 4001, nor does it identify how it would determine the sufficiency of the Cities' efforts to manage activities within the Ports. If the Cities were deemed to be in violation simply because the District may choose to "disapprove" a Plan or revised Plan, under what legal authority would the District purport to sanction the Cities in the event of some perceived "violation"?

PR 4001 fails to provide objective standards appropriate for the District to judge the sufficiency of any plans or measures proposed by the Cities to achieve the emission reduction targets. The proposed rule fails to provide sufficient detail at paragraph (f)(2)(F)(iii) as to what the consequence would be if the District were to disapprove a City's revised Plan. Also, the reference here that the Cities "shall be in violation of this Rule…" must be clarified.

Similarly, the terse discussion of the Variance and Appeal Process outlined in paragraph (g)(1) and (2) of PR 4001 is vague and fails to identify criteria or the process for the Cities to petition the District Hearing Board for a variance. PR 4001 also fails to explain the outcome should the District grant a variance.

Both Measure IND-01 and PR 4001 are unconstitutionally vague in their failure to explain exactly what fines, penalties or other administrative enforcement would be imposed on the Cities in the event that targets are missed or the District's Executive Officer disapproves a plan. The District also fails to explain how it purports to impose penalties or corrective action against another governmental entity for failure of private third party emissions sources to achieve emissions reductions that such other governmental entity is also preempted from regulating.

The District has failed to show any constitutional or statutory basis for requiring a governmental entity to devote public resources, pay exactions, administrative fines or suffer penalties for pollution caused by private entities. Similarly, the District has not shown any authority for PR 4001's attempt to shift onto the Cities liability for emission shortfalls by other parties assigned AQMP emissions reduction responsibility. The District has failed to show how PR 4001 would not violate constitutional limitations requiring exactions or penalties imposed on a party to be reasonably related to and proportional to the party's deleterious public impacts. This is especially true when PR 4001 only applies to the Cities, which are non-operating ports, while failing to include all parties involved in the CAAP including the other air agencies that jointly sponsored the CAAP, or actual owners and operators of emission sources. The District also fails to define how it would allocate liability to COLB versus COLA, when they are two separate legal entities with independent Boards as decision makers that may approve different Plans or no Plan at all. In any event, neither City is in direct control of the actual emissions sources and rudimentary principals of justice require that they should not be burdened with

sanctions, penalties, or Plan-writing responsibilities to cure the "shortfalls" of others or to act as a delegated air regulator that has no such authority.

J. PR 4001 Fails to Consider Legal Limits on Grant Funding

In the Cities' actual operating experience, demonstration that proposed activities go beyond, rather than merely comply with, enforceable regulations, is a basic requirement in both state and federal grant funding applications. The District has claimed that its adoption of PR 4001 as an enforceable rule or regulation would not prevent the Cities from continuing to be eligible for the types of grant funding that the Cities have used successfully to fund emission reduction programs. However, the District has failed to provide legal citation in support of how the governmental agencies typically funding such programs might continue to legally fund activities for the purpose of complying with existing mandates, without violating constitutional limits prohibiting payment to comply with the law as "gifts of public funds."

K. Reporting Requirements under PR 4001 are Excessive

PR 4001 paragraph (f) requires annual revisions to the Emission Reduction Plan. This is new and excessive regulation, well beyond backstopping achievement of 2014 targets, and is duplicative, unnecessarily burdensome, and has not been sanctioned or in any way approved by the District's Governing Board. Even CARB in its state oversight over the District's plans, only requires three-year updates to the AQMP. Furthermore, PR 4001 is placing greater air quality regulatory burden on the Cities (and their Ports) than the federal government places on AQMD or other air agencies.

L. Annual Emission Inventory Requirements under PR 4001 are Inappropriate and Vague

PR 4001 paragraph (d) outlines requirements for annual emissions reporting. An initial inventory for 2014 would be required by November 2014 "from all port-related sources for the 2014 calendar year based on actual activity information available prior to November 1st of the calendar year and projected activity information for the remainder of the year." Although Distract staff indicated that specific requirements for this November 2014 submittal would be provided, neither the rule nor the accompanying Staff Report list any specifics. The Cities will incur additional costs based on this requirement to prepare a 2014 inventory based on incomplete data in November 2014.

The majority of the sources tracked in the Cities' current emission inventories of port-related sources are not owned, operated or controlled by the Cities. Therefore, emissions inventories that will be used to evaluate compliance with PR 4001 should only include those port-related sources over which the Cities have direct control.

II. LACK OF AUTHORITY

A. PR 4001 is NOT Consistent with the District's Governing Board Approved Control Measure IND-01

Control Measure IND-01 provided a description of the Cities' successful CAAP and its various emissions reduction goals: "This AQMP Control Measure is designed to provide a "backstop" to the Ports' actions to provide assurance that, if emissions do not continue to meet projections, the Ports will develop and implement plans to get back on track, to the extent that cost effective and feasible strategies are available." (Final 2012 AQMP Appendix IV-A, page 3). PR 4001, by contrast, describes its purpose differently: "The purpose of this rule is to establish actions to be taken in the event that emissions from port-related sources do not meet the emission targets assumed in the Final 2012 Air Quality Management Plan for the purpose of meeting the federal 24-hour $PM_{2.5}$ standard in 2014 and maintenance of attainment in subsequent years" (PR 4001 paragraph (a)). District Staff has apparently drafted PR 4001 so as to eliminate the references in Measure IND-01 as adopted by the District's Governing Board to backstopping the Cities CAAP targets to the extent cost effective and feasible strategies are available and has replaced that "backstop control measure" with a traditional regulation by the District to meet District-set targets.

In addition, the District Staff (apparently without Board approval) has **changed** the concern from assuring "the attainment demonstration" for 2014 $PM_{2.5}$ emission targets (as described in the 2012 AQMP) to add "maintenance of the air quality standard in subsequent years." (PR 4001 paragraph (a)). This change adds a new undefined and open-ended element into PR 4001 that is not consistent with Control Measure IND-01 as publicly adopted by the District's Board in February 2013. Most importantly, to the extent the provisions of PR 4001 vary in purpose and scope from Measure IND-01, they are not authorized by the District Governing Board.

B. The District Fails to Show Any Basis to "Indirectly" Regulate Mobile Sources or Delegate Authority Without Clean Air Act Waivers from the USEPA

The District has failed to show any constitutional or statutory basis for attempting to regulate mobile sources "indirectly" that it is preempted from regulating directly. The District's use of the term "port related sources" appears to be a euphemism for "mobile sources" that may be located at or operate at the areas governed by the Cities. "Mobile sources" of emissions are, of course, generally beyond the limited regulatory authority conferred by the Legislature on local or regional districts. (e.g., Health & Safety Code § 40001(a); also see, 76 Ops. Cal. Atty. Gen. 11 (1993); 75 Ops. Cal. Atty. Gen. 256 (1992); 74 Ops. Cal. Atty. Gen. 196 (1991); 73 Ops. Cal. Atty. Gen. 229, 234-35 (1990).)

The District has failed to show any authority for attempting to regulate mobile sources by making another governmental entity that lacks any air regulatory authority its agent for enforcement of its desired mobile source emission reductions. (See, e.g., *Association of American Railroads et al. v. South Coast Air Quality Management District et al.*, 622 F.3d 1094, 1096 (9th Cir. 2010), invalidating several train-idling emissions rules enacted by the District, on the basis of federal preemption under the Interstate Commerce Termination Act of 1995 (ICCTA).) Moreover, the District does not have mobile source regulatory authority itself to delegate, as it does not have a waiver under the Clean Air Act from the USEPA. The District should instead work on stronger regulations from USEPA or CARB, which does have certain USEPA waivers to regulate mobile sources.

PR 4001 impermissibly requires the Cities to become air pollution control agencies, responsible for "achieving" reductions of emissions that are actually from other private parties that operate or control equipment largely used in goods movement within the geographic boundaries of the Cities. There is no statutory or other legal basis for imposing such a requirement on another governmental agency. For example, does this mean that a city that has a significant number of factories or refineries within its borders becomes a stationary source and indirect source for those emissions? Evidently the District does not distinguish between "operating ports" such as the Port of Charleston, S.C., which actually operates the terminals within the port, and "non-operating ports" such as the Cities, which are landlords that do not operate the marine terminals and other facilities within the harbor districts.

The emission reduction plan required by PR 4001 strongly resembles the State Implementation Plan requirements of the Clean Air Act (42USC§7410). Specifically PR 4001(f)(1)(A)(i) states, "…Ports shall engage [CARB, USEPA and the District] to discuss legal jurisdiction and authority to implement potential strategies to address the shortfall…" Based on the Clean Air Act, the enforcing agency should be the state of California through CARB and the District; however, PR 4001 places the burden of enforcement of emission reductions on the Cities. Based on this, if the port-related sources don't meet the emission reduction target specified by PR 4001, it should be the District and/or CARB that are responsible for preparing and enforcing the emission reduction plan against the emissions sources. If the District insists that the Cities prepare an emission reduction plan, then the plan must be subject to the limits on authority, preemption and feasibility issues described above. Further, USEPA, CARB and the District should provide funding to the Cities to support programs for incentives, since the Cities will no longer have available grant funding for voluntary programs.

C. PR 4001 Violates Cities' Charter Authorities and Tidelands Obligations

Control Measure IND-01 and PR 4001 are illegal, abusing the District's limited statutory power in an unprecedented manner that exceeds its authority. There is no legal precedent or

authority for the District's attempted regulation of the Port Authorities of the Cities, or the District's imposition of an arbitrary, unnecessary and discriminatory rule on the Cities, and thereby dictate the Cities' governing Boards of Harbor Commissioners' ("Boards") decisions regarding the exercise of their police power authority, the management of their respective properties and expenditures of the Cities in order to satisfy the District-defined targets for a single district within the State.

PR 4001 acknowledges that funding will be necessary to implement a plan to satisfy District targets, but fails to provide District funds or specify the source of such funds. The District cannot legally compel the Cities' Boards to make expenditure of Tidelands Trust revenues for the purpose of incentives or funding emission reduction programs as contemplated in District enforcement activity under PR 4001. Such proposed unfettered District authority would unlawfully supplant the trustee judgment and legal obligations of the Cities to operate the port properties and their revenues solely for the benefit of the entire State of California under the Tidelands Trust doctrine (promoting maritime commerce, navigation and fisheries) rather than for limited municipal or a single District's purposes.

Worse yet, PR 4001 proposes that a single District Executive Officer acting alone (rather than the District's full Governing Board) would wield the sole discretion to approve or disapprove the independent jurisdictional decisions of the Boards regarding conditions they impose on their properties or expenditures of their Harbor Revenue Funds, violating the Tidelands Trust and the Cities' charters.

D. <u>There is No Statutory Authority for District to Impose PR 4001 On Cities</u>

The District has failed to cite any statutory authority for regulating the Cities—governmental entities—as purported "sources" of emissions. As the Cities have repeatedly explained, neither the Cities nor the Ports are "sources" of emissions—direct, indirect, or otherwise. The District has not provided any authority that would support the District's attempted characterization of the Cities, or the Ports, as "indirect sources" of emission, solely based on the confluence of distinct privately-owned activities, vessels, vehicles, equipment, and uses within the geographic area and jurisdiction of the respective Ports.

"An air pollution control district, as a special district, 'has only such powers as are given to it by the statute and is an entity, the powers and functions of which are derived entirely from the Legislature.'" (74 Ops. Cal. Atty. Gen. 196 (1991)[citations omitted].) "No matter how altruistic its motives, an administrative agency has no discretion to promulgate a regulation that is inconsistent with the governing statutes." (*Terhune v. Superior Court* (1998) 65 Cal.App.4th 864, 874.) The District has failed to cite any statute or grant of authority from the Legislature for the proposed PR 4001.

Under the District's 2007 Air Quality Management Plan, a proposed "Port Backstop Rule" was proposed as a "Mobile Source Measure MOB-03" that defined the operators of marine terminals and rail yards, as well as the Cities, as indirect sources, Measure IND-01 and PR 4001 inexplicably exclude the operators of the mobile sources that had been in MOB-03 and instead propose to regulate and punish solely the Cities, effectively insulating from responsibility, the private sector entities that do own, operate and control the equipment producing the emissions.

The District Staff has previously referred to a clearly erroneous, overbroad interpretation of Health & Safety Code §§40716 (a)(1); 40440 (b)(3), as potential authority for attempting to justify Measure IND-01 and PR 4001 as forms of indirect source review, as applied to the Cities. However, such lax interpretations apparently ignore the Legislature's explicit limitations on any such "indirect source" regulatory authority—precluding application of PR 4001 against the Cities (e.g., Health & Safety Code § 40716(b): "Nothing in this section constitutes an infringement on the existing authority of counties and cities to plan or control land use, and nothing in this section provides or transfers new authority over such land use to a district.")

Similarly, any District reliance on Health & Safety Code § 40440 is clearly misplaced. The introductory clause of § 40440(b)(3), for example, states that indirect source controls must be "[c]onsistent with Section 40414." Importantly, Health & Safety Code §40414 [specifically governing the District] states: "No provision of this chapter shall constitute an infringement on the existing authority of counties and cities to plan or control land use, and no provision of this chapter shall be interpreted as providing or transferring new authority over such land use to either the south coast district, the Southern California Association of Governments, or the state board." Not only does this provision apply generally to Chapter 5.5 [governing the District] but it is also specifically referenced in § 40440(b)(3), leaving little doubt that any District rule related to indirect source controls may not overreach or infringe on the Cities' police power to control land use in their jurisdictions or Tidelands Trustee duties for benefit of the State.

Finally, the District Staff's reference to two cases involving the very distinct "indirect source review" adopted by the San Joaquin Valley APCD is misplaced. Those cases, *California Building Industry Association v. San Joaquin Valley Air Pollution Control District*, 178 Cal. App. 4th 120 (2009) and *Nat'l Ass'n of Home Builders v. San Joaquin Valley Air Pollution Control District*, 627 F. 3d 730 (9th Cir. 2010), involved quite different circumstances and a distinct and specific statute permitting an indirect source review program and in-lieu fees to be imposed on new construction sites. The holdings of those cases were narrow, and based on the nature of the emission sources being regulated. "Because the court's approval of the rule depended on the nature of the source being regulated, mobile non-road construction equipment, indirect sources are not categorically permissible after NAHB." (39 ECOLOGY LAW QUARTERLY 667 (2012).) Those cases are thus irrelevant, and do not support District Staff's assertion of some authority for the District to impose rules on the Cities under the guise of Measure IND-01 or PR 4001.

III. PROCEDURAL FLAWS

A. General Comments

The PR 4001 developmental and procedural process is on an accelerated timeline that is unusually short for a rule of this unprecedented nature that has generated such controversy and so many unanswered questions from other public agencies and stakeholders. The District should provide a comprehensive rule development schedule, including key milestones of staff report revisions, staff report analyses, workshops, workgroup meetings, etc. and provide the stakeholders, and the public adequate time for review and comment after release of actual substantive information necessary to evaluate the proposed rule.

Instead, the District was late with release of the actual text of PR 4001, not releasing it until November 26, 2013. The text of the PR 4001 is severely lacking explanation of many material elements, leaving continued unanswered questions that had been posed literally for years, even under the development of Measure IND-01 and early working group consultation meetings. The Preliminary Draft Staff Report for PR 4001 offers little help, as the Staff Report does not contain technical data and analyses necessary for a complete review. The PR 4001 Preliminary Staff Report lacks substance and does not meet important specificity requirements (see specific comments below related to the Preliminary Staff Report).

Lastly, the District's environmental assessment of the PR 4001 has also been extremely flawed and we incorporate by reference the comment letters previously submitted by the Cities on the Notice of Preparation and Recirculated Notice of Preparation under the California Environmental Quality Act, which are attached hereto.

B. The District's Preliminary Draft Staff Report on PR 4001 Fails to Comply With Statutory Requirements for Rule Adoption

The District's December 2013 Preliminary Draft Staff Report fails to comply with statutory requirements for rule adoption as discussed below.

1. Non-compliance with Health & Safety Code § 40440.5 – Notice of Proposed Action:

The District must give public notice of the Board hearing to consider PR 4001 not less than 30 days prior to the hearing date, and must include specified information in that Notice:

(a) A "summary description of the effect of the proposal" as required by Section 40725(b);
(b) Description of the air quality objective of the rule, and reasons for the rule;
(c) A list of supporting information and documents relevant to the PR 4001, and any environmental assessment; and
(d) A statement that a staff report on the proposed rule "has been prepared" and the contact information to obtain that staff report.[5]
(e) The statutes further specify the required contents of the Staff Report that must be prepared and made available at least 30 days prior to the hearing date:

Whenever the proposed rule or regulation will significantly affect air quality or emissions limitations, the staff report shall include the full text of the proposed rule or regulations, an analysis of alternative control measures, a list of reference materials used in developing the proposed rule regulation, an environmental assessment, exhibits, and draft findings for consideration by the District Governing Board pursuant to Health & Safety Code §40727. Further, if an environmental assessment is prepared, the staff report shall also include social, economic, and public health analyses.

2. Non-compliance with Health & Safety Code § 40727 – Required Findings:

Before the District's Board could approve the PR 4001, it would need to make the findings required by Section 40727 (and to provide the public with sufficient information/substantial evidence in the record to support those mandatory findings). The District's Preliminary Draft Staff Report (December 2013) fails to satisfy these requirements. The findings must address:

(a) "necessity" – Since PR 4001 is by definition a "backstop" measure intended to address emissions issues that are not currently a problem (and which are not shown to be likely to occur), it is inherently difficult for the District to make such a finding of "necessity" for the rule (also see the detailed discussion demonstrating the District's failure to demonstrate "necessity" for PR 4001 set forth above). Moreover, the District Governing Board found Measure IND-01 necessary in the 2012 AQMP, but not PR 4001, as stated in the Staff Report.

[5] This wording indicates that the Staff Report must already be prepared before the Notice of the Board meeting goes out. If the District intends to rely upon the "Preliminary Draft Staff Report" issued in December 2013, it would be deficient because that PDSR fails to include all of the information required by statute.

(b) "authority" – As pointed out above, the District has failed to demonstrate its legal authority for PR 4001, if any. By what authority can the District "delegate" (or "foist") its own responsibilities for regulating air quality emissions onto the Cities? The District cites no authority for imposing a rule on independent governmental agencies to take specific land use, environmental, or fiscal actions (fees, tariffs, etc.) Also, the District fails to address the statutory limitations on its authority in Health & Safety Code § 40414: the District may not infringe on the existing authority of Cities to plan or control land use.

(c) "clarity" – The lack of clarity in the draft text of PR 4001 is addressed throughout this comment letter. In addition, the lack of clarity in PR 4001 is exemplified in the circular argument of PR 4001(d)(2)(A) and PR 4001(f)(1)(D). PR 4001(d)(2)(A) specifies that that, in the case of triggering an Emission Reduction Plan, the Port shall report the progress in meeting the shortfall "based on the process developed pursuant to subparagraph (f)(1)(D)." However PR 4001(f)(1)(D) specifies the Emission Reduction Plan "shall provide a process for submittal of progress reports toward eliminating the emission reduction shortfall pursuant to subparagraph (d)(2)(A)."

(d) "consistency" –PR 4001 is inconsistent with Measure IND-01; it is also inconsistent with the CAAP and the Cities' general plans, harbor area plans, transportation management plans, etc, as well as state Tidelands Trust policies. In addition, PR 4001 is inconsistent with, and preempted by federal laws (e.g., ICCTA; FAAAA) and regulations of IMO (MARPOL / APPS) as well as federal regulations of trucks, locomotives, etc.. Also, PR 4001 is inconsistent with the California Clean Air Act and the statutory limitations on the regulatory authority of the District, and further is inconsistent with CARB polices.

(e) "nonduplication" – PR 4001 would unnecessarily – by definition – duplicate and "backstop" existing plans and policies such as CAAP and the aforementioned regulations;

(f) "reference" – The District has failed to demonstrate what law or court decision is purportedly being implemented by PR 4001.

3. <u>Non-compliance with Health & Safety Code § 40727.2 – Written Analysis of Rule</u>:

Does the District contend that its Preliminary Draft Staff Report satisfies this requirement that it produce a written analysis of PR 4001? If so, it fails to comply with § 40727.2(e). The Preliminary Draft Staff Report only indicates that the technical impact

assessment is underway. Without the Impact Assessment section, the staff report is incomplete. The Impact Assessment section must include the District's explanation of differences between PR 4001 and existing guidelines, such as in CAAP or AQMP, as well as address regulation cost effectiveness, including costs beyond mere control equipment costs.

4. Non-compliance with Health & Safety Code § 40440.8 – Assessment of Socioeconomic Impacts of PR 4001:

This requirement is also imposed by Section 40428.5, and the need for such a socioeconomic analysis was addressed, at least in brief, in the NOP comment letter. The Preliminary Draft Staff Report (page 18) erroneously describes the likely socioeconomic impacts of PR 4001 as being limited to the Cities' costs incurred for emissions forecasting and reporting. This grossly understates the likely impacts, including impacts of additional control measures that could be required under PR 4001 impacting the entire use and economic viability of the Ports. The staff report must include a socioeconomic assessment and must certainly address the threat of diversion resulting from potential undefined, regulatory-mandated, emission control measures. The Preliminary Draft Staff Report erroneously suggests that "a detailed assessment cannot be made at this time" and should be deferred, which is in violation of the statutory requirement. The Staff Report also indicates that a socioeconomic assessment will be made available 30 days prior to the public hearing. The significant potential impact and novel nature of this rule warrants a 60 day review period of the socioeconomic assessment.

5. Non –compliance with Health & Safety Code § 40440.8(b)(4) – Alternatives to PR 4001:

The socioeconomic assessment must address "the availability and cost-effectiveness of alternatives to the rule." (§ 40440.8(b)(4)) However, the Preliminary Draft Staff Report fails to even mention any "alternatives" to the Rule, much less to evaluate the availability and cost-effectiveness of alternatives, such as VMEP.

6. Non-compliance with Health & Safety Code § 40440(c): "Cost-effectiveness"

The District failed to demonstrate that the adoption of PR 4001 would comply with the requirement of Section 40440(c) that all of the District's rules "are efficient and cost-effective..." Also, Section 40703 requires the District to make available to the public, and requires the Board to make findings, as to the cost effectiveness of control measures, and similarly Section 40922 requires the District to consider "the relative cost effectiveness of the [control] measure..." The District has not done so.

C. Additional Analysis is Required Before Rule Development Can Proceed

The Cities have put into place a voluntary program with documented air quality improvements in the face of economic growth. It is AQMD's responsibility to perform a regulatory impact assessment documenting that PR 4001 will not reverse voluntary gains made by the Cities and endanger future programs. This includes the analysis of lost grant funding that would have otherwise been available to fund equipment replacement and other emissions reductions, due to conversion of voluntary program to regulation.

D. The District Must Acknowledge and Respond to All Comments Submitted on Measure IND-01 and PR 4001

The draft findings in the next staff report must acknowledge and respond to all comments submitted on Measure IND-01 and PR 4001, including all comments on the environmental assessment such as the Notice of Preparation and Initial Study for PR 4001.

IV. FAILED REQUIREMENTS FOR SIP INCLUSION

The District has claimed that adoption of PR 4001 is necessary to ensure SIP credit for the Cities' voluntary emission reduction programs. However, neither this Proposed Rule nor its precursor, "Control Measure IND-01" can be justified on this pretext, and neither PR 4001 nor Measure IND-01 meet the criteria for SIP inclusion. The Cities have raised significant technical, jurisdictional, constitutional and other legal concerns with Measure IND-01 and PR 4001, as set forth in public comment letters sent to the District during the 2012 AQMP adoption process and PR 4001 development process, which are provided as attachments.

A. Measure IND-01 and PR 4001 Violate Health & Safety Code § 39602

Measure IND-01 and PR 4001 violate California Health & Safety Code § 39602, which provides that the SIP shall only include those provisions **necessary** to meet the requirements of the Clean Air Act. The Cities have shown that there is no demonstrated need for the rule, nor is this rule necessary for regional attainment of the 2014 $PM_{2.5}$ standard. PR 4001 is duplicative of regulations already in place and effectively reducing emissions from port-related sources. As noted above, the Cities estimate that in 2014, 98% of the $PM_{2.5}$ equivalent emission reductions that PR 4001 seeks to "backstop" will occur as the result of regulations adopted by CARB and

the IMO.[6] The remaining 2% of $PM_{2.5}$ equivalent emission reductions is primarily attributed to the Cities' successful voluntary vessel speed reduction incentive program which is part of the Cities' Clean Air Action Plan.

More importantly, there are significant legal questions regarding the District's attempt to invoke " indirect source review" as authority to impose a new rule on governmental agencies. PR 4001 clearly infringes upon, and potentially usurps the Cities' authority to plan and control land use and exercise police power, in contravention of Health & Safety Code §§ 40716(b) and 40414, and compels compliance and punishes them for non-achievement of emissions targets for equipment the Cities do not own, control or operate, and are preempted from regulating.

B. <u>The District Failed to Timely Submit Proposed "Control Measure IND-01" to CARB for Public Consideration and Approval As Part of the SIP Submitted to USEPA on January 25, 2013</u>

Under CAA section 110(l), SIP revisions must be adopted by the State, and the State must provide for reasonable public notice and hearing prior to adoption. EPA cannot approve Measure IND-01 as part of the SIP because the District did not approve and forward IND-01 in time for CARB to follow the process for public consideration and State adoption required by CAA Section 110(1) and California Health and Safety Code Section 41650 for SIP submissions, and CARB failed to do so.

Under 40 CFR 51.102(d), reasonable public notice in this context refers to at least 30 days. Similarly, Health and Safety Code Section 41650 provides for a public hearing that would allow public comment as to whether the SIP meets the requirements of the CAA. By resolution dated January 25, 2013, CARB approved the District's 2012 AQMP and directed the executive officer of CARB to submit the AQMP to the USEPA for inclusion in the SIP. However, at the time of the January 25, 2013 CARB action**, Measure IND-01 was not part of the AQMP**. Because the District Governing Board adopted the AQMP without Measure IND-01 on December 7, 2012, and in fact, did not adopt Measure IND-01 until February 1, 2013, the January 25 CARB action did not constitute approval of Measure IND-01 which had not yet been submitted to CARB for consideration.

The documents attached to CARB's February 13, 2013 SIP submittal to the USEPA include the December 7, 2012 resolution by the District Governing Board and the December 20, 2012 District letter to CARB transmitting the approved SIP, which pre-dated the District

[6] CARB Port Drayage Truck Rule, CARB Truck and Bus Rule, CARB Ocean-Going Vessel (OGV) Shore Power Rule, OGV Low-Sulfur Fuel Rule, CARB Cargo-Handling Equipment at Ports Rule, CARB Commercial Harbor Craft Rule, IMO North American Emission Control Area

Governing Board's approval of Measure IND-01. Inexplicably, without the required public notice or public hearing and adoption by the CARB Governing Board, the submitted SIP includes the addition of Measure IND-01. Until this procedural error is corrected, and the Cities and the public are given the opportunity to comment at a public hearing, and CARB is able to properly consider proposed Measure IND-01 at such a properly-noticed public hearing, Measure IND-01 is not properly before the USEPA and cannot be approved as part of the SIP.

C. The Many Flaws of Measure IND-01 and PR 4001 Harm Rather Than Help the SIP

As a result of the above-mentioned extensive technical, jurisdictional, constitutional, statutory and other legal problems, inclusion of IND-01 in the SIP and attempted implementation through PR 4001 creates unnecessary risks of disputes and legal challenges to the AQMP and SIP. The unprecedented nature and legal and jurisdictional conflicts of PR 4001 and Measure IND-01 require significant explanation of the legal underpinnings of the Measure. Instead a single paragraph of generalities ignoring the jurisdictional conflict and lack of legal authority for classification of Cities as stationary sources or indirect sources was produced to justify PR 4001.

Conclusion

The ports of Long Beach and Los Angeles are a major economic engine for the region and nation. PR 4001 and the uncertainty it creates will have a substantial negative impact on the goods movement industry and the local economy, resulting in cargo diversion, job losses and business closures. Moreover, rather than improving air quality, PR 4001 eliminates all incentive for voluntary participation in emission reduction efforts at the Ports that have been so successful.

The Cities have a proven track record of developing and implementing appropriate and effective emission reduction strategies, working with the port industry and the air quality regulatory agencies. Since the CAAP was adopted in 2006, essentially all of the Cities' early actions have been overtaken by regulations from state, federal, and international agencies. The majority of emission reductions are already being achieved by regulations. Therefore, there is clearly no need for additional regulation.

The Cities share the air emission reduction goals of the District, CARB, and USEPA, and strongly believe that the voluntary cooperative CAAP process established by the Cities remains the most appropriate forum to discuss technical and policy issues related to implementing appropriate strategies for reducing emissions from port-related sources. There are feasible alternatives that would effectively ensure emission reduction goals are met, including the USEPA's VMEP that would allow for the small percentage of emissions reductions needed beyond regulations to be credited in the SIP. The Cities hope you will work with us to discuss various mechanisms, contractual or otherwise, by which the VMEP can be implemented in San

Pedro Bay, and move forward as a possible resolution to the issues currently under discussion regarding PR 4001.

We appreciate your consideration. Thank you.

Sincerely,

Matthew Arms
Acting Director of
Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachments:

- January 15, 2014 Letter; Port of Long Beach and Port of Los Angeles to South Coast Air Quality Management District (SCAQMD)*; Comments on Notice of Preparation, Initial Study and Scope of Proposed Program Environmental Assessment*
- August 21, 2013 Letter; Port of Long Beach and Port of Los Angeles to SCAQMD; *Comments on Notice of Preparation, Initial Study, and Scope of Proposed Environmental Assessment*
- October 2, 2013 Letter; Port of Long Beach and Port of Los Angeles to SCAQMD, *Initial Comments for Public Consultation on Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets are Met at Commercial Marine Ports"*

cc: Al Moro, Acting Executive Director, Port of Long Beach
Richard Cameron, Managing Director, Port of Long Beach
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Gary Lee Moore, Interim Executive Director, Port of Los Angeles
Michael Christensen, Deputy Executive Director, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
Barry Wallerstein, Executive Officer, SCAQMD

Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Randall Pasek, Planning and Rules Manager, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Governing Board Members, SCAQMD
Richard Corey, Executive Officer, CARB
Cynthia Marvin, Division Chief, Stationary Source Division, CARB
Doug Ito, Chief, Freight Transportation Branch, CARB
Jared Blumenfeld, Administrator, USEPA, Region 9
Deborah Jordan, Director, Air Division, USEPA, Region 9
Elizabeth Adams, Deputy Director, USEPA, Region 9

ATTACHMENT 4.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

January 15, 2014

Jared Blumenfeld
Regional Administrator
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

Re: California State Implementation Plan for PM2.5 for South Coast Air Basin (SIP) - South Coast 2012 Air Quality Management Plan (AQMP) Control Measure IND-01 *Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities* and EPA *Voluntary Mobile Source Emission Reduction Program* (VMEP)

Dear Mr. Blumenfeld:

On behalf of the City of Long Beach acting by its Harbor Department and the City of Los Angeles acting by its Harbor Department (collectively, the Cities), we raise serious concerns regarding Control Measure IND-01 *Backstop Measure for Indirect Sources of Emissions from Ports and Port-related Facilities* (Measure IND-01) in the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP). The Cities request that the United States Environmental Protection Agency (EPA) disapprove and exclude Measure IND-01 from the California State Implementation Plan (SIP) for particulate matter 2.5 microns or less (PM2.5) for the South Coast Air Basin, which is currently pending EPA approval. As set forth below, both the substance of Measure IND-01 and the California Air Resources Board (ARB) procedure for inclusion of Measure IND-01in the SIP violate all five prongs of the standard test used by EPA to evaluate a SIP's compliance with Clean Air Act (CAA) requirements.[1]

1. Did the State provide adequate public notice and comment periods?

EPA cannot approve Measure IND-01 as part of the SIP because the ARB failed to follow the process for SIP submissions required by CAA Section 110(1) and California Health and Safety Code Section 41650. Under CAA section 110(l), SIP revisions must be adopted by the State, and the State must provide for reasonable public notice and hearing prior to adoption. Under 40 CFR 51.102(d), reasonable public notice in this context refers to at least 30 days. Similarly, Health and Safety Code Section 41650 provides for a public hearing that would allow public comment as to whether the SIP meets the requirements of the CAA. By resolution dated January 25, 2013,

[1] See, e.g., CAA Sections 110(a)(2)(A), 110(a)(2)(E), 110(l).

the ARB approved the AQMD 2012 AQMP and directed the executive officer of the ARB to submit the AQMP to EPA for inclusion in the SIP. However, at the time of the January 25, 2013 ARB action, Measure IND-01 was not part of the AQMP. Because the AQMD Governing Board adopted the AQMP without Measure IND-01 on December 7, 2012 and did not adopt Measure IND-01 until February 1, 2013, the January 25 ARB action did not constitute approval of Measure IND-01 which had not yet been submitted to ARB for consideration. The documents attached to the ARB's February 13, 2013 SIP submittal to the EPA include the December 7, 2012 resolution by the AQMD Governing Board and the December 20, 2012 AQMD letter to ARB transmitting the approved SIP, which pre-dated the AQMD Governing Board's approval of Measure IND-01. Inexplicably, without the required public notice or public hearing and adoption by the ARB Governing Board, the submitted SIP includes the addition of Measure IND-01. Until this procedural error is corrected, and the Cities and the public are given the opportunity to comment at a public hearing, Measure IND-01 is not properly before EPA and cannot be approved as part of the SIP.

2. Does the State have adequate legal authority to implement the regulations?

As you may know, the AQMD is now pursuing adoption of Proposed Rule 4001—*Maintenance of AQMD Emission Reduction Targets at Commercial Marine Ports* (PR 4001) – ostensibly to implement Measure IND-01 and ensure SIP credit for voluntary emission reduction programs of the Cities. The Cities have raised significant technical, jurisdictional, constitutional and other legal concerns with Measure IND-01 and PR 4001, as set forth in public comment letters sent to AQMD during the AQMP adoption process. Measure IND-01 and PR 4001 violate California Health and Safety Code Section 39602, which provides that the State Implementation Plan shall only include those provisions necessary to meet the requirements of the Clean Air Act. The Cities have shown that there is no demonstrated need for the rule, nor is this rule necessary for regional attainment of the 2014 PM2.5 standard. The Cities estimate that by 2014, 99.5 percent of the PM2.5 equivalent emission reduction that PR 4001 seeks to backstop will occur as the result of regulations adopted by ARB and the International Maritime Organization (IMO).[2] The remaining 0.5 percent of PM2.5 equivalent emission reductions is primarily attributed to the Cities' successful voluntary vessel speed reduction incentive program which is part of the Cities' Clean Air Action Plan. More importantly, there are significant legal questions regarding AQMD's attempt to apply an indirect source rule to governmental agencies in a manner that potentially usurps the Cities authority and compels compliance and punishes them for non-achievement of emissions targets for equipment the Cities do not own, control or operate, and are preempted from regulating.

[2] CARB Port Drayage Truck Rule, CARB Truck and Bus Rule, CARB Ocean-Going Vessel (OGV) Shore Power Rule, OGV Low-Sulfur Fuel Rule, CARB Cargo-Handling Equipment at Ports Rule, CARB Commercial Harbor Craft Rule, IMO North American Emission Control Area

3. Are the regulations enforceable as required under CAA section 110(a)(2)?

Because the Cities are not regulatory agencies and, therefore, are limited in their authority to impose requirements on mobile sources operated by the goods movement industry that call at port facilities, IND-01 and PR 4001 are inappropriate and ineffective mechanisms for achieving emission reductions.

4. Will the State have adequate personnel and funding for the regulations?

Measure IND-01 does not specify the source of funding for its regulation of the Cities but implies that it will come from the Cities. However, AQMD and ARB have no authority to require Cities' expenditures which are subject to the Cities' own requirements as governmental agencies. Furthermore, because it converts a voluntary program into enforceable regulation, the financial effect of Measure IND-01 will be to remove previously available funding from Federal and State grants that are only given for voluntary programs that go beyond regulation, making it less likely that the Cities will have funds to assist the goods movement industry with meeting the AQMP targets.[3]

5. Do the regulations interfere with reasonable further progress and attainment or any other applicable requirement of the Act?

Measure IND-01 interferes with reasonable further progress of the Cities' voluntary programs by reduction of available funding as mentioned above, and providing disincentives to Cities and goods movement industry to pursue programs like the voluntary Clean Air Action Plan.

The Solution: Voluntary Mobile Source Emission Reduction Program (VMEP)

To the extent the ARB and AQMD seek to ensure the emission benefits of the Cities' voluntary vessel speed reduction program, there is a more appropriate method in the form of the EPA's policy and guidance for the Voluntary Mobile Source Emission Reduction Program (VMEP), which constitutes an established process to grant SIP credit for emission reductions resulting from voluntary mobile source measures that go beyond existing regulations. The VMEP approach was intended for exactly the type of successful voluntary program such as the Cities' landmark Clean Air Action Plan, and should be used to account for the 0.5 percent of port-related emissions not currently backstopped by regulation. The VMEP would also reduce the industry and jurisdictional uncertainty that could divert cargo away from the Ports and hurt our local economy.

[3] Many of the Cities programs for equipment replacement or emissions reductions projects have been funded by federal and state grants that require funded activities must go beyond regulations. See e.g., California Proposition 1B Goods Movement and federal Diesel Emission Reduction programs.

We urge the EPA to disapprove and exclude the AQMD's Measure IND-01 from the SIP, and insist that the AQMD use the EPA's established VMEP process that was developed for programs such as the Cities' vessel speed reduction program and other Clean Air Action Plan measures. Use of the established VMEP will accomplish the objective sought by Measure IND-01 and PR 4001 and ensure that the emissions reductions achieved by the program are credited in the SIP. Further, the implementation of a VMEP will achieve the same emissions reductions while ensuring that grant funds remain available for actions going beyond regulations and will do so in a collaborative manner. It will also encourage other cities and regions throughout the nation to develop and pursue innovative voluntary programs and solutions that best fit their needs to improve air quality and public health.

The Cities share the air emission reduction goals of the AQMD, ARB, and EPA, and strongly believe that the VMEP is the most effective way to ensure that emission reduction goals are met in a manner that will allow the SIP to move forward without unnecessary disputes or challenges. The Cities look forward to discussing the various mechanisms, contractual or otherwise, by which the VMEP can be implemented in San Pedro Bay.

Sincerely,

Matthew Arms
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

LW

cc: Al Moro, Acting Executive Director, Port of Long Beach
Gary Lee Moore, Interim Executive Director, Port of Los Angeles
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Randall Pasek, Planning and Rules Manager, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Richard Corey, Executive Officer, ARB

Cynthia Marvin, Division Chief, Stationary Source Division, ARB
Doug Ito, Chief, Freight Transportation Branch, ARB
Deborah Jordan, Director, Air Division, EPA, Region 9
Elizabeth Adams, Deputy Director, U.S. EPA, Region 9

ATTACHMENT 5.

January 15, 2014

VIA E-MAIL – bradlein@aqmd.gov
VIA FACSIMILE – (909) 396-3324

Ms. Barbara Radlein
c/o CEQA
SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT
21865 Copley Drive
Diamond Bar, California 91756-4178

Re: Recirculated Notice of Preparation and Initial Study
Proposed Rule 4001— Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports
November 2013

SCAQMD File No. 0722013BAR
SCH No.: 2013071072

Comments on Recirculated Notice of Preparation, Initial Study, and Scope of Proposed Program Environmental Assessment and Alternatives Analysis

Dear Ms. Radlein and Staff of the South Coast Air Quality Management District:

On behalf of the City of Long Beach (referred to herein as "COLB)" and the City of Los Angeles acting by and through their respective Harbor Department ("COLA", and collectively with COLB referred to herein as the "Cities"), we appreciate this opportunity to submit responses and comments on the District's recent "Recirculated Notice of Preparation of a Draft Program Environmental Assessment" ("Recirculated NOP") and the accompanying Initial Study ("IS") prepared in connection with the District's consideration of the proposed project entitled "Rule 4001: Maintenance of AQMP Emission Reduction Targets At Commercial Marine Ports" (the "Project" or "PR 4001"). We appreciate that the District has extended the public comment period to January 16, 2014, in light of the serious and substantial issues raised by this Project and the original comment period scheduled over the holidays limiting stakeholder time for review.

This letter is organized in the following manner:

A. Introductory Comments
B. General Comments on the Recirculated NOP and Initial Study
C. Specific Comments on the Recirculated Initial Study
    1. Comments on Chapter 1
    2. Comments on Chapter 2 (Environmental Checklist)
D. Conclusion

Additionally, the Cities' previous comment letter on the original NOP dated August 21, 2013 has been attached for reference.

A. Introductory Comments:

We have previously commented on, and objected to, Air Quality Management Plan (AQMP) Control Measure IND-01 (Measure IND-01) and have expressed our grave concerns about the District's rulemaking approach to craft a ostensible "backstop rule" that would be applicable only to the Cities and their respective San Pedro Bay Ports ("Ports") such as that embodied in the new draft PR 4001. As the District is well aware, the Cities have been dedicated, innovative, and effective leaders in the efforts of public agencies to improve air quality despite the fact that we have no regulatory authority or control over the emissions sources. Working collaboratively and voluntarily with the District, our efforts have been successful in helping the maritime goods movement industry achieve very substantial reductions in emissions from the wide range of industrial and mobile sources they operate at or near the Ports, and we look forward to continuing to work with the District, other air regulatory agencies, and industry in building on these successes.

While we appreciate that the District staff has finally released the draft text of PR 4001, together with the recirculation of a new NOP and Initial Study, we find that many of the questions and issues raised in our previous comments remain unanswered or contain the same deficiencies in the new description of the "Project" and the Recirculated NOP, and still fail to identify or address feasible alternatives to PR 4001. Therefore, we respectfully reiterate and incorporate by reference all of our previous comments and objections (including, but not limited to, our letter dated August 21, 2013, and comments on the District's 2012 Air Quality Management Plan ("AQMP") and Control Measure IND-01), in addition to our new comments on the Recirculated NOP and IS.

Our responses are submitted in light of the California Environmental Quality Act ("CEQA") which calls for public review, critical evaluation, and comment on the scope of the environmental review proposed to be conducted in response to a Notice of Preparation, including the significant environmental issues, alternatives, and mitigation measures that should be analyzed in the proposed draft EIR (or Environmental Assessment, "EA") (14 CCR

15082(b)(1).) (See, CEQA Guidelines, at Title 14 Cal. Code of Regulations, §§ 15000, *et seq*..) Since it is anticipated that the proposed Project will have substantial impacts on the Cities and other communities served by the Ports, it is particularly important that the scope of this proposed review take into account jurisdictional and legal limitations, established state and local plans and policies, and other potentially feasible and less-impactful alternatives to the Project. In addition, it will be important to consider the impacts of the proposed Project on the important missions, facilities, and operations of the San Pedro Bay Ports.

In that context, we respectfully submit the following comments regarding the Recirculated NOP as well as questions, concerns and objections related to the omissions of critical information, unsupported assumptions, or analytical deficiencies in the Initial Study, and comments as to the scope of the proposed environmental assessment ("EA") as contemplated and invited by the District's Recirculated NOP.

B. General Comments on the Recirculated NOP and Initial Study.

1. **Changed Project Title**: What is the authority of the District to change the proposed Project from a "*Backstop Measure for Indirect Sources of Emissions from Ports and Port-related Facilities*" authorized by the District's Governing Board, to a new Project title of "*Maintenance of AQMP Emission Reduction Targets At Commercial Marine Ports*"? The District inexplicably no longer describes this as "a backstop measure" – although such a "contingency measure" concept has been the basis for District consideration of this type of proposed rule going back to Control Measure IND – 01 and a similar mobile source port backstop rule in the 2007 AQMP/SIP. What is the significance of this change and has the District now moved from a backstop of the voluntary Clean Air Action Plan goals of the Cities, which it sold to its board, to full District regulation setting District targets for the Cities' ports beyond backstopping voluntary programs? Does this change require the approval of the District's board? In any event, the Cities repeat their strong protest of both Project concepts and further comment on this issue below.

2. **Changed Project Description:** The Recirculated NOP/IS cover letter (11/22/2013) acknowledges that "changes were made to the project description *and* the environmental analysis subsequent to release of the original NOP/IS on July 23, 2013." However, the new NOP/IS fails to describe the "changes" in "the Project" and fails to describe or evaluate the significance of those Project changes. We note at least a few changes between the previous Initial Study and this new Recirculated NOP/IS:

(a) The Project Description now includes *the draft text of the Proposed Rule*. The new Initial Study states (p. 1-3) that the prior NOP/IS had tried to use the text of Control Measure IND-01 as a surrogate for the Project, because the rule language for PR 4001 had not been developed. However, **the draft text of PR 4001 is not the same as Control Measure**

IND-01. The distinct jurisdictional, legal, administrative, due process and procedural issues posed by the draft text of PR 4001 (as well as its semantic ambiguities) add new levels of complexity to the evaluation of the environmental impacts of the Project, which are not adequately explained or evaluated in the new Initial Study.

As detailed below, the draft text now creates uncertainty as to how and when the requirements of the new PR 4001 that the Cities "take actions" would be triggered, as well as the scope of their obligations to act under the new Rule. Indeed, the draft text of PR 4001 raises questions as to whether the Project as now described is even consistent with the Final 2012 AQMP, the EIR for that AQMP, or with subsequently-adopted Control Measure IND-01, or other state and regional plans. Most importantly, to the extent the provisions of PR 4001 vary in purpose and scope from Measure IND-01, they are not authorized by the AQMD Governing Board.

(b) The initial Project description (and Control Measure IND-01) would have required "actions to be taken" [by the Cities] only "in the event that emissions from port-related sources *do not meet* the emission targets assumed in the final 2012 AQMP. Similarly, Control Measure IND-01 represented that the "backstop" requirements will be triggered "if the reported aggregate emissions *for 2014* for all port-related sources exceed the 2014 emissions targets." (Final 2012 AQMP, Appendix IV-A-41.) By contrast, however, the new Project description would apparently require the Cities to "take actions" in the event that "port-related sources do not meet *or are not on track to maintain* the emission targets ... *for the purpose of meeting and maintaining the federal 24-hrs PM2.5 standard*." The new version of the Project description appears to have expanded the "triggering" events, and extended the trigger period, beyond those events and time periods contemplated in the 2012 Final AQMP. Accordingly, the new version of PR 4001 may no longer be consistent with the AQMP or with the environmental review of that document.

(c) The new NOP and Initial Study changed the type of CEQA document from an Environmental Assessment to a Program Environmental Assessment for the Project that will be programmatic in nature (as described in 14 CCR 15168) rather than a project-specific environmental review, and suggests that the District may thereby intend to *defer* more detailed CEQA analysis to some undefined future stage of "the Project" (p. 1-2). The District has already prepared and certified a Final Program Environmental Impact Report (Program EIR) for the 2012 AQMP which was considered to be the appropriate document pursuant to CEQA Guidelines Section 15168(a)(3) and included a programmatic analysis of Control Measure IND-01. However, the District has now presented the adoption of PR 4001 as "the Project" but is still preparing yet another Program Environmental Assessment with the same reasoning as it did in the prior CEQA analysis. It is not clear how the District believes two program-level environmental documents can be prepared for the same rule and when, if at all, the District may intend to provide such more specific "project-level" analysis as required under CEQA.

Moreover, this part of the new Initial Study implies a commitment that the "program CEQA document" would include "consideration of broad policy alternatives and program-wide mitigation measures." (*id*.). However, *the new Initial Study fails to identify or discuss any such "policy alternatives" or "program-wide mitigation measures"* and gives no indication that *the scope* of the eventual EA will in fact include any such policy alternatives or mitigation measures.

In their prior comment letter on the Draft 2012 AQMP Program EIR dated October 22, 2012, the Cities expressed very similar concerns over the vague and deficient "project description" of backstop Measure IND-01. In the District's response to comment #5-4 in the Final Program EIR, the District represented that: "*The exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted.*" The District also committed, in its response to the same comment #504 in the AQMP Final Program EIR, that "*further details regarding the future requirements* [a Rule implementing Control Measure IND-01] *will be determined more appropriately* ***during the rule development process***."

The new Initial Study indicates that the District may be reneging on these commitments to provide the necessary analysis of "the exact impacts" of PR 4001 "during the rule-development process, in violation of CEQA and in violation of the District's own Rule 110.

(d) The District also appears to have made other subtle changes to the Project Description, without announcement, which are **not consistent with Control Measure IND-01**, and which may have potentially significant – but unaddressed -- impacts. For example:

i. The new Initial Study has changed the description of the Project from adoption of a "backstop measure" to the adoption of "backstop *requirement*" and has made other changes to the Project which are not consistent with Control Measure IND-01 as adopted (p. 1-1.) Control Measure IND-01 provides a description of the Cities' successful Clean Air Action Plan (CAAP) and its various emissions reductions goals. "This AQMP Control Measure is designed to provide a "backstop" to the Ports' actions to provide assurance that, if emissions do not continue to meet projections, the Ports will develop and implement plans to get back on track, to the extent that cost effective and feasible strategies are available." (Final 2012 AQMP Appendix IV-A, page 3) The Proposed Project describes its purpose as: "The purpose of the rule is to establish actions to be taken in the event that emissions from port-related sources do not meet the emission targets assumed in the Final 2012 Air Quality Management Plan for the purpose of meeting the federal 24-hour $PM_{2.5}$ standard in 2014 and maintenance of attainment in subsequent years." (PR 4001, Section (a)) The proposed

Project has eliminated the references in its Board-adopted IND-01 to backstopping the Ports Clean Air Action Plan targets to the extent cost effective and feasible strategies are available and replaced with a traditional regulation by the District to meet District-set targets.

ii. The new Initial Study has apparently changed the District's concern from assuring "the attainment demonstration" for 2014 PM2.5 emission targets (as embodied in the 2012 AQMP) to add "*maintenance of the air quality standard in subsequent years*." (p. 1-1.) This change in the Project appears to add a new undefined and open-ended element into the Project, not consistent with the District's adopted Control Measure IND-01.

(e) **Changed Definition of "Feasible Control Strategy:"** The draft text for the new PR 4001 proposes to change the definition of "feasible control strategy" so that it is *not consistent with* the obligations that could potentially be imposed on the Cities under *Control Measure IND -01* as adopted by the District Board. Instead, the draft of PR 4001 (at Paragraph (c)(1)) and the new Initial Study have *changed the limitations* on the proposed obligations of the Cities to achieve additional emission reductions under PR 4001. Previously, the Project was described as requiring the Cities to "propose additional emission reduction methods ... [but only] *to the extent cost-effective strategies are technically feasible* and within the Ports' authority." However, new PR 4001, and the new Initial Study (p. 1-1) have inexplicably omitted (at several points*)* the prior limitation on the Cities' potential obligations to measures that are "*technically feasible*." Again, these subtle changes in the Project description are not consistent with the text of IND-01 or any other legal or regulatory authority identified by the District in the new Initial Study. The Initial Study should address (i) whether these changes have been authorized by the District's Board, and (2) what potential environmental impacts (as well as socio-economic impacts) may arise from the changes in the concept of "feasible control strategies."

(f) The District should clearly identify all other "changes" in the Project.

Other comments on the flawed "project description" are set out in Section C(1), below.

3. **Changed Environmental Analysis:** We appreciate that the Recirculated NOP/IS has expanded the range of environmental subjects which it now acknowledges may be subject to the proposed Project's significant adverse environmental impacts, perhaps partly in response to our previous comments. However, the scope of the proposed environmental analysis still does not take into account all of our concerns and still fails to comply with CEQA, e.g., by failing to identify potential significant environmental impacts, failing to propose a range of feasible

alternatives, and failing to evaluate reasonable mitigation measures. We therefore reiterate our prior comments on the scope of the proposed EA.

4. **Reiteration and Incorporation of Prior Comments:** The new NOP/IS states that it "replaces the July 23, 2013 NOP/IS" and that there will be no District responses to previously-submitted comments. We recognize that the Recirculated NOP purports to reflect changes made, in part, to previously submitted comments on the July 2013 NOP/IS. However, the new NOP/IS does not take into account all of our previous comments nor do the changes made in the new NOP/IS necessarily reflect or satisfy the requests made in our previous comments. Accordingly, we incorporate and include our previous comments as detailed in our letter dated August 21, 2013.

5. **Failure to Adequately Identify and Include Feasible Alternatives:** The Recirculated NOP/IS still fails to comply with CEQA's requirements for identification and consideration of all feasible project alternatives. Like the original IS, the new IS fails to identify a single "alternative" to the District Board's adoption of PR 4001. The superficial mention of "alternatives" on page 1-15 of the IS merely recites the legal obligations of the District to "discuss and compare" a range of "reasonable alternatives" to the proposed Project. This fails to fulfill the "scoping" purpose of an Initial Study. The District should analyze, among a range of alternatives, a collaborative Memorandum of Agreement between all of the stakeholders, as previously suggested by the Cities and recommended by the District to its Board (which speaks well to its feasibility as an alternative). The District should also evaluate the use of the EPA's policy and guidance for the Voluntary Mobile Source Emission Reduction Program (VMEP), which was developed for voluntary emission reduction programs of the sort outlined in the CAAP.

"The scoping process is the screening process by which a local agency makes its initial determination as to which alternatives are feasible and merit in-depth consideration, and which do not." (*Goleta II, supra*, 52 Cal.3d at p. 569; see Guidelines §15083.) It involves "consult[ation] directly with any person or organization [the lead agency] believes will be concerned with the environmental effects of the project" in hopes of "solv[ing] many potential problems that would arise in more serious forms later in the review process." (Guidelines, § 15083.)" "The determination of whether to include an alternative during the scoping process is whether the alternative is potentially feasible (*Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 489 (*Mira Mar*)), and the EIR "is required to make an in-depth discussion of those alternatives identified as at least potentially feasible." (*Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1505, fn. 5].)" (*South County Citizens for Smart Growth v. County of Nevada* (3d Dist. 2013) 221 Cal.App.4th 316, 327 (*South County*.)

"A lead agency must give reasons for rejecting an alternative as 'infeasible' during the scoping process (Guidelines, § 15126.6, subd. (c)), the scoping process takes place prior to

completion of the draft EIR. (*Gilroy Citizens for Responsible Planning v. City of Gilroy*, *supra*, 140 Cal.App.4th at p. 917, fn. 5; Guidelines, § 15083.)" (*South County*, p. 328.)[1]

The Initial Study also uses the wrong legal standard in its passing acknowledgement of the District's duty to consider alternatives: the Initial Study must identify "potentially feasible" alternatives ("feasibility" is a defined, and critical, term under CEQA), rather than "reasonable" alternatives (as mis-stated in the IS on page 1-15.)

6. **Deficient Initial Study:** The CEQA Guidelines contemplate that an Initial Study is to be used in defining the scope of environmental review (14 CCR §§ 15006(d), 15063(a), 15143.) However, as a result of the omissions, inconsistencies, and deficiencies in the Initial Study, the District's proposed scope of environmental assessment for this Project will be unduly narrowed and limited, and is likely to erroneously exclude issues, feasible alternatives, and mitigation measures from the proposed Environmental Assessment. (More detailed comments on the deficient Initial Study are set out in Section D, below.)

As detailed below in Section C, the new Initial Study does not provide the information, potentially feasible alternatives, evidence, or analysis required by the CEQA Guidelines (14 C.C.R. §15063, subd. (d)):

(1) A description of the Project including the location of the Project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries . . .

(4) A discussion of ways to mitigate the significant effects identified, if any;

(5) An examination of whether the Project would be consistent with existing zoning, plans, and other applicable land use controls;

(6) The name of the person or persons who prepared or participated in the initial study."

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[1] "Differing factors come into play when the final decision on project approval is made; at that juncture the decisionmaking body evaluates whether the alternatives are actually feasible. (Guidelines, § 15091, subd. (a)(3).) "[T]he decision makers may reject as infeasible alternatives that were identified in the EIR as potentially feasible." (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 981.)" (*South County*, p. 327.)

An Initial Study that fails to provide all of the information, analysis, and evidence called for by CEQA may be deemed to be inadequate and not a valid basis for CEQA review or Project approval (See, e.g., *City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, at pp. 407–408, invalidating the County's proposed general plan amendments because of a deficient initial study: "[T]he initial threshold study is inadequate because it fails to provide sufficient evidence or analysis of the potential environmental effects of the amendments.")

7. **Request for Correction and Recirculation of Corrected NOP and IS:**

For the multiple reasons summarized above, and detailed below, it is essential that the Recirculated NOP and Initial Study be withdrawn and further revised and corrected in order to properly fulfill their role in seeking meaningful public input on the appropriate "scope" of the proposed environmental assessment for the Project. A more accurate, complete, and CEQA-compliant Initial Study that addresses specific project-level impacts should be prepared and released for public review, along with a new set of public meetings, to provide the public with sufficient time and opportunity to comment on the scope and adequacy of the revised NOP/IS.

The District has already commenced its Rule- development process. It appears from the District's records that District staff has already committed to the District Board that the Proposed Rule will be adopted in April of 2014. District documents also indicate that District staff has further committed to shortly thereafter embarking on revisiting and changing the emissions targets that are the subject of this Proposed Rule, likely placing even more burdensome requirements on the Cities It is imperative, not only for Due Process reasons but also for reasons of sound public policy, meaningful community input, and well-informed decision-making, that the District provide adequate, complete, and accurate information – and time -- to allow the Project to be fully vetted before it is rushed to the District's Board for consideration.

It is therefore respectfully urged that the Recirculated Initial Study (and the related NOP) be recalled, corrected, and again be recirculated for public review and comment as corrected before the District proceeds with any further action in connection with the proposed Project.

The comments on the Recirculated Initial Study included in this letter are organized in the same format used by the Initial Study, i.e., comments on "*Chapter 1 – Project Description*" in Section C, below, followed by comments on "*Chapter 2 – Environmental Checklist*" in Section D. The comments are limited to those matters which appear in the Recirculated Initial Study, but we reserve the right to provide further comments in the event that additional or different information about the proposed Project becomes available.

C. Specific Comments on the Recirculated Initial Study:

1. Chapter 1 of the Initial Study -- Inadequate "Project" Description.

(a). Deficient "Project Description" – In General

"A correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA." (*Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 267).

> **The initial study must include a description of the project.**" (*City of Redlands, supra,* 96 Cal.App.4th at pp. 405–406, fns. omitted.) **An accurate and complete project description is necessary** to fully evaluate the project's potential environmental effects. [Citations.]" (*El Dorado County, supra,* 122 Cal.App.4th at p. 1597.) (*Id*.)

As noted above (Section B(2)), the District's cover letter for the Recirculated NOP states that "the Project" has been changed, and that the Project description has been "changed." However, the Recirculated NOP and Initial Study do not explain the "changes" in the Project, and they still fail to provide an accurate and complete description of the Project as mandated by CEQA. The failure of the Initial Study and NOP to provide an accurate, complete, and coherent description of the "Project" is a fundamental deficiency, which permeates the entire document.

The Initial Study fails to describe additional planned or reasonably foreseeable activities or actions by the District (e.g., changes to emissions targets) or by other agencies in response to or associated with the proposed Rule, or to address cumulative impacts of this proposed Project in light of other related actions and plans.

The Initial Study suggests, instead, that the intent of PR 4001 would be to delegate the District's responsibilities for regulating or reducing emissions of NOx, SOx, and PM2.5 air emissions to other agencies, specifically the officials governing the ports of Long Beach and Los Angeles. The Initial Study further 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 Rule 4001 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 entire project*, improper project "segmentation," *improper deferral* of impact analysis and mitigation, failure to identify and evaluate *potentially feasible project alternatives*, etc.)

The absence of such a clear description of the proposed Project inherently prevents the IS from facilitating meaningful review and analysis of the proposed "Project," and violates the requirements of CEQA. (See, e.g., CEQA Guidelines, 14 CCR § 15124; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376.)

The Initial Study falls far short of these requirements in describing the proposed Project, and thus falls short of serving the "public awareness" purposes mandated by CEQA:

> An accurate and complete project description is necessary for an intelligent evaluation of the potential 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, citing *Aberdeen & Rockfish RR. v. SCRAP* (1975) 422 U.S. 289, 322 [an accurate, complete and consistent project description is the sine qua non of informative, legally adequate CEQA review].) (*City of Redlands v. County of San Bernardino, supra,* 96 Cal. App. 4th at pp. 407–408.)

In sum, the Recirculated NOP/IS still erroneously limits the scope of the required environmental analysis and calls for impermissible speculation or impossible prescience on the part of the Cities or other members of the concerned public to undertake effective analysis of the proposed Project, or to provide meaningful comments as to the scope of review of the Project, until and unless the District provides an adequate and complete description of the "Project."

Incomplete Description of Environmental Setting

The Initial Study also fails to provide an adequate description of "the environmental setting" of the proposed Project.

While the CEQA Guidelines do not specifically define "environmental setting" with regard to an initial study, they do explain, in regard to EIR preparation, that the "environmental setting" must be informative: "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." (Guidelines, § 15125, subd. (a).) A description of the environmental setting must be sufficient to allow "an understanding of the significant effects of the proposed projects and its alternatives" but "no longer." (Guidelines, § 15125, subd. (a).) That description should place "[s]pecial emphasis" "on environmental resources that are rare or unique to that region and would be affected by the project" and "must permit the significant effects of the project to be considered in the full environmental context." (Guidelines, § 15125, subd. (c).)

Failure to Examine All Phases of the Entire Project as Proposed

"The Initial Study must include a description of the project, and the scope of the environmental review conducted for the initial study must include the *entire* project." (*Nelson v. County of Kern, supra*, 190 Cal.App.4th at 270, emph. in original.)

The Initial Study here improperly fails to describe "the entire Project" and fails to consider all phases of the proposed Project. The CEQA Guidelines (14 C.C.R §15063(a)(1)) make clear that an initial study must take a comprehensive view of the proposed project *as a whole*. "All phases of project planning, implementation, and operation must be considered in the initial study of the project."

Since the Project also contemplates the possibility of future discretionary actions and measures on the part of the Cities, if compelled under PR 4001, which may in themselves have additional, not-yet-identified environmental impacts, the Initial Study should call for the scope of the EA to be expanded to include such issues.

The scope of the environmental review conducted for the initial study must include the entire project. (*Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1222.) Thus, a correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA. (*Nelson v. County of Kern, supra*, 190 Cal.App.4th at 267.)

The NOP/IS indicates that proposed Rule 4001 is intended to require actions by the Cities, to adopt and implement plans and strategies to address any "shortfall" in emissions reductions. The Initial Study improperly fails, however, to address or to provide information and analysis relating to the environmental impacts of the anticipated "subsequent approvals," "discretionary permits" and amendments to the Cities' plans and regulations that appear to be proposed as parts of the Project, or the physical environmental effects of social or economic impacts that may result from those anticipated changes in land use regulations. (Guidelines § 15063.) Such anticipated and intended actions by other governmental agencies thus appear to be part of this Project, and must be identified and evaluated in the Project EA, along with their potential impacts. As such, we reiterate our prior comment on the Draft 2012 AQMP Program EIR dated October 22, 2012 where it is stated that the District has failed to fully disclose the details of Measure IND-01 and as a result is segmenting or piecemealing its CEQA analysis.

Failure to Describe Existing Land Use Regulations

The Initial Study does not include an examination of whether the Project would be consistent with existing zoning, plans and other applicable land use controls, as required by CEQA Guideline Section 15063. Although the Initial Study includes some background discussion of the CAAP, it provides little or no description of the existing planning and zoning designations applicable to the "Project" location, and relies on (unsupported) assertions that the Project would be in furtherance of the CAAP. It provides no information or analysis of other existing plans or policies applicable in the Harbor Districts, which may be affected or impacted by the Project. Additionally, the Initial Study contemplates impacts beyond the Harbor Districts but does not specifically define these areas nor the applicable land-use regulations.

Uncertain and Inadequate Identification of "Baseline" Used for Review

It is critical under CEQA that any level of environmental review make it clear as to the "baseline" being used as the basis for analysis of the significance of potential Project impacts. (CEQA Guidelines Section 15125(a).) Normally, the "baseline" will be the existing environmental conditions in the vicinity of the Project. (Guideline Section 15125(a); see also, 48 Cal.4th 310, 315 [the baseline for an agency's primary environmental analysis under CEQA must ordinarily be the *actually* existing physical conditions rather than *hypothetical* conditions that could have existed under applicable permits or regulations].) The Supreme Court has explained that the requirement for identification and use of the appropriate "baseline" applies in the context of an Initial Study as well as in an EIR. (*Communities for a Better Environment, supra*, 48 Cal.4th at 512, and n. 5.)

The Initial Study here, however, fails to make it clear as to what "baseline" is being used. In many places the Initial Study compares the anticipated "impacts" of adopting proposed Rule 4001 to the permitted emissions levels anticipated (in the future) under the 2012 AQMP, or alternatively to the (future) emission reduction targets of the CAAP -- rather than to the existing environmental conditions. While the recent Supreme Court decision in *Neighbors for Smart Rail v. Exposition Metroline Constr. Authority* (2013) 57 Cal.4th 439, 451-52 indicates that the baseline need not always be the existing physical conditions, and that "projected future conditions" may be used in rare situations as a baseline "if their use in place of measure existing conditions ... is justified by unusual aspects of the project or the surrounding conditions", it does not detract from the rule that the Initial Study must accurately and consistently describe the baseline being used. Nor does it permit the use of "future conditions" in the absence of a showing of unusual circumstances. The Initial Study in this case does neither.

For each of these fundamental reasons, the Recirculated NOP/IS should be rescinded in order that it may be revised, completed and corrected to meet CEQA requirements.

(b) The Initial Study Improperly Fails to Identify or Address Alternatives to the Proposed Project:

As noted above, CEQA requires that an Initial Study identify a range of "potentially feasible alternatives" to the proposed project which are to be more carefully analyzed in the draft environmental study. (14 CCR § 15083; "The determination of whether to include an alternative during the scoping process is whether the alternative is potentially feasible (*Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 489.)

However, the new Initial Study totally fails to identify any alternatives for study in the eventual EA. Instead, it merely "commits" the District to "discuss and compare alternatives" in the future, as part of the Draft EA. This is insufficient. The Initial Study also suggests the District is looking to the public or other agencies to identify "alternatives" during the scoping process. The Cities previously (January 2013) submitted such a potential alternative to PR 4001, in the form of a proposed Memorandum of Agreement. The District Board directed District staff to follow up and confer with the Cities on that approach. Nevertheless, it is not even mentioned in the Initial Study. Additionally, the EPA's long-established VMEP program is not considered as an alternative although it was developed for this very purpose.

If the District is authorized to prepare a PEA, rather than an EIR, the PEA must at least comply with Guideline Section 15252. Section 15252(a) requires that a substitute document, like a PEA, must include at least – a description of the proposed activity, and "**alternatives** to the activity and **mitigation measures** to avoid or reduce and significant or potentially significant effects that the project may have on the environment."

The No Project Alternative is not defined in the NOP/IS. In accordance with CEQA Guidelines Section 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. Therefore, the Draft EA should consider the impacts that would occur under the existing 2012 AQMP without Control Measure IND-01 or proposed Rule 4001.

As an example, an analysis should be conducted of the grant funding that would be available under the No Project Alternative that would not be available if the proposed Project constitutes regulation, and the environmental impact if grant funding necessary to make certain actions economically feasible is no longer available under the proposed Project. If the District's position is that there is no loss of grant funding in order to comply with Rule 4001 as a regulation that the District purports to make enforceable under the State Implementation Plan and the Clean Air Act, the District must explain in the Rule its basis for this conclusion in the context of why grants made for compliance with a regulation is not a gift of public funds.

Due to the District's failure to satisfy this CEQA requirement of alternatives development, the Cities direct the District to review the feasible alternative to the Project set forth in their January 16, 2014 letter to the United States Environmental Protection Agency Region 9, copied to the District. The Cities have noted the problems with including Measure IND-01 in the California State Implementation Plan (SIP) and recommended to the US EPA to instead apply as an alternative, the Voluntary Mobile Source Emission Reduction Program (VMEP) to grant SIP credit for the small percentage of emission reductions that are not already achieved by other regulations. The VMEP can work with or similarly to the memorandum of agreement approach that was suggested by the Cities to the District as an alternative to Measure IND-01 last year. One additional alternative would be for the District to formulate its own "backstop" measures and strategies for addressing any shortfall in emission reduction targets, relying on the District or CARB regulatory authority, expertise and resources, rather than pursuing proposed Rule 4001, which appears to be an attempt to solely rely upon the Cities, which lack regulatory authority or control over the actual sources, or use of the EPA's VMEP.

(c) Comments on the District's new Proposed Rule 4001:

The "project description" in the Recirculated Initial Study includes the *draft text* of PR 4001, at Appendix B. Notwithstanding the inclusion of a draft of the text of the proposed Rule, the "project description" remains incomplete and deficient. The Initial Study does <u>not</u> provide an adequate description of how the proposed Rule would work in practice (as distinct from the superficial summary of the text at pages 1-7 through 1-10) or how it would be likely to impact the Cities, the tenants and users of the Ports, and the surrounding communities and environments. The Cities anticipate the submission of additional, more detailed, comments on inconsistencies and problems raised by the draft text of PR 4001 itself and additional questions and concerns about the District's "rule-making" process.

Other deficiencies and questions about the draft text of PR 4001 include the following:

<u>What Is the District'scLegal Authority for PR 4001?</u>

The new Initial Study asserts that if the "backstop requirement" of PR 4001 "becomes effective," then the new Rule would require the Cities to submit an Emissions Reduction Plan "to address the emission reduction "shortfall."" Under what legal authority does the District believe that its proposed Rule 4001 may purport to compel distinct governmental bodies (the Cities and the Boards of Harbor Commissioners) to legislate or to exercise their discretion in particular ways to achieve District objectives?

The new NOP continues to dodge the questions (previously raised) about the District's legal authority – if any – to adopt PR 4001 or to compel the Ports to participate in the new backstop planning process contemplated by the rule. The NOP includes only the perfunctory

assertion that PR 4001 would "implement Control Measure IND-01" – as though that were an independent and sufficient source of authority. However, even the District's Final 2012 AQMP document acknowledges that it confers no new authority on the District, and CEQA similarly cautions that it confers no new or additional legal authority on agencies independent of the powers granted to the agency by other laws. (Guidelines, sec. 15040(b).)

Moreover, as noted previously, to the extent that the draft of PR 4001 is not consistent with the Control Measure IND -01 as approved by the District's Board, it is unauthorized.

The source of the District's purported legal authority for processing this PR 4001 is important for determining whether or not the District may claim to be acting within the scope of the District's "Certified Regulatory Program" – and thus outside of CEQA. The CEQA Guidelines limit that "certified regulatory program" exemption to "that portion of the regulatory program of the SCAQMD which involves the adoption, amendment, and repeal of regulations *pursuant to the Health & Safety Code*." (Guideline, sec. 15251(l).)

If the NOP/IS seeks to justify the District preparing an environmental assessment under its "certified regulatory program" rather than an EIR under CEQA, then the District should clearly demonstrate that the PR 4001 would be enacted pursuant to some specific statutory authority in the Health & Safety Code.

The District previously sought to characterize Control Measure IND-01 as an "indirect source rule." The current references to proposed Rule 4001 in the NOP/IS have omitted all mention of an "indirect source rule." However, the new Initial Study does not cite any authority the District is relying on for its processing of the proposed Rule. This should be corrected so that the public can perceive and comment on whatever "legal authority" may be invoked by the District.

Is it anticipated that the "plans" and strategies that would be required to be adopted by the legislative boards of the two Cities under the mandate of proposed Rule 4001 would be within SCAQMD's regulating authority and subject to the District's approval or disapproval? If so, why would SCAQMD not directly adopt such "backstop" strategies and plans itself? If not, is the Rule being proposed in order accomplish something indirectly that SCAQMD itself cannot do directly? (Cf., *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 [same].)

The vague disclaimer in the Initial Study to the effect that proposed Rule 4001 would not require any measure that *lacks legal authority* raises more questions than it answers. (Note also the new Initial Study, and PR 4001, no longer disclaim any intent to require the Cities to adopt measures that are not "*technically feasible*.") Whatever types of "emissions reduction plans"

may be anticipated by PR 4001 should be identified by the District in the NOP/IS so that the feasibility and legality of such approaches can be evaluated as part of the environmental assessment for the Project. (The new Initial Study omitted the examples of 'control strategies' that had been in the previous Initial Study.)

On What Basis Would PR 4001 Impose "Requirements" on the Cities

The NOP/IS states that none of the CAAP strategies would be "prescribed in PR 4001." Instead, the NOP states that if proposed Rule 4001 becomes effective, the Cities (presumably the Boards of Harbor Commissioners) -- "individually or jointly" -- would be required to identify sources that could undergo potential emission reduction to "make up for the shortfall."

Why would/should the obligation to make up for a possible shortfall in meeting emission reduction targets (which are primarily the responsibility of the District to attain) be shifted so as to fall upon two independent governmental entities? The Cities are governmental entities, and are not directly producing emissions or otherwise directly responsible for the targeted emissions or for the attainment of the emissions reduction targets.

Moreover, if there were to be a "shortfall" in attaining the targets, it could well be due to factors not caused or controlled by the Cities, and not due to any actions or derelictions on the part of the Cities or their tenants or users. Would uncontrollable/unforeseeable factors resulting in all or part of a shortfall be excluded from whatever obligation may be imposed on the Cities? Would it be required/permitted that any such "shortfall" be allocated to sources or causes bearing some actual responsibility for the lack of attainment? How would any shortfall be "allocated" between the Cities?

Would proposed Rule 4001 take into account the statutory limits on the jurisdiction and authority of the Cities (i.e, the Boards of Harbor Commissioners) to impose restrictions on most mobile sources of emissions?

The NOP/IS mentions a possible "option" that would "allow" the Cities to reduce emissions from "non-port-related sources." This vague reference requires clarification before it may be evaluated in connection with the Project. Direct and indirect effects would need to be considered that may occur beyond the geographic boundaries of the Harbor Districts. Therefore, it is premature for the District to conclude that any changes based on the working group or public scoping comments will be within the scope of the analysis in the NOP/IS.

What is meant by an "Emissions Shortfall"?

What environmental baseline and other parameters would be required by proposed Rule 4001 in order for the Cities to determine the extent of any "emissions shortfall" that may need to

be addressed in the Cities' plans in the event they were to undertake to submit plans under the Rule?

The term "shortfall" first appears in the Proposed Rule in (d)(1)(A), where it appears to call for a Plan to report on progress in "meeting the shortfall" but that seems logically inconsistent with the structure of the Proposed Rule, i.e., the District can't require the Ports to submit an emissions reduction plan unless and until the annually-reported emissions reductions "show that the percent reduction in PM2.5 from the baseline emissions is less than the reduction target of 75%" (Para (e)(1)B).) So there would not be any "shortfall" identified until that time; and therefore it would seem premature and illogical to require the Ports to submit a Plan that "reports the progress in meeting the shortfall" that was just identified.?

To the limited extent the PR 4001 describes the shortfall that might trigger the need to prepare a Plan, the provisions for annual estimating or reporting of the emissions appear imprecise and vague. Para (f) appears to contemplate that once a 'shortfall' had been determined in one year, then the District could demand a Revised Plan in following years if targets are still not met; but what happens if the shortfall is "corrected" in subsequent years and targets are again being met?

Does an Emissions Reduction Plan, once required by the District, ever go away?

<u>On What Authority Would the District Purport to "Revise the Reduction Target"?</u>

The new Initial Study reports (p. 1-8) that PR 4001 (e)(2) purports to require the District's Executive Officer to review the reduction target before July 2017, and to "develop a proposed amendment to Rule 4001..." that would "revise the reduction target as necessary to conform to the 2016 AQMP reduction target."

By what authority would these targets be "revised" in the future? Under what objective standards? What public process would the Executive Officer need to follow in order to "develop" a proposed "amendment" to PR 4001? How would such a "moving target" affect the Cities and what environmental impacts would be possible consequences of such "revisions"?

<u>Does PR 4001 Provide a Clear and Feasible Process for Cities to Develop a "Plan"?</u>

Para (f) (E) would require that "the Plan shall be approved by the Board of Harbor Commissioners" at each Port, and would require the Port to conduct at least one "public meeting" ... but is this an improper attempt by the District to control and dictate the exercise of discretion" conferred on the Board of Harbor Commissioners? The Board of Harbor Commissioners may in fact disagree that a plan is required or may exercise its own discretion, as required by law, that it cannot commit expenditures to a program desired by the District. Under what authority can the District's Executive Officer, acting alone without even District Governing

Board authority, disapprove a plan or compel a plan to be approved by the Cities' own governing authorities? What is the District's intended mystery penalty or consequence, which the proposed Project still has not revealed to the cities and the public in PR 4001? Furthermore, discretionary action by the Boards of Harbor Commissioners requires compliance with CEQA. What type of CEQA review would be triggered for the emission reduction plans if the Program Environmental Assessment being prepared by the District is only programmatic in nature and how is the timing for either a consistency review or project-specific analysis, if warranted, accounted for in PR 4001?

Would PR 4001 Create Violations of Due Process?

The draft of PR 4001 raises several questions regarding apparent violations of Due Process:

Para (f)(2)(B) -- the District's Executive Officer would be given nearly unfettered discretion to "disapprove" a Plan submitted by the Cities?

There must be some requirement at least that the Executive Officer must make "findings" of "non-compliance" with some provision of (f)(1) of the Rule, based on some objective standards.

What would be the procedure if the Cities submitted a Plan, and the District (either by its Executive Officer or its Hearing Board) "disapproved" the Plan (per Para (f)(2)(C))? The Port would apparently be required to submit a Revised Plan within 60 days of the disapproval. But what about the Harbor Commissioners holding a new "public meeting" for input on the Revised Plan? And would there be any time or procedure for the Harbor Commissioners to consider and approve a new Revised Plan and comply with CEQA within that arbitrary 60 day time frame?

At the end of Para (g)(2) is the threat again that if the District Board denies the Port's appeal from a "disapproval" of the Port's emissions reduction plan, then the "*Ports shall comply* with ... [or subparagraph (f)(2)(F)]" -- which means the Port shall be self-confessed as "in violation" of the Rule? This would appear to inflict a denial of Due Process on the Cities.

Variance: PR 4001 must provide more detail as to what is meant by Para (g) - petitioning for a "variance" ? What are the criteria? What would the process be? What would be the effect of the District granting a variance?

How Would the District Determine the "Consequences" for "Violation" of PR 4001?

By what authority would the District sit in judgment as to the sufficiency of the Cities' efforts to manage activities and uses of the Ports? What might the consequences be if a City were to be deemed to be "in violation" simply because the District may choose to "disapprove" a

Revised Plan, and by what legal authority would the District purport to sanction the Cities in the event of some perceived "violation"?

By what objective standards would the District judge the sufficiency of any plans or measures proposed by the Cities to achieve the emission reduction targets?

What is the consequence of disapproval of a City plan by the District? The rule should provide more detail at Para (f)(2)(F) (iii) -- what is meant by the obscure reference here that the Ports "shall be in violation of this Rule... "?

Does PR 4001 Provide for Judicial Review of District Actions?

Should the Rule make provision for judicial review of the actions of the District in enforcing or interpreting the Proposed Rule?

As drafted, PR 4001, at Para (h): "Severability" appears to contemplate that a "judicial order" could hold some provision of the Rule to be invalid? Otherwise the Rule is silent on Judicial Review.

Are the Cities Supposed to Regulate Off-Site "Sources"?

The Initial Study indicates (p. 1-4) that the District anticipates that the "control strategies" contemplated by this Project "may potentially include" measures for the Cities to adopt and implement policies or programs extending beyond their jurisdictions or to try to reduce emissions from sources *not entering* onto port properties. What does this mean? By what legal authority might the Cities try to regulate *off-site* sources that do not come within the jurisdiction of the respective Harbor Commissions? (Municipal police power authority may generally be exercised only within the territorial boundaries of their jurisdiction, and the Boards of Harbor Commissioners have special Tidelands limits on their authority.)

Would such (unidentified) measures be part of Rule 4001, or would proposed Rule 4001 require that the Cities formulate (unidentified) measures in the future to somehow regulate *off-site* "sources?"

How Does the District Contemplate Funding of Backstop Measures?

The draft of PR 4001 implies that "funding" would be necessary for many of the potential future emission reduction measures that may be compelled under proposed Rule 4001. Would such funding be provided by the District? What other "funding" sources are contemplated?

The conversion of the Cities' voluntary programs into PR 4001 as a district regulation and potentially state and federal law if adopted into an approved SIP, will impose constitutional

or common law "gift of public funds" restrictions on federal and state grant funding currently relied upon by the Cities for emission reduction activities under their CAAP.

To the extent the District expects the Cities to fund future programs, this demonstrates a lack of understanding of the Cities' own governmental authority and obligations. The Boards of Harbor Commissioners of the Cities are trustees for the Tidelands Trust funds they are entrusted to manage and have specific legal obligations to meet, including promotion of maritime commerce, navigation and fisheries and keeping their budgets in balance amidst a current global shipping economy with many dynamic and threatening competitive pressures to retain market share. By what authority may the Harbor Commissioners impose taxes, assessments, and charges on users of the Harbor Districts, given the restrictions of various state laws, including, among others, Proposition 26?

(d) Specific Comments and Questions re "Project Description" and Text

The following comments and questions refer to specific portions or pages of Chapter 1 of the new Initial Study:

Pp. 1-1 - 1-2 – Introduction

(i) *Erroneous Characterization of Existing Emission Reduction Requirements:* The Introduction states, in the first sentence of the third paragraph on page 1-1, that Control Measure IND-01 "...does not call for additional emission reductions beyond those realized with existing regulations and emission reductions programs implemented at the Ports to date." This is an untrue statement. The CAAP is only a planning document which specifically provides for discretionary future decisions to be made regarding implementation by each of the Cities' respective Board of Harbor Commissioners, and the resolution adopting the CAAP update states:

> The CAAP is a living document intended to establish a process to develop solutions, not a static document binding the Ports to particular future actions….The CAAP is a planning document that identifies goals and potential implementation strategies to guide further actions, and as such does not constrain the discretion of either Board of Harbor Commissioners with respect to any particular action.[2]

[2] Los Angeles Resolution No. 10-7041 adopted by the Board of Harbor Commissioners of the City of Los Angeles and Long Beach Resolution No. HD 2600 adopted by the Board of Harbor Commissioners of the City of Long Beach on November 22, 2010.

Not all individual Board actions that may be required in order to achieve the CAAP's goals and activities have been adopted; in fact, many of these goals were stretch targets with uncertainty as to whether they could be achieved. Control Measure IND-01 and Rule 4001 propose to *require* the Cities to potentially adopt future discretionary, quasi-legislative actions that create potentially-conflicting authorities between the District, as regulator, and the Cities, as independent governmental agencies regulated by the District, so as to force the Cities to exercise their discretionary police power authority in a particular way. The Constitution does not permit such usurpation of the Cities' authority.

(ii) *Misleading and Inaccurate References to "Port-Related" Sources of Emissions:* The new Initial Study and Recirculated NOP continue to describe PR 4001 in the misleading context of "port-related sources" of PM2.5 emissions, and as ensuring that emissions from "port-related sources" meet the targets included in the Final 2012 AQMP. The term "port-related sources", however, is not used in the federal Clean Air Act ("CAA") or Health &Safety Code. As described in the NOP, "port related sources" are mobile and vehicular sources ("ocean-going vessels, on-road trucks, locomotives, harbor craft, and cargo-handling equipment"). Those *actual* "sources" of emissions are distinct from the geographic area in which they operate and are generally and comprehensively regulated by other State and federal agencies, not regional air quality districts.

The District's continued references to "port-related sources" of emissions are misleading and are no more accurate or descriptive than would be similarly generic references to "coastal-related sources" or "County-related sources" or "Air District-related sources" of emissions.

(iii). *Misleading Failure of the Project to Limit the Cities' New Obligations to "Technically Feasible" Measures:* The previous Initial Study for PR 4001 at least made it clear that the District only intended to require the Cities to propose additional emission reduction methods for vessels, trucks, locomotives, etc., "to the extent cost-effective strategies are *technically feasible* and within the Ports' authority." (Similar limitations on the Cities' new obligations under the proposed 'backstop measure' are included in IND-01.) However, the new Initial Study no longer includes any limitation to "technically-feasible" measures that could be required of the Cities (p. 1-1.) This omission creates uncertainty about the District's intentions as to the scope of PR 4001, i.e. whether it might be construed to be a "technology-forcing" regulation or not.

(iv). *Inconsistent or Uncertain Emissions Reduction Targets.* The Introduction states, in the last paragraph beginning on Page 1-1, that the emission targets for "port-related sources" are those assumed in the 2012 AQMP emissions inventory. The draft text of PR 4001 now purports to define "emissions target" by reference to page IV-A-36 of Appendix IV to the Final 2012 AQMP. The Cities raised questions during the Measure IND-01 adoption process regarding the District's calculation of these targets, which are *different* from the emissions targets set under the

CAAP. Although the specific emission targets of the proposed Project do not appear at all in the NOP (which omission itself is a defect), the District has verbally advised the Cities and a working group on August 8, 2013, that the Rule will be such as to be triggered on set emission targets for 2014 and 2019. Those comments, however, left the Cities and working group participants with many questions about how the District set the emissions inventory, particularly for 2019, which was not in the CAAP. These examples are provided to illustrate that the Initial Study's description of the applicable emission reduction targets to be covered by PR 4001 are uncertain, or inconsistent.

P. 1-4 - Project Location

The new Initial Study provides no finite "project location." It again refers to the District's jurisdictional boundaries. It then states that "PR 4001 would apply to POLA and POLB, both of which are located within Los Angeles County." It is unclear if this was an attempt to state that the Project location would be Harbor Districts of the Cities. The lack of clarity regarding the Project location is further compounded by the Rule's reference to "sources not entering Port," and by a new but vague reference to the effect that the unidentified "strategies proposed by the Ports" under compulsion of PR 4001 could extend the "project location" beyond Los Angeles County.

Is it the intention that any portion of the Project may be implemented outside the geographic areas of the two Ports? It remains unclear from this description whether the Project may have impacts or foreseeably result in actions being taken outside the geographic areas of the two ports. This may have jurisdictional implications which cannot be evaluated without additional information.

Also, the Initial Study fails to disclose or analyze the possibility that if the option for the Cities to reduce emissions from sources not entering Port properties is included in proposed Rule 4001, even the vague "project location" and geographic scope of the proposed Rule in the Initial Study would not be accurate and would need to be modified in the NOP/IS.

P. 1-5 – Project Background

The new Initial Study appears to recognize that distinct "emission sources at the Ports" such as vehicles, engines, ships, trains, trucks and other cargo-moving equipment operated by distinct tenants, users, and visitors of the ports are the intended targets of the Project's emission reductions requirements. It also acknowledges that the Ports themselves adopted the San Pedro Bay Ports Clean Air Action Plan ("CAAP") in 2006, and further that emissions from these so-called "port-related sources" have been "substantially reduced since 2006" as a result of collaborative and voluntary programs and regulations developed by both Ports. (p. 1-6).

These acknowledgements raise again the question of the need or justification for the Project, or for the attempt by the District to foist the responsibilities for regulating emissions from such mobile or vehicular sources of emissions from state and federal agencies onto the Cities.

Also, on Page 1-6, the new Initial Study states that the intent of PR 4001 is to "provide a backstop to the Ports' actions" in case emission reductions "from port-related sources do not meet *or are not on track to maintain the emissions targets*..." This appears to be an unauthorized change in the Project description and is not consistent with IND-01. Also, notion that the District would be empowered by PR 4001 to enforce sanctions against the Cities if the District somehow deems that they are "not on track" to maintain targets is ambiguous, and without objective standards or legally-necessary procedural protections.

Pp. 1-11 -- Technology Overview/Implementation Strategies

The new Initial Study refers to some emission reduction strategies included in the CAAP, but the Initial Study does not explain how these may relate to proposed Rule 4001, or whether they should be considered as part of the Project.

The suggestion in the Initial Study of possible "tariff changes" or "impact fees" on the activities of users of the Harbor Districts raises other questions (e.g., legal authority, funding for studies and public review processes required before such measures could be considered or adopted, indemnification for costs of defense, etc.) requiring identification and study. Moreover, such measures may themselves be considered as "projects" subject to CEQA review and may have impacts on the activities of Harbor District users that themselves would require analysis or mitigation.

The Initial Study also includes reference to "Port funded incentives" as possible measures to reduce emissions, but also observes that there is not adequate funding for such strategies in the Cities' budgets or other grant programs. The source of funding any "Port-funded" measures contemplated by proposed Rule 4001 should be clearly identified and evaluated.

Any such contemplated implementation strategies should be included in the "Project description" and better identified in a more complete NOP/IS, so that they may be evaluated along with the rest of the Project.

Feasibility: The new Initial Study abjures any consideration of technical feasibility or other concepts of "feasibility" despite CEQA's recognition of feasibility as a critical limitation on environmental regulation. The scope of the EA should be expanded to address the legal, technological and economic feasibility of the seven bulleted items listed in this section.

2. Chapter 2 of the Initial Study – The "Environmental Checklist"

(a) General Comments on the Environmental Checklist

The Recirculated NOP/IS relies on a standard CEQA environmental checklist to identify those "impact areas" it recognizes to be potentially affected by the Project. In several respects, however, the Initial Study appears to merely assume the absence of potentially significant impacts, rather than factually demonstrating that significant impacts will not occur if the Project is adopted and implemented. This is insufficient under CEQA, and under the District's own rules. (SCAQMD Rule 110; *City of Redlands, supra*, 96 Cal.App.4th at 408-09; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296).

The new NOP includes many statements that the PEA will rely on "conservative assumptions" about the possible environmental impacts of the Proposed Rule. Reliance on any assumptions in CEQA analysis is unsound, and if assumptions are to be used, the District must explain why it would rely on "conservative" assumptions about the scope of impacts.

Furthermore, it is contrary to the District's response to comment #5-4 in the Final Program EIR, which indicates that "[t]he exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted."

We appreciate that the new Initial Study has expanded the number of environmental areas to be studied in the eventual EA from the six (6) topics identified in the previous Initial Study to thirteen areas now recognized as being subject to potentially significant impacts if the Project is approved. The new Initial Study now recognizes the following *additional areas* of potential environmental impact to be addressed in the EA: (1) Aesthetics, (2) Biological Resources, (3) Cultural Resources, (4) Land Use and Planning, (5) Noise, (6) Public Services, and (7) *broadened evaluation* of potential impacts and issues in the areas of Energy, Hazards and Hazardous Materials, Air Quality, and Transportation and Traffic.

However, the new Initial Study continues to provide only superficial and inadequate discussion of the areas of environmental impact, and thus fails to properly indicate the necessary scope for the eventual EA. Unless and until those areas are more fully addressed, the new NOP/IS still improperly limits the scope of the proposed EA, and still erroneously exclude areas requiring further assessment.

(b) Specific Comments on the Environmental Checklist

As detailed below, there are numerous areas of potential environmental impact in the checklist as to which the Initial Study either omits required evidence to support its conclusions of "no potential impact" or treats with insufficient detail.

Even as to those areas that are now identified in the new Initial Study as having potential impacts, the new Checklist still errs by limiting the scope of the potential impacts identified for further study based on unfounded assumptions as to the environmentally benign intent behind the Project. However, the law is clear that environmentally "benign" objectives for a project do not excuse non-compliance with CEQA and do not justify reliance on assumptions in lieu of evidence to demonstrate the absence of potential impacts. *See, e.g., California Farm Bureau v. California Wildlife Conservation Board* (2006) 143 Cal.App.4th 173, 196, emph. added [State environmental agency violated CEQA by exempting environmentally beneficial habitat project from review]:

"[I]t cannot be assumed that activities intended to protect or preserve the environment are immune from environmental review. [Citations.]" (*Davidon Homes, supra*, 54 Cal.App.4th 106, at p. 119; see, e.g., *Dunn-Edwards Corp. v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644 (disapproved on other grounds in *Western States Petroleum Assn. v. Superior Court, supra*, 9 Cal.4th 559, 570.) **There may be environmental costs to an environmentally beneficial project, which must be considered and assessed**.

P. 2-4 -- Preliminary Discussion of Checklist

First Paragraph: We reiterate the same comment as noted above, regarding Cities not being the "source" of emissions. It is "the operational activities by the Ports' tenants" [and other users of the area] that produce emissions (as the new Initial Study more accurately recognizes) and which should be the true District targets as the sources of emissions.

First Paragraph, Last Sentence: The Initial Study states that "some emission reductions [assumed by the District's 2012 AQMP] may be contingent upon the Ports taking and maintaining *actions which are not required by air quality regulations*." This suggests that one of the purposes for District proposal of proposed Rule 4001 may be to establish a new regulatory "authority" over the Cities (and the communities served by and dependent upon the Harbor Departments of the Cities) that is not in fact already provided by existing federal, state, or regional air quality regulations. The policy implications of such a Project may well include significant impacts on the environment, if regulatory authority over activities, facilities, and uses of the Harbor Districts is shifted or arrogated to the District. (See, e.g., *City of Redlands, supra,* 96 Cal. App. 4th 398 [proposed new County policy re exercise of County authority over annexations and sphere of influence was not supported by adequate CEQA review].)

Page 2-5: The new Initial Study makes reference to a "survey" of existing CEQA documents to try to identify projects "similar to the types of projects the Ports may choose to implement in an Emission Reduction Plan." It then suggests that "reasonably foreseeable projects" resulting from this survey will be evaluated in the EA. While we respect these goals, we submit that the new Initial Study is vague as to what may be deemed to be "reasonably

foreseeable projects" warranting analysis in the EA, and would request that more objective criteria be provided.

(1) **Aesthetic Impacts:**

The brief discussion of "potentially significant" Aesthetic impacts in the new IS does not address many of the Cities' prior comments on these impacts, and we reincorporate those comments.

(2) **Biological Resources:**

The new discussion of impacts on Biological Resources does not address the Cities' prior comments re possible impacts on migratory birds and least terns, and we reincorporate those comments.

(3) **Energy:**

The new Initial Study section VI (c) must be expanded to also consider and analyze 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 required in the event of a major disaster. Also some types of emission control measures, facilities, or technologies contemplated by the Project could increase or shift demand for different types of energy or fuel usage. Although "risk of upset" is not considered in the new Initial Study checklist. The scope of the proposed EA should be expanded to include this additional analysis.

(4) **Hazards and Hazardous Materials:**

In addition to our comments on the prior Initial Study, the new Initial Study section VIII(f) must be expanded to also consider and analyze the increase reliance on alternative fuels or electrical powered technologies that would require sufficient supply and emergency storage in the event of a major disaster. Although interference with emergency response plans was marginally addressed in this section, "risk of upset" is not considered in the new Initial Study Checklist. The scope of the proposed EA should be expanded to include this additional analysis.

(5) **Land Use & Planning Impacts:**

The new IS now identifies Land Use and Planning as an area involving potential significant impacts, to be studied in the EA. However, the new IS states that such impacts will be considered in the EA only "if the project conflicts with the land use and zoning designations established by local jurisdictions." This is insufficient.

We previously pointed out that the PR would cause conflicts with existing land use plans and policies, circulations plans, congestion management plans, etc. The prior IS itself admitted that the Project would cause potentially significant impacts or conflicts with existing land use plans (but was only going to address them in the Transportation section). This should be a definite area for evaluation in the EA, not a 'conditional' topic of study.

We also note that the new Initial Study is internally inconsistent. It makes the remarkable assertion (inexplicably placed in its discussion of impacts on Biological Resources, at p. 2-18) that "there are no provisions in the proposed project that would adversely affect land use plans, local policies, ordinances or regulations. LAND USE AND OTHER PLANNING CONSIDERATIONS ARE DETERMINED BY LOCAL GOVERNMENTS AND NO LAND USE OR PLANNING REQUIREMENTS WOULD BE ALTERED BY THE PROPOSED PROJECT." We strongly disagree, as pointed out in our prior comments, which are incorporated.

The measures contemplated in the Initial Study include the adoption of new "regulatory requirements," new "impact fees" on the movement of cargo or sources, and changing the tariffs for use of the Harbor Districts – all of which would cause at least potential "conflicts" with applicable plans and policies. (Cf., *Orinda Ass'n v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1169 [the CEQA requirements for initial study examination of non-conformity with existing land use plans are intended to allow lead agency to modify the Project to avoid inconsistencies with existing plans – not vice versa].)

The Initial Study itself acknowledges that the Project is anticipated to cause "potentially significant impacts" or conflicts with "an applicable plan ... for the performance of the circulation system" and conflicts with "an applicable congestion management plan." (Initial Study, p. 2-44.) Although the Initial Study proposes to address those admitted conflicts in the "transportation" section of the EA, these acknowledged conflicts confirm the necessity for including "land use and planning" impacts in the proposed EA as well.

Also, the proposed Project would seemingly create conflicts with the Cities' 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 are detailed in the previous port letters included in Attachment A to this letter. In addition, the proposed Project would create inconsistencies with the Clean Air Action Plan.

The proposed Rule is apparently structured in a way that would impermissibly usurp the (non-delegable) police power authority of the Cities and their respective Boards of Harbor Commissioners to plan, implement, and regulate land use policies and actions in their respective jurisdictions. (This comment has also been raised above, in Project Description comments.)

The numerous inconsistencies between the Project as proposed and the existing plans and policies require identification in the Initial Study and inclusion in the proposed EA. (Guidelines § 15125(d).) The scope of the proposed EA should be expanded to include environmental analysis of all of these potential impacts on land use and planning.

The EA should also include analysis of the impacts of the proposed/anticipated Project-related subsequent amendments to the Cities' plans, policies, and other land use regulations. (See, e.g., *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1197 [CEQA review failed to consider incidental results from adoption of revised policy; incidental impacts could not be disregarded in an initial study based upon "net" environmental impact of the change in policy being benign since CEQA requires each environmental impact of project be discretely evaluated].) "Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project." (Guidelines, § 15064, subd. (e); see §§ 21080, subd. (e)(2), 21082.2, subd. (c).)

The scope of the EIR should be expanded to include analysis of possible physical changes in port facilities and operations that might be caused by economic or social effects of the Project itself or by the anticipated amendments to land use and zoning policies by the Cities subsequent implementation of the Project.

(6) **Transportation and Traffic Impacts**

The new Initial Study fails to adequately describe and analyze potential impacts to rail and marine vessel traffic and ignores the significance criteria identified as "[w]ater borne, rail car or air traffic is substantially altered" on page 2-45. The new Initial Study erroneously considers vehicular traffic impacts to local roadways.

Socioeconomics Analysis

The proposed EA needs to include a broad-based analysis of the socioeconomic effects of Proposed Rule 4001, including the potential for job loss, business closures, and diversion of cargo to other ports due to the potential loss of regional competitiveness. The socioeconomic analysis needs to consider both the existence of the rule, even if not triggered, and the future enforcement of the rule. Because these conditions have the potential to physically change the environment in and around the ports, these impacts should be identified and assessed in the EA. (See CEQA Guidelines §§ 15064€ and 15131; *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3rd433,445 [EIR must consider possibility of economic blight from rezoning].) Moreover, this assessment should not be limited to businesses and operations within the ports, but should extend to those facilities, business and operations that while located outside of the Harbor Districts are dependent upon the flow of cargo for their continued operations.

This CEQA analysis of the socioeconomics effects of PR 4001 in the proposed PEA would be separate from, and in addition to, the assessment of socioeconomic impacts of the proposed Rule that the District is required to prepare in compliance with Health & Safety Code § 40728.5 and § 40440.8.

D. Conclusion:

The current version of the Recirculated NOP/IS still fails to comply with CEQA or with the District's own Rules for environmental review, and fails to properly provide an adequate "scope" for the eventual Environmental Assessment to be prepared for analysis of the Proposed Rule 4001. The Initial Study must therefore be revised, corrected, and re-circulated with all of the descriptions and other content required by CEQA.

While it is clear that an EA is called for in connection with this proposed Project, it is equally clear that the EA should be more complete than what is envisioned by the current NOP/IS. More fundamentally, its scope must be determined by a legally-adequate revised NOP/IS. The EA for the Project must, of course, be supported by credible and substantial evidence, including independent professional analysis.

Even this inadequate NOP/IS makes it clear that **the scope of the proposed EA has been unduly narrowed and fails to identify any potentially feasible alternatives to the Project.** Consequently any ensuing environmental review will be limited in a way that erroneously fails to provide the relevant decision-makers, affected public agencies, residents and the public generally with sufficient evidence and analysis of all potential impacts from the Project as a whole, or of all potentially feasible mitigation measures or appropriate Project alternatives as required by CEQA.

We respectfully request that these comments and questions be considered before the District embarks on preparation of the EA and all of the other required independent studies in connection with the CEQA review of the proposed Project. We therefore look forward to working with the District, and any study teams or working groups tasked with evaluation of the proposed Rule 4001.

The NOP requests that we provide you with a contact person for each responding agency. For the **COLB,** the contact persons are as follows:

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For **COLA**, the contact persons are as follows:
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With a copy to:

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We appreciate your consideration. Thank you.

Sincerely,

Matthew Arms
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachments:

- August 21, 2013 Letter; Port of Long Beach and Port of Los Angeles to SCAQMD; *Comments on Notice of Preparation, Initial Study, and Scope of Proposed Environmental Assessment*

- October 2, 2013 Letter; Port of Long Beach and Port of Los Angeles to SCAQMD, *Initial Comments for Public Consultation on Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets are Met at Commercial Marine Ports"*

cc: Al Moro, Acting Executive Director, Port of Long Beach
Gary Lee Moore, Interim Executive Director, Port of Los Angeles
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
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Jared Blumenfeld, Administrator, U.S. EPA, Region 9
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ATTACHMENT 6.

October 2, 2013

VIA ELECTRONIC MAIL – rpasek@aqmd.gov
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South Coast Air Quality Management District
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Re: Initial Comments for Public Consultation on Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports"

Dear Mr. Pasek and Staff of the South Coast Air Quality Management District:

We appreciate this opportunity to submit comments during the public consultation period on the South Coast Air Quality Management District's (AQMD's) proposed "Rule 4001: Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports" on behalf of the City of Long Beach acting by and through its Harbor Department (referred to herein as "COLB") and the City of Los Angeles acting by and through its Harbor Department ("COLA," collectively with COLB, the "Cities" or the "Ports").

The Cities take their role as environmental leaders seriously and through the years have achieved tremendous success in obtaining substantial emissions reductions through the efforts guided by the joint San Pedro Bay Ports Clean Air Action Plan ("CAAP"). The Cities continue to support programs that will result in cleaner air for the local communities and the region and have worked aggressively with the port industry to reduce air quality impacts from the equipment they operate. As a result, the recently released emissions inventories have shown that between 2005 and 2012, emissions from sources at both the Port of Long Beach and Port of Los Angeles were reduced by 80% for diesel particulate matter and 55% for nitrogen oxides. However, the Cities continue to disagree with the AQMD's current proposal to inappropriately and unnecessarily regulate the Cities. The Cities have been consistent in our comments to the AQMD about the serious concerns and objections to the proposed rulemaking approach. A compilation of these comments was recently submitted to the AQMD in our comment letter on the Notice of Preparation and Initial Study for Proposed Rule 4001, dated August 21, 2013.

As for the comments the AQMD is currently seeking, we have concerns that the process recently initiated by the AQMD to solicit comments on Proposed Rule 4001 deviates from the rule-

making procedures called for by the Health & Safety Code and by the AQMD's own rules (Rule 110), in several respects. For example, it is essential that a copy of the Proposed Rule, or the text of the Proposed Rule, "be made available to the general public in connection with a request for comments" on a proposed rule in order to commence a legally-compliant rule-making process. (E,g., H & S Code §§ 40727.2, 40727(i).) The Cities have previously pointed out the inherent inconsistency of inviting public comment on Proposed Rule 4001 before the AQMD has publicly-disclosed the text of the Proposed Rule, as well as the resulting limitations on the ability of the Cities and other members of the public to provide specific input on the Proposed Rule. As a result of the failure to provide the text of the Proposed Rule, or necessary information regarding the Proposed Rule, a meaningful and legally valid rule-making procedure has not yet been commenced, and it is premature for the AQMD to demand the submission of comments on the anticipated but still undefined new "backstop" rule.

Further, it appears that the AQMD is attempting to limit comment by setting an agenda for the items on which they are seeking input, as shown on slide 8 "Soliciting Inputs/Comments" of the presentation provided during the CEQA Scoping Meeting on August 14, 2013. In addition, limiting the public process primarily to a small working group with seats set at a small table does not allow for significant input from the broader affected public, including the port tenants and operators. Input could be more meaningfully provided if the Proposed Rule was released with sufficient time for the Cities and the public to review and provide detailed comment.

The Cities are further concerned that not enough time is being included in the schedule for rule development. To date, a draft of the Proposed Rule has not been released, nor is it expected to be released for at least several weeks; however, a hearing date for the AQMD Board to consider approval of the Proposed Rule has already been identified for early December. Well in advance of any such hearing, the AQMD must provide the public with substantial information and analysis of the Proposed Rule as required by the Health & Safety Code and AQMD rules (e.g., H & S Code §§ 40727.2; Rule 110(b), (c), and (d).), as well as responses to the public comments. The AQMD also must provide the comprehensive assessment of socioeconomic impacts required by Section 40728.5.

This timeline for review and comment is unacceptably short for a rule of this magnitude. The failure to provide the draft rule language with adequate time for the public to review and submit comments to AQMD, and for those comments to be meaningfully considered by AQMD staff, is a denial of due process.

In this regard, we also have concerns about the demand that comments be submitted by September 6, 2013. There is no explanation, nor any apparent legal basis, for imposing such a deadline for public comments. It is unreasonable, particularly in light of the absence of text or details regarding the Proposed Rule, and fails to provide due process to the Cities or other members of the public who may be burdened or affected by the Proposed Rule, to demand comments by such an early cut-off. The imposition of such a premature deadline for submission

of comments appears arbitrary, and in conflict with Health & Safety Code § 40726, which states that the AQMD "shall provide for the submission of statements, arguments, or contentions, either oral or written or both," up until the time of the public hearing on the Proposed Rule. We therefore respectfully object to the imposition of a deadline for submission of comments on the Proposed Rule, and reserve all rights to comment on the Proposed Rule in the manner, and at the times, provided by state law and the AQMD rules, and to insist on compliance with the procedures and rights afforded by state law and AQMD rules.

The Cities are therefore providing these comments on a preliminary (and non-binding) basis, considering only the limited information on Proposed Rule 4001 thus far provided by the AQMD, based upon presentations by AQMD staff about the general concepts of the approach. The Cities reserve our rights, however, to make further comments after the September 6 deadline and to continue to provide input throughout the process, including submission of additional or different comments after the draft rule is made available.

First, there is an issue of need. As a rule that is contained in the proposed State Implementation Plan, Proposed Rule 4001 violates Section 39602 of the California Health and Safety Code, which states that the State Implementation Plan shall only include those provisions necessary to meet the requirements of the Clean Air Act. There is no need for Proposed Rule 4001 since the AQMP's emissions targets for port industry equipment in 2014 will be met by United States Environmental Protection Agency (EPA) and California Air Resources Board (CARB) regulations and existing Clean Ocean Vessel Voluntary Incentive Programs. Further, AQMD staff has suggested that Proposed Rule 4001 will require the Ports to develop a "Contingency Plan" immediately following rule adoption, prior to any indication that an emissions shortfall may occur. This approach is punitive, requiring the Ports to invest resources into a type of corrective action, when there is no identified need for that action, and therefore goes against the Act and is inconsistent with due process.

Second, there is an issue of legal authority and jurisdiction. The AQMD has failed to cite any legal authority for characterization of governmental entities as a stationary source, or imposing an indirect source rule on governmental entities that do not own, operate or control the sources of emissions, based merely upon the location of facilities operated by private parties within the government entities' geographic area. The Ports are not "indirect sources" and no authority has been cited to authorize the use of an indirect source rule against fellow governmental agencies that have their own jurisdiction and responsibilities by law and do not have regulatory authority to issue air regulations. The AQMD has failed to cite any legal authority for imposing an indirect source rule on Trustees for the Tidelands of California or how it could legally compel the Ports to make expenditure of Tidelands Trust revenues for the purpose of incentives or to adopt other emission reduction programs to be funded as contemplated in AQMD enforcement activity under Measure IND-01. The AQMD has failed to show any legal authority that would allow it to (1) regulate mobile sources by making another governmental entity, that is not an air regulator, its agent for enforcement of its desired mobile source emission reductions, or (2) "enforce" the

Proposed Rule, which under AQMD administrative rules would eventually mean fines and penalties, against such other governmental entity that does not control the emissions of indirect sources located within its jurisdictional boundaries. The AQMD has failed to show any constitutional or statutory basis for attempting to regulate mobile sources "indirectly" that it is preempted from regulating directly, or to purport to impose penalties or corrective action against another governmental entity for failure of private third party emissions sources to achieve emissions reductions that such other governmental entity is also preempted from regulating.

Third, while the Cities remain firm in our position that the rulemaking is unnecessary, counterproductive and beyond the AQMD's jurisdiction, if AQMD does continue to proceed, the following significant issues must be addressed.

AQMD staff appears to be proceeding with development of the proposed rule in a manner that is inconsistent with the provisions of AQMP Measure IND-01 and the discussion between the AQMD Board and the staff during the approval of AQMP Measure IND-01 at the Board Meeting of February 1, 2013. During that discussion, it was identified that the requirements under any proposed rule would only be triggered if the ports failed to meet their goals for the target year. The proposed rulemaking concepts that have been presented by AQMD staff more recently have indicated that the Ports may be required to develop corrective action plans in advance of any identified shortfall. Further, it appears AQMD staff is considering that the Ports will be required to submit emission inventories to AQMD for approval each year through 2020 and that compliance action may be triggered for any potential shortfalls that may occur during interim years, prior to the target years. These potential requirements are inappropriate and go beyond the direction from the AQMD Board.

Also, because the Cities are not regulatory agencies, have not been granted authority to regulate sources of air pollution, and have limitations on their ability to impose requirements on sources operating within their jurisdiction, AQMD must ensure that Proposed Rule 4001 does not mandate that the Cities implement strategies that are outside of their authority or ability to implement. AQMD must recognize that the Cities do not even have contractual relationships with many of the emissions sources that AQMD has attributed to the Cities' "responsibility" for emissions reductions under Proposed Rule 4001, and that even if Cities have leases with some of the operators, they are negotiated business agreements that constrain the Cities' ability to unilaterally impose new terms in response to whatever new conditions AQMD may desire.

In addition, the Boards of Harbor Commissioners of the Cities have the discretion for making business decisions related to the ports and their tenants, consistent with the Tidelands Trust and California Coastal Act. Neither AQMD staff nor its Board can override the discretion of the Harbor Commissions including decisions related to the management of the port or how port funds are spent. Therefore, AQMD cannot disapprove an Emission Reduction Plan simply because AQMD disagrees with the chosen strategies.

Moreover, approval or disapproval of any Emission Reduction Plan cannot be at the sole discretion of AQMD staff. Any plan development should be coordinated with the agencies involved in the development of the CAAP, specifically EPA, CARB and the AQMD. The partnerships established through the CAAP process, and the actions over the past seven years that have been taken by the regulatory agencies, in addition to the Ports, have been critical in the success that has been achieved. As CARB has stated[1], "[s]uccessful implementation of the CARB emission reduction plan will depend upon actions at all levels of government and partnership with the private sector. No single entity can solve this problem in isolation." Therefore, AQMD staff should not place themselves in a position to be the sole authority to approve or deny plans for emission reductions at the Ports. Any plans should be developed in partnership, with input by all agencies, and final approval on actions to be taken specifically by the Cities should be at the discretion of the Boards of Harbor Commissioners.

Slide 8 of the AQMD presentation at the August 14 Scoping Meeting identified that AQMD is seeking input on "[f]lexibility to garnish emission reductions/air quality benefits off port property". Under the Tidelands Trust, the Boards of Harbor Commissioners are limited in their ability to spend Tidelands funds outside of the Tidelands areas. The Cities cannot be mandated by an AQMD rule to mitigate emissions that are unrelated to port-operations outside of the Harbor Districts and the Tidelands areas.

AQMD has stated that the goal of the Proposed Rule is to ensure that the Cities meet their commitments outlined in the CAAP. The Cities have clearly demonstrated over the past seven years that they are committed to working with the industry and will do what they can to reduce, from port-related sources, the port sector's fair share of regional air emissions. If other non-port related sectors within the region do not achieve their share of emissions reductions, the Cities cannot be held responsible for making up for those shortfalls, regardless of whether or not those shortfalls are anticipated to result in a delay in regional attainment of the $PM_{2.5}$ Standard in 2014.

In addition, the Cities should not be held responsible for any potential emissions shortfalls from regulatory agencies not implementing emission reduction regulations as identified within the SIP, even if those regulations are related to equipment operating at the ports. If an agency makes a decision to delay a regulation schedule, or if a regulation is overturned due to a court decision that the requirements are not within their authority to implement, the Cities should not then be mandated to backfill the potential shortfall.

The last update to the CAAP took over two years to develop and cost over $1 million. The Cities should not be required by the Proposed Rule to prepare an Emission Reduction Plan when no need for such a plan has been identified (e.g. region is anticipated to reach attainment with the $PM_{2.5}$ Standard, emission reductions will be achieved by in-place regulations, no emission shortfall has been identified, etc.). Further, development of a plan should not be mandated if the

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[1] *Emission Reduction Plan for Ports and Goods Movement in California*, Executive Summary, ES-1, CARB, 2006.

reasons for any emissions shortfall are due to reasons outside of the Cities control or if no feasible strategies are available. Any plan that is required by AQMD should be streamlined and focused solely on actions that will be taken by the Ports and/or agencies to make up for any identified shortfall.

As identified in the 2012 Air Quality Management Plan, it was determined that the 2014 $PM_{2.5}$ Standard could be achieved by 2014 and no request for an extension would be needed[2]. Therefore, it is inappropriate for the AQMD to require an emission target year of 2019 in the Proposed Rule.

As stated above, these comments represent the Cities' initial concerns with the AQMD's proposed approach. Further comments will be provided as the process progresses and as more information is made available by AQMD.

We appreciate your consideration. Thank you.

Sincerely,

Heather Tomley
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

cc: Al Moro, Acting Executive Director Port of Long Beach
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Peter Greenwald, Senior Policy Advisor, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Cynthia Marvin, Division Chief, California Air Resources Board
Elizabeth Adams, Deputy Director, U.S. Environmental Protection Agency, Region 9

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[2] *2012 Air Quality Management Plan*, Executive Summary, ES-11, AQMD, 2013.

ATTACHMENT 7.

August 21, 2013

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Ms. Barbara Radlein
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Re: Notice of Preparation and Initial Study
Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports"

SCAQMD File No. 0722013BAR
SCH No. 2013071072

Comments on Notice of Preparation, Initial Study, and Scope of Proposed Environmental Assessment

Dear Ms. Radlein and Staff of the South Coast Air Quality Management District:

We appreciate this opportunity to submit comments on the Notice of Preparation ("NOP") and the accompanying Initial Study prepared in connection with the District's consideration of the proposed project entitled "Rule 4001: Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports" (the "Project") on behalf of the City of Long Beach acting by and through its Harbor Department (referred to herein as "COLB") and the City of Los Angeles acting by and through its Harbor Department ("COLA", collectively with COLB, the "Cities").

As environmental leaders nationwide, the Cities have achieved tremendous success in obtaining substantial emissions reductions from their joint San Pedro Bay Ports Clean Air Action Plan ("CAAP") and other air quality measures implemented under the Cities' initiatives. The Cities continue to be supportive of projects and programs that are intended to contribute to improvement of air quality and promote other environmental values. However, the Cities must fundamentally disagree with the District's current proposal to unnecessarily convert an effective voluntary plan, built on multi-agency and industry cooperation, into potentially punitive regulations imposed unlawfully on the Cities. The Cities have previously sought to make the District aware of the serious concerns and objections to this approach. The Cities incorporate by reference their previous comments on the 2012 Air Quality Management Plan ("AQMP")

The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

Measure IND-01 Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities ("Measure IND-01") as comments on the proposed Project. The Cities' comments on Measure IND-01 are Attachment "A" to this letter.

We are also mindful that the California Environmental Quality Act ("CEQA") calls for public review, critical evaluation, and comment on the scope of the environmental review to be conducted prior to approval of proposed projects. Such review and critique 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. Thorough identification of the proposed Project, and candid disclosure of all phases of the Project and their potential impacts, is essential to assure 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, mitigation measures, and alternatives. In addition, it will be important to consider the impacts of the proposed Project on the San Pedro Bay Ports' communities, missions, 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 NOP for this "Project" as well as questions, concerns and objections related to the omissions of critical information, unsupported assumptions, or analytical deficiencies in the Initial Study, and comments as to the scope of the proposed environmental assessment ("EA") as contemplated and invited by the District's NOP.

A. General Comments on the Initial Study

While we recognize the effort that has gone into preparation of the current Initial Study, it is apparent that the Initial Study does not provide the information, evidence, or analysis required under CEQA. The Initial Study thus fails to fulfill its critical role as mandated by CEQA in educating the public generally, other affected regulatory agencies and governments, such as the Cities, 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 initial study are described in the CEQA Guidelines (14 C.C.R. §15063, subd. (d)). An initial study must "contain in brief form:

(1) A description of the Project including the location of the Project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries . . . ;

(4) A discussion of ways to mitigate the significant effects identified, if any;

(5) An examination of whether the Project would be consistent with existing zoning, plans, and other applicable land use controls;

(6) The name of the person or persons who prepared or participated in the initial study."

An initial study that fails to provide all of the information, analysis, and evidence called for by CEQA may be deemed to be inadequate and not a valid basis for CEQA review or project approval. (See, e.g., *City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, at pp. 407–408, [invalidating the County's proposed general plan amendments because of a deficient initial study: "[T]he initial threshold study is inadequate because it fails to provide sufficient evidence or analysis of the potential environmental effects of the amendments."].)

It is therefore respectfully urged that the Initial Study (and the related NOP) be revised, corrected, and recirculated for public review and comment before the District proceeds with any further action or EA in connection with the proposed Project.

The CEQA Guidelines contemplate that an initial study is to be used in defining the scope of environmental review (Guidelines, Sections 15006(d), 15063(a), 15143). However, as a result of the omissions, open questions, and deficiencies in the Initial Study as noted below, it appears to have unduly narrowed the District's proposed scope of environmental assessment, and to have caused the NOP to erroneously exclude critical issues and topics from the proposed scope of the EA.

The comments on the current Initial Study included in this letter are organized in the same format used by the Initial Study, i.e., comments on "Chapter 1 – Project Description" followed by comments on "Chapter 2 – Environmental Checklist." The comments are limited to those matters that appear in the current version of the Initial Study, and we reserve the right to provide further comments in the event that additional or different information about the proposed Project becomes available, or the District provides a revised and CEQA-compliant Initial Study.

B. Request for Revision of NOP and Re-Circulation of Revised NOP/IS To Include a Legally-Adequate "Project" Description and Text of Proposed Rule 4001

It is essential that the NOP and the Initial Study be revised to include an adequate "project description" including the text of the proposed Rule that is the "project" before the public, or the Cities, can be expected to provide comments and input.

In their prior comment letter on the Draft 2012 AQMP Program EIR dated October 22, 2012, the Cities expressed the very same concern over the vague and deficient "project description" of backstop Measure IND-01. In the District's response to comment #5-4 in the

Final Program EIR, the District stated: "*The exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted*." The District also committed, in its response to the same comment #5-4 in the AQMP Final Program EIR, that "*further details regarding the future requirements* [a Rule implementing Control Measure IND-01] *will be determined more appropriately during the rule development process.*"

The District has already commenced the rule development process. However, it has not yet provided even a draft of the proposed Rule 4001. To the contrary, at a public meeting held on August 8, 2013, the District's staff announced that the Rule will be developed after various public meetings with a "Rule 4001 working group," with a goal of releasing a draft of the Rule on August 28, 2013. Such a deferred release date for the "draft" of the proposed Rule would be one week after the deadline for comments on this NOP. The details and text of the promised Rule must be developed and disclosed before the "particular methods" and "exact impacts" anticipated may be analyzed or the subject of comment. Accordingly, it is still not possible for the District to proceed with appropriate project-level CEQA review or to issue an accurate NOP/IS at this stage if the details of proposed Rule 4001 are under development.

It is necessary that the current NOP and Initial Study be revised to include a revised "Project" Description, to incorporate the text of the draft Rule 4001 in detail, and to recirculate the revised documents for public review. A new set of public meetings, including a new "scoping meeting" should be scheduled to provide the public with sufficient time and opportunity to comment on the scope and adequacy of the revised NOP/IS.

C. Comments on the Initial Study

1. Chapter 1 of the Initial Study -- Inadequate "Project" Description

(a) Deficient "Project" Description – In General

The failure of the Initial Study and NOP to provide an accurate, complete, and coherent description of the "Project" is a fundamental deficiency, which permeates the entire document. The absence of such a clear description of the proposed Project inherently prevents the Initial Study from facilitating meaningful review and analysis of the proposed Rule 4001, and violates the requirements of CEQA. (See, e.g., CEQA Guidelines, Section 15124; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376.)

The Initial Study does not include or even describe the text of the proposed Rule that is supposed to be the "Project." The section of the Initial Study that purports to "describe" the Project, "PR 4001," includes nothing more than summaries of "key concepts provided in the 2012 AQMP Control Measure IND- 01." Those summaries and "concepts" are insufficient to describe the Project itself, and prevent effective public review and comment. Moreover, since

the 2012 AQMP Control Measure IND- 01 has already been adopted, it is perplexing that the District would use that measure as a substitute for the Project description.

The Initial Study does not provide a description of how the proposed Rule would work. It fails to describe reasonably foreseeable activities or actions of other agencies in response to or associated with the proposed Rule. This Initial Study suggests, instead, that the intent of proposed Rule 4001 would be to delegate the District's responsibilities for regulating or reducing emissions of NOx, SOx, and PM2.5 air emissions to other agencies, specifically the public officials governing the ports of Long Beach and Los Angeles, 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 Rule 4001 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 evaluation project alternatives, etc.).

The importance of providing an accurate and informative project description in an Initial Study was re-emphasized in *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 267, emph. added:

> "**The initial study must include a description of the project.**" (*City of Redlands, supra,* 96 Cal.App.4th at pp. 405–406, fns. omitted.) "Where an agency fails to provide an accurate project description, or fails to gather information and undertake an adequate environmental analysis in its initial study, a negative declaration is inappropriate. [Citation.] An accurate and complete project description is necessary to fully evaluate the project's potential environmental effects. [Citations.]" (*El Dorado County, supra*, 122 Cal.App.4th at p. 1597.)
>
> "**The scope of the environmental review conducted for the initial study must include the entire project**." (*Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1222.) Thus, a correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA. (*Tuolumne County Citizens, supra*, at p. 1222.)

The Initial Study currently falls far short of these requirements in describing the proposed Project, and thus falls equally short of serving the "public awareness" purposes described above and mandated by CEQA:

> An accurate and complete project description is necessary for an intelligent evaluation of the potential 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, citing *Aberdeen & Rockfish RR. v. SCRAP* (1975) 422 U.S. 289, 322 [an accurate, complete and consistent project description is the sine qua non of informative, legally adequate CEQA review].) (*City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, 407–408.)

The Initial Study (p. 1-5) indicates that "the approaches and concepts considered in this NOP/IS may be subject to change" based on comments from the working group. In light of the District's initiative in forming a "working group" of interested participants to help formulate the proposed Rule, and thereby provide an actual "project description," it would be more appropriate to undertake CEQA analysis and compliance after the actual Rule is developed. Furthermore, it is premature for the District to assume or conclude that any changes received from the working group as well as comments received relative to this NOP/IS will all be within the scope of the analysis in the NOP/IS.

In brief, the NOP/IS erroneously limits the scope of the analysis and inherently calls for impermissible speculation or impossible prescience on the part of the Cities or other members of the concerned public to undertake effective analysis of the proposed Project, or to provide meaningful comments as to the scope of review of the Project, until and unless the District provides an adequate description of the "Project."

(b) Specific Comments and Questions re "Project Description" and Text

The following comments and questions refer to specific portions or pages of Chapter 1 of the Initial Study:

Pp. 1-1 - 1-2 – Introduction

The Introduction states, in the first sentence of the third paragraph on page 1-1, that Control Measure IND-01 "...does not call for additional emission reductions beyond those realized with existing regulations and emission reductions programs implemented at the Ports to date." This is an untrue statement. The CAAP is only a planning document which specifically provides for discretionary future decisions to be made regarding implementation by each of the Cities' respective Board of Harbor Commissioners, and resolution adopting the CAAP update states: "The CAAP is a living document intended to establish a process to develop solutions, not a static document binding the Ports to particular future actions….The CAAP is a planning document that identifies goals and potential implementation strategies to guide further actions, and as such does not constrain the discretion of either Board of Harbor Commissioners with

respect to any particular action."[1] Not all individual Board actions that may be required in order to achieve the CAAP's goals and activities have been adopted, many of which goals were stretch targets with uncertainty as to whether they could be achieved. Measure IND-01 and Rule 4001 propose to require the Cities to potentially adopt future actions that create potentially-conflicting authorities between the District, as regulator, and the Cities, as independent governmental agencies regulated by the District, so as to force the Cities to exercise their discretionary police power authority in a particular way. The Constitution does not permit such usurpation of the Cities' authority.

The Introduction states, in the last paragraph beginning on Page 1-1, that the emission targets for port-related sources are those assumed in the 2012 AQMP emissions inventory. The Cities raised questions during the Measure IND-01 adoption process regarding the District's calculation of these targets, which are different from the emissions targets set under the CAAP. Although the specific emission targets of the proposed Project do not appear at all in the NOP (which omission itself is a defect), the District has verbally advised the Cities and a working group on August 8, 2013, that the Rule will be such as to be triggered on set emission targets for 2014 and 2019. Those comments, however, left the Cities and working group participants with many questions about how the District set the emissions inventory, particularly for 2019, which was not in the CAAP. These examples are provided to illustrate that the NOP's description of the proposed Rule is not only flawed but missing altogether.

P. 1-3 - Project Location

The Initial Study provides no finite "project location." It describes the District's jurisdictional boundaries. It then states that "PR 4001 would apply to POLA and POLB, both of which are located within Los Angeles County." It is unclear if this was an attempt to state that the Project location would be Harbor Districts of the Cities. The lack of clarity regarding the Project location is further compounded by the Rule's reference to "sources not entering Port properties." During the August 14th Scoping Meeting, Mr. Hogo attempted to clarify this reference by referencing an undefined area outside of but near the two Harbor Districts. Unfortunately, Mr. Hogo's statement did not clarify the proposed Project's location.

Is it the intention that any portion of the Project may be implemented outside the geographic areas of the Harbor Districts of the Cities? It is unclear from this description whether the Project may have impacts or foreseeably result in actions being taken outside these Harbor Districts. This may have jurisdictional implications which cannot be evaluated without additional information.

[1] Los Angeles Resolution No. 10-7041 adopted by the Board of Harbor Commissioners of the City of Los Angeles and Long Beach Resolution No. HD 2600 adopted by the Board of Harbor Commissioners of the City of Long Beach on November 22, 2010.

Also, the Initial Study fails to disclose or analyze the possibility that if the option for the Cities to reduce emissions from sources not entering Port properties is included in proposed Rule 4001, even the vague "project location" and geographic scope of the proposed Rule in the Initial Study would not be accurate and would need to be modified in the NOP/IS.

P. 1-4 – Project Background

The Initial Study's description of the "Project Background" implies that the two Cities' ports themselves actually conduct cargo operations. For example, the text states that the COLA "serves approximately 80 shipping companies." This illustrates a fundamental lack of understanding by the District of how ports work. There are two types of business models of ports: some are "operating ports," that conduct cargo operations directly, such as the Port of Charleston, South Carolina and some are "landlord ports," such as the Ports of Los Angeles and Long Beach, that merely lease wharves and land to operators who conduct cargo operations.

The Ports of Los Angeles and Long Beach are not, "the single largest fixed source of air pollution in Southern California." The EA should clarify that the referenced sources of air emissions are the vehicles, engines, ships, trains, trucks and other cargo-moving equipment operated by distinct tenants, users, and visitors of the ports, not the Harbor Districts or the Cities.

P. 1-5 – Legal Authority for PR 4001

The Initial Study suggests that if the (unspecified) "backstop measure" that would be mandated under PR 4001 "becomes effective," then the new Rule would require the Cities to take (unspecified) action "to develop and implement plans to get back on track" regarding attainment of emissions targets. Under what legal authority does the District believe that its proposed Rule 4001 may purport to compel distinct governmental bodies (the Cities and the Boards of Harbor Commissioners) to legislate or to exercise their discretion in particular ways to achieve District objectives?

Measure IND-01 was prominently referred to as an "indirect source rule." The current general references to proposed Rule 4001 in the NOP/IS have lost all mention of an "indirect source rule." However, the references to proposed Rule 4001 do not cite to any authority the District is relying on for its processing of the proposed Rule. This should be corrected so that the public can comment on whatever legal authority may be invoked by the District.

Is it anticipated that the "plans" and strategies that would be required to be adopted by the legislative boards of the two Cities under the mandate of proposed Rule 4001 would be within SCAQMD's regulating authority and subject to the District's approval or disapproval? If so, why would SCAQMD not directly adopt such "backstop" strategies and plans itself? If not, is the Rule being proposed in order accomplish something indirectly that SCAQMD itself cannot do directly? (Cf., *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 [same].)

P. 1-5 – Call for Cities to Regulate Off-Site "Sources"

The Initial Study indicates that the District will be inviting and considering proposals, as part of this "Project," regarding potential measures for the Cities to adopt and implement to try to reduce emission from sources *not entering* onto port properties. What does this mean? What legal authority might the Cities have to try to regulate *off-site* sources that do not come within the jurisdiction of the respective Harbor Commissions? (Municipal police power authority may generally be exercised only within the territorial boundaries of their jurisdiction, and the Boards of Harbor Commissioners have special Tidelands limits on their authority.)

Would such (unidentified) measures be part of Rule 4001, or would proposed Rule 4001 require that the Cities formulate (unidentified) measures in the future to somehow regulate *off-site* "sources?"

Until such options are identified, shown to be legally authorized and technically feasible, how can the CEQA analysis for proposed Rule 4001 be undertaken?

P. 1-6 – First Bullet – Imposing "Requirements" on the Cities?

The Initial Study indicates that if proposed Rule 4001 becomes effective the Cities "would be required to submit an emissions reduction plan to address the emissions reduction shortfall."

As noted above, this raises questions as to the intent and legal authority behind the Rule. Has the District identified legal authority for a rule that would require other governmental agencies (the Boards of Harbor Commissioners for the respective Cities) to exercise their legislative discretion/authority in any particular manner? Does the District intend to reserve to itself some authority to approve or disapprove any such plans submitted by the Cities?

What is the consequence of disapproval by the District?

What environmental baseline and other parameters would be required by proposed Rule 4001 in order for the Cities to determine the extent of any "emissions shortfall" that may need to be addressed in the Cities' plans in the event they were to undertake to submit plans under the Rule?

P. 1-6 – Second Bullet -- Funding

This bullet point implies that "funding" would be necessary for many of the potential future emission reduction measures that may be compelled under proposed Rule 4001. Would such funding be provided by the District? What other "funding" sources are contemplated? Will

there be constitutional or common law "gift of public funds" restrictions on funding imposed on the Cities for activities under their CAAP if Rule 4001 makes CAAP compliance a potential state or even federal regulation?

Are the Cities expected to fund these programs from Tidelands Funds? By what authority may the Harbor Commissioners impose taxes, assessments, and charges on users of the Harbor Districts, given the restrictions of various state laws, including, among others, Proposition 26?

The vague disclaimer in the Initial Study to the effect that proposed Rule 4001 would not require any measure that lacks legal authority or feasibility raises more questions than it answers. Whatever types of "emissions reduction plans" may be anticipated by proposed Rule 4001 should identified by the District in the NOP/IS so that the feasibility and legality of such approaches can be evaluated as part of the environmental assessment for the Project.

Pp. 1-6 – 1-7 -- Technology Overview/Implementation Strategies

This refers to some emission reduction strategies included in the CAAP, but the Initial Study does not explain how these may relate to proposed Rule 4001, or whether they should be considered as part of the Project.

The suggestion in the Initial Study of possible "tariff change" or "impact fees" on the activities of users of the Harbor Districts raises other questions (e.g., legal authority, funding for studies and public review processes required before such measures could be considered or adopted, indemnification for costs of defense, etc.) requiring identification and study. Moreover, such measures may themselves be considered as "projects" subject to CEQA review and may have impacts on the activities of Harbor District users that themselves would require analysis or mitigation.

The Initial Study also includes reference to "Port funded incentives" as possible measures to reduce emissions, but also observes that there is not adequate funding for such strategies in the Cities' budgets or other grant program. The source of funding any "Port-funded" measures contemplated by proposed Rule 4001 should be clearly identified and evaluated.

Any such contemplated implementation strategies should be included in the "Project description" and better identified in a more complete NOP/IS, so that they may be evaluated along with the rest of the Project.

Pp. 1-10 – 1-11 -- Imposition of "Requirements" on the Cities

The NOP/IS states that none of the CAAP strategies would be "prescribed in PR 4001." Instead, the NOP states that if proposed Rule 4001 becomes effective, the Cities (presumably the Boards of Harbor Commissioners) -- "individually or jointly" -- would be required to identify sources that could undergo potential emission reduction to "make up for the shortfall."

Why would/should the obligation to make up for a possible shortfall in meeting emission reduction targets (which are primarily the responsibility of the District to attain) be shifted so as to fall upon two independent governmental entities? The Cities are governmental entities, and are not directly producing emissions or otherwise directly responsible for the targeted emissions or for the attainment of the emissions reduction targets. Moreover, if there were to be a "shortfall" in attaining the targets, it could well be due to factors not caused or controlled by the Cities, and not due to any actions or derelictions on the part of the Cities or their tenants or users.

Other issues: How would a "shortfall" be measured or determined? Would any such "shortfall" be allocated to sources or causes bearing some actual responsibility for the lack of attainment? How would it be "allocated" between the Cities? Would uncontrollable/unforeseeable factors resulting in all or part of a shortfall be excluded from whatever obligation may be imposed on the Cities?

Would proposed Rule 4001 take into account the statutory limits on the jurisdiction and authority of the Cities (i.e, the Boards of Harbor Commissioners) to impose restrictions on most mobile sources of emissions?

Footnote 6 (on page 1-11)

The NOP/IS mentions a possible "option" that would "allow" the Cities to reduce emissions from "non-port-related sources." This vague reference requires clarification before it may be evaluated in connection with the Project. Direct and indirect effects would need to be considered that may occur beyond the geographic boundaries of the Harbor Districts. Therefore, it is premature for the District to conclude that any changes based on the working group or public scoping comments will be within the scope of the analysis in the NOP/IS.

P. 1-11 -- Technologies

The EA should be expanded to address the legal, technological and economic feasibility of the seven bulleted items listed in this section.

P. 1-12 -- Alternatives

No alternatives have been identified for study in the NOP/IS. Instead, it merely commits the District to "discuss and compare alternatives" in the future, as part of the Draft EA.

It also suggests the District is looking to the public or other agencies to identify "alternatives" during the scoping process. As previously explained however, how can alternatives realistically be suggested when the Project itself has not been identified or described?

The No Project Alternative is not defined in the NOP/IS. In accordance with CEQA Guidelines Section 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. Therefore, the Draft EA should consider the impacts that would occur under the existing 2012 AQMP without Control Measure IND-01 or proposed Rule 4001. In particular, an analysis should be conducted of the grant funding that would be available under the No Project Alternative that would not be available if the proposed Project constitutes regulation, and the environmental impact if grant funding necessary to make certain actions economically feasible is no longer available under the proposed Project. If the District's position is that there is no loss of grant funding in order to comply with Rule 4001 as a regulation that the District purports to make enforceable under the State Implementation Plan and the Clean Air Act, the District must explain in the Rule its basis for this conclusion in the context of why grants made for compliance with a regulation is not a gift of public funds.

In light of the technical complexities of the issues and the ambiguities as to what the District is actually seeking to accomplish by way of proposed Rule 4001, it seems unreasonable to expect others to develop the project alternatives. One suggested alternative would be for the District to formulate its own "backstop" measures and strategies for addressing any shortfall in emission reduction targets, relying on the District legal authority, expertise and resources, rather than pursuing proposed Rule 4001, which appears to be an attempt to rely upon presumed authority of the Cities. Another suggested alternative would be, the memorandum of understanding approach that was suggested by the Cities and proposed by staff as an alternative to Measure IND-01.

(c) Other Comments on Chapter 1 - "Project Description"

Incomplete Description of Environmental Setting

The Initial Study also fails to provide an adequate description of "the environmental setting" of the proposed Project.

While the CEQA Guidelines do not specially define "environmental setting" with regard to an initial study, they do explain, in regard to EIR preparation, that the "environmental setting" must be informative: "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." (Guidelines, § 15125, subd. (a).) A description of the environmental setting must be sufficient to allow "an understanding of the significant effects of the proposed projects and its alternatives" but "no longer." (Guidelines, § 15125, subd. (a).) That description should place "[s]pecial emphasis" "on environmental resources that are rare or unique to that region and would be affected by the project" and "must permit the significant effects of the project to be considered in the full environmental context." (Guidelines, § 15125, subd. (c).)

Failure to Examine All Phases of the Entire Project as Proposed

"The Initial Study must include a description of the project, and 'the scope of the environmental review conducted for the initial study must include the *entire* project." (*Nelson v. County of Kern, supra*, 190 Cal.App.4th at 270, emph. in original.)

The Initial Study here improperly fails to describe "the entire Project" and fails to consider all phases of the proposed Project. The CEQA Guidelines (14 C.C.R §15063(a)(1)) make clear that an initial study must take a comprehensive view of the proposed project *as a whole*. "All phases of project planning, implementation, and operation must be considered in the initial study of the project."

The NOP/IS indicates that proposed Rule 4001 is intended to require actions by the Cities, to adopt and implement plans and strategies to address any "shortfall" in emissions reductions. The Initial Study improperly fails to address or to provide information and analysis relating to the environmental impacts of the anticipated "subsequent approvals," "discretionary permits" and amendments to the Cities' plans and regulations that appear to be proposed as parts of the Project, or the physical environmental effects of social or economic impacts that may result from those anticipated and apparently necessary changes in land use regulations." (Guidelines § 15063.) Such anticipated and intended actions by other governmental agencies thus appear to be part of this Project, and must be identified and evaluated in the Project EA, along with their potential impacts. As such, we reiterate our prior comment on the Draft 2012 AQMP Program EIR dated October 22, 2012 where it is stated that the District has failed to fully disclose the details of Measure IND-01 and as a result is segmenting or piecemealing its CEQA analysis.

Failure to Describe Existing Land Use Regulations

The Initial Study does not include an examination of whether the Project would be consistent with existing zoning, plans and other applicable land use controls, as required by CEQA Guideline Section 15063. Although the Initial Study includes some background discussion of the CAAP, it provides little or no description of the existing planning and zoning designations applicable to the "Project" location, and relies on (unsupported) assertions that the Project would be in furtherance of the CAAP. It provides no information or analysis of other existing plans or policies applicable in the Harbor Districts, which may be affected or impacted by the Project.

Uncertain and Inadequate Identification of "Baseline" Used for Review

It is critical under CEQA that any level of environmental review make it clear as to the "baseline" being used as the basis for analysis of the significance of potential Project impacts. (CEQA Guidelines Section 15125(a).) Normally, the "baseline" will be the existing environmental conditions in the vicinity of the Project. (Guideline Section 15125(a); see also,

Communities for a Better Environment v. South Coast Air Quality Management District (2010) 48 Cal.4th 310, 315 [the baseline for an agency's primary environmental analysis under CEQA must ordinarily be the *actually* existing physical conditions rather than *hypothetical* conditions that could have existed under applicable permits or regulations].) The Supreme Court has explained that the requirement for identification and use of the appropriate "baseline" applies in the context of an Initial Study as well as in an EIR. (*Communities for a Better Environment, supra*, 48 Cal.4th at 512, and n. 5.)

The Initial Study here, however, fails to make it clear as to what "baseline" is being used. In many places the Initial Study compares the anticipated "impacts" of adopting proposed Rule 4001 to the permitted emissions levels anticipated (in the future) under the 2012 AQMP, or alternatively to the (future) emission reduction targets of the CAAP -- rather than to the existing environmental conditions. While the recent Supreme Court decision in *Neighbors for Smart Rail v. Exposition Metroline Constr. Authority* (8/5/2013, No. S202828) ___ Cal.4th ___, indicates that the baseline need not always be the existing physical conditions, and that "projected future conditions" may be used in rare situations as a baseline "if their use in place of measure existing conditions ... is justified by unusual aspects of the project or the surrounding conditions" (Slip Opinion, p. 11), it does not detract from the rule that the Initial Study must accurately and consistently describe the baseline being used. Nor does it permit the use of "future conditions" in the absence of a showing of unusual circumstances. The Initial Study in this case does neither.

For each of these fundamental reasons, the NOP/IS should be rescinded in order that it may be revised, completed and corrected to meet CEQA requirements.

2. Chapter 2 of the Initial Study – The "Environmental Checklist"

(a) General Comments and Questions on the Environmental Checklist

The NOP/IS apparently relied on a standard CEQA environmental checklist to identify those "impact areas" it recognizes to be potentially affected by the Project. In several respects, however, the Initial Study appears to merely assume 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, supra*, 96 Cal.App.4th at 408-09; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296). Furthermore, it is contrary to the District's response to comment #5-4 in the Final Program EIR, which indicates that "[t]he exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted."

The NOP/IS currently indicates that the scope of the proposed EA for this "Project" will be limited to the six topics listed at p. 2-2. Compliance with CEQA, however, would require not only a new and corrected Initial Study, providing an adequate "Project description" but also a more comprehensive EA that addressed additional areas of potentially significant impact, including (without limitation): (1) Aesthetics, (2) Biological Resources, (3) Cultural Resources, (4) Land Use and Planning, (5) Noise, (6) Public Services, and (7) *broadened evaluation* of potential impacts and issues in the areas of Energy, Hazards and Hazardous Materials, Air Quality, and Transportation and Traffic.

Unless and until those areas are more fully addressed, the NOP/IS appears to improperly limit the scope of the proposed EA, and to erroneously exclude areas requiring further assessment.

(b) Specific Comments and Questions on the Environmental Checklist

As detailed below, there are numerous areas of potential environmental impact in the checklist as to which the Initial Study either omits required evidence to support its conclusions of "no potential impact" or treats with insufficient detail.

More specific questions and comments follow:

P. 2-4 -- Preliminary Discussion of Checklist

First Paragraph: We reiterate the same comment as noted on page 1-4 regarding Cities being the source of emissions. The geographic location itself does not produce emissions. It is the users of the area that produce impacts. The users of the two ports are the owners and operators of the ships, trains, trucks and equipment which the District targets as the sources of emissions.

First Paragraph, Last Sentence: The Initial Study states that "some emission reductions [assumed by the District's 2012 AQMP] may be contingent upon the Ports taking and maintaining *actions which are not required by air quality regulations*." This suggests that one of the purposes for District proposal of proposed Rule 4001 may be to establish a new regulatory "authority" over the Cities (and the communities served by and dependent upon the Harbor Departments of the Cities) that is not in fact already provided by existing federal, state, or regional air quality regulations. The policy implications of such a Project may well include significant impacts on the environment, if regulatory authority over activities, facilities, and uses of the Harbor Districts is shifted or arrogated to the District. (See, e.g., *City of Redlands, supra,* 96 Cal. App. 4th 398 [proposed new County policy re exercise of County authority over annexations and sphere of influence was not supported by adequate CEQA review].)

Second Paragraph, Last Sentence: Same comment as page 1-5.

Third Paragraph. The NOP/IS states that the checklist responses focus on "the above mentioned actions." This is extremely vague. Is the reference intended to be the items referenced in the paragraph immediately above, or in the earlier pages?

Identification of precisely what measures are being assumed or proposed in proposed Rule 4001 is essential to being able to review the Initial Study.

Aesthetics -- P. 2-5

Discussion of I a), b) and c). The Initial Study suggests that "because PR 4001 would implement IND-01" the District may simply assume that this Project would not be expected to generate significant adverse aesthetics impacts. However, given that the measures that would be used to implement IND-01 are not identified, the Initial Study does not provide evidence to demonstrate that proposed Rule 4001 has no potential for impact. To the contrary, the Initial Study admits that "PR 4001 will primarily affect operations at two ports" and but then simply assumes from the industrial and commercial zoning of the Harbor Districts that there could not be a potential for impacts on "scenic vistas" nor any potential degradation of the visual character of the areas around the Harbor Districts.

The Initial Study fails to describe the environmental setting and include any evidence or analysis to support its assumption that whatever is done to implement proposed Rule 4001 would "likely easily blend in" with the surrounding activities, especially since what would be done to implement the Rule is not yet known. Specifically, the Initial Study 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. 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 Harbor Districts and if modified, through obstruction, alteration, or demolition could have a negative aesthetic impact. Without a clearly defined project, project location, or description of the environmental setting, it is not possible to conclude that any port modifications will have little or no noticeable effect on adjacent areas and would blend in with the visual setting.

The Initial Study indicates that "Control devices may include hoods or bonnets on ship exhaust stacks to capture emissions and are expected to be as high as 80 feet (POLB, 2006)" and concludes that "these control devices would be similar to other structures used within the heavily industrialized portions of the Ports…" First, the "POLB" citation is missing in the list of references. Second, it is speculative and erroneous to assume that control devices as high as 80 feet would have "no visual impact" without knowing the location, dimensions, color scheme or critical viewpoints. No such analysis has been considered here and the impact is dismissed with no evidence to support the conclusion.

The last sentence of the first paragraph (on p. 2-6; I. d) suggests there are no residential areas "next to" the Harbor Districts, and thus the Initial Study may dispense with analysis of light and glare impacts. It is evident however that was an inaccurate assumption given the residential communities of San Pedro, Wilmington and Long Beach located adjacent to the Harbor Districts. This is also contradictory to the description of surrounding land uses and setting on page 2-1 which indicates "potentially residential."

The Initial Study further errs by dispensing with environmental analysis or evidence, simply because of the (assumed) beneficial air quality goals of proposed Rule 4001. The law is clear that environmentally "benign" objectives for a project do not excuse non-compliance with CEQA and do not justify reliance on assumptions in lieu of evidence to demonstrate the absence of potential impacts. *See, e.g., California Farm Bureau v. California Wildlife Conservation Board* (2006) 143 Cal.App.4th 173, 196, emph. added [State environmental agency violated CEQA by exempting environmentally beneficial habitat project from review]:

> "[I]t cannot be assumed that activities intended to protect or preserve the environment are immune from environmental review. [Citations.]" (*Davidon Homes, supra*, 54 Cal.App.4th 106, at p. 119; see, e.g., *Dunn-Edwards Corp. v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644 (disapproved on other grounds in *Western States Petroleum Assn. v. Superior Court, supra*, 9 Cal.4th 559, 570.) **There may be environmental costs to an environmentally beneficial project, which must be considered and assessed**.

This topic should not be dismissed. Given the nature of proposed Rule 4001, it cannot be determined that its implementation would have no impact on aesthetics. The EA therefore should include "Aesthetics" as a potentially impacted area of study.

Air Quality -- P. 2-11, Discussion

In the first paragraph (p. 2-11), last sentence, the stated assumption is speculative given there is no information about what physical changes to the environment proposed Rule 4001 will entail. There is no evidence to support the assumption in the Initial Study that proposed Rule 4001 would be identical to Measure IND -01 or have identical (previously-studied) impacts on air quality.

P. 2-11, III.a

The first paragraph, last sentence, again raises the question of why it should become the obligation of the Cities to take actions on their own to fulfill the obligations of the District for reaching emissions reductions targets? What is the legal authority for this shifting (or delegation) of the District's air quality responsibility?

In the second paragraph, the Initial Study relies on an assumption that "the Port" would be installing control equipment. Again, this erroneously confuses the Harbor Departments of the Cities with the operators of vessels, vehicles, and equipment. The Harbor Boards serve as trustees of tideland assets.

The conclusion in this section assumes that the undefined strategies and approaches suggested in conceptual description of proposed Rule 4001 will be successful. That is dependent on the feasibility of the approaches, which must be identified and assessed. Therefore, this topic should be analyzed in the EA.

P. 2-12, III.b, c, and g

Given the total lack of information regarding what proposed Rule 4001 would entail and whether it's implementation is feasible, it is premature to assess impacts in this category. These details must be provided and these topics should also be identified and assessed in the EA.

P. 2-13, III.e

There is no factual basis in the Initial Study upon which to conclude that implementation of proposed Rule 4001 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 Initial Study analysis only applies to construction odors and ignores any potential odors that may occur during long-term operations.

The NOP should be amended to make clear that at least these additional areas of potential impacts on air quality should also be identified and assessed in the EA.

Biological Resources – P. 2-14

The Initial Study fails to adequately describe, and improperly minimizes, possible impacts to biological resources, including least terns and migratory birds.

The scope of the proposed EA should be expanded to include environmental analysis of the Project's potential impacts on biological resources.

Cultural Resources – P. 2-16

The Initial Study fails to adequately describe, and improperly minimizes, possible impacts to cultural resources. Not all areas within the Harbor Districts are devoid of cultural resources or have cultural resources that have been previously disturbed, as concluded in the Initial Study on page 2-18 in section V(b), (c), and (d). There are known recorded historic and prehistoric sites throughout the Harbor Districts. For example, see COLA's website at http://www.portoflosangeles.org/idx_history.asp. Without knowing the location and extent of ground disturbance from possible construction activities associated with proposed Rule 4001, it

is speculative to assume that no significant adverse cultural resources impacts are expected from implementing proposed Rule 4001. The conclusion in the Initial Study is unsupported and lacks evidence or facts to support the findings.

The scope of the proposed EA should be expanded to include environmental analysis of the Project's potential impacts on cultural resources.

Energy – P. 2-18

The Initial Study section VI(c) must be expanded to also consider and analyze 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 required in the event of a major disaster. Also, some types of emissions control measures, facilities, or technologies contemplated by the Project could increase or shift demand for different types of energy or fuel usage. Although "risk of upset" is not considered in the Initial Study checklist, it should be cross referenced here and addressed in the Hazards section of the Initial Study.

The scope of the proposed EA should be expanded to include this additional analysis.

Hazards and Hazardous Materials – P. 2-24

The Initial Study section VIII(f) must be expanded to also consider and analyze the increased reliance on alternative fuels or electrical powered technologies that would require sufficient supply and emergency storage in the event of a major disaster. Although interference with emergency response plans was marginally addressed in this section, "risk of upset" is not considered in the Initial Study checklist.

The scope of the proposed EA should be expanded to include this additional analysis.

Land Use and Planning – P. 2-34

The Initial Study fails to adequately describe, and improperly minimizes, possible inconsistencies between the proposed Project and the existing and applicable land use plans and policies.

The Initial Study erroneously claims that "there are no provisions in PR 4001 that would affect land use plans, policies, or regulations." (P. 2-34.) The Initial Study does not support that conclusion with any substantial evidence.

First, the NOP/IS fails to identify any of "the provisions of PR 4001" so the statement cannot be supported or evaluated.

Second, and more importantly, however, the Initial Study repeatedly references "implementation strategies," "plans" and other new measures that it anticipates the Cities will be required to enact if proposed Rule 4001 becomes effective. Presumably this is because of inconsistencies between the existing plans and policies and the requirements of the new Rule. (See, e.g., pages 1-6 through 1-11.) The measures contemplated in the Initial Study include the adoption of new "regulatory requirements," new "impact fees" on the movement of cargo or sources, and changing the tariffs for use of the Harbor Districts – all of which would cause at least potential "conflicts" with applicable plans and policies. (Cf., *Orinda Ass'n v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1169 [the CEQA requirements for initial study examination of non-conformity with existing land use plans are intended to allow lead agency to modify the Project to avoid inconsistencies with existing plans – not vice versa].)

Third, the Initial Study itself acknowledges that the Project is anticipated to cause "potentially significant impacts" or conflicts with "an applicable plan ... for the performance of the circulation system" and conflicts with "an applicable congestion management plan." (Initial Study, p. 2-44.) Although the Initial Study proposes to address those admitted conflicts in the "transportation" section of the EA, these acknowledged conflicts confirm the necessity for including "land use and planning" impacts in the proposed EA as well.

Fourth, the proposed Project would seemingly create conflicts with the Cities' 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 are detailed in the previous port letters included in Attachment A to this letter. In addition, the proposed Project would create inconsistencies with the Clean Air Action Plan.

Fifth, the proposed Rule is apparently structured in a way that would impermissibly usurp the (non-delegable) police power authority of the Cities and their respective Boards of Harbor Commissioners to plan, implement, and regulate land use policies and actions in their respective jurisdictions. (This comment has also been raised above, in Project Description comments.)

The numerous inconsistencies between the Project as proposed and the existing plans and policies require identification in the Initial Study and inclusion in the proposed EA. (Guidelines § 15125(d).)

The scope of the proposed EA should be expanded to include environmental analysis of the Project's potential impacts on land use and planning.

The EA should also include analysis of the impacts of the proposed/anticipated Project-related subsequent amendments to the Cities' plans, policies, and other land use regulations. (See, e.g., *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1197 [CEQA review failed to consider incidental results from adoption of revised policy; incidental impacts could not be disregarded in an initial study based upon "net" environmental impact of the change in policy being benign since CEQA requires each environmental impact of

project be discretely evaluated].) "Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project." (Guidelines, § 15064, subd. (e); see §§ 21080, subd. (e)(2), 21082.2, subd. (c).)

The scope of the EIR should be expanded to include analysis of possible physical changes in port facilities and operations that might be caused by economic or social effects of the Project itself or by the anticipated amendments to land use and zoning policies by the Cities subsequent implementation of the Project.

Noise – P. 2-36

The NOP/IS acknowledges that approval of the Project and "triggering" of the PR 4001 could result in the construction or installation of new control equipment. The Initial Study improperly dismisses the potential noise impacts from such work as "not expected to be in excess of current operations." There is no substantial evidence in the Initial Study to justify such assumptions.

Similarly, there is no evidence cited in the Initial Study to support its further assumption that additional permanent noise impacts anticipated from the operations of new control equipment would not "substantially increase ambient operational noise levels in the area."

This section of the Initial Study is littered with mere "expectations" unsupported by any evidence regarding the magnitude of new noise impacts, even though such new impacts are anticipated by the Initial Study. Nor is there any analysis of the potential for significant adverse impacts from new noise generators related to the Project.

The NOP/IS must be revised, and the scope of the proposed EA expanded to include a detailed analysis, supported by evidence, regarding these anticipated new noise impacts, alternatives, and possible mitigation measures.

Public Services – P. 2-39

The Initial Study assumes that the Project would not generate any increased need for public services. However, the Initial Study does not provide any substantial evidence to support its assumptions regarding the "absence of impact" on additional public services or facilities.

The Initial Study should be expanded to address potential impacts that may arise from the increased "diversion" of existing "dirty" vehicles and vessels into solid waste sites if proposed Rule 4001 is triggered.

Transportation and Traffic – P. 2-44

The Initial Study fails to adequately describe and analyze potential impacts to rail and marine vessel traffic and ignores the significance criteria identified as "[w]ater borne, rail car or air traffic is substantially altered" on page 2-45. The Initial Study erroneously considers only vehicular traffic impacts to local roadways.

The NOP/IS must be revised, and the scope of the proposed EA expanded to include a detailed analysis, supported by evidence, regarding potential impacts to rail and marine vessel traffic.

Socioeconomics Analysis

The EA needs to include a broad-based analysis of the socioeconomic effects of the proposed Rule 4001, including the potential for job loss, business closures, and diversion of cargo to other ports due to the potential loss of regional competitiveness. The socioeconomic analysis needs to consider both the existence of the rule, even if not triggered, and the future enforcement of the rule. Because these conditions have the potential to physically change the environment in and around the ports, these impacts should be identified and assessed in the EA. (See CEQA Guidelines §§ 15064(e) and 15131; *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3rd 433, 445 [EIR must consider possibility of economic blight from rezoning].) Moreover, this assessment should not be limited to businesses and operations within the ports, but should extend to those facilities, businesses and operations that while located outside of the Harbor Districts are dependent upon the flow of cargo for their continued operations.

Too-Narrowly "Focused" Environmental Review

We note in closing that the Initial Study appears to reflect a preliminary decision to conduct less-than-full disclosure or environmental review of the proposed Project. Although the Initial Study concludes that "the proposed Project may have a significant effect on the environment and an Environmental Assessment will be required," it nevertheless appears that environmental review in the admittedly-required EA is proposed to be curtailed and "focused" on just the six topics listed in the current the NOP. One obvious indication of this is the miniscule list of references that were relied upon to support the Initial Study analysis; the list is limited to three sources.

It is respectfully submitted that such an approach would be too narrow and not in conformance with the requirements of CEQA, or with the District's own policies and rules for environmental analysis. While the CEQA Guidelines call for emphasis and "focus" on the significant environmental impacts of the Project, the authority to use such focus is misapplied in the Initial Study. For example, CEQA Guideline § 15143 explains that such focus may be used to limit the analysis in an EIR [or, in this case, EA] 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 NOP/IS here, by contrast, appears to exclude from consideration in the EA numerous effects that it has not shown to be "clearly insignificant and unlikely to occur."

D. Conclusion

The current version of the NOP/IS fails to adequately describe the "Project" thereby thwarting effective public review and comment on proposed Rule 4001. The Initial Study must therefore be revised, corrected, and re-circulated with all of the descriptions and other content required by CEQA.

Even this inadequate NOP/IS makes it clear that **the scope of the proposed EA has been unduly narrowed**, and that environmental review will be limited in a way that erroneously fails to provide the relevant decision-makers, affected public agencies, residents and the public generally with sufficient evidence and analysis of all anticipated and potential impacts from the Project as a whole, or of all potentially feasible mitigation measures or appropriate Project alternatives as required by CEQA.

While it is clear that an EA is called for in connection with this proposed Project, it is equally clear that the EA should be more complete than what is envisioned by the current NOP/IS. More fundamentally, its scope must be determined by a legally-adequate revised NOP/IS. The EA for the Project must, of course, be supported by credible and substantial evidence, including independent professional analysis.

We respectfully request that these comments and questions be considered before the District embarks on preparation of the EA and all of the other required independent studies in connection with the CEQA review of the proposed Project. We therefore look forward to working with the District, and any study teams or working groups tasked with evaluation of the proposed Rule 4001.

The NOP requests that we provide you with a contact person for each responding agency. For the COLB, the contact persons are as follows:

Heather Tomley
Acting Director of Environmental Planning
Port of Long Beach
925 Harbor Plaza
Long Beach, CA 90802
(562) 283-7100
e-mail: heather.tomley@polb.com

With copies to:

Dominic Holzhaus, Principal Deputy City Attorney
Long Beach City Hall
333 West Ocean Boulevard
Long Beach, California 90802
(562) 570-2212
e-mail: dominic.holzhaus@longbeach.gov

M. Katherine Jenson
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611 Anton Boulevard, St. 1400
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David P. Lanferman
Rutan & Tucker, LLP
Five Palo Alto Square
3000 El Camino Real, #3000
Palo Alto, California 94306
(650) 320-1507
e-mail: dlanferman@rutan.com

For COLA, the contact persons are as follows:

Christopher Cannon
Director of Environmental Management
Port of Los Angeles
425 South Palos Verdes Street
San Pedro, CA 90731
(310) 732-3763
e-mail: ccannon@portla.org

With a copy to:

Joy Crose, Assistant General Counsel
City of Los Angeles, Harbor Division
425 South Palos Verdes Street
San Pedro, CA 90731
(310) 732-3750
e-mail: jcrose@portla.org

We appreciate your consideration. Thank you.

Sincerely,

Heather Tomley
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachment A:

Letters dated July 10, 2012; July 27, 2012; August 30, 2012 (which includes letter dated May 4, 2010); October 22, 2012; October 31, 2012; November 8, 2012; November 19, 2012; and November 27, 2012 from Port of Los Angeles and Port of Long Beach to SCAQMD

cc: Al Moro, Acting Executive Director Port of Long Beach
Geraldine Knatz, Executive Director Port of Los Angeles
Dominic Holzhaus, Principal Deputy City Attorney City of Long Beach
Joy Crose, Assistant General Counsel City of Los Angeles, Harbor Division
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Randall Pasek, Planning and Rules Manager, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Cynthia Marvin, Division Chief, California Air Resources Board
Elizabeth Adams, Deputy Director, U.S. Environmental Protection Agency, Region 9

ATTACHMENT 8.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

November 27, 2012

Ms. Susan Nakamura
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Ports' Comments on South Coast Air Quality Management District (AQMD) Revisions to Measure IND-01 in Draft 2012 Air Quality Management Plan

Dear Ms. Nakamura:

Thank you for the AQMD's proposed revisions to Measure IND-01, "Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities" (IND-01) in the Draft 2012 Air Quality Management Plan (AQMP). We appreciate that efforts were made by AQMD staff to address the concerns that the ports of Long Beach and Los Angeles (Ports) have raised in our various comments letters on the AQMP and in our meeting on November 15, 2012 among the Ports' staff, AQMD staff and AQMD Boardmember Judy Mitchell.

However, the ports are disappointed that the fundamental structure of Measure IND-01, to treat the ports as "stationary sources" and "indirect sources," and convert the ports' voluntary Clean Air Action Plan into enforceable regulation by AQMD, was not altered in any respect. The ports do not own or operate any of the targeted equipment, and the ports are not regulatory agencies. The ports can't accept any regulatory action by the AQMD that will result in AQMD oversight and approvals of port actions, or enforcement actions by AQMD on the ports for failure of the port industry to meet the ports' emission reduction goals. Therefore the Ports continue to object to Measure IND-01's inclusion and request that it be removed from the AQMP. Measure IND-01 contains the fatal flaw of defining the ports as stationary and indirect sources responsible for the emissions from equipment they do not regulate, own, or control. We also believe that this measure is beyond AQMD's authority.

We reiterate our prior requests that AQMD reconsider its approach and allow the continuation of the successful collaborative work by the ports, regulatory agencies and other stakeholders under the voluntary Clean Air Action Plan and San Pedro Bay Standards. Moving forward with Measure IND-01 in this current draft form will actually reduce rather than improve the future success of programs, since conversion of voluntary plans into regulation will reduce voluntary

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

cooperation by the industry with port programs, and will eliminate the ability of the ports, agencies and industry emissions sources to obtain grants to accelerate emission reductions from port industry equipment.

Thank you for your continued attention to this matter and we hope that we can continue with the successful, cooperative partnership that we have built over the past seven years.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

HAT:s

cc: AQMD Boardmember Judy Mitchell
Barry Wallerstein, South Coast Air Quality Management District
Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Chris Lytle, Port of Long Beach
Robert Kanter, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Geraldine Knatz, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 9.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

November 19, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Ports' Proposed Revision and Resolution Language for the Draft 2012 Air Quality Management Plan

Dear Dr. Wallerstein:

On November 15, 2012, staff from the ports of Long Beach and Los Angeles met with AQMD Boardmember Judy Mitchell and AQMD staff to discuss concerns and comments that have been raised by the ports in previous comment letters on the Draft 2012 Air Quality Management Plan (AQMP). At the conclusion of the meeting, it was determined that staff would continue to work together to attempt to resolve the concerns that have been raised.

In that spirit, the ports of Long Beach and Los Angeles propose the following revisions to the 2012 AQMP, consistent with our past comment letters to AQMD:

1. Measure IND-01 must be removed from the 2012 Air Quality Management Plan if it continues to apply or recommend any form of AQMD oversight and approvals of the ports' actions, or enforcement (in terms of fines, penalties, administrative actions) against the Ports for failures of the Port industry to achieve designated emissions reductions. This includes the intent to develop such enforcement actions in later IND-01 rulemaking after adoption of the AQMP, even if such details regarding enforcement activity are absent from the draft AQMP.

2. With the removal of the Measure IND-01, the following language could be added to the adopting resolution for the 2012 Air Quality Management Plan:

   BE IT FURTHER RESOLVED, the District commits to continue working with the Port of Long Beach and the Port of Los Angeles on the implementation of the San Pedro Bay Ports Clean Air Action Plan (CAAP) in order to meet the emission reduction goals identified in the San Pedro Bay Standards, and as a part of the annual report to the Board, District staff will continue to provide information on the progress of the ports in implementing the CAAP.

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BE IT FURTHER RESOLVED, if the ports do not demonstrate sufficient progress for achieving the San Pedro Bay Standards, the District will work with the ports, the other air quality regulatory agencies, and port industry emission sources that are stakeholders under the CAAP, to identify additional feasible strategies for implementation within the ports' jurisdiction.

We look forward to discussing these recommendations with you.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

HAT:s

cc: AQMD Boardmember Judy Mitchell
Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Susan Nakamura, South Coast Air Quality Management District
Robert Kanter, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 10.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

November 8, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Dear Dr. Wallerstein:

SUBJECT: COMMENTS ON THE DRAFT SOCIOECONOMIC REPORT FOR THE DRAFT 2012 AIR QUALITY MANAGEMENT PLAN

The ports of Los Angeles and Long Beach (Ports) appreciate the opportunity to comment on the South Coast Air Quality Management District's (AQMD) Draft Socioeconomic Report for the Draft 2012 Air Quality Management Plan (AQMP).

The Draft Socioeconomic Report states that "District staff performs a socioeconomic analysis of the Draft Plan in order to further inform public discussions and the decision making process of the Draft Plan." However, the Draft Socioeconomic Report shows that no cost data have been developed for Measure IND-01 – Backstop Measures for Indirect Sources of Emissions from the Ports and Port-Related Sources, despite the fact that there are real and significant costs to the Port industry to implement the emission controls that could result from the proposed Backstop Measure. Presentation of this measure to AQMD's Board, as well as the public, is incomplete without an associated socioeconomic analysis. Potential regulation of the Port could have a very significant economic effect on the region that AQMD does not address, and therefore the Ports believe that it is inappropriate to move forward with inclusion of this measure in the Draft AQMP without a full socioeconomic analysis.

By not including a socioeconomic analysis of Measure IND-01, the AQMD is completely ignoring the economic importance of the Ports. The Ports are a major economic engine for the region and nation, and port-related industry generates $5.1 billion and $21.5 billion in state and federal tax revenue, respectively. The Ports account for over 1.1 million jobs in California and 3.3 million jobs in the United States. Additionally, for every one job created by a Port customer, nearly 1.7 additional jobs are created elsewhere in the region.

Even just the potential of additional regulation of the Ports brings with it a significant uncertainty for the Port industry that may result in the diversion of goods to other ports outside of this region. There are more environmental requirements on the Port industry operating in this region than anywhere else in the world. The threat of additional regulatory requirements, especially when no details have been provided as to what those requirements would be, results in significant concerns for these operators and a significant potential for loss of regional economic benefits due to diversion. The Draft Socioeconomic Report fails to analyze this potential impact.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

Additionally, AQMD has indicated that Measure IND-01 does not have a socioeconomic analysis associated with it because there are no emission reductions associated/committed with this measure. As noted in our comment letter on the Draft AQMP dated August 30, 2012, Section 39602 of the California Health and Safety Code states that, the State Implementation Plan (SIP) shall only include those provisions necessary to meet the requirements of the Clean Air Act. Hence, there is no identified need or legal basis for implementing Measure IND-01. AQMD's proposed measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

Finally, as stated in our letter dated October 31, 2012, Measure IND-01 should not move forward because the AQMP makes a commitment to implement it before AQMD has developed or released details of its intended compliance actions against the Ports, or the socioeconomic and other analyses for such actions. Failing to disclose the AQMD's intended actions against the Ports violates due process, depriving the public and the Ports of the opportunity to adequately review and comment on this measure prior to finalizing the AQMP.

For the reasons listed above and those presented in our previous letters, the Ports reiterate our consistent position that Measure IND-01 should be eliminated from the AQMP. Further, we continue to believe that the successful, collaborative approach established by the Ports and the regulatory agencies remains the best mechanism for identifying and implementing strategies to reduce emissions from Port-related sources.

Sincerely,

CHRISTOPHER CANNON
Director of Environmental Management
Port of Los Angeles

RICHARD D. CAMERON
Director of Environmental Planning
Port of Long Beach

CC:CLP:KM:LW:myd
ADP No.: 061024-605

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Robert Kanter, Port of Long Beach
Mike Christensen, City of Los Angeles Harbor Department, Deputy Executive Director
Dominic Holzhaus, City of Long Beach, Deputy City Attorney
Joy Crose, City of Los Angeles Harbor Department, General Counsel

ATTACHMENT 11.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

October 31, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Supplemental Comments on the Revised Draft 2012 Air Quality Management Plan

Dear Dr. Wallerstein:

The Port of Long Beach and Port of Los Angeles (ports) are submitting this comment letter to add to comments previously submitted on August 30, 2012.

As members of the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) Advisory Committee, the ports have worked with AQMD staff to provide comments on the draft plan, including the emissions data being used. Included in this effort, ports' staff provided the 2008 base year emissions inventories for the port sources based on the most recent methodologies agreed upon by the Technical Working Group (TWG) in the ports' 2011 air emissions inventories.

As noted in the Draft AQMP, *"An effective AQMP relies on an adequate emission inventory."* Discrepancies exist between the emissions inventories prepared by the ports and the inventory prepared by the AQMD. The emissions shown in the Draft 2012 AQMP are different from those prepared by the ports in cooperation with the AQMD, California Air Resources Board, and Environmental Protection Agency, during development of the San Pedro Bay Standards. If the AQMD's emissions projections for achieving attainment are incorrect, the concerns expressed in our August 30 comments are greatly increased. The emissions projections drive both the Measure IND-01 analysis and the PM2.5 analysis. The basis for the Draft 2012 AQMP emissions projections is impossible to determine, because the assumptions and methodologies (including control factors and growth factors) are not disclosed.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

Additionally, it concerns the ports that the AQMP has made a commitment to Measure IND-01 before AQMD has released details of its intended implementation actions against the ports, or the socioeconomic and other analyses for such actions. Elaine Chang admitted at the AQMD's October 24, 2012, meeting that it is unknown what a port compliance plan would include and that AQMD would develop it during a future rulemaking process. This violates due process, to commit to implement an AQMP measure without disclosing what AQMD's actions against the ports will be under the backstop measure, as it deprives the public and the ports of the opportunity to review and comment to influence the decision, prior to committing to it in the AQMP.

This further demonstrates that the collaborative process established by the ports and the air quality regulatory agencies remains the most appropriate forum to identify and implement strategies to reduce emissions from port-related sources.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

AT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Randall Pasek, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Robert Kanter, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 12.

October 22, 2012

Jeff Inabinet
c/o Office of Planning, Rule Development, and Area Sources/CEQA Facilities
South Coast Air Quality Management District Development and Planning Branch
21865 Copley Drive
Diamond Bar, CA 91765-4182

Subject: Draft 2012 AQMP Program Environmental Impact Report

Dear Mr. Inabinet:

The Port of Long Beach (POLB) and Port of Los Angeles (POLA) appreciate the opportunity to comment on the Draft Program Environmental Impact Report (Draft EIR) developed for the 2012 Air Quality Management Program (AQMP). The ports appreciate that AQMD staff took steps to address the scoping comments provided by the ports, specifically the inclusion of a transportation and traffic impact analysis as part of the Draft EIR.

However, the ports must reiterate their concerns relating to AQMP Control Measure IND-01 (Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources). As the AQMD knows from prior comment letters submitted by the ports (please see AQMP comment letters dated August 30, 2012; July 10, 2012; and May 4, 2010), the ports believe that Measure IND-01 exceeds the AQMD's authority and should not be included in the AQMP for the reasons set forth in the referenced letters.

Measure IND-01 also contains various flaws which contribute to the inadequacy of the Draft EIR and failure to comply with the California Environmental Quality Act (CEQA). First, Measure IND-01, as described in the project description of the Draft EIR and in the AQMP itself, is unconstitutionally vague and lacks sufficient description of exactly what it proposes to impose on the ports or substantial evidence in support. The Draft EIR's failure to describe the project fully makes it impossible for AQMD, the ports, or the public to assess its 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. Because of the importance and consequences of the AQMP to the State of California's State Implementation Plan (SIP) if adopted by California Air Resources Board (ARB), and to the Federal Clean Air Act enforcement if approved by the U.S. Environmental Protection Agency (EPA), the AQMD is required to fully disclose the details of Measure IND-01 before adoption, and CEQA requires a full disclosure and discussion, which AQMD has failed to do.

Second, to the extent the AQMD intends to approve the Draft EIR and AQMP containing the vague current version of Measure IND-01, and later, as a part of future rulemaking, provide details regarding its proposed actions against the ports including an environmental assessment, that would be segmentation or piecemealing of its CEQA analysis.

Third, Measure IND-01 has serious problems of infeasibility which the Draft EIR has failed to analyze at all. Measure IND-01 in effect attempts to convert the ports' various aspirational goals, set forth in their voluntary Clean Air Action Plan (CAAP), into enforceable regulation against the ports. However, the CAAP goals depend upon future technology advancement which has not yet occurred, all of which are beyond the control of the ports. Therefore, there are technology feasibility issues with the AQMD making the ports' goals into required emissions limits. Further, as the ports are not air regulators and they do not themselves own, operate, or control the emissions equipment operated by the port industry, there are legal feasibility questions over the ports' ability to exercise authority to carry out the actions of Measure IND-01. There are also serious legal feasibility questions including federal preemption asserted by railroads in connection with locomotive specifications and rail operations, and international preemption asserted over ocean vessels. The Draft EIR is flawed in its failure to discuss these infeasibility issues, and had it done so, it would lead to the conclusion that Measure IND-01 should be removed from the AQMP.

Fourth, the AQMD has concluded in the air quality analysis that specific measures associated with Measure IND-01 "are unknown, and therefore the impacts are speculative," (see page 4.2-7 of Draft EIR). This is yet another reason why the Draft EIR is flawed. CEQA Guidelines Section 15145 specifies that if, after thorough investigation, a Lead Agency finds that a particular impact is too speculative for evaluation the agency should note its conclusion and terminate discussion of the impact. Instead, the AQMD proceeded to analyze secondary impacts to air quality that are based on speculative assumptions regarding construction emissions, energy demand, and operations.

Lastly, to the extent that Measure IND-01 proposes to impose upon the ports a form of enforcement for port industry's failure to meet the CAAP's target emissions reduction goals, when the ports do not own, operate, or control the emissions sources, it violates constitutional limitations requiring that exactions imposed on a party must be proportional to the party's contribution, when it fails to include all parties involved in the CAAP, including the actual emissions sources.

Given these deficiencies and speculation under CEQA and with the AQMP rulemaking, Measure IND-01 should be removed from the final EIR and the AQMP, and the analysis should be revised accordingly. With this change, the ports can support the revised AQMP and can continue to work with AQMD, other agencies, and the port industry in the collaborative manner that has made the ports' voluntary CAAP a success.

Thank you for considering the above comments. If you have any questions, please contact Dylan Porter, Port of Long Beach, at (562) 283-7100 or Lisa Wunder, Port of Los Angeles, at (310) 732-7688.

Sincerely,

Richard D. Cameron
Director of Environmental Planning, Port of Long Beach

Christopher Cannon
Director of Environmental Management, Port of Los Angeles

DP:s

cc: Elaine Chang, South Coast Air Quality Management District
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 13.

August 30, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Comments on the Draft 2012 Air Quality Management Plan

Dear Dr. Wallerstein:

The Port of Long Beach and Port of Los Angeles (Ports) appreciate the opportunity to serve on the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) Advisory Committee. We support the AQMD's clean air goals and have a proven leadership record of developing and implementing appropriate and effective strategies that have resulted in the port-related goods movement industry's achievement of real and dramatic emissions reductions. Although the Ports do not own or control the emission sources, the Ports have worked cooperatively with business operators in the port area and the air quality regulatory agencies (i.e. Environmental Protection Agency, California Air Resources Board, and AQMD) to help the port industry reduce its fair share of air quality impacts to the region from port-related operations, as outlined in the San Pedro Bay Ports Clean Air Action Plan (CAAP) and the associated San Pedro Bay Standards. As a result, between 2005 and 2011 emissions from port-related sources were reduced by 73 percent for diesel particulate matter (DPM) and by 50 percent for nitrogen oxides (NOx). The Ports' San Pedro Bay Standards for 2014 established goals to reduce port-related DPM by 72 percent and NOx by 22 percent. Therefore, as a result of implementation of aggressive actions by the port industry, port-related emission reductions have exceeded our goals several years ahead of schedule.

While we remain a committed partner in the effort to improve air quality in the region, we have significant concerns with several proposed control measures in the Draft 2012 AQMP that improperly misclassify the Ports as "stationary sources" or "indirect sources" under AQMP Stationary Source measures, or as "implementing agencies" of specific AQMP mobile source measures. In particular, the proposed Stationary Source Measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources" contains many legal flaws, as explained in greater detail below, and inappropriately proposes to impose enforcement actions on the Ports for emissions generated by emissions sources that the Ports do not own,

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operate, or control, which is counterproductive to the cooperative relationship that our agencies have established since we began working together on the voluntary CAAP in 2006.

This letter provides the Ports' specific comments on the control measures in the Draft 2012 AQMP that we believe must be addressed prior to finalization and adoption by your agency.

Proposed Stationary Source Measure IND-01

There are three fundamental problems with Proposed Measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources." First, the proposed backstop rule would transform the Ports' voluntary CAAP into the AQMD's mandatory regulation of the Ports. This would jeopardize the Ports and the Port-related emissions sources' grant funding for equipment replacement and modernization if it is now necessary to comply with regulation, while offering nothing to assist the Ports with compliance in terms of additional technologies, facilitating regulations, tools, or funding. Second, although the CAAP was a voluntary cooperative effort of the Ports and the air agencies designed to encourage the industry operators of regulated equipment to go beyond regulation, the proposed backstop rule would improperly subject the Ports to the AQMD's enforcement action for industry's missed emissions reductions by equipment not operated or controlled by the Ports, or even potential loss of federal funding under federal conformity principles if the AQMP is adopted into the State Implementation Plan (SIP) and approved by the U.S. EPA as federal law. Third, the proposed backstop rule exceeds the AQMD's authority and if implemented may violate the State Tidelands Trust. If Measure IND-01 (as well as the Offroad Mobile Source Measures discussed below) are in reality the AQMD's regulation of Port-related mobile emissions sources such as locomotives, ships, rail, and trucks, then this is beyond AQMD's legal authority and AQMD should obtain a waiver under the Clean Air Act from the U.S. EPA. The Ports provide further detailed comments on Proposed Measure IND-01 below, and object to it being included in the 2012 AQMP.

Based upon the AQMD's modeling results, existing control measures are expected to result in attainment of the Federal 24-hour PM2.5 standard by the 2014 deadline without Measure IND-01. Section 39602 of the California Health and Safety Code states that the State Implementation Plan (SIP) shall only include those provisions necessary to meet the requirements of the Clean Air Act. Hence, there is no identified need or legal basis for implementing Measure IND-01. The AQMD's proposed measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

The Ports are neither "direct emissions sources" nor "stationary sources" subject to AQMD permitting, and the AQMD has not complied with requirements for regulation under Health and Safety Code. The Ports are also not "indirect sources" subject to an AQMD indirect source review program within the meaning of the Clean Air Act, and the AQMD has not complied with requirements of the Clean Air Act, 42 U.S.C. §7410 and various other requirements for indirect source classification. The Ports are also not air agency regulators. The Ports do not own, operate, regulate, or control any of the goods movement equipment serving the Ports that are

targeted emissions sources under Measure IND-01. Additionally, the equipment are mobile sources regulated by state, federal, and/or international regulation, sometimes under jurisdiction preempting Port or AQMD action. It is inappropriate for the AQMD to regulate the Ports without the Ports' ownership, operation, or jurisdiction to regulate the various industry businesses actually causing the emissions within our boundaries.

The proposed backstop measure continues to state that if there is a South Coast Air Basin-wide shortfall in emission reductions, then the AQMD will mandate additional emission reductions from the Ports, even if the port-related sources have already met their commitments. This moving target standard is unconstitutionally vague and therefore illegal. The Ports are unfairly targeted, as there are no backstop measures proposed for other entities or source categories should other modeling assumptions not come to pass, such as anticipated natural fleet turnover, or other non-regulated initiatives failing to meet their goals, such as those expected by the Carl Moyer Program. If the AQMD's emissions projections for achieving attainment are incorrect, including control factors and growth rates, this measure appears to imply that the Ports will be specifically tasked with rectifying the shortfall. If the Basin fails to achieve the federal air quality standard, the proper channel to address this is through the established SIP process, not to establish a contingency rule to unfairly burden one specific industry out of the entire Basin.

AQMD staff has indicated that Measure IND-01 is proposed to account for measures that are not backed by enforceable requirements. However, significant programs such as the CAAP's Clean Truck Program, Ocean-going Vessel Low Sulfur Fuel Program, Cargo-handling Equipment requirements, and the Shore-side Power/Alternative Maritime Power programs are currently backstopped by CARB and International Maritime Organization (IMO) regulations. The Ports also require higher rates of vessel or equipment compliance than regulation through terminal leases, when such commercial opportunities are able to be negotiated with tenants. Therefore, Proposed Measure IND-01 is unnecessary.

Measure IND-01 is vague and incomplete. It is unclear whether the AQMD has taken credit for actual/current emission reductions in the baseline only, or if assumptions have been made for future year reductions. We take issue with a measure moving forward where emissions projections are "on-going." Further, no detail is provided on the level of emission reductions that are needing to be maintained. This is further complicated by the differences that exist between the emissions inventories produced by the Ports and the inventory used for the AQMP. It is unclear if a specific emission reduction shortfall will trigger implementation of the measure, or if it is simply left to the discretion of the AQMD. Additionally, the control costs have not yet been developed or justified in a cost-benefit analysis.

The CAAP is a planning document that provides a guideline of strategies and targets that are often "stretch goals," which ultimately are implemented through individual actions adopted by the Long Beach and Los Angeles Boards of Harbor Commissioners (Boards). The Ports are sovereign Tidelands granted to the cities of Los Angeles and Long Beach by the state under the oversight of the State Lands Commission. Each city has been appointed as a trustee and has established their respective Board of Harbor Commissioners with exclusive control and management of the Tidelands and revenues and expenditures from the Tidelands. However,

such discretion must be exercised in accordance with their obligations to prudently manage Tidelands assets and revenues within a nexus and proportionality to the Tidelands Trust interests, as well as in accordance with applicable laws such as the California Environmental Quality Act (CEQA) and principles of federal preemption.[1] The AQMD cannot mandate action by each Port's Board of Harbor Commissioners, nor can the AQMD direct how the Ports obligate state Tidelands money; only the appointed trustee can make discretionary actions to obligate state Tidelands funds. Specifically, the CAAP measures listed in the Draft 2012 AQMP each require the Boards to authorize the expenditure of incentive monies and program costs, or to approve conditions of infrastructure project development in their discretion as CEQA lead agency and as Tidelands trustees.

We strongly believe that the voluntary and cooperative CAAP process established by the Ports remains the most appropriate forum for the Ports and the air regulatory agencies to discuss technical and policy issues related to reducing emissions from port-related sources. As stated above, we remain committed to achieving the clean air goals identified in the CAAP and working with port industry and the air regulatory agencies on implementation of appropriate strategies.

For your reference, attached is our comment letter dated July 10, 2012, expressing our preliminary concerns related to the proposed Measure IND-01 and a comment letter dated May 4, 2010, in which the Ports initially expressed concerns regarding backstop rules.

Proposed Off-Road Mobile Source and Advanced Control Technology Measures

The Draft 2012 AQMP also identifies the San Pedro Bay Ports as "Implementing Agencies" for several of the proposed Off-Road measures (OFFRD-02, OFFRD-04, and OFFRD-05) and Advanced Control Technology measures (ADV-01, ADV-02, ADV-03, ADV-04, and ADV-05). The Ports should not be listed as Implementing Agencies, which the AQMP Appendix IV-A defines as "the agency(ies) responsible for implementing the control measure." While the Ports have been moving forward with voluntary efforts in these areas, as mentioned above, the Ports are not air agency regulators. We also do not own or operate the equipment identified in the proposed measures, and therefore we do not have direct control over any of the sources listed. During the Advisory Committee meetings, AQMD staff has provided clarification that the Ports are listed as Implementing Agencies because of our voluntary commitments to work on these

[1] The Ports' experience with the first phase of the 2006-2010 CAAP showed that in actual implementation, many CAAP measures were carried out in a different manner than originally conceptualized, or not carried out at all, based on limitations on the Boards' opportunities and their exercise of their discretion to manage Tidelands assets and funds under real-world circumstances. Some of the CAAP measures can only be implemented if businesses apply to the Ports for permits to build or expand their lease premises and CEQA mitigation required by law or lease conditions that can be negotiated with a Port tenant. Other CAAP measures involve emissions sources (rail or ocean vessels) that may assert federal preemption against efforts to compel use of specific technology, so the CAAP goals involve the Ports offering economic incentives in voluntary compliance programs, such as the Ocean Vessel incentive programs. However, only the Boards have the legal authority to fund such incentives or impose CEQA mitigation or lease conditions to project approval, which decisions also fall within the Boards' sole discretion regarding their respective Port's properties and their individual Harbor Revenue Fund budgets, which may be affected by the global economy.

efforts, and that being listed as an implementation agency does not obligate the Ports to any specific requirement, however, this is contrary to the language of the AQMP that implementing agencies are "responsible for implementing the control measure." We believe that listing the Ports, and not including all of the other public and private partners that are also working on these efforts, gives the impression that the Ports do have an assigned obligation, or that the Ports must bear a larger burden in the effort to implement these programs. We also repeat our comment stated above that the AQMD cannot mandate in the AQMP that the Ports must expend monies in these voluntary efforts, since most of these Off-Road and Advanced Control Technology measures require incentive monies to fund demonstration projects or accelerated use of new technology.

We believe that the appropriate Implementing Agencies for these measures are the United States Environmental Protection Agency and the California Air Resources Board.

The Ports urge AQMD to make all of the above-requested changes to the draft 2012 AQMP, in particular, to eliminate Measure IND-01 Port Backstop Rule as a legally unnecessary measure exceeding AQMD's authority and violating the State Tidelands Trust. We believe it is much more effective to advance our mutual clean air goals for our agencies to continue working cooperatively together, but if the AQMD takes the above 2012 AQMP measures forward, the Ports will have no choice but to vigorously oppose such action through the administrative and legal process.

Sincerely,

Chris Lytle
Executive Director
Port of Long Beach

Geraldine Knatz
Executive Director
Port of Los Angeles

HAT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Susan Nakamura, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Port of Long Beach Harbor Commission
Port of Los Angeles Harbor Commission
Robert Kanter, Port of Long Beach
Rick Cameron, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Chris Cannon, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles
David Reich, Los Angeles City Mayor's Office

ATTACHMENT 14.

July 10, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Initial Comments on the Proposed 2012 Air Quality Management Plan, Control Measure IND-01

Dear Dr. Wallerstein:

The Port of Long Beach and Port of Los Angeles (Ports) appreciate the opportunity to participate in the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) Advisory Committee. We support the AQMD's clean air goals and have worked aggressively with the port industry to reduce our fair share of air quality impacts to the region from port-related operations, as outlined in the San Pedro Bay Ports Clean Air Action Plan (CAAP) and the associated San Pedro Bay Standards. As a result, between 2005 and 2010, emissions from port-related sources were reduced by 70 percent for diesel particulate matter and by 49 percent for nitrogen oxides. Emissions inventory work currently underway indicates additional, continued emission reductions in 2011.

While we continue to remain a committed partner in the effort to improve air quality in the region, we disagree with AQMD's proposed control strategy for port-related sources in the Draft 2012 AQMP. The inclusion of proposed measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources," is unnecessary and counter-productive.

The two Ports have a proven track record of developing and implementing appropriate and effective emission reduction strategies. These efforts have been entered into voluntarily, working cooperatively with operators in the port area and the air quality regulatory agencies (i.e. Environmental Protection Agency, California Air Resources Board and AQMD). Since the Ports initially implemented the CAAP, many of the port-related control strategies have been or will be superseded by state or international requirements, such as the rules for replacing drayage trucks, switching to cleaner marine fuels, and using shore power while at berth. The Ports' emissions inventories in 2010 show reductions that are meeting or are in excess of the emission reductions that the Ports committed to in the San Pedro Bay Standards. However, it is important to note that in order to remain on track to meet the Standards, a collaborative and concerted effort with our agency partners is essential, with the understanding that while the Ports can achieve significant emission

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

reductions, no single entity can accomplish this task. The previous State Implementation Plan identified several regulatory strategies that have not yet materialized into regulations for various reasons. Moving forward, the Ports will need agency assistance, particularly on the development and deployment of zero-emission technologies and at-berth controls for non-regulated vessels, as well as on the preferential deployment of cleaner vessels to the basin.

The Ports are sustaining and growing long-standing successful CAAP programs, such as the Vessel Speed Reduction Incentive Program and, on July 1, 2012, the Ports implemented new, groundbreaking incentive programs to encourage cleaner ocean-going vessels to call at the Ports. With programs such as these, along with the above-referenced regulatory rules becoming effective and ensuring significant additional emission reductions by 2014, there is no identified need for implementing a backstop measure. The AQMD's proposed backstop measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

It is inappropriate for the AQMD to attempt to regulate the Ports, which are the Harbor Departments of the cities of Long Beach and Los Angeles, in an attempt to control emissions from equipment within our boundaries, but which we do not own or operate. Further, the proposed backstop measure identifies that the "…requirements will be triggered if the reported emissions for 2014 for port-related sources exceed the 2014 target milestone, *or the Basin fails to meet the 24-hour PM2.5 standard as demonstrated in the 2012 AQMP and basin-wide reductions are needed, in which case a new reduction target for each pollutant will be established*." (emphasis added). While clarification has been provided by AQMD staff that any effort to make up for a basin-wide shortfall will be the responsibility of all sectors, not just the Ports, this statement still implies that if the port industry meets their targeted emission reductions, but other sectors fail to meet their fair share obligations, then the AQMD will mandate additional reductions from the Ports. This is counter to the cooperative relationship that our agencies have established since we began working together on the CAAP in 2006, and ignores the tremendous air quality benefits that have been gained from voluntary actions.

Lastly, based on the preliminary calculations by AQMD, the majority of the region is expected to be in attainment for PM2.5 by the target year of 2014, with the remainder anticipated to be in attainment by the expected extension date of 2019. The inclusion of IND-01 is therefore unnecessary for the region to reach attainment. If these emission reductions are needed in the baseline emissions calculation, there is precedent for mechanisms other than control measures to be used for this purpose, and we would like to discuss those options with your staff.

We strongly believe that the voluntary and cooperative CAAP process established by the Ports remains the most appropriate forum for the Ports and the air regulatory agencies to discuss technical and policy issues related to reducing emissions from port-related sources. As stated above, we remain committed to achieving our fair share of clean air goals identified in the CAAP and working with port industry and the air regulatory agencies on implementation of appropriate strategies.

For your reference, attached is a comment letter dated May 4, 2010, in which the Ports initially expressed concerns regarding backstop rules. The letter was submitted as a public comment on the proposed Rules 4010 and 4020, which were proposed backstop rules for health risk and criteria pollutant emissions.

We look forward to working with AQMD on resolving our concerns related to the proposed backstop measure in the Draft 2012 AQMP.

Sincerely,

CHRIS LYTLE
Executive Director
Port of Long Beach

MICHAEL R. CHRISTENSEN
Deputy Executive Director, Development
Port of Los Angeles

HAT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Susan Nakamura, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Robert Kanter, Port of Long Beach
Rick Cameron, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Chris Cannon, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 15.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

San Pedro Bay Ports Clean Air Action Plan

May 4, 2010

Susan Nakamura
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Subject: AQMD Proposed Rules 4010 and 4020

Dear Ms. Nakamura:

This letter is on behalf of the Ports of Long Beach and Los Angeles (Ports) as a preliminary response to the "backstop" Rules 4010 and 4020 (Proposed Rules) proposed by the South Coast Air Quality Management District (AQMD). As will be explained below, based upon the limited amount of information released by the AQMD about the Proposed Rules thus far, the Ports have a number of preliminary questions and concerns at this stage of the first public consultation meeting and will be providing more detailed comments on the Proposed Rules at a later stage.

The Ports have had tremendous success with implementing the San Pedro Bay Port Clean Air Action Plan (CAAP). The development of the original CAAP and the update to the CAAP has been conducted through a cooperative effort with staff from the AQMD, the United States Environmental Protection Agency (EPA), and the California Air Resources Board (CARB). The Ports strongly believe that this partnership of over four years, and the collaboration that has occurred throughout that time, have aided in the success of the CAAP and the emissions reductions that have been achieved.

Since the CAAP was adopted in late 2006, the Ports have exceeded our interim emissions reductions milestones and are well on our way to meeting the original forecasted emissions reductions of at least 45% by 2011, compared to uncontrolled conditions. This has been accomplished through the steadfast implementation of CAAP measures, highlighted as follows:

- Development, approval, and implementation of the Clean Trucks Program in which two major milestones have been achieved resulting in truck pollution reductions of nearly 80% (January 2010), almost two years ahead of schedule (HDV1).
  - October 2008: ban pre-1989 trucks.
  - January 2010: ban pre-1993 trucks; 1994-2003 trucks require Level 3 plus NO_x retrofit.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

- Facilitated construction of an LNG on-road truck fueling station in the port area. Fueling operations have been underway since early 2009. In addition the Ports have contributed to funding the construction of two additional LNG on-road truck fueling stations in the Port area, due to open later in 2010 (HDV2).
- Over $6.5 million in incentives for vessels participating in the voluntary Vessel Speed Reduction Program and Vessel Fuel Incentive Program (OGV1, OGV4).
- Design, construction, and operation of shore power infrastructure completed at 5 berths and underway for over 40 additional berths (OGV2).
- Replaced entire fleet of port switching locomotives with new, cleaner locomotives in 2008, and a subsequent fleet turnover to cleaner locomotives anticipated by end of 2011 (RL1).
- Provided funding of $5.4 million toward projects through our Technology Advancement Program, conducted with input from an Advisory Committee consisting of AQMD, EPA, and CARB.
- The Ports' 2008 Emissions Inventories show combined emission reductions of 20% diesel particulate matter (DPM), 10% nitrogen oxides (NOx) and 24% sulfur oxides (SOx) compared to the 2005 baseline. The 2009 Emissions Inventories, which are expected to be finalized and published in June, will show an even greater level of emission reductions as additional CAAP efforts have come into effect.

In addition to the implementation efforts listed above, the Ports have also worked in coordination with CARB and EPA on development of rules and regulations affecting port sources. These regulatory requirements have helped to ensure that emissions reductions from specific equipment types operating at the Ports will continue into the future. The Ports look forward to continuing these cooperative efforts on regulatory development with CARB and EPA, with the support of AQMD, to ensure that the early action measures being taken by the Ports are supported and implemented more broadly.

Further, as you are aware, the Ports recently released our draft CAAP Update, where we revisited and updated each of the control measures and proposed aggressive, long-term goals for emissions reductions and health risk reductions, titled the San Pedro Bay Standards. Once the CAAP Update is adopted, the Ports will quantitatively measure our progress against these long-term goals and will make adjustments to our implementation efforts over time as necessary to ensure that we remain on track for achieving these goals.

With these demonstrated results carried out voluntarily, and further efforts underway, the Ports regard the AQMD's proposed Rules 4010 and 4020 as unnecessary, and raise several questions regarding the Proposed Rules and the rulemaking process. Below is a list of preliminary questions to help us gain a better understanding of the AQMD's proposed approach:

Emissions and Health Risk Reduction Targets

Proposed Rule 4020 Sections (d) (1) and (2) will include targets for criteria pollutant and health risk reductions to be met by the Ports to avoid triggering the backstop provisions. The Ports have the following concerns and questions regarding the targets:

1. How were the targets developed? In June 2007, the Ports provided AQMD with detailed comments and concerns regarding the methodology and the specific port-related emission reduction targets contained in the 2007 Air Quality Management Plan (AQMP). CARB declined to adopt the port targets into the 2007 State Implementation Plan (SIP). In the AQMD Governing Board's resolution adopting the 2007 AQMP, it committed that AQMD staff would work with the Ports and, based on its technical review, would recommend any appropriate adjustments to the AQMP criteria pollutant targets attributable to the Ports. Although initial coordination efforts have occurred, the AQMD has not completed detailed analyses necessary for the Ports to understand how the AQMP targets and the targets contained in the Proposed Rules have been developed, or to understand how these targets differ from the Emission Reduction Standards contained in the Draft 2010 CAAP Update. We request that the AQMD present the methodology and resulting targets to a Stakeholder Working Group, including the Ports, before progressing further with the rulemaking process. Further, to the extent that the targets in proposed Rule 4020 go beyond the 2007 SIP/AQMP targets to address future regulations that have not yet been adopted, the Ports have even greater concerns.

2. The Emission Reduction Standards contained in the Draft 2010 CAAP Update were developed by the Ports in coordination with the EPA, CARB, and AQMD. Achievement of these Standards will require aggressive implementation of strategies by the Ports and the port operators. Further, the Standards are predicated on a conservative 2007 cargo forecast developed before the recent economic crisis and assume that the Ports reach capacity in 2023. Instead, there has been a significant downturn in cargo volumes from 2008 to present, such that the Ports do not anticipate returning to 2007 cargo throughput levels until 2014-2015, and reaching capacity until approximately 2035. This has reduced the Ports' emissions footprint, as well as potentially reduced the Ports' proportion of basin-wide pollution. Nonetheless, to be conservative and to voluntarily strive to ensure a "fair share" contribution of port-related sources to regional attainment goals, the Ports retained the higher growth forecast in the CAAP. It is important to note that, even with these higher than anticipated rates of future emissions growth, the Ports project DPM reductions greater than 70%, SOx reductions greater than 90%, and NOx reductions of nearly 60% by 2023.

3. The 2007 SIP identified several regulatory and technology strategies to be undertaken by EPA and CARB to contribute to the reduction in port-related emissions. This is consistent with the philosophy that achieving emission reductions from port-related sources must be a cooperative partnership effort, because no one entity can meet the need by itself. Since the 2007 SIP was developed, for various reasons including technical feasibility, technology availability, and cost-effectiveness, several key federal and state regulatory and technology strategies have failed to occur. These include, but are not limited to: commercial availability of Tier 4 line haul and switcher locomotive engines in 2012, implementation of a statewide regulation requiring use of shoreside power for all vessel types while at berth, and implementation of a statewide regulation requiring retrofitting of existing ocean-going vessels and the preferential deployment of progressively cleaner new build vessels to California ports. The Ports are concerned that the emission reductions associated with these proposed EPA and CARB strategies are now being fully assigned to the Ports through the proposed targets in order to make the

SIP "whole," even though the strategies may not be technically feasible and/or cost-effective. Further, as you know, the Ports do not own or operate the emissions sources targeted by this regulation and the Ports may not have implementation mechanisms available within their jurisdiction to implement the controls even if they were deemed feasible and cost-effective.

DISTRICT RULEMAKING PROCESS

The Ports have a number of initial questions geared towards gaining a better understanding of AQMD's intended rulemaking process for the Proposed Rules.

4. As suggested above, will the AQMD form a Stakeholder Working Group, including the Ports, to discuss the AQMD's Proposed Rules and analysis?

5. What is the AQMD's authority for regulating the Ports under the Proposed Rules?

6. The Ports would like to understand what level of CEQA analysis the AQMD is proposing for this rulemaking. Will there be a scoping meeting?

7. When will the AQMD release a Preliminary Draft Staff Report (PDSR)? Given the unprecedented nature and broad technical, practical, regulatory, and legal implications of these Proposed Rules, we believe that the PDSR must be very detailed or the Ports, air agencies, and other stakeholders will not have the information necessary to participate fully in the rule development process. We request that the PDSR include:
    a. Technical analysis of the Proposed Rules, targets, etc.
    b. An analysis of potential Draft Findings required under Health and Safety Code (e.g., Necessity, Authority, Clarity, Consistency, Non-Duplication, and References)
    c. Detailed information on control technologies and programs that the AQMD believes the Ports and affected sources would need to implement to meet the proposed rule reduction requirements.
    d. As part of cost-effectiveness analysis, detailed information on the feasibility, control effectiveness, and costs of these technologies and programs, including who would bear those costs. The AQMD should work with the Ports, their tenants, and others in the goods movement industry to estimate these costs.
    e. A preliminary Socioeconomic Impact Report (SIR) based on input from the Ports, their tenants, and other affected industries. Given the broad implications to the region's economy, the Ports recommend a detailed preliminary SIR be prepared and released with the PDSR.
    f. AQMD's proposal for how it will specifically apply the scheme of fines, penalties, or other enforcement provisions of the Health and Safety Code to the Ports to enforce the Proposed Rules, including providing an understanding of how the enforcement action would be assessed, given that the Ports are two separate and distinct departments of their respective cities.

The Ports look forward to receiving AQMD's responses to these preliminary questions. We will follow up with additional questions and comments later, as more information is provided by AQMD on the proposed rules.

The Ports are committed to achieving aggressive and feasible emissions reductions and health risk reductions from port-related sources, and have already proven that such reductions can be achieved while allowing the Ports to continue to move forward as a strong economic engine for the region. The Ports remain committed to implementing the CAAP and working in cooperation with the agencies and the industry to achieve our goals. We believe the Proposed Rules are unnecessary and that the AQMD should consider alternative mechanisms to achieve the AQMD's goals. We bring to your attention that the Bay Area AQMD initiated a backstop measure but ultimately determined to pursue a Memorandum of Agreement approach for similar work with the Bay Area ports.

If you have any questions regarding this correspondence, please contact Heather Tomley, Assistant Director of Environmental Planning, Port of Long Beach, at (562) 590-4160; or Christopher Patton, Environmental Affairs Officer, Port of Los Angeles, at (310) 732-3677.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Director of Environmental Management
Port of Los Angeles

cc: Dick Steinke, Executive Director, POLB
Geraldine Knatz, Executive Director, POLA
Mike Christensen, Deputy Executive Director, POLA
Robert Kanter, Managing Director, POLB
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 16.

FINAL 2012 AIR QUALITY MANAGEMENT PLAN

DECEMBER 2012

TABLE 4-2

List of District's Adoption/Implementation Dates and Estimated Emission Reductions from Short-Term PM2.5 Control Measures

NUMBER	TITLE	ADOPTION	IMPLEMENTATION PERIOD	REDUCTION (TPD)
CMB-01	Further NOx Reductions from RECLAIM [NOx] –*Phase I (Contingency)*	2013	2014	2-3 [a]
BCM-01	Further Reductions from Residential Wood Burning Devices [PM2.5]	2013	2013-2014	7.1 [b]
BCM-02	Further Reductions from Open Burning [PM2.5]	2013	2013-2014	4.6 [c]
BCM-03 (*formerly BCM-05*)	Emission Reductions from Under-Fired Charbroilers [PM2.5]	Phase I – 2013 (*Tech Assessment*) Phase II - TBD	TBD	1 [d]
BCM-04	Further Ammonia Reductions from Livestock Waste [NH3]	Phase I – 2013-2014 (*Tech Assessment*) Phase II - TBD	TBD	TBD [e]
~~IND-01 (*formerly MOB-03*)~~	~~Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources [NOx, SOx, PM2.5]~~	~~2013~~	~~12 months after trigger~~	~~N/A~~ [f]
EDU-01 (*formerly MCS-02, MCS-03*)	Further Criteria Pollutant Reductions from Education, Outreach and Incentives [All Pollutants]	Ongoing	Ongoing	N/A [f]
MCS-01 (*formerly MCS-07*)	Application of All Feasible Measures Assessment [All Pollutants]	Ongoing	Ongoing	TBD [e]

a. Emission reductions are included in the SIP as a contingency measure.
b. Winter average day reductions based on episodic conditions and 75 percent compliance rate.
c. Reductions based on episodic day conditions.
d. Will submit into SIP once technically feasible and cost effective options are confirmed.
e. TBD are reductions to be determined once the technical assessment is complete, and inventory and control approach are identified.
f. N/A are reductions that cannot be quantified due to the nature of the measure (e.g., outreach, incentive programs) or if the measure is designed to ensure reductions that have been assumed to occur will in fact occur.

requirements regarding manure removal, handling, and composting; however, the rule does not focus on fresh manure, which is one of the largest dairy sources of ammonia emissions. An assessment will be conducted to evaluate the use of sodium bisulfate (SBS) at local dairies to evaluate the technical and economic feasibility of its application, as well as potential impacts to ground water, and the health and safety of both workers and dairy stock. Reducing pH level in manure through the application of acidulant additives (acidifier), such as SBS, is one of the potential mitigations for ammonia. SBS is currently being considered for use in animal housing areas where high concentrations of fresh manure are located. Research indicates that best results occur when SBS is used on "hot spots". SBS can also be applied to manure stock piles and at fencelines, and upon scraping manure to reduce ammonia spiking from the leftover remnants of manure and urine. SBS application may be required seasonally or episodically during times when high ambient PM2.5 levels are forecast.

Multiple Component Sources

There is one short-term control measure for all feasible measures.

MCS-01: APPLICATION OF ALL FEASIBLE MEASURES ASSESSMENT: This control measure is to address the state law requirement for all feasible measures for ozone. Existing rules and regulations for pollutants such as VOC, NOx, SOx and PM reflect current best available retrofit control technology (BARCT). However, BARCT continually evolves as new technology becomes available that is feasible and cost-effective. Through this proposed control measure, the District would commit to the adoption and implementation of the new retrofit control technology standards. Finally, staff will review actions taken by other air districts for applicability in our region.

Indirect Sources

This category includes a proposed control measure carried over from the 2007 AQMP (formerly MOB-03) that establishes a backstop measure for indirect sources of emissions at ports.

~~**IND-01 BACKSTOP MEASURE FOR INDIRECT SOURCES OF EMISSIONS FROM PORTS AND PORT-RELATED SOURCES:** The goal of this measure is to ensure that NOx, SOx and PM2.5 emissions reductions from port-related sources are sufficient to attain the 24-hr federal PM2.5 ambient air quality~~

~~standard. If emission levels projected to result from the current regulatory requirements and voluntary reduction strategies specified by the Ports are not realized, the 24-hr federal PM2.5 ambient air quality standard may not be achieved. This control measure is designed to ensure that the necessary emission reductions from port-related sources projected in the 2012 AQMP milestone years are achieved or if it is later determined through a SIP amendment that additional region-wide reductions are needed due to the change in Basin-wide carrying capacity for PM2.5 attainment. In this case, the ports will be required to further reduce their emissions on a "fair-share" basis.~~

Educational Programs

There is one proposed educational program within this category.

EDU-01: FURTHER CRITERIA POLLUTANT REDUCTIONS FROM EDUCATION, OUTREACH AND INCENTIVES: This proposed control measure seeks to provide educational outreach and incentives for consumers to contribute to clean air efforts. Examples include the usage of energy efficient products, new lighting technology, "super compliant" coatings, tree planting, and the use of lighter colored roofing and paving materials which reduce energy usage by lowering the ambient temperature. In addition, this proposed measure intends to increase the effectiveness of energy conservation programs through public education and awareness as to the environmental and economic benefits of conservation. Educational and incentive tools to be used include social comparison applications (comparing your personal environmental impacts with other individuals), social media, and public/private partnerships.

PROPOSED PM2.5 CONTINGENCY MEASURES

Pursuant to CAA section 172(c)(9), contingency measures are emission reduction measures that are to be automatically triggered and implemented if an area fails to attain the national ambient air quality standard by the applicable attainment date, or fails to make reasonable further progress (RFP) toward attainment. Further detailed descriptions of contingency requirements can be found in Chapter 6 – Clean Air Act Requirements. As discussed in Chapter 6 and consistent with U.S. EPA guidance, the District is proposing to use excess air quality improvement from the proposed control strategy, as well as potential NOx reductions from CMB-01 listed above, to demonstrate compliance with this federal requirement.

The Final 2012 AQMP relies on a set of five years of particulate data centered on 2008, the base year selected for the emissions inventory development and the anchor year for the future year PM2.5 projections. In July, 2010, U.S. EPA proposed revisions to the 24-hour PM2.5 modeling attainment demonstration guidance. The new guidance suggests using five years of data, but instead of directly using quarterly calculated design values, the procedure requires the top 8 daily PM2.5 concentrations days in each quarter to reconstruct the annual 98th percentile. The logic in the analysis is twofold: by selecting the top 8 values in each quarter the 98th percentile concentration is guaranteed to be included in the calculation. Second, the analysis projects future year concentrations for each of the 32 days in a year (160 days over five years) to test the response of future year 24-hour PM2.5 to the proposed control strategy. Since the 32 days in each year include different meteorological conditions and particulate species profiles it is expected those individual days will respond independently to the projected future year emissions profile and that a new distribution of PM2.5 concentrations will result. Overall, the process is more robust in that the analysis is examining the impact of the control strategy implementation for a total of 160 days, covering a wide variety of potential meteorology and emissions combinations.

Table 5-1 provides the weighted 2008 annual and 24-hour average PM2.5 design values for the Basin.

TABLE 5-1

2008 Weighted 24-Hour PM2.5 Design Values ($\mu g/m^3$)

MONITORING SITE	24-HOURS
Anaheim	35.0
Los Angeles	40.1
Fontana	45.6
North Long Beach	34.4
South Long Beach	33.4
Mira Loma	47.9
Rubidoux	44.1

Relative Response Factors and Future Year Design Values

To bridge the gap between air quality model output evaluation and applicability to the health-based air quality standards, U.S. EPA guidance has proposed the use of relative response factors (RRF). The RRF concept was first used in the 2007 AQMP modeling attainment demonstrations. The RRF is simply a ratio of future year predicted air quality

with the control strategy fully implemented to the simulated air quality in the base year. The mechanics of the attainment demonstration are pollutant and averaging period specific. For 24-hour PM2.5, the top 10 percentile of modeled concentrations in each quarter of the simulation year are used to determine the quarterly RRFs. For the annual average PM2.5, the quarterly average RRFs are used for the future year projections. For the 8-hour average ozone simulations, the aggregated response of multiple episode days to the implementation of the control strategy is used to develop an averaged RRF for projecting a future year design value. Simply stated, the future year design value is estimated by multiplying the non-dimensional RRF by the base year design value. Thus, the simulated improvement in air quality, based on multiple meteorological episodes, is translated as a metric that directly determines compliance in the form of the standard.

The modeling analyses described in this chapter use the RRF and design value approach to demonstrate future year attainment of the standards.

PM2.5 Modeling

Within the Basin, PM2.5 particles are either directly emitted into the atmosphere (primary particles), or are formed through atmospheric chemical reactions from precursor gases (secondary particles). Primary PM2.5 includes road dust, diesel soot, combustion products, and other sources of fine particles. Secondary products, such as sulfates, nitrates, and complex carbon compounds are formed from reactions with oxides of sulfur, oxides of nitrogen, VOCs, and ammonia.

The Final 2012 AQMP employs the CMAQ air quality modeling platform with SAPRC99 chemistry and WRF meteorology as the primary tool used to demonstrate future year attainment of the 24-hour average PM2.5 standard. A detailed discussion of the features of the CMAQ approach is presented in Appendix V. The analysis was also conducted using the CAMx modeling platform using the "one atmosphere" approach comprised of the SAPRC99 gas phased chemistry and a static two-mode particle size aerosol module as the particulate modeling platform. Parallel testing was conducted to evaluate the CMAQ performance against CAMx and the results indicated that the two model/chemistry packages had similar performance. The CAMx results are provided in Appendix V as a component of the weight of evidence discussion.

The Final 2012 modeling attainment demonstrations using the CMAQ (and CAMx) platform were conducted in a vastly expanded modeling domain compared with the analysis conducted for the 2007 AQMP modeling attainment demonstration. In this analysis, the PM2.5 and ozone base and future simulations were modeled simultaneously. The simulations were conducted using a Lambert Conformal grid

projection where the western boundary of the domain was extended to 084 UTM, over 100 miles west of the ports of Los Angeles and Long Beach. The eastern boundary extended beyond the Colorado river while the northern and southern boundaries of the domain extend to the San Joaquin Valley and the Northern portions of Mexico (3543 UTM). The grid size has been reduced from 5 kilometers squared to 4 kilometers squared and the vertical resolution has been increased from 11 to 18 layers.

The final WRF meteorological fields were generated for the identical domain, layer structure and grid size. The WRF simulations were initialized from National Centers for Environmental Prediction (NCEP) analyses and run for 3-day increments with the option for four dimensional data assimilation (FDDA). Horizontal and vertical boundary conditions were designated using a "U.S. EPA clean boundary profile."

PM2.5 data measured as individual species at six-sites in the AQMD air monitoring network during 2008 provided the characterization for evaluation and validation of the CMAQ annual and episodic modeling. The six sites include the historical PM2.5 maximum location (Riverside- Rubidoux), the stations experiencing many of the highest county concentrations (among the 4-county jurisdiction including Fontana, North Long Beach and Anaheim) and source oriented key monitoring sites addressing goods movement (South Long Beach) and mobile source impacts (Central Los Angeles). It is important to note that the close proximity of Mira Loma to Rubidoux and the common in-Basin air flow and transport patterns enable the use of the Rubidoux speciated data as representative of the particulate speciation at Mira Loma. Both sites are directly downwind of the dairy production areas in Chino and the warehouse distribution centers located in the northwestern corner of Riverside County. Speciated data monitored at the selected sites for 2006-2007 and 2009-2010 were analyzed to corroborate the applicability of using the 2008 profiles.

Day-specific point source emissions were extracted from the District stationary source and RECLAIM inventories. Mobile source emissions included weekday, Saturday and Sunday profiles based on CARB's EMFAC2011 emissions model, CALTRANS weigh-in-motion profiles, and vehicle population data and transportation analysis zone (TAZ) data provided by SCAG. The mobile source data and selected area source data were subjected to daily temperature corrections to account for enhanced evaporative emissions on warmer days. Gridded daily biogenic VOC emissions were provided by CARB using BEIGIS biogenic emissions model. The simulations benefited from enhancements made to the emissions inventory including an updated ammonia inventory, improved emissions characterization that split organic compounds into coarse, fine and primary

particulate categories, and updated spatial allocation of primary paved road dust emissions.

Model performance was evaluated against speciated particulate PM2.5 air quality data for ammonium, nitrates, sulfates, secondary organic matter, elemental carbon, primary and total particulate mass for the six monitoring sites (Rubidoux, Central Los Angeles, Anaheim, South Long Beach, Long Beach, and Fontana).

The following section summarizes the PM2.5 modeling approach conducted in preparation for this Plan. Details of the PM2.5 modeling are presented in Appendix V.

24-Hour PM2.5 Modeling Approach

CMAQ simulations were conducted for each day in 2008. The simulations included 8784 consecutive hours from which daily 24-hour average PM2.5 concentrations (0000-2300 hours) were calculated. A set of RRFs were generated for each future year simulation. RRFs were generated for the ammonium ion (NH_4), nitrate ion (NO_3), sulfate ion (SO_4), organic carbon (OC), elemental carbon (EC) and a combined grouping of crustal, sea salts and metals (Others). A total of 24 RRFs were generated for each future year simulation (4 seasons and 6 monitoring sites).

Future year concentrations of the six component species were calculated by applying the model generated quarterly RRFs to the speciated 24-hour PM2.5 (FRM) data, sorted by quarter, for each of the five years used in the design value calculation. The 32 days in each year were then re-ranked to establish a new 98^{th} percentile concentration. The resulting future year 98^{th} percentile concentrations for the five years were subjected to weighted averaging for the attainment demonstration.

In this chapter, future year PM2.5 24-hour average design values are presented for 2014, and 2019 to (1) demonstrate the future baseline concentrations if no further controls are implemented; (2) identify the amount of air quality improvement needed to advance the attainment date to 2014; and (3) confirm the attainment demonstration given the proposed PM2.5 control strategy. In addition, Appendix V will include a discussion and demonstration that attainment will be satisfied for the entire modeling domain.

Weight of Evidence

PM2.5 modeling guidance strongly recommends the use of corroborating evidence to support the future year attainment demonstration. The weight of evidence demonstration for the Final 2012 AQMP includes brief discussions of the observed 24-hour PM2.5,

emissions trends, and future year PM2.5 predictions. Detailed discussions of all model results and the weight of evidence demonstration are provided in Appendix V.

FUTURE AIR QUALITY

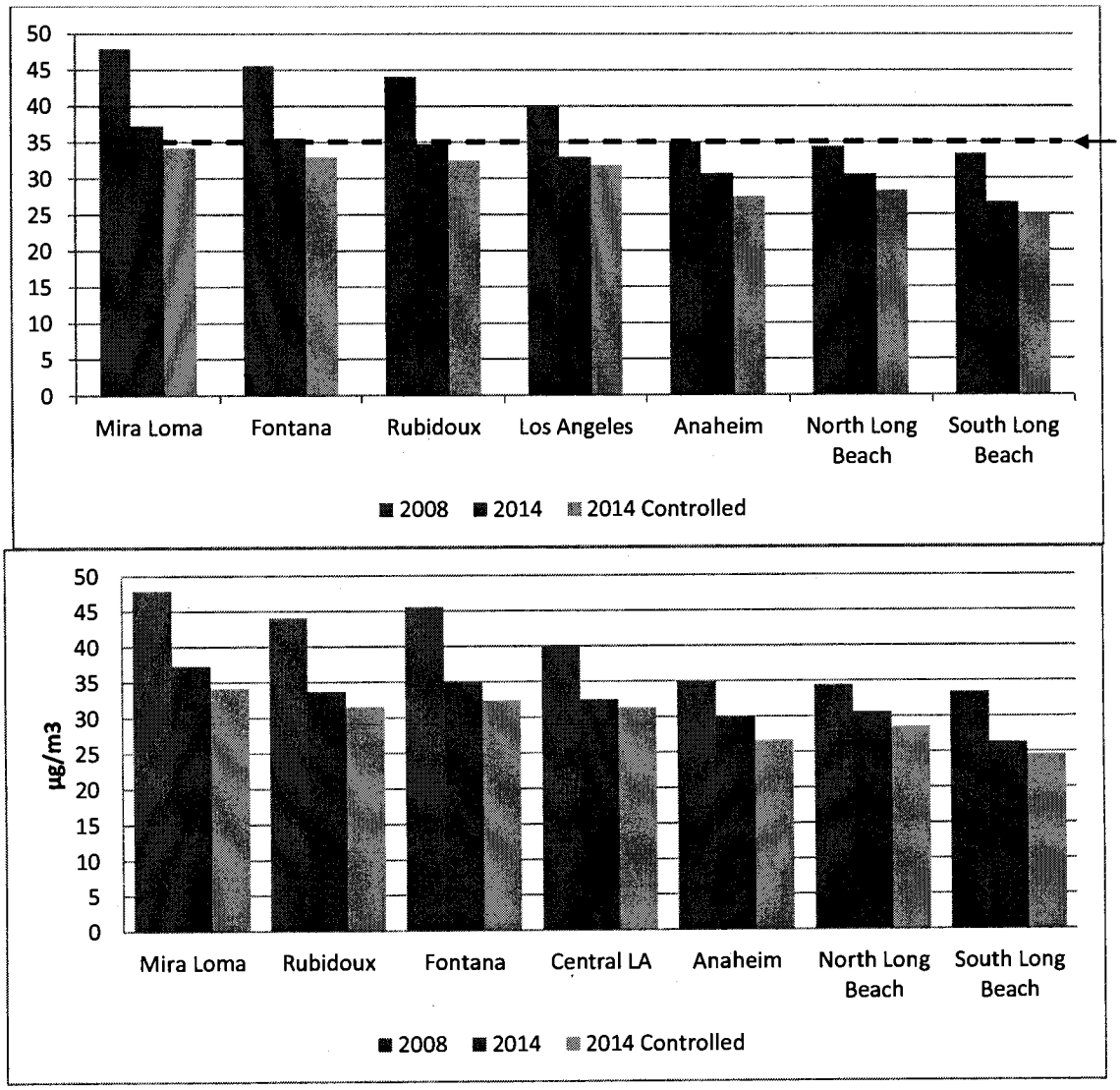
Under the federal Clean Air Act, the Basin must comply with the federal PM2.5 air quality standards by December, 2014 [Section 172(a)(2)(A)]. An extension of up-to five years (until 2019) could be granted if attainment cannot be demonstrated any earlier with all feasible control measures incorporated.

24-Hour PM2.5

A simulation of 2014 baseline emissions was conducted to substantiate the severity of the 24-hour PM2.5 problem in the Basin. The simulation used the projected emissions for 2014 which included all adopted control measures that will be implemented prior to and during 2014, including mobile source incentive projects under contract (Proposition 1B and Carl Moyer Programs). The resulting 2014 future-year Basin design value ($37.3\mu g/m^3$) failed to meet the federal standard. As a consequence additional controls are needed.

Simulation of the 2019 baseline emissions indicates that the Basin PM2.5 will attain the federal 24-hour PM2.5 standard in 2019 without additional controls. With the control program in place, the 24-hour PM2.5 simulations project that the 2014 design value will be 34.3 $\mu g/m^3$ and that the attainment date will advance from 2019 to 2014.

Figure 5-3 depicts future 24-hour PM2.5 air quality projections at the Basin design site (Mira Loma) and six PM2.5 monitoring sites having comprehensive particulate species characterization. Shown in the figure, are the base year design values for 2008 along with projections for 2014 with and without control measures in place. All of the sites with the exception of Mira Loma will meet the 24-hour PM2.5 standard by 2014 without additional controls. With implementation of the control measures, all sites in the Basin demonstrate attainment.



**No such state standard.*

FIGURE 5-3

Maximum 24-Hour Average PM2.5 Design Concentrations:
2008 Baseline, 2014 and 2014 Controlled

Spatial Projections of PM2.5 Design Values

Figure 5-4 provides a perspective of the Basin-wide spatial extent of 24-hour PM2.5 impacts in the base year 2008, with all adopted rules and measures implemented. Figures 5-5 and 5-6 provide a Basin-wide perspective of the spatial extent of 24-hour PM2.5 future impacts for baseline 2014 emissions and 2014 with the proposed control program in place. With no additional controls, several areas around the northwestern portion of Riverside and southwestern portion of San Bernardino Counties depict grid

cells with weighted PM2.5 24-hour design values exceeding 35 $\mu g/m^3$. By 2014, the number of grid cells with concentrations exceeding the federal standard is restricted to a small region surrounding the Mira Loma monitoring station in northwestern Riverside County. With the control program fully implemented in 2014, the Basin does not exhibit any grid cells exceeding the federal standard.

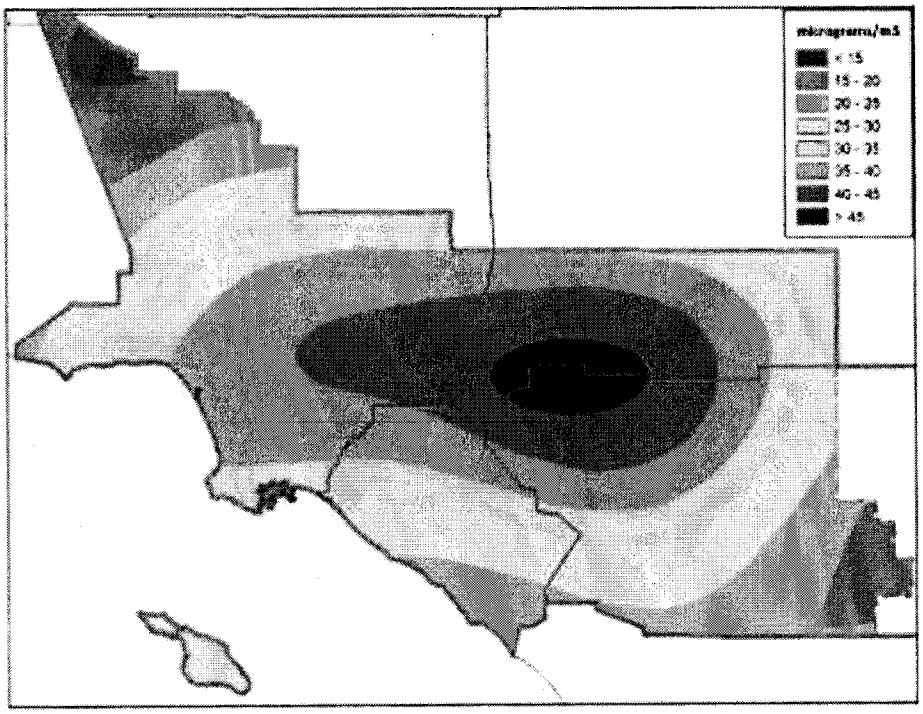


FIGURE 5-4

2008 Baseline 24-Hour PM2.5 Design Concentrations ($\mu g/m^3$)

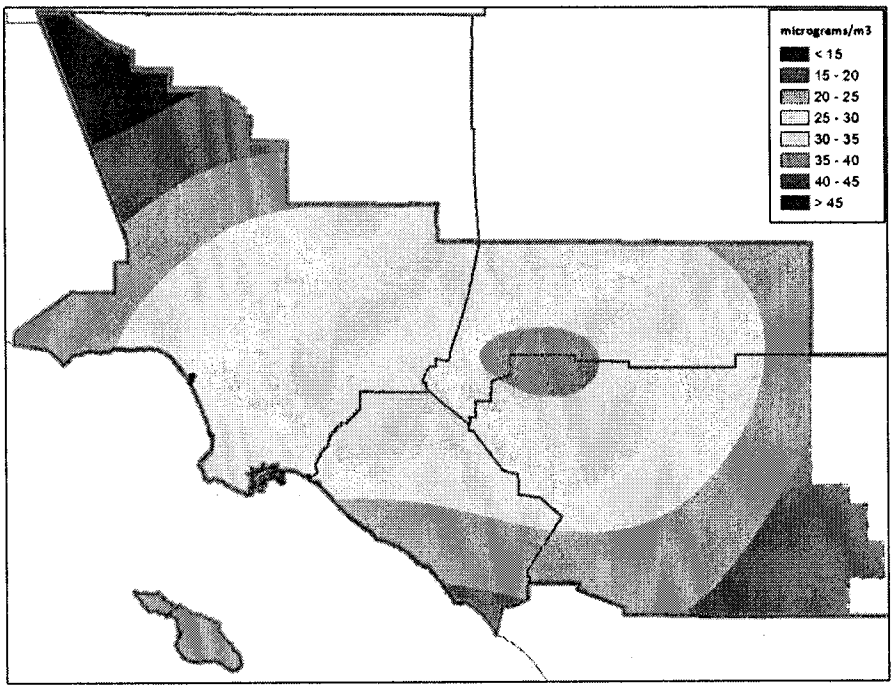


FIGURE 5-5

2014 Baseline 24-Hour PM2.5 Design Concentrations ($\mu g/m^3$)

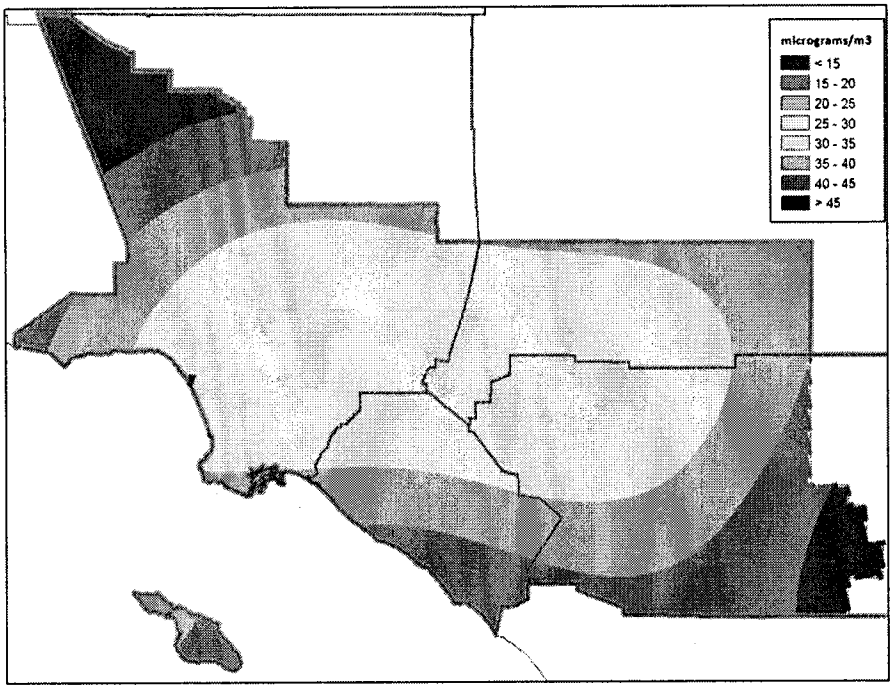


FIGURE 5-6

2014 Controlled 24-Hour PM2.5 Design Concentrations ($\mu g/m^3$)

Weight of Evidence Discussion

The weight of evidence discussion focuses on the trends of 24-hour PM2.5 and key precursor emissions to provide justification and confidence that the Basin will meet the federal standard by 2014.

Figure 5-7 depicts the long term trend of observed Basin 24-hour average PM2.5 design values with the CMAQ projected design value for 2014. Also superimposed on the graph is the linear best-fit trend line for the observed 24-hour average PM2.5 design values. The observed trend depicts a steady 49 percent decrease in observed design value concentrations between 2001 and 2011. The rate of improvement is just under 4 $\mu g/m^3$ per year. If the trend is extended beyond 2011, the projection suggests attainment of the PM2.5 24-hour standard in 2013, one year earlier than determined by the attainment demonstration. While the straight-line future year approximation is aggressive in its projection, it offers insight to the effectiveness of the ongoing control program and is consistent with the attainment demonstration.

Figures 5-8 depicts the long term trend of Basin NOx emissions for the same period. Figure 5-9 provides the corresponding emissions trend for directly emitted PM2.5. Base year NOx inventories between 2002 (from the 2007 AQMP) and 2008 experienced a 31 percent reduction while directly emitted PM2.5 experienced a 19 percent reduction over the 6-year period. The Basin 24-hour average PM2.5 design value experienced a concurrent 27 percent reduction between 2002 and 2008. The projected trend of NOx emissions indicates that the PM2.5 precursor associated with the formation of nitrate will continue to be reduced though 2019 by an additional 48 percent. Similarly, the projected trend of directly emitted PM2.5 projects a more moderate reduction of 13 percent through 2019. However, as discussed in the 2007 AQMP and in a later section of this chapter, directly emitted PM2.5 is a more effective contributor to the formation of ambient PM2.5 compared to NOx. While the projected NOx and direct PM2.5 emissions trends decrease at a reduced rate between 2012 and 2019, it is clearly evident that the overall significant reductions will continue to result in lower nitrate, elemental carbon and direct particulate contributions to 24-hour PM2.5 design values.

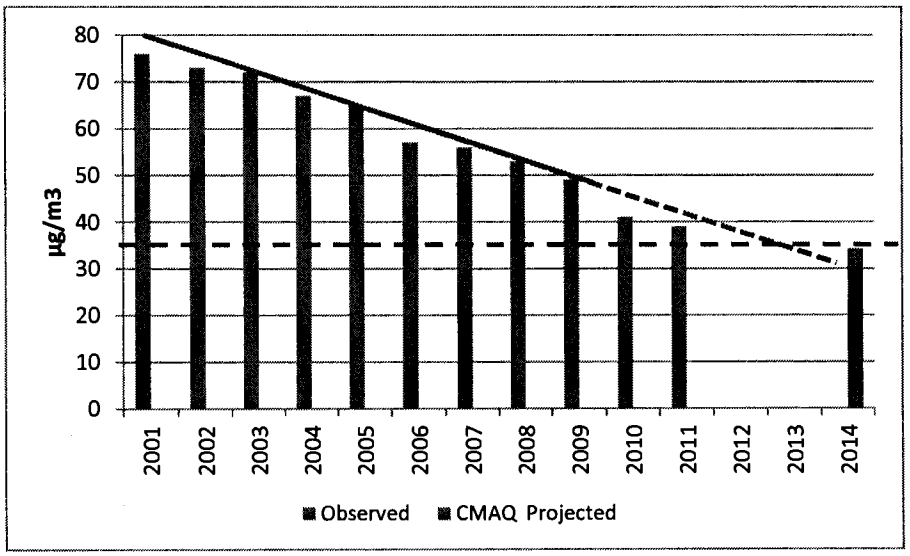


FIGURE 5-7

Basin Observed and CMAQ Projected
Future Year PM2.5 Design Concentrations ($\mu g/m^3$)

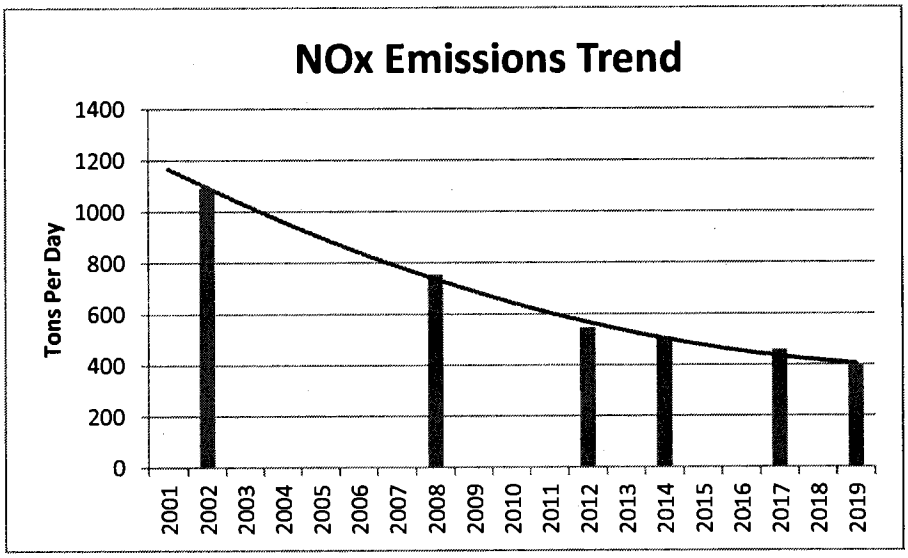


FIGURE 5-8

Trend of Basin NOx Emissions (Controlled)

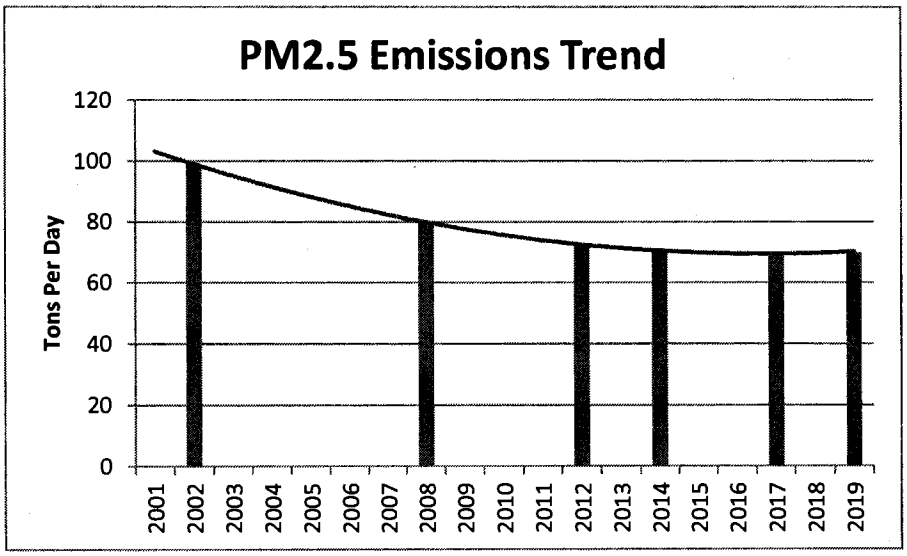


FIGURE 5-9

Trend of Basin PM2.5 Emissions (Controlled)

Control Strategy Choices

PM2.5 has five major precursors that contribute to the development of the ambient aerosol including ammonia, NOx, SOx, VOC, and directly emitted PM2.5. Various combinations of reductions in these pollutants could all provide a path to clean air. The 24-hour PM2.5 attainment strategy presented in this Final 2012 AQMP relies on a dual approach to first demonstrate attainment of the federal standard by 2019 and then focuses on controls that will be most effective in reducing PM2.5 to accelerate attainment to the earliest extent. The 2007 AQMP control measures since implemented will result in substantial reductions of SOx, direct PM2.5, VOC and NOx emissions. Newly proposed short-term measures, discussed in Chapter 4, will provide additional regional emissions reductions targeting directly emitted PM2.5 and NOx.

It is useful to weigh the value of the precursor emissions reductions (on a per ton basis) to microgram per cubic meter improvements in ambient PM2.5 levels. As presented in the weight of evidence discussion, trends of PM2.5 and NOx emissions suggest a direct response between lower emissions and improving air quality. The Final 2007 AQMP established a set of factors to relate regional per ton precursor emissions reductions to PM2.5 air quality improvements based on the annual average concentration. The Final 2012 AQMP CMAQ simulations provided a similar set of factors, but this time directed at 24-hour PM2.5. The analysis determined that VOC emissions reductions have the lowest return in terms of micrograms reduced per ton reduction, one third of the benefit of NOx reductions. SOx emissions were about eight times more effective than NOx

reductions. However, directly emitted PM2.5 reductions were approximately 15 times more effective than NOx reductions. It is important to note that the contribution of ammonia emissions is embedded as a component of the SOx and NOx factors since ammonium nitrate and ammonium sulfate are the resultant particulates formed in the ambient chemical process. Table 5-2 summarizes the relative importance of precursor emissions reductions to 24-hour PM2.5 air quality improvements based on the analysis. . (A comprehensive discussion of the emission reduction factors is presented in Attachment 8 of Appendix V of this document). Emission reductions due to existing programs and implementation of the 2012 AQMP control measures will result in projected 24-hour PM2.5 concentrations throughout the Basin that meet the standard by 2014 at all locations. Basin-wide curtailment of wood burning and open burning when the PM2.5 air quality is projected to exceed 30 $\mu g/m^3$ in Mira Loma will effectively accelerate attainment at Mira Loma from 2019 to 2014. Table 5-3 lists the mix of the four primary precursor's emissions reductions targeted for the staged control measure implementation approach.

TABLE 5-2

Relative Contributions of Precursor Emissions Reductions to Simulated Controlled Future-Year 24-hour PM2.5 Concentrations

PRECURSOR	PM2.5 COMPONENT ($\mu g/m^3$)	STANDARDIZED CONTRIBUTION TO AMBIENT PM2.5 MASS
VOC	Organic Carbon	Factor of 0.3
NOx	Nitrate	Factor of 1
SOx	Sulfate	Factor of 7.8
PM2.5	Elemental Carbon & Others	Factor of 14.8

TABLE 5-3

Final 2012 AQMP
24-hour PM2.5 Attainment Strategy
Allowable Emissions (TPD)

YEAR	SCENARIO	VOC	NOx	SOx	PM2.5
2014	Baseline	451	506	18	70
2014	Controlled	451	490	18	58*

*Winter episodic day emissions

ADDITIONAL MODELING ANALYSES

As a component of the Final 2012 AQMP, concurrent simulations were also conducted to update and assess the impacts to annual average PM2.5 and 8-hour ozone given the new modeling platform and emissions inventory. This update provides a confirmation that the control strategy will continue to move air quality expeditiously towards attainment of the relevant standards.

Annual PM2.5

Annual PM2.5 Modeling Approach

The Final 2012 AQMP annual PM2.5 modeling employs the same approach to estimating the future year annual PM2.5 as was described in the 2007 AQMP attainment demonstrations. Future year PM2.5 annual average air quality is determined using site

and species specific quarterly averaged RRFs applied to the weighted quarterly average 2008 PM2.5 design values per U.S. EPA guidance documents.

In this application, CMAQ and WRF were used to simulate 2008 meteorological and air quality to determine Basin annual average PM2.5 concentrations. The future year attainment demonstration was analyzed for 2015, the target set by the federal CAA. The 2014 simulation relies on implementation of all adopted rules and measures through 2014. This enables a full year-long demonstration based on a control strategy that would be fully implemented by January 1, 2015. It is important to note that the use of the quarterly design values for a 5-year period centered around 2008 (listed in Table 5-4) continue to be used in the projection of the future year annual average PM2.5 concentrations. The future year design reflects the weighted quarterly average concentration calculated from the projections over five years (20 quarters).

TABLE 5-4

2008 Weighted Annual PM2.5 Design Values* ($\mu g/m^3$)

MONITORING SITE	ANNUAL*
Anaheim	13.1
Los Angeles	15.4
Fontana	15.7
North Long Beach	13.6
South Long Beach	13.2
Mira Loma	18.6
Rubidoux	16.7

* Calculated based on quarterly observed data between 2006 – 2010

Future Annual PM2.5 Air Quality

The projections for the annual state and federal standards are shown in Figure 5-10. All areas will be in attainment of the federal annual standard (15.0 $\mu g/m^3$) by 2014. The 2014 design value is projected to be 9 percent below the federal standard. However, as shown in Figure 5-10, the Final 2012 AQMP does not achieve the California standard of 12 $\mu g/m^3$ by 2014. Additional controls would be needed to meet the California annual PM2.5 standard.

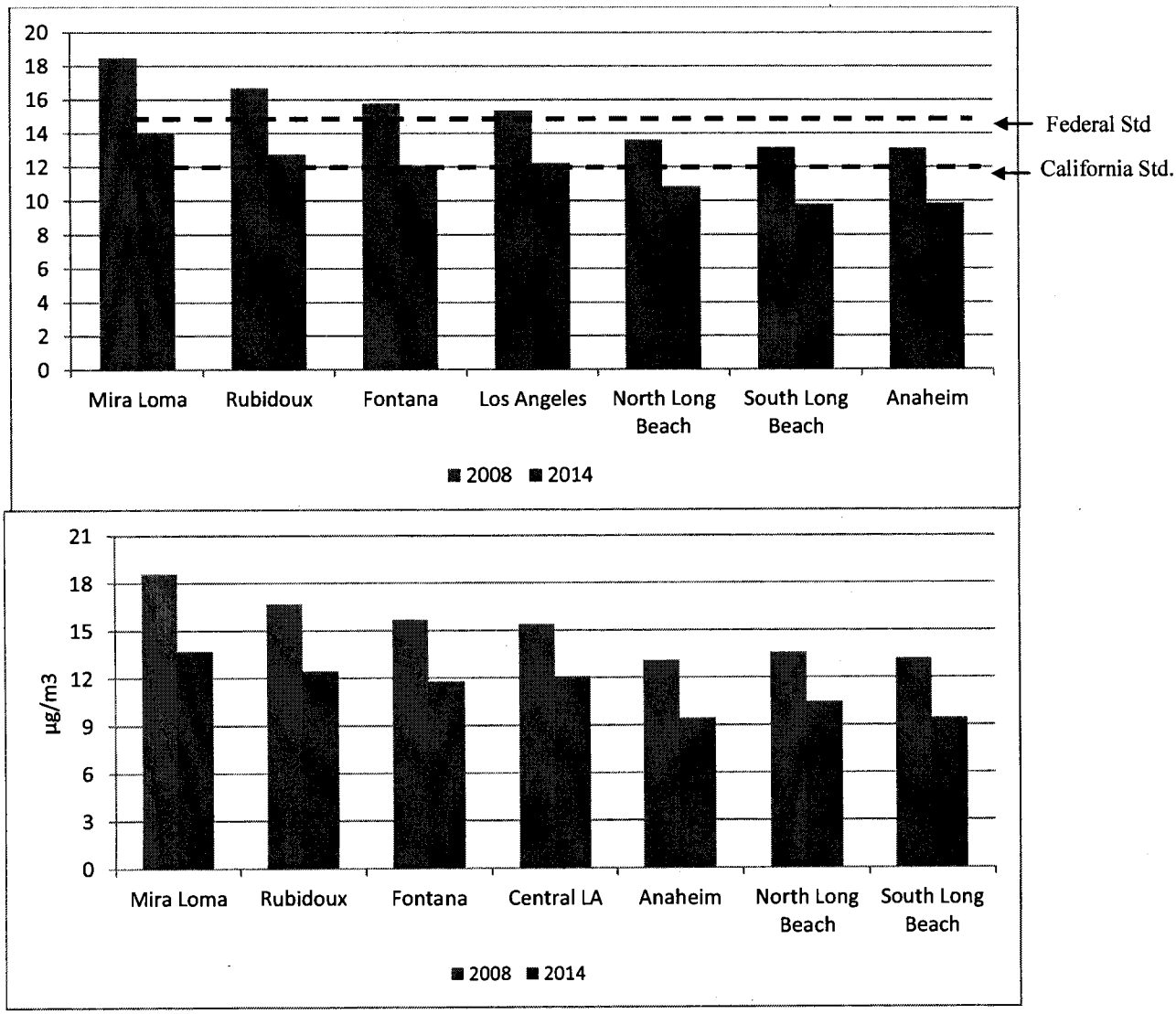


FIGURE 5-10

Annual Average PM2.5 Design Concentrations:
2008 and 2014 Controlled

Ozone Modeling

The 2007 AQMP provided a comprehensive 8-hour ozone analysis that demonstrated future year attainment of the 1997 federal ozone standard (80 ppb) by 2023 with implementation of short-term measures and CAA Section 182(e)(5) long term emissions reductions. The analysis concluded that NOx emissions needed to be reduced approximately 76 percent and VOC 22 percent from the 2023 baseline in order to demonstrate attainment. The 2023 base year VOC and NOx summer planning emissions inventories included 536 and 506 TPD, respectively.

INTRODUCTION

The purpose of the 2012 revision to the AQMP for the South Coast Air Basin is to set forth a comprehensive program that will assist in leading the Basin and those portions of the Salton Sea Air Basin under the District's jurisdiction into compliance with all federal and state air quality planning requirements. Specifically, the Final 2012 AQMP is designed to satisfy the SIP submittal requirements of the federal CAA to demonstrate attainment of the 24-hour PM2.5 ambient air quality standards, the California CAA triennial update requirements, and the District's commitment to update transportation emission budgets based on the latest approved motor vehicle emissions model and planning assumptions. Specific information related to the air quality and planning requirements for portions of the Salton Sea Air Basin under the District's jurisdiction are included in the Final 2012 AQMP and can be found in Chapter 7 – Current and Future Air Quality – Desert Nonattainment Area. The 2012 AQMP will be submitted to U.S. EPA as SIP revisions once approved by the District's Governing Board and CARB.

SPECIFIC 24-HOUR PM2.5 PLANNING REQUIREMENTS

In November 1990, Congress enacted a series of amendments to the CAA intended to intensify air pollution control efforts across the nation. One of the primary goals of the 1990 CAA Amendments was to overhaul the planning provisions for those areas not currently meeting the NAAQS. The CAA identifies specific emission reduction goals, requires both a demonstration of reasonable further progress and an attainment demonstration, and incorporates more stringent sanctions for failure to attain or to meet interim milestones. There are several sets of general planning requirements, both for nonattainment areas [Section 172(c)] and for implementation plans in general [Section 110(a)(2)]. These requirements are listed and briefly described in Chapter 1 (Tables 1-4 and 1-5). The general provisions apply to all applicable criteria pollutants unless superseded by pollutant-specific requirements. The following sections discuss the federal CAA requirements for the 24-hour PM2.5 standards.

FEDERAL AIR QUALITY STANDARDS FOR FINE PARTICULATES

The U.S. EPA promulgated the National Ambient Air Quality Standards for Fine Particles (PM2.5) in July 1997. Following legal actions, the statements were eventually upheld in March 2002. The annual standard was set at a level of 15 micrograms per cubic meter ($\mu g/m^3$), based on the 3-year average of annual mean PM2.5 concentrations. The 24-hour standard was set at a level of 65 $\mu g/m^3$ based on the 3-year average of the

98th percentile of 24-hour concentrations. U.S. EPA issued designations in December 2004, which became effective on April 5, 2005.

In January 2006, U.S. EPA proposed to lower the 24-hour PM2.5 standard. On September 21, 2006, U.S. EPA signed the "Final Revisions to the NAAQS for Particulate Matter." In promulgating the new standards, U.S. EPA followed an elaborate review process which led to the conclusion that existing standards for particulates were not adequate to protect public health. The studies indicated that for PM2.5, short-term exposures at levels below the 24-hour standard of 65 $\mu g/m^3$ were found to cause acute health effects, including asthma attacks and breathing and respiratory problems. As a result, the U.S. EPA established a new, lower 24-hour average standard for PM2.5 at 35 $\mu g/m^3$. No changes were made to the existing annual PM2.5 standard which remained at 15 $\mu g/m^3$ as discussed in Chapter 2. On June 14, 2012, U.S. EPA proposed revisions to this annual standard. The annual component of the standard was set to provide protection against typical day-to-day exposures as well as longer-term exposures, while the daily standard protects against more extreme short-term events. For the 2006 24-hour PM2.5 standard, the form of the standard continues to be based on the 98th percentile of 24-hour PM2.5 concentrations measured in a year (averaged over three years) at the monitoring site with the highest measured values in an area. This form of the standard was set to be health protective while providing a more stable metric to facilitate effective control programs. Table 6-1 summarizes the U.S. EPA's PM2.5 standards.

TABLE 6-1

U.S. EPA's PM2.5 Standards

	1997 STANDARDS		2006 STANDARDS	
	Annual	**24-Hour**	**Annual**	**24-Hour**
PM2.5	15 $\mu g/m^3$ Annual arithmetic mean, averaged over 3 years	65 $\mu g/m^3$ 24-hour average, 98th percentile, averaged over 3 years	15 $\mu g/m^3$ Annual arithmetic mean, averaged over 3 years	35 $\mu g/m^3$ 24-hour average, 98th percentile, averaged over 3 years

On December 14, 2009, the U.S. EPA designated the Basin as nonattainment for the 2006 24-hour PM2.5 NAAQS. A SIP revision is due to U.S. EPA no later than three years from the effective date of designation, December 14, 2012, demonstrating attainment with the standard by 2014. Under Section 172 of the CAA, U.S. EPA may grant an area an extension of the initial attainment date for a period of up to five years.

With implementation of all feasible measures as outlined in this Plan, the Basin will demonstrate attainment with the 24-hour PM2.5 standard by 2014, so no extension is being requested.

FEDERAL CLEAN AIR ACT REQUIREMENTS

For areas such as the Basin that are classified nonattainment for the 2006 24-hour PM2.5 NAAQS, Section 172 of subpart 1 of the CAA applies. Section 172(c) requires states with nonattainment areas to submit an attainment demonstration. Section 172(c)(2) requires that nonattainment areas demonstrate Reasonable Further Progress (RFP). Under subpart I of the CAA, all nonattainment area SIPs must include contingency measures. Section 172(c)(1) of the CAA requires nonattainment areas to provide for implementation of all reasonably available control measures (RACM) as expeditiously as possible, including the adoption of reasonably available control technology (RACT). Section 172 of the CAA requires the implementation of a new source review program including the use of "lowest achievable emission rate" for major sources referred to under state law as "Best Available Control Technology" (BACT) for major sources of PM2.5 and precursor emissions (i.e., precursors of secondary particulates).

This section describes how the Final 2012 AQMP meets the 2006 24-hour PM2.5 planning requirements for the Basin. The requirements specifically addressed for the Basin are:

1. Attainment demonstration and modeling [Section 172(a)(2)(A)];
2. Reasonable further progress [Section 172(c)(2)];
3. Reasonably available control technology (RACT) and Reasonably available control measures (RACM) [Section 172(c)(1)] ;
4. New source review (NSR) [Sections 172(c)(4) and (5)];
5. Contingency measures [Section 172(c)(9)]; and
6. Transportation control measures (as RACM).

Attainment Demonstration and Modeling

Under the CAA Section 172(a)(2)(A), each attainment plan should demonstrate that the area will attain the NAAQS "as expeditiously as practicable," but no later than five years from the effective date of the designation of the area. If attainment within five years is considered impracticable due to the severity of an area's air quality problem and the lack

of available control measures, the state may propose an attainment date of more than five years but not more than ten years from designation.

This attainment demonstration consists of: (1) technical analyses that locate, identify, and quantify sources of emissions that contribute to violations of the PM2.5 standard; (2) analysis of future year emission reductions and air quality improvement resulting from adopted and proposed control measures; (3) proposed emission reduction measures with schedules for implementation; and (4) analysis supporting the region's proposed attainment date by performing a detailed modeling analysis. Chapter 3 and Appendix III of the Final 2012 AQMP present base year and future year emissions inventories in the Basin, while Chapter 4 and Appendix IV provide descriptions of the proposed control measures, the resulting emissions reductions, and schedules for implementation of each measure. The detailed modeling analysis and attainment demonstration are summarized in Chapter 5 and documented in Appendix V.

Reasonable Further Progress (RFP)

The CAA requires SIPs for most nonattainment areas to demonstrate reasonable further progress (RFP) towards attainment through emission reductions phased in from the time of the SIP submission until the attainment date time frame. The RFP requirements in the CAA are intended to ensure that there are sufficient PM2.5 and precursor emission reductions in each nonattainment area to attain the 2006 24-hour PM2.5 NAAQS by December 14, 2014.

Per CAA Section 171(1), RFP is defined as "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." As stated in subsequent federal regulation, the goal of the RFP requirements is for areas to achieve generally linear progress toward attainment. To determine RFP for the 2006 24-hour PM2.5 attainment date, the plan should rely only on emission reductions achieved from sources within the nonattainment area.

Section 172(c)(2) of the CAA requires that nonattainment area plans show ongoing annual incremental emissions reductions toward attainment, which is commonly expressed in terms of benchmark emissions levels or air quality targets to be achieved by certain interim milestone years. The U.S. EPA recommends that the RFP inventories include direct PM2.5, and also PM precursors (such as SOx, NOx, and VOCs) that have been determined to be significant.

40 CFR 51.1009 requires any area that submits an approvable demonstration for an attainment date of more than five years from the effective date of designation to also submit an RFP plan. The Final 2012 AQMP demonstrates attainment with the 24-hour PM2.5 standard in 2014, which is five years from the 2009 designation date. Therefore, no separate RFP plan is required.

Reasonably Available Control Measures (RACM) and Reasonably Available Control Technology (RACT) Requirements

Section 172(c)(1) of the CAA requires nonattainment areas to

> *Provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.*

The District staff has completed its RACM analysis as presented in Appendix VI of the Final 2012 AQMP.

The U.S. EPA provided further guidance on the RACM in the preamble and the final "Clean Air Fine Particle Implementation Rule" to implement the 1997 PM2.5 NAAQS which were published in the Federal Register on November 1, 2005 and April 25, 2007, respectively.[1, 2] The U.S. EPA's long-standing interpretation of the RACM provision stated in the 1997 PM2.5 Implementation Rule is that the non-attainment air districts should consider all candidate measures that are available and technologically and economically feasible to implement within the non-attainment areas, including any measures that have been suggested; however, the districts are not obligated to adopt all measures, but should demonstrate that there are no additional reasonable measures available that would advance the attainment date by at least one year or contribute to reasonable further progress (RFP) for the area.

With regard to the identification of emission reduction programs, the U.S. EPA recommends that non-attainment air districts first identify the emission reduction programs that have already been implemented at the federal level and by other states and local air districts. Next, the U.S. EPA recommends that the air districts examine additional RACM/RACTs adopted for other non-attainment areas to attain the ambient air quality standards as expeditiously as practicable. The U.S. EPA also recommends the

[1] See 70FR 65984 (November 1, 2005)
[2] See 72FR 20586 (April 25, 2007)

air districts evaluate potential measures for sources of direct PM2.5, SOx and NOx first. VOC and ammonia are only considered if the area determines that they significantly contribute to the PM2.5 concentration in the non-attainment area (otherwise they are pressured not to significantly contribute). The PM2.5 Implementation Rule also requires that the air districts establish RACM/RACT emission standards that take into consideration the condensable fraction of direct PM2.5 emissions after January 1, 2011. In addition, the U.S. EPA recognizes that each non-attainment area has its own profile of emitting sources, and thus neither requires specific RACM/RACT to be implemented in every non-attainment area, nor includes a specific source size threshold for the RACM/RACT analysis.

A RACM/RACT demonstration must be provided within the SIP. For areas projected to attain within five years of designation, a limited RACM/RACT analysis including the review of available reasonable measures, the estimation of potential emission reductions, and the evaluation of the time needed to implement these measures is sufficient. The areas that cannot reach attainment within five years must conduct a thorough RACM/RACT analysis to demonstrate that sufficient control measures could not be adopted and implemented cumulatively in a practical manner in order to reach attainment at least one year earlier.

In regard to economic feasibility, the U.S. EPA did not propose a fixed dollar per ton cost threshold and recommended that air districts to include health benefits in the cost analysis. As indicated in the preamble of the 1997 PM2.5 Implementation Rule:

> *In regard to economic feasibility, U.S. EPA is not proposing a fixed dollar per ton cost threshold for RACM, just as it is not doing so for RACT...Where the severity of the non-attainment problem makes reductions more imperative or where essential reductions are more difficult to achieve, the acceptable cost of achieving those reductions could increase. In addition, we believe that in determining what are economically feasible emission reduction levels, the States should also consider the collective health benefits that can be realized in the area due to projected improvements.*

Subsequently, on March 2, 2012, the U.S. EPA issued a memorandum to confirm that the overall framework and policy approach stated in the PM2.5 Implementation Rule for the 1997 PM2.5 standards continues to be relevant and appropriate for addressing the 2006 24-hour PM2.5 standards.

As described in Appendix VI, the District has concluded that all District rules fulfilled RACT for the 2006 24-hour PM2.5 standard. In addition, pursuant to California Health

and Safety Code Section 39614 (SB 656), the District evaluated a statewide list of feasible and cost-effective control measures to reduce directly emitted PM2.5 and its potential precursor emissions (e.g., NOx, SOx, VOCs, and ammonia). The District has concluded that for the majority of stationary and area source categories, the District was identified as having the most stringent rules in California (see Appendix VI). Under the RACM guidelines, transportation control measures must be included in the analysis. Consequently, SCAG has completed a RACM determination for transportation control measures in the Final 2012 AQMP, included in Appendix IV-C.

New Source Review

New source review (NSR) for major and in some cases minor sources of PM2.5 and its precursors are presently addressed through the District's NSR and RECLAIM programs (Regulations XIII and XX). In particular, Rule 1325 has been adopted to satisfy NSR requirements for major sources of directly-emitted PM2.5.

Contingency Measures

Contingency Measure Requirements

Section 172(c)(9) of the CAA requires that SIPs include contingency measures.

> *Such plan shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or the Administrator.*

In subsequent NAAQS implementation regulations and SIP approvals/disapprovals published in the Federal Register, U.S. EPA has repeatedly reaffirmed that SIP contingency measures:

1. Must be fully adopted rules or control measures that are ready to be implemented, without significant additional action (or only minimal action) by the State, as expeditiously as practicable upon a determination by U.S. EPA that the area has failed to achieve, or maintain reasonable further progress, or attain the NAAQS by the applicable statutory attainment date (40 CFR § 51.1012, 73 FR 29184)

2. Must be measures not relied on in the plan to demonstrate RFP or attainment for the time period in which they serve as contingency measures and should provide SIP-creditable emissions reductions equivalent to one year of RFP, based on "generally

linear" progress towards achieving the overall level of reductions needed to demonstrate attainment (76 FR 69947, 73 FR 29184)

3. Should contain trigger mechanisms and specify a schedule for their implementation (72 FR 20642)

Furthermore, U.S. EPA has issued guidance that the contingency measure requirement could be satisfied with already adopted control measures, provided that the controls are above and beyond what is needed to demonstrate attainment with the NAAQS (76 FR 57891).

> *U.S. EPA guidance provides that contingency measures may be implemented early, i.e., prior to the milestone or attainment date. Consistent with this policy, States are allowed to use excess reductions from already adopted measures to meet the CAA sections 172(c)(9) and 182(c)(9)contingency measures requirement. This is because the purpose of contingency measures is to provide extra reductions that are not relied on for RFP or attainment, and that will provide a cushion while the plan is being revised to fully address the failure to meet the required milestone. Nothing in the CAA precludes a State from implementing such measures before they are triggered.*

Thus, an already adopted control measure with an implementation date prior to the milestone year or attainment year would obviate the need for an automatic trigger mechanism.

Air Quality Improvement Scenario

The U.S. EPA Guidance Memo issued March 2, 2012, "Implementation Guidance for the 2006 24-Hour Fine Particle (PM2.5) National Ambient Air Quality Standard (NAAQS)", provides the following discussion of contingency measures:

> *The preamble of the 2007 PM2.5 Implementation Rule (see 79 FR 20642-20645) notes that contingency measures "should provide for emission reductions equivalent to about one year of reductions needed for reasonable further progress (RFP)." The term "one year of reductions needed for RFP" requires clarification. This phrase may be confusing because all areas technically are not required to develop a separate RFP plan under the 2007 PM2.5 Implementation Rule. The basic concept is that an area's set of contingency measures should provide for an amount of emission reductions that would achieve "one year's worth" of air quality improvement proportional to the overall amount of air quality improvement to be achieved by the area's attainment plan; or alternatively, an amount of emission reductions (for all pollutants subject to control measures in the attainment plan) that would achieve one year's worth of emission reductions proportional to the overall amount of emission*

reductions needed to show attainment. Contingency measures can include measures that achieve emission reductions from outside the nonattainment area as well as from within the nonattainment area, provided that the measures produce the appropriate air quality impact within the nonattainment area.

The U.S. EPA believes a similar interpretation of the contingency measures requirements under section 172(c)(9) would be appropriate for the 2006 24-hour PM2.5 NAAQS.

The March 2, 2012 memo then provides an example describing two methods for determining the required magnitude of emissions reductions to be potentially achieved by implementation of contingency measures:

Assume that the state analysis uses a 2008 base year emissions inventory and a future year projection inventory for 2014. To demonstrate attainment, the area needs to reduce its air quality concentration from 41ug/m^3 in 2008 to 35 ug/m^3 in 2014, equal to a rate of change of 1 μg/m^3 per year. The attainment plan demonstrates that this level of air quality improvement would be achieved by reducing emissions between 2008 and 2014 by the following amounts: 1,200 tons of PM2.5; 6,000 tons of NOx; and 6,000 tons of SO2.

Thus, the target level for contingency measures for the area could be identified in two ways:

1) *The area would need to provide an air quality improvement of 1 ug/m^3 in the area, based on an adequate technical demonstration provided in the state plan. The emission reductions to be achieved by the contingency measures can be from any one or a combination of all pollutants addressed in the attainment plan, provided that the state plan shows that the cumulative effect of the adopted contingency measures would result in a 1 ug/m^3 improvement in the fine particle concentration in the nonattainment area; and*

2) *The contingency measures for the area would be one-sixth (or approximately 17%) of the overall emission reductions needed between 2008 and 2014 to show attainment. In this example, these amounts would be the following: 200 tons of PM2.5; 1,000 tons of NOx; and 1,000 tons of SO2.*

The two approaches are explicitly mentioned in regulatory form at 40 CFR § 51.1009:

(g) The RFP plan due three years after designation must demonstrate that emissions for the milestone year are either:

(1) At levels that are roughly equivalent to the benchmark emission levels for direct PM2.5 emissions and each PM2.5 attainment plan precursor to be addressed in the plan; or

(2) At levels included in an alternative scenario that is projected to result in a generally equivalent improvement in air quality by the milestone year as would be achieved under the benchmark RFP plan.

(h) The equivalence of an alternative scenario to the corresponding benchmark plan must be determined by comparing the expected air quality changes of the two scenarios at the design value monitor location. This comparison must use the information developed for the attainment plan to assess the relationship between emissions reductions of the direct PM2.5 emissions and each PM2.5 attainment plan precursor addressed in the attainment strategy and the ambient air quality improvement for the associated ambient species.

The first method in the example and the alternative scenario in the regulation, 40 CFR § 51.1009 (g)(2), base the required amount of contingency measure emission reductions on one year's worth of air quality improvements. The most accurate way of demonstrating that the emissions reductions will lead to air quality improvements is through air quality modeling such as that used in the attainment demonstration (40 CFR § 51.1009 (h) above). If the model results show the required air quality improvements, then the emissions reductions included in the model input are therefore shown to be sufficient to achieve those air quality improvements. The second method in the example, and (g)(1) in the regulation, is based solely on emission reductions, without a direct demonstration that there will be a corresponding improvement in air quality.

Logically, the method based on air quality is more robust than the method based solely on emissions reductions in that it demonstrates that emissions reductions will in fact lead to corresponding air quality improvements, which is the ultimate goal of the CAA and the SIP. The second method relying on overall emissions reductions alone does not account for the spatial and temporal variation of emissions, nor does it account for where and when the reductions will occur. As the relationship between emissions reductions and resulting air quality improvements is complex and not always linear, relying solely on prescribed emission reductions may not ensure that the desired air quality improvements will result when and where they are needed. Therefore, determining the magnitude of reductions required for contingency measures based on air quality improvements, derived from a modeling demonstration, is more effective in achieving the objective of this CAA requirement.

Magnitude of Contingency Measure Air Quality Improvements

The example for determining the required magnitude of air quality improvement to be achieved by contingency measures provided in the March 2, 2012 guidance memo uses the attainment demonstration base year as the base year in the calculation (2008). This is based on the memo's statement that *"contingency measures should provide for an amount of emission reductions that would achieve 'one year's worth' of air quality improvement proportional to the overall amount of air quality improvement to be achieved by the area's attainment plan.* The original preamble (79 FR 20642-20645) states that contingency measures *"should provide for emission reductions equivalent to about one year of reductions needed for reasonable further progress (RFP)."* The term "reasonable further progress" is defined in Section 171(1) of the CAA as *"such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date."*

40 CFR 51.1009 is explicit on how emissions reductions for RFP are to be calculated. In essence, the calculation is a linear interpolation between base-year emissions and attainment-year (full implementation) emissions. The Plan must then show that emissions or air quality in the milestone year (or attainment year) are "roughly equivalent" or "generally equivalent" to the RFP benchmark. As stated earlier in this chapter, given the 2014 attainment year, there are no interim milestone RFP requirements. The contingency measure requirements, therefore, only apply to the 2014 attainment year. In 2014, contingency measures must provide for about one year's worth of reductions or air quality improvement, proportional to the overall amount of air quality improvement to be achieved by the area's attainment plan.

The 2008 base year design value in the 24-hour PM2.5 attainment demonstration is 47.9 $\mu g/m^3$, and the 2014 attainment year design value must be less than 35.5 $\mu g/m^3$ (see Chapter 5). Linear progress towards attainment over the six year period yields one year's worth of air quality improvements equal to approximately 2 $\mu g/m^3$. Thus, contingency measures should provide for approximately 2 $\mu g/m^3$ of air quality improvements to be automatically implemented in 2015 if the Basin fails to attain the 24-hour PM2.5 standard in 2014.

Satisfying the Contingency Measure Requirements

As stated above, the contingency measure requirement can be satisfied by already adopted measures resulting in air quality improvements above and beyond those needed

for attainment. Since the attainment demonstration need only show an attainment year concentration below 35.5 $\mu g/m^3$, any measures leading to improvement in air quality beyond this level can serve as contingency measures. As shown in Chapter 5, the attainment demonstration yields a 2014 design value of 34.28 $\mu g/m^3$. The excess air quality improvement is therefore approximately 1.2 $\mu g/m^3$.

In addition to these air quality improvements beyond those needed for attainment, an additional contingency measure is proposed that will result in emissions reductions beyond those needed for attainment in 2014. Control Measure CMB-01 Phase I seeks to achieve an additional two tons per day of NOx emissions reductions from the RECLAIM market if the Basin fails to achieve the standard by the 2014 attainment date. CMB-01 Phase I is scheduled for near-term adoption and includes the appropriate automatic trigger mechanism and implementation schedule consistent with CAA contingency measure requirements. Taken together with the 1.2 $\mu g/m^3$ of excess air quality improvement described above, this represents a sufficient margin of "about one year's of progress" and "generally linear" progress to satisfy the contingency measure requirements. Note that based on the most recent air quality data at the design value site, Mira Loma, the actual measured air quality is already better (by over 4 $\mu g/m^3$ in 2011) than that projected by modeling based on linear interpolation between base year and attainment year.

To address U.S. EPA's comments regarding contingency measures, the excess air quality improvements beyond those needed to demonstrate attainment should also be expressed in terms of emissions reductions. This will facilitate their enforceability and any future needs to substitute emissions reductions from alternate measures to satisfy contingency measure requirements. For this purpose, Table 6-2 explicitly identifies the portions of emissions reductions from proposed measures that are designated as contingency measures. Table 6-2 also includes the total equivalent basin-wide NOx emissions reductions based on the PM2.5 formation potential ratios described in Chapter 5.

TABLE 6-2

Emissions Reductions for Contingency Measures (2014)

MEASURE	ASSOCIATED EMISSIONS REDUCTIONS FROM CONTINGENCY MEASURES (TONS/DAY)
BCM-01 – Residential Wood Burning[1,2]	2.84(PM2.5)
BCM-02 – Open Burning [1,2]	1.84(PM2.5)
CMB-01 – NOx reductions from RECLAIM	2 (NOx)
Total	71 ($NOx_{(e)}$)[3]

[1]40% of the reductions from these measures, as shown in Table 4-2, are designated for contingency purposes.

[2] Episodic emissions reductions occurring on burning curtailment days.

[3] NOx equivalent emissions based on PM2.5 formation potentials described in Chapter 5 (Table 5-2). The PM2.5:NOx ratio is 14.83:1.

Transportation Control Measures

As part of the requirement to demonstrate that RACM has been implemented, transportation control measures meeting the CAA requirements must be included in the plan. Updated transportation control measures included in this plan attainment of the federal 2006 24-hour PM2.5 standard are described in Appendix IV-C – Regional Transportation Strategy & Control Measures.

Section 182(d)(1)(A) of the CAA requires the District to include transportation control strategies (TCS) and transportation control measures (TCM) in its plans for ozone that offset any growth in emissions from growth in vehicle trips and vehicle miles traveled. Such control measures must be developed in accordance with the guidelines listed in Section 108(f) of the CAA. The programs listed in Section 108(f) of the CAA include, but are not limited to, public transit improvement projects, traffic flow improvement projects, the construction of high occupancy vehicle (HOV) facilities and other mobile source emission reduction programs. While this is not an ozone plan, TCMs may be

ATTACHMENT 17.

FINAL 2012 AQMP
APPENDIX IV-A

DISTRICT'S STATIONARY SOURCE CONTROL MEASURES

DECEMBER 2012

Table of Contents

SECTION 1 - STATIONARY SOURCE CONTROL MEASURES

SECTION 2 - SHORT-TERM PM2.5 CONTROL MEASURES

TABLE IV-A-1 (concluded)

Short-Term PM2.5 Control Measures

NUMBER	TITLE	ADOPTION	IMPLEMENTATION PERIOD	REDUCTION (TPD)
~~IND-01 (formerly MOB-03)~~	~~Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources [NOx, SOx, PM2.5]~~	~~2013~~	~~12 months after trigger~~	~~N/A~~ [f]
EDU-01 *(formerly MCS-02, MCS-03)*	Further Criteria Pollutant Reductions from Education, Outreach and Incentives [All Pollutants]	Ongoing	Ongoing	N/A [f]
MCS-01 *(formerly MCS-07)*	Application of All Feasible Measures Assessment [All Pollutants]	Ongoing	Ongoing	TBD [e]

a. Emission reductions are included in the SIP as a contingency measure.
b. Winter average day reductions based on episodic conditions and 75 percent compliance rate.
c. Reduction based on episodic day conditions.
d. Will submit into SIP once technically feasible and cost effective options are confirmed.
e. TBD are reductions to be determined once the technical assessment is complete, and inventory and control approach are identified.
f. N/A are reductions that cannot be quantified due to the nature of the measure (e.g., outreach, incentive programs) or if the measure is designed to ensure reductions that have been assumed to occur will in fact occur.

It should be noted that the emission reduction targets for the proposed control measures (those with quantified reductions) are established based on available or anticipated control methods or technologies. However, emission reductions associated with implementation of these and other control measures or rules in excess of the AQMP's projected reductions can be credited toward the overall emission reduction targets for the proposed control measures in this appendix.

Emission reductions associated with the District's SIP commitment to adopt and implement emission reductions from sources under the District's jurisdiction are being proposed. Once the SIP commitment is accepted, should there be emission reduction shortfalls in any given year, the District would identify and adopt other measures to make up the shortfall. Similarly, if excess emission reductions are achieved in a year, they can be used in that year or carried over to subsequent years if necessary to meet reduction goals. More detailed discussion on the District's SIP commitment is included in Chapter 4 of the Final 2012 AQMP.

The following sections provide a brief overview of the specific source category types targeted by short-term PM2.5 control measures.

Combustion Sources

This category includes one control measure that seeks further NOx emission reductions from RECLAIM sources.

IND-01: BACKSTOP MEASURE FOR INDIRECT SOURCES OF EMISSIONS FROM PORTS AND PORT-RELATED FACILITIES [NO_x, SO_x, PM2.5]

CONTROL MEASURE SUMMARY

SOURCE CATEGORY:	IF THE BACKSTOP MEASURE BECOMES EFFECTIVE (I.E. IF EMISSIONS FROM PORT-RELATED SOURCES EXCEED TARGETS FOR NOX, SOX, AND PM2.5), AFFECTED SOURCES WOULD BE PROPOSED BY THE PORTS AND COULD INCLUDE SOME OR ALL PORT-RELATED SOURCES (TRUCKS, CARGO HANDLING EQUIPMENT, HARBOR CRAFT, MARINE VESSELS, LOCOMOTIVES, AND STATIONARY EQUIPMENT), TO THE EXTENT COST EFFECTIVE STRATEGIES ARE AVAILABLE
CONTROL METHODS:	IF THE BACKSTOP MEASURE BECOMES EFFECTIVE, EMISSION REDUCTION METHODS WOULD BE PROPOSED BY THE PORTS AND POTENTIALLY COULD INCLUDE CLEAN TECHNOLOGY FUNDING PROGRAMS, LEASE PROVISIONS, PORT TARIFFS, OR INCENTIVES/DISINCENTIVES TO IMPLEMENT MEASURES, TO THE EXTENT COST EFFECTIVE AND FEASIBLE STRATEGIES ARE AVAILABLE

EMISSIONS (TONS/DAY):

ANNUAL AVERAGE	2008	2014	2019	2023
NOx INVENTORY*	78.6	51.2	47.2	39.2
NOx REDUCTION*		N/A	N/A	N/A
NOx REMAINING*		51.2	47.2	39.2
SOx INVENTORY*	25.5	1.8	2.3	2.7
SOx REDUCTION*		N/A	N/A	N/A
SOx REMAINING*		1.8	2.3	2.7
PM2.5 INVENTORY*	3.7	1.0	1.0	1.1
PM2.5 REDUCTION*		N/A	N/A	N/A
PM2.5 REMAINING*		1.0	1.0	1.1

CONTROL COST:	TBD
IMPLEMENTING AGENCY:	SCAQMD

** The purpose of this control measure is to ensure the emissions from port-related sources are at or below the AQMP baseline inventories for PM2.5 attainment demonstration. The emissions presented herein were used for attainment demonstration of the 24-hr PM 2.5 standard by 2014.*

DESCRIPTION OF SOURCE CATEGORY

This control measure is carried over from the 2007 AQMP/SIP. If the backstop measure goes into effect, affected sources would be proposed by the ports and could include some or all port-related sources (trucks, cargo handling equipment, harbor craft, marine vessels, locomotives, and stationary equipment), to the extent cost effective and feasible strategies are available.

Other sources – i.e. sources that are unrelated to the ports – would not in any way be subject to emission reductions under this measure (including through funding of emission reduction measures, or purchase of emission credits, by the ports or port tenants).

Background

Emissions and Progress. The ports of Los Angeles and Long Beach are the largest in the nation in terms of container throughput, and collectively are the single largest fixed source of air pollution in Southern California. Emissions from port-related sources have been reduced significantly since 2006 through efforts by the ports and a wide range of stakeholders. In large part, these emission reductions have resulted from programs developed and implemented by the ports in collaboration with port tenants, marine carriers, trucking interests and railroads. Regulatory agencies, including EPA, CARB and SCAQMD, have participated in these collaborative efforts from the outset, and some measures adopted by the ports have led the way for adoption of analogous regulatory requirements that are now applicable statewide. These port measures include the Clean Truck Program and actions to deploy shore power and low emission cargo handling equipment. The Ports of Los Angeles and Long Beach have also established incentive programs which have not subsequently been adopted as regulations. These include incentives for routing of vessels meeting IMO Tier 2 and 3 NOx standards, and vessel speed reduction. In addition, the ports are, in collaboration with the regulatory agencies, implementing an ambitious Technology Advancement Program to develop and deploy clean technologies of the future.

Port sources such as marine vessels, locomotives, trucks, harbor craft and cargo handling equipment, continue to be among the largest sources of $PM_{2.5}$ and $PM_{2.5}$ precursors in the region. Given the large magnitude of emissions from port-related sources, the substantial efforts described above play a critical part in the ability of the South Coast Air Basin to attain the national $PM_{2.5}$ ambient air standard by federal deadlines. This measure provides assurance that emissions from the Basin's largest fixed emission source will continue to support attainment of the federal 24-hour PM2.5 standard. . Reductions in PM2.5 emissions will also reduce cancer risks from diesel particulate matter.

Clean Air Action Plan. The emission control efforts described above largely began in 2006 when the Ports of Los Angeles and Long Beach, with the participation and cooperation of the staff of the SCAQMD, CARB, and U.S. EPA, adopted the San Pedro Bay Ports Clean Air Action Plan (CAAP). The CAAP was further amended in 2010, updating many of the goals and implementation strategies to reduce air emissions and health risks associated with port

operations while allowing port development to continue. In addition to addressing health risks from port-related sources, the CAAP sought the reduction of criteria pollutant emissions to the levels that assure port-related sources decrease their "fair share" of regional emissions to enable the Basin to attain state and federal ambient air quality standards.

The CAAP focuses primarily on reducing diesel particulate matter (DPM), along with NOx and SOx. The CAAP includes proposed strategies on port-related sources that are implemented through new leases or Port-wide tariffs, Memoranda of Understanding (MOU), voluntary action, grants or incentive programs.

The goals set forth in the CAAP include:

- Health Risk Reduction Standard: 85% reduction in population-weighted cancer risk by 2020
- Emission Reduction Standards:
  - By 2014, reduce emissions by 72% for DPM, 22% for NOx, and 93% for SOx
  - By 2023, reduce emissions by 77% for DPM, 59% for NOx, and 93% for SOx

In addition to the CAAP, the Ports have completed annual inventories of port-related sources since 2005. These inventories have been completed in conjunction with a technical working group composed of the SCAQMD, CARB, and U.S. EPA. Based on the latest inventories, it is estimated that the emissions from port-related sources will meet the 2012 AQMP emission targets necessary for meeting the 24-hr PM2.5 ambient air quality standard. The projected emissions from port related sources are included in the "baseline" emissions assumed in this plan to attain the PM2.5 standards.

While many of the emission reduction targets in the CAAP result from implementation of federal and state regulations (either adopted prior to or after the CAAP), some are contingent upon the Ports taking and maintaining actions which are not required by air quality regulations. These actions include the Expanded Vessel Speed Reduction Incentive Program, lower emission switching locomotives,and incentives for lower emission marine vessels. This AQMP control measure is designed to provide a "backstop" to the Ports' actions to provide assurance that, if emissions do not continue to meet projections, the ports will develop and implement plans to get back on track, to the extent that cost effective and feasible strategies are available. .

Regulatory History

The CAAP sets out the emission control programs and plans that will help mitigate air quality impacts from port-related sources. The CAAP relies on a combination of regulatory requirements and voluntary control strategies which go beyond U.S. EPA or CARB requirements, or are implemented faster than regulatory rules. The regulations which the CAAP relies on include international, federal and state requirements controlling port-related sources such as marine vessels, harbor craft, cargo handling equipment, locomotives, and trucks.

The International Maritime Organization (IMO) MARPOL Annex VI, which came into force in May 2005, set new international NO_x emission limits on Category 3 (>30 liters per cylinder displacement) marine engines installed on new vessels retroactive to the year 2000. In October

~~2008, the IMO adopted an amendment which places a global limit on marine fuel sulfur content of 0.1 percent by 2015 for specific areas known as Emission Control Areas (ECA). The South Coast District waters of the California coast are included in an ECA and ships calling at the Port of Los Angeles and Long Beach have to meet this new fuel standard. In addition, the 2008 IMO amendment required new ships built after January 1, 2016 which will be used in an Emission Control Area (ECA) to meet a Tier III NOx emission standard which is 80 percent lower than the original emission standard.~~

~~To reduce emissions from switch and line-haul locomotives, the U.S. EPA in 2008 established a series of increasingly strict emission standards for new or remanufactured locomotive engines. The emission standards are implemented by "Tier" with Tier 0 as the least stringent and Tier 4 being the most stringent. U.S. EPA also established remanufacture standards for both line haul and switch engines. For Tiers 0, 1, and 2, the remanufacture standards are more stringent than the new manufacture standards for those engines for some pollutants.~~

~~To reduce emissions from on-road, heavy-duty diesel trucks, U.S. EPA established a series of cleaner emission standards for new engines, starting in 1988. The U.S. EPA promulgated the final and cleanest standards with the 2007 Heavy Duty Highway Rule. Starting with model year 2010, all new heavy-duty trucks have to meet the final emission standards specified in the rule.~~

~~On December 8, 2005, CARB approved the Regulation for Mobile Cargo Handling Equipment (CHE) at Ports and Intermodal Rail Yards (Title 13, CCR, Section 2479), which is designed to use best available control technology (BACT) to reduce diesel PM and NO_x emissions from mobile cargo handling equipment at ports and intermodal rail yards. The regulation became effective December 31, 2006. Since January 1, 2007, the regulation imposes emission performance standards on new and in-use terminal equipment that vary by equipment type.~~

~~In 1998, the railroads and CARB entered into an MOU to accelerate the introduction of Tier 2 locomotives into the SCAB. The MOU includes provisions for a fleet average in the SCAB, equivalent to U.S. EPA's Tier 2 locomotive standard by 2010. The MOU addressed NOx emissions from locomotives. Under the MOU, NOx levels from locomotives are reduced by 67 percent.~~

~~On June 30, 2005, Union Pacific Railroad (UP) and Burlington Northern Santa Fe Railroad (BNSF) entered into a Statewide Rail Yard Agreement to Reduce Diesel PM at California Rail Yards with the CARB. The railroads committed to implementing certain actions from rail operations throughout the state. In addition, the railroads prepared equipment inventories and conducted dispersion modeling for Diesel PM.~~

~~In December 2007, CARB adopted a regulation which applies to heavy-duty diesel trucks operating at California ports and intermodal rail yards. This regulation eventually will require all drayage trucks to meet 2007 on-road emission standards by 2014.~~

~~Areas where the CAAP went beyond existing regulatory requirements or accelerated the implementation of current IMO, U.S. EPA, or CARB rules include emissions reductions from ocean-going vessels through lowering vessel speeds, accelerating the introduction of 2007/2010 on-road heavy-duty drayage trucks, maximizing the use of shore-side power for ocean-going~~

vessels while at berth, early use of low-sulfur fuel in ocean-going vessels, and the restriction of high-emitting locomotives on port property. Each of these strategies is highlighted below.

HDV1 – Performance Standards for On-Road Heavy Duty Vehicles (Clean Truck Program) – This control measure requires that all on-road trucks entering the ports comply with the Clean Truck Program. Several milestones occurred early in the program implementation, but the current requirement bans all trucks not meeting the 2007 on-road heavy-duty truck emission standards from port property. This program has the effect of accelerating the introduction of clean trucks sooner than would have occurred under the state-wide drayage truck regulation framework.

OGV1 – Vessel Speed Reduction Program (VSRP): Under this voluntary program, the Port requested that ships coming into the Ports reduce their speed to 12 knots or less within 20nm of the Point Fermin Lighthouse. The program started in May 2001. The Ports expanded the program out to 40 nm from the Point Fermin Lighthouse in 2010.

OGV3/OGV4 – Low Sulfur Fuel for Auxiliary and Main Engines and Auxiliary Boilers: OGV3 reduces emissions for auxiliary engines and auxiliary boilers of OGVs during their approach and departure from the ports, including hoteling, by switching to MGO or MDO with a fuel sulfur content of 0.2 percent or less within 40 nm from Point Fermin. OGV4 Control measure reduces emissions from main engines during their approach and departure from the ports. OGV3 and OVV4 are implemented as terminal leases are renewed.

RL-3 – New and Redeveloped Near-Dock Rail Yards: The Ports have committed to support the goal of accelerating the natural turnover of line-haul locomotive fleet to at least 95 percent Tier 4 by 2020. In addition, this control measure establishes the minimum standard goal that the Class 1 (UP and BNSF) locomotive fleet associated with new and redeveloped near-dock rail yards use 15-minute idle restrictors and ULSD or alternative fuels, and as part of the environmental review process for upcoming rail projects, 40% of line-haul locomotives accessing port property will meet a Tier 3 emission standard and 50% will meet Tier 4.

PROPOSED METHOD OF CONTROL

The goal of this measure is to ensure that NOx, SOx and PM2.5 emissions reductions from port-related sources are sufficient to attain the 24-hr federal PM2.5 ambient air quality standard. This measure would establish targets for NOx, SOx, and PM2.5 for 2014 that are based on emission reductions resulting from adopted rules and other measures such as railroad MOUs and vessel speed reduction that have been adopted and are being implemented. These emissions from port related sources are included in the "baseline" emissions assumed in this plan to attain the 24-hour $PM_{2.5}$ standard. Based on current and future emission inventory projections these rules and measures will be sufficient to achieve attainment of the 24-hr federal PM2.5 ambient air quality standard. Requirements adopted pursuant to this measure will become effective only if emission levels exceed the above targets. Once triggered, the ports will be required to develop and implement a plan to reduce emissions from port related sources to meet the emission targets over a time period. The time period to achieve and maintain emission targets will be established pursuant to procedures and criteria developed during rulemaking and specified in the rule.

~~This control measure will be implemented through a District rule. Through the rule development process the AQMD staff will establish a working group, hold a series of working group meetings, and hold public workshops. The purpose of the rule development process is to allow the AQMD staff to work with a variety of stakeholders such as the Ports, potentially affected industries, other agencies, and environmental and community groups. The rule development process will discuss the terms of the proposed backstop rule and, through an iterative public process, develop proposed rule language. In addition, the emissions inventory and targets will be reviewed and may be refined if necessary. This control measure applies to the Port of Los Angeles and the Port of Long Beach, acting through their respective Boards of Harbor Commissioners. The ports may have the option to comply separately or jointly with provisions of the backstop rule.~~

~~Elements of Backstop Rule~~

~~*Summary*: This control measure will establish enforceable nonattainment pollutant emission reduction targets for the ports in order to ensure implementation of the 24-hr PM2.5 attainment strategy in the 2012 AQMP. The "backstop" rule will go into effect if aggregate emissions from port related sources exceed specified emissions targets. If emissions do not exceed such targets, the ports will have no control obligations under this control measure.~~

~~*Emissions Targets:* The emissions inventories projected for the port related sources in the 2012 AQMP are an integral part of the 24-hr PM2.5 attainment demonstration for 2014 and its maintenance of attainment in subsequent years. These emissions serve as emission targets for meeting the 24-hr PM2.5 standard.~~

~~*Scope of Emissions Included:* Emissions from all sources associated with each port, including equipment on port property, marine vessels traveling to and from the port while in California Coastal Waters, locomotives and trucks traveling to and from port-owned property while within the South Coast Air Basin. This measure will make use of the Port's annual emission inventory, either jointly or individually, as the basis for the emission targets. The inventory methodology to estimate these emissions is consistent with the CAAP methodology. Other sources – i.e. sources that are unrelated to the ports – would not in any way be subject to emission reductions under this measure (including through funding of emission reduction measures, or purchase of emission credits, by the ports or port tenants).~~

~~*Circumstances Causing Backstop Rule Regulatory Requirements to Come Into Effect:* The "backstop" requirements will be triggered if the reported aggregate emissions for 2014 for all port related sources exceed the 2014 emissions targets. The rule may also provide that it will come into effect if the target is met in 2014 but exceeded in a subsequent year. If the target is not exceeded, the ports would have no obligations under this measure.~~

~~*Requirements if Backstop Rule Goes Into Effect:* If the "backstop" rule goes into effect, the Ports would submit an Emission Control Plan to the District. The plan would include measures sufficient to bring the Ports back into compliance with the 2014 emission targets. The Ports may choose which sources would be subject to additional emission controls, and may choose any number of implementation tools that can achieve the necessary reduction. These may include clean technology funding programs, lease provisions, port tariffs, or incentives/disincentives to~~

implement measures. As described below, the ports would have no obligation under this measure to implement measures which are not cost-effective and feasible, or where the ports lack the authority to adopt an implementation mechanism. The District would approve the plan if it met the requirements of the rule.

RULE COMPLIANCE AND TEST METHODS

Compliance with this control measure will depend on the type of control strategy implemented. Compliance will be verified through compliance plans, and enforced through submittal and review of records, reports, and emission inventories. Enforcement provisions will be discussed as part of the rule development process.

COST EFFECTIVENESS AND FEASIBILITY

The cost effectiveness of this measure will be based on the control option selected. A maximum cost-effectiveness threshold will be established for each pollutant during rule development. The rule will not require any additional control strategy to be implemented which exceeds the threshold, or which is not feasible. In addition, the rule would not require any strategy to be implemented if the ports lack authority to implement such strategy. If sufficient cost-effective and feasible measures with implementation authority are not available to achieve the emissions targets by the applicable date, the District will issue an extension of time to achieve the target. It is the District's intent that during such extension, the ports and regulatory agencies would work collaboratively to develop technologies and implementation mechanisms to achieve the target at the earliest date feasible.

IMPLEMENTING AGENCY

The District has authority to adopt regulations to reduce or mitigate emissions from indirect sources, i.e. facilities such as ports that attract on- and off-road mobile sources, and has certain authorities to control emissions from off-road mobile sources themselves. These authorities include the following:

Indirect Source Controls. State law provides the District authority to adopt rules to control emissions from "indirect sources." The Clean Air Act defines an indirect source as a "facility, building, structure, installation, real property, road or highway which attracts, or may attract, mobile sources of pollution." 42 U.S.C. § 7410(a)(5)(C); CAA § 110(a)(5)(C). Districts are authorized to adopt rules to "reduce or mitigate emissions from indirect sources" of pollution. (Health & Safety Code § 40716(a)(1)). The South Coast District is also required to adopt indirect source rules for areas where there are "high-level, localized concentrations of pollutants or with respect to any new source that will have a significant impact on air quality in the South Coast Air Basin." (Health & Safety Code § 40440(b)(3)). The federal Court of Appeals has held that an indirect source rule is not a preempted "emission standard." *National Association of Home Builders v. San Joaquin Valley Unified Air Pollution Control District*, 627 F.3d. 730 (9th Cir. 2010)

Nonvehicular (Off-Road) Source Emissions Standards. Under California law "local and regional authorities," including the ports and the District, have primary responsibility for the control of air pollution from all sources other than motor vehicles. (Health & Safety Code § 40000). Such "nonvehicular" sources include marine vessels, locomotives and other non-road equipment. CARB has concurrent authority under state law to regulate these sources. The federal Clean Air Act preempts states and local governments from adopting emission standards and other requirements for new locomotives (Clean Air Act § 209(e); 42 U.S.C.§ 7543(e)), but California may establish and enforce standards for other non-road sources upon receiving authorization from EPA (*Id.*). No such federal authorization is required for state or local fuel, operational, or mass emission limits for marine vessels, locomotives or other non-road equipment. (40 CFR Pt. 89, Subpt. A, App.A; *Engine Manufacturers Assn. v. Environmental Protection Agency*, 88 F.3d. 1075 (DC Cir. 1996)).

Fuel Sulfur Limits. With respect to non-road engines, including marine vessels and locomotives, the District and CARB have concurrent authority to establish fuel limits, such as those on sulfur content. As was noted above, fuel regulations for non-road equipment are not preempted by the Clean Air Act and do not require EPA authorization.

Operational Limits. The District has authority under state law to establish operational limits for nonvehicular sources such as marine vessels, locomotives, and cargo handling equipment (to the extent cargo handling equipment is "nonvehicular"). As was discussed above, operational limits for non-road equipment are not preempted by the Clean Air Act. In addition, the District may adopt operational limits for motor vehicles such as indirect source controls and transportation controls without receiving an authorization or waiver from U.S. EPA.

REFERENCES

San Pedro Bay Ports Clean Air Action Plan, 2010 Update, October 2010

Southern California International Gateway Project Draft Environmental Impact Report, Port of Los Angeles, September 2011

SCAQMD, 2007 Air Quality Management Plan, Appendix IV-A, June 2007

ATTACHMENT 18.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Final Supplement to the 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin

February 2015

Executive Officer
Barry R. Wallerstein, D. Env.

Deputy Executive Officer
Planning, Rule Development and Area Sources
Elaine Chang, DrPH

Assistant Deputy Executive Officer
Planning, Rule Development and Area Sources
Philip Fine, Ph.D.

Author:	Joseph Cassmassi	Planning and Rules Manager
	Sang-Mi Lee, Ph.D.	Program Supervisor
	Kalam Cheung, Ph.D.	Air Quality Specialist
	Michael Krause	Program Supervisor
Reviewed By:	Barbara Baird	Chief Deputy Counsel
	Megan Lorenz	Senior Deputy District Counsel

TABLE F-1

Updated 2012 SIP Emission Reduction Commitments to Attain 24-hour PM2.5 NAAQS *(35 μg/m³)*

Control Measure #	CONTROL MEASURE TITLE	2012 AQMP			PROPOSED in SUPPLEMENT		
		Adoption Date	COMMITMENT	ACHIEVED	Adoption Date	COMMITMENT	ACHIEVED
			2014	2014		2015	2015
PM2.5 EMISSIONS							
IND-01	Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Facilities [R4001]	2013	N/A[1]	N/A[1]	**2015**	N/A[1]	N/A[1]
BCM-01	Further Reductions from Residential Wood Burning Devices [R445]	2013	7.1	7.1	2013	7.1	7.1
BCM-02	Further Reductions from Open Burning [R444]	2013	4.6	4.6	2013	4.6	4.6
MCS-01	Application of All Feasible Measures Assessment	Ongoing	TBD[2]	TBD	Ongoing	TBD[2]	TBD
BCM-03	Emission Reductions from Under-Fired Charbroilers [R1138]	2015	TBD[3]	TBD	**2017**	TBD[3]	TBD
EDU-01	Further Criteria Pollutant Reductions from Education, Outreach and Incentives	Ongoing	N/A[4]	N/A	Ongoing	N/A[4]	N/A
	TOTAL PM2.5 EMISSION REDUCTIONS (TPD)		**11.7**	**11.7**	**--**	**11.7**	**11.7**
NOx EMISSIONS							
CMB-01	Further NOx Reductions from RECLAIM [Reg XX]	2013	2.0[5]	--	**2015**	2.0[5]	--
IND-01	Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Facilities [R4001]	2013	N/A[1]	N/A[1]	**2015**	N/A[1]	N/A[1]
	TOTAL NOx EMISSION REDUCTIONS (TPD)		**2.0**	--	--	**2.0**	--
SOx EMISSIONS							
IND-01	Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Facilities [R4001]	2013	N/A[1]	N/A[1]	**2015**	N/A[1]	N/A[1]
	TOTAL SOx EMISSION REDUCTIONS (TPD)		--	**N/A[1]**	--	--	**N/A[1]**
NH3 EMISSIONS							
BCM-04	Further Ammonia Reductions from Livestock Waste [R1127] - Phase I (*Tech Assessment*)	2013-2014	TBD[2]	TBD	**2015 - 2016**	TBD[2]	TBD
	-Phase II (*Rule Amendment*)	TBD	TBD[2]	TBD	TBD	TBD[2]	TBD
	TOTAL NH3 EMISSION REDUCTIONS (TPD)		TBD	TBD	--	--	--

[1] Measure is designed to ensure reductions assumed to occur will in fact occur
[2] Reductions to be determined once the technical assessment is complete, and inventory and control approach are identified
[3] Will submit into SIP once technically feasible and cost effective options are identified
[4] Reductions cannot be quantified due to the nature of the measure (e.g., outreach, incentive programs)
[5] Emission reductions are included in the SIP as a contingency measure, if triggered

ATTACHMENT 19.

BOARD MEETING DATE: February 6, 2015 AGENDA NO. 22

PROPOSAL: Supplement to 24-hour PM2.5 State Implementation Plan for South Coast Air Basin

SYNOPSIS: The purpose of this Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin is to demonstrate attainment of the 2006 24-hour PM2.5 National Ambient Air Quality Standard by 2015 under Clean Air Act, Title 1, Part D, Subpart 4, along with updates to the transportation conformity budgets, analysis of Reasonably Available Control Measures/Reasonably Available Control Technology, control measure commitments submitted in the 2012 AQMP, and other Subpart 4 requirements.

COMMITTEE: Mobile Source Committee, January 23, 2015, Reviewed

RECOMMENDED ACTIONS:
Adopt the attached resolution:

1. Determining that the Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin is exempt from the requirements of CEQA; and
2. Approving the attached Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin for Submittal into the SIP.

Barry R. Wallerstein, D.Env.
Executive Officer

BB EC:PF:MK

Background

The 2012 AQMP was approved by the SCAQMD Board in December 2012, with additional amendments approved in February 2013, and was subsequently submitted to CARB and the U.S. EPA for inclusion into the SIP. That plan demonstrated projected attainment of the 2006 24-hour PM2.5 National Ambient Air Quality Standards (NAAQS) (35 $\mu g/m^3$) by 2014. However, a recent court decision (*Natural Res. Def. Council v. EPA*, 706 F.3d 428 (D.C. Cir. 2013)) compels U.S. EPA to evaluate the 24-

ATTACHMENT B

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Draft Supplement to the 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin

January 2015

Executive Officer
Barry R. Wallerstein, D. Env.

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Elaine Chang, DrPH

Assistant Deputy Executive Officer
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	Michael Krause	Program Supervisor
Reviewed By:	Barbara Baird	Chief Deputy Counsel
	Megan Lorenz	Senior Deputy District Counsel

ATTACHMENT F

UPDATED LIST OF CONTROL STRATEGY COMMITMENTS

UPDATE OF COMMITMENTS

The short-term PM2.5 control measures in the 2012 AQMP included stationary source control measures, technology assessments, an indirect source measure and one education and outreach measure. The development of the control measures considered the emissions reductions and the adoption and implementation dates that would result in attainment of the 2006 24-hour PM2.5 standard of 35 $\mu g/m^3$. In some cases, only a range of possible emissions reductions could be determined, and for some others, the magnitude of potential reductions could not be determined at that time. The short-term PM2.5 control measures were presented in Table 4-2 (Chapter 4) of the 2012 AQMP, and the following table, Table F-1 updates that information, thus replacing Table 4-2 in the 2012 AQMP for inclusion in the 24-hour PM2.5 SIP. Note that these changes do not affect the magnitude or timing of emission reductions commitments supporting the attainment demonstration in the 2012 AQMP and this Supplement. The emission reduction commitment for CMB-01 (Further NOx Reductions from RECLAIM) was as a contingency measure only for PM2.5, and thus does not affect the attainment demonstrations.

The measures target a variety of source categories: Combustion Sources (CMB), PM Sources (BCM), Indirect Sources (IND), Educational Programs (EDU) and Multiple Component Sources (MCS).

Two PM2.5 control measures, BCM-01 (Further Reductions from Residential Wood Burning Devices) and BCM-02 (Further Reductions from Open Burning), were adopted in 2013 in the form of amendments to Rules 445 (Wood Burning Devices) and 444 (Open Burning), respectively. Together, these amendments generated a total of 11.7 tons of PM2.5 per day reductions on an episodic basis. Control measure CMB-01 (Further NOx Reductions from RECLAIM), which was submitted as a contingency measure, is anticipated to be considered by the SCAQMD Governing Board in the first half of 2015. The rulemaking process for control measure IND-01 (Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities) is underway, with anticipated SCAQMD Governing Board consideration in 2015 and the technology assessment for control measure BCM-04 (Further Ammonia Reductions from Livestock Waste) will now be adopted in the 2015 to 2016 timeframe with rulemaking to follow, if technically feasible and cost-effective. The BCM-03 (Emission Reductions from Under-Fired Charbroilers) technology assessment is ongoing and is expected to be completed by 2015 with rule development to follow by 2017.

Pursuant to CAA Section 172(c)(9), SIPs are required to include contingency measures to be undertaken if the area fails to make reasonable further progress or attain the NAAQS by the attainment date. The contingency measures "should provide for emission reductions equivalent to about one year of reductions needed for reasonable further progress (RFP)" (79 FR 20642-20645) The 2012 AQMP relied on excess air quality improvement from the control strategy as well as potential NOx reductions from control measure CMB-01 (Further NOx Reductions from

ATTACHMENT 20.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Final Supplement to the 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin

February 2015

Executive Officer
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	TOTAL NOx EMISSION REDUCTIONS (TPD)		**2.0**	--	--	**2.0**	--
SOx EMISSIONS							
IND-01	Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Facilities [R4001]	2013	N/A[1]	N/A[1]	**2015**	N/A[1]	N/A[1]
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BCM-04	Further Ammonia Reductions from Livestock Waste [R1127] - Phase I (*Tech Assessment*)	2013-2014	TBD[2]	TBD	**2015 - 2016**	TBD[2]	TBD
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	TOTAL NH3 EMISSION REDUCTIONS (TPD)		TBD	TBD	--	--	--

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[3] Will submit into SIP once technically feasible and cost effective options are identified
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BOARD MEETING DATE: February 6, 2015 AGENDA NO. 22

PROPOSAL: Supplement to 24-hour PM2.5 State Implementation Plan for South Coast Air Basin

SYNOPSIS: The purpose of this Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin is to demonstrate attainment of the 2006 24-hour PM2.5 National Ambient Air Quality Standard by 2015 under Clean Air Act, Title 1, Part D, Subpart 4, along with updates to the transportation conformity budgets, analysis of Reasonably Available Control Measures/Reasonably Available Control Technology, control measure commitments submitted in the 2012 AQMP, and other Subpart 4 requirements.

COMMITTEE: Mobile Source Committee, January 23, 2015, Reviewed

RECOMMENDED ACTIONS:
Adopt the attached resolution:
1. Determining that the Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin is exempt from the requirements of CEQA; and
2. Approving the attached Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin for Submittal into the SIP.

Barry R. Wallerstein, D.Env.
Executive Officer

BB EC:PF:MK

Background

The 2012 AQMP was approved by the SCAQMD Board in December 2012, with additional amendments approved in February 2013, and was subsequently submitted to CARB and the U.S. EPA for inclusion into the SIP. That plan demonstrated projected attainment of the 2006 24-hour PM2.5 National Ambient Air Quality Standards (NAAQS) (35 $\mu g/m^3$) by 2014. However, a recent court decision (*Natural Res. Def. Council v. EPA*, 706 F.3d 428 (D.C. Cir. 2013)) compels U.S. EPA to evaluate the 24-

ATTACHMENT E

~~DEMONSTRATION OF COMPLIANCE WITH~~
CLEAN AIR ACT, SUBPART 4, SECTION 189(E)
AND OTHER PRECURSOR REQUIREMENTS

BACKGROUND

PM2.5 has four major precursors, other than direct PM2.5 emissions, that may contribute to the development of the ambient PM2.5: ammonia, NOx, SOx, and VOC. The 2012 AQMP modeling analysis resulted in a set of ratios that reflect the relative amounts of ambient PM2.5 improvements expected from reductions of PM2.5 precursors emissions. For instance, Table 5-2 in Chapter 5 of the 2012 AQMP demonstrates that one ton of VOC emission reductions is only 30 percent as effective as one ton of NOx for lowering 24-hour PM2.5 concentrations. VOC reductions are only four percent and two percent as effective as SOx and direct PM2.5 reductions, respectively, on a per ton basis. Thus, VOC controls have a much less significant impact on ambient 24-hour PM2.5 levels relative to other PM2.5 precursors.

EMISSIONS CONTRIBUTION

While similar relative contributions to PM2.5 have not been developed for ammonia, the mass contributions of ammonium sulfate and ammonium nitrate are accounted for in the SOx and NOx contributions. This essentially assumes that PM2.5 formation in the basin is not ammonia limited with sufficient ammonia in the atmosphere to combine with available nitrates and sulfates. Under these conditions, ammonia controls are much less effective at reducing ambient PM2.5 levels than other precursors.

While the 2012 AQMP ammonia emissions inventory was close to 100 ton per day (TPD), the inventory was highly variable in terms of source contributions and spatial distribution throughout the Basin. As presented in Table E-1, major sources accounted for 1.7 TPD or less than 2 percent of the Basin inventory. Furthermore, only four major source emitters were noted in the inventory with the single highest major source accounting for less than 0.50 TPD direct emissions. All four major sources are located in the western Basin.

TABLE E-1

VOC and Ammonia Emissions Contributions

POLLUTANT	ALL SOURCES *(Tons Per Day)*	MAJOR SOURCES *(Tons Per Day)*	RELATIVE CONTRIBUTION
VOC	451[1]	8.0[2]	1.8%
Ammonia	99[3]	1.7[2]	1.7%

[1] 2012 AQMP - Appendix III: Base and Future Year Emission Inventory; 2014 Annual Average Emissions by Source Category in South Coast Air Basin

[2] 2013 SCAQMD Annual Emission Reporting

[3] ARB Almanac 2013 – Appendix B: County Level Emissions and Air Quality by Air Basin; County Emission Trends

Prior to the 2003 AQMP, significant effort was undertaken to develop inter-pollutant trading ratios to meet NSR emissions reduction goals. The primary mechanism was to reduce SOx to offset PM emissions. Aerosol chemical mechanisms embedded in box and regional modeling platforms where used to estimate the formation rates of ammonium sulfate from local sulfur emissions to establish a SOx emissions to PM formation ratio. The analyses determined that the influence of ammonia emissions was spatially varying where coastal-metro zone (west Basin) trading ratios of SOX to PM valued more than 5:1 per unit SOx emissions to PM. Conversely, eastern Basin ratios valued 1:1 since ammonia emissions were abundant and all SOx emissions were likely to rapidly transform to particulate ammonium sulfate. The inter-pollutant trades made during this time were reviewed by U.S. EPA and were included by reference to the EPA sponsored Inter-Pollutant Trading Working Group[4].

As part of the controls strategy evaluation for future PM2.5 attainment, additional set of analyses were conducted to test the potential impact of the use of SCR as a NOx control mechanism for mobile sources in the Basin. The analyses assumed that light as well as heavy duty diesels would use the control equipment potentially resulting in a 78-85 percent increase in ammonia from those source categories. The results of the analysis, presented at the September 24, 2010 SCAQMD Mobile Source Committee Meeting[5], indicated that a 10 TPD increase in ammonia would result in a net 0.22 $\mu g/m^3$ increase in regional PM2.5 concentrations. The emissions mostly followed heavy traffic corridors including freeways and major arterials. Regardless, the minimal PM2.5 simulated increase from a 10 percent increase in the Basin inventory reflected the degree of saturation of ammonia in the Basin and minimal sensitivity of changes in ammonia emissions to PM2.5 production.

During the development of the 2012 AQMP, a sensitivity analysis was conducted to test the potential impact of using a feed supplement applied to dairy cows on a forecasted basis that would reduce bovine ammonia emissions by 50 percent. The analysis focused on the Mira Loma area where more than 70 percent of the Basin's dairy emissions originate. In the sensitivity analysis a total of 2.9 TPD emissions were reduced from 103 dairy sources, or an average of 0.028 TPD per source (roughly one tenth of major source threshold)[6]. Since the Mira Loma monitoring station was embedded among the dairy sources, the reduction of the ground level emissions resulted in an approximate 0.16 $\mu g/m^3$ reduction in PM2.5. As in the aforementioned analyses, the reduction in regional ammonia emissions resulted in a minimal PM2.5 impact per ton emissions reduced.

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and Forecasts 2012 Emissions. NOTE: 2012 AQMP – Appendix III provides 2014 Annual Average of 102 tpd of NH3; the relative contribution would not change (1.7/102 = 1.7%)

[4] "Preliminary Assessment of Methods for Determining Interpollutant Offsets", Correspondence with Scott Bohning U.S. EPA Region IX, May 6, 2002.

[5] "Impact of Higher On- and Off-road Ammonia Emissions on Regional PM2.5," Item 3, SCAQMD, Mobile Source Committee, September 24, 2010.

[6] "2008 24-hour PM2.5 Model Performance/Preliminary Attainment Demonstration," Item #2, Scientific Technical Modeling Peer Group Advisory Committee, June 14, 2012.

Thus, ammonia controls also have a much less significant impact on 24-hour PM2.5 exceedances than other precursors. Note however, that the effect on annual PM2.5 levels will be further evaluated in the 2016 AQMP.

SECTION 189(E)

Clean Air Act (CAA), Title I, Part D, Subpart 4, Section 189(e) states that control requirements applicable to plans in effect for major stationary PM sources shall also apply to major stationary sources of PM precursors, except where such sources does not contribute significantly to PM levels which exceed the standard in the area. According to the U.S. EPA, a major source in a nonattainment area is a source with emission of any one air pollutant greater than or equal to the major source thresholds in a nonattainment area. This threshold is generally 100 tons per year (tpy) or lower depending on the nonattainment severity for all sources. Emissions are based on "potential to emit" and include the effect of add-on emission control technology, if enforceable (*must be able to show continual compliance with the limitation or requirement*).

Major stationary sources of NOx and SOx are already subject to emission offsets (e.g., Regulation XX (RECLAIM) and Regulation XII (New Source Review)). Thus, to demonstrate compliance with CAA Subpart 4, Section 189(e), an analysis was conducted of the emissions of VOC and ammonia from major stationary sources during rule development of amended Rule 1325 (*Federal PM2.5 New Source Review Program*) approved by the SCAQMD Governing Board on December 5, 2014 (http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2014/2014-dec5-038.pdf?sfvrsn=2). That analysis concluded that VOC and ammonia from major sources (emitting 100 tpy or greater) contribute less than 2% of the overall Basin-wide VOC and ammonia emissions (Table E-1), and by extension, do not contribute significantly to PM levels. Furthermore, both VOC and ammonia are subject to requirements for Best Available Control Technology (BACT) under existing New Source Review (NSR) at a zero threshold, so those emission will still be minimized. This analysis was also included in the final approved staff report for PAR 1325.

~~Thus, the SCAQMD believes the requirements of CAA Subpart 4, Section 189(e) are satisfied and thus request that the Administrator of U.S. EPA makes this determination pursuant to this Section.~~

NEW SOURCE REVIEW

Because ammonia from major stationary sources does not significantly contribute to PM levels (see Table E-1), ammonia emission sources have not historically been subject to NSR offset requirements. However, for permitted ammonia sources, SCAQMD Rule 1303 (*NSR Requirements)* requires denial of "the Permit to Construct for any relocation, or for any new or

modified source which results in an emission increase of any nonattainment air contaminant, any ozone depleting compound, or ammonia, unless BACT is employed for the new or relocated source or for the actual modification to an existing source." No new major stationary source of ammonia is expected to be introduced to the region given that these new sources would be subject to BACT requirements (under SCAQMD Rule 1303 (*NSR Requirements*), BACT shall be at least as stringent as Lowest Achievable Emissions Rate (LAER) as defined in the federal Clean Air Act Section 171(3) [42 U.S.C. Section 7501(3)]). As mentioned above, there are currently only four major sources of ammonia (emitting more than 100 tons per year) in the South Coast Air Basin. If these sources were new to the region, they would be subject to BACT as stringent as LAER and not expected to reach 100 tons per year so as to be classified as a major source, thus not subject to NSR offset requirements.

However unlikely, even if new or modified major sources of ammonia increase ammonia emissions in the Basin, the ammonia contribution from major sources in the South Coast Air Basin will still not be a significant contributor to PM2.5 levels given that all current major sources of ammonia account for less than two percent of the overall ammonia emissions inventory. For instance, in the extremely unlikely event that ammonia emissions from major sources double, they would still contribute less than five percent of the overall ammonia inventory.

ATTACHMENT 21.

ATTACHMENT A
RESOLUTION NO. 12-19

A Resolution of the South Coast Air Quality Management District (AQMD or District) Governing Board Certifying the Final Program Environmental Impact Report for the 2012 Air Quality Management Plan (AQMP), adopting the Draft Final 2012 AQMP, to be referred to after adoption as the Final 2012 AQMP, and to be submitted into the California State Implementation Plan.

WHEREAS, the U.S. Environmental Protection Agency (U.S. EPA) promulgated a 24-hour fine particulate matter (PM2.5) national ambient air quality standard (NAAQS or standard) in 2006, and 8-hour ozone NAAQS in 1997, followed up by implementation rules which set forth the classification and planning requirements for State Implementation Plans (SIP); and

WHEREAS, the South Coast Air Basin was classified as nonattainment for the 2006 24-hour PM2.5 standard on December 14, 2009, with an attainment date by December 14, 2014; and

WHEREAS, the U.S. EPA revoked the 1-hour ozone standard effective June 15, 2005, but on September 19, 2012 issued a proposed call for a California SIP revision for the South Coast to demonstrate attainment of the 1-hour ozone standard; and

WHEREAS, the 1997 8-hour ozone standard became effective on June 15, 2004, with an attainment date for the South Coast of **June 15**, 2024; and amended 12-7-12 sm

WHEREAS, the South Coast Air Basin was classified as "extreme" nonattainment for 8-hour ozone for the 1997 standard with attainment dates by 2024; and

WHEREAS, EPA approved the South Coast SIP for 8-hour ozone on March 1, 2012; and

WHEREAS, the federal Clean Air Act requires SIPs for regions not in attainment with the NAAQS be submitted no later than three years after the nonattainment area was designated, whereby, a SIP for the South Coast Air Basin must be submitted for 24-hour PM2.5 by December 14, 2012; and

WHEREAS, the South Coast Air Quality Management District has jurisdiction over the South Coast Air Basin and the desert portion of Riverside County known as the Coachella Valley; and

WHEREAS, 40 Code of Federal Regulations (CFR) Part 93 requires that transportation emission budgets for certain criteria pollutants be specified in the SIP, and

WHEREAS, 40 CFR Part 93.118(e)(4)(iv) requires a demonstration that transportation emission budgets submitted to U.S. EPA are "consistent with applicable requirements for reasonable further progress, attainment, or" maintenance (whichever is relevant to the given implementation plan submission); and

WHEREAS, the South Coast Air Quality Management District is committed to comply with the requirements of the federal Clean Air Act; and

WHEREAS, the Lewis-Presley Air Quality Management Act requires the District's Governing Board adopt an AQMP to achieve and maintain all state and federal air quality standards; to contain deadlines for compliance with federal primary ambient air quality standards; and to achieve the state standards and federal secondary air quality standards by the application of all reasonably available control measures, by the earliest date achievable (Health and Safety Code Section 40462) and the California Clean Air Act requires the District to endeavor to achieve and maintain state ambient air quality standards for ozone, carbon monoxide, sulfur dioxide, and nitrogen dioxide by the earliest practicable date (Health and Safety Code Section 40910); and

WHEREAS, the California Clean Air Act requires a nonattainment area to evaluate and, if necessary, update its AQMP under Health & Safety Code §40910 triennially to incorporate the most recent available technical information; and

WHEREAS, the South Coast Air Quality Management District Governing Board is committed to comply with the requirements of the California Clean Air Act; and

WHEREAS, the South Coast Air Quality Management District is unable to specify an attainment date for state ambient air quality standards for 8-hour ozone, PM2.5, and PM10, however, the 2012 AQMP, in conjunction with earlier AQMPs contains every feasible control strategy and measure to ensure progress toward attainment and the AQMP will be reviewed and revised to ensure that progress toward all standards is maintained; and

WHEREAS, the 2012 AQMP must meet all applicable requirements of state law and the federal Clean Air Act; and

WHEREAS, the South Coast Air Quality Management District Governing Board is committed to achieving healthful air in the South Coast Air Basin and all other parts of the District at the earliest possible date; and

WHEREAS, the 2012 AQMP is the result of 17 months of staff work, public review and debate, and has been revised in response to public comments; and

WHEREAS, the 2012 AQMP incorporates updated emissions inventories, ambient measurements, new meteorological episodes, improved air quality modeling analyses, and updated control strategies by the District, and the Southern California Association of Governments (SCAG) and will be forwarded to the California Air Resources Board (CARB) for any necessary additions and submission to EPA; and

WHEREAS, as part of the preparation of an AQMP, in conjunction or coordination with public health agencies such as CARB and the Office of Environmental Health Hazard Assessment (OEHHA), a report has been prepared and peer-reviewed by the Advisory Council on the health impacts of particulate matter air pollution in the South Coast Air Basin pursuant to California Health and Safety Code § 40471, which has been included as part of Appendix I (Health Effects) of the 2012 AQMP together with any required appendices; and

WHEREAS, the 2012 AQMP establishes transportation conformity budgets for the 24-hour PM2.5 standard based on the latest planning assumptions; and

WHEREAS, the AQMP satisfies all the attainment deadlines for federal ambient air quality standards for 24-hour PM2.5 and 1-hour ozone NAAQS; and

WHEREAS, the 2012 AQMP satisfies the planning requirements set forth in the federal and California Clean Air Acts; and

WHEREAS, the 2012 AQMP includes the 24-hour PM2.5 attainment demonstration plan, reasonably available control measure (RACM) and reasonably available control technology (RACT) determinations, and transportation conformity budgets for the South Coast Air Basin; and

WHEREAS, the 2012 AQMP updates the U.S. EPA approved 8-hour ozone control plan with new measures designed to reduce reliance on the federal Clean Air Act (CAA) Section 182(e)(5) long-term measures for NOx and VOC reductions; and

WHEREAS, in order to reduce reliance on the CAA Section 182(e)(5) long-term measures, the SCAQMD will need emission reductions from sources outside of its primary regulatory authority and from sources that may lack, in some cases, the financial wherewithal to implement technology with reduced air pollutant emissions; and

WHEREAS, a majority of the measures identified to reduce reliance on the CAA Section 182(e)(5) long-term measures rely on continued and sustained funding to incentivize the deployment of the cleanest on-road vehicles and off-road equipment; and

WHEREAS, the 2012 AQMP includes a new demonstration of 1-hour ozone attainment (Appendix VII) and vehicle miles travelled (VMT) emissions offsets (Appendix VIII), as per recent proposed U.S. EPA requirements; and

WHEREAS, the South Coast Air Quality Management District Governing Board finds and determines with certainty that the 2012 AQMP is considered a "project" pursuant to CEQA; and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA) a Notice of Preparation (NOP) of a Draft Program Environmental Impact Report (PEIR) and Initial Study for the 2012 AQMP was prepared and released for a 30-day public comment period, preliminarily setting forth the potential adverse environmental impacts of adopting and implementing the 2012 AQMP; and

WHEREAS, pursuant to CEQA a Draft PEIR on the 2012 AQMP (State Clearinghouse Number 2012061093), including the NOP and Initial Study and responses to comments on the NOP and Initial Study, was prepared and released for a 45-day public comment period, setting forth the potential adverse environmental impacts of adopting and implementing the 2012 AQMP; and

WHEREAS, the Draft PEIR on the 2012 AQMP included an evaluation of project-specific and cumulative direct and indirect impacts from the proposed project and four project alternatives; and

WHEREAS, the AQMD staff reviewed the 2012 AQMP and determined that it may have the potential to generate significant adverse environmental impacts; and

WHEREAS, the Draft PEIR on the 2012 AQMP has been revised based on comments received and modifications to the draft 2012 AQMP and all comments received were responded to, such that it is now a Final PEIR on the 2012 AQMP; and

WHEREAS, the Governing Board finds and determines, taking into consideration the factors in §(d)(4)(D) of the Governing Board Procedures, that the modifications that have been made to 2012 AQMP, since the Draft PEIR on the 2012 AQMP was made available for public review would not constitute significant new information within the meaning of the CEQA Guidelines; and

WHEREAS, none of the modifications to the 2012 AQMP alter any of the conclusions reached in the Draft PEIR on the 2012 AQMP, nor provide new information of substantial importance that would require recirculation of the Draft PEIR on the 2012 AQMP pursuant to CEQA Guidelines §15088.5; and

WHEREAS, it is necessary that the adequacy of the Final PEIR on the 2012 AQMP be determined by the AQMD Governing Board prior to its certification; and

WHEREAS, it is necessary that the adequacy of responses to all comments received on the Draft PEIR on the 2012 AQMP be determined prior to its certification; and

WHEREAS, it is necessary that the AQMD prepare Findings and a Statement of Overriding Considerations pursuant to CEQA Guidelines §§15091 and 15093, respectively, regarding adverse environmental impacts that cannot be mitigated to insignificance; and,

WHEREAS, Findings and a Statement of Overriding Considerations have been prepared and are included in Attachment 2 to this Resolution, which is attached and incorporated herein by reference; and

WHEREAS, the provisions of Public Resources Code §21081.6 – Mitigation Monitoring and Reporting - require the preparation and adoption of implementation plans for monitoring and reporting measures to mitigate adverse environmental impacts identified in environmental documents; and

WHEREAS, staff has prepared such a plan which sets forth the adverse environmental impacts, mitigation measures, methods, and procedures for monitoring and reporting mitigation measures, and agencies responsible for monitoring mitigation measure, which is included as Attachment 2 to the Resolution and incorporated herein by reference; and

WHEREAS, the South Coast Air Quality Management District Governing Board voting on this Resolution has reviewed and considered the Final Program Environmental Impact Report on the 2012 AQMP, including responses to comments on the Draft Program Environmental Impact Report on the 2012 AQMP, the Statement of Findings, Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting Plan; and

WHEREAS, the Draft Socioeconomic Report on the 2012 AQMP was prepared and released for public review and comment; and

WHEREAS, the Draft Socioeconomic Report for the 2012 AQMP is revised based on comments received and modifications to the Draft 2012 AQMP such that it is now a Draft Final Socioeconomic Report for the 2012 AQMP; and

WHEREAS, the 2012 AQMP includes every feasible measure and an expeditious adoption schedule; and

WHEREAS, the CARB and the U.S. EPA have the responsibility to control emissions from motor vehicles, motor vehicle fuels, and non-road engines and consumer products which are primarily under their jurisdiction representing over 80 percent of ozone precursor emissions in 2023; and

WHEREAS, significant emission reductions must be achieved from sources under state and federal jurisdiction for the South Coast Air Basin to attain the federal air quality standards; and

WHEREAS, the formal deadline for submission of the 24-hour PM2.5 attainment plan is December 14, 2012, and the formal deadline for submission of the 1-hour ozone SIP revision is expected to be late 2013 or early 2014, but since the emissions inventory and control strategy for ozone has already been developed for the 2012 AQMP, and attaining the 1-hour ozone standard can rely on the same strategy for the 8-hour ozone standard, an attainment demonstration for the 1-hour ozone standard is included as an Appendix to the 2012 AQMP; and

WHEREAS, the 1-hour ozone attainment demonstration (Appendix VII) uses the same base year (2008) and future year inventories as presented in Appendix III of the 2012 AQMP and satisfies the pre-base year offset requirement by including pre-base year emissions in the growth projections, consistent with 40 CFR § 51.165(a)(3)(i)(C)(1), as described on page III-2-54 of Appendix III of the 2012 AQMP.

WHEREAS the South Coast Air Quality Management District Governing Board hereby requests that CARB commit to submitting contingency measures as required by Section 182(e)(5) as necessary to meet the requirements for demonstrating attainment of the 1-hr ozone standard; and

WHEREAS, the South Coast Air Quality Management District Governing Board directs staff to move expeditiously to adopt and implement feasible new control measures to achieve long-term reductions while meeting all applicable public notice and other regulatory development requirements; and

WHEREAS, the South Coast Air Quality Management District has held six public workshops on the Draft 2012 AQMP, one public workshop on the Draft Socioeconomic Report, four public hearings throughout the four-county region in September on the Revised Draft 2012 AQMP, 14 AQMP Advisory Group meetings, 11 Scientific, Technical, and Modeling, Peer Review Advisory Group meetings, four public hearings in November throughout the four-county region on the Draft Final 2012 AQMP, and one adoption hearing pursuant to section 40466 of the Health and Safety Code; and

WHEREAS, pursuant to section 40471(b) of the Health and Safety Code, as part of the six public workshops on the Draft 2012 AQMP, four public hearings on the Revised Draft 2012 AQMP, the four public hearings on the Draft Final 2012 AQMP, and adoption hearing, public testimony and input were taken on Appendix I (Health Effects); and

WHEREAS, the record of the public hearing proceedings is located at South Coast Air Quality Management District, 21865 Copley Drive, Diamond Bar, California 91765, and the custodian of the record is the Clerk of the Board; and

WHEREAS, an extensive outreach program took place that included over 75 meetings with local stakeholders, key government agencies, focus groups, topical workshops, and over 65 presentations on the 2012 AQMP provided; and

WHEREAS, the record of the CEQA proceedings is located at South Coast Air Quality Management District, 21865 Copley Drive, Diamond Bar, California 91765, and the custodian of the record is the Assistant Deputy Executive Officer, Planning, Rule Development, and Area Sources.

NOW, THEREFORE BE IT RESOLVED, that the South Coast Air Quality Management District Governing Board does hereby certify that the Final PEIR for the 2012 AQMP including the responses to comments has been completed in compliance with the requirements of CEQA and finds that the Final PEIR on the 2012 AQMP, including responses to comments, was presented to the AQMD Governing Board, whose members reviewed, considered and approved the information therein prior to acting on the 2012 AQMP; and finds that the Final PEIR for the 2012 AQMP reflects the AQMD's independent judgment and analysis; and

BE IT FURTHER RESOLVED, that the District will develop, adopt, submit, and implement the short-term PM2.5 control measures as identified in Table 4-2 and the 8-hour ozone measures in Table 4-4 of Chapter 4 in the 2012 AQMP (Main Document) as expeditiously as possible in order to meet or exceed

the commitments identified in Tables 4-10 and 4-11 of the 2012 AQMP (Main Document), and to substitute any other measures as necessary to make up any emission reduction shortfall.

BE IT FURTHER RESOLVED, the District commits to update AQMP emissions inventories, baseline assumptions and control measures as needed to ensure that the best available data is utilized and attainment needs are met.

BE IT FURTHER RESOLVED, the District commits to conduct a review of its socioeconomic analysis methods during 2013, convene a panel of experts, and update assessment methods and approaches, as appropriate.

BE IT FURTHER RESOLVED, the District commits to continue working with the ports on the implementation of control measure IND-01 (Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Sources).

BE IT FURTHER RESOLVED, that the Executive Officer is hereby directed to enhance outreach and education efforts related to the "Check before you Burn" residential wood burning curtailment program, and to expand the current incentive programs for gas log buydown and to include potentially wood stove replacements working closely with U.S. EPA and other stakeholders.

amended 12-7-12 BA

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board does hereby direct staff to work in conjunction with CARB to provide annual reports to U.S. EPA describing progress towards meeting Section 182(e)(5) emission reduction commitments.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, pursuant to the requirements of Title 14 California Code of Regulations, does hereby adopt the Statement of Findings pursuant to §15091, and adopts the Statement of Overriding Considerations pursuant to §15093, included in Attachment 2 and incorporated by reference; and

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, does hereby adopt the Mitigation Monitoring and Reporting Plan, as required by Public Resources Code, Section 21081.6, attached hereto and incorporated by reference; and

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board finds that the mobile source control measures contained in Appendix IV-B are technically feasible and cost-effective and requests that CARB consider them in any future incentives programs or rulemaking.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board does hereby direct staff to work with state agencies and state legislators, federal agencies and U.S. Congressional and Senate members to identify funding sources and secure funding for the expedited replacement of older existing vehicles and off-road equipment to help reduce the reliance on the CAA Section 182(e)(5) long-term measures.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board finds that transportation emission budgets are "consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to the given implementation plan submission)" pursuant to 40 CFR 93.118(e)(4)(iv).

BE IT FURTHER RESOLVED, that the Executive Officer is hereby directed to finalize the 2012 AQMP including the main document, appendices, and related documents as adopted at the December 7, 2012 public hearing.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, whose members reviewed, considered and approved the information contained in the documents listed herein, adopts the 2012 AQMP dated December 7, 2012 consisting of the document entitled 2012 AQMP as amended by the final changes set forth by the AQMD Governing Board and the associated documents listed in Attachment 1 to this Resolution, the Draft Final Socioeconomic Report for the 2012 AQMP; the Final Program EIR for the 2012 AQMP, and the Statements of Findings and Overriding Considerations and Mitigation Monitoring Plan (Attachment 2 to this Resolution).

BE IT FURTHER RESOLVED, the Executive Officer is hereby directed to work with CARB and the U.S. EPA to ensure expeditious approval of this 2012 AQMP for PM2.5 and 1-hour ozone attainment.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, requests that the 2012 AQMP serve as the SIP revision submittal for the 24-hour PM2.5 attainment demonstration plan including the RACM/RACT determinations for the PM2.5 standard for the South Coast Air Basin, and the PM2.5 Transportation Conformity Budgets for the South Coast Air Basin.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, requests that the 2012 AQMP (Appendix VII) serve as the SIP revision submittal for the 1-hour ozone NAAQS attainment demonstration.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, requests that the 2012 AQMP (Appendix VIII) serve as the SIP revision submittal for a revised VMT emissions offset demonstration as required under Section 182(d)(1)(A) for both the 1-hour ozone and 8-hour ozone SIPs for the South Coast Air Basin.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, requests that the 2012 AQMP serve as an update to the approved 2007 8-hour ozone SIP for the South Coast Air Basin with specific control measures designed to further implement the 8-hour ozone SIP and reduce reliance on Section 182(e)(5) long term measures.

BE IT FURTHER RESOLVED, that the 2012 AQMP does not serve as a revision to the previously approved 8-hour ozone SIP with respect to emissions inventories, attainment demonstration, RFP, and transportation emissions budgets or any other required SIP elements.

BE IT FURTHER RESOLVED, that the Executive Officer is hereby directed to forward a copy of this Resolution, the 2012 AQMP and its appendices as amended by the final changes, to CARB, and to request that these documents be forwarded to the U.S. EPA for approval as part of the California State Implementation Plan. In addition, the Executive Officer is directed to forward a copy of this Resolution, comments on the 2012 AQMP and responses to comments, public notices, and any other information requested by the U.S. EPA for informational purposes.

Attachments

AYES: Benoit, Burke, Cacciotti, Gonzales, Loveridge, Lyou, Mitchell, Nelson, Parker, Pulido, and Yates.

NOES: None.

ABSTAIN: None.

ABSENT: Antonovich and Perry.

Dated: 12-7-2012

Saundra McDaniel
Clerk of the District Board

ATTACHMENT 1

The Final 2012 Air Quality Management Plan submitted for the South Coast Air Quality Management District Governing Board's consideration consists of the documents entitled:

- Draft Final 2012 AQMP (Attachment B) including the following appendices:
  - Appendix I - Health Effects
  - Appendix II - Current Air Quality
  - Appendix III - Base and Future Year Emission Inventory
  - Appendix IV (A) - District's Stationary Source Control Measures
  - Appendix IV (B) - Proposed 8-Hour Ozone Measures
  - Appendix IV (C) - Regional Transportation Strategies & Control Measures
  - Appendix V - Modeling & Attainment Demonstrations
  - Appendix VI - Reasonably Available Control Measures (RACM) Demonstration
  - Appendix VII - 1-Hour Ozone Attainment Demonstration
  - Appendix VIII - VMT Offset Requirement Demonstration
- Comments on the 2012 Air Quality Management Plan, and Responses to Comments (November 2012) – (Attachment C)
- Final Program Environmental Impact Report for the 2012 Air Quality Management Plan (Attachment D)
  - Findings, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Plan (Attachment 2 to the Resolution)
- Draft Final Socioeconomic Report for the 2012 Air Quality Management Plan (Attachment E)
- Changes to Control Measures IND-01, CMB-01, CTS-01 and CTS-04 (Attachment F)

ATTACHMENT 22.

State of California
AIR RESOURCES BOARD

SOUTH COAST AIR BASIN 2012 PM2.5 AND OZONE STATE IMPLEMENTATION PLANS

Resolution 13-3

January 25, 2013

Agenda Item No.: 13-2-2

WHEREAS, the Legislature in Health and Safety Code section 39602 has designated the State Air Resources Board (ARB or Board) as the air pollution control agency for all purposes set forth in federal law;

WHEREAS, the ARB is responsible for preparing the State Implementation Plan (SIP) for attaining and maintaining the National Ambient Air Quality Standards (standards) as required by the federal Clean Air Act (Act) (42 U.S.C. section 7401 et seq.), and to this end is directed by Health and Safety Code section 39602 to coordinate the activities of all local and regional air pollution control and air quality management districts (districts) as necessary to comply with the Act;

WHEREAS, section 41650 of the Health and Safety Code requires the ARB to approve the nonattainment area plan adopted by a district as part of the SIP unless the Board finds, after a public hearing, that the plan does not meet the requirements of the Act;

WHEREAS, the ARB has responsibility for ensuring that the districts meet their responsibilities under the Act pursuant to sections 39002, 39500, 39602, and 41650 of the Health and Safety Code;

WHEREAS, the ARB is authorized by section 39600 of the Health and Safety Code to do such acts as may be necessary for the proper execution of its powers and duties;

WHEREAS, sections 39515 and 39516 of the Health and Safety Code provide that any duty may be delegated to the Board's Executive Officer as the Board deems appropriate;

WHEREAS, the districts have primary responsibility for controlling air pollution from non-vehicular sources and for adopting control measures, rules, and regulations to attain the standards within their boundaries pursuant to sections 39002, 40000, 40001, 40701, 40702, and 41650 of the Health and Safety Code;

WHEREAS, the South Coast Air Basin (SCAB or Basin) includes Orange County, the southwestern two-thirds of Los Angeles County, southwestern San Bernardino County, and western Riverside County;

WHEREAS, the South Coast Air Quality Management District (District) is the local air district with jurisdiction over the SCAB, pursuant to sections 40410 and 40413 of the Health and Safety Code;

WHEREAS, the Southern California Association of Governments (SCAG) is the regional transportation agency for the SCAB and Coachella Valley and has responsibility for preparing and implementing transportation control measures to reduce vehicle trips, vehicle use, vehicle miles traveled, vehicle idling and traffic congestion for the purpose of reducing motor vehicle emissions pursuant to sections 40460(b) and 40465 of the Health and Safety Code;

WHEREAS, section 40463(b) of the Health and Safety Code specifies that the District board must establish a carrying capacity - the maximum level of emissions which would enable the attainment and maintenance of an ambient air quality standard for a pollutant - for the South Coast Air Basin with the active participation of SCAG;

WHEREAS, the South Coast 2012 Air Quality Management Plan (AQMP) includes State Implementation Plan (SIP) amendments for fine particulate matter (PM2.5) and ozone;

WHEREAS, in July 1997, the United States Environmental Protection Agency (U.S. EPA) promulgated 24-hour and annual standards for PM2.5 of 65 micrograms per cubic meter (ug/m^3) and 15 ug/m^3, respectively;

WHEREAS, in December 2004, U.S. EPA designated the South Coast Air Basin as nonattainment for the PM2.5 standards;

WHEREAS, in March 2007, U.S. EPA finalized the PM2.5 implementation rule (Rule) which established the framework and requirements that states must meet to develop annual average PM2.5 SIPs, set an initial attainment date of April 5, 2010, and allowed for an attainment date extension of up to five years;

WHEREAS, the Rule requires that PM2.5 SIPs include air quality and emissions data, a control strategy, a modeled attainment demonstration, transportation conformity emission budgets, reasonably available control measure/reasonably available technology (RACM/RACT) demonstration, and contingency measures;

WHEREAS, in July 1997, the U.S. EPA promulgated an 8-hour standard for ozone of 0.08 parts per million (ppm);

WHEREAS, on April 15, 2004, U.S. EPA designated the South Coast as nonattainment for the 0.08 ppm 8-hour ozone standard;

WHEREAS, in 2007, the District and ARB adopted SIP amendments demonstrating attainment of the annual PM2.5 standard by April 5, 2015, and of the 8-hour ozone standard by December 31, 2023, and submitted the SIP amendments to U.S. EPA;

WHEREAS, in 2009 and 2011, at U.S. EPA's request, ARB provided clarifying amendments to the annual PM2.5 and 8-hour ozone South Coast SIPs submitted in 2007;

WHEREAS, in 2011, U.S. EPA approved the control strategy, emission reduction commitment and attainment demonstration for the annual PM2.5 standard with an attainment date of April 5, 2015;

WHEREAS, in 2012, U.S. EPA approved the control strategy, emission reduction commitment and attainment demonstration for the 8-hour ozone standard with an attainment date of June 15, 2024;

WHEREAS, in December 2006, U.S. EPA lowered the 24-hour PM2.5 standard from 65 ug/m^3 to 35 ug/m^3;

WHEREAS, effective December 14, 2009, U.S. EPA designated the South Coast Air Basin as nonattainment for the 35 ug/m^3 PM2.5 standard;

WHEREAS, on March 12, 2012, U.S. EPA issued a memorandum that provided further guidance on the development of SIPs specific to the 35 ug/m^3 PM2.5 standard and set an initial attainment date of December 14, 2014, with a provision for an attainment date extension of up to five years;

WHEREAS, the 2012 AQMP Plan identifies directly-emitted PM2.5, nitrogen oxides (NOx), sulfur oxides (SOx) and volatile organic compounds (VOC) as PM2.5 attainment plan precursors consistent with the Rule;

WHEREAS, the emission reductions contained in the 2012 AQMP for PM2.5 attainment rely on adopted regulations and on new or revised District control measures;

WHEREAS, the 2012 AQMP's new PM2.5 measures include further strengthening of the District's wood burning curtailment program, outreach, and incentive programs;

WHEREAS, in accordance with section 172(b)(2) of the Act, the 2012 AQMP identifies 2014 as the most expeditious attainment date for the 24-hour PM2.5 standard;

WHEREAS, the attainment analysis in the 2012 AQMP demonstrates that the 24-hour PM2.5 standard will be met throughout the Basin by the proposed 2014 attainment date;

WHEREAS, consistent with section 172(c)(3) of the Act, the 2012 AQMP includes a comprehensive, accurate, current inventory of emissions data for directly emitted PM2.5 and PM2.5 precursors: oxides of nitrogen (NOx), reactive organic gases (ROG), sulfur oxides (SOx), and ammonia (NH3);

WHEREAS, consistent with section 172(c) of the Act, the 2012 AQMP demonstrates the implementation of RACM/RACT for direct PM2.5 and the area's relevant PM2.5 precursors;

WHEREAS, consistent with section 172(c)(9) of the Act, the 2012 AQMP includes contingency measures that provide extra emissions reductions that go into effect without further regulatory action if the area fails to make attainment of the 24-hour PM2.5 standard on time;

WHEREAS, consistent with section 176 of the Act, the 2012 AQMP establishes transportation conformity emission budgets, developed in consultation between the District, ARB staff, transportation agencies, and U.S. EPA, that conform to the attainment emission levels;

WHEREAS, the approved commitment for emission reductions is for total aggregate reductions that may be achieved through the measures identified in the SIP, alternative measures or incentive programs, and actual emission decreases that occur;

WHEREAS, the approved commitment for emission reductions allows for the substitution of reductions of one precursor for another using relative PM2.5 reductions values identified by the District;

WHEREAS, section 182(e)(5) of the Act provides that SIPs for extreme ozone nonattainment areas may rely in part upon the development of new technologies or the improvement of existing technologies;

WHEREAS, the approved SIP includes commitments to achieve additional reductions from advanced technology as provided for in section 182(e)(5) of the Act;

WHEREAS, in the Federal Register (Volume 77 Fed.Reg. 12674 at 12686 (March 1, 2012)) entry approving the ozone elements of the South Coast 8-hour ozone SIP, U.S. EPA stated that measures approved under section 182(e)(5) may include those that anticipate future technological developments as well as those that require complex analyses, decision making and coordination among a number of government agencies;

WHEREAS, the 2011 revision to the 8-hour ozone SIP included State commitments to develop, adopt, and submit contingency measures by 2020 if advanced technology measures do not achieve planned reductions;

WHEREAS, the 2012 AQMP includes actions to develop and put into use advanced transformational technologies to fulfill in part the approved SIP commitment for the Act section 182(e)(5) reductions;

WHEREAS, these actions described in the 2012 AQMP as seventeen mobile measures (five on-road measures, five off-road measures, and seven advanced technology measures), are consistent with U.S. EPA's interpretation of 182(e)(5) used in the approval of the South Coast 8-hour ozone SIP (77 Fed.Reg. 12674 at 12686 (March 1, 2012));

WHEREAS, on November 6, 1991, U.S. EPA designated the South Coast Air Basin an extreme nonattainment area for the 1-hour ozone standard with an attainment date of no later than November 15, 2010;

WHEREAS, in 2000 ARB submitted the 1999 Amendment to the South Coast 1997 AQMP, collectively called the 1997/1999 SIP revision, which included long-term measures pursuant to section 185(e)(5);

WHEREAS, in 2000 U.S. EPA approved the 1997/1999 revision to the South Coast 1-hour ozone SIP;

WHEREAS, in 2003 ARB submitted a revision to the South Coast 1-hour ozone SIP;

WHEREAS, in 2009 U.S. EPA disapproved the attainment demonstration in the 2003 revision;

WHEREAS, on February 2, 2011, the Ninth Circuit Court of Appeals remanded U.S. EPA's 2009 final action on the 2003 South Coast 1-hour ozone SIP and directed U.S. EPA to take further action to ensure that the State develop a plan demonstrating attainment of the 1-hour ozone standard, consistent with Clean Air Act requirements;

WHEREAS, on January 7, 2013, U.S. EPA issued a SIP call for the State to submit, within 12 months of the effective date of the SIP call, a SIP revision demonstrating attainment of the 1-hour ozone standard in the Basin;

WHEREAS, the 2012 AQMP's 1-hour ozone attainment demonstration relies on adopted state and local regulations, along with new local regulations including continued implementation of the approved 8-hour ozone SIP to reduce emissions by 2022;

WHEREAS, the 1-hour ozone attainment demonstration also relies upon section 182(e)(5) provisions for future reductions from developing new technologies or improving existing technologies;

WHEREAS, the actions to implement advanced technology measures for the approved 8-hour ozone SIP also describe actions to implement advanced technology measures for the 1-hour ozone attainment demonstration;

WHEREAS, section 182(e)(5) of the Act requires contingency measures be submitted no later than three years prior to the attainment year in the event that the anticipated long-term measures approved pursuant to section 182(e)(5) do not achieve planned reductions needed for attaining the 1-hour ozone standard;

WHEREAS, section 182(e)(5) contingency measures in the approved SIP meet the requirements for attainment contingency measures because section 182(e)(5) is not relied on for emission reductions prior to November 15, 2000;

WHEREAS, the 2012 AQMP demonstrates the Basin will attain the 1-hour ozone standard by 2022;

WHEREAS, consistent with section 172(c)(3) of the Act, the 2012 AQMP includes a comprehensive, accurate, current inventory of emissions data for precursors of ozone: oxides of nitrogen (NOx) and reactive organic gases (ROG);

WHEREAS, consistent with section 172(c) of the Act, the 2012 AQMP demonstrates the implementation of RACM/RACT for NOx and ROG;

WHEREAS, section 182(d)(1)(a) of the Act requires ozone nonattainment areas classified as severe and extreme to submit a vehicle miles traveled (VMT) offset demonstration showing no increase in motor vehicle emissions between the base year in the Act 1990 Amendments and the area's attainment year;

WHEREAS, in February 2011, the Ninth Circuit Court of Appeals held that section 182(d)(1)(a) of the Act requires additional transportation control strategies and transportation control measures to offset vehicle emissions whenever they are projected to be higher than if base year VMT had not increased;

WHEREAS, the Ninth Circuit Court of Appeals remanded the approval of the 2007 8-hour ozone SIP VMT emissions offsets demonstration to U.S. EPA;

WHEREAS, in September 2012, U.S. EPA proposed to withdraw its final approvals, and then disapprove, SIP revisions submitted to meet the section 182(d)(1)(a) VMT emissions offset requirements for the U.S. EPA approved South Coast Air Basin 1-hour and 8-hour ozone plans;

WHEREAS, in August 2012, U.S. EPA issued guidance entitled "Implementing Clean Air Act Section 182(d)(1)(A): Transportation Control Measures and Transportation Control Strategies to Offset growth in Emissions Due to Growth in Vehicle Miles Traveled";

WHEREAS, consistent with the requirements of section 182(d)(1)(A) as specified by the Ninth Circuit Court of Appeals ruling in 2011 and with U.S. EPA guidance in 2012, and in response to U.S. EPA's September 2012 proposal, the 2012 AQMP includes a VMT offset demonstration for both 1-hour and 8-hour ozone plans;

WHEREAS, the 2012 AQMP also includes a second VMT emissions offset demonstration for 8-hour ozone that meets an alternative VMT offset methodology proposed by U.S. EPA;

WHEREAS, the California Environmental Quality Act (CEQA) requires that no project which may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, pursuant to California Environmental Quality Act (CEQA), the District prepared a Program Environmental Impact Report (EIR) for the 2012 AQMP that was released for a 45-day public review and comment period from September 7, 2012 to October 23, 2012, and in the Final Program EIR the District responded to the 13 comment letters received;

WHEREAS, the District's Final Program EIR identified potentially significant and unavoidable project-specific adverse environmental impacts to air quality (CO and PM10 impacts from construction activities), energy demand, hazards (associated with accidental release of liquefied natural gas during transport), water demand, noise (from construction activities) and traffic (construction activities and operations), as well as potentially significant cumulative adverse impacts to air quality (construction), energy demand, hazards and hazardous materials, hydrology and water quality, noise, and transportation and traffic;

WHEREAS, the District Governing Board adopted a Statement of Findings and a Statement of Overriding Considerations finding the project's benefits outweigh the unavoidable adverse impacts, as well as a Mitigation Monitoring Plan;

WHEREAS, federal law set forth in section 110(l) of the Act and Title 40, Code of Federal Regulations (CFR), section 51.102, requires that one or more public hearings, preceded by at least 30 days notice and opportunity for public review, must be conducted prior to adopting and submitting any SIP revision to U.S. EPA;

WHEREAS, as required by federal law, the District made the 2012 AQMP available for public review at least 30 days before the District hearing;

WHEREAS, following a public hearing on December 7, 2012, the AQMD Governing Board voted to approve the 2012 AQMP including the 24-hour PM2.5 plan, the 8-hour ozone advanced technology actions and the 1-hour ozone plan;

WHEREAS, on December 20, 2012, the District transmitted the 2012 AQMP to ARB as a SIP revision, along with proof of public notice publication, and environmental documents in accordance with State and federal law; and

WHEREAS, the Board finds that:

1. The 2012 AQMP meets the applicable planning requirements established by the Act and the Rule for 24-hour PM2.5 SIPs, and includes the required air quality and emissions data, modeled attainment demonstrations, RACM/RACT demonstrations, new source review, transportation conformity emission budgets, and contingency measures;

2. The existing 2007 PM2.5 SIP, including benefits of ARB's adopted mobile source control measures, combined with the new District control measures identified in the adopted 2012 AQMP will provide the emission reductions needed for meeting the 24-hour PM2.5 standard by the December 14, 2014, attainment date;

3. The 2012 AQMP identifies contingency measures that will achieve additional emission reductions, beyond those relied on in the attainment demonstration, in the event that the South Coast Air Basin does not attain the 24-hour PM2.5 standard by 2014;

4. The 2012 AQMP meets applicable planning requirements established by the Act for 1-hour ozone SIPs, and includes the required air quality and emissions data, modeled attainment demonstrations, new source review and RACM/RACT demonstrations;

5. The 2012 AQMP VMT offset demonstrations meets the section 182(d)(1)(a) VMT offset requirements for both the 1-hour ozone and the 8-hour ozone plans; and

6. ARB has reviewed and considered the Final EIR prepared by the District and comments presented by interested parties, and find there are no additional feasible mitigation measures or alternatives within ARB's powers that would substantially lessen or avoid the project-specific impacts identified.

NOW, THEREFORE, BE IT RESOLVED the Board hereby approves the South Coast 2012 AQMP as an amendment to the SIP, excluding those portions not required to be submitted to U.S. EPA under federal law, and directs the Executive Officer to forward the 2012 AQMP as approved to U.S. EPA for inclusion in the SIP to be effective, for purposes of federal law, upon approval by U.S. EPA.

BE IT FURTHER RESOLVED that the Board commits to develop, adopt, and submit contingency measures by 2019 if advanced technology measures do not achieve planned reductions as required by section 182(e)(5)(B).

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to work with the District and U.S. EPA and take appropriate action to resolve any completeness or approvability issues that may arise regarding the SIP submission.

BE IT FURTHER RESOLVED that the Board authorizes the Executive Officer to include in the SIP submittal any technical corrections, clarifications, or additions that may be necessary to secure U.S. EPA approval.

BE IT FURTHER RESOLVED that the Board hereby certifies pursuant to 40 CFR section 51.102 that the District's 2012 AQMP was adopted after notice and public hearing as required by 40 CFR section 51.102.

I hereby certify that the above is a true and correct copy of Resolution 13-3, as adopted by the Air Resources Board.

Tracy Jensen, Clerk of the Board

SAN PEDRO BAY PORTS

CLEAN AIR ACTION PLAN

November 19, 2015

Ms. Wienke Tax
Air Planning Office (AIR-2)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

Re: Docket No. EPA-R09-OAR-2015-0204
U.S. Environmental Protection Agency
Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; California; South Coast Moderate Area Plan and Reclassification as Serious Nonattainment for the 2006 PM2.5 NAAQS

Dear Ms. Tax:

On behalf of the City of Long Beach acting by its Harbor Department and the City of Los Angeles acting by its Harbor Department (collectively, the Cities or the ports), we appreciate the opportunity to provide comments in response to the U.S. Environmental Protection Agency's (EPA) proposal for *Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; California; South Coast Moderate Area Plan and Reclassification as Serious Nonattainment for the 2006 PM2.5 NAAQS,* as published in the *Federal Register* on October 20, 2015 (Federal Register, Vol. 80. No 202).

I. Summary of Ports' Position.

The Cities urge the EPA to disapprove and exclude the South Coast Air Quality Management District (SCAQMD or District) Control Measure IND-01 and Proposed Rule 4001, *Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities* from the State Implementation Plan (SIP) submittal for the 2006 $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) in the South Coast Air Basin. The Cities recognize that emissions from nearly every business sector, including the maritime goods movement industry, need to be reduced in order for the State of California and SCAQMD to meet the NAAQS. For this reason, the two Cities implemented the highly successful voluntary San Pedro Bay Clean Air Action Plan (CAAP) to encourage the maritime goods movement industry to do its fair share in the South Coast Air Basin to reduce emissions. Most of the strategies included in the CAAP have since been overtaken by regulations enacted by the California Air Resources Board or International Maritime Organization. It is the Cities' understanding that the purpose of Control

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

Measure IND-01 and Proposed Rule 4001 is to allow the SCAQMD to enforce against the Cities their voluntary CAAP program in the event that the international, federal, and state regulatory programs don't achieve the $PM_{2.5}$ emissions inventory that SCAQMD assumed in the baseline for the years 2014 and 2019 in the 2012 AQMP.

The inclusion of Measure IND-01 and Proposed Rule 4001 in the AQMP and SIP is neither necessary nor legally proper, for reasons that will be explained below. SCAQMD proposes by Control Measure IND-01 to improperly designate the entire harbor districts of the Cities as "stationary sources" and "indirect sources," and then hold the two Cities legally responsible for actions by the maritime industry that the SCAQMD assumed in the $PM_{2.5}$ Plan. The Cities do not operate, own or control the emissions sources.

The Cities have long opposed the inclusion of any form of a "backstop" rule on the ports that would apply SCAQMD oversight and enforcement against the ports for failures of the SCAQMD and CARB in assuming maritime goods movement industry activities in the baseline.. We have also raised significant technical, jurisdictional, constitutional, and legal concerns with Proposed Rule 4001 in a series of comment letters sent to SCAQMD, CARB and EPA regarding the inclusion of Control Measure IND-01 in the 2012 Air Quality Management Plan and SIP, and the subsequent rulemaking process of SCAQMD Rule 4001. (See Attachments 1-15.) These letters are incorporated by reference as a part of this comment letter to EPA as if fully set forth herein. With respect to EPA's present rulemaking, as further discussed below in sections III-IV, the ports do not believe that Control Measure IND-01 and Proposed Rule 4001 are properly before EPA. Even if EPA determines there are no procedural infirmities and proceeds with the proposed rulemaking, there are numerous substantive legal reasons why EPA cannot approve Control Measure IND-01 or Proposed Rule 4001 as part of the SIP. These arguments are discussed below in section V.

II. Background.

The Cities and businesses that move goods in and out of the ports are vital to the regional, state, and national economy. The ports are home to the two busiest container seaports in the United States and, if taken together, are the fifth busiest in the world, moving more than $260 billion a year in trade. The international cargo handled by the ports also accounts for over 1.1 million jobs in California and 3.3 million jobs in the United States; however, competition for much of this cargo is intensifying particularly with other international ports (Panama Canal, Canada, Mexico).

The ports are global leaders, voluntarily working in partnership with several public agencies (EPA, CARB, and SCAQMD) and the maritime goods movement industry to achieve unprecedented success in reducing emissions from goods movement sources (ships, trains, trucks, cargo handling equipment, harbor craft) and improving air quality, while continuing to foster port development that is essential to Southern California's economy. On November 20, 2006, the Cities approved the landmark CAAP, the most comprehensive strategy to cut air pollution and reduce health risks ever adopted for a global seaport complex. The CAAP contained goals to achieve a 45% emissions reduction in diesel particulate matter (DPM), nitrogen oxides (NOx), and sulfur oxides (Sox) by the end of 2011 from the mobile sources operating in and around the ports. In 2007, the ports received the 8th Annual National U.S. EPA Clean Air Excellence Award in recognition of this groundbreaking work and commitment.

The Cities continued their pioneering work and commitment to clean air by adopting an update to the CAAP on November 22, 2010. The 2010 CAAP update established several aggressive goals: (1) by 2014, reduce emissions from mobile sources operating in and around the ports by 22% for NOx, 93% for SOx, and 72% for DPM from baseline emissions; (2) by 2023, reduce emissions from mobile sources operating in and around the ports by 59% for NOx, 92% for SOx and 77% for DPM; and, (3) aim by 2020 to lower the cancer risk related to diesel particulate pollution by 85% in the communities adjacent to the ports. The CAAP was initially developed as a voluntary effort not required by any state, federal or local law or regulation. The voluntary aspect of the CAAP is critical. The ports set stretch goals under an incentive-based and collaborative approach that has resulted in billions of dollars of investment by the Cities and private sector businesses in clean air programs and technology. More importantly, because the goals are in advance of regulations, much of the CAAP success is due to reliance on federal, state and SCAQMD grants that can only be obtained for "surplus" emission reductions that go beyond regulation –which will not be available under a required regulation such as PR 4001.

The Cities remain firm in their position that Control Measure IND-01 and Proposed Rule 4001 are unnecessary and counterproductive to a successful collaborative approach, and should not be included in the SIP. These measures would hold the ports, not the owners or operators of the emission sources, responsible for shortfalls in voluntary CAAP measures. This approach will deter the ports as well as other ports and industries from any type of voluntary emission reduction action in the future. The proposed rule would also unfairly impact only the ports in Southern California; no such rule exists for any other port in the United States or other parts of the world.

In addition, the Cities have shown that there is no demonstrated need for a backstop rule for equipment operating in and around the ports, nor is a ports' backstop rule necessary for the regional attainment of the 2006 $PM_{2.5}$ standard. (See Attachment 3, Cities' Letter to Dr. Randall Pasek, SCAQMD, January 15, 2014].). The attainment demonstration for the 2012 $PM_{2.5}$ Plan did not rely on any emission reductions from Control Measure IND-01. As indicated in SCAQMD's supplement to the 24-hour $PM_{2.5}$ SIP, unanticipated extreme weather conditions, not emissions from the maritime goods movement industry, have made attainment unlikely in 2014, citing the effects of the severe drought on the west coast of the United States.

Because any current shortfall in the regional attainment of the $PM_{2.5}$ emissions targets is not caused or controlled by the Cities, and not due to any actions or omissions on the part of the Cities, it is inappropriate and unnecessary to require Rule 4001 enforcement against the ports. The control measure was intended as a "backstop" that would go into effect only if the emission targets for NOx, SOx, and $PM_{2.5}$ from sources operating in or around the ports exceed the levels projected by the ports and assumed in the 2012 AQMP. In fact, the ports' most recently completed emissions inventories for calendar year 2014 show that the ports have **exceeded** the assumptions SCAQMD included in the 2012 $PM_{2.5}$ Plan.. Diesel particulate matter (DPM) emissions have been reduced by 85% over the 9 year period between 2005 and 2014. In addition, NOx emissions are down by 51%, and SOx emissions have been reduced by 97%. Instead of being rewarded for these extraordinary efforts, the Cities will instead be unnecessarily penalized with a port specific backstop rule. Since 2014 $PM_{2.5}$ CAAP goals were met and the ports are on track to maintain these reductions through 2019, there is no identified need or basis for including Proposed Rule 4001 in the SIP. In fact, the ports would be the *only* entities the SCAQMD regulates in this matter, notwithstanding these unprecedented voluntary efforts.

Table 3 of the Notice does not identify the anticipated implementation date and emissions reductions for Rule 4001, rather, listing "N/A". It is unreasonable to approve the inclusion of the Proposed Rule in the SIP without an indication of the implementation date and necessary emissions reductions from implementation of the rule to bring the South Coast Basin into attainment. A critical aspect of this related to the lack of need for an additional regulation on the ports is that many of the voluntary control strategies implemented under the CAAP have been superseded by source-specific state or international regulation. Approximately 98% of the emissions reductions from maritime goods movement emission sources that have been achieved to date rely on, and are largely the result of regulations at the state and international levels, including:

- CARB Truck and Bus Regulation
- CARB Ocean-going Vessel At-Berth Regulation
- CARB and International Ocean-going Vessels Low-Sulfur Fuel Regulations
- CARB Cargo-handling Equipment Regulation
- CARB Commercial Harbor Craft Regulation
- International Maritime Organization North American Emission Control Area

The Cities should not be held responsible for or mandated to backfill any potential emissions shortfalls from regulatory agencies not implementing emission reduction regulations as identified within the SIP, even if those regulations are related to equipment operating in or around the ports. The backstop measure should instead require EPA or CARB to enact applicable regulations under their air regulatory authority applied uniformly to the national ports or state ports, or to find the shortfall emission reductions from other sources in the SIP.

The Cities continually develop and support emission reduction strategies and programs that will result in cleaner air for the local communities and the region. These efforts have been entered into voluntarily, working cooperatively with the operators in the port area to reduce air quality impacts from the equipment they operate. The potential for additional regulation by the SCAQMD in the form of Rule 4001 on the ports brings significant uncertainty that will have broad negative effects on the goods movement industry and the economy as a whole, and will jeopardize the voluntary, collaborative partnership between the Cities, industry, and the air agencies that has led to the significant emissions reductions achieved to date.

III. Control Measure IND-01 Cannot Be Approved in the Final Rulemaking Because it Was Not Approved by the CARB Board for SIP Adoption, and Has Not Been Properly Submitted to EPA for Approval.

According to the Federal Register Notice (80 Fed. Reg. 63640), the SIP revisions encompassed in the proposed rulemaking are "the 2012 $PM_{2.5}$ Plan, submitted February 13, 2013, and the 2015 Supplement, submitted March 4, 2015." The 2012 $PM_{2.5}$ Plan submitted February 13, 2013, does ***not*** include IND-01 or Proposed Rule 4001. This is because on December 7, 2012, when the SCAQMD Governing Board considered the $PM_{2.5}$ Plan, the Governing Board specifically ***removed*** Control Measure IND-01 from the $PM_{2.5}$ Plan ***before*** adopting the Plan. (See Attachment 16.) On February 13, 2013, the CARB Executive Officer submitted the 2012 $PM_{2.5}$ Plan to EPA without Control Measure IND-01. In fact, the $PM_{2.5}$ Plan in the federal docket for this proposed rulemaking has IND-01 ***crossed out*** to confirm that it was removed from the $PM_{2.5}$ Plan before submittal to CARB and EPA. (See

Attachment 17.) The CARB Board, which is the only entity authorized to make SIP submittals, has never held a public meeting, offered to receive public comment on, or taken a Board vote to authorize the amendment of the SIP to include the submittal of IND-01 or Proposed Rule 4001 to EPA for inclusion as part of California's SIP for the South Coast Air Basin. The EPA Notice is based only on a control measure list with the date and title of Control Measure IND-01 included on Attachment F to the 2015 Supplement, with no evidence of CARB Board approval of its addition as a SIP supplement, which is legally insufficient as a SIP revision. EPA cites no other documents to demonstrate that Control Measure IND-01 was approved by the CARB Board and properly submitted to EPA as a proposed SIP revision.

Further, the 2015 Supplement did not constitute a submittal of Control Measure IND-01 or Proposed Rule 4001. As explained in EPA's proposed rulemaking (80 Fed. Reg. 63641), the 2015 Supplement was submitted in response to the appellate court's decision in *NRDC v. EPA*, 706 F/3d 428 (D.D. Cir. 2013), that EPA must consider the general implementation requirements of subpart 1 with the requirements specific to particulate matter nonattainment areas in subpart 4 of Part D, Title I of the Clean Air Act. The 2015 Supplement was intended to address the subpart 4 issues that had not been included in the $PM_{2.5}$ Plan. (80 Fed. Reg. 63641-63642.) The 2015 Supplement merely provides in Table F-1 a new proposed adoption date for Control Measure IND-01/Proposed Rule 4001 of 2015. (See Attachment 18.) The stated emission reduction "commitment" towards $PM_{2.5}$ attainment for Control Measure IND-01/Proposed Rule 4001 is "N/A" in both the $PM_{2.5}$ Plan and in the 2015 Supplement. The 2015 Supplement only states that Proposed Rule 4001 will not be approved in 2015 as stated in the 2015 Supplement. (See Attachment 19.)

EPA states that the $PM_{2.5}$ Plan or 2015 Supplement are considered complete SIP submittals under section 110(k)(1)(B) by operation of law without the inclusion of Control Measure IND-01 or Proposed Rule 4001. (80 Fed. Reg. 63642.) However, there is no text of either Control Measure IND-01 or Proposed Rule 4001 for EPA to assess in determining whether these actions comply with the applicable requirements of subparts 1 and 4. Since there is no Control Measure IND-01 or Proposed Rule 4001 in the $PM_{2.5}$ Plan or 2015 Supplement, these actions are not properly before EPA, and EPA cannot approve a commitment for SCAQMD to adopt Proposed Rule 4001 in its final rulemaking.

IV. Commitments to Adopt a Rule in the Future Cannot be Approved under Clean Air Act Section 110(k)(3).

To the extent that EPA will issue a final rule on the 2012 $PM_{2.5}$ Plan and 2015 Supplement, approval of SCAQMD's future commitments, specifically Control Measure IND-01 and Proposed Rule 4001, cannot be approved under Clean Air Act section 110(k)(3) as EPA proposes to do in the rulemaking. (80 Fed. Reg. 63650). According to EPA, under Section 110(k)(3), EPA considers three factors in determining whether to approve a control measure as an enforceable commitment. As discussed below, Control measure IND-01 and Proposed Rule 4001 are not enforceable commitments. However, EPA has determined it does not need to consider these factors because "the $PM_{2.5}$ Plan and 2015 Supplement do not rely on either the rule amendment commitments in its impracticability demonstration, RACM demonstration, RFP demonstration, or quantitative milestones, or to meet any other CAA requirement." (80 Fed. Reg. 63652.) Since the three-factor test has not been applied and Control Measure IND-01/Proposed Rule 4001 are not necessary to comply with the Clean Air Act

requirements, there is no basis for approving Control Measure IND-01/Proposed Rule 4001 under Section 110(k)(3).

V. Control Measure IND-01 and Proposed Rule 4001 are Legally Deficient.

If EPA decides that Control Measure IND-01 and Proposed Rule 4001 are properly before the agency, then the ports submit the following comments and concerns.

1. *Clean Air Act Subparts 1 and 4 Requirements Are Not Met.*

In accordance with Clean Air Act section 189(a)(1)(B), modeling is conducted for demonstrating attainment or that attainment by the applicable deadline is not practicable. Through Control Measure IND-01 and Proposed Rule 4001, SCAQMD is inappropriately attempting to enforce the modeling assumptions it utilized in the 2012 $PM_{2.5}$ Plan (that demonstrated attainment[1]) *for the ports only*. There is no justification as to why the port-only assumptions and no others must be enforced to achieve attainment. If EPA approves this novel and significant change in SIPs in its final rulemaking, it will be signaling to states and local agencies that they can enforce assumptions. This will undermine the SIP process and lead to serious disagreements and controversies over all assumptions states and local agencies include in their SIPs because the regulated community will be fearful that any technical assumptions included in the SIP will be enforced in the future. Technical assumptions estimated by scientists will become political decisions. Further, this approach has been disapproved by the Ninth Circuit Court of Appeals in *Bayview Hunters Point Community Advocates v. Metropolitan Transportation Commission*, 366 3d 692 (9th Cir. 2004).

The requirements in subparts 1 and 4 relative to RACM/RACT have not been met for Control Measure IND-01 and Proposed Rule 4001. EPA states that RACM includes any potential control measure for non-road emission sources that is both technologically and economically feasible. (80 Fed. Reg. 63647.) There must be an evaluation of technical feasibility that includes operation conditions, and non-air quality impacts as well as an economic feasibility that includes consideration of cost per ton of pollutant reduced, capital costs and annualized costs. There is no such analysis for Control Measure IND-01 or Proposed Rule 4001. SCAQMD cannot evade these requirements by calling Control Measure IND-01 an indirect source measure or a measure to simply enforce an attainment demonstration assumption.

Clean Air Act section 110(a)(2)(A) requires that control measures in the SIP be enforceable. As discussed herein, Control Measure IND-01 and Proposed Rule 4001 are not enforceable by the designated agencies and cannot be approved as Clean Air Act section 110(k)(3) commitments. As acknowledged by Table 3 in 80 Fed. Reg. 63651 there is no implementation date or emission reductions to be achieved by Control Measure IND-01 or Proposed Rule 4001. Further, EPA proposes to approve Control Measure IND-01 for ***NOx reductions*** in the $PM_{2.5}$ Plan. (80 Fed. Reg. 63652.) Control

[1] 80 Fed. Reg. 63644 incorrectly states that the 2012 PM2.5 Plan demonstrated that attainment by the moderate deadline is impracticable

Measure IND-01 is not evaluated in the attainment demonstration as a NOx control measure necessary to reduce $PM_{2.5}$ precursors. (See 42. U.S.C. § 7502(c).) (See Attachment 20.)

2. *The Ports Cannot Be Legally Responsible for Other Agencies' Actions.*

The CAAP's goals and control measures that SCAQMD seeks to codify as the responsibility of the ports are in fact the responsibility of other government agencies. As stated above, approximately 98% of voluntary CAAP measures have been superseded by state or international regulation, including:

- CARB Truck and Bus Regulation
- CARB Ocean-going Vessel At-Berth Regulation
- CARB and International Ocean-going Vessels Low-Sulfur Fuel Regulations
- CARB Cargo-handling Equipment Regulation
- CARB Commercial Harbor Craft Regulation
- International Maritime Organization North American Emission Control Area

The Cities should not be held legally responsible for or mandated to backfill any potential emissions shortfalls from regulatory agencies not implementing emission reduction regulations as identified within the SIP, even if those regulations are related to equipment operating at or in the vicinity of the ports or were originally identified as voluntary measures.

3. *Control Measure IND-01 and Proposed Rule 4001 are Not Required for Demonstrating Attainment.*

The SCAQMD Governing Board found that without Control Measure IND-01: (1) "the 2012 AQMP, in conjunction with earlier AQMPs contains every feasible control strategy and measure to ensure progress toward attainment…."; (2) "the AQMP satisfies all the attainment deadlines for federal ambient air quality standards for 24-hour $PM_{2.5}$ and 1-hour ozone NAAQS"; (3) "the 2012 AQMP satisfies the planning requirements set forth in the federal and California Clean Air Acts"; and, (4) "the 2012 AQMP includes every feasible measure and an expeditious adoption schedule". (Attachment 21, Resolution, motions, deleted Control Measure IND-01.)

On January 25, 2013, the CARB Board adopted Resolution No. 13-3. (Attachment 22, Resolution.) The CARB Board found that without Control Measure IND-01: (1) "the attainment analysis in the 2012 AQMP demonstrates that the 24-hour $PM_{2.5}$ standard will be met throughout the [South Coast Air] Basin by the proposed attainment date"; (2) the 2012 AQMP demonstrates the [South Coast Air] Basin will attain the 1-hour ozone standard by 2022"; (3) "[t]the 2012 AQMP meets the applicable planning requirements established by the [Clean Air] Act and the Rule for 24-hour $PM_{2.5}$ SIPs, and includes the required air quality and emissions data, modeled attainment demonstrations, RACM/RACT demonstrations, new source review, transportation conformity emission budgets, and contingency measures"; (4) "[t]he 2012 AQMP identifies contingency measures that will achieve additional emission reductions, beyond those relied on in the attainment demonstration, in the event that the South Coast Air Basin does not attain the 24-hour $PM_{2.5}$ standard by 2014"; and, (5) "[t]he 2012 AQMP meets applicable planning requirements established by the [Clean Air] Act for 1-hour ozone SIPs, and includes the required air quality and emissions data, modeled attainment demonstrations, new source review and RACM/RACT demonstrations".

EPA proposes to conclude that RACM/RACT have been met without Control Measure IND-01/Proposed Rule 4001. Because there is no need for Control Measure IND-01/Proposed Rule 4001, there is no basis for approving it as part of the SIP.

4. *Control Measure IND-01 and Proposed Rule 4001 Are Preempted by the Clean Air Act and SCAQMD Lacks Authority to Adopt and Implement these Committments.*

Congress vested the federal government with the authority to set nationwide emissions standards for mobile sources, including nonroad mobile engines and vehicles. (42 U.S.C. §§ 7521, 7547.) Congress expressly and impliedly preempted states from setting standards or other requirements relating to the control of emissions for mobile sources. (42 U.S.C. § 7543, (a) & (e) The goods movement sources that would be regulated by Proposed Rule 4001 are within the express and implied preemption.

The Clean Air Act allows California to seek authorization from the EPA to adopt "standards and other requirements relating to the control of emissions" for some but not all mobile sources that would be covered by Proposed Rule 4001. (42 U.S.C. §§ 7543, (b) & (e)(2)(A).) The Clean Air Act does not allow for California to seek an EPA waiver for every one of the goods movement emission sources, nor has CARB made such a request.

Control Measure IND-01/Proposed Rule 4001 sets standards relating to the control of emissions that are preempted by the Clean Air Act. Control Measure IND-01/Proposed Rule 4001 establishes an emission reduction target of 75% below 2008 emission levels. (See CAAP's goals and control measures above.) The ports do not own or operate the emitting equipment. If business-as-usual does not satisfy this requirement, then the ports' tenants (e.g., shipping companies) and customers (e.g., trucking companies) that own or operate the specific port-related sources will need to modify their current operations – the equivalent of complying with "other requirements."

Control Measure IND-01/Proposed Rule 4001 also sets "other requirements" relating to emissions from mobile sources because it requires the ports to ensure implementation of the rules and regulations of CARB, EPA and MARPOL. Proposed Rule 4001's emission inventory requirement will compel the ports to monitor compliance by mobile sources operating in and around the ports and identify and report reduction shortfalls. If emissions increase, exceeding the 75% emissions cap, the ports will have to identify the emission source and cause in order to adequately prepare a strategy for the Emission Reduction Plan required by the proposed rule to address and reduce these emissions. Yet, the ports have not been granted the authority by CARB, EPA and MARPOL to enforce their rules and regulations.

Under Control Measure IND-01/Proposed Rule 4001, if the Executive Officer decides the emission reduction target is not met, the ports would be required to prepare an Emission Reduction Plan that includes sufficient feasible control strategies expected to eliminate the identified shortfall and maintain the reduction target from maritime goods movement sources through calendar year 2020. This amounts to requiring the ports to impose "other requirements" upon the cargo movement that are more stringent than the requirements of CARB, EPA and MARPOL.

5. *SCAQMD Lacks Authority to Regulate Outside of Jurisdictional Boundaries.*

SCAQMD's authority to regulate is limited to its jurisdictional boundaries. SCAQMD was created by the California Legislature "in those portions of the Counties of Los Angeles, Orange,

Riverside, and San Bernardino included within the area of the South Coast Air Basin, as described in Section 60104 of Title 17 of the California Administrative Code, as now or hereafter amended." (Cal. Health & Safety Code, § 40410.)

The South Coast Air Basin includes the portion of Los Angeles County "[b]eginning at the Los Angeles-San Bernardino County boundary and running west along the township line common to T.3 N and T.2 N, San Bernardino Base and Meridian; then north along the range line common to R.8 W and R.9 W; then west along the township line common to T.4 N and T.3 N; then north along the range line common to R.12 W and R.13 W to the southeast corner of Section 12, T.5 N, R.13 W; then west along the south boundaries of Sections 12, 11, 10, 9, 8, 7, T.5 N, R.13 W to the boundary of the Angeles National Forest which is collinear with the range line common to R.13 W and R.14 W; then north and west along the Angeles National Forest boundary to the point of intersection with the township line common to T.7 N and T.6 N (point is at the northwest corner of Section 4 in T.6 N, R.14 W); then west along the township line common to T.7 N and T.6 N; then north along the range line common to R.15 W and R.16 W to the southeast corner of Section 13, T.7 N, R.16 W; then along the south boundaries of Sections 13, 14, 15, 16, 17, 18, T.7 N, R.16 W; then north along the range line common to R.16 W and R.17 W to the north boundary of the Angeles National Forest (collinear with township line common to T.8 N and T.7 N); then west and north along the Angeles National Forest boundary to the point of intersection with the south boundary of the Rancho La Liebre Land Grant; then west and north along this land grant boundary to the Los Angeles-Kern County boundary. (17 Cal. Code Regs., § 60104(d).)

SCAQMD's 2012 AQMP, which includes Control Measure IND-01 as an indirect source control strategy, applies only to the South Coast Air Basin. The 2012 AQMP acknowledges that SCAQMD's jurisdiction over the South Coast Air Basin "is bounded by the Pacific Ocean to the west and the San Gabriel, San Bernardino, and San Jacinto mountains to the north and east." (See 2012 AQMP, p. 1-2.) SCAQMD lacks authority to adopt and enforce Proposed Rule 4001 because it does not have jurisdiction to regulate emission sources outside of its geographical boundaries as would be required if the CAAP programs become mandatory. The Ocean Going Vessel (OGV) Vessel Speed Reduction program would require OGVs to slow vessel speed to 12 knots during their approach and departure from the ports at a distance of either 20 nm or 40 nm from Point Fermin, which is outside SCAQMD's jurisdictional boundary. The OGV Low Sulfur Fuel for Auxiliary Engines and Auxiliary Boilers program would require OGVs to switch to low sulfur distillate fuel within 40 nm from Point Fermin, which is outside of SCAQMD's jurisdictional boundary. The OGV Low Sulfur Fuel for Main Engines program would require OGVs to switch to low sulfur distillate fuel within 40 nm from Point Fermin, which is outside of SCAQMD's jurisdictional boundary.

This OGV Vessel Speed Reduction program is the only CAAP measure that is not already part of regulations adopted by other agencies. Yet, the ports also lack jurisdiction to mandate any OGV actions of the ship owners if CAAP voluntary incentive targets are not met for the reasons stated below in section V.6.

6. ***Control Measure IND-01 and Proposed Rule 4001 Violate IMO's MARPOL Annex VI and Maritime Pollution Prevention Act of 2008.***

OGVs are regulated by the federal government implementing its treaty obligations under MARPOL, administered by the IMO, specifically MARPOL Annex VI Regulations for the Prevention

of Air Pollution from Ships (Annex VI) which sets global limits for SOx, NOx, and PM emissions from OGVs. Congress vested MARPOL and Annex VI authority with the Secretary of the U.S. Coast Guard (Secretary) and the Administrator (Administrator) of the EPA. (33 U.S.C. § 1903.) The Secretary has exclusive MARPOL administrative and enforcement authority. (33 U.S.C. § 1903(a).) The Administrator has Annex VI administrative, regulatory, investigative, and enforcement authority. (33 U.S.C. §§ 1901 et seq.)

The SCAQMD's ability to adopt, enforce, and require the ports to comply with Control Measure IND-01/Proposed Rule 4001 is precluded and preempted by Annex VI and federal regulations. (40 CFR § 1043.10.) The federal government has historically been the principal regulator of emissions from U.S. and foreign-flagged ships (or OGVs) under Annex VI. (40 C.F.R. § 94; 40 C.F.R. § 1043, 33 C.F.R. § 151).

The ports are located within the North American Environmental Control Area (ECA) established under Annex VI. The North American ECA's limits are much stricter than Annex VI's global requirements. Control Measure IND-01/Proposed Rule 4001 unlawfully requires the ports to collect and report NOx, SOx, and PM emissions information from OGVs subject to Annex VI requirements in the North American ECA. (Proposed Rule 4001(d).) To collect this information, the ports must impose a reporting requirement for OGVs coming and going from the ports– effectively regulating them under Annex VI. The ports lack authority to regulate U.S. and foreign-flagged ships in this manner. (33 U.S.C. §§ 1903, 1907.) Federal recordkeeping and reporting requirements for fuel and marine engines are expressly allowed (40 C.F.R. § 1043.70(b)-(c)), but no other recordkeeping and reporting requirements are authorized by statute or regulation. Control Measure IND-01/Proposed Rule 4001's reporting requirement is thus preempted by both Annex VI's record-keeping requirements for NOx engine standards and sulfur content in fuel (Regulations 13 and 14, Annex VI; incorporated by reference at 40 C.F.R. § 1043.100) and federal regulatory record-keeping and reporting requirements (40 C.F.R. § 1043.70).

Control Measure IND-01/Proposed Rule 4001 is also preempted on enforcement grounds. Congress expressly reserved enforcement authority of Annex VI regulations to the U.S. Coast Guard and EPA. (33 U.S.C. §§ 1903, 1907.) Enforcement inspections will be conducted only by the U.S. Coast Guard and, when referred by the Secretary, investigated by the Administrator. (33 U.S.C. §§ 1907(f)(1)-(2).) The U.S. Coast Guard and EPA are authorized to impose civil penalties for violations of MARPOL (including Annex VI) and 33 U.S.C. §§ 1901 et seq., § 1908(b)(1). The ports and SCAQMD are not so authorized and cannot inspect, penalize, or undertake enforcement actions against OGVs under Annex VI and 33 U.S.C. §§ 1901 et seq.

Control Measure IND-01/Proposed Rule 4001 also gives the Executive Officer of the SCAQMD authority to decide that the emission target is not met. To satisfy the Emission Reduction Plan requirement, the ports may have to impose more stringent emissions requirements on U.S. and foreign-flagged vessels than required by Annex VI. The ports and SCAQMD both lack this authority.

7. ***Control Measure IND-01 and Proposed Rule 4001 Violate the Dormant Commerce Clause.***

Control Measure IND-01/Proposed Rule 4001 violates the dormant Commerce Clause and would impede the free and efficient flow of commerce imposing a heavy burden on ports, the shipping

industry, navigation and commerce without any local environmental benefit, or an insubstantial local benefit at best. Because SCAQMD's attainment demonstration shows the $PM_{2.5}$ NAAQS can be obtained without Control Measure IND-01/Proposed Rule 4001, it is unnecessary to require additional emissions reductions from the maritime goods movement industry to achieve attainment and the burdens on interstate commerce of Control Measure IND-01/Proposed Rule 4001 render it unreasonable and irrational.

8. ***SCAQMD Lacks Authority under the Clean Air Act to Designate and Regulate the Ports as "Indirect Sources."***

The Clean Air Act defines an indirect source as "a facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution." (42 U.S.C. § 7410(a)(5)(C).) An "indirect source review program" is "the facility-by-facility review of indirect sources of air pollution, including such measures as are necessary to assure, or assist in assuring, that a new or modified indirect source will not attract mobile sources of air pollution" that would contribute to the exceedance of the NAAQS. (42 U.S.C. § 7410(a)(5)(D)(i).) "Direct emissions sources or facilities at, within, or associated with, any indirect source shall not be deemed indirect sources for the purpose" of an indirect source review program. (42 U.S.C. § 7410(a)(5)(C).)

The ports are not a "Facility" as required by the Clean Air Act's indirect source provisions. Together, the Port of Los Angeles and Port of Long Beach encompass 10,700 acres, miles of waterfront and features 50 passenger and cargo terminals, including dry and liquid bulk, container, breakbulk, automobile and warehouse facilities, and a cruise passenger complexes. While some U.S. ports are "operating ports" that own and operate their terminals and equipment and hire longshoremen to handle cargo, the ports of Los Angeles and Long Beach are "non-operating" or "landlord" ports that hold the tidelands property in trust for the State of California and lease it out to port tenants that operate the terminals. Each port tenant is treated as an individual stationary source facility by the SCAQMD and their activities are separately regulated and permitted by the SCAQMD.

SCAQMD advances the novel theory in Control Measure IND-01/Proposed Rule 4001 that it can designate a geographic area of a city to be an "indirect source." Further, the geographic line drawn by SCAQMD does not respect political boundaries and lumps portions of the Cities together as a single indirect source. The SCAQMD believes it can draw any geographic boundary it desires and declare that area to be an "indirect source" without regard for whether the landowner operates or controls mobile sources that pass through the area. Under the SCAQMD's theory, a local air district could designate as a stationary source, and an indirect source any city or county that has natural features that attract ships or cars or other mobile sources, even if the city or county does not own, operate or control those sources. Is a city with oil fields a stationary source and indirect source because it attracts refineries, trucks and trains to transport the petroleum products? If Riverside County has increased the numbers of warehouses and distribution centers within its borders, is the governmental agency or county geographical area now a stationary source and indirect source because such distribution centers within their borders attract trucks and trains?

Control Measure IND-01/Proposed Rule 4001 uses the Clean Air Act's indirect source provisions as a guise to impermissibly regulate mobile sources. Proposed Rule 4001 regulates emissions from "***on- and off-road mobile sources operating at, and to and from***, the Ports, which includes ocean-

going vessels, locomotives, heavy duty trucks, harbor craft, trucks, and cargo handling equipment that emit NOx, SOx, or PM2.5." (Proposed Rule 4001(c)(7) [Emphasis added].) Proposed Rule 4001's language clearly regulates emissions from the tailpipes of on-road and off-road mobile sources listed above, which makes Proposed Rule 4001 a mobile source regulation. The language also plainly allows Proposed Rule 4001 to regulate off-site emissions (emissions occurring during transit "to and from" the purported "site"). Proposed Rule 4001 therefore regulates emissions from heavy duty trucks hauling a container from the ports to Oregon or OGVs hauling cargo containers from Asia to the ports – even when that truck or OGV is no longer physically operating within the ports' boundaries. Proposed Rule 4001 is therefore not a site-based program. Congress did not intend or authorize the use of the indirect source provisions of the Clean Air Act as a way to circumvent mobile source preemption.

Control Measure IND-01/Proposed Rule 4001 also fails as an indirect source review program because the ports are not a "new or modified indirect emissions source." The Clean Air Act defines modification as "any physical change in, or change in the method of operation, of a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of an air pollutant not previously emitted." (42 U.S.C. § 7411(a)(4).) The criteria pollutants targeted by Control Measure IND-01/Proposed Rule 4001 are among those that have been identified and reduced for the duration of the CAAP. Because the ports do not qualify as either a new or modified source, any attempt to regulate them as such exceeds the SCAQMD's authority.

Control Measure IND-01/Proposed Rule 4001 also violates the nexus requirement for indirect source review programs. The purpose of an indirect source review program is to ensure that mobile source emissions do not "cause or contribute to air pollution concentrations exceeding any national primary ambient air quality standard for a mobile-source related air pollutant." (42 U.S.C § 7410(a)(5)(D)(i).) SCAQMD's own $PM_{2.5}$ monitors show that emissions from mobile sources operating in and around the ports are not causing or contributing to the South Coast Air Basin's nonattainment of the $PM_{2.5}$ NAAQS. In the 2015 Supplement, SCAQMD attributes nonattainment to a single monitor – Mira Loma (Van Buren) – which is located in Riverside, approximately 60 miles northeast of the ports. This monitor has purportedly failed to attain the $PM_{2.5}$ NAAQS because of drought conditions in Southern California, even though all of the South Coast Air Basin has experienced the drought and none of SCAQMD's other monitors have failed to demonstrate attainment with the $PM_{2.5}$ NAAQS, including the two State and Local Air Monitoring Stations nearest to the Ports – in North and South Long Beach. The Long Beach monitors have consistently demonstrated attainment for at least the last four years and are projected to continue attaining the standard through 2019. The data thus suggest a nexus between nonattainment and a source located near the Mira Loma (Van Buren) monitor – ***not the ports***.

9. *SCAQMD Lacks Authority to Require the Ports to Regulate Air Quality*.

Control Measure IND-01/Proposed Rule 4001 unlawfully compels the Ports to regulate local air quality in violation of California Health and Safety Code sections 40414 and 40440. SCAQMD's authority is confined to air quality and cannot infringe on the land use authority of counties and cities. (42 U.S.C. § 7431; Cal. Health and Safety Code § 40414.) The ports, not SCAQMD, have the authority to determine their own land use needs to advance trade and commerce. The ports play a critical role in facilitating domestic and international maritime commerce. The Los Angeles City Charter charges the Port of Los Angeles with possession, management, and control of all navigable waters, tidelands, submerged lands, and other lands as specified in the City Charter. (City Charter, Sections 602 and 651.)

Similarly, the Long Beach City Charter vests in the Long Beach Harbor Department the authority to control and supervise the Harbor District to provide for the needs of commerce, navigation, recreation and fishery. (Long Beach charter Article X11.) As an exercise of this authority, the ports decided to develop an emission inventory and implement CAAP programs after having weighed the risks of losing business to other ports without a CAAP-equivalent program. These emissions are not caused by the ports' own equipment or operations – they are caused by tenants and other goods movement customers that operate in or near the ports.

The ports are not authorized by state or federal law to carry out the air quality responsibilities of an air district or state. (40 C.F.R. § 51.232(a).) The delegation requirements are also not met. (40 C.F.R. § 51.232(b).) Control Measure IND-01/Proposed Rule 4001 nevertheless requires the ports to conduct regulatory activities, such as developing and adopting emission reduction strategies for maritime goods movement emission sources, which may include retrofit, idling, or fuel requirements; seeking SCAQMD's approval to implement the ERP regulations; and establishing enforcement procedures to ensure that $PM_{2.5}$ emission reductions from mobile sources operating in or near the ports meet the 2012 AQMP assumptions. (See Proposed Rule 4001(f)(1)(C), (f)(1) and (2), and (f)(1)(D).)

10. *There is No Legal Authority for Including Control Measure IND-01 or Proposed Rule 4001 in the SIP*.

Indirect source control measures cannot be required as a condition of SIP approval by EPA or CARB. (42 U.S.C. § 7410(a)(5)(A)(ii); Cal. Health & Safety Code, § 40468.) There are no provisions in the Clean Air Act for including "backstop" measures like Control Measure IND-01 and rules like Proposed Rule 4001 in the California SIP. Only those provisions necessary to meet the requirements of the Clean Air Act can be included in the SIP. (Cal. Health & Safety Code, § 39602.) Control Measure IND-01/Proposed Rule 4001 is not necessary to meet the 24-hour $PM_{2.5}$ NAAQS requirements of Clean Air Act, and there is no emission reduction target for Control Measure IND-01 in the attainment strategy for the 2012 AQMP which Proposed Rule 4001 purports to implement. Thus, Proposed Rule 4001 does not comply with SIP submittal requirements. (See e.g., 40 C.F.R. §§ 51.112-51.114.)

The 2012 AQMP baseline assumptions SCAQMD seeks to enforce by Control Measure IND-01/Proposed Rule 4001 are not credited as emission reductions in the control attainment demonstration for the 2012 AQMP. There is no requirement under the Clean Air Act to enforce baseline assumptions in a SIP. CARB and SCAQMD must have legal authority to adopt, carry out and enforce each SIP measure before EPA can approve the SIP measure. (40 C.F.R. §§ 51.230-51.232; 40 C.F.R. § 51, App. V.) CARB and SCAQMD lack legal authority (preempted) because they cannot require the owners or operators of OGVs, locomotives, harbor craft, and CHE to implement all of the measures set forth in the CAAP, which Control Measure IND-01/Rule Proposed Rule 4001 requires. There is no agreement between CARB or SCAQMD with the Cities for the ports to agree to implement and enforce the sources covered by Proposed Rule 4001. (40 C.F.R. § 51.240.)

11. *Control Measure IND-01 and Proposed Rule 4001 Violate the Tidelands Trust Doctrine*.

The Cities' management of their tidelands is restricted by the public trust doctrine and the legislative acts that granted tidelands to the Cities. As tidelands trustees, the Cities are required to operate and use their tidelands property and revenues solely for the benefit of the entire State of

California, and not for purely local interest or benefit. The Cities have been granted the discretion over how to best fulfill the express trust purposes. SCAQMD cannot compel the ports through Proposed Rule 4001 to violate these Tidelands Trust obligations.

Control Measure IND-01/Proposed Rule 4001 strips the Cities of their discretion in administering the tidelands for the benefit of the State of California and compels the Cities to utilize their revenues for air quality purposes ahead of the purposes expressly set forth in the documents granting tidelands to the Cities. As a practical matter, Control Measure IND-01/Proposed Rule 4001 compliance will depend in part on the Cities providing financial incentives to the owners and operators of mobile sources to incentivize emission reductions. If the SCAQMD Executive Officer requires the ports to develop an Emission Reduction Plan and determines that more generous financial incentives must be offered by the ports to achieve the emission targets (which is permissible under Proposed Rule 4001), this would ultimately diminish the Cities' ability to execute their tidelands trust obligations by forcing revenue to be spent on complying with Proposed Rule 4001, and depleting revenues for express trust purposes.

In their discretion, the ports consider environmental quality to fall within the implied scope of the tidelands trust and have in fact made substantial expenditures when their operating budgets allow. The ports also fully comply with the California Environmental Quality Act when developing their properties for tenants' use, which may include providing mitigation such as air quality reduction measures to address any environmental impacts. However, the tidelands trust does not expressly require revenues be expended for "air quality improvement", and Control Measure IND-01/Proposed Rule 4001 appears to challenge the Cities' jurisdiction over their own funds, if the only way to increase compliance with a CAAP incentive program, for example, is to increase the amount of incentives.

Control Measure IND-01/Proposed Rule 4001 also compels the Cities to violate their Tidelands Trust obligations by mandating that the ports utilize trust funds for an entirely local air regulatory program to reduce PM 2.5, SOx, and NOx emissions. Proposed Rule 4001 applies to "commercial marine ports located in the South Coast Air Quality Management District." (Proposed Rule 4001(b).) The SCAQMD covers a sub-region within Southern California. (Cal. Health and Safety Code, § 40410.) "Commercial marine ports" means "the Port of Los Angeles and the Port of Long Beach." (Proposed Rule 4001(c)(2).) The funding to implement Proposed Rule 4001 will confer only an emission reduction benefit to the South Coast Air Basin and not the entire State of California. Thus, the benefits of Proposed Rule 4001 are strictly localized and conflict with the express terms of the tidelands trust provisions that the ports' property and revenues confer statewide, and not purely local, benefits. The implementation of Proposed Rule 4001 in the South Coast Air Basin will place the ports at a competitive disadvantage to other ports in California. If other ports secure cargo business meant for the Los Angeles or Long Beach ports, the Cities will lose revenues they need to fulfill their tidelands trust obligations.

Conclusion

Again, the ports appreciate the opportunity to comment on EPA's proposed rulemaking and urge the EPA to disapprove and exclude SCAQMD's Control Measure IND-01 and Proposed Rule 4001 from the SIP submittal for the 2006 $PM_{2.5}$ NAAQS in the South Coast Air Basin.

Sincerely,

Heather A. Tomley
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachments

1) March 25, 2014 Letter to Richard Corey, California Air Resources Board from Heather Tomley, Port of Los Angeles and Christopher Cannon, Port of Los Angeles
2) February 24, 2014 Letter from Deborah Jordan, EPA to Christopher Cannon, Port of Los Angeles and Matthew Arms, Port of Long Beach
3) January 31, 2014 Letter to Randall Pasek, Ph.D., South Coast Air Quality Management District from Matthew Arms, Port of Long Beach and Christopher Cannon, Port of Los Angeles
4) January 15, 2014 Letter to Jared Blumenfeld, U.S. Environmental Protection Agency, Region 9 from Matthew Arms, Port of Long Beach and Christopher Cannon, Port of Los Angeles
5) January 15, 2014 Letter to Barbara Radlein, South Coast Air Quality Management District from Matthew Arms, Port of Long Beach and Christopher Cannon, Port of Los Angeles
6) October 2, 2013 Letter to Randall Pasek, South Coast Air Quality Management District from Heather Tomley, Port of Long Beach and Christopher Cannon, Port of Los Angeles
7) August 21, 2013 Letter to Barbara Radlein, South Coast Air Quality Management District from Heather Tomley, Port of Long Beach and Christopher Cannon, Port of Los Angeles
8) November 27, 2012 Letter to Susan Nakamura, South Coast Air Quality Management District from Richard D. Cameron, Port of Long Beach and Christopher Cannon, Port of Los Angeles
9) November 19, 2012 Letter to Barry Wallerstein, South Coast Air Quality Management District from Richard D. Cameron, Port of Long Beach and Christopher Cannon, Port of Los Angeles
10) November 8, 2012 Letter to Barry Wallerstein, South Coast Air Quality Management District from Richard D. Cameron, Port of Long Beach and Christopher Cannon, Port of Los Angeles
11) October 31, 2012 Letter to Barry Wallerstein, South Coast Air Quality Management District from Richard D. Cameron, Port of Long Beach and Christopher Cannon, Port of Los Angeles from Chris Lytle, Port of Long Beach and Michael Christensen, Port of Los Angeles
12) October 22, 2012 Letter to Jeff Inabinet, South Coast Air Quality Management District from Richard D. Cameron, Port of Long Beach and Christopher Cannon, Port of Los Angeles

13) August 30, 2012 Letter to Barry Wallerstein, South Coast Air Quality Management District from Chris Lytle, Port of Long Beach and Geraldine Knatz, Port of Los Angeles

14) July 10, 2012 Letter to Barry Wallerstein, South Coast Air Quality Management District from Chris Lytle, Port of Long Beach and Michael Christensen, Port of Los Angeles

15) May 4, 2010 Letter to Susan Nakamura, South Coast Air Quality Management District, from Richard D. Cameron, Port of Long Beach and Ralph Appy, Port of Los Angeles

16) December 2012, SCAQMD Final 2012 Air Quality Management Plan, pp. 4-8, 4-12 to 4-13; and January 11, 2013 CARB Staff Report on Proposed Revisions to the PM2.5 and Ozone State Implementation Plans for the South Coast Air Basin, pp. 12-13.

17) December 2012, SCAQMD Final 2012 AQMD Appendix IV-A, District's Stationary Source Control Measures, pp. IV-A-2, IV-A-36 to IV-A-43

18) February 2015, SCAQMD Final Supplement to the 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin, Table F-1

19) February 6, 2015, SCAQMD Agenda No. 22, Supplement to 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin, Attachment F, p. F-1

20) February 2015, SCAQMD Final Supplement to the 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin, Table F-1; and February 6, 2015, SCAQMD Agenda No. 22, Supplement to 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin, Attachment E

21) December 7, 2012, SCAQMD Resolution 12-19

22) January 25, 2013, CARB Resolution 13-3

cc: The Honorable Barbara Boxer, United States Senate
The Honorable Janice Hahn, United States House of Representatives
The Honorable Alan Lowenthal, United State House of Representatives
The Honorable Edmund G. Brown, Jr., Governor, State of California
The Honorable Ricardo Lara, California State Senate
The Honorable Patrick O'Donnell, California State Assembly
The Honorable Robert Garcia, Mayor, City of Long Beach
The Honorable Eric Garcetti, Mayor, City of Los Angeles
Jon Slangerup, Chief Executive, Port of Long Beach
Gene Seroka, Executive Director, Port of Los Angeles
Richard Cameron, Managing Director, Port of Long Beach
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Barbara McTigue, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
Jared Blumenfeld, Administrator, EPA, Region 9
Deborah Jordan, Director, Air Division, EPA, Region 9
Elizabeth Adams, Deputy Director, Air Division, EPA, Region 9

Jeanhee Hong, Regional Counsel, EPA Region 9
Richard Corey, Executive Officer, CARB
Cynthia Marvin, Division Chief, Stationary Source Division, CARB
Doug Ito, Chief, Freight Transportation Branch, CARB
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD

ATTACHMENT 1.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

March 26, 2014

Richard Corey
Executive Officer
California Air Resources Board
1001 "I" Street
Sacramento, California 95814

Re: California State Implementation Plan (SIP) for $PM_{2.5}$ for South Coast Air Basin – South Coast 2012 Air Quality Management Plan (AQMP) Control Measure IND-01 *Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities*

Dear Mr. Corey:

The Ports of Long Beach and Los Angeles (Ports) would like to express our concern regarding the California Air Resources Board (ARB) procedure for inclusion of Control Measure IND-01 *Backstop Measure for Indirect Sources of Emissions from Ports and Port-related Facilities* (Measure IND-01) in the California State Implementation Plan (SIP) for particulate matter 2.5 microns or less ($PM_{2.5}$) for the South Coast Air Basin, which is currently pending United States Environmental Protection Agency (EPA) approval.

The Ports believe that ARB failed to follow the process for SIP revision submissions required by Clean Air Act Section 110(1) and California Health and Safety Code Section 41650. Under Clean Air Act Section 110(l), SIP revisions must be adopted by the State, and the State must provide for reasonable public notice and hearing prior to adoption. Pursuant to 40 CFR 52.102(a)(1), the State must hold a public hearing, not only for initial SIP approval, but also for any SIP revision, and must provide notice of the date, place, and time of a public hearing and opportunity to submit written comments. Under 40 CFR 51.102(d), reasonable public notice in this context refers to at least 30 days. Similarly, Health and Safety Code Section 41650 provides for a public hearing that would allow public comment as to whether the SIP meets the requirements of the Clean Air Act. By resolution dated January 25, 2013, the ARB approved the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) and directed the executive officer of the ARB to submit the AQMP to EPA for inclusion in the SIP. However, at the time of the January 25, 2013 ARB action, Measure IND-01 was not part of the AQMP. Because the AQMD Governing Board adopted the AQMP without Measure IND-01 on December 7, 2012 and did not adopt Measure IND-01 until February 1, 2013, the January 25 ARB action did not constitute approval of Measure IND-01 which had not yet been submitted to ARB for consideration. The

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425 S. Palos Verdes Street • San Pedro • CA 90731 • 310-732-3675

Port of Long Beach • Environmental Planning
925 Harbor Plaza • Long Beach • CA 90802 • 562-590-4160

The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

documents attached to the ARB's February 13, 2013 SIP submittal to the EPA include the December 7, 2012 resolution by the AQMD Governing Board and the December 20, 2012 AQMD letter to ARB transmitting the approved SIP, which pre-dated the AQMD Governing Board's approval of Measure IND-01. However, without the required public notice or public hearing and adoption by the ARB Governing Board, the submitted SIP includes the addition of Measure IND-01 by Executive Order S-13-004, dated April 9, 2014.

Furthermore, the Ports were made aware of this Executive Order, which occurred without public hearing or Governing Board approval through a letter from EPA to the Ports dated February 24, 2014. This letter stated that ARB had approved the revised SIP containing Measure IND-01and had forwarded it to EPA under cover of a letter dated April 9, 2013. After a search of the ARB website, however, we were unable to find a copy of the April 9, 2013, submission to the EPA, and the only ARB action posted on the ARB website was the February 13, 2013, SIP submission without Measure IND-01 and the ARB Board's resolution dated January 23, 2013, also without Measure IND-01. We made inquiry to ARB staff and for the first time, on March 18, 2014, received a copy of the April 9, 2013 submission and ARB Executive Order S-13-004, neither of which are available on the ARB website even as of this date.

Perhaps more important than the procedural issue described above, we respectfully request that ARB consider the Ports' many legal, jurisdictional, operational, and technical concerns regarding the substance of Measure IND-01 and its implementing Rule 4001 as set forth in the attached letter to AQMD, dated January 31, 2014, which we hereby incorporate by reference as comments to the ARB on Measure IND-01, since ARB has never formally noticed a public comment period, in violation of the Clean Air Act and Health and Safety Code Section 41650.

The Ports value our partnership with ARB, working together to improve air quality, and we look forward to continuing our collaboration on projects such as ARB's new Sustainable Freight Strategy effort. Rather than introduce counterproductive regulation such as Measure IND-01 or Proposed Rule 4001, the Ports strongly urge ARB to recognize that a multi-agency agreement, using a collaborative process for development of potential programs, is the most effective way to ensure that emission reduction goals continue to be incentivized, and are actually realized. We respectfully request that ARB rescind Executive Order S-13-004, withdraw Measure IND-01 from the SIP, and meet with the Ports to work on a collaborative path forward.

Sincerely,

Heather Tomley
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

LW

Attachment: Port of Long Beach and Port of Los Angeles January 31, 2014 Letter to Mr. Randall Pasek, AQMD, *Re: Comments on South Coast Air Quality Management District Proposed Rule 4001 — Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports*

cc: Al Moro, Acting Executive Director, Port of Long Beach
Gary Lee Moore, Interim Executive Director, Port of Los Angeles
Richard D. Cameron, Managing Director, Port of Long Beach
Michael Christensen, Deputy Executive Director, Port of Los Angeles
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
Mary Nichols, Chairman, ARB
Members of the California Air Resources Board (*c/o Clerk of the Board, Attachment on CD*)
Cynthia Marvin, Division Chief, Stationary Source Division, ARB

ATTACHMENT 2.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

FEB 2 4 2014

Mr. Christopher Cannon
Director of Environmental Management
Port of Los Angeles
425 S. Palos Verdes Street
San Pedro, CA 90731

Mr. Matthew Arms
Acting Director of Environmental Planning
Port of Long Beach
925 Harbor Plaza
Long Beach, CA 90802

Dear Mr. Cannon and Mr. Arms:

Thank you for your letter dated January 15, 2014, to the U.S. Environmental Protection Agency Region 9's Regional Administrator Jared Blumenfeld, expressing your concerns about the South Coast Air Quality Management District's (SCAMQD) Control Measure IND-01, *Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities.* We appreciate the Port of Long Beach's and the Port of Los Angeles' input on Control Measure IND-01.

We agree with your statement that California Air Resources Board's (CARB) January 25, 2013 adoption of the South Coast 2012 Air Quality Management Plan (2012 AQMP) did not include Control Measure IND-01. The SCAQMD Governing Board voted to delay that measure when it adopted the 2012 AQMP pending further work by SCAQMD staff. The measure was approved by the SCAQMD Governing Board in February 2013 and CARB adopted it and submitted it to EPA on April 9, 2013. To date, we have not received South Coast Rule 4001, which will implement Control Measure IND-01, as a revision to the California State Implementation Plan. Once we receive the rule, we are obligated to review and act on the rule.

In the mean time, I propose that my staff schedule a teleconference call with your staff to discuss the concerns you raised in your letter. If you have any questions, please contact Elizabeth Adams, Air Division Deputy Director, at (415) 972-3183.

Sincerely,

Deborah Jordan
Director, Air Division

ATTACHMENT 3.

January 31, 2014

VIA E-MAIL – rpasek@aqmd.gov

Mr. Randall Pasek, Ph.D.
Planning Manager, Off-Road Section
Mobile Source Division
Science and Technology Advancement
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91756-4178

Re: Comments on South Coast Air Quality Management District Proposed Rule 4001 — *Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports*

Dear Mr. Pasek and Staff of the South Coast Air Quality Management District:

On behalf of the City of Long Beach (referred to herein as "COLB") and the City of Los Angeles acting by and through their respective Harbor Departments ("COLA"), and collectively with COLB referred to herein as the "Cities"), we appreciate this opportunity to submit comments on the South Coast Air Quality Management District's ("District") recently published draft "Proposed Rule 4001 – *Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports*" ("PR 4001"), which attempts to implement "Stationary Source Measure IND-01—*Backstop Measures for Indirect Sources of Emissions from Ports and Port-related Facilities*" ("Measure IND-01") in the 2012 Air Quality Management Plan for the South Coast Air Basin ("AQMP").

As the District is well aware, the Cities have been dedicated, innovative, and effective leaders in the efforts of public agencies to improve air quality despite the fact that we have no air quality regulatory authority or control over emissions sources. The potential of additional regulation by the District in the form of PR 4001 on the ports of Long Beach and Los Angeles ("Ports") brings significant uncertainty that will have broad negative effects on the goods movement industry and the economy as a whole, and destroys the voluntary, collaborative partnership among the Cities, industry and all of the air agencies that has led to unparalleled emission reductions. PR 4001 raises questions of fairness and unacceptable delegation of responsibility from federal, state and local air regulators to individual cities.

The Cities have previously commented on, and objected to PR 4001 and Measure IND-01, and have expressed our grave concerns about the District's rulemaking approach, attempting to craft an ostensible "backstop rule" that would regulate the Cities and their respective Ports in an unprecedented manner. This letter provides the Cities' comments on PR 4001 and the District's Preliminary Draft Staff Report ("PDSR") for PR 4001 and concludes that:

I. The substance of Measure IND-01 and PR 4001 is deeply flawed from technical, jurisdictional, legal, and public policy perspectives, in ways that cannot be cured;

II. District is acting beyond its authority to adopt PR 4001;

III. The procedural process for development, public participation and adoption of Measure IND-01 and PR4001 is similarly flawed under both state and federal law; and

IV. Measure IND-01 and PR 4001 fail the requirements for inclusion in a State Implementation Plan (SIP) under the federal Clean Air Act and applicable state law and their existence within the SIP threatens the its success.

Each of these four conclusions is explained in detail below.

I. SUBSTANTIVE FLAWS IN PR 4001

A. There Is No Demonstrated Need for PR 4001

The District has failed to and cannot provide any demonstration of "need" or justification for either Measure IND-01 or PR 4001. The District's persistent demand for the Cities – and the Cities alone – to be subjected to a redundant rule to "backstop" existing and effective emission regulations, reduction plans and policies is arbitrary, discriminatory, and remains unjustified by evidence or legal authority.

We respectfully point out that the District previously proposed a "port backstop rule" as a "Mobile Source Measure MOB-03" ("Measure MOB-03") as part of the District's 2007 Air Quality Management Plan, although Measure MOB-03 included as regulated parties, the port-related emission sources. However, following the Cities' objections to that similarly-unjustified proposal, the California Air Resources Board ("CARB") excluded the Port-related emission reduction targets and the proposed MOB-03 "backstop" measure from the 2007 SIP. Despite that rejection, and despite its repeated and manifest failure to demonstrate any legitimate need the District introduced an even more unjustified form of backstop that targets the Cities alone, in the form of PR 4001.

Implementation of PR 4001 would transform the Cities' voluntary San Pedro Bay Ports Clean Air Action Plan ("CAAP") into the District's mandatory regulation of the Cities. The CAAP was a voluntary cooperative effort of Cities and all of the air regulatory agencies (including the District, CARB and the United States Environmental Protection Agency ("USEPA") designed to encourage the industry operators of emission sources to go beyond regulation. PR 4001 would improperly and illogically subject the Cities to the District's regulation for industry's failure to achieve anticipated emissions reductions from equipment not operated, owned or controlled by the Cities, or even to the potential loss of federal and state funding for emission reduction measures if the PR 4001 is adopted and included in the SIP and approved by the USEPA.

As the Cities have previously shown, there is no demonstrated need for the rule, nor is this rule necessary for regional attainment of the 2014 $PM_{2.5}$ standard. PR 4001 is unnecessarily duplicative of regulations already in place for port-related sources.[1] This violates the federal Clean Air Act and State of California Health & Safety regulations that require SIP provisions to be "necessary." The Ports' 2012 air emissions inventories show that diesel particulate emissions (DPM) have been reduced by 80% over the seven year period between 2005 and 2012, exceeding the commitments we made for 2014 and 2023 in the CAAP. Further, the Cities estimate that by 2014**, 98%** of the $PM_{2.5}$ equivalent emission reduction that PR 4001 seeks to backstop will occur as the result of regulations adopted by CARB and the International Maritime Organization (IMO).[2] The remaining **2%** of $PM_{2.5}$ equivalent emission reductions is primarily attributed to the Cities' successful voluntary vessel speed reduction incentive program which is part of the Cities' CAAP.

B. A VMEP Should Be Used To Achieve Reductions Rather than Rulemaking

To the extent the District may be seeking to ensure the emission benefits of the Cities' voluntary vessel speed reduction incentive program, there is a more appropriate and focused method in the form of the USEPA's policy and guidance for the Voluntary Mobile Source

[1] The term "port-related sources" may occasionally be used in this letter, merely for convenience and consistency with usage of that colloquial term by the District, as shorthand for the range of discrete sources of air emissions, mostly mobile, which happen to operate at or near the geographic boundaries of the respective Ports. The Ports themselves, however, are "non-operating ports" and therefore not "sources" of emissions, and there is no statutory reference to anything called "port-related sources" for purposes of air quality regulation. The Cities are governmental entities having jurisdiction over defined geographic areas, like the District, and are no more the "sources" of emissions than is the District.

[2] CARB Port Drayage Truck Rule, CARB Truck and Bus Rule, CARB Ocean-Going Vessel (OGV) Shore Power Rule, OGV Low-Sulfur Fuel Rule, CARB Cargo-Handling Equipment at Ports Rule, CARB Commercial Harbor Craft Rule, IMO North American Emission Control Area

Emission Reduction Program (VMEP). This USEPA policy provides an established process to grant SIP credit for emission reductions resulting from voluntary mobile source measures that go beyond existing regulations. The VMEP approach was intended for exactly the type of successful voluntary program such as the Cities' landmark CAAP, and should be used to account for the 2% of port-related emissions not currently backstopped by regulation. Use of the VMEP would allow the continuation of a successful voluntary approach that has industry support eliminating the risk of cargo diversion that would be caused by the uncertainty inherent in the ill-conceived regulatory structure of PR 4001.

The USEPA's established VMEP process that was conceptualized for programs such as the Cities' vessel speed reduction incentive program and other CAAP measures is a feasible and preferable alternative to PR 4001 as it will accomplish the objectives sought by Measure IND-01 and PR 4001 and ensure that the emissions reductions achieved by the program are credited in the SIP. Further, a VMEP, which can be implemented by a memorandum of understanding, will achieve the same emissions reductions while allowing grant funds to continue to remain available for actions going beyond regulations and will do so in a collaborative manner. It will also encourage other port partners, as well as cities and regions throughout the nation, to develop and pursue innovative voluntary programs and solutions that best fit their needs to improve air quality and public health. The Cities are open to discussing mechanisms, contractual or otherwise, by which the Cities and the District can formalize a VMEP to ensure the voluntary emission reductions are maintained in future years.

C. PR 4001 Emissions Reduction Target Methodology is Flawed

Table 5 of the District's Preliminary Draft Staff Report shows the overall combined 2014 target emission reduction of 75% resulting from the application of the Cities' CAAP 2014 emissions reduction goals for NOx, SOx, and DPM compared to the CAAP 2005 baseline, but fails to specify a mechanism to harmonize the AQMP inventory values with the Cities' reported air emissions inventories. Furthermore, the use of a fortuitous similarity in 'percent reduction' cannot be the basis of any type of backstop rule.

Since the 2012 Final AQMP emissions inventory uses a baseline year of 2008 that includes the Cities' 2008 emissions inventories, the 2005 baseline emissions should be replaced with the more appropriate 2008 emissions estimates to determine the overall $PM_{2.5}$ equivalent emissions reduction target. Based on the Cities' calculation, using the District staff's methodology, by applying the CAAP reduction factors to the 2008 baseline inventory, the overall combined target $PM_{2.5}$ equivalent emission reduction is 68%, as shown in the following table:

Emissions Inventory	NOx	SOx	$PM_{2.5}$	$PM_{2.5}$Eq
	(tons per day)			
CAAP 2005 Baseline[1, 3]	87.45	33.39	4.73	28.54
Ports Combined 2008 Total Port-Related Emissions[2, 3]	78.6	25.5	3.7	22.7
CAAP 2014 Reduction[4]	22%	93%	72%*	-----
2014 Estimated Inventory[3]	68.21	2.34	1.32	7.34
Overall $PM_{2.5}$ Equivalent Reduction Between 2008 and 2014				68%

[1] From Table 2 of Preliminary Draft Staff Report for PR 4001
[2] From Table 3 of Preliminary Draft Staff Report for PR 4001
[3] 2005 and 2008 emissions are based on the Ports' 2011 emission estimation methodologies.
[4] CAAP 2014 Bay-Wide Standards emission reduction goals for NOx, SOx and DPM
*Please note that that the CAAP 2014 emission reduction goal of 72% is for DPM, not for PM.

In determining the 2014 emission reduction targets for PR 4001, District staff applied the Basin-wide percent reductions from 2008 to 2014 and 2019 to the Cities' 2008 inventory to arrive at the forecasted net emissions reduction percentages of 75% for 2014 and 2019 (page 11 of Preliminary Draft Staff Report). This approach is not appropriate because the Basin-wide percent reductions are based on an inventory of emissions from overall sources (including non-port-related) in the South Coast Air Basin (SCAB). Therefore, the approach taken in PR 4001, is not directly applicable to what the Rule describes as "port-related emissions." Since the SCAB estimates include emissions from what the District erroneously describes as the "port-related source" categories, as well as sources operating elsewhere in the SCAB, the 75% emission reduction target specific to the ports of Long Beach and Los Angeles is questionable. As an example, SCAB-specific emissions from heavy-duty vehicles includes emissions from all heavy-duty trucks operating in the basin, including those associated with construction activities, public fleets, utility, intrastate, interstate, and drayage trucks, while the ports-specific heavy-duty truck emissions inventory only includes activity and emissions associated with port-related drayage trucks.

It is also important to note that the District's December 2013 Preliminary Draft Staff Report for PR 4001 erroneously assumes that $PM_{2.5}$ emissions are equivalent to diesel particulate matter (DPM) emissions. The Cities' 2014 CAAP emission reduction goal of 72% is specific to DPM, not $PM_{2.5}$ as assumed in the calculation of the $PM_{2.5}$ equivalent emissions reduction goal of 75%. Each of the Port's annual air emissions inventories separately estimate DPM and $PM_{2.5}$. As shown in their annual reports, the resulting emissions of DPM and $PM_{2.5}$ **are not equivalent**.

Please refer to Table 8.4 of the Port of Long Beach 2012 Air Emissions Inventory Report[3] and Table 9.4 of the Port of Los Angeles 2012 Inventory of Air Emissions Report[4].

A comparison of the $PM_{2.5}$ equivalent factors used in the 2007 AQMP , 2012 AQMP, and PR 4001 shows that there is inconsistency in how the $PM_{2.5}$ equivalent factors were derived and applied, as shown in the table below:

$PM_{2.5}$ Equivalent Factors

	VOC	NOx	$PM_{2.5}$	SOx
2007 AQMP	0.04	0.10	1.00	1.52
2012 AQMP	0.02	0.07	1.00	0.53
PR 4001	NA	0.07	1.00	0.53

In the 2007 AQMP, emissions reductions were simulated between 2005 and 2014, whereas for the 2012 AQMP, emissions reductions were simulated between 2008 and 2014. In the 2007 AQMP, the effect of each pollutant precursor's reduction on the 2014 $PM_{2.5}$concentration was considered on an annual basis, while the 2012 AQMP considers 24-hour $PM_{2.5}$concentrations. Also, the 2007 AQMP used the annual $PM_{2.5}$ concentration which was based on the average concentrations from all air monitoring stations in the South Coast Air Basin, while the 2012 AQMP only uses the average from six regional locations—Riverside-Rubidoux, Downtown Los Angeles, Fontana, Long Beach, South Long Beach, and Anaheim. The Basin-averaged conversion factors resulting from the 2007 analysis were submitted as part of the 2007 SIP (Appendix C, of the CARB staff report, "$PM_{2.5}$ Reasonable Further Progress Calculations") and were approved by the USEPA.

In addition, PR 4001(c)(6) defines "$PM_{2.5}$ Equivalent" as "the aggregate of the NOx, SOx, and $PM_{2.5}$ emissions (in tons per day) as defined by the following formula provided in the Final 2012 AQMP:

$$PM_{2.5}\text{ Equivalent} = 0.07 * NOx + 0.53 * SOx + 1.0 * PM2.5$$

The formula provided in PR 4001 does not reflect the $PM_{2.5}$ equivalent formula provided in the Final 2012 AQMP, which includes emissions of VOCs in the calculation. In PR 4001, without explanation, the District has erroneously "dropped" the contribution of VOC from the $PM_{2.5}$ equivalent formula, although the District's emissions modeling simulation shows VOCs as a contributing factor.

[3] Port of Long Beach 2012 Air Emissions Inventory. www.polb.com/emissions
[4] Port of Los Angeles 2012 Inventory of Air Emissions. www.portoflosangeles.org/environment/studies_reports.asp

Given that there have been several revisions to the $PM_{2.5}$ equivalent calculations, the text and formulae used in PR 4001 for those calculations do not appear consistent with previous approaches to such determinations. Prior to proceeding any further with PR 4001, the Cities request a scientific technical evaluation and obtain confirmation from the USEPA that the revised $PM_{2.5}$ equivalent factors and formula to calculate $PM_{2.5}$ equivalent emissoins used in the 2012 AQMP and in PR 4001 are appropriate.

D. PR 4001 Fails to Provide an Accurate and Appropriate Definition of Emissions "Shortfall"

PR 4001 would require the Cities to develop and submit an emissions reduction plan ("Plan") identifying control strategies to eliminate some potential future "shortfall" in attainment of reduction targets. The proposed rule, however, fails to identify the environmental baseline or other parameters that would be required in order for the Cities or the District to determine the extent of any emissions "shortfall" to be addressed in the potential Plan. Under PR 4001, the existence of a "shortfall" would appear to be the necessary prerequisite to trigger some responsive action on the part of the Cities, but the draft text of PR 4001 fails to provide for a timely and objective process to ascertain when and whether such a "shortfall" may have arisen.

The term "shortfall" first appears in the proposed rule in paragraph (d)(1)(A), where it appears to call for a Plan to report on progress in "meeting the shortfall." However, that would appear to be inconsistent with the structure of the proposed rule, i.e., under PR 4001, the District cannot require the Cities to submit an emissions reduction plan unless and until the annually-reported emissions reductions "show that the percent reduction in $PM_{2.5}$ from the baseline emissions is less than the reduction target" of 75% (Paragraph (e)(1)B)). There would not be any "shortfall" identified until that time; therefore, it would be premature and illogical to require the Cities to submit a Plan that "reports the progress in meeting the shortfall."

To the limited extent that the draft text of PR 4001 describes the shortfall that might trigger the need to prepare a Plan, the provisions for annual estimating or reporting of the emissions appear imprecise and vague. Also, paragraph (f) appears to contemplate that once a "shortfall" is determined to exist in one year, then the District could demand a revised Plan in following years if targets still are not met. What happens if the shortfall is "corrected" in subsequent years and targets are again being met?

PR 4001 fails to provide for any process for review or appeal of a possible District "determination" that a "shortfall" has occurred. PR 4001 fails to provide adequate time for the Cities to prepare a Plan, if required, or adequate time or procedures for the Cities to study the proposed Plan, to conduct environmental review of the Plan, or to conduct public hearings and gather input on any Plan that may be deemed to be appropriate if PR 4001 is properly triggered.

Development of a Plan should not be mandated if any eventual determination of an emissions "shortfall" is due to reasons outside of the Cities' control. As previously stated, by 2014, the emissions sources ostensibly targeted by PR 4001 are already controlled by state, federal, and international regulations. Should there be a shortfall in attaining the emissions targets, it will likely be due to factors not caused or controlled by the Cities, and not due to any action or derelictions on the part of the Cities or their tenants or users. The obligation to go through a burdensome process to prepare and approve a new Plan or to take active measures to make up for a shortfall in meeting emission reduction targets should not fall on the two Cities. The Cities are independent governmental entities who are not directly producing emissions or otherwise directly responsible for the targeted emissions or for the attainment of emission targets. The Cities are certainly not air agencies created by federal or state law with specific regulatory authority to control emissions.

E. <u>PR 4001 Improperly Provides for Moving Emissions Reduction Targets</u>

PR 4001 paragraph (c)(4) defines the "Emissions Target" as the "emissions forecast that is based on the Ports' 2008 baseline emissions **forecasted** for a specific year as provided in Appendix IV-A page IV-A-36 of the Final 2012 AQMP." This definition is confusing, as it is assumed that this reference is contained in the Final 2012 AQMP. In the description of this measure in Appendix IV, page IV-A-36, only projected levels of NOx, $PM_{2.5}$, and SOx are shown for calendar years 2014 and 2019. However, PR 4001 and the District's Preliminary Draft Staff Report discuss a 75% reduction in $PM_{2.5}$ equivalent emissions in 2014 compared to 2008 baseline levels. Again, there is a clear inconsistency between PR 4001 and the text of Measure IND-01 as actually approved by the District's Governing Board.

PR 4001 paragraph (e)(2) requires the District's Executive Officer to review the reduction target based on the latest information available including future year emission estimates in the 2016 AQMP and purports to allow the Executive Officer, by July 1, 2017 to "update," if necessary, the emission reduction target. This provision is unauthorized by IND-01 or any other rule, regulation, plan or statute, and would unlawfully vest apparently unfettered power on the Executive Officer to **change the previously-approved reduction targets**. By what authority would these targets be "revised" in the future? Under what objective standards? What public process would the District's Executive Officer need to follow in order to "develop" a proposed amendment to PR 4001 changing the targets? What environmental review/public outreach processes would be required before the Executive Officer could change the reduction targets and how would the environmental/socioeconomic impacts of such changes be addressed? How would such a moving target affect the Cities, the port communities, tenants, users, and the existing plans and policies which have proven effective in attaining the agreed and approved reduction targets?

F. The Processes For Development, Approval and Disapproval of Emission Reduction Plans Are Flawed

In the event the emissions reduction targets are not met, PR 4001 requires the Cities to submit an Emissions Reduction Plan "to address the emission reduction 'shortfall'." In addition, PR 4001 dictates the public processes of other government agencies: "…the Ports shall conduct at least one duly noticed public meeting before the Plan is presented to each respective Board of Harbor Commissioners for approval." This is an improper attempt by the District to control and dictate the exercise of "discretion" conferred on the Boards of Harbor Commissioners regarding their own notice, agenda setting, public hearing procedures and substantive decision making processes under their own applicable governing laws and rules. Neither the District's staff nor its Governing Board can require approval of the District's desired measures or override the discretion of the Board of Harbor Commissioners including decisions related to the management of the port or how port resources are allocated.

Moreover, if the Board of Harbor Commissioners disagrees that a Plan is required or specific terms of a Plan requested by the District, what process is provided for resolution of such disagreements? Under what authority would PR 4001 purport to allow the District's Executive Officer, acting alone, without even District Governing Board authority, to "disapprove" a Plan or compel a Plan to be approved by the Cities' own governing authorities? Although the Cities dispute that the District can compel or disapprove a Plan at all due to conflicting governmental authority, certainly such approval or disapproval of any Emission Reduction Plan cannot be at the sole discretion of a single District staff member.

G. PR 4001 Would Violate Constitutional Requirements of Due Process

PR 4001 also raises several questions regarding violations of Due Process. As noted above, PR 4001 would unlawfully purport to vest the District's Executive Officer with unilateral authority to "approve" or "disapprove" a Plan submitted by the Cities, without any process for public hearing, review by the District Board, or other guarantees of procedural due process for those concerned about such actions. PR 4001 also improperly fails to provide any requirement that the Executive Officer must make "findings" of "non-compliance" with some provision of paragraph (f)(1) of PR 4001, or that the Executive Officer's decisions must be based on some reasonable and objective standards.

PR 4001 fails to provide for the District giving the Cities any particular notice or justification for disapproval of a Plan, or any process for the Cities to seek review or appeal of the District's disapproval.

What would be the procedure if the PR 4001 triggered the obligation of the Cities to prepare a Plan, and the Cities duly submitted a Plan, but the District (either by its Executive

Officer or its Hearing Board) "disapproved" the Plan (per paragraph (f)(2)(C))? The Cities would apparently be required to submit a revised Plan within 60 days of the disapproval; however, that time would not be sufficient for the Boards of Harbor Commissioners and their staffs to prepare a new revised Plan, to hold new "public meetings" and gather public input, or otherwise take meaningful action on the revised Plan. PR 4001 fails to provide adequate time or process for the Boards of Harbor Commissioners to prepare, conduct CEQA review and public outreach, or to consider and approve a new revised Plan within the arbitrary 60 day time frame set by the rule.

H. PR 4001 Improperly Changes the Definition of "Feasibility" In Control Strategies and Alternatives

PR 4001 proposes to change the definition of "feasible control strategy" so that it is not consistent with the obligations that could potentially be imposed on the Cities under Measure IND-01 as adopted by the District Governing Board. Instead, PR 4001 (at paragraph (c)(1)) has changed the limitations on the proposed obligations of the Cities to achieve additional emissions reductions under PR 4001. Previously, the proposed rule was described as requiring the Cities to "propose additional emission reduction methods …[but only] *to the extent cost-effective strategies are technically feasible* and within the Ports' authority." PR 4001 has inexplicably omitted (at several points) the prior limitation on the Cities' potential obligations to measures that are "*technically feasible.*" Again, this is not consistent with the text of Measure IND-01 or any other legal or regulatory authority identified by the District.

The Cities assert that feasibility must be defined as technically, operationally, commercially, financially, and legally feasible, and within the legal and jurisdictional authority of the Cities. Further, the District must acknowledge that feasibility is also subject to the Cities' and their Boards of Harbor Commissioners' own legal and trustee obligations as governmental agencies under their City Charters and applicable laws.

The District also fails to show how it expects the Cities as governmental agencies to legally overcome the same doctrines of international and federal preemption that prevent the District from regulating mobile sources such as ocean-going vessels, rail locomotives and trucks. If the District intends that the Cities shall be compelled to pay incentives for District programs if they are unable to legally regulate mobile sources, then again this raises the jurisdictional conflict with the Cities' Boards' independent governmental discretion and legal obligations to manage their properties and revenues to serve Tidelands purposes for the benefit of the State. In this era of ever diminishing resources and increased competition the District is seemingly ignoring the lawful obligations of the Cities' Boards and insisting they place District priorities (which they themselves cannot legally accomplish) before the established responsibilities of the respective City Boards.

I. The PR 4001 Enforcement Scheme is Unconstitutionally Vague and Impermissible

PR 4001 does not describe how the District would determine the "consequences" for violation of PR 4001, nor does it identify how it would determine the sufficiency of the Cities' efforts to manage activities within the Ports. If the Cities were deemed to be in violation simply because the District may choose to "disapprove" a Plan or revised Plan, under what legal authority would the District purport to sanction the Cities in the event of some perceived "violation"?

PR 4001 fails to provide objective standards appropriate for the District to judge the sufficiency of any plans or measures proposed by the Cities to achieve the emission reduction targets. The proposed rule fails to provide sufficient detail at paragraph (f)(2)(F)(iii) as to what the consequence would be if the District were to disapprove a City's revised Plan. Also, the reference here that the Cities "shall be in violation of this Rule…" must be clarified.

Similarly, the terse discussion of the Variance and Appeal Process outlined in paragraph (g)(1) and (2) of PR 4001 is vague and fails to identify criteria or the process for the Cities to petition the District Hearing Board for a variance. PR 4001 also fails to explain the outcome should the District grant a variance.

Both Measure IND-01 and PR 4001 are unconstitutionally vague in their failure to explain exactly what fines, penalties or other administrative enforcement would be imposed on the Cities in the event that targets are missed or the District's Executive Officer disapproves a plan. The District also fails to explain how it purports to impose penalties or corrective action against another governmental entity for failure of private third party emissions sources to achieve emissions reductions that such other governmental entity is also preempted from regulating.

The District has failed to show any constitutional or statutory basis for requiring a governmental entity to devote public resources, pay exactions, administrative fines or suffer penalties for pollution caused by private entities. Similarly, the District has not shown any authority for PR 4001's attempt to shift onto the Cities liability for emission shortfalls by other parties assigned AQMP emissions reduction responsibility. The District has failed to show how PR 4001 would not violate constitutional limitations requiring exactions or penalties imposed on a party to be reasonably related to and proportional to the party's deleterious public impacts. This is especially true when PR 4001 only applies to the Cities, which are non-operating ports, while failing to include all parties involved in the CAAP including the other air agencies that jointly sponsored the CAAP, or actual owners and operators of emission sources. The District also fails to define how it would allocate liability to COLB versus COLA, when they are two separate legal entities with independent Boards as decision makers that may approve different Plans or no Plan at all. In any event, neither City is in direct control of the actual emissions sources and rudimentary principals of justice require that they should not be burdened with

sanctions, penalties, or Plan-writing responsibilities to cure the "shortfalls" of others or to act as a delegated air regulator that has no such authority.

J. PR 4001 Fails to Consider Legal Limits on Grant Funding

In the Cities' actual operating experience, demonstration that proposed activities go beyond, rather than merely comply with, enforceable regulations, is a basic requirement in both state and federal grant funding applications. The District has claimed that its adoption of PR 4001 as an enforceable rule or regulation would not prevent the Cities from continuing to be eligible for the types of grant funding that the Cities have used successfully to fund emission reduction programs. However, the District has failed to provide legal citation in support of how the governmental agencies typically funding such programs might continue to legally fund activities for the purpose of complying with existing mandates, without violating constitutional limits prohibiting payment to comply with the law as "gifts of public funds."

K. Reporting Requirements under PR 4001 are Excessive

PR 4001 paragraph (f) requires annual revisions to the Emission Reduction Plan. This is new and excessive regulation, well beyond backstopping achievement of 2014 targets, and is duplicative, unnecessarily burdensome, and has not been sanctioned or in any way approved by the District's Governing Board. Even CARB in its state oversight over the District's plans, only requires three-year updates to the AQMP. Furthermore, PR 4001 is placing greater air quality regulatory burden on the Cities (and their Ports) than the federal government places on AQMD or other air agencies.

L. Annual Emission Inventory Requirements under PR 4001 are Inappropriate and Vague

PR 4001 paragraph (d) outlines requirements for annual emissions reporting. An initial inventory for 2014 would be required by November 2014 "from all port-related sources for the 2014 calendar year based on actual activity information available prior to November 1st of the calendar year and projected activity information for the remainder of the year." Although Distract staff indicated that specific requirements for this November 2014 submittal would be provided, neither the rule nor the accompanying Staff Report list any specifics. The Cities will incur additional costs based on this requirement to prepare a 2014 inventory based on incomplete data in November 2014.

The majority of the sources tracked in the Cities' current emission inventories of port-related sources are not owned, operated or controlled by the Cities. Therefore, emissions inventories that will be used to evaluate compliance with PR 4001 should only include those port-related sources over which the Cities have direct control.

II. LACK OF AUTHORITY

A. PR 4001 is NOT Consistent with the District's Governing Board Approved Control Measure IND-01

Control Measure IND-01 provided a description of the Cities' successful CAAP and its various emissions reduction goals: "This AQMP Control Measure is designed to provide a "backstop" to the Ports' actions to provide assurance that, if emissions do not continue to meet projections, the Ports will develop and implement plans to get back on track, to the extent that cost effective and feasible strategies are available." (Final 2012 AQMP Appendix IV-A, page 3). PR 4001, by contrast, describes its purpose differently: "The purpose of this rule is to establish actions to be taken in the event that emissions from port-related sources do not meet the emission targets assumed in the Final 2012 Air Quality Management Plan for the purpose of meeting the federal 24-hour $PM_{2.5}$ standard in 2014 and maintenance of attainment in subsequent years" (PR 4001 paragraph (a)). District Staff has apparently drafted PR 4001 so as to eliminate the references in Measure IND-01 as adopted by the District's Governing Board to backstopping the Cities CAAP targets to the extent cost effective and feasible strategies are available and has replaced that "backstop control measure" with a traditional regulation by the District to meet District-set targets.

In addition, the District Staff (apparently without Board approval) has **changed** the concern from assuring "the attainment demonstration" for 2014 $PM_{2.5}$ emission targets (as described in the 2012 AQMP) to add "maintenance of the air quality standard in subsequent years." (PR 4001 paragraph (a)). This change adds a new undefined and open-ended element into PR 4001 that is not consistent with Control Measure IND-01 as publicly adopted by the District's Board in February 2013. Most importantly, to the extent the provisions of PR 4001 vary in purpose and scope from Measure IND-01, they are not authorized by the District Governing Board.

B. The District Fails to Show Any Basis to "Indirectly" Regulate Mobile Sources or Delegate Authority Without Clean Air Act Waivers from the USEPA

The District has failed to show any constitutional or statutory basis for attempting to regulate mobile sources "indirectly" that it is preempted from regulating directly. The District's use of the term "port related sources" appears to be a euphemism for "mobile sources" that may be located at or operate at the areas governed by the Cities. "Mobile sources" of emissions are, of course, generally beyond the limited regulatory authority conferred by the Legislature on local or regional districts. (e.g., Health & Safety Code § 40001(a); also see, 76 Ops. Cal. Atty. Gen. 11 (1993); 75 Ops. Cal. Atty. Gen. 256 (1992); 74 Ops. Cal. Atty. Gen. 196 (1991); 73 Ops. Cal. Atty. Gen. 229, 234-35 (1990).)

The District has failed to show any authority for attempting to regulate mobile sources by making another governmental entity that lacks any air regulatory authority its agent for enforcement of its desired mobile source emission reductions. (See, e.g., *Association of American Railroads et al. v. South Coast Air Quality Management District et al.*, 622 F.3d 1094, 1096 (9th Cir. 2010), invalidating several train-idling emissions rules enacted by the District, on the basis of federal preemption under the Interstate Commerce Termination Act of 1995 (ICCTA).) Moreover, the District does not have mobile source regulatory authority itself to delegate, as it does not have a waiver under the Clean Air Act from the USEPA. The District should instead work on stronger regulations from USEPA or CARB, which does have certain USEPA waivers to regulate mobile sources.

PR 4001 impermissibly requires the Cities to become air pollution control agencies, responsible for "achieving" reductions of emissions that are actually from other private parties that operate or control equipment largely used in goods movement within the geographic boundaries of the Cities. There is no statutory or other legal basis for imposing such a requirement on another governmental agency. For example, does this mean that a city that has a significant number of factories or refineries within its borders becomes a stationary source and indirect source for those emissions? Evidently the District does not distinguish between "operating ports" such as the Port of Charleston, S.C., which actually operates the terminals within the port, and "non-operating ports" such as the Cities, which are landlords that do not operate the marine terminals and other facilities within the harbor districts.

The emission reduction plan required by PR 4001 strongly resembles the State Implementation Plan requirements of the Clean Air Act (42USC§7410). Specifically PR 4001(f)(1)(A)(i) states, "…Ports shall engage [CARB, USEPA and the District] to discuss legal jurisdiction and authority to implement potential strategies to address the shortfall…" Based on the Clean Air Act, the enforcing agency should be the state of California through CARB and the District; however, PR 4001 places the burden of enforcement of emission reductions on the Cities. Based on this, if the port-related sources don't meet the emission reduction target specified by PR 4001, it should be the District and/or CARB that are responsible for preparing and enforcing the emission reduction plan against the emissions sources. If the District insists that the Cities prepare an emission reduction plan, then the plan must be subject to the limits on authority, preemption and feasibility issues described above. Further, USEPA, CARB and the District should provide funding to the Cities to support programs for incentives, since the Cities will no longer have available grant funding for voluntary programs.

C. PR 4001 Violates Cities' Charter Authorities and Tidelands Obligations

Control Measure IND-01 and PR 4001 are illegal, abusing the District's limited statutory power in an unprecedented manner that exceeds its authority. There is no legal precedent or

authority for the District's attempted regulation of the Port Authorities of the Cities, or the District's imposition of an arbitrary, unnecessary and discriminatory rule on the Cities, and thereby dictate the Cities' governing Boards of Harbor Commissioners' ("Boards") decisions regarding the exercise of their police power authority, the management of their respective properties and expenditures of the Cities in order to satisfy the District-defined targets for a single district within the State.

PR 4001 acknowledges that funding will be necessary to implement a plan to satisfy District targets, but fails to provide District funds or specify the source of such funds. The District cannot legally compel the Cities' Boards to make expenditure of Tidelands Trust revenues for the purpose of incentives or funding emission reduction programs as contemplated in District enforcement activity under PR 4001. Such proposed unfettered District authority would unlawfully supplant the trustee judgment and legal obligations of the Cities to operate the port properties and their revenues solely for the benefit of the entire State of California under the Tidelands Trust doctrine (promoting maritime commerce, navigation and fisheries) rather than for limited municipal or a single District's purposes.

Worse yet, PR 4001 proposes that a single District Executive Officer acting alone (rather than the District's full Governing Board) would wield the sole discretion to approve or disapprove the independent jurisdictional decisions of the Boards regarding conditions they impose on their properties or expenditures of their Harbor Revenue Funds, violating the Tidelands Trust and the Cities' charters.

D. <u>There is No Statutory Authority for District to Impose PR 4001 On Cities</u>

The District has failed to cite any statutory authority for regulating the Cities—governmental entities—as purported "sources" of emissions. As the Cities have repeatedly explained, neither the Cities nor the Ports are "sources" of emissions—direct, indirect, or otherwise. The District has not provided any authority that would support the District's attempted characterization of the Cities, or the Ports, as "indirect sources" of emission, solely based on the confluence of distinct privately-owned activities, vessels, vehicles, equipment, and uses within the geographic area and jurisdiction of the respective Ports.

"An air pollution control district, as a special district, 'has only such powers as are given to it by the statute and is an entity, the powers and functions of which are derived entirely from the Legislature.'" (74 Ops. Cal. Atty. Gen. 196 (1991)[citations omitted].) "No matter how altruistic its motives, an administrative agency has no discretion to promulgate a regulation that is inconsistent with the governing statutes." (*Terhune v. Superior Court* (1998) 65 Cal.App.4th 864, 874.) The District has failed to cite any statute or grant of authority from the Legislature for the proposed PR 4001.

Under the District's 2007 Air Quality Management Plan, a proposed "Port Backstop Rule" was proposed as a "Mobile Source Measure MOB-03" that defined the operators of marine terminals and rail yards, as well as the Cities, as indirect sources, Measure IND-01 and PR 4001 inexplicably exclude the operators of the mobile sources that had been in MOB-03 and instead propose to regulate and punish solely the Cities, effectively insulating from responsibility, the private sector entities that do own, operate and control the equipment producing the emissions.

The District Staff has previously referred to a clearly erroneous, overbroad interpretation of Health & Safety Code §§40716 (a)(1); 40440 (b)(3), as potential authority for attempting to justify Measure IND-01 and PR 4001 as forms of indirect source review, as applied to the Cities. However, such lax interpretations apparently ignore the Legislature's explicit limitations on any such "indirect source" regulatory authority—precluding application of PR 4001 against the Cities (e.g., Health & Safety Code § 40716(b): "Nothing in this section constitutes an infringement on the existing authority of counties and cities to plan or control land use, and nothing in this section provides or transfers new authority over such land use to a district.")

Similarly, any District reliance on Health & Safety Code § 40440 is clearly misplaced. The introductory clause of § 40440(b)(3), for example, states that indirect source controls must be "[c]onsistent with Section 40414." Importantly, Health & Safety Code §40414 [specifically governing the District] states: "No provision of this chapter shall constitute an infringement on the existing authority of counties and cities to plan or control land use, and no provision of this chapter shall be interpreted as providing or transferring new authority over such land use to either the south coast district, the Southern California Association of Governments, or the state board." Not only does this provision apply generally to Chapter 5.5 [governing the District] but it is also specifically referenced in § 40440(b)(3), leaving little doubt that any District rule related to indirect source controls may not overreach or infringe on the Cities' police power to control land use in their jurisdictions or Tidelands Trustee duties for benefit of the State.

Finally, the District Staff's reference to two cases involving the very distinct "indirect source review" adopted by the San Joaquin Valley APCD is misplaced. Those cases, *California Building Industry Association v. San Joaquin Valley Air Pollution Control District*, 178 Cal. App. 4th 120 (2009) and *Nat'l Ass'n of Home Builders v. San Joaquin Valley Air Pollution Control District*, 627 F. 3d 730 (9th Cir. 2010), involved quite different circumstances and a distinct and specific statute permitting an indirect source review program and in-lieu fees to be imposed on new construction sites. The holdings of those cases were narrow, and based on the nature of the emission sources being regulated. "Because the court's approval of the rule depended on the nature of the source being regulated, mobile non-road construction equipment, indirect sources are not categorically permissible after NAHB." (39 ECOLOGY LAW QUARTERLY 667 (2012).) Those cases are thus irrelevant, and do not support District Staff's assertion of some authority for the District to impose rules on the Cities under the guise of Measure IND-01 or PR 4001.

III. PROCEDURAL FLAWS

A. General Comments

The PR 4001 developmental and procedural process is on an accelerated timeline that is unusually short for a rule of this unprecedented nature that has generated such controversy and so many unanswered questions from other public agencies and stakeholders. The District should provide a comprehensive rule development schedule, including key milestones of staff report revisions, staff report analyses, workshops, workgroup meetings, etc. and provide the stakeholders, and the public adequate time for review and comment after release of actual substantive information necessary to evaluate the proposed rule.

Instead, the District was late with release of the actual text of PR 4001, not releasing it until November 26, 2013. The text of the PR 4001 is severely lacking explanation of many material elements, leaving continued unanswered questions that had been posed literally for years, even under the development of Measure IND-01 and early working group consultation meetings. The Preliminary Draft Staff Report for PR 4001 offers little help, as the Staff Report does not contain technical data and analyses necessary for a complete review. The PR 4001 Preliminary Staff Report lacks substance and does not meet important specificity requirements (see specific comments below related to the Preliminary Staff Report).

Lastly, the District's environmental assessment of the PR 4001 has also been extremely flawed and we incorporate by reference the comment letters previously submitted by the Cities on the Notice of Preparation and Recirculated Notice of Preparation under the California Environmental Quality Act, which are attached hereto.

B. The District's Preliminary Draft Staff Report on PR 4001 Fails to Comply With Statutory Requirements for Rule Adoption

The District's December 2013 Preliminary Draft Staff Report fails to comply with statutory requirements for rule adoption as discussed below.

1. Non-compliance with Health & Safety Code § 40440.5 – Notice of Proposed Action:

The District must give public notice of the Board hearing to consider PR 4001 not less than 30 days prior to the hearing date, and must include specified information in that Notice:

(a) A "summary description of the effect of the proposal" as required by Section 40725(b);
(b) Description of the air quality objective of the rule, and reasons for the rule;
(c) A list of supporting information and documents relevant to the PR 4001, and any environmental assessment; and
(d) A statement that a staff report on the proposed rule "has been prepared" and the contact information to obtain that staff report.[5]
(e) The statutes further specify the required contents of the Staff Report that must be prepared and made available at least 30 days prior to the hearing date:

Whenever the proposed rule or regulation will significantly affect air quality or emissions limitations, the staff report shall include the full text of the proposed rule or regulations, an analysis of alternative control measures, a list of reference materials used in developing the proposed rule regulation, an environmental assessment, exhibits, and draft findings for consideration by the District Governing Board pursuant to Health & Safety Code §40727. Further, if an environmental assessment is prepared, the staff report shall also include social, economic, and public health analyses.

2. Non-compliance with Health & Safety Code § 40727 – Required Findings:

Before the District's Board could approve the PR 4001, it would need to make the findings required by Section 40727 (and to provide the public with sufficient information/substantial evidence in the record to support those mandatory findings). The District's Preliminary Draft Staff Report (December 2013) fails to satisfy these requirements. The findings must address:

(a) "necessity" – Since PR 4001 is by definition a "backstop" measure intended to address emissions issues that are not currently a problem (and which are not shown to be likely to occur), it is inherently difficult for the District to make such a finding of "necessity" for the rule (also see the detailed discussion demonstrating the District's failure to demonstrate "necessity" for PR 4001 set forth above). Moreover, the District Governing Board found Measure IND-01 necessary in the 2012 AQMP, but not PR 4001, as stated in the Staff Report.

[5] This wording indicates that the Staff Report must already be prepared before the Notice of the Board meeting goes out. If the District intends to rely upon the "Preliminary Draft Staff Report" issued in December 2013, it would be deficient because that PDSR fails to include all of the information required by statute.

(b) "authority" – As pointed out above, the District has failed to demonstrate its legal authority for PR 4001, if any. By what authority can the District "delegate" (or "foist") its own responsibilities for regulating air quality emissions onto the Cities? The District cites no authority for imposing a rule on independent governmental agencies to take specific land use, environmental, or fiscal actions (fees, tariffs, etc.) Also, the District fails to address the statutory limitations on its authority in Health & Safety Code § 40414: the District may not infringe on the existing authority of Cities to plan or control land use.

(c) "clarity" – The lack of clarity in the draft text of PR 4001 is addressed throughout this comment letter. In addition, the lack of clarity in PR 4001 is exemplified in the circular argument of PR 4001(d)(2)(A) and PR 4001(f)(1)(D). PR 4001(d)(2)(A) specifies that that, in the case of triggering an Emission Reduction Plan, the Port shall report the progress in meeting the shortfall "based on the process developed pursuant to subparagraph (f)(1)(D)." However PR 4001(f)(1)(D) specifies the Emission Reduction Plan "shall provide a process for submittal of progress reports toward eliminating the emission reduction shortfall pursuant to subparagraph (d)(2)(A)."

(d) "consistency" –PR 4001 is inconsistent with Measure IND-01; it is also inconsistent with the CAAP and the Cities' general plans, harbor area plans, transportation management plans, etc, as well as state Tidelands Trust policies. In addition, PR 4001 is inconsistent with, and preempted by federal laws (e.g., ICCTA; FAAAA) and regulations of IMO (MARPOL / APPS) as well as federal regulations of trucks, locomotives, etc.. Also, PR 4001 is inconsistent with the California Clean Air Act and the statutory limitations on the regulatory authority of the District, and further is inconsistent with CARB polices.

(e) "nonduplication" – PR 4001 would unnecessarily – by definition – duplicate and "backstop" existing plans and policies such as CAAP and the aforementioned regulations;

(f) "reference" – The District has failed to demonstrate what law or court decision is purportedly being implemented by PR 4001.

3. <u>Non-compliance with Health & Safety Code § 40727.2 – Written Analysis of Rule</u>:

Does the District contend that its Preliminary Draft Staff Report satisfies this requirement that it produce a written analysis of PR 4001? If so, it fails to comply with § 40727.2(e). The Preliminary Draft Staff Report only indicates that the technical impact

assessment is underway. Without the Impact Assessment section, the staff report is incomplete. The Impact Assessment section must include the District's explanation of differences between PR 4001 and existing guidelines, such as in CAAP or AQMP, as well as address regulation cost effectiveness, including costs beyond mere control equipment costs.

4. Non-compliance with Health & Safety Code § 40440.8 – Assessment of Socioeconomic Impacts of PR 4001:

This requirement is also imposed by Section 40428.5, and the need for such a socioeconomic analysis was addressed, at least in brief, in the NOP comment letter. The Preliminary Draft Staff Report (page 18) erroneously describes the likely socioeconomic impacts of PR 4001 as being limited to the Cities' costs incurred for emissions forecasting and reporting. This grossly understates the likely impacts, including impacts of additional control measures that could be required under PR 4001 impacting the entire use and economic viability of the Ports. The staff report must include a socioeconomic assessment and must certainly address the threat of diversion resulting from potential undefined, regulatory-mandated, emission control measures. The Preliminary Draft Staff Report erroneously suggests that "a detailed assessment cannot be made at this time" and should be deferred, which is in violation of the statutory requirement. The Staff Report also indicates that a socioeconomic assessment will be made available 30 days prior to the public hearing. The significant potential impact and novel nature of this rule warrants a 60 day review period of the socioeconomic assessment.

5. Non –compliance with Health & Safety Code § 40440.8(b)(4) – Alternatives to PR 4001:

The socioeconomic assessment must address "the availability and cost-effectiveness of alternatives to the rule." (§ 40440.8(b)(4)) However, the Preliminary Draft Staff Report fails to even mention any "alternatives" to the Rule, much less to evaluate the availability and cost-effectiveness of alternatives, such as VMEP.

6. Non-compliance with Health & Safety Code § 40440(c): "Cost-effectiveness"

The District failed to demonstrate that the adoption of PR 4001 would comply with the requirement of Section 40440(c) that all of the District's rules "are efficient and cost-effective..." Also, Section 40703 requires the District to make available to the public, and requires the Board to make findings, as to the cost effectiveness of control measures, and similarly Section 40922 requires the District to consider "the relative cost effectiveness of the [control] measure..." The District has not done so.

C. Additional Analysis is Required Before Rule Development Can Proceed

The Cities have put into place a voluntary program with documented air quality improvements in the face of economic growth. It is AQMD's responsibility to perform a regulatory impact assessment documenting that PR 4001 will not reverse voluntary gains made by the Cities and endanger future programs. This includes the analysis of lost grant funding that would have otherwise been available to fund equipment replacement and other emissions reductions, due to conversion of voluntary program to regulation.

D. The District Must Acknowledge and Respond to All Comments Submitted on Measure IND-01 and PR 4001

The draft findings in the next staff report must acknowledge and respond to all comments submitted on Measure IND-01 and PR 4001, including all comments on the environmental assessment such as the Notice of Preparation and Initial Study for PR 4001.

IV. FAILED REQUIREMENTS FOR SIP INCLUSION

The District has claimed that adoption of PR 4001 is necessary to ensure SIP credit for the Cities' voluntary emission reduction programs. However, neither this Proposed Rule nor its precursor, "Control Measure IND-01" can be justified on this pretext, and neither PR 4001 nor Measure IND-01 meet the criteria for SIP inclusion. The Cities have raised significant technical, jurisdictional, constitutional and other legal concerns with Measure IND-01 and PR 4001, as set forth in public comment letters sent to the District during the 2012 AQMP adoption process and PR 4001 development process, which are provided as attachments.

A. Measure IND-01 and PR 4001 Violate Health & Safety Code § 39602

Measure IND-01 and PR 4001 violate California Health & Safety Code § 39602, which provides that the SIP shall only include those provisions **necessary** to meet the requirements of the Clean Air Act. The Cities have shown that there is no demonstrated need for the rule, nor is this rule necessary for regional attainment of the 2014 $PM_{2.5}$ standard. PR 4001 is duplicative of regulations already in place and effectively reducing emissions from port-related sources. As noted above, the Cities estimate that in 2014, 98% of the $PM_{2.5}$ equivalent emission reductions that PR 4001 seeks to "backstop" will occur as the result of regulations adopted by CARB and

the IMO.[6] The remaining 2% of $PM_{2.5}$ equivalent emission reductions is primarily attributed to the Cities' successful voluntary vessel speed reduction incentive program which is part of the Cities' Clean Air Action Plan.

More importantly, there are significant legal questions regarding the District's attempt to invoke " indirect source review" as authority to impose a new rule on governmental agencies. PR 4001 clearly infringes upon, and potentially usurps the Cities' authority to plan and control land use and exercise police power, in contravention of Health & Safety Code §§ 40716(b) and 40414, and compels compliance and punishes them for non-achievement of emissions targets for equipment the Cities do not own, control or operate, and are preempted from regulating.

B. <u>The District Failed to Timely Submit Proposed "Control Measure IND-01" to CARB for Public Consideration and Approval As Part of the SIP Submitted to USEPA on January 25, 2013</u>

Under CAA section 110(l), SIP revisions must be adopted by the State, and the State must provide for reasonable public notice and hearing prior to adoption. EPA cannot approve Measure IND-01 as part of the SIP because the District did not approve and forward IND-01 in time for CARB to follow the process for public consideration and State adoption required by CAA Section 110(1) and California Health and Safety Code Section 41650 for SIP submissions, and CARB failed to do so.

Under 40 CFR 51.102(d), reasonable public notice in this context refers to at least 30 days. Similarly, Health and Safety Code Section 41650 provides for a public hearing that would allow public comment as to whether the SIP meets the requirements of the CAA. By resolution dated January 25, 2013, CARB approved the District's 2012 AQMP and directed the executive officer of CARB to submit the AQMP to the USEPA for inclusion in the SIP. However, at the time of the January 25, 2013 CARB action**, Measure IND-01 was not part of the AQMP**. Because the District Governing Board adopted the AQMP without Measure IND-01 on December 7, 2012, and in fact, did not adopt Measure IND-01 until February 1, 2013, the January 25 CARB action did not constitute approval of Measure IND-01 which had not yet been submitted to CARB for consideration.

The documents attached to CARB's February 13, 2013 SIP submittal to the USEPA include the December 7, 2012 resolution by the District Governing Board and the December 20, 2012 District letter to CARB transmitting the approved SIP, which pre-dated the District

[6] CARB Port Drayage Truck Rule, CARB Truck and Bus Rule, CARB Ocean-Going Vessel (OGV) Shore Power Rule, OGV Low-Sulfur Fuel Rule, CARB Cargo-Handling Equipment at Ports Rule, CARB Commercial Harbor Craft Rule, IMO North American Emission Control Area

Governing Board's approval of Measure IND-01. Inexplicably, without the required public notice or public hearing and adoption by the CARB Governing Board, the submitted SIP includes the addition of Measure IND-01. Until this procedural error is corrected, and the Cities and the public are given the opportunity to comment at a public hearing, and CARB is able to properly consider proposed Measure IND-01 at such a properly-noticed public hearing, Measure IND-01 is not properly before the USEPA and cannot be approved as part of the SIP.

C. The Many Flaws of Measure IND-01 and PR 4001 Harm Rather Than Help the SIP

As a result of the above-mentioned extensive technical, jurisdictional, constitutional, statutory and other legal problems, inclusion of IND-01 in the SIP and attempted implementation through PR 4001 creates unnecessary risks of disputes and legal challenges to the AQMP and SIP. The unprecedented nature and legal and jurisdictional conflicts of PR 4001 and Measure IND-01 require significant explanation of the legal underpinnings of the Measure. Instead a single paragraph of generalities ignoring the jurisdictional conflict and lack of legal authority for classification of Cities as stationary sources or indirect sources was produced to justify PR 4001.

Conclusion

The ports of Long Beach and Los Angeles are a major economic engine for the region and nation. PR 4001 and the uncertainty it creates will have a substantial negative impact on the goods movement industry and the local economy, resulting in cargo diversion, job losses and business closures. Moreover, rather than improving air quality, PR 4001 eliminates all incentive for voluntary participation in emission reduction efforts at the Ports that have been so successful.

The Cities have a proven track record of developing and implementing appropriate and effective emission reduction strategies, working with the port industry and the air quality regulatory agencies. Since the CAAP was adopted in 2006, essentially all of the Cities' early actions have been overtaken by regulations from state, federal, and international agencies. The majority of emission reductions are already being achieved by regulations. Therefore, there is clearly no need for additional regulation.

The Cities share the air emission reduction goals of the District, CARB, and USEPA, and strongly believe that the voluntary cooperative CAAP process established by the Cities remains the most appropriate forum to discuss technical and policy issues related to implementing appropriate strategies for reducing emissions from port-related sources. There are feasible alternatives that would effectively ensure emission reduction goals are met, including the USEPA's VMEP that would allow for the small percentage of emissions reductions needed beyond regulations to be credited in the SIP. The Cities hope you will work with us to discuss various mechanisms, contractual or otherwise, by which the VMEP can be implemented in San

Pedro Bay, and move forward as a possible resolution to the issues currently under discussion regarding PR 4001.

We appreciate your consideration. Thank you.

Sincerely,

Matthew Arms
Acting Director of
Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachments:

- January 15, 2014 Letter; Port of Long Beach and Port of Los Angeles to South Coast Air Quality Management District (SCAQMD)*; Comments on Notice of Preparation, Initial Study and Scope of Proposed Program Environmental Assessment*
- August 21, 2013 Letter; Port of Long Beach and Port of Los Angeles to SCAQMD; *Comments on Notice of Preparation, Initial Study, and Scope of Proposed Environmental Assessment*
- October 2, 2013 Letter; Port of Long Beach and Port of Los Angeles to SCAQMD, *Initial Comments for Public Consultation on Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets are Met at Commercial Marine Ports"*

cc: Al Moro, Acting Executive Director, Port of Long Beach
Richard Cameron, Managing Director, Port of Long Beach
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Gary Lee Moore, Interim Executive Director, Port of Los Angeles
Michael Christensen, Deputy Executive Director, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
Barry Wallerstein, Executive Officer, SCAQMD

Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Randall Pasek, Planning and Rules Manager, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Governing Board Members, SCAQMD
Richard Corey, Executive Officer, CARB
Cynthia Marvin, Division Chief, Stationary Source Division, CARB
Doug Ito, Chief, Freight Transportation Branch, CARB
Jared Blumenfeld, Administrator, USEPA, Region 9
Deborah Jordan, Director, Air Division, USEPA, Region 9
Elizabeth Adams, Deputy Director, USEPA, Region 9

ATTACHMENT 4.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

January 15, 2014

Jared Blumenfeld
Regional Administrator
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

Re: California State Implementation Plan for PM2.5 for South Coast Air Basin (SIP) - South Coast 2012 Air Quality Management Plan (AQMP) Control Measure IND-01 *Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities* and EPA *Voluntary Mobile Source Emission Reduction Program* (VMEP)

Dear Mr. Blumenfeld:

On behalf of the City of Long Beach acting by its Harbor Department and the City of Los Angeles acting by its Harbor Department (collectively, the Cities), we raise serious concerns regarding Control Measure IND-01 *Backstop Measure for Indirect Sources of Emissions from Ports and Port-related Facilities* (Measure IND-01) in the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP). The Cities request that the United States Environmental Protection Agency (EPA) disapprove and exclude Measure IND-01 from the California State Implementation Plan (SIP) for particulate matter 2.5 microns or less (PM2.5) for the South Coast Air Basin, which is currently pending EPA approval. As set forth below, both the substance of Measure IND-01 and the California Air Resources Board (ARB) procedure for inclusion of Measure IND-01in the SIP violate all five prongs of the standard test used by EPA to evaluate a SIP's compliance with Clean Air Act (CAA) requirements.[1]

1. Did the State provide adequate public notice and comment periods?

EPA cannot approve Measure IND-01 as part of the SIP because the ARB failed to follow the process for SIP submissions required by CAA Section 110(1) and California Health and Safety Code Section 41650. Under CAA section 110(l), SIP revisions must be adopted by the State, and the State must provide for reasonable public notice and hearing prior to adoption. Under 40 CFR 51.102(d), reasonable public notice in this context refers to at least 30 days. Similarly, Health and Safety Code Section 41650 provides for a public hearing that would allow public comment as to whether the SIP meets the requirements of the CAA. By resolution dated January 25, 2013,

[1] See, e.g., CAA Sections 110(a)(2)(A), 110(a)(2)(E), 110(l).

the ARB approved the AQMD 2012 AQMP and directed the executive officer of the ARB to submit the AQMP to EPA for inclusion in the SIP. However, at the time of the January 25, 2013 ARB action, Measure IND-01 was not part of the AQMP. Because the AQMD Governing Board adopted the AQMP without Measure IND-01 on December 7, 2012 and did not adopt Measure IND-01 until February 1, 2013, the January 25 ARB action did not constitute approval of Measure IND-01 which had not yet been submitted to ARB for consideration. The documents attached to the ARB's February 13, 2013 SIP submittal to the EPA include the December 7, 2012 resolution by the AQMD Governing Board and the December 20, 2012 AQMD letter to ARB transmitting the approved SIP, which pre-dated the AQMD Governing Board's approval of Measure IND-01. Inexplicably, without the required public notice or public hearing and adoption by the ARB Governing Board, the submitted SIP includes the addition of Measure IND-01. Until this procedural error is corrected, and the Cities and the public are given the opportunity to comment at a public hearing, Measure IND-01 is not properly before EPA and cannot be approved as part of the SIP.

2. Does the State have adequate legal authority to implement the regulations?

As you may know, the AQMD is now pursuing adoption of Proposed Rule 4001—*Maintenance of AQMD Emission Reduction Targets at Commercial Marine Ports* (PR 4001) – ostensibly to implement Measure IND-01 and ensure SIP credit for voluntary emission reduction programs of the Cities. The Cities have raised significant technical, jurisdictional, constitutional and other legal concerns with Measure IND-01 and PR 4001, as set forth in public comment letters sent to AQMD during the AQMP adoption process. Measure IND-01 and PR 4001 violate California Health and Safety Code Section 39602, which provides that the State Implementation Plan shall only include those provisions necessary to meet the requirements of the Clean Air Act. The Cities have shown that there is no demonstrated need for the rule, nor is this rule necessary for regional attainment of the 2014 PM2.5 standard. The Cities estimate that by 2014, 99.5 percent of the PM2.5 equivalent emission reduction that PR 4001 seeks to backstop will occur as the result of regulations adopted by ARB and the International Maritime Organization (IMO).[2] The remaining 0.5 percent of PM2.5 equivalent emission reductions is primarily attributed to the Cities' successful voluntary vessel speed reduction incentive program which is part of the Cities' Clean Air Action Plan. More importantly, there are significant legal questions regarding AQMD's attempt to apply an indirect source rule to governmental agencies in a manner that potentially usurps the Cities authority and compels compliance and punishes them for non-achievement of emissions targets for equipment the Cities do not own, control or operate, and are preempted from regulating.

[2] CARB Port Drayage Truck Rule, CARB Truck and Bus Rule, CARB Ocean-Going Vessel (OGV) Shore Power Rule, OGV Low-Sulfur Fuel Rule, CARB Cargo-Handling Equipment at Ports Rule, CARB Commercial Harbor Craft Rule, IMO North American Emission Control Area

3. Are the regulations enforceable as required under CAA section 110(a)(2)?

Because the Cities are not regulatory agencies and, therefore, are limited in their authority to impose requirements on mobile sources operated by the goods movement industry that call at port facilities, IND-01 and PR 4001 are inappropriate and ineffective mechanisms for achieving emission reductions.

4. Will the State have adequate personnel and funding for the regulations?

Measure IND-01 does not specify the source of funding for its regulation of the Cities but implies that it will come from the Cities. However, AQMD and ARB have no authority to require Cities' expenditures which are subject to the Cities' own requirements as governmental agencies. Furthermore, because it converts a voluntary program into enforceable regulation, the financial effect of Measure IND-01 will be to remove previously available funding from Federal and State grants that are only given for voluntary programs that go beyond regulation, making it less likely that the Cities will have funds to assist the goods movement industry with meeting the AQMP targets.[3]

5. Do the regulations interfere with reasonable further progress and attainment or any other applicable requirement of the Act?

Measure IND-01 interferes with reasonable further progress of the Cities' voluntary programs by reduction of available funding as mentioned above, and providing disincentives to Cities and goods movement industry to pursue programs like the voluntary Clean Air Action Plan.

The Solution: Voluntary Mobile Source Emission Reduction Program (VMEP)

To the extent the ARB and AQMD seek to ensure the emission benefits of the Cities' voluntary vessel speed reduction program, there is a more appropriate method in the form of the EPA's policy and guidance for the Voluntary Mobile Source Emission Reduction Program (VMEP), which constitutes an established process to grant SIP credit for emission reductions resulting from voluntary mobile source measures that go beyond existing regulations. The VMEP approach was intended for exactly the type of successful voluntary program such as the Cities' landmark Clean Air Action Plan, and should be used to account for the 0.5 percent of port-related emissions not currently backstopped by regulation. The VMEP would also reduce the industry and jurisdictional uncertainty that could divert cargo away from the Ports and hurt our local economy.

[3] Many of the Cities programs for equipment replacement or emissions reductions projects have been funded by federal and state grants that require funded activities must go beyond regulations. See e.g., California Proposition 1B Goods Movement and federal Diesel Emission Reduction programs.

We urge the EPA to disapprove and exclude the AQMD's Measure IND-01 from the SIP, and insist that the AQMD use the EPA's established VMEP process that was developed for programs such as the Cities' vessel speed reduction program and other Clean Air Action Plan measures. Use of the established VMEP will accomplish the objective sought by Measure IND-01 and PR 4001 and ensure that the emissions reductions achieved by the program are credited in the SIP. Further, the implementation of a VMEP will achieve the same emissions reductions while ensuring that grant funds remain available for actions going beyond regulations and will do so in a collaborative manner. It will also encourage other cities and regions throughout the nation to develop and pursue innovative voluntary programs and solutions that best fit their needs to improve air quality and public health.

The Cities share the air emission reduction goals of the AQMD, ARB, and EPA, and strongly believe that the VMEP is the most effective way to ensure that emission reduction goals are met in a manner that will allow the SIP to move forward without unnecessary disputes or challenges. The Cities look forward to discussing the various mechanisms, contractual or otherwise, by which the VMEP can be implemented in San Pedro Bay.

Sincerely,

Matthew Arms
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

LW

cc: Al Moro, Acting Executive Director, Port of Long Beach
Gary Lee Moore, Interim Executive Director, Port of Los Angeles
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
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Richard Corey, Executive Officer, ARB

Cynthia Marvin, Division Chief, Stationary Source Division, ARB
Doug Ito, Chief, Freight Transportation Branch, ARB
Deborah Jordan, Director, Air Division, EPA, Region 9
Elizabeth Adams, Deputy Director, U.S. EPA, Region 9

ATTACHMENT 5.

January 15, 2014

VIA E-MAIL – bradlein@aqmd.gov
VIA FACSIMILE – (909) 396-3324

Ms. Barbara Radlein
c/o CEQA
SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT
21865 Copley Drive
Diamond Bar, California 91756-4178

Re: Recirculated Notice of Preparation and Initial Study
Proposed Rule 4001— Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports
November 2013

SCAQMD File No. 0722013BAR
SCH No.: 2013071072

Comments on Recirculated Notice of Preparation, Initial Study, and Scope of Proposed Program Environmental Assessment and Alternatives Analysis

Dear Ms. Radlein and Staff of the South Coast Air Quality Management District:

On behalf of the City of Long Beach (referred to herein as "COLB)" and the City of Los Angeles acting by and through their respective Harbor Department ("COLA", and collectively with COLB referred to herein as the "Cities"), we appreciate this opportunity to submit responses and comments on the District's recent "Recirculated Notice of Preparation of a Draft Program Environmental Assessment" ("Recirculated NOP") and the accompanying Initial Study ("IS") prepared in connection with the District's consideration of the proposed project entitled "Rule 4001: Maintenance of AQMP Emission Reduction Targets At Commercial Marine Ports" (the "Project" or "PR 4001"). We appreciate that the District has extended the public comment period to January 16, 2014, in light of the serious and substantial issues raised by this Project and the original comment period scheduled over the holidays limiting stakeholder time for review.

This letter is organized in the following manner:

A. Introductory Comments
B. General Comments on the Recirculated NOP and Initial Study
C. Specific Comments on the Recirculated Initial Study
    1. Comments on Chapter 1
    2. Comments on Chapter 2 (Environmental Checklist)
D. Conclusion

Additionally, the Cities' previous comment letter on the original NOP dated August 21, 2013 has been attached for reference.

A. Introductory Comments:

We have previously commented on, and objected to, Air Quality Management Plan (AQMP) Control Measure IND-01 (Measure IND-01) and have expressed our grave concerns about the District's rulemaking approach to craft a ostensible "backstop rule" that would be applicable only to the Cities and their respective San Pedro Bay Ports ("Ports") such as that embodied in the new draft PR 4001. As the District is well aware, the Cities have been dedicated, innovative, and effective leaders in the efforts of public agencies to improve air quality despite the fact that we have no regulatory authority or control over the emissions sources. Working collaboratively and voluntarily with the District, our efforts have been successful in helping the maritime goods movement industry achieve very substantial reductions in emissions from the wide range of industrial and mobile sources they operate at or near the Ports, and we look forward to continuing to work with the District, other air regulatory agencies, and industry in building on these successes.

While we appreciate that the District staff has finally released the draft text of PR 4001, together with the recirculation of a new NOP and Initial Study, we find that many of the questions and issues raised in our previous comments remain unanswered or contain the same deficiencies in the new description of the "Project" and the Recirculated NOP, and still fail to identify or address feasible alternatives to PR 4001. Therefore, we respectfully reiterate and incorporate by reference all of our previous comments and objections (including, but not limited to, our letter dated August 21, 2013, and comments on the District's 2012 Air Quality Management Plan ("AQMP") and Control Measure IND-01), in addition to our new comments on the Recirculated NOP and IS.

Our responses are submitted in light of the California Environmental Quality Act ("CEQA") which calls for public review, critical evaluation, and comment on the scope of the environmental review proposed to be conducted in response to a Notice of Preparation, including the significant environmental issues, alternatives, and mitigation measures that should be analyzed in the proposed draft EIR (or Environmental Assessment, "EA") (14 CCR

15082(b)(1).) (See, CEQA Guidelines, at Title 14 Cal. Code of Regulations, §§ 15000, *et seq*..) Since it is anticipated that the proposed Project will have substantial impacts on the Cities and other communities served by the Ports, it is particularly important that the scope of this proposed review take into account jurisdictional and legal limitations, established state and local plans and policies, and other potentially feasible and less-impactful alternatives to the Project. In addition, it will be important to consider the impacts of the proposed Project on the important missions, facilities, and operations of the San Pedro Bay Ports.

In that context, we respectfully submit the following comments regarding the Recirculated NOP as well as questions, concerns and objections related to the omissions of critical information, unsupported assumptions, or analytical deficiencies in the Initial Study, and comments as to the scope of the proposed environmental assessment ("EA") as contemplated and invited by the District's Recirculated NOP.

B. General Comments on the Recirculated NOP and Initial Study.

1. **Changed Project Title**: What is the authority of the District to change the proposed Project from a "*Backstop Measure for Indirect Sources of Emissions from Ports and Port-related Facilities*" authorized by the District's Governing Board, to a new Project title of "*Maintenance of AQMP Emission Reduction Targets At Commercial Marine Ports*"? The District inexplicably no longer describes this as "a backstop measure" – although such a "contingency measure" concept has been the basis for District consideration of this type of proposed rule going back to Control Measure IND – 01 and a similar mobile source port backstop rule in the 2007 AQMP/SIP. What is the significance of this change and has the District now moved from a backstop of the voluntary Clean Air Action Plan goals of the Cities, which it sold to its board, to full District regulation setting District targets for the Cities' ports beyond backstopping voluntary programs? Does this change require the approval of the District's board? In any event, the Cities repeat their strong protest of both Project concepts and further comment on this issue below.

2. **Changed Project Description:** The Recirculated NOP/IS cover letter (11/22/2013) acknowledges that "changes were made to the project description *and* the environmental analysis subsequent to release of the original NOP/IS on July 23, 2013." However, the new NOP/IS fails to describe the "changes" in "the Project" and fails to describe or evaluate the significance of those Project changes. We note at least a few changes between the previous Initial Study and this new Recirculated NOP/IS:

(a) The Project Description now includes *the draft text of the Proposed Rule*. The new Initial Study states (p. 1-3) that the prior NOP/IS had tried to use the text of Control Measure IND-01 as a surrogate for the Project, because the rule language for PR 4001 had not been developed. However, **the draft text of PR 4001 is not the same as Control Measure**

IND-01. The distinct jurisdictional, legal, administrative, due process and procedural issues posed by the draft text of PR 4001 (as well as its semantic ambiguities) add new levels of complexity to the evaluation of the environmental impacts of the Project, which are not adequately explained or evaluated in the new Initial Study.

As detailed below, the draft text now creates uncertainty as to how and when the requirements of the new PR 4001 that the Cities "take actions" would be triggered, as well as the scope of their obligations to act under the new Rule. Indeed, the draft text of PR 4001 raises questions as to whether the Project as now described is even consistent with the Final 2012 AQMP, the EIR for that AQMP, or with subsequently-adopted Control Measure IND-01, or other state and regional plans. Most importantly, to the extent the provisions of PR 4001 vary in purpose and scope from Measure IND-01, they are not authorized by the AQMD Governing Board.

(b) The initial Project description (and Control Measure IND-01) would have required "actions to be taken" [by the Cities] only "in the event that emissions from port-related sources *do not meet* the emission targets assumed in the final 2012 AQMP. Similarly, Control Measure IND-01 represented that the "backstop" requirements will be triggered "if the reported aggregate emissions *for 2014* for all port-related sources exceed the 2014 emissions targets." (Final 2012 AQMP, Appendix IV-A-41.) By contrast, however, the new Project description would apparently require the Cities to "take actions" in the event that "port-related sources do not meet *or are not on track to maintain* the emission targets ... *for the purpose of meeting and maintaining the federal 24-hrs PM2.5 standard*." The new version of the Project description appears to have expanded the "triggering" events, and extended the trigger period, beyond those events and time periods contemplated in the 2012 Final AQMP. Accordingly, the new version of PR 4001 may no longer be consistent with the AQMP or with the environmental review of that document.

(c) The new NOP and Initial Study changed the type of CEQA document from an Environmental Assessment to a Program Environmental Assessment for the Project that will be programmatic in nature (as described in 14 CCR 15168) rather than a project-specific environmental review, and suggests that the District may thereby intend to *defer* more detailed CEQA analysis to some undefined future stage of "the Project" (p. 1-2). The District has already prepared and certified a Final Program Environmental Impact Report (Program EIR) for the 2012 AQMP which was considered to be the appropriate document pursuant to CEQA Guidelines Section 15168(a)(3) and included a programmatic analysis of Control Measure IND-01. However, the District has now presented the adoption of PR 4001 as "the Project" but is still preparing yet another Program Environmental Assessment with the same reasoning as it did in the prior CEQA analysis. It is not clear how the District believes two program-level environmental documents can be prepared for the same rule and when, if at all, the District may intend to provide such more specific "project-level" analysis as required under CEQA.

Moreover, this part of the new Initial Study implies a commitment that the "program CEQA document" would include "consideration of broad policy alternatives and program-wide mitigation measures." (*id*.). However, *the new Initial Study fails to identify or discuss any such "policy alternatives" or "program-wide mitigation measures"* and gives no indication that *the scope* of the eventual EA will in fact include any such policy alternatives or mitigation measures.

In their prior comment letter on the Draft 2012 AQMP Program EIR dated October 22, 2012, the Cities expressed very similar concerns over the vague and deficient "project description" of backstop Measure IND-01. In the District's response to comment #5-4 in the Final Program EIR, the District represented that: "*The exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted.*" The District also committed, in its response to the same comment #504 in the AQMP Final Program EIR, that "*further details regarding the future requirements* [a Rule implementing Control Measure IND-01] *will be determined more appropriately* ***during the rule development process***."

The new Initial Study indicates that the District may be reneging on these commitments to provide the necessary analysis of "the exact impacts" of PR 4001 "during the rule-development process, in violation of CEQA and in violation of the District's own Rule 110.

(d) The District also appears to have made other subtle changes to the Project Description, without announcement, which are **not consistent with Control Measure IND-01**, and which may have potentially significant – but unaddressed -- impacts. For example:

i. The new Initial Study has changed the description of the Project from adoption of a "backstop measure" to the adoption of "backstop *requirement*" and has made other changes to the Project which are not consistent with Control Measure IND-01 as adopted (p. 1-1.) Control Measure IND-01 provides a description of the Cities' successful Clean Air Action Plan (CAAP) and its various emissions reductions goals. "This AQMP Control Measure is designed to provide a "backstop" to the Ports' actions to provide assurance that, if emissions do not continue to meet projections, the Ports will develop and implement plans to get back on track, to the extent that cost effective and feasible strategies are available." (Final 2012 AQMP Appendix IV-A, page 3) The Proposed Project describes its purpose as: "The purpose of the rule is to establish actions to be taken in the event that emissions from port-related sources do not meet the emission targets assumed in the Final 2012 Air Quality Management Plan for the purpose of meeting the federal 24-hour $PM_{2.5}$ standard in 2014 and maintenance of attainment in subsequent years." (PR 4001, Section (a)) The proposed

Project has eliminated the references in its Board-adopted IND-01 to backstopping the Ports Clean Air Action Plan targets to the extent cost effective and feasible strategies are available and replaced with a traditional regulation by the District to meet District-set targets.

ii. The new Initial Study has apparently changed the District's concern from assuring "the attainment demonstration" for 2014 PM2.5 emission targets (as embodied in the 2012 AQMP) to add "*maintenance of the air quality standard in subsequent years*." (p. 1-1.) This change in the Project appears to add a new undefined and open-ended element into the Project, not consistent with the District's adopted Control Measure IND-01.

(e) **Changed Definition of "Feasible Control Strategy:"** The draft text for the new PR 4001 proposes to change the definition of "feasible control strategy" so that it is *not consistent with* the obligations that could potentially be imposed on the Cities under *Control Measure IND -01* as adopted by the District Board. Instead, the draft of PR 4001 (at Paragraph (c)(1)) and the new Initial Study have *changed the limitations* on the proposed obligations of the Cities to achieve additional emission reductions under PR 4001. Previously, the Project was described as requiring the Cities to "propose additional emission reduction methods ... [but only] *to the extent cost-effective strategies are technically feasible* and within the Ports' authority." However, new PR 4001, and the new Initial Study (p. 1-1) have inexplicably omitted (at several points*)* the prior limitation on the Cities' potential obligations to measures that are "*technically feasible*." Again, these subtle changes in the Project description are not consistent with the text of IND-01 or any other legal or regulatory authority identified by the District in the new Initial Study. The Initial Study should address (i) whether these changes have been authorized by the District's Board, and (2) what potential environmental impacts (as well as socio-economic impacts) may arise from the changes in the concept of "feasible control strategies."

(f) The District should clearly identify all other "changes" in the Project.

Other comments on the flawed "project description" are set out in Section C(1), below.

3. **Changed Environmental Analysis:** We appreciate that the Recirculated NOP/IS has expanded the range of environmental subjects which it now acknowledges may be subject to the proposed Project's significant adverse environmental impacts, perhaps partly in response to our previous comments. However, the scope of the proposed environmental analysis still does not take into account all of our concerns and still fails to comply with CEQA, e.g., by failing to identify potential significant environmental impacts, failing to propose a range of feasible

alternatives, and failing to evaluate reasonable mitigation measures. We therefore reiterate our prior comments on the scope of the proposed EA.

4. **Reiteration and Incorporation of Prior Comments:** The new NOP/IS states that it "replaces the July 23, 2013 NOP/IS" and that there will be no District responses to previously-submitted comments. We recognize that the Recirculated NOP purports to reflect changes made, in part, to previously submitted comments on the July 2013 NOP/IS. However, the new NOP/IS does not take into account all of our previous comments nor do the changes made in the new NOP/IS necessarily reflect or satisfy the requests made in our previous comments. Accordingly, we incorporate and include our previous comments as detailed in our letter dated August 21, 2013.

5. **Failure to Adequately Identify and Include Feasible Alternatives:** The Recirculated NOP/IS still fails to comply with CEQA's requirements for identification and consideration of all feasible project alternatives. Like the original IS, the new IS fails to identify a single "alternative" to the District Board's adoption of PR 4001. The superficial mention of "alternatives" on page 1-15 of the IS merely recites the legal obligations of the District to "discuss and compare" a range of "reasonable alternatives" to the proposed Project. This fails to fulfill the "scoping" purpose of an Initial Study. The District should analyze, among a range of alternatives, a collaborative Memorandum of Agreement between all of the stakeholders, as previously suggested by the Cities and recommended by the District to its Board (which speaks well to its feasibility as an alternative). The District should also evaluate the use of the EPA's policy and guidance for the Voluntary Mobile Source Emission Reduction Program (VMEP), which was developed for voluntary emission reduction programs of the sort outlined in the CAAP.

"The scoping process is the screening process by which a local agency makes its initial determination as to which alternatives are feasible and merit in-depth consideration, and which do not." (*Goleta II, supra*, 52 Cal.3d at p. 569; see Guidelines §15083.) It involves "consult[ation] directly with any person or organization [the lead agency] believes will be concerned with the environmental effects of the project" in hopes of "solv[ing] many potential problems that would arise in more serious forms later in the review process." (Guidelines, § 15083.)" "The determination of whether to include an alternative during the scoping process is whether the alternative is potentially feasible (*Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 489 (*Mira Mar*)), and the EIR "is required to make an in-depth discussion of those alternatives identified as at least potentially feasible." (*Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1505, fn. 5].)" (*South County Citizens for Smart Growth v. County of Nevada* (3d Dist. 2013) 221 Cal.App.4th 316, 327 (*South County*.)

"A lead agency must give reasons for rejecting an alternative as 'infeasible' during the scoping process (Guidelines, § 15126.6, subd. (c)), the scoping process takes place prior to

completion of the draft EIR. (*Gilroy Citizens for Responsible Planning v. City of Gilroy*, *supra*, 140 Cal.App.4th at p. 917, fn. 5; Guidelines, § 15083.)" (*South County*, p. 328.)[1]

The Initial Study also uses the wrong legal standard in its passing acknowledgement of the District's duty to consider alternatives: the Initial Study must identify "potentially feasible" alternatives ("feasibility" is a defined, and critical, term under CEQA), rather than "reasonable" alternatives (as mis-stated in the IS on page 1-15.)

6. **Deficient Initial Study:** The CEQA Guidelines contemplate that an Initial Study is to be used in defining the scope of environmental review (14 CCR §§ 15006(d), 15063(a), 15143.) However, as a result of the omissions, inconsistencies, and deficiencies in the Initial Study, the District's proposed scope of environmental assessment for this Project will be unduly narrowed and limited, and is likely to erroneously exclude issues, feasible alternatives, and mitigation measures from the proposed Environmental Assessment. (More detailed comments on the deficient Initial Study are set out in Section D, below.)

As detailed below in Section C, the new Initial Study does not provide the information, potentially feasible alternatives, evidence, or analysis required by the CEQA Guidelines (14 C.C.R. §15063, subd. (d)):

(1) A description of the Project including the location of the Project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries . . .

(4) A discussion of ways to mitigate the significant effects identified, if any;

(5) An examination of whether the Project would be consistent with existing zoning, plans, and other applicable land use controls;

(6) The name of the person or persons who prepared or participated in the initial study."

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[1] "Differing factors come into play when the final decision on project approval is made; at that juncture the decisionmaking body evaluates whether the alternatives are actually feasible. (Guidelines, § 15091, subd. (a)(3).) "[T]he decision makers may reject as infeasible alternatives that were identified in the EIR as potentially feasible." (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 981.)" (*South County*, p. 327.)

An Initial Study that fails to provide all of the information, analysis, and evidence called for by CEQA may be deemed to be inadequate and not a valid basis for CEQA review or Project approval (See, e.g., *City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, at pp. 407–408, invalidating the County's proposed general plan amendments because of a deficient initial study: "[T]he initial threshold study is inadequate because it fails to provide sufficient evidence or analysis of the potential environmental effects of the amendments.")

7. **Request for Correction and Recirculation of Corrected NOP and IS:**

For the multiple reasons summarized above, and detailed below, it is essential that the Recirculated NOP and Initial Study be withdrawn and further revised and corrected in order to properly fulfill their role in seeking meaningful public input on the appropriate "scope" of the proposed environmental assessment for the Project. A more accurate, complete, and CEQA-compliant Initial Study that addresses specific project-level impacts should be prepared and released for public review, along with a new set of public meetings, to provide the public with sufficient time and opportunity to comment on the scope and adequacy of the revised NOP/IS.

The District has already commenced its Rule- development process. It appears from the District's records that District staff has already committed to the District Board that the Proposed Rule will be adopted in April of 2014. District documents also indicate that District staff has further committed to shortly thereafter embarking on revisiting and changing the emissions targets that are the subject of this Proposed Rule, likely placing even more burdensome requirements on the Cities It is imperative, not only for Due Process reasons but also for reasons of sound public policy, meaningful community input, and well-informed decision-making, that the District provide adequate, complete, and accurate information – and time -- to allow the Project to be fully vetted before it is rushed to the District's Board for consideration.

It is therefore respectfully urged that the Recirculated Initial Study (and the related NOP) be recalled, corrected, and again be recirculated for public review and comment as corrected before the District proceeds with any further action in connection with the proposed Project.

The comments on the Recirculated Initial Study included in this letter are organized in the same format used by the Initial Study, i.e., comments on "*Chapter 1 – Project Description*" in Section C, below, followed by comments on "*Chapter 2 – Environmental Checklist*" in Section D. The comments are limited to those matters which appear in the Recirculated Initial Study, but we reserve the right to provide further comments in the event that additional or different information about the proposed Project becomes available.

C. Specific Comments on the Recirculated Initial Study:

1. Chapter 1 of the Initial Study -- Inadequate "Project" Description.

(a). Deficient "Project Description" – In General

"A correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA." (*Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 267).

> **The initial study must include a description of the project.**" (*City of Redlands, supra,* 96 Cal.App.4th at pp. 405–406, fns. omitted.) **An accurate and complete project description is necessary** to fully evaluate the project's potential environmental effects. [Citations.]" (*El Dorado County, supra,* 122 Cal.App.4th at p. 1597.) (*Id*.)

As noted above (Section B(2)), the District's cover letter for the Recirculated NOP states that "the Project" has been changed, and that the Project description has been "changed." However, the Recirculated NOP and Initial Study do not explain the "changes" in the Project, and they still fail to provide an accurate and complete description of the Project as mandated by CEQA. The failure of the Initial Study and NOP to provide an accurate, complete, and coherent description of the "Project" is a fundamental deficiency, which permeates the entire document.

The Initial Study fails to describe additional planned or reasonably foreseeable activities or actions by the District (e.g., changes to emissions targets) or by other agencies in response to or associated with the proposed Rule, or to address cumulative impacts of this proposed Project in light of other related actions and plans.

The Initial Study suggests, instead, that the intent of PR 4001 would be to delegate the District's responsibilities for regulating or reducing emissions of NOx, SOx, and PM2.5 air emissions to other agencies, specifically the officials governing the ports of Long Beach and Los Angeles. The Initial Study further 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 Rule 4001 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 entire project*, improper project "segmentation," *improper deferral* of impact analysis and mitigation, failure to identify and evaluate *potentially feasible project alternatives*, etc.)

The absence of such a clear description of the proposed Project inherently prevents the IS from facilitating meaningful review and analysis of the proposed "Project," and violates the requirements of CEQA. (See, e.g., CEQA Guidelines, 14 CCR § 15124; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376.)

The Initial Study falls far short of these requirements in describing the proposed Project, and thus falls short of serving the "public awareness" purposes mandated by CEQA:

> An accurate and complete project description is necessary for an intelligent evaluation of the potential 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, citing *Aberdeen & Rockfish RR. v. SCRAP* (1975) 422 U.S. 289, 322 [an accurate, complete and consistent project description is the sine qua non of informative, legally adequate CEQA review].) (*City of Redlands v. County of San Bernardino, supra,* 96 Cal. App. 4th at pp. 407–408.)

In sum, the Recirculated NOP/IS still erroneously limits the scope of the required environmental analysis and calls for impermissible speculation or impossible prescience on the part of the Cities or other members of the concerned public to undertake effective analysis of the proposed Project, or to provide meaningful comments as to the scope of review of the Project, until and unless the District provides an adequate and complete description of the "Project."

Incomplete Description of Environmental Setting

The Initial Study also fails to provide an adequate description of "the environmental setting" of the proposed Project.

While the CEQA Guidelines do not specifically define "environmental setting" with regard to an initial study, they do explain, in regard to EIR preparation, that the "environmental setting" must be informative: "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." (Guidelines, § 15125, subd. (a).) A description of the environmental setting must be sufficient to allow "an understanding of the significant effects of the proposed projects and its alternatives" but "no longer." (Guidelines, § 15125, subd. (a).) That description should place "[s]pecial emphasis" "on environmental resources that are rare or unique to that region and would be affected by the project" and "must permit the significant effects of the project to be considered in the full environmental context." (Guidelines, § 15125, subd. (c).)

Failure to Examine All Phases of the Entire Project as Proposed

"The Initial Study must include a description of the project, and the scope of the environmental review conducted for the initial study must include the *entire* project." (*Nelson v. County of Kern, supra*, 190 Cal.App.4th at 270, emph. in original.)

The Initial Study here improperly fails to describe "the entire Project" and fails to consider all phases of the proposed Project. The CEQA Guidelines (14 C.C.R §15063(a)(1)) make clear that an initial study must take a comprehensive view of the proposed project *as a whole*. "All phases of project planning, implementation, and operation must be considered in the initial study of the project."

Since the Project also contemplates the possibility of future discretionary actions and measures on the part of the Cities, if compelled under PR 4001, which may in themselves have additional, not-yet-identified environmental impacts, the Initial Study should call for the scope of the EA to be expanded to include such issues.

The scope of the environmental review conducted for the initial study must include the entire project. (*Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1222.) Thus, a correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA. (*Nelson v. County of Kern, supra*, 190 Cal.App.4th at 267.)

The NOP/IS indicates that proposed Rule 4001 is intended to require actions by the Cities, to adopt and implement plans and strategies to address any "shortfall" in emissions reductions. The Initial Study improperly fails, however, to address or to provide information and analysis relating to the environmental impacts of the anticipated "subsequent approvals," "discretionary permits" and amendments to the Cities' plans and regulations that appear to be proposed as parts of the Project, or the physical environmental effects of social or economic impacts that may result from those anticipated changes in land use regulations. (Guidelines § 15063.) Such anticipated and intended actions by other governmental agencies thus appear to be part of this Project, and must be identified and evaluated in the Project EA, along with their potential impacts. As such, we reiterate our prior comment on the Draft 2012 AQMP Program EIR dated October 22, 2012 where it is stated that the District has failed to fully disclose the details of Measure IND-01 and as a result is segmenting or piecemealing its CEQA analysis.

Failure to Describe Existing Land Use Regulations

The Initial Study does not include an examination of whether the Project would be consistent with existing zoning, plans and other applicable land use controls, as required by CEQA Guideline Section 15063. Although the Initial Study includes some background discussion of the CAAP, it provides little or no description of the existing planning and zoning designations applicable to the "Project" location, and relies on (unsupported) assertions that the Project would be in furtherance of the CAAP. It provides no information or analysis of other existing plans or policies applicable in the Harbor Districts, which may be affected or impacted by the Project. Additionally, the Initial Study contemplates impacts beyond the Harbor Districts but does not specifically define these areas nor the applicable land-use regulations.

Uncertain and Inadequate Identification of "Baseline" Used for Review

It is critical under CEQA that any level of environmental review make it clear as to the "baseline" being used as the basis for analysis of the significance of potential Project impacts. (CEQA Guidelines Section 15125(a).) Normally, the "baseline" will be the existing environmental conditions in the vicinity of the Project. (Guideline Section 15125(a); see also, 48 Cal.4th 310, 315 [the baseline for an agency's primary environmental analysis under CEQA must ordinarily be the *actually* existing physical conditions rather than *hypothetical* conditions that could have existed under applicable permits or regulations].) The Supreme Court has explained that the requirement for identification and use of the appropriate "baseline" applies in the context of an Initial Study as well as in an EIR. (*Communities for a Better Environment, supra*, 48 Cal.4th at 512, and n. 5.)

The Initial Study here, however, fails to make it clear as to what "baseline" is being used. In many places the Initial Study compares the anticipated "impacts" of adopting proposed Rule 4001 to the permitted emissions levels anticipated (in the future) under the 2012 AQMP, or alternatively to the (future) emission reduction targets of the CAAP -- rather than to the existing environmental conditions. While the recent Supreme Court decision in *Neighbors for Smart Rail v. Exposition Metroline Constr. Authority* (2013) 57 Cal.4th 439, 451-52 indicates that the baseline need not always be the existing physical conditions, and that "projected future conditions" may be used in rare situations as a baseline "if their use in place of measure existing conditions ... is justified by unusual aspects of the project or the surrounding conditions", it does not detract from the rule that the Initial Study must accurately and consistently describe the baseline being used. Nor does it permit the use of "future conditions" in the absence of a showing of unusual circumstances. The Initial Study in this case does neither.

For each of these fundamental reasons, the Recirculated NOP/IS should be rescinded in order that it may be revised, completed and corrected to meet CEQA requirements.

(b) The Initial Study Improperly Fails to Identify or Address Alternatives to the Proposed Project:

As noted above, CEQA requires that an Initial Study identify a range of "potentially feasible alternatives" to the proposed project which are to be more carefully analyzed in the draft environmental study. (14 CCR § 15083; "The determination of whether to include an alternative during the scoping process is whether the alternative is potentially feasible (*Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 489.)

However, the new Initial Study totally fails to identify any alternatives for study in the eventual EA. Instead, it merely "commits" the District to "discuss and compare alternatives" in the future, as part of the Draft EA. This is insufficient. The Initial Study also suggests the District is looking to the public or other agencies to identify "alternatives" during the scoping process. The Cities previously (January 2013) submitted such a potential alternative to PR 4001, in the form of a proposed Memorandum of Agreement. The District Board directed District staff to follow up and confer with the Cities on that approach. Nevertheless, it is not even mentioned in the Initial Study. Additionally, the EPA's long-established VMEP program is not considered as an alternative although it was developed for this very purpose.

If the District is authorized to prepare a PEA, rather than an EIR, the PEA must at least comply with Guideline Section 15252. Section 15252(a) requires that a substitute document, like a PEA, must include at least – a description of the proposed activity, and "**alternatives** to the activity and **mitigation measures** to avoid or reduce and significant or potentially significant effects that the project may have on the environment."

The No Project Alternative is not defined in the NOP/IS. In accordance with CEQA Guidelines Section 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. Therefore, the Draft EA should consider the impacts that would occur under the existing 2012 AQMP without Control Measure IND-01 or proposed Rule 4001.

As an example, an analysis should be conducted of the grant funding that would be available under the No Project Alternative that would not be available if the proposed Project constitutes regulation, and the environmental impact if grant funding necessary to make certain actions economically feasible is no longer available under the proposed Project. If the District's position is that there is no loss of grant funding in order to comply with Rule 4001 as a regulation that the District purports to make enforceable under the State Implementation Plan and the Clean Air Act, the District must explain in the Rule its basis for this conclusion in the context of why grants made for compliance with a regulation is not a gift of public funds.

Due to the District's failure to satisfy this CEQA requirement of alternatives development, the Cities direct the District to review the feasible alternative to the Project set forth in their January 16, 2014 letter to the United States Environmental Protection Agency Region 9, copied to the District. The Cities have noted the problems with including Measure IND-01 in the California State Implementation Plan (SIP) and recommended to the US EPA to instead apply as an alternative, the Voluntary Mobile Source Emission Reduction Program (VMEP) to grant SIP credit for the small percentage of emission reductions that are not already achieved by other regulations. The VMEP can work with or similarly to the memorandum of agreement approach that was suggested by the Cities to the District as an alternative to Measure IND-01 last year. One additional alternative would be for the District to formulate its own "backstop" measures and strategies for addressing any shortfall in emission reduction targets, relying on the District or CARB regulatory authority, expertise and resources, rather than pursuing proposed Rule 4001, which appears to be an attempt to solely rely upon the Cities, which lack regulatory authority or control over the actual sources, or use of the EPA's VMEP.

(c) Comments on the District's new Proposed Rule 4001:

The "project description" in the Recirculated Initial Study includes the *draft text* of PR 4001, at Appendix B. Notwithstanding the inclusion of a draft of the text of the proposed Rule, the "project description" remains incomplete and deficient. The Initial Study does <u>not</u> provide an adequate description of how the proposed Rule would work in practice (as distinct from the superficial summary of the text at pages 1-7 through 1-10) or how it would be likely to impact the Cities, the tenants and users of the Ports, and the surrounding communities and environments. The Cities anticipate the submission of additional, more detailed, comments on inconsistencies and problems raised by the draft text of PR 4001 itself and additional questions and concerns about the District's "rule-making" process.

Other deficiencies and questions about the draft text of PR 4001 include the following:

<u>What Is the District'scLegal Authority for PR 4001?</u>

The new Initial Study asserts that if the "backstop requirement" of PR 4001 "becomes effective," then the new Rule would require the Cities to submit an Emissions Reduction Plan "to address the emission reduction "shortfall."" Under what legal authority does the District believe that its proposed Rule 4001 may purport to compel distinct governmental bodies (the Cities and the Boards of Harbor Commissioners) to legislate or to exercise their discretion in particular ways to achieve District objectives?

The new NOP continues to dodge the questions (previously raised) about the District's legal authority – if any – to adopt PR 4001 or to compel the Ports to participate in the new backstop planning process contemplated by the rule. The NOP includes only the perfunctory

assertion that PR 4001 would "implement Control Measure IND-01" – as though that were an independent and sufficient source of authority. However, even the District's Final 2012 AQMP document acknowledges that it confers no new authority on the District, and CEQA similarly cautions that it confers no new or additional legal authority on agencies independent of the powers granted to the agency by other laws. (Guidelines, sec. 15040(b).)

Moreover, as noted previously, to the extent that the draft of PR 4001 is not consistent with the Control Measure IND -01 as approved by the District's Board, it is unauthorized.

The source of the District's purported legal authority for processing this PR 4001 is important for determining whether or not the District may claim to be acting within the scope of the District's "Certified Regulatory Program" – and thus outside of CEQA. The CEQA Guidelines limit that "certified regulatory program" exemption to "that portion of the regulatory program of the SCAQMD which involves the adoption, amendment, and repeal of regulations *pursuant to the Health & Safety Code*." (Guideline, sec. 15251(l).)

If the NOP/IS seeks to justify the District preparing an environmental assessment under its "certified regulatory program" rather than an EIR under CEQA, then the District should clearly demonstrate that the PR 4001 would be enacted pursuant to some specific statutory authority in the Health & Safety Code.

The District previously sought to characterize Control Measure IND-01 as an "indirect source rule." The current references to proposed Rule 4001 in the NOP/IS have omitted all mention of an "indirect source rule." However, the new Initial Study does not cite any authority the District is relying on for its processing of the proposed Rule. This should be corrected so that the public can perceive and comment on whatever "legal authority" may be invoked by the District.

Is it anticipated that the "plans" and strategies that would be required to be adopted by the legislative boards of the two Cities under the mandate of proposed Rule 4001 would be within SCAQMD's regulating authority and subject to the District's approval or disapproval? If so, why would SCAQMD not directly adopt such "backstop" strategies and plans itself? If not, is the Rule being proposed in order accomplish something indirectly that SCAQMD itself cannot do directly? (Cf., *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 [same].)

The vague disclaimer in the Initial Study to the effect that proposed Rule 4001 would not require any measure that *lacks legal authority* raises more questions than it answers. (Note also the new Initial Study, and PR 4001, no longer disclaim any intent to require the Cities to adopt measures that are not "*technically feasible*.") Whatever types of "emissions reduction plans"

may be anticipated by PR 4001 should be identified by the District in the NOP/IS so that the feasibility and legality of such approaches can be evaluated as part of the environmental assessment for the Project. (The new Initial Study omitted the examples of 'control strategies' that had been in the previous Initial Study.)

On What Basis Would PR 4001 Impose "Requirements" on the Cities

The NOP/IS states that none of the CAAP strategies would be "prescribed in PR 4001." Instead, the NOP states that if proposed Rule 4001 becomes effective, the Cities (presumably the Boards of Harbor Commissioners) -- "individually or jointly" -- would be required to identify sources that could undergo potential emission reduction to "make up for the shortfall."

Why would/should the obligation to make up for a possible shortfall in meeting emission reduction targets (which are primarily the responsibility of the District to attain) be shifted so as to fall upon two independent governmental entities? The Cities are governmental entities, and are not directly producing emissions or otherwise directly responsible for the targeted emissions or for the attainment of the emissions reduction targets.

Moreover, if there were to be a "shortfall" in attaining the targets, it could well be due to factors not caused or controlled by the Cities, and not due to any actions or derelictions on the part of the Cities or their tenants or users. Would uncontrollable/unforeseeable factors resulting in all or part of a shortfall be excluded from whatever obligation may be imposed on the Cities? Would it be required/permitted that any such "shortfall" be allocated to sources or causes bearing some actual responsibility for the lack of attainment? How would any shortfall be "allocated" between the Cities?

Would proposed Rule 4001 take into account the statutory limits on the jurisdiction and authority of the Cities (i.e, the Boards of Harbor Commissioners) to impose restrictions on most mobile sources of emissions?

The NOP/IS mentions a possible "option" that would "allow" the Cities to reduce emissions from "non-port-related sources." This vague reference requires clarification before it may be evaluated in connection with the Project. Direct and indirect effects would need to be considered that may occur beyond the geographic boundaries of the Harbor Districts. Therefore, it is premature for the District to conclude that any changes based on the working group or public scoping comments will be within the scope of the analysis in the NOP/IS.

What is meant by an "Emissions Shortfall"?

What environmental baseline and other parameters would be required by proposed Rule 4001 in order for the Cities to determine the extent of any "emissions shortfall" that may need to

be addressed in the Cities' plans in the event they were to undertake to submit plans under the Rule?

The term "shortfall" first appears in the Proposed Rule in (d)(1)(A), where it appears to call for a Plan to report on progress in "meeting the shortfall" but that seems logically inconsistent with the structure of the Proposed Rule, i.e., the District can't require the Ports to submit an emissions reduction plan unless and until the annually-reported emissions reductions "show that the percent reduction in PM2.5 from the baseline emissions is less than the reduction target of 75%" (Para (e)(1)B).) So there would not be any "shortfall" identified until that time; and therefore it would seem premature and illogical to require the Ports to submit a Plan that "reports the progress in meeting the shortfall" that was just identified.?

To the limited extent the PR 4001 describes the shortfall that might trigger the need to prepare a Plan, the provisions for annual estimating or reporting of the emissions appear imprecise and vague. Para (f) appears to contemplate that once a 'shortfall' had been determined in one year, then the District could demand a Revised Plan in following years if targets are still not met; but what happens if the shortfall is "corrected" in subsequent years and targets are again being met?

Does an Emissions Reduction Plan, once required by the District, ever go away?

<u>On What Authority Would the District Purport to "Revise the Reduction Target"?</u>

The new Initial Study reports (p. 1-8) that PR 4001 (e)(2) purports to require the District's Executive Officer to review the reduction target before July 2017, and to "develop a proposed amendment to Rule 4001..." that would "revise the reduction target as necessary to conform to the 2016 AQMP reduction target."

By what authority would these targets be "revised" in the future? Under what objective standards? What public process would the Executive Officer need to follow in order to "develop" a proposed "amendment" to PR 4001? How would such a "moving target" affect the Cities and what environmental impacts would be possible consequences of such "revisions"?

<u>Does PR 4001 Provide a Clear and Feasible Process for Cities to Develop a "Plan"?</u>

Para (f) (E) would require that "the Plan shall be approved by the Board of Harbor Commissioners" at each Port, and would require the Port to conduct at least one "public meeting" ... but is this an improper attempt by the District to control and dictate the exercise of discretion" conferred on the Board of Harbor Commissioners? The Board of Harbor Commissioners may in fact disagree that a plan is required or may exercise its own discretion, as required by law, that it cannot commit expenditures to a program desired by the District. Under what authority can the District's Executive Officer, acting alone without even District Governing

Board authority, disapprove a plan or compel a plan to be approved by the Cities' own governing authorities? What is the District's intended mystery penalty or consequence, which the proposed Project still has not revealed to the cities and the public in PR 4001? Furthermore, discretionary action by the Boards of Harbor Commissioners requires compliance with CEQA. What type of CEQA review would be triggered for the emission reduction plans if the Program Environmental Assessment being prepared by the District is only programmatic in nature and how is the timing for either a consistency review or project-specific analysis, if warranted, accounted for in PR 4001?

Would PR 4001 Create Violations of Due Process?

The draft of PR 4001 raises several questions regarding apparent violations of Due Process:

Para (f)(2)(B) -- the District's Executive Officer would be given nearly unfettered discretion to "disapprove" a Plan submitted by the Cities?

There must be some requirement at least that the Executive Officer must make "findings" of "non-compliance" with some provision of (f)(1) of the Rule, based on some objective standards.

What would be the procedure if the Cities submitted a Plan, and the District (either by its Executive Officer or its Hearing Board) "disapproved" the Plan (per Para (f)(2)(C))? The Port would apparently be required to submit a Revised Plan within 60 days of the disapproval. But what about the Harbor Commissioners holding a new "public meeting" for input on the Revised Plan? And would there be any time or procedure for the Harbor Commissioners to consider and approve a new Revised Plan and comply with CEQA within that arbitrary 60 day time frame?

At the end of Para (g)(2) is the threat again that if the District Board denies the Port's appeal from a "disapproval" of the Port's emissions reduction plan, then the "*Ports shall comply* with ... [or subparagraph (f)(2)(F)]" -- which means the Port shall be self-confessed as "in violation" of the Rule? This would appear to inflict a denial of Due Process on the Cities.

Variance: PR 4001 must provide more detail as to what is meant by Para (g) - petitioning for a "variance" ? What are the criteria? What would the process be? What would be the effect of the District granting a variance?

How Would the District Determine the "Consequences" for "Violation" of PR 4001?

By what authority would the District sit in judgment as to the sufficiency of the Cities' efforts to manage activities and uses of the Ports? What might the consequences be if a City were to be deemed to be "in violation" simply because the District may choose to "disapprove" a

Revised Plan, and by what legal authority would the District purport to sanction the Cities in the event of some perceived "violation"?

By what objective standards would the District judge the sufficiency of any plans or measures proposed by the Cities to achieve the emission reduction targets?

What is the consequence of disapproval of a City plan by the District? The rule should provide more detail at Para (f)(2)(F) (iii) -- what is meant by the obscure reference here that the Ports "shall be in violation of this Rule... "?

Does PR 4001 Provide for Judicial Review of District Actions?

Should the Rule make provision for judicial review of the actions of the District in enforcing or interpreting the Proposed Rule?

As drafted, PR 4001, at Para (h): "Severability" appears to contemplate that a "judicial order" could hold some provision of the Rule to be invalid? Otherwise the Rule is silent on Judicial Review.

Are the Cities Supposed to Regulate Off-Site "Sources"?

The Initial Study indicates (p. 1-4) that the District anticipates that the "control strategies" contemplated by this Project "may potentially include" measures for the Cities to adopt and implement policies or programs extending beyond their jurisdictions or to try to reduce emissions from sources *not entering* onto port properties. What does this mean? By what legal authority might the Cities try to regulate *off-site* sources that do not come within the jurisdiction of the respective Harbor Commissions? (Municipal police power authority may generally be exercised only within the territorial boundaries of their jurisdiction, and the Boards of Harbor Commissioners have special Tidelands limits on their authority.)

Would such (unidentified) measures be part of Rule 4001, or would proposed Rule 4001 require that the Cities formulate (unidentified) measures in the future to somehow regulate *off-site* "sources?"

How Does the District Contemplate Funding of Backstop Measures?

The draft of PR 4001 implies that "funding" would be necessary for many of the potential future emission reduction measures that may be compelled under proposed Rule 4001. Would such funding be provided by the District? What other "funding" sources are contemplated?

The conversion of the Cities' voluntary programs into PR 4001 as a district regulation and potentially state and federal law if adopted into an approved SIP, will impose constitutional

or common law "gift of public funds" restrictions on federal and state grant funding currently relied upon by the Cities for emission reduction activities under their CAAP.

To the extent the District expects the Cities to fund future programs, this demonstrates a lack of understanding of the Cities' own governmental authority and obligations. The Boards of Harbor Commissioners of the Cities are trustees for the Tidelands Trust funds they are entrusted to manage and have specific legal obligations to meet, including promotion of maritime commerce, navigation and fisheries and keeping their budgets in balance amidst a current global shipping economy with many dynamic and threatening competitive pressures to retain market share. By what authority may the Harbor Commissioners impose taxes, assessments, and charges on users of the Harbor Districts, given the restrictions of various state laws, including, among others, Proposition 26?

(d) Specific Comments and Questions re "Project Description" and Text

The following comments and questions refer to specific portions or pages of Chapter 1 of the new Initial Study:

Pp. 1-1 - 1-2 – Introduction

(i) *Erroneous Characterization of Existing Emission Reduction Requirements:* The Introduction states, in the first sentence of the third paragraph on page 1-1, that Control Measure IND-01 "...does not call for additional emission reductions beyond those realized with existing regulations and emission reductions programs implemented at the Ports to date." This is an untrue statement. The CAAP is only a planning document which specifically provides for discretionary future decisions to be made regarding implementation by each of the Cities' respective Board of Harbor Commissioners, and the resolution adopting the CAAP update states:

> The CAAP is a living document intended to establish a process to develop solutions, not a static document binding the Ports to particular future actions….The CAAP is a planning document that identifies goals and potential implementation strategies to guide further actions, and as such does not constrain the discretion of either Board of Harbor Commissioners with respect to any particular action.[2]

[2] Los Angeles Resolution No. 10-7041 adopted by the Board of Harbor Commissioners of the City of Los Angeles and Long Beach Resolution No. HD 2600 adopted by the Board of Harbor Commissioners of the City of Long Beach on November 22, 2010.

Not all individual Board actions that may be required in order to achieve the CAAP's goals and activities have been adopted; in fact, many of these goals were stretch targets with uncertainty as to whether they could be achieved. Control Measure IND-01 and Rule 4001 propose to *require* the Cities to potentially adopt future discretionary, quasi-legislative actions that create potentially-conflicting authorities between the District, as regulator, and the Cities, as independent governmental agencies regulated by the District, so as to force the Cities to exercise their discretionary police power authority in a particular way. The Constitution does not permit such usurpation of the Cities' authority.

(ii) *Misleading and Inaccurate References to "Port-Related" Sources of Emissions:* The new Initial Study and Recirculated NOP continue to describe PR 4001 in the misleading context of "port-related sources" of PM2.5 emissions, and as ensuring that emissions from "port-related sources" meet the targets included in the Final 2012 AQMP. The term "port-related sources", however, is not used in the federal Clean Air Act ("CAA") or Health &Safety Code. As described in the NOP, "port related sources" are mobile and vehicular sources ("ocean-going vessels, on-road trucks, locomotives, harbor craft, and cargo-handling equipment"). Those *actual* "sources" of emissions are distinct from the geographic area in which they operate and are generally and comprehensively regulated by other State and federal agencies, not regional air quality districts.

The District's continued references to "port-related sources" of emissions are misleading and are no more accurate or descriptive than would be similarly generic references to "coastal-related sources" or "County-related sources" or "Air District-related sources" of emissions.

(iii). *Misleading Failure of the Project to Limit the Cities' New Obligations to "Technically Feasible" Measures:* The previous Initial Study for PR 4001 at least made it clear that the District only intended to require the Cities to propose additional emission reduction methods for vessels, trucks, locomotives, etc., "to the extent cost-effective strategies are *technically feasible* and within the Ports' authority." (Similar limitations on the Cities' new obligations under the proposed 'backstop measure' are included in IND-01.) However, the new Initial Study no longer includes any limitation to "technically-feasible" measures that could be required of the Cities (p. 1-1.) This omission creates uncertainty about the District's intentions as to the scope of PR 4001, i.e. whether it might be construed to be a "technology-forcing" regulation or not.

(iv). *Inconsistent or Uncertain Emissions Reduction Targets.* The Introduction states, in the last paragraph beginning on Page 1-1, that the emission targets for "port-related sources" are those assumed in the 2012 AQMP emissions inventory. The draft text of PR 4001 now purports to define "emissions target" by reference to page IV-A-36 of Appendix IV to the Final 2012 AQMP. The Cities raised questions during the Measure IND-01 adoption process regarding the District's calculation of these targets, which are *different* from the emissions targets set under the

CAAP. Although the specific emission targets of the proposed Project do not appear at all in the NOP (which omission itself is a defect), the District has verbally advised the Cities and a working group on August 8, 2013, that the Rule will be such as to be triggered on set emission targets for 2014 and 2019. Those comments, however, left the Cities and working group participants with many questions about how the District set the emissions inventory, particularly for 2019, which was not in the CAAP. These examples are provided to illustrate that the Initial Study's description of the applicable emission reduction targets to be covered by PR 4001 are uncertain, or inconsistent.

P. 1-4 - Project Location

The new Initial Study provides no finite "project location." It again refers to the District's jurisdictional boundaries. It then states that "PR 4001 would apply to POLA and POLB, both of which are located within Los Angeles County." It is unclear if this was an attempt to state that the Project location would be Harbor Districts of the Cities. The lack of clarity regarding the Project location is further compounded by the Rule's reference to "sources not entering Port," and by a new but vague reference to the effect that the unidentified "strategies proposed by the Ports" under compulsion of PR 4001 could extend the "project location" beyond Los Angeles County.

Is it the intention that any portion of the Project may be implemented outside the geographic areas of the two Ports? It remains unclear from this description whether the Project may have impacts or foreseeably result in actions being taken outside the geographic areas of the two ports. This may have jurisdictional implications which cannot be evaluated without additional information.

Also, the Initial Study fails to disclose or analyze the possibility that if the option for the Cities to reduce emissions from sources not entering Port properties is included in proposed Rule 4001, even the vague "project location" and geographic scope of the proposed Rule in the Initial Study would not be accurate and would need to be modified in the NOP/IS.

P. 1-5 – Project Background

The new Initial Study appears to recognize that distinct "emission sources at the Ports" such as vehicles, engines, ships, trains, trucks and other cargo-moving equipment operated by distinct tenants, users, and visitors of the ports are the intended targets of the Project's emission reductions requirements. It also acknowledges that the Ports themselves adopted the San Pedro Bay Ports Clean Air Action Plan ("CAAP") in 2006, and further that emissions from these so-called "port-related sources" have been "substantially reduced since 2006" as a result of collaborative and voluntary programs and regulations developed by both Ports. (p. 1-6).

These acknowledgements raise again the question of the need or justification for the Project, or for the attempt by the District to foist the responsibilities for regulating emissions from such mobile or vehicular sources of emissions from state and federal agencies onto the Cities.

Also, on Page 1-6, the new Initial Study states that the intent of PR 4001 is to "provide a backstop to the Ports' actions" in case emission reductions "from port-related sources do not meet *or are not on track to maintain the emissions targets*..." This appears to be an unauthorized change in the Project description and is not consistent with IND-01. Also, notion that the District would be empowered by PR 4001 to enforce sanctions against the Cities if the District somehow deems that they are "not on track" to maintain targets is ambiguous, and without objective standards or legally-necessary procedural protections.

Pp. 1-11 -- Technology Overview/Implementation Strategies

The new Initial Study refers to some emission reduction strategies included in the CAAP, but the Initial Study does not explain how these may relate to proposed Rule 4001, or whether they should be considered as part of the Project.

The suggestion in the Initial Study of possible "tariff changes" or "impact fees" on the activities of users of the Harbor Districts raises other questions (e.g., legal authority, funding for studies and public review processes required before such measures could be considered or adopted, indemnification for costs of defense, etc.) requiring identification and study. Moreover, such measures may themselves be considered as "projects" subject to CEQA review and may have impacts on the activities of Harbor District users that themselves would require analysis or mitigation.

The Initial Study also includes reference to "Port funded incentives" as possible measures to reduce emissions, but also observes that there is not adequate funding for such strategies in the Cities' budgets or other grant programs. The source of funding any "Port-funded" measures contemplated by proposed Rule 4001 should be clearly identified and evaluated.

Any such contemplated implementation strategies should be included in the "Project description" and better identified in a more complete NOP/IS, so that they may be evaluated along with the rest of the Project.

Feasibility: The new Initial Study abjures any consideration of technical feasibility or other concepts of "feasibility" despite CEQA's recognition of feasibility as a critical limitation on environmental regulation. The scope of the EA should be expanded to address the legal, technological and economic feasibility of the seven bulleted items listed in this section.

2. Chapter 2 of the Initial Study – The "Environmental Checklist"

(a) General Comments on the Environmental Checklist

The Recirculated NOP/IS relies on a standard CEQA environmental checklist to identify those "impact areas" it recognizes to be potentially affected by the Project. In several respects, however, the Initial Study appears to merely assume the absence of potentially significant impacts, rather than factually demonstrating that significant impacts will not occur if the Project is adopted and implemented. This is insufficient under CEQA, and under the District's own rules. (SCAQMD Rule 110; *City of Redlands, supra*, 96 Cal.App.4th at 408-09; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296).

The new NOP includes many statements that the PEA will rely on "conservative assumptions" about the possible environmental impacts of the Proposed Rule. Reliance on any assumptions in CEQA analysis is unsound, and if assumptions are to be used, the District must explain why it would rely on "conservative" assumptions about the scope of impacts.

Furthermore, it is contrary to the District's response to comment #5-4 in the Final Program EIR, which indicates that "[t]he exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted."

We appreciate that the new Initial Study has expanded the number of environmental areas to be studied in the eventual EA from the six (6) topics identified in the previous Initial Study to thirteen areas now recognized as being subject to potentially significant impacts if the Project is approved. The new Initial Study now recognizes the following *additional areas* of potential environmental impact to be addressed in the EA: (1) Aesthetics, (2) Biological Resources, (3) Cultural Resources, (4) Land Use and Planning, (5) Noise, (6) Public Services, and (7) *broadened evaluation* of potential impacts and issues in the areas of Energy, Hazards and Hazardous Materials, Air Quality, and Transportation and Traffic.

However, the new Initial Study continues to provide only superficial and inadequate discussion of the areas of environmental impact, and thus fails to properly indicate the necessary scope for the eventual EA. Unless and until those areas are more fully addressed, the new NOP/IS still improperly limits the scope of the proposed EA, and still erroneously exclude areas requiring further assessment.

(b) Specific Comments on the Environmental Checklist

As detailed below, there are numerous areas of potential environmental impact in the checklist as to which the Initial Study either omits required evidence to support its conclusions of "no potential impact" or treats with insufficient detail.

Even as to those areas that are now identified in the new Initial Study as having potential impacts, the new Checklist still errs by limiting the scope of the potential impacts identified for further study based on unfounded assumptions as to the environmentally benign intent behind the Project. However, the law is clear that environmentally "benign" objectives for a project do not excuse non-compliance with CEQA and do not justify reliance on assumptions in lieu of evidence to demonstrate the absence of potential impacts. *See, e.g., California Farm Bureau v. California Wildlife Conservation Board* (2006) 143 Cal.App.4th 173, 196, emph. added [State environmental agency violated CEQA by exempting environmentally beneficial habitat project from review]:

"[I]t cannot be assumed that activities intended to protect or preserve the environment are immune from environmental review. [Citations.]" (*Davidon Homes, supra*, 54 Cal.App.4th 106, at p. 119; see, e.g., *Dunn-Edwards Corp. v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644 (disapproved on other grounds in *Western States Petroleum Assn. v. Superior Court, supra*, 9 Cal.4th 559, 570.) **There may be environmental costs to an environmentally beneficial project, which must be considered and assessed**.

P. 2-4 -- Preliminary Discussion of Checklist

First Paragraph: We reiterate the same comment as noted above, regarding Cities not being the "source" of emissions. It is "the operational activities by the Ports' tenants" [and other users of the area] that produce emissions (as the new Initial Study more accurately recognizes) and which should be the true District targets as the sources of emissions.

First Paragraph, Last Sentence: The Initial Study states that "some emission reductions [assumed by the District's 2012 AQMP] may be contingent upon the Ports taking and maintaining *actions which are not required by air quality regulations*." This suggests that one of the purposes for District proposal of proposed Rule 4001 may be to establish a new regulatory "authority" over the Cities (and the communities served by and dependent upon the Harbor Departments of the Cities) that is not in fact already provided by existing federal, state, or regional air quality regulations. The policy implications of such a Project may well include significant impacts on the environment, if regulatory authority over activities, facilities, and uses of the Harbor Districts is shifted or arrogated to the District. (See, e.g., *City of Redlands, supra,* 96 Cal. App. 4th 398 [proposed new County policy re exercise of County authority over annexations and sphere of influence was not supported by adequate CEQA review].)

Page 2-5: The new Initial Study makes reference to a "survey" of existing CEQA documents to try to identify projects "similar to the types of projects the Ports may choose to implement in an Emission Reduction Plan." It then suggests that "reasonably foreseeable projects" resulting from this survey will be evaluated in the EA. While we respect these goals, we submit that the new Initial Study is vague as to what may be deemed to be "reasonably

foreseeable projects" warranting analysis in the EA, and would request that more objective criteria be provided.

(1) **Aesthetic Impacts:**

The brief discussion of "potentially significant" Aesthetic impacts in the new IS does not address many of the Cities' prior comments on these impacts, and we reincorporate those comments.

(2) **Biological Resources:**

The new discussion of impacts on Biological Resources does not address the Cities' prior comments re possible impacts on migratory birds and least terns, and we reincorporate those comments.

(3) **Energy:**

The new Initial Study section VI (c) must be expanded to also consider and analyze 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 required in the event of a major disaster. Also some types of emission control measures, facilities, or technologies contemplated by the Project could increase or shift demand for different types of energy or fuel usage. Although "risk of upset" is not considered in the new Initial Study checklist. The scope of the proposed EA should be expanded to include this additional analysis.

(4) **Hazards and Hazardous Materials:**

In addition to our comments on the prior Initial Study, the new Initial Study section VIII(f) must be expanded to also consider and analyze the increase reliance on alternative fuels or electrical powered technologies that would require sufficient supply and emergency storage in the event of a major disaster. Although interference with emergency response plans was marginally addressed in this section, "risk of upset" is not considered in the new Initial Study Checklist. The scope of the proposed EA should be expanded to include this additional analysis.

(5) **Land Use & Planning Impacts:**

The new IS now identifies Land Use and Planning as an area involving potential significant impacts, to be studied in the EA. However, the new IS states that such impacts will be considered in the EA only "if the project conflicts with the land use and zoning designations established by local jurisdictions." This is insufficient.

We previously pointed out that the PR would cause conflicts with existing land use plans and policies, circulations plans, congestion management plans, etc. The prior IS itself admitted that the Project would cause potentially significant impacts or conflicts with existing land use plans (but was only going to address them in the Transportation section). This should be a definite area for evaluation in the EA, not a 'conditional' topic of study.

We also note that the new Initial Study is internally inconsistent. It makes the remarkable assertion (inexplicably placed in its discussion of impacts on Biological Resources, at p. 2-18) that "there are no provisions in the proposed project that would adversely affect land use plans, local policies, ordinances or regulations. LAND USE AND OTHER PLANNING CONSIDERATIONS ARE DETERMINED BY LOCAL GOVERNMENTS AND NO LAND USE OR PLANNING REQUIREMENTS WOULD BE ALTERED BY THE PROPOSED PROJECT." We strongly disagree, as pointed out in our prior comments, which are incorporated.

The measures contemplated in the Initial Study include the adoption of new "regulatory requirements," new "impact fees" on the movement of cargo or sources, and changing the tariffs for use of the Harbor Districts – all of which would cause at least potential "conflicts" with applicable plans and policies. (Cf., *Orinda Ass'n v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1169 [the CEQA requirements for initial study examination of non-conformity with existing land use plans are intended to allow lead agency to modify the Project to avoid inconsistencies with existing plans – not vice versa].)

The Initial Study itself acknowledges that the Project is anticipated to cause "potentially significant impacts" or conflicts with "an applicable plan ... for the performance of the circulation system" and conflicts with "an applicable congestion management plan." (Initial Study, p. 2-44.) Although the Initial Study proposes to address those admitted conflicts in the "transportation" section of the EA, these acknowledged conflicts confirm the necessity for including "land use and planning" impacts in the proposed EA as well.

Also, the proposed Project would seemingly create conflicts with the Cities' 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 are detailed in the previous port letters included in Attachment A to this letter. In addition, the proposed Project would create inconsistencies with the Clean Air Action Plan.

The proposed Rule is apparently structured in a way that would impermissibly usurp the (non-delegable) police power authority of the Cities and their respective Boards of Harbor Commissioners to plan, implement, and regulate land use policies and actions in their respective jurisdictions. (This comment has also been raised above, in Project Description comments.)

The numerous inconsistencies between the Project as proposed and the existing plans and policies require identification in the Initial Study and inclusion in the proposed EA. (Guidelines § 15125(d).) The scope of the proposed EA should be expanded to include environmental analysis of all of these potential impacts on land use and planning.

The EA should also include analysis of the impacts of the proposed/anticipated Project-related subsequent amendments to the Cities' plans, policies, and other land use regulations. (See, e.g., *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1197 [CEQA review failed to consider incidental results from adoption of revised policy; incidental impacts could not be disregarded in an initial study based upon "net" environmental impact of the change in policy being benign since CEQA requires each environmental impact of project be discretely evaluated].) "Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project." (Guidelines, § 15064, subd. (e); see §§ 21080, subd. (e)(2), 21082.2, subd. (c).)

The scope of the EIR should be expanded to include analysis of possible physical changes in port facilities and operations that might be caused by economic or social effects of the Project itself or by the anticipated amendments to land use and zoning policies by the Cities subsequent implementation of the Project.

(6) **Transportation and Traffic Impacts**

The new Initial Study fails to adequately describe and analyze potential impacts to rail and marine vessel traffic and ignores the significance criteria identified as "[w]ater borne, rail car or air traffic is substantially altered" on page 2-45. The new Initial Study erroneously considers vehicular traffic impacts to local roadways.

Socioeconomics Analysis

The proposed EA needs to include a broad-based analysis of the socioeconomic effects of Proposed Rule 4001, including the potential for job loss, business closures, and diversion of cargo to other ports due to the potential loss of regional competitiveness. The socioeconomic analysis needs to consider both the existence of the rule, even if not triggered, and the future enforcement of the rule. Because these conditions have the potential to physically change the environment in and around the ports, these impacts should be identified and assessed in the EA. (See CEQA Guidelines §§ 15064€ and 15131; *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3rd433,445 [EIR must consider possibility of economic blight from rezoning].) Moreover, this assessment should not be limited to businesses and operations within the ports, but should extend to those facilities, business and operations that while located outside of the Harbor Districts are dependent upon the flow of cargo for their continued operations.

This CEQA analysis of the socioeconomics effects of PR 4001 in the proposed PEA would be separate from, and in addition to, the assessment of socioeconomic impacts of the proposed Rule that the District is required to prepare in compliance with Health & Safety Code § 40728.5 and § 40440.8.

D. Conclusion:

The current version of the Recirculated NOP/IS still fails to comply with CEQA or with the District's own Rules for environmental review, and fails to properly provide an adequate "scope" for the eventual Environmental Assessment to be prepared for analysis of the Proposed Rule 4001. The Initial Study must therefore be revised, corrected, and re-circulated with all of the descriptions and other content required by CEQA.

While it is clear that an EA is called for in connection with this proposed Project, it is equally clear that the EA should be more complete than what is envisioned by the current NOP/IS. More fundamentally, its scope must be determined by a legally-adequate revised NOP/IS. The EA for the Project must, of course, be supported by credible and substantial evidence, including independent professional analysis.

Even this inadequate NOP/IS makes it clear that **the scope of the proposed EA has been unduly narrowed and fails to identify any potentially feasible alternatives to the Project.** Consequently any ensuing environmental review will be limited in a way that erroneously fails to provide the relevant decision-makers, affected public agencies, residents and the public generally with sufficient evidence and analysis of all potential impacts from the Project as a whole, or of all potentially feasible mitigation measures or appropriate Project alternatives as required by CEQA.

We respectfully request that these comments and questions be considered before the District embarks on preparation of the EA and all of the other required independent studies in connection with the CEQA review of the proposed Project. We therefore look forward to working with the District, and any study teams or working groups tasked with evaluation of the proposed Rule 4001.

The NOP requests that we provide you with a contact person for each responding agency. For the **COLB,** the contact persons are as follows:

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We appreciate your consideration. Thank you.

Sincerely,

Matthew Arms
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachments:

- August 21, 2013 Letter; Port of Long Beach and Port of Los Angeles to SCAQMD; *Comments on Notice of Preparation, Initial Study, and Scope of Proposed Environmental Assessment*

- October 2, 2013 Letter; Port of Long Beach and Port of Los Angeles to SCAQMD, *Initial Comments for Public Consultation on Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets are Met at Commercial Marine Ports"*

cc: Al Moro, Acting Executive Director, Port of Long Beach
Gary Lee Moore, Interim Executive Director, Port of Los Angeles
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Randall Pasek, Planning and Rules Manager, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
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Cynthia Marvin, Division Chief, Stationary Source Division, CARB
Doug Ito, Chief, Freight Transportation Branch, CARB
Jared Blumenfeld, Administrator, U.S. EPA, Region 9
Deborah Jordan, Director, Air Division, U.S. EPA, Region 9
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ATTACHMENT 6.

October 2, 2013

VIA ELECTRONIC MAIL – rpasek@aqmd.gov
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Re: Initial Comments for Public Consultation on Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports"

Dear Mr. Pasek and Staff of the South Coast Air Quality Management District:

We appreciate this opportunity to submit comments during the public consultation period on the South Coast Air Quality Management District's (AQMD's) proposed "Rule 4001: Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports" on behalf of the City of Long Beach acting by and through its Harbor Department (referred to herein as "COLB") and the City of Los Angeles acting by and through its Harbor Department ("COLA," collectively with COLB, the "Cities" or the "Ports").

The Cities take their role as environmental leaders seriously and through the years have achieved tremendous success in obtaining substantial emissions reductions through the efforts guided by the joint San Pedro Bay Ports Clean Air Action Plan ("CAAP"). The Cities continue to support programs that will result in cleaner air for the local communities and the region and have worked aggressively with the port industry to reduce air quality impacts from the equipment they operate. As a result, the recently released emissions inventories have shown that between 2005 and 2012, emissions from sources at both the Port of Long Beach and Port of Los Angeles were reduced by 80% for diesel particulate matter and 55% for nitrogen oxides. However, the Cities continue to disagree with the AQMD's current proposal to inappropriately and unnecessarily regulate the Cities. The Cities have been consistent in our comments to the AQMD about the serious concerns and objections to the proposed rulemaking approach. A compilation of these comments was recently submitted to the AQMD in our comment letter on the Notice of Preparation and Initial Study for Proposed Rule 4001, dated August 21, 2013.

As for the comments the AQMD is currently seeking, we have concerns that the process recently initiated by the AQMD to solicit comments on Proposed Rule 4001 deviates from the rule-

making procedures called for by the Health & Safety Code and by the AQMD's own rules (Rule 110), in several respects. For example, it is essential that a copy of the Proposed Rule, or the text of the Proposed Rule, "be made available to the general public in connection with a request for comments" on a proposed rule in order to commence a legally-compliant rule-making process. (E,g., H & S Code §§ 40727.2, 40727(i).) The Cities have previously pointed out the inherent inconsistency of inviting public comment on Proposed Rule 4001 before the AQMD has publicly-disclosed the text of the Proposed Rule, as well as the resulting limitations on the ability of the Cities and other members of the public to provide specific input on the Proposed Rule. As a result of the failure to provide the text of the Proposed Rule, or necessary information regarding the Proposed Rule, a meaningful and legally valid rule-making procedure has not yet been commenced, and it is premature for the AQMD to demand the submission of comments on the anticipated but still undefined new "backstop" rule.

Further, it appears that the AQMD is attempting to limit comment by setting an agenda for the items on which they are seeking input, as shown on slide 8 "Soliciting Inputs/Comments" of the presentation provided during the CEQA Scoping Meeting on August 14, 2013. In addition, limiting the public process primarily to a small working group with seats set at a small table does not allow for significant input from the broader affected public, including the port tenants and operators. Input could be more meaningfully provided if the Proposed Rule was released with sufficient time for the Cities and the public to review and provide detailed comment.

The Cities are further concerned that not enough time is being included in the schedule for rule development. To date, a draft of the Proposed Rule has not been released, nor is it expected to be released for at least several weeks; however, a hearing date for the AQMD Board to consider approval of the Proposed Rule has already been identified for early December. Well in advance of any such hearing, the AQMD must provide the public with substantial information and analysis of the Proposed Rule as required by the Health & Safety Code and AQMD rules (e.g., H & S Code §§ 40727.2; Rule 110(b), (c), and (d).), as well as responses to the public comments. The AQMD also must provide the comprehensive assessment of socioeconomic impacts required by Section 40728.5.

This timeline for review and comment is unacceptably short for a rule of this magnitude. The failure to provide the draft rule language with adequate time for the public to review and submit comments to AQMD, and for those comments to be meaningfully considered by AQMD staff, is a denial of due process.

In this regard, we also have concerns about the demand that comments be submitted by September 6, 2013. There is no explanation, nor any apparent legal basis, for imposing such a deadline for public comments. It is unreasonable, particularly in light of the absence of text or details regarding the Proposed Rule, and fails to provide due process to the Cities or other members of the public who may be burdened or affected by the Proposed Rule, to demand comments by such an early cut-off. The imposition of such a premature deadline for submission

of comments appears arbitrary, and in conflict with Health & Safety Code § 40726, which states that the AQMD "shall provide for the submission of statements, arguments, or contentions, either oral or written or both," up until the time of the public hearing on the Proposed Rule. We therefore respectfully object to the imposition of a deadline for submission of comments on the Proposed Rule, and reserve all rights to comment on the Proposed Rule in the manner, and at the times, provided by state law and the AQMD rules, and to insist on compliance with the procedures and rights afforded by state law and AQMD rules.

The Cities are therefore providing these comments on a preliminary (and non-binding) basis, considering only the limited information on Proposed Rule 4001 thus far provided by the AQMD, based upon presentations by AQMD staff about the general concepts of the approach. The Cities reserve our rights, however, to make further comments after the September 6 deadline and to continue to provide input throughout the process, including submission of additional or different comments after the draft rule is made available.

First, there is an issue of need. As a rule that is contained in the proposed State Implementation Plan, Proposed Rule 4001 violates Section 39602 of the California Health and Safety Code, which states that the State Implementation Plan shall only include those provisions necessary to meet the requirements of the Clean Air Act. There is no need for Proposed Rule 4001 since the AQMP's emissions targets for port industry equipment in 2014 will be met by United States Environmental Protection Agency (EPA) and California Air Resources Board (CARB) regulations and existing Clean Ocean Vessel Voluntary Incentive Programs. Further, AQMD staff has suggested that Proposed Rule 4001 will require the Ports to develop a "Contingency Plan" immediately following rule adoption, prior to any indication that an emissions shortfall may occur. This approach is punitive, requiring the Ports to invest resources into a type of corrective action, when there is no identified need for that action, and therefore goes against the Act and is inconsistent with due process.

Second, there is an issue of legal authority and jurisdiction. The AQMD has failed to cite any legal authority for characterization of governmental entities as a stationary source, or imposing an indirect source rule on governmental entities that do not own, operate or control the sources of emissions, based merely upon the location of facilities operated by private parties within the government entities' geographic area. The Ports are not "indirect sources" and no authority has been cited to authorize the use of an indirect source rule against fellow governmental agencies that have their own jurisdiction and responsibilities by law and do not have regulatory authority to issue air regulations. The AQMD has failed to cite any legal authority for imposing an indirect source rule on Trustees for the Tidelands of California or how it could legally compel the Ports to make expenditure of Tidelands Trust revenues for the purpose of incentives or to adopt other emission reduction programs to be funded as contemplated in AQMD enforcement activity under Measure IND-01. The AQMD has failed to show any legal authority that would allow it to (1) regulate mobile sources by making another governmental entity, that is not an air regulator, its agent for enforcement of its desired mobile source emission reductions, or (2) "enforce" the

Proposed Rule, which under AQMD administrative rules would eventually mean fines and penalties, against such other governmental entity that does not control the emissions of indirect sources located within its jurisdictional boundaries. The AQMD has failed to show any constitutional or statutory basis for attempting to regulate mobile sources "indirectly" that it is preempted from regulating directly, or to purport to impose penalties or corrective action against another governmental entity for failure of private third party emissions sources to achieve emissions reductions that such other governmental entity is also preempted from regulating.

Third, while the Cities remain firm in our position that the rulemaking is unnecessary, counterproductive and beyond the AQMD's jurisdiction, if AQMD does continue to proceed, the following significant issues must be addressed.

AQMD staff appears to be proceeding with development of the proposed rule in a manner that is inconsistent with the provisions of AQMP Measure IND-01 and the discussion between the AQMD Board and the staff during the approval of AQMP Measure IND-01 at the Board Meeting of February 1, 2013. During that discussion, it was identified that the requirements under any proposed rule would only be triggered if the ports failed to meet their goals for the target year. The proposed rulemaking concepts that have been presented by AQMD staff more recently have indicated that the Ports may be required to develop corrective action plans in advance of any identified shortfall. Further, it appears AQMD staff is considering that the Ports will be required to submit emission inventories to AQMD for approval each year through 2020 and that compliance action may be triggered for any potential shortfalls that may occur during interim years, prior to the target years. These potential requirements are inappropriate and go beyond the direction from the AQMD Board.

Also, because the Cities are not regulatory agencies, have not been granted authority to regulate sources of air pollution, and have limitations on their ability to impose requirements on sources operating within their jurisdiction, AQMD must ensure that Proposed Rule 4001 does not mandate that the Cities implement strategies that are outside of their authority or ability to implement. AQMD must recognize that the Cities do not even have contractual relationships with many of the emissions sources that AQMD has attributed to the Cities' "responsibility" for emissions reductions under Proposed Rule 4001, and that even if Cities have leases with some of the operators, they are negotiated business agreements that constrain the Cities' ability to unilaterally impose new terms in response to whatever new conditions AQMD may desire.

In addition, the Boards of Harbor Commissioners of the Cities have the discretion for making business decisions related to the ports and their tenants, consistent with the Tidelands Trust and California Coastal Act. Neither AQMD staff nor its Board can override the discretion of the Harbor Commissions including decisions related to the management of the port or how port funds are spent. Therefore, AQMD cannot disapprove an Emission Reduction Plan simply because AQMD disagrees with the chosen strategies.

Moreover, approval or disapproval of any Emission Reduction Plan cannot be at the sole discretion of AQMD staff. Any plan development should be coordinated with the agencies involved in the development of the CAAP, specifically EPA, CARB and the AQMD. The partnerships established through the CAAP process, and the actions over the past seven years that have been taken by the regulatory agencies, in addition to the Ports, have been critical in the success that has been achieved. As CARB has stated[1], "[s]uccessful implementation of the CARB emission reduction plan will depend upon actions at all levels of government and partnership with the private sector. No single entity can solve this problem in isolation." Therefore, AQMD staff should not place themselves in a position to be the sole authority to approve or deny plans for emission reductions at the Ports. Any plans should be developed in partnership, with input by all agencies, and final approval on actions to be taken specifically by the Cities should be at the discretion of the Boards of Harbor Commissioners.

Slide 8 of the AQMD presentation at the August 14 Scoping Meeting identified that AQMD is seeking input on "[f]lexibility to garnish emission reductions/air quality benefits off port property". Under the Tidelands Trust, the Boards of Harbor Commissioners are limited in their ability to spend Tidelands funds outside of the Tidelands areas. The Cities cannot be mandated by an AQMD rule to mitigate emissions that are unrelated to port-operations outside of the Harbor Districts and the Tidelands areas.

AQMD has stated that the goal of the Proposed Rule is to ensure that the Cities meet their commitments outlined in the CAAP. The Cities have clearly demonstrated over the past seven years that they are committed to working with the industry and will do what they can to reduce, from port-related sources, the port sector's fair share of regional air emissions. If other non-port related sectors within the region do not achieve their share of emissions reductions, the Cities cannot be held responsible for making up for those shortfalls, regardless of whether or not those shortfalls are anticipated to result in a delay in regional attainment of the $PM_{2.5}$ Standard in 2014.

In addition, the Cities should not be held responsible for any potential emissions shortfalls from regulatory agencies not implementing emission reduction regulations as identified within the SIP, even if those regulations are related to equipment operating at the ports. If an agency makes a decision to delay a regulation schedule, or if a regulation is overturned due to a court decision that the requirements are not within their authority to implement, the Cities should not then be mandated to backfill the potential shortfall.

The last update to the CAAP took over two years to develop and cost over $1 million. The Cities should not be required by the Proposed Rule to prepare an Emission Reduction Plan when no need for such a plan has been identified (e.g. region is anticipated to reach attainment with the $PM_{2.5}$ Standard, emission reductions will be achieved by in-place regulations, no emission shortfall has been identified, etc.). Further, development of a plan should not be mandated if the

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[1] *Emission Reduction Plan for Ports and Goods Movement in California*, Executive Summary, ES-1, CARB, 2006.

reasons for any emissions shortfall are due to reasons outside of the Cities control or if no feasible strategies are available. Any plan that is required by AQMD should be streamlined and focused solely on actions that will be taken by the Ports and/or agencies to make up for any identified shortfall.

As identified in the 2012 Air Quality Management Plan, it was determined that the 2014 $PM_{2.5}$ Standard could be achieved by 2014 and no request for an extension would be needed[2]. Therefore, it is inappropriate for the AQMD to require an emission target year of 2019 in the Proposed Rule.

As stated above, these comments represent the Cities' initial concerns with the AQMD's proposed approach. Further comments will be provided as the process progresses and as more information is made available by AQMD.

We appreciate your consideration. Thank you.

Sincerely,

Heather Tomley
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

cc: Al Moro, Acting Executive Director Port of Long Beach
Geraldine Knatz, Executive Director Port of Los Angeles
Rick Cameron, Acting Managing Director of Environmental Affairs and Planning, POLB
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Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Cynthia Marvin, Division Chief, California Air Resources Board
Elizabeth Adams, Deputy Director, U.S. Environmental Protection Agency, Region 9

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[2] *2012 Air Quality Management Plan*, Executive Summary, ES-11, AQMD, 2013.

ATTACHMENT 7.

August 21, 2013

VIA ELECTRONIC MAIL - bradlein@aqmd.gov
VIA FACSIMILE - (909) 396-3324

Ms. Barbara Radlein
c/o CEQA
SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT
21865 Copley Drive
Diamond Bar, CA 91765-4178

Re: Notice of Preparation and Initial Study
Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports"

SCAQMD File No. 0722013BAR
SCH No. 2013071072

Comments on Notice of Preparation, Initial Study, and Scope of Proposed Environmental Assessment

Dear Ms. Radlein and Staff of the South Coast Air Quality Management District:

We appreciate this opportunity to submit comments on the Notice of Preparation ("NOP") and the accompanying Initial Study prepared in connection with the District's consideration of the proposed project entitled "Rule 4001: Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports" (the "Project") on behalf of the City of Long Beach acting by and through its Harbor Department (referred to herein as "COLB") and the City of Los Angeles acting by and through its Harbor Department ("COLA", collectively with COLB, the "Cities").

As environmental leaders nationwide, the Cities have achieved tremendous success in obtaining substantial emissions reductions from their joint San Pedro Bay Ports Clean Air Action Plan ("CAAP") and other air quality measures implemented under the Cities' initiatives. The Cities continue to be supportive of projects and programs that are intended to contribute to improvement of air quality and promote other environmental values. However, the Cities must fundamentally disagree with the District's current proposal to unnecessarily convert an effective voluntary plan, built on multi-agency and industry cooperation, into potentially punitive regulations imposed unlawfully on the Cities. The Cities have previously sought to make the District aware of the serious concerns and objections to this approach. The Cities incorporate by reference their previous comments on the 2012 Air Quality Management Plan ("AQMP")

The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

Measure IND-01 Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities ("Measure IND-01") as comments on the proposed Project. The Cities' comments on Measure IND-01 are Attachment "A" to this letter.

We are also mindful that the California Environmental Quality Act ("CEQA") calls for public review, critical evaluation, and comment on the scope of the environmental review to be conducted prior to approval of proposed projects. Such review and critique 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. Thorough identification of the proposed Project, and candid disclosure of all phases of the Project and their potential impacts, is essential to assure 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, mitigation measures, and alternatives. In addition, it will be important to consider the impacts of the proposed Project on the San Pedro Bay Ports' communities, missions, 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 NOP for this "Project" as well as questions, concerns and objections related to the omissions of critical information, unsupported assumptions, or analytical deficiencies in the Initial Study, and comments as to the scope of the proposed environmental assessment ("EA") as contemplated and invited by the District's NOP.

A. General Comments on the Initial Study

While we recognize the effort that has gone into preparation of the current Initial Study, it is apparent that the Initial Study does not provide the information, evidence, or analysis required under CEQA. The Initial Study thus fails to fulfill its critical role as mandated by CEQA in educating the public generally, other affected regulatory agencies and governments, such as the Cities, 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 initial study are described in the CEQA Guidelines (14 C.C.R. §15063, subd. (d)). An initial study must "contain in brief form:

(1) A description of the Project including the location of the Project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries . . . ;

(4) A discussion of ways to mitigate the significant effects identified, if any;

(5) An examination of whether the Project would be consistent with existing zoning, plans, and other applicable land use controls;

(6) The name of the person or persons who prepared or participated in the initial study."

An initial study that fails to provide all of the information, analysis, and evidence called for by CEQA may be deemed to be inadequate and not a valid basis for CEQA review or project approval. (See, e.g., *City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, at pp. 407–408, [invalidating the County's proposed general plan amendments because of a deficient initial study: "[T]he initial threshold study is inadequate because it fails to provide sufficient evidence or analysis of the potential environmental effects of the amendments."].)

It is therefore respectfully urged that the Initial Study (and the related NOP) be revised, corrected, and recirculated for public review and comment before the District proceeds with any further action or EA in connection with the proposed Project.

The CEQA Guidelines contemplate that an initial study is to be used in defining the scope of environmental review (Guidelines, Sections 15006(d), 15063(a), 15143). However, as a result of the omissions, open questions, and deficiencies in the Initial Study as noted below, it appears to have unduly narrowed the District's proposed scope of environmental assessment, and to have caused the NOP to erroneously exclude critical issues and topics from the proposed scope of the EA.

The comments on the current Initial Study included in this letter are organized in the same format used by the Initial Study, i.e., comments on "Chapter 1 – Project Description" followed by comments on "Chapter 2 – Environmental Checklist." The comments are limited to those matters that appear in the current version of the Initial Study, and we reserve the right to provide further comments in the event that additional or different information about the proposed Project becomes available, or the District provides a revised and CEQA-compliant Initial Study.

B. Request for Revision of NOP and Re-Circulation of Revised NOP/IS To Include a Legally-Adequate "Project" Description and Text of Proposed Rule 4001

It is essential that the NOP and the Initial Study be revised to include an adequate "project description" including the text of the proposed Rule that is the "project" before the public, or the Cities, can be expected to provide comments and input.

In their prior comment letter on the Draft 2012 AQMP Program EIR dated October 22, 2012, the Cities expressed the very same concern over the vague and deficient "project description" of backstop Measure IND-01. In the District's response to comment #5-4 in the

Final Program EIR, the District stated: "*The exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted*." The District also committed, in its response to the same comment #5-4 in the AQMP Final Program EIR, that "*further details regarding the future requirements* [a Rule implementing Control Measure IND-01] *will be determined more appropriately during the rule development process.*"

The District has already commenced the rule development process. However, it has not yet provided even a draft of the proposed Rule 4001. To the contrary, at a public meeting held on August 8, 2013, the District's staff announced that the Rule will be developed after various public meetings with a "Rule 4001 working group," with a goal of releasing a draft of the Rule on August 28, 2013. Such a deferred release date for the "draft" of the proposed Rule would be one week after the deadline for comments on this NOP. The details and text of the promised Rule must be developed and disclosed before the "particular methods" and "exact impacts" anticipated may be analyzed or the subject of comment. Accordingly, it is still not possible for the District to proceed with appropriate project-level CEQA review or to issue an accurate NOP/IS at this stage if the details of proposed Rule 4001 are under development.

It is necessary that the current NOP and Initial Study be revised to include a revised "Project" Description, to incorporate the text of the draft Rule 4001 in detail, and to recirculate the revised documents for public review. A new set of public meetings, including a new "scoping meeting" should be scheduled to provide the public with sufficient time and opportunity to comment on the scope and adequacy of the revised NOP/IS.

C. Comments on the Initial Study

1. Chapter 1 of the Initial Study -- Inadequate "Project" Description

(a) Deficient "Project" Description – In General

The failure of the Initial Study and NOP to provide an accurate, complete, and coherent description of the "Project" is a fundamental deficiency, which permeates the entire document. The absence of such a clear description of the proposed Project inherently prevents the Initial Study from facilitating meaningful review and analysis of the proposed Rule 4001, and violates the requirements of CEQA. (See, e.g., CEQA Guidelines, Section 15124; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376.)

The Initial Study does not include or even describe the text of the proposed Rule that is supposed to be the "Project." The section of the Initial Study that purports to "describe" the Project, "PR 4001," includes nothing more than summaries of "key concepts provided in the 2012 AQMP Control Measure IND- 01." Those summaries and "concepts" are insufficient to describe the Project itself, and prevent effective public review and comment. Moreover, since

the 2012 AQMP Control Measure IND- 01 has already been adopted, it is perplexing that the District would use that measure as a substitute for the Project description.

The Initial Study does not provide a description of how the proposed Rule would work. It fails to describe reasonably foreseeable activities or actions of other agencies in response to or associated with the proposed Rule. This Initial Study suggests, instead, that the intent of proposed Rule 4001 would be to delegate the District's responsibilities for regulating or reducing emissions of NOx, SOx, and PM2.5 air emissions to other agencies, specifically the public officials governing the ports of Long Beach and Los Angeles, 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 Rule 4001 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 evaluation project alternatives, etc.).

The importance of providing an accurate and informative project description in an Initial Study was re-emphasized in *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 267, emph. added:

> "**The initial study must include a description of the project.**" (*City of Redlands, supra,* 96 Cal.App.4th at pp. 405–406, fns. omitted.) "Where an agency fails to provide an accurate project description, or fails to gather information and undertake an adequate environmental analysis in its initial study, a negative declaration is inappropriate. [Citation.] An accurate and complete project description is necessary to fully evaluate the project's potential environmental effects. [Citations.]" (*El Dorado County, supra*, 122 Cal.App.4th at p. 1597.)
>
> "**The scope of the environmental review conducted for the initial study must include the entire project**." (*Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1222.) Thus, a correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA. (*Tuolumne County Citizens, supra*, at p. 1222.)

The Initial Study currently falls far short of these requirements in describing the proposed Project, and thus falls equally short of serving the "public awareness" purposes described above and mandated by CEQA:

> An accurate and complete project description is necessary for an intelligent evaluation of the potential 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, citing *Aberdeen & Rockfish RR. v. SCRAP* (1975) 422 U.S. 289, 322 [an accurate, complete and consistent project description is the sine qua non of informative, legally adequate CEQA review].) (*City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, 407–408.)

The Initial Study (p. 1-5) indicates that "the approaches and concepts considered in this NOP/IS may be subject to change" based on comments from the working group. In light of the District's initiative in forming a "working group" of interested participants to help formulate the proposed Rule, and thereby provide an actual "project description," it would be more appropriate to undertake CEQA analysis and compliance after the actual Rule is developed. Furthermore, it is premature for the District to assume or conclude that any changes received from the working group as well as comments received relative to this NOP/IS will all be within the scope of the analysis in the NOP/IS.

In brief, the NOP/IS erroneously limits the scope of the analysis and inherently calls for impermissible speculation or impossible prescience on the part of the Cities or other members of the concerned public to undertake effective analysis of the proposed Project, or to provide meaningful comments as to the scope of review of the Project, until and unless the District provides an adequate description of the "Project."

(b) Specific Comments and Questions re "Project Description" and Text

The following comments and questions refer to specific portions or pages of Chapter 1 of the Initial Study:

Pp. 1-1 - 1-2 – Introduction

The Introduction states, in the first sentence of the third paragraph on page 1-1, that Control Measure IND-01 "...does not call for additional emission reductions beyond those realized with existing regulations and emission reductions programs implemented at the Ports to date." This is an untrue statement. The CAAP is only a planning document which specifically provides for discretionary future decisions to be made regarding implementation by each of the Cities' respective Board of Harbor Commissioners, and resolution adopting the CAAP update states: "The CAAP is a living document intended to establish a process to develop solutions, not a static document binding the Ports to particular future actions….The CAAP is a planning document that identifies goals and potential implementation strategies to guide further actions, and as such does not constrain the discretion of either Board of Harbor Commissioners with

respect to any particular action."[1] Not all individual Board actions that may be required in order to achieve the CAAP's goals and activities have been adopted, many of which goals were stretch targets with uncertainty as to whether they could be achieved. Measure IND-01 and Rule 4001 propose to require the Cities to potentially adopt future actions that create potentially-conflicting authorities between the District, as regulator, and the Cities, as independent governmental agencies regulated by the District, so as to force the Cities to exercise their discretionary police power authority in a particular way. The Constitution does not permit such usurpation of the Cities' authority.

The Introduction states, in the last paragraph beginning on Page 1-1, that the emission targets for port-related sources are those assumed in the 2012 AQMP emissions inventory. The Cities raised questions during the Measure IND-01 adoption process regarding the District's calculation of these targets, which are different from the emissions targets set under the CAAP. Although the specific emission targets of the proposed Project do not appear at all in the NOP (which omission itself is a defect), the District has verbally advised the Cities and a working group on August 8, 2013, that the Rule will be such as to be triggered on set emission targets for 2014 and 2019. Those comments, however, left the Cities and working group participants with many questions about how the District set the emissions inventory, particularly for 2019, which was not in the CAAP. These examples are provided to illustrate that the NOP's description of the proposed Rule is not only flawed but missing altogether.

P. 1-3 - Project Location

The Initial Study provides no finite "project location." It describes the District's jurisdictional boundaries. It then states that "PR 4001 would apply to POLA and POLB, both of which are located within Los Angeles County." It is unclear if this was an attempt to state that the Project location would be Harbor Districts of the Cities. The lack of clarity regarding the Project location is further compounded by the Rule's reference to "sources not entering Port properties." During the August 14th Scoping Meeting, Mr. Hogo attempted to clarify this reference by referencing an undefined area outside of but near the two Harbor Districts. Unfortunately, Mr. Hogo's statement did not clarify the proposed Project's location.

Is it the intention that any portion of the Project may be implemented outside the geographic areas of the Harbor Districts of the Cities? It is unclear from this description whether the Project may have impacts or foreseeably result in actions being taken outside these Harbor Districts. This may have jurisdictional implications which cannot be evaluated without additional information.

[1] Los Angeles Resolution No. 10-7041 adopted by the Board of Harbor Commissioners of the City of Los Angeles and Long Beach Resolution No. HD 2600 adopted by the Board of Harbor Commissioners of the City of Long Beach on November 22, 2010.

Also, the Initial Study fails to disclose or analyze the possibility that if the option for the Cities to reduce emissions from sources not entering Port properties is included in proposed Rule 4001, even the vague "project location" and geographic scope of the proposed Rule in the Initial Study would not be accurate and would need to be modified in the NOP/IS.

P. 1-4 – Project Background

The Initial Study's description of the "Project Background" implies that the two Cities' ports themselves actually conduct cargo operations. For example, the text states that the COLA "serves approximately 80 shipping companies." This illustrates a fundamental lack of understanding by the District of how ports work. There are two types of business models of ports: some are "operating ports," that conduct cargo operations directly, such as the Port of Charleston, South Carolina and some are "landlord ports," such as the Ports of Los Angeles and Long Beach, that merely lease wharves and land to operators who conduct cargo operations.

The Ports of Los Angeles and Long Beach are not, "the single largest fixed source of air pollution in Southern California." The EA should clarify that the referenced sources of air emissions are the vehicles, engines, ships, trains, trucks and other cargo-moving equipment operated by distinct tenants, users, and visitors of the ports, not the Harbor Districts or the Cities.

P. 1-5 – Legal Authority for PR 4001

The Initial Study suggests that if the (unspecified) "backstop measure" that would be mandated under PR 4001 "becomes effective," then the new Rule would require the Cities to take (unspecified) action "to develop and implement plans to get back on track" regarding attainment of emissions targets. Under what legal authority does the District believe that its proposed Rule 4001 may purport to compel distinct governmental bodies (the Cities and the Boards of Harbor Commissioners) to legislate or to exercise their discretion in particular ways to achieve District objectives?

Measure IND-01 was prominently referred to as an "indirect source rule." The current general references to proposed Rule 4001 in the NOP/IS have lost all mention of an "indirect source rule." However, the references to proposed Rule 4001 do not cite to any authority the District is relying on for its processing of the proposed Rule. This should be corrected so that the public can comment on whatever legal authority may be invoked by the District.

Is it anticipated that the "plans" and strategies that would be required to be adopted by the legislative boards of the two Cities under the mandate of proposed Rule 4001 would be within SCAQMD's regulating authority and subject to the District's approval or disapproval? If so, why would SCAQMD not directly adopt such "backstop" strategies and plans itself? If not, is the Rule being proposed in order accomplish something indirectly that SCAQMD itself cannot do directly? (Cf., *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 [same].)

P. 1-5 – Call for Cities to Regulate Off-Site "Sources"

The Initial Study indicates that the District will be inviting and considering proposals, as part of this "Project," regarding potential measures for the Cities to adopt and implement to try to reduce emission from sources *not entering* onto port properties. What does this mean? What legal authority might the Cities have to try to regulate *off-site* sources that do not come within the jurisdiction of the respective Harbor Commissions? (Municipal police power authority may generally be exercised only within the territorial boundaries of their jurisdiction, and the Boards of Harbor Commissioners have special Tidelands limits on their authority.)

Would such (unidentified) measures be part of Rule 4001, or would proposed Rule 4001 require that the Cities formulate (unidentified) measures in the future to somehow regulate *off-site* "sources?"

Until such options are identified, shown to be legally authorized and technically feasible, how can the CEQA analysis for proposed Rule 4001 be undertaken?

P. 1-6 – First Bullet – Imposing "Requirements" on the Cities?

The Initial Study indicates that if proposed Rule 4001 becomes effective the Cities "would be required to submit an emissions reduction plan to address the emissions reduction shortfall."

As noted above, this raises questions as to the intent and legal authority behind the Rule. Has the District identified legal authority for a rule that would require other governmental agencies (the Boards of Harbor Commissioners for the respective Cities) to exercise their legislative discretion/authority in any particular manner? Does the District intend to reserve to itself some authority to approve or disapprove any such plans submitted by the Cities?

What is the consequence of disapproval by the District?

What environmental baseline and other parameters would be required by proposed Rule 4001 in order for the Cities to determine the extent of any "emissions shortfall" that may need to be addressed in the Cities' plans in the event they were to undertake to submit plans under the Rule?

P. 1-6 – Second Bullet -- Funding

This bullet point implies that "funding" would be necessary for many of the potential future emission reduction measures that may be compelled under proposed Rule 4001. Would such funding be provided by the District? What other "funding" sources are contemplated? Will

there be constitutional or common law "gift of public funds" restrictions on funding imposed on the Cities for activities under their CAAP if Rule 4001 makes CAAP compliance a potential state or even federal regulation?

Are the Cities expected to fund these programs from Tidelands Funds? By what authority may the Harbor Commissioners impose taxes, assessments, and charges on users of the Harbor Districts, given the restrictions of various state laws, including, among others, Proposition 26?

The vague disclaimer in the Initial Study to the effect that proposed Rule 4001 would not require any measure that lacks legal authority or feasibility raises more questions than it answers. Whatever types of "emissions reduction plans" may be anticipated by proposed Rule 4001 should identified by the District in the NOP/IS so that the feasibility and legality of such approaches can be evaluated as part of the environmental assessment for the Project.

Pp. 1-6 – 1-7 -- Technology Overview/Implementation Strategies

This refers to some emission reduction strategies included in the CAAP, but the Initial Study does not explain how these may relate to proposed Rule 4001, or whether they should be considered as part of the Project.

The suggestion in the Initial Study of possible "tariff change" or "impact fees" on the activities of users of the Harbor Districts raises other questions (e.g., legal authority, funding for studies and public review processes required before such measures could be considered or adopted, indemnification for costs of defense, etc.) requiring identification and study. Moreover, such measures may themselves be considered as "projects" subject to CEQA review and may have impacts on the activities of Harbor District users that themselves would require analysis or mitigation.

The Initial Study also includes reference to "Port funded incentives" as possible measures to reduce emissions, but also observes that there is not adequate funding for such strategies in the Cities' budgets or other grant program. The source of funding any "Port-funded" measures contemplated by proposed Rule 4001 should be clearly identified and evaluated.

Any such contemplated implementation strategies should be included in the "Project description" and better identified in a more complete NOP/IS, so that they may be evaluated along with the rest of the Project.

Pp. 1-10 – 1-11 -- Imposition of "Requirements" on the Cities

The NOP/IS states that none of the CAAP strategies would be "prescribed in PR 4001." Instead, the NOP states that if proposed Rule 4001 becomes effective, the Cities (presumably the Boards of Harbor Commissioners) -- "individually or jointly" -- would be required to identify sources that could undergo potential emission reduction to "make up for the shortfall."

Why would/should the obligation to make up for a possible shortfall in meeting emission reduction targets (which are primarily the responsibility of the District to attain) be shifted so as to fall upon two independent governmental entities? The Cities are governmental entities, and are not directly producing emissions or otherwise directly responsible for the targeted emissions or for the attainment of the emissions reduction targets. Moreover, if there were to be a "shortfall" in attaining the targets, it could well be due to factors not caused or controlled by the Cities, and not due to any actions or derelictions on the part of the Cities or their tenants or users.

Other issues: How would a "shortfall" be measured or determined? Would any such "shortfall" be allocated to sources or causes bearing some actual responsibility for the lack of attainment? How would it be "allocated" between the Cities? Would uncontrollable/unforeseeable factors resulting in all or part of a shortfall be excluded from whatever obligation may be imposed on the Cities?

Would proposed Rule 4001 take into account the statutory limits on the jurisdiction and authority of the Cities (i.e, the Boards of Harbor Commissioners) to impose restrictions on most mobile sources of emissions?

Footnote 6 (on page 1-11)

The NOP/IS mentions a possible "option" that would "allow" the Cities to reduce emissions from "non-port-related sources." This vague reference requires clarification before it may be evaluated in connection with the Project. Direct and indirect effects would need to be considered that may occur beyond the geographic boundaries of the Harbor Districts. Therefore, it is premature for the District to conclude that any changes based on the working group or public scoping comments will be within the scope of the analysis in the NOP/IS.

P. 1-11 -- Technologies

The EA should be expanded to address the legal, technological and economic feasibility of the seven bulleted items listed in this section.

P. 1-12 -- Alternatives

No alternatives have been identified for study in the NOP/IS. Instead, it merely commits the District to "discuss and compare alternatives" in the future, as part of the Draft EA.

It also suggests the District is looking to the public or other agencies to identify "alternatives" during the scoping process. As previously explained however, how can alternatives realistically be suggested when the Project itself has not been identified or described?

The No Project Alternative is not defined in the NOP/IS. In accordance with CEQA Guidelines Section 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. Therefore, the Draft EA should consider the impacts that would occur under the existing 2012 AQMP without Control Measure IND-01 or proposed Rule 4001. In particular, an analysis should be conducted of the grant funding that would be available under the No Project Alternative that would not be available if the proposed Project constitutes regulation, and the environmental impact if grant funding necessary to make certain actions economically feasible is no longer available under the proposed Project. If the District's position is that there is no loss of grant funding in order to comply with Rule 4001 as a regulation that the District purports to make enforceable under the State Implementation Plan and the Clean Air Act, the District must explain in the Rule its basis for this conclusion in the context of why grants made for compliance with a regulation is not a gift of public funds.

In light of the technical complexities of the issues and the ambiguities as to what the District is actually seeking to accomplish by way of proposed Rule 4001, it seems unreasonable to expect others to develop the project alternatives. One suggested alternative would be for the District to formulate its own "backstop" measures and strategies for addressing any shortfall in emission reduction targets, relying on the District legal authority, expertise and resources, rather than pursuing proposed Rule 4001, which appears to be an attempt to rely upon presumed authority of the Cities. Another suggested alternative would be, the memorandum of understanding approach that was suggested by the Cities and proposed by staff as an alternative to Measure IND-01.

(c) Other Comments on Chapter 1 - "Project Description"

Incomplete Description of Environmental Setting

The Initial Study also fails to provide an adequate description of "the environmental setting" of the proposed Project.

While the CEQA Guidelines do not specially define "environmental setting" with regard to an initial study, they do explain, in regard to EIR preparation, that the "environmental setting" must be informative: "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." (Guidelines, § 15125, subd. (a).) A description of the environmental setting must be sufficient to allow "an understanding of the significant effects of the proposed projects and its alternatives" but "no longer." (Guidelines, § 15125, subd. (a).) That description should place "[s]pecial emphasis" "on environmental resources that are rare or unique to that region and would be affected by the project" and "must permit the significant effects of the project to be considered in the full environmental context." (Guidelines, § 15125, subd. (c).)

Failure to Examine All Phases of the Entire Project as Proposed

"The Initial Study must include a description of the project, and 'the scope of the environmental review conducted for the initial study must include the *entire* project." (*Nelson v. County of Kern, supra*, 190 Cal.App.4th at 270, emph. in original.)

The Initial Study here improperly fails to describe "the entire Project" and fails to consider all phases of the proposed Project. The CEQA Guidelines (14 C.C.R §15063(a)(1)) make clear that an initial study must take a comprehensive view of the proposed project *as a whole*. "All phases of project planning, implementation, and operation must be considered in the initial study of the project."

The NOP/IS indicates that proposed Rule 4001 is intended to require actions by the Cities, to adopt and implement plans and strategies to address any "shortfall" in emissions reductions. The Initial Study improperly fails to address or to provide information and analysis relating to the environmental impacts of the anticipated "subsequent approvals," "discretionary permits" and amendments to the Cities' plans and regulations that appear to be proposed as parts of the Project, or the physical environmental effects of social or economic impacts that may result from those anticipated and apparently necessary changes in land use regulations." (Guidelines § 15063.) Such anticipated and intended actions by other governmental agencies thus appear to be part of this Project, and must be identified and evaluated in the Project EA, along with their potential impacts. As such, we reiterate our prior comment on the Draft 2012 AQMP Program EIR dated October 22, 2012 where it is stated that the District has failed to fully disclose the details of Measure IND-01 and as a result is segmenting or piecemealing its CEQA analysis.

Failure to Describe Existing Land Use Regulations

The Initial Study does not include an examination of whether the Project would be consistent with existing zoning, plans and other applicable land use controls, as required by CEQA Guideline Section 15063. Although the Initial Study includes some background discussion of the CAAP, it provides little or no description of the existing planning and zoning designations applicable to the "Project" location, and relies on (unsupported) assertions that the Project would be in furtherance of the CAAP. It provides no information or analysis of other existing plans or policies applicable in the Harbor Districts, which may be affected or impacted by the Project.

Uncertain and Inadequate Identification of "Baseline" Used for Review

It is critical under CEQA that any level of environmental review make it clear as to the "baseline" being used as the basis for analysis of the significance of potential Project impacts. (CEQA Guidelines Section 15125(a).) Normally, the "baseline" will be the existing environmental conditions in the vicinity of the Project. (Guideline Section 15125(a); see also,

Communities for a Better Environment v. South Coast Air Quality Management District (2010) 48 Cal.4th 310, 315 [the baseline for an agency's primary environmental analysis under CEQA must ordinarily be the *actually* existing physical conditions rather than *hypothetical* conditions that could have existed under applicable permits or regulations].) The Supreme Court has explained that the requirement for identification and use of the appropriate "baseline" applies in the context of an Initial Study as well as in an EIR. (*Communities for a Better Environment, supra*, 48 Cal.4th at 512, and n. 5.)

The Initial Study here, however, fails to make it clear as to what "baseline" is being used. In many places the Initial Study compares the anticipated "impacts" of adopting proposed Rule 4001 to the permitted emissions levels anticipated (in the future) under the 2012 AQMP, or alternatively to the (future) emission reduction targets of the CAAP -- rather than to the existing environmental conditions. While the recent Supreme Court decision in *Neighbors for Smart Rail v. Exposition Metroline Constr. Authority* (8/5/2013, No. S202828) ___ Cal.4th ___, indicates that the baseline need not always be the existing physical conditions, and that "projected future conditions" may be used in rare situations as a baseline "if their use in place of measure existing conditions ... is justified by unusual aspects of the project or the surrounding conditions" (Slip Opinion, p. 11), it does not detract from the rule that the Initial Study must accurately and consistently describe the baseline being used. Nor does it permit the use of "future conditions" in the absence of a showing of unusual circumstances. The Initial Study in this case does neither.

For each of these fundamental reasons, the NOP/IS should be rescinded in order that it may be revised, completed and corrected to meet CEQA requirements.

2. Chapter 2 of the Initial Study – The "Environmental Checklist"

(a) General Comments and Questions on the Environmental Checklist

The NOP/IS apparently relied on a standard CEQA environmental checklist to identify those "impact areas" it recognizes to be potentially affected by the Project. In several respects, however, the Initial Study appears to merely assume 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, supra*, 96 Cal.App.4th at 408-09; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296). Furthermore, it is contrary to the District's response to comment #5-4 in the Final Program EIR, which indicates that "[t]he exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted."

The NOP/IS currently indicates that the scope of the proposed EA for this "Project" will be limited to the six topics listed at p. 2-2. Compliance with CEQA, however, would require not only a new and corrected Initial Study, providing an adequate "Project description" but also a more comprehensive EA that addressed additional areas of potentially significant impact, including (without limitation): (1) Aesthetics, (2) Biological Resources, (3) Cultural Resources, (4) Land Use and Planning, (5) Noise, (6) Public Services, and (7) *broadened evaluation* of potential impacts and issues in the areas of Energy, Hazards and Hazardous Materials, Air Quality, and Transportation and Traffic.

Unless and until those areas are more fully addressed, the NOP/IS appears to improperly limit the scope of the proposed EA, and to erroneously exclude areas requiring further assessment.

(b) Specific Comments and Questions on the Environmental Checklist

As detailed below, there are numerous areas of potential environmental impact in the checklist as to which the Initial Study either omits required evidence to support its conclusions of "no potential impact" or treats with insufficient detail.

More specific questions and comments follow:

P. 2-4 -- Preliminary Discussion of Checklist

First Paragraph: We reiterate the same comment as noted on page 1-4 regarding Cities being the source of emissions. The geographic location itself does not produce emissions. It is the users of the area that produce impacts. The users of the two ports are the owners and operators of the ships, trains, trucks and equipment which the District targets as the sources of emissions.

First Paragraph, Last Sentence: The Initial Study states that "some emission reductions [assumed by the District's 2012 AQMP] may be contingent upon the Ports taking and maintaining *actions which are not required by air quality regulations*." This suggests that one of the purposes for District proposal of proposed Rule 4001 may be to establish a new regulatory "authority" over the Cities (and the communities served by and dependent upon the Harbor Departments of the Cities) that is not in fact already provided by existing federal, state, or regional air quality regulations. The policy implications of such a Project may well include significant impacts on the environment, if regulatory authority over activities, facilities, and uses of the Harbor Districts is shifted or arrogated to the District. (See, e.g., *City of Redlands, supra,* 96 Cal. App. 4th 398 [proposed new County policy re exercise of County authority over annexations and sphere of influence was not supported by adequate CEQA review].)

Second Paragraph, Last Sentence: Same comment as page 1-5.

Third Paragraph. The NOP/IS states that the checklist responses focus on "the above mentioned actions." This is extremely vague. Is the reference intended to be the items referenced in the paragraph immediately above, or in the earlier pages?

Identification of precisely what measures are being assumed or proposed in proposed Rule 4001 is essential to being able to review the Initial Study.

Aesthetics -- P. 2-5

Discussion of I a), b) and c). The Initial Study suggests that "because PR 4001 would implement IND-01" the District may simply assume that this Project would not be expected to generate significant adverse aesthetics impacts. However, given that the measures that would be used to implement IND-01 are not identified, the Initial Study does not provide evidence to demonstrate that proposed Rule 4001 has no potential for impact. To the contrary, the Initial Study admits that "PR 4001 will primarily affect operations at two ports" and but then simply assumes from the industrial and commercial zoning of the Harbor Districts that there could not be a potential for impacts on "scenic vistas" nor any potential degradation of the visual character of the areas around the Harbor Districts.

The Initial Study fails to describe the environmental setting and include any evidence or analysis to support its assumption that whatever is done to implement proposed Rule 4001 would "likely easily blend in" with the surrounding activities, especially since what would be done to implement the Rule is not yet known. Specifically, the Initial Study 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. 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 Harbor Districts and if modified, through obstruction, alteration, or demolition could have a negative aesthetic impact. Without a clearly defined project, project location, or description of the environmental setting, it is not possible to conclude that any port modifications will have little or no noticeable effect on adjacent areas and would blend in with the visual setting.

The Initial Study indicates that "Control devices may include hoods or bonnets on ship exhaust stacks to capture emissions and are expected to be as high as 80 feet (POLB, 2006)" and concludes that "these control devices would be similar to other structures used within the heavily industrialized portions of the Ports…" First, the "POLB" citation is missing in the list of references. Second, it is speculative and erroneous to assume that control devices as high as 80 feet would have "no visual impact" without knowing the location, dimensions, color scheme or critical viewpoints. No such analysis has been considered here and the impact is dismissed with no evidence to support the conclusion.

The last sentence of the first paragraph (on p. 2-6; I. d) suggests there are no residential areas "next to" the Harbor Districts, and thus the Initial Study may dispense with analysis of light and glare impacts. It is evident however that was an inaccurate assumption given the residential communities of San Pedro, Wilmington and Long Beach located adjacent to the Harbor Districts. This is also contradictory to the description of surrounding land uses and setting on page 2-1 which indicates "potentially residential."

The Initial Study further errs by dispensing with environmental analysis or evidence, simply because of the (assumed) beneficial air quality goals of proposed Rule 4001. The law is clear that environmentally "benign" objectives for a project do not excuse non-compliance with CEQA and do not justify reliance on assumptions in lieu of evidence to demonstrate the absence of potential impacts. *See, e.g., California Farm Bureau v. California Wildlife Conservation Board* (2006) 143 Cal.App.4th 173, 196, emph. added [State environmental agency violated CEQA by exempting environmentally beneficial habitat project from review]:

> "[I]t cannot be assumed that activities intended to protect or preserve the environment are immune from environmental review. [Citations.]" (*Davidon Homes, supra*, 54 Cal.App.4th 106, at p. 119; see, e.g., *Dunn-Edwards Corp. v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644 (disapproved on other grounds in *Western States Petroleum Assn. v. Superior Court, supra*, 9 Cal.4th 559, 570.) **There may be environmental costs to an environmentally beneficial project, which must be considered and assessed**.

This topic should not be dismissed. Given the nature of proposed Rule 4001, it cannot be determined that its implementation would have no impact on aesthetics. The EA therefore should include "Aesthetics" as a potentially impacted area of study.

Air Quality -- P. 2-11, Discussion

In the first paragraph (p. 2-11), last sentence, the stated assumption is speculative given there is no information about what physical changes to the environment proposed Rule 4001 will entail. There is no evidence to support the assumption in the Initial Study that proposed Rule 4001 would be identical to Measure IND -01 or have identical (previously-studied) impacts on air quality.

P. 2-11, III.a

The first paragraph, last sentence, again raises the question of why it should become the obligation of the Cities to take actions on their own to fulfill the obligations of the District for reaching emissions reductions targets? What is the legal authority for this shifting (or delegation) of the District's air quality responsibility?

In the second paragraph, the Initial Study relies on an assumption that "the Port" would be installing control equipment. Again, this erroneously confuses the Harbor Departments of the Cities with the operators of vessels, vehicles, and equipment. The Harbor Boards serve as trustees of tideland assets.

The conclusion in this section assumes that the undefined strategies and approaches suggested in conceptual description of proposed Rule 4001 will be successful. That is dependent on the feasibility of the approaches, which must be identified and assessed. Therefore, this topic should be analyzed in the EA.

P. 2-12, III.b, c, and g

Given the total lack of information regarding what proposed Rule 4001 would entail and whether it's implementation is feasible, it is premature to assess impacts in this category. These details must be provided and these topics should also be identified and assessed in the EA.

P. 2-13, III.e

There is no factual basis in the Initial Study upon which to conclude that implementation of proposed Rule 4001 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 Initial Study analysis only applies to construction odors and ignores any potential odors that may occur during long-term operations.

The NOP should be amended to make clear that at least these additional areas of potential impacts on air quality should also be identified and assessed in the EA.

Biological Resources – P. 2-14

The Initial Study fails to adequately describe, and improperly minimizes, possible impacts to biological resources, including least terns and migratory birds.

The scope of the proposed EA should be expanded to include environmental analysis of the Project's potential impacts on biological resources.

Cultural Resources – P. 2-16

The Initial Study fails to adequately describe, and improperly minimizes, possible impacts to cultural resources. Not all areas within the Harbor Districts are devoid of cultural resources or have cultural resources that have been previously disturbed, as concluded in the Initial Study on page 2-18 in section V(b), (c), and (d). There are known recorded historic and prehistoric sites throughout the Harbor Districts. For example, see COLA's website at http://www.portoflosangeles.org/idx_history.asp. Without knowing the location and extent of ground disturbance from possible construction activities associated with proposed Rule 4001, it

is speculative to assume that no significant adverse cultural resources impacts are expected from implementing proposed Rule 4001. The conclusion in the Initial Study is unsupported and lacks evidence or facts to support the findings.

The scope of the proposed EA should be expanded to include environmental analysis of the Project's potential impacts on cultural resources.

Energy – P. 2-18

The Initial Study section VI(c) must be expanded to also consider and analyze 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 required in the event of a major disaster. Also, some types of emissions control measures, facilities, or technologies contemplated by the Project could increase or shift demand for different types of energy or fuel usage. Although "risk of upset" is not considered in the Initial Study checklist, it should be cross referenced here and addressed in the Hazards section of the Initial Study.

The scope of the proposed EA should be expanded to include this additional analysis.

Hazards and Hazardous Materials – P. 2-24

The Initial Study section VIII(f) must be expanded to also consider and analyze the increased reliance on alternative fuels or electrical powered technologies that would require sufficient supply and emergency storage in the event of a major disaster. Although interference with emergency response plans was marginally addressed in this section, "risk of upset" is not considered in the Initial Study checklist.

The scope of the proposed EA should be expanded to include this additional analysis.

Land Use and Planning – P. 2-34

The Initial Study fails to adequately describe, and improperly minimizes, possible inconsistencies between the proposed Project and the existing and applicable land use plans and policies.

The Initial Study erroneously claims that "there are no provisions in PR 4001 that would affect land use plans, policies, or regulations." (P. 2-34.) The Initial Study does not support that conclusion with any substantial evidence.

First, the NOP/IS fails to identify any of "the provisions of PR 4001" so the statement cannot be supported or evaluated.

Second, and more importantly, however, the Initial Study repeatedly references "implementation strategies," "plans" and other new measures that it anticipates the Cities will be required to enact if proposed Rule 4001 becomes effective. Presumably this is because of inconsistencies between the existing plans and policies and the requirements of the new Rule. (See, e.g., pages 1-6 through 1-11.) The measures contemplated in the Initial Study include the adoption of new "regulatory requirements," new "impact fees" on the movement of cargo or sources, and changing the tariffs for use of the Harbor Districts – all of which would cause at least potential "conflicts" with applicable plans and policies. (Cf., *Orinda Ass'n v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1169 [the CEQA requirements for initial study examination of non-conformity with existing land use plans are intended to allow lead agency to modify the Project to avoid inconsistencies with existing plans – not vice versa].)

Third, the Initial Study itself acknowledges that the Project is anticipated to cause "potentially significant impacts" or conflicts with "an applicable plan ... for the performance of the circulation system" and conflicts with "an applicable congestion management plan." (Initial Study, p. 2-44.) Although the Initial Study proposes to address those admitted conflicts in the "transportation" section of the EA, these acknowledged conflicts confirm the necessity for including "land use and planning" impacts in the proposed EA as well.

Fourth, the proposed Project would seemingly create conflicts with the Cities' 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 are detailed in the previous port letters included in Attachment A to this letter. In addition, the proposed Project would create inconsistencies with the Clean Air Action Plan.

Fifth, the proposed Rule is apparently structured in a way that would impermissibly usurp the (non-delegable) police power authority of the Cities and their respective Boards of Harbor Commissioners to plan, implement, and regulate land use policies and actions in their respective jurisdictions. (This comment has also been raised above, in Project Description comments.)

The numerous inconsistencies between the Project as proposed and the existing plans and policies require identification in the Initial Study and inclusion in the proposed EA. (Guidelines § 15125(d).)

The scope of the proposed EA should be expanded to include environmental analysis of the Project's potential impacts on land use and planning.

The EA should also include analysis of the impacts of the proposed/anticipated Project-related subsequent amendments to the Cities' plans, policies, and other land use regulations. (See, e.g., *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1197 [CEQA review failed to consider incidental results from adoption of revised policy; incidental impacts could not be disregarded in an initial study based upon "net" environmental impact of the change in policy being benign since CEQA requires each environmental impact of

project be discretely evaluated].) "Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project." (Guidelines, § 15064, subd. (e); see §§ 21080, subd. (e)(2), 21082.2, subd. (c).)

The scope of the EIR should be expanded to include analysis of possible physical changes in port facilities and operations that might be caused by economic or social effects of the Project itself or by the anticipated amendments to land use and zoning policies by the Cities subsequent implementation of the Project.

Noise – P. 2-36

The NOP/IS acknowledges that approval of the Project and "triggering" of the PR 4001 could result in the construction or installation of new control equipment. The Initial Study improperly dismisses the potential noise impacts from such work as "not expected to be in excess of current operations." There is no substantial evidence in the Initial Study to justify such assumptions.

Similarly, there is no evidence cited in the Initial Study to support its further assumption that additional permanent noise impacts anticipated from the operations of new control equipment would not "substantially increase ambient operational noise levels in the area."

This section of the Initial Study is littered with mere "expectations" unsupported by any evidence regarding the magnitude of new noise impacts, even though such new impacts are anticipated by the Initial Study. Nor is there any analysis of the potential for significant adverse impacts from new noise generators related to the Project.

The NOP/IS must be revised, and the scope of the proposed EA expanded to include a detailed analysis, supported by evidence, regarding these anticipated new noise impacts, alternatives, and possible mitigation measures.

Public Services – P. 2-39

The Initial Study assumes that the Project would not generate any increased need for public services. However, the Initial Study does not provide any substantial evidence to support its assumptions regarding the "absence of impact" on additional public services or facilities.

The Initial Study should be expanded to address potential impacts that may arise from the increased "diversion" of existing "dirty" vehicles and vessels into solid waste sites if proposed Rule 4001 is triggered.

Transportation and Traffic – P. 2-44

The Initial Study fails to adequately describe and analyze potential impacts to rail and marine vessel traffic and ignores the significance criteria identified as "[w]ater borne, rail car or air traffic is substantially altered" on page 2-45. The Initial Study erroneously considers only vehicular traffic impacts to local roadways.

The NOP/IS must be revised, and the scope of the proposed EA expanded to include a detailed analysis, supported by evidence, regarding potential impacts to rail and marine vessel traffic.

Socioeconomics Analysis

The EA needs to include a broad-based analysis of the socioeconomic effects of the proposed Rule 4001, including the potential for job loss, business closures, and diversion of cargo to other ports due to the potential loss of regional competitiveness. The socioeconomic analysis needs to consider both the existence of the rule, even if not triggered, and the future enforcement of the rule. Because these conditions have the potential to physically change the environment in and around the ports, these impacts should be identified and assessed in the EA. (See CEQA Guidelines §§ 15064(e) and 15131; *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3rd 433, 445 [EIR must consider possibility of economic blight from rezoning].) Moreover, this assessment should not be limited to businesses and operations within the ports, but should extend to those facilities, businesses and operations that while located outside of the Harbor Districts are dependent upon the flow of cargo for their continued operations.

Too-Narrowly "Focused" Environmental Review

We note in closing that the Initial Study appears to reflect a preliminary decision to conduct less-than-full disclosure or environmental review of the proposed Project. Although the Initial Study concludes that "the proposed Project may have a significant effect on the environment and an Environmental Assessment will be required," it nevertheless appears that environmental review in the admittedly-required EA is proposed to be curtailed and "focused" on just the six topics listed in the current the NOP. One obvious indication of this is the miniscule list of references that were relied upon to support the Initial Study analysis; the list is limited to three sources.

It is respectfully submitted that such an approach would be too narrow and not in conformance with the requirements of CEQA, or with the District's own policies and rules for environmental analysis. While the CEQA Guidelines call for emphasis and "focus" on the significant environmental impacts of the Project, the authority to use such focus is misapplied in the Initial Study. For example, CEQA Guideline § 15143 explains that such focus may be used to limit the analysis in an EIR [or, in this case, EA] 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 NOP/IS here, by contrast, appears to exclude from consideration in the EA numerous effects that it has not shown to be "clearly insignificant and unlikely to occur."

D. Conclusion

The current version of the NOP/IS fails to adequately describe the "Project" thereby thwarting effective public review and comment on proposed Rule 4001. The Initial Study must therefore be revised, corrected, and re-circulated with all of the descriptions and other content required by CEQA.

Even this inadequate NOP/IS makes it clear that **the scope of the proposed EA has been unduly narrowed**, and that environmental review will be limited in a way that erroneously fails to provide the relevant decision-makers, affected public agencies, residents and the public generally with sufficient evidence and analysis of all anticipated and potential impacts from the Project as a whole, or of all potentially feasible mitigation measures or appropriate Project alternatives as required by CEQA.

While it is clear that an EA is called for in connection with this proposed Project, it is equally clear that the EA should be more complete than what is envisioned by the current NOP/IS. More fundamentally, its scope must be determined by a legally-adequate revised NOP/IS. The EA for the Project must, of course, be supported by credible and substantial evidence, including independent professional analysis.

We respectfully request that these comments and questions be considered before the District embarks on preparation of the EA and all of the other required independent studies in connection with the CEQA review of the proposed Project. We therefore look forward to working with the District, and any study teams or working groups tasked with evaluation of the proposed Rule 4001.

The NOP requests that we provide you with a contact person for each responding agency. For the COLB, the contact persons are as follows:

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e-mail: ccannon@portla.org

With a copy to:

Joy Crose, Assistant General Counsel
City of Los Angeles, Harbor Division
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San Pedro, CA 90731
(310) 732-3750
e-mail: jcrose@portla.org

We appreciate your consideration. Thank you.

Sincerely,

Heather Tomley
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachment A:

Letters dated July 10, 2012; July 27, 2012; August 30, 2012 (which includes letter dated May 4, 2010); October 22, 2012; October 31, 2012; November 8, 2012; November 19, 2012; and November 27, 2012 from Port of Los Angeles and Port of Long Beach to SCAQMD

cc: Al Moro, Acting Executive Director Port of Long Beach
Geraldine Knatz, Executive Director Port of Los Angeles
Dominic Holzhaus, Principal Deputy City Attorney City of Long Beach
Joy Crose, Assistant General Counsel City of Los Angeles, Harbor Division
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Randall Pasek, Planning and Rules Manager, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Cynthia Marvin, Division Chief, California Air Resources Board
Elizabeth Adams, Deputy Director, U.S. Environmental Protection Agency, Region 9

ATTACHMENT 8.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

November 27, 2012

Ms. Susan Nakamura
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Ports' Comments on South Coast Air Quality Management District (AQMD) Revisions to Measure IND-01 in Draft 2012 Air Quality Management Plan

Dear Ms. Nakamura:

Thank you for the AQMD's proposed revisions to Measure IND-01, "Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities" (IND-01) in the Draft 2012 Air Quality Management Plan (AQMP). We appreciate that efforts were made by AQMD staff to address the concerns that the ports of Long Beach and Los Angeles (Ports) have raised in our various comments letters on the AQMP and in our meeting on November 15, 2012 among the Ports' staff, AQMD staff and AQMD Boardmember Judy Mitchell.

However, the ports are disappointed that the fundamental structure of Measure IND-01, to treat the ports as "stationary sources" and "indirect sources," and convert the ports' voluntary Clean Air Action Plan into enforceable regulation by AQMD, was not altered in any respect. The ports do not own or operate any of the targeted equipment, and the ports are not regulatory agencies. The ports can't accept any regulatory action by the AQMD that will result in AQMD oversight and approvals of port actions, or enforcement actions by AQMD on the ports for failure of the port industry to meet the ports' emission reduction goals. Therefore the Ports continue to object to Measure IND-01's inclusion and request that it be removed from the AQMP. Measure IND-01 contains the fatal flaw of defining the ports as stationary and indirect sources responsible for the emissions from equipment they do not regulate, own, or control. We also believe that this measure is beyond AQMD's authority.

We reiterate our prior requests that AQMD reconsider its approach and allow the continuation of the successful collaborative work by the ports, regulatory agencies and other stakeholders under the voluntary Clean Air Action Plan and San Pedro Bay Standards. Moving forward with Measure IND-01 in this current draft form will actually reduce rather than improve the future success of programs, since conversion of voluntary plans into regulation will reduce voluntary

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

cooperation by the industry with port programs, and will eliminate the ability of the ports, agencies and industry emissions sources to obtain grants to accelerate emission reductions from port industry equipment.

Thank you for your continued attention to this matter and we hope that we can continue with the successful, cooperative partnership that we have built over the past seven years.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

HAT:s

cc: AQMD Boardmember Judy Mitchell
Barry Wallerstein, South Coast Air Quality Management District
Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Chris Lytle, Port of Long Beach
Robert Kanter, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Geraldine Knatz, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 9.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

November 19, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Ports' Proposed Revision and Resolution Language for the Draft 2012 Air Quality Management Plan

Dear Dr. Wallerstein:

On November 15, 2012, staff from the ports of Long Beach and Los Angeles met with AQMD Boardmember Judy Mitchell and AQMD staff to discuss concerns and comments that have been raised by the ports in previous comment letters on the Draft 2012 Air Quality Management Plan (AQMP). At the conclusion of the meeting, it was determined that staff would continue to work together to attempt to resolve the concerns that have been raised.

In that spirit, the ports of Long Beach and Los Angeles propose the following revisions to the 2012 AQMP, consistent with our past comment letters to AQMD:

1. Measure IND-01 must be removed from the 2012 Air Quality Management Plan if it continues to apply or recommend any form of AQMD oversight and approvals of the ports' actions, or enforcement (in terms of fines, penalties, administrative actions) against the Ports for failures of the Port industry to achieve designated emissions reductions. This includes the intent to develop such enforcement actions in later IND-01 rulemaking after adoption of the AQMP, even if such details regarding enforcement activity are absent from the draft AQMP.

2. With the removal of the Measure IND-01, the following language could be added to the adopting resolution for the 2012 Air Quality Management Plan:

   BE IT FURTHER RESOLVED, the District commits to continue working with the Port of Long Beach and the Port of Los Angeles on the implementation of the San Pedro Bay Ports Clean Air Action Plan (CAAP) in order to meet the emission reduction goals identified in the San Pedro Bay Standards, and as a part of the annual report to the Board, District staff will continue to provide information on the progress of the ports in implementing the CAAP.

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BE IT FURTHER RESOLVED, if the ports do not demonstrate sufficient progress for achieving the San Pedro Bay Standards, the District will work with the ports, the other air quality regulatory agencies, and port industry emission sources that are stakeholders under the CAAP, to identify additional feasible strategies for implementation within the ports' jurisdiction.

We look forward to discussing these recommendations with you.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

HAT:s

cc: AQMD Boardmember Judy Mitchell
Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Susan Nakamura, South Coast Air Quality Management District
Robert Kanter, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 10.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

November 8, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Dear Dr. Wallerstein:

SUBJECT: COMMENTS ON THE DRAFT SOCIOECONOMIC REPORT FOR THE DRAFT 2012 AIR QUALITY MANAGEMENT PLAN

The ports of Los Angeles and Long Beach (Ports) appreciate the opportunity to comment on the South Coast Air Quality Management District's (AQMD) Draft Socioeconomic Report for the Draft 2012 Air Quality Management Plan (AQMP).

The Draft Socioeconomic Report states that "District staff performs a socioeconomic analysis of the Draft Plan in order to further inform public discussions and the decision making process of the Draft Plan." However, the Draft Socioeconomic Report shows that no cost data have been developed for Measure IND-01 – Backstop Measures for Indirect Sources of Emissions from the Ports and Port-Related Sources, despite the fact that there are real and significant costs to the Port industry to implement the emission controls that could result from the proposed Backstop Measure. Presentation of this measure to AQMD's Board, as well as the public, is incomplete without an associated socioeconomic analysis. Potential regulation of the Port could have a very significant economic effect on the region that AQMD does not address, and therefore the Ports believe that it is inappropriate to move forward with inclusion of this measure in the Draft AQMP without a full socioeconomic analysis.

By not including a socioeconomic analysis of Measure IND-01, the AQMD is completely ignoring the economic importance of the Ports. The Ports are a major economic engine for the region and nation, and port-related industry generates $5.1 billion and $21.5 billion in state and federal tax revenue, respectively. The Ports account for over 1.1 million jobs in California and 3.3 million jobs in the United States. Additionally, for every one job created by a Port customer, nearly 1.7 additional jobs are created elsewhere in the region.

Even just the potential of additional regulation of the Ports brings with it a significant uncertainty for the Port industry that may result in the diversion of goods to other ports outside of this region. There are more environmental requirements on the Port industry operating in this region than anywhere else in the world. The threat of additional regulatory requirements, especially when no details have been provided as to what those requirements would be, results in significant concerns for these operators and a significant potential for loss of regional economic benefits due to diversion. The Draft Socioeconomic Report fails to analyze this potential impact.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

Additionally, AQMD has indicated that Measure IND-01 does not have a socioeconomic analysis associated with it because there are no emission reductions associated/committed with this measure. As noted in our comment letter on the Draft AQMP dated August 30, 2012, Section 39602 of the California Health and Safety Code states that, the State Implementation Plan (SIP) shall only include those provisions necessary to meet the requirements of the Clean Air Act. Hence, there is no identified need or legal basis for implementing Measure IND-01. AQMD's proposed measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

Finally, as stated in our letter dated October 31, 2012, Measure IND-01 should not move forward because the AQMP makes a commitment to implement it before AQMD has developed or released details of its intended compliance actions against the Ports, or the socioeconomic and other analyses for such actions. Failing to disclose the AQMD's intended actions against the Ports violates due process, depriving the public and the Ports of the opportunity to adequately review and comment on this measure prior to finalizing the AQMP.

For the reasons listed above and those presented in our previous letters, the Ports reiterate our consistent position that Measure IND-01 should be eliminated from the AQMP. Further, we continue to believe that the successful, collaborative approach established by the Ports and the regulatory agencies remains the best mechanism for identifying and implementing strategies to reduce emissions from Port-related sources.

Sincerely,

CHRISTOPHER CANNON
Director of Environmental Management
Port of Los Angeles

RICHARD D. CAMERON
Director of Environmental Planning
Port of Long Beach

CC:CLP:KM:LW:myd
ADP No.: 061024-605

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Robert Kanter, Port of Long Beach
Mike Christensen, City of Los Angeles Harbor Department, Deputy Executive Director
Dominic Holzhaus, City of Long Beach, Deputy City Attorney
Joy Crose, City of Los Angeles Harbor Department, General Counsel

ATTACHMENT 11.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

October 31, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Supplemental Comments on the Revised Draft 2012 Air Quality Management Plan

Dear Dr. Wallerstein:

The Port of Long Beach and Port of Los Angeles (ports) are submitting this comment letter to add to comments previously submitted on August 30, 2012.

As members of the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) Advisory Committee, the ports have worked with AQMD staff to provide comments on the draft plan, including the emissions data being used. Included in this effort, ports' staff provided the 2008 base year emissions inventories for the port sources based on the most recent methodologies agreed upon by the Technical Working Group (TWG) in the ports' 2011 air emissions inventories.

As noted in the Draft AQMP, *"An effective AQMP relies on an adequate emission inventory."* Discrepancies exist between the emissions inventories prepared by the ports and the inventory prepared by the AQMD. The emissions shown in the Draft 2012 AQMP are different from those prepared by the ports in cooperation with the AQMD, California Air Resources Board, and Environmental Protection Agency, during development of the San Pedro Bay Standards. If the AQMD's emissions projections for achieving attainment are incorrect, the concerns expressed in our August 30 comments are greatly increased. The emissions projections drive both the Measure IND-01 analysis and the PM2.5 analysis. The basis for the Draft 2012 AQMP emissions projections is impossible to determine, because the assumptions and methodologies (including control factors and growth factors) are not disclosed.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

Additionally, it concerns the ports that the AQMP has made a commitment to Measure IND-01 before AQMD has released details of its intended implementation actions against the ports, or the socioeconomic and other analyses for such actions. Elaine Chang admitted at the AQMD's October 24, 2012, meeting that it is unknown what a port compliance plan would include and that AQMD would develop it during a future rulemaking process. This violates due process, to commit to implement an AQMP measure without disclosing what AQMD's actions against the ports will be under the backstop measure, as it deprives the public and the ports of the opportunity to review and comment to influence the decision, prior to committing to it in the AQMP.

This further demonstrates that the collaborative process established by the ports and the air quality regulatory agencies remains the most appropriate forum to identify and implement strategies to reduce emissions from port-related sources.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

AT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Randall Pasek, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Robert Kanter, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 12.

October 22, 2012

Jeff Inabinet
c/o Office of Planning, Rule Development, and Area Sources/CEQA Facilities
South Coast Air Quality Management District Development and Planning Branch
21865 Copley Drive
Diamond Bar, CA 91765-4182

Subject: Draft 2012 AQMP Program Environmental Impact Report

Dear Mr. Inabinet:

The Port of Long Beach (POLB) and Port of Los Angeles (POLA) appreciate the opportunity to comment on the Draft Program Environmental Impact Report (Draft EIR) developed for the 2012 Air Quality Management Program (AQMP). The ports appreciate that AQMD staff took steps to address the scoping comments provided by the ports, specifically the inclusion of a transportation and traffic impact analysis as part of the Draft EIR.

However, the ports must reiterate their concerns relating to AQMP Control Measure IND-01 (Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources). As the AQMD knows from prior comment letters submitted by the ports (please see AQMP comment letters dated August 30, 2012; July 10, 2012; and May 4, 2010), the ports believe that Measure IND-01 exceeds the AQMD's authority and should not be included in the AQMP for the reasons set forth in the referenced letters.

Measure IND-01 also contains various flaws which contribute to the inadequacy of the Draft EIR and failure to comply with the California Environmental Quality Act (CEQA). First, Measure IND-01, as described in the project description of the Draft EIR and in the AQMP itself, is unconstitutionally vague and lacks sufficient description of exactly what it proposes to impose on the ports or substantial evidence in support. The Draft EIR's failure to describe the project fully makes it impossible for AQMD, the ports, or the public to assess its 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. Because of the importance and consequences of the AQMP to the State of California's State Implementation Plan (SIP) if adopted by California Air Resources Board (ARB), and to the Federal Clean Air Act enforcement if approved by the U.S. Environmental Protection Agency (EPA), the AQMD is required to fully disclose the details of Measure IND-01 before adoption, and CEQA requires a full disclosure and discussion, which AQMD has failed to do.

Second, to the extent the AQMD intends to approve the Draft EIR and AQMP containing the vague current version of Measure IND-01, and later, as a part of future rulemaking, provide details regarding its proposed actions against the ports including an environmental assessment, that would be segmentation or piecemealing of its CEQA analysis.

Third, Measure IND-01 has serious problems of infeasibility which the Draft EIR has failed to analyze at all. Measure IND-01 in effect attempts to convert the ports' various aspirational goals, set forth in their voluntary Clean Air Action Plan (CAAP), into enforceable regulation against the ports. However, the CAAP goals depend upon future technology advancement which has not yet occurred, all of which are beyond the control of the ports. Therefore, there are technology feasibility issues with the AQMD making the ports' goals into required emissions limits. Further, as the ports are not air regulators and they do not themselves own, operate, or control the emissions equipment operated by the port industry, there are legal feasibility questions over the ports' ability to exercise authority to carry out the actions of Measure IND-01. There are also serious legal feasibility questions including federal preemption asserted by railroads in connection with locomotive specifications and rail operations, and international preemption asserted over ocean vessels. The Draft EIR is flawed in its failure to discuss these infeasibility issues, and had it done so, it would lead to the conclusion that Measure IND-01 should be removed from the AQMP.

Fourth, the AQMD has concluded in the air quality analysis that specific measures associated with Measure IND-01 "are unknown, and therefore the impacts are speculative," (see page 4.2-7 of Draft EIR). This is yet another reason why the Draft EIR is flawed. CEQA Guidelines Section 15145 specifies that if, after thorough investigation, a Lead Agency finds that a particular impact is too speculative for evaluation the agency should note its conclusion and terminate discussion of the impact. Instead, the AQMD proceeded to analyze secondary impacts to air quality that are based on speculative assumptions regarding construction emissions, energy demand, and operations.

Lastly, to the extent that Measure IND-01 proposes to impose upon the ports a form of enforcement for port industry's failure to meet the CAAP's target emissions reduction goals, when the ports do not own, operate, or control the emissions sources, it violates constitutional limitations requiring that exactions imposed on a party must be proportional to the party's contribution, when it fails to include all parties involved in the CAAP, including the actual emissions sources.

Given these deficiencies and speculation under CEQA and with the AQMP rulemaking, Measure IND-01 should be removed from the final EIR and the AQMP, and the analysis should be revised accordingly. With this change, the ports can support the revised AQMP and can continue to work with AQMD, other agencies, and the port industry in the collaborative manner that has made the ports' voluntary CAAP a success.

Thank you for considering the above comments. If you have any questions, please contact Dylan Porter, Port of Long Beach, at (562) 283-7100 or Lisa Wunder, Port of Los Angeles, at (310) 732-7688.

Sincerely,

Richard D. Cameron
Director of Environmental Planning, Port of Long Beach

Christopher Cannon
Director of Environmental Management, Port of Los Angeles

DP:s

cc: Elaine Chang, South Coast Air Quality Management District
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 13.

August 30, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Comments on the Draft 2012 Air Quality Management Plan

Dear Dr. Wallerstein:

The Port of Long Beach and Port of Los Angeles (Ports) appreciate the opportunity to serve on the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) Advisory Committee. We support the AQMD's clean air goals and have a proven leadership record of developing and implementing appropriate and effective strategies that have resulted in the port-related goods movement industry's achievement of real and dramatic emissions reductions. Although the Ports do not own or control the emission sources, the Ports have worked cooperatively with business operators in the port area and the air quality regulatory agencies (i.e. Environmental Protection Agency, California Air Resources Board, and AQMD) to help the port industry reduce its fair share of air quality impacts to the region from port-related operations, as outlined in the San Pedro Bay Ports Clean Air Action Plan (CAAP) and the associated San Pedro Bay Standards. As a result, between 2005 and 2011 emissions from port-related sources were reduced by 73 percent for diesel particulate matter (DPM) and by 50 percent for nitrogen oxides (NOx). The Ports' San Pedro Bay Standards for 2014 established goals to reduce port-related DPM by 72 percent and NOx by 22 percent. Therefore, as a result of implementation of aggressive actions by the port industry, port-related emission reductions have exceeded our goals several years ahead of schedule.

While we remain a committed partner in the effort to improve air quality in the region, we have significant concerns with several proposed control measures in the Draft 2012 AQMP that improperly misclassify the Ports as "stationary sources" or "indirect sources" under AQMP Stationary Source measures, or as "implementing agencies" of specific AQMP mobile source measures. In particular, the proposed Stationary Source Measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources" contains many legal flaws, as explained in greater detail below, and inappropriately proposes to impose enforcement actions on the Ports for emissions generated by emissions sources that the Ports do not own,

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

operate, or control, which is counterproductive to the cooperative relationship that our agencies have established since we began working together on the voluntary CAAP in 2006.

This letter provides the Ports' specific comments on the control measures in the Draft 2012 AQMP that we believe must be addressed prior to finalization and adoption by your agency.

Proposed Stationary Source Measure IND-01

There are three fundamental problems with Proposed Measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources." First, the proposed backstop rule would transform the Ports' voluntary CAAP into the AQMD's mandatory regulation of the Ports. This would jeopardize the Ports and the Port-related emissions sources' grant funding for equipment replacement and modernization if it is now necessary to comply with regulation, while offering nothing to assist the Ports with compliance in terms of additional technologies, facilitating regulations, tools, or funding. Second, although the CAAP was a voluntary cooperative effort of the Ports and the air agencies designed to encourage the industry operators of regulated equipment to go beyond regulation, the proposed backstop rule would improperly subject the Ports to the AQMD's enforcement action for industry's missed emissions reductions by equipment not operated or controlled by the Ports, or even potential loss of federal funding under federal conformity principles if the AQMP is adopted into the State Implementation Plan (SIP) and approved by the U.S. EPA as federal law. Third, the proposed backstop rule exceeds the AQMD's authority and if implemented may violate the State Tidelands Trust. If Measure IND-01 (as well as the Offroad Mobile Source Measures discussed below) are in reality the AQMD's regulation of Port-related mobile emissions sources such as locomotives, ships, rail, and trucks, then this is beyond AQMD's legal authority and AQMD should obtain a waiver under the Clean Air Act from the U.S. EPA. The Ports provide further detailed comments on Proposed Measure IND-01 below, and object to it being included in the 2012 AQMP.

Based upon the AQMD's modeling results, existing control measures are expected to result in attainment of the Federal 24-hour PM2.5 standard by the 2014 deadline without Measure IND-01. Section 39602 of the California Health and Safety Code states that the State Implementation Plan (SIP) shall only include those provisions necessary to meet the requirements of the Clean Air Act. Hence, there is no identified need or legal basis for implementing Measure IND-01. The AQMD's proposed measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

The Ports are neither "direct emissions sources" nor "stationary sources" subject to AQMD permitting, and the AQMD has not complied with requirements for regulation under Health and Safety Code. The Ports are also not "indirect sources" subject to an AQMD indirect source review program within the meaning of the Clean Air Act, and the AQMD has not complied with requirements of the Clean Air Act, 42 U.S.C. §7410 and various other requirements for indirect source classification. The Ports are also not air agency regulators. The Ports do not own, operate, regulate, or control any of the goods movement equipment serving the Ports that are

targeted emissions sources under Measure IND-01. Additionally, the equipment are mobile sources regulated by state, federal, and/or international regulation, sometimes under jurisdiction preempting Port or AQMD action. It is inappropriate for the AQMD to regulate the Ports without the Ports' ownership, operation, or jurisdiction to regulate the various industry businesses actually causing the emissions within our boundaries.

The proposed backstop measure continues to state that if there is a South Coast Air Basin-wide shortfall in emission reductions, then the AQMD will mandate additional emission reductions from the Ports, even if the port-related sources have already met their commitments. This moving target standard is unconstitutionally vague and therefore illegal. The Ports are unfairly targeted, as there are no backstop measures proposed for other entities or source categories should other modeling assumptions not come to pass, such as anticipated natural fleet turnover, or other non-regulated initiatives failing to meet their goals, such as those expected by the Carl Moyer Program. If the AQMD's emissions projections for achieving attainment are incorrect, including control factors and growth rates, this measure appears to imply that the Ports will be specifically tasked with rectifying the shortfall. If the Basin fails to achieve the federal air quality standard, the proper channel to address this is through the established SIP process, not to establish a contingency rule to unfairly burden one specific industry out of the entire Basin.

AQMD staff has indicated that Measure IND-01 is proposed to account for measures that are not backed by enforceable requirements. However, significant programs such as the CAAP's Clean Truck Program, Ocean-going Vessel Low Sulfur Fuel Program, Cargo-handling Equipment requirements, and the Shore-side Power/Alternative Maritime Power programs are currently backstopped by CARB and International Maritime Organization (IMO) regulations. The Ports also require higher rates of vessel or equipment compliance than regulation through terminal leases, when such commercial opportunities are able to be negotiated with tenants. Therefore, Proposed Measure IND-01 is unnecessary.

Measure IND-01 is vague and incomplete. It is unclear whether the AQMD has taken credit for actual/current emission reductions in the baseline only, or if assumptions have been made for future year reductions. We take issue with a measure moving forward where emissions projections are "on-going." Further, no detail is provided on the level of emission reductions that are needing to be maintained. This is further complicated by the differences that exist between the emissions inventories produced by the Ports and the inventory used for the AQMP. It is unclear if a specific emission reduction shortfall will trigger implementation of the measure, or if it is simply left to the discretion of the AQMD. Additionally, the control costs have not yet been developed or justified in a cost-benefit analysis.

The CAAP is a planning document that provides a guideline of strategies and targets that are often "stretch goals," which ultimately are implemented through individual actions adopted by the Long Beach and Los Angeles Boards of Harbor Commissioners (Boards). The Ports are sovereign Tidelands granted to the cities of Los Angeles and Long Beach by the state under the oversight of the State Lands Commission. Each city has been appointed as a trustee and has established their respective Board of Harbor Commissioners with exclusive control and management of the Tidelands and revenues and expenditures from the Tidelands. However,

such discretion must be exercised in accordance with their obligations to prudently manage Tidelands assets and revenues within a nexus and proportionality to the Tidelands Trust interests, as well as in accordance with applicable laws such as the California Environmental Quality Act (CEQA) and principles of federal preemption.[1] The AQMD cannot mandate action by each Port's Board of Harbor Commissioners, nor can the AQMD direct how the Ports obligate state Tidelands money; only the appointed trustee can make discretionary actions to obligate state Tidelands funds. Specifically, the CAAP measures listed in the Draft 2012 AQMP each require the Boards to authorize the expenditure of incentive monies and program costs, or to approve conditions of infrastructure project development in their discretion as CEQA lead agency and as Tidelands trustees.

We strongly believe that the voluntary and cooperative CAAP process established by the Ports remains the most appropriate forum for the Ports and the air regulatory agencies to discuss technical and policy issues related to reducing emissions from port-related sources. As stated above, we remain committed to achieving the clean air goals identified in the CAAP and working with port industry and the air regulatory agencies on implementation of appropriate strategies.

For your reference, attached is our comment letter dated July 10, 2012, expressing our preliminary concerns related to the proposed Measure IND-01 and a comment letter dated May 4, 2010, in which the Ports initially expressed concerns regarding backstop rules.

Proposed Off-Road Mobile Source and Advanced Control Technology Measures

The Draft 2012 AQMP also identifies the San Pedro Bay Ports as "Implementing Agencies" for several of the proposed Off-Road measures (OFFRD-02, OFFRD-04, and OFFRD-05) and Advanced Control Technology measures (ADV-01, ADV-02, ADV-03, ADV-04, and ADV-05). The Ports should not be listed as Implementing Agencies, which the AQMP Appendix IV-A defines as "the agency(ies) responsible for implementing the control measure." While the Ports have been moving forward with voluntary efforts in these areas, as mentioned above, the Ports are not air agency regulators. We also do not own or operate the equipment identified in the proposed measures, and therefore we do not have direct control over any of the sources listed. During the Advisory Committee meetings, AQMD staff has provided clarification that the Ports are listed as Implementing Agencies because of our voluntary commitments to work on these

[1] The Ports' experience with the first phase of the 2006-2010 CAAP showed that in actual implementation, many CAAP measures were carried out in a different manner than originally conceptualized, or not carried out at all, based on limitations on the Boards' opportunities and their exercise of their discretion to manage Tidelands assets and funds under real-world circumstances. Some of the CAAP measures can only be implemented if businesses apply to the Ports for permits to build or expand their lease premises and CEQA mitigation required by law or lease conditions that can be negotiated with a Port tenant. Other CAAP measures involve emissions sources (rail or ocean vessels) that may assert federal preemption against efforts to compel use of specific technology, so the CAAP goals involve the Ports offering economic incentives in voluntary compliance programs, such as the Ocean Vessel incentive programs. However, only the Boards have the legal authority to fund such incentives or impose CEQA mitigation or lease conditions to project approval, which decisions also fall within the Boards' sole discretion regarding their respective Port's properties and their individual Harbor Revenue Fund budgets, which may be affected by the global economy.

efforts, and that being listed as an implementation agency does not obligate the Ports to any specific requirement, however, this is contrary to the language of the AQMP that implementing agencies are "responsible for implementing the control measure." We believe that listing the Ports, and not including all of the other public and private partners that are also working on these efforts, gives the impression that the Ports do have an assigned obligation, or that the Ports must bear a larger burden in the effort to implement these programs. We also repeat our comment stated above that the AQMD cannot mandate in the AQMP that the Ports must expend monies in these voluntary efforts, since most of these Off-Road and Advanced Control Technology measures require incentive monies to fund demonstration projects or accelerated use of new technology.

We believe that the appropriate Implementing Agencies for these measures are the United States Environmental Protection Agency and the California Air Resources Board.

The Ports urge AQMD to make all of the above-requested changes to the draft 2012 AQMP, in particular, to eliminate Measure IND-01 Port Backstop Rule as a legally unnecessary measure exceeding AQMD's authority and violating the State Tidelands Trust. We believe it is much more effective to advance our mutual clean air goals for our agencies to continue working cooperatively together, but if the AQMD takes the above 2012 AQMP measures forward, the Ports will have no choice but to vigorously oppose such action through the administrative and legal process.

Sincerely,

Chris Lytle
Executive Director
Port of Long Beach

Geraldine Knatz
Executive Director
Port of Los Angeles

HAT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Susan Nakamura, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Port of Long Beach Harbor Commission
Port of Los Angeles Harbor Commission
Robert Kanter, Port of Long Beach
Rick Cameron, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Chris Cannon, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles
David Reich, Los Angeles City Mayor's Office

ATTACHMENT 14.

July 10, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Initial Comments on the Proposed 2012 Air Quality Management Plan, Control Measure IND-01

Dear Dr. Wallerstein:

The Port of Long Beach and Port of Los Angeles (Ports) appreciate the opportunity to participate in the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) Advisory Committee. We support the AQMD's clean air goals and have worked aggressively with the port industry to reduce our fair share of air quality impacts to the region from port-related operations, as outlined in the San Pedro Bay Ports Clean Air Action Plan (CAAP) and the associated San Pedro Bay Standards. As a result, between 2005 and 2010, emissions from port-related sources were reduced by 70 percent for diesel particulate matter and by 49 percent for nitrogen oxides. Emissions inventory work currently underway indicates additional, continued emission reductions in 2011.

While we continue to remain a committed partner in the effort to improve air quality in the region, we disagree with AQMD's proposed control strategy for port-related sources in the Draft 2012 AQMP. The inclusion of proposed measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources," is unnecessary and counter-productive.

The two Ports have a proven track record of developing and implementing appropriate and effective emission reduction strategies. These efforts have been entered into voluntarily, working cooperatively with operators in the port area and the air quality regulatory agencies (i.e. Environmental Protection Agency, California Air Resources Board and AQMD). Since the Ports initially implemented the CAAP, many of the port-related control strategies have been or will be superseded by state or international requirements, such as the rules for replacing drayage trucks, switching to cleaner marine fuels, and using shore power while at berth. The Ports' emissions inventories in 2010 show reductions that are meeting or are in excess of the emission reductions that the Ports committed to in the San Pedro Bay Standards. However, it is important to note that in order to remain on track to meet the Standards, a collaborative and concerted effort with our agency partners is essential, with the understanding that while the Ports can achieve significant emission

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

reductions, no single entity can accomplish this task. The previous State Implementation Plan identified several regulatory strategies that have not yet materialized into regulations for various reasons. Moving forward, the Ports will need agency assistance, particularly on the development and deployment of zero-emission technologies and at-berth controls for non-regulated vessels, as well as on the preferential deployment of cleaner vessels to the basin.

The Ports are sustaining and growing long-standing successful CAAP programs, such as the Vessel Speed Reduction Incentive Program and, on July 1, 2012, the Ports implemented new, groundbreaking incentive programs to encourage cleaner ocean-going vessels to call at the Ports. With programs such as these, along with the above-referenced regulatory rules becoming effective and ensuring significant additional emission reductions by 2014, there is no identified need for implementing a backstop measure. The AQMD's proposed backstop measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

It is inappropriate for the AQMD to attempt to regulate the Ports, which are the Harbor Departments of the cities of Long Beach and Los Angeles, in an attempt to control emissions from equipment within our boundaries, but which we do not own or operate. Further, the proposed backstop measure identifies that the "…requirements will be triggered if the reported emissions for 2014 for port-related sources exceed the 2014 target milestone, *or the Basin fails to meet the 24-hour PM2.5 standard as demonstrated in the 2012 AQMP and basin-wide reductions are needed, in which case a new reduction target for each pollutant will be established*." (emphasis added). While clarification has been provided by AQMD staff that any effort to make up for a basin-wide shortfall will be the responsibility of all sectors, not just the Ports, this statement still implies that if the port industry meets their targeted emission reductions, but other sectors fail to meet their fair share obligations, then the AQMD will mandate additional reductions from the Ports. This is counter to the cooperative relationship that our agencies have established since we began working together on the CAAP in 2006, and ignores the tremendous air quality benefits that have been gained from voluntary actions.

Lastly, based on the preliminary calculations by AQMD, the majority of the region is expected to be in attainment for PM2.5 by the target year of 2014, with the remainder anticipated to be in attainment by the expected extension date of 2019. The inclusion of IND-01 is therefore unnecessary for the region to reach attainment. If these emission reductions are needed in the baseline emissions calculation, there is precedent for mechanisms other than control measures to be used for this purpose, and we would like to discuss those options with your staff.

We strongly believe that the voluntary and cooperative CAAP process established by the Ports remains the most appropriate forum for the Ports and the air regulatory agencies to discuss technical and policy issues related to reducing emissions from port-related sources. As stated above, we remain committed to achieving our fair share of clean air goals identified in the CAAP and working with port industry and the air regulatory agencies on implementation of appropriate strategies.

For your reference, attached is a comment letter dated May 4, 2010, in which the Ports initially expressed concerns regarding backstop rules. The letter was submitted as a public comment on the proposed Rules 4010 and 4020, which were proposed backstop rules for health risk and criteria pollutant emissions.

We look forward to working with AQMD on resolving our concerns related to the proposed backstop measure in the Draft 2012 AQMP.

Sincerely,

CHRIS LYTLE
Executive Director
Port of Long Beach

MICHAEL R. CHRISTENSEN
Deputy Executive Director, Development
Port of Los Angeles

HAT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Susan Nakamura, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Robert Kanter, Port of Long Beach
Rick Cameron, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Chris Cannon, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 15.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

San Pedro Bay Ports Clean Air Action Plan

May 4, 2010

Susan Nakamura
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Subject: AQMD Proposed Rules 4010 and 4020

Dear Ms. Nakamura:

This letter is on behalf of the Ports of Long Beach and Los Angeles (Ports) as a preliminary response to the "backstop" Rules 4010 and 4020 (Proposed Rules) proposed by the South Coast Air Quality Management District (AQMD). As will be explained below, based upon the limited amount of information released by the AQMD about the Proposed Rules thus far, the Ports have a number of preliminary questions and concerns at this stage of the first public consultation meeting and will be providing more detailed comments on the Proposed Rules at a later stage.

The Ports have had tremendous success with implementing the San Pedro Bay Port Clean Air Action Plan (CAAP). The development of the original CAAP and the update to the CAAP has been conducted through a cooperative effort with staff from the AQMD, the United States Environmental Protection Agency (EPA), and the California Air Resources Board (CARB). The Ports strongly believe that this partnership of over four years, and the collaboration that has occurred throughout that time, have aided in the success of the CAAP and the emissions reductions that have been achieved.

Since the CAAP was adopted in late 2006, the Ports have exceeded our interim emissions reductions milestones and are well on our way to meeting the original forecasted emissions reductions of at least 45% by 2011, compared to uncontrolled conditions. This has been accomplished through the steadfast implementation of CAAP measures, highlighted as follows:

- Development, approval, and implementation of the Clean Trucks Program in which two major milestones have been achieved resulting in truck pollution reductions of nearly 80% (January 2010), almost two years ahead of schedule (HDV1).
  - October 2008: ban pre-1989 trucks.
  - January 2010: ban pre-1993 trucks; 1994-2003 trucks require Level 3 plus NO_x retrofit.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

- Facilitated construction of an LNG on-road truck fueling station in the port area. Fueling operations have been underway since early 2009. In addition the Ports have contributed to funding the construction of two additional LNG on-road truck fueling stations in the Port area, due to open later in 2010 (HDV2).
- Over $6.5 million in incentives for vessels participating in the voluntary Vessel Speed Reduction Program and Vessel Fuel Incentive Program (OGV1, OGV4).
- Design, construction, and operation of shore power infrastructure completed at 5 berths and underway for over 40 additional berths (OGV2).
- Replaced entire fleet of port switching locomotives with new, cleaner locomotives in 2008, and a subsequent fleet turnover to cleaner locomotives anticipated by end of 2011 (RL1).
- Provided funding of $5.4 million toward projects through our Technology Advancement Program, conducted with input from an Advisory Committee consisting of AQMD, EPA, and CARB.
- The Ports' 2008 Emissions Inventories show combined emission reductions of 20% diesel particulate matter (DPM), 10% nitrogen oxides (NOx) and 24% sulfur oxides (SOx) compared to the 2005 baseline. The 2009 Emissions Inventories, which are expected to be finalized and published in June, will show an even greater level of emission reductions as additional CAAP efforts have come into effect.

In addition to the implementation efforts listed above, the Ports have also worked in coordination with CARB and EPA on development of rules and regulations affecting port sources. These regulatory requirements have helped to ensure that emissions reductions from specific equipment types operating at the Ports will continue into the future. The Ports look forward to continuing these cooperative efforts on regulatory development with CARB and EPA, with the support of AQMD, to ensure that the early action measures being taken by the Ports are supported and implemented more broadly.

Further, as you are aware, the Ports recently released our draft CAAP Update, where we revisited and updated each of the control measures and proposed aggressive, long-term goals for emissions reductions and health risk reductions, titled the San Pedro Bay Standards. Once the CAAP Update is adopted, the Ports will quantitatively measure our progress against these long-term goals and will make adjustments to our implementation efforts over time as necessary to ensure that we remain on track for achieving these goals.

With these demonstrated results carried out voluntarily, and further efforts underway, the Ports regard the AQMD's proposed Rules 4010 and 4020 as unnecessary, and raise several questions regarding the Proposed Rules and the rulemaking process. Below is a list of preliminary questions to help us gain a better understanding of the AQMD's proposed approach:

Emissions and Health Risk Reduction Targets

Proposed Rule 4020 Sections (d) (1) and (2) will include targets for criteria pollutant and health risk reductions to be met by the Ports to avoid triggering the backstop provisions. The Ports have the following concerns and questions regarding the targets:

1. How were the targets developed? In June 2007, the Ports provided AQMD with detailed comments and concerns regarding the methodology and the specific port-related emission reduction targets contained in the 2007 Air Quality Management Plan (AQMP). CARB declined to adopt the port targets into the 2007 State Implementation Plan (SIP). In the AQMD Governing Board's resolution adopting the 2007 AQMP, it committed that AQMD staff would work with the Ports and, based on its technical review, would recommend any appropriate adjustments to the AQMP criteria pollutant targets attributable to the Ports. Although initial coordination efforts have occurred, the AQMD has not completed detailed analyses necessary for the Ports to understand how the AQMP targets and the targets contained in the Proposed Rules have been developed, or to understand how these targets differ from the Emission Reduction Standards contained in the Draft 2010 CAAP Update. We request that the AQMD present the methodology and resulting targets to a Stakeholder Working Group, including the Ports, before progressing further with the rulemaking process. Further, to the extent that the targets in proposed Rule 4020 go beyond the 2007 SIP/AQMP targets to address future regulations that have not yet been adopted, the Ports have even greater concerns.

2. The Emission Reduction Standards contained in the Draft 2010 CAAP Update were developed by the Ports in coordination with the EPA, CARB, and AQMD. Achievement of these Standards will require aggressive implementation of strategies by the Ports and the port operators. Further, the Standards are predicated on a conservative 2007 cargo forecast developed before the recent economic crisis and assume that the Ports reach capacity in 2023. Instead, there has been a significant downturn in cargo volumes from 2008 to present, such that the Ports do not anticipate returning to 2007 cargo throughput levels until 2014-2015, and reaching capacity until approximately 2035. This has reduced the Ports' emissions footprint, as well as potentially reduced the Ports' proportion of basin-wide pollution. Nonetheless, to be conservative and to voluntarily strive to ensure a "fair share" contribution of port-related sources to regional attainment goals, the Ports retained the higher growth forecast in the CAAP. It is important to note that, even with these higher than anticipated rates of future emissions growth, the Ports project DPM reductions greater than 70%, SOx reductions greater than 90%, and NOx reductions of nearly 60% by 2023.

3. The 2007 SIP identified several regulatory and technology strategies to be undertaken by EPA and CARB to contribute to the reduction in port-related emissions. This is consistent with the philosophy that achieving emission reductions from port-related sources must be a cooperative partnership effort, because no one entity can meet the need by itself. Since the 2007 SIP was developed, for various reasons including technical feasibility, technology availability, and cost-effectiveness, several key federal and state regulatory and technology strategies have failed to occur. These include, but are not limited to: commercial availability of Tier 4 line haul and switcher locomotive engines in 2012, implementation of a statewide regulation requiring use of shoreside power for all vessel types while at berth, and implementation of a statewide regulation requiring retrofitting of existing ocean-going vessels and the preferential deployment of progressively cleaner new build vessels to California ports. The Ports are concerned that the emission reductions associated with these proposed EPA and CARB strategies are now being fully assigned to the Ports through the proposed targets in order to make the

SIP "whole," even though the strategies may not be technically feasible and/or cost-effective. Further, as you know, the Ports do not own or operate the emissions sources targeted by this regulation and the Ports may not have implementation mechanisms available within their jurisdiction to implement the controls even if they were deemed feasible and cost-effective.

DISTRICT RULEMAKING PROCESS

The Ports have a number of initial questions geared towards gaining a better understanding of AQMD's intended rulemaking process for the Proposed Rules.

4. As suggested above, will the AQMD form a Stakeholder Working Group, including the Ports, to discuss the AQMD's Proposed Rules and analysis?

5. What is the AQMD's authority for regulating the Ports under the Proposed Rules?

6. The Ports would like to understand what level of CEQA analysis the AQMD is proposing for this rulemaking. Will there be a scoping meeting?

7. When will the AQMD release a Preliminary Draft Staff Report (PDSR)? Given the unprecedented nature and broad technical, practical, regulatory, and legal implications of these Proposed Rules, we believe that the PDSR must be very detailed or the Ports, air agencies, and other stakeholders will not have the information necessary to participate fully in the rule development process. We request that the PDSR include:
    a. Technical analysis of the Proposed Rules, targets, etc.
    b. An analysis of potential Draft Findings required under Health and Safety Code (e.g., Necessity, Authority, Clarity, Consistency, Non-Duplication, and References)
    c. Detailed information on control technologies and programs that the AQMD believes the Ports and affected sources would need to implement to meet the proposed rule reduction requirements.
    d. As part of cost-effectiveness analysis, detailed information on the feasibility, control effectiveness, and costs of these technologies and programs, including who would bear those costs. The AQMD should work with the Ports, their tenants, and others in the goods movement industry to estimate these costs.
    e. A preliminary Socioeconomic Impact Report (SIR) based on input from the Ports, their tenants, and other affected industries. Given the broad implications to the region's economy, the Ports recommend a detailed preliminary SIR be prepared and released with the PDSR.
    f. AQMD's proposal for how it will specifically apply the scheme of fines, penalties, or other enforcement provisions of the Health and Safety Code to the Ports to enforce the Proposed Rules, including providing an understanding of how the enforcement action would be assessed, given that the Ports are two separate and distinct departments of their respective cities.

The Ports look forward to receiving AQMD's responses to these preliminary questions. We will follow up with additional questions and comments later, as more information is provided by AQMD on the proposed rules.

The Ports are committed to achieving aggressive and feasible emissions reductions and health risk reductions from port-related sources, and have already proven that such reductions can be achieved while allowing the Ports to continue to move forward as a strong economic engine for the region. The Ports remain committed to implementing the CAAP and working in cooperation with the agencies and the industry to achieve our goals. We believe the Proposed Rules are unnecessary and that the AQMD should consider alternative mechanisms to achieve the AQMD's goals. We bring to your attention that the Bay Area AQMD initiated a backstop measure but ultimately determined to pursue a Memorandum of Agreement approach for similar work with the Bay Area ports.

If you have any questions regarding this correspondence, please contact Heather Tomley, Assistant Director of Environmental Planning, Port of Long Beach, at (562) 590-4160; or Christopher Patton, Environmental Affairs Officer, Port of Los Angeles, at (310) 732-3677.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Director of Environmental Management
Port of Los Angeles

cc: Dick Steinke, Executive Director, POLB
Geraldine Knatz, Executive Director, POLA
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Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 16.

FINAL 2012 AIR QUALITY MANAGEMENT PLAN

DECEMBER 2012

TABLE 4-2

List of District's Adoption/Implementation Dates and Estimated Emission Reductions from Short-Term PM2.5 Control Measures

NUMBER	TITLE	ADOPTION	IMPLEMENTATION PERIOD	REDUCTION (TPD)
CMB-01	Further NOx Reductions from RECLAIM [NOx] –*Phase I (Contingency)*	2013	2014	2-3 [a]
BCM-01	Further Reductions from Residential Wood Burning Devices [PM2.5]	2013	2013-2014	7.1 [b]
BCM-02	Further Reductions from Open Burning [PM2.5]	2013	2013-2014	4.6 [c]
BCM-03 (*formerly BCM-05*)	Emission Reductions from Under-Fired Charbroilers [PM2.5]	Phase I – 2013 (*Tech Assessment*) Phase II - TBD	TBD	1 [d]
BCM-04	Further Ammonia Reductions from Livestock Waste [NH3]	Phase I – 2013-2014 (*Tech Assessment*) Phase II - TBD	TBD	TBD [e]
~~IND-01 (*formerly MOB-03*)~~	~~Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources [NOx, SOx, PM2.5]~~	~~2013~~	~~12 months after trigger~~	~~N/A~~ [f]
EDU-01 (*formerly MCS-02, MCS-03*)	Further Criteria Pollutant Reductions from Education, Outreach and Incentives [All Pollutants]	Ongoing	Ongoing	N/A [f]
MCS-01 (*formerly MCS-07*)	Application of All Feasible Measures Assessment [All Pollutants]	Ongoing	Ongoing	TBD [e]

a. Emission reductions are included in the SIP as a contingency measure.
b. Winter average day reductions based on episodic conditions and 75 percent compliance rate.
c. Reductions based on episodic day conditions.
d. Will submit into SIP once technically feasible and cost effective options are confirmed.
e. TBD are reductions to be determined once the technical assessment is complete, and inventory and control approach are identified.
f. N/A are reductions that cannot be quantified due to the nature of the measure (e.g., outreach, incentive programs) or if the measure is designed to ensure reductions that have been assumed to occur will in fact occur.

requirements regarding manure removal, handling, and composting; however, the rule does not focus on fresh manure, which is one of the largest dairy sources of ammonia emissions. An assessment will be conducted to evaluate the use of sodium bisulfate (SBS) at local dairies to evaluate the technical and economic feasibility of its application, as well as potential impacts to ground water, and the health and safety of both workers and dairy stock. Reducing pH level in manure through the application of acidulant additives (acidifier), such as SBS, is one of the potential mitigations for ammonia. SBS is currently being considered for use in animal housing areas where high concentrations of fresh manure are located. Research indicates that best results occur when SBS is used on "hot spots". SBS can also be applied to manure stock piles and at fencelines, and upon scraping manure to reduce ammonia spiking from the leftover remnants of manure and urine. SBS application may be required seasonally or episodically during times when high ambient PM2.5 levels are forecast.

Multiple Component Sources

There is one short-term control measure for all feasible measures.

MCS-01: APPLICATION OF ALL FEASIBLE MEASURES ASSESSMENT: This control measure is to address the state law requirement for all feasible measures for ozone. Existing rules and regulations for pollutants such as VOC, NOx, SOx and PM reflect current best available retrofit control technology (BARCT). However, BARCT continually evolves as new technology becomes available that is feasible and cost-effective. Through this proposed control measure, the District would commit to the adoption and implementation of the new retrofit control technology standards. Finally, staff will review actions taken by other air districts for applicability in our region.

Indirect Sources

This category includes a proposed control measure carried over from the 2007 AQMP (formerly MOB-03) that establishes a backstop measure for indirect sources of emissions at ports.

~~**IND-01 BACKSTOP MEASURE FOR INDIRECT SOURCES OF EMISSIONS FROM PORTS AND PORT-RELATED SOURCES:** The goal of this measure is to ensure that NOx, SOx and PM2.5 emissions reductions from port-related sources are sufficient to attain the 24-hr federal PM2.5 ambient air quality~~

~~standard. If emission levels projected to result from the current regulatory requirements and voluntary reduction strategies specified by the Ports are not realized, the 24-hr federal PM2.5 ambient air quality standard may not be achieved. This control measure is designed to ensure that the necessary emission reductions from port-related sources projected in the 2012 AQMP milestone years are achieved or if it is later determined through a SIP amendment that additional region-wide reductions are needed due to the change in Basin-wide carrying capacity for PM2.5 attainment. In this case, the ports will be required to further reduce their emissions on a "fair-share" basis.~~

Educational Programs

There is one proposed educational program within this category.

EDU-01: FURTHER CRITERIA POLLUTANT REDUCTIONS FROM EDUCATION, OUTREACH AND INCENTIVES: This proposed control measure seeks to provide educational outreach and incentives for consumers to contribute to clean air efforts. Examples include the usage of energy efficient products, new lighting technology, "super compliant" coatings, tree planting, and the use of lighter colored roofing and paving materials which reduce energy usage by lowering the ambient temperature. In addition, this proposed measure intends to increase the effectiveness of energy conservation programs through public education and awareness as to the environmental and economic benefits of conservation. Educational and incentive tools to be used include social comparison applications (comparing your personal environmental impacts with other individuals), social media, and public/private partnerships.

PROPOSED PM2.5 CONTINGENCY MEASURES

Pursuant to CAA section 172(c)(9), contingency measures are emission reduction measures that are to be automatically triggered and implemented if an area fails to attain the national ambient air quality standard by the applicable attainment date, or fails to make reasonable further progress (RFP) toward attainment. Further detailed descriptions of contingency requirements can be found in Chapter 6 – Clean Air Act Requirements. As discussed in Chapter 6 and consistent with U.S. EPA guidance, the District is proposing to use excess air quality improvement from the proposed control strategy, as well as potential NOx reductions from CMB-01 listed above, to demonstrate compliance with this federal requirement.

The Final 2012 AQMP relies on a set of five years of particulate data centered on 2008, the base year selected for the emissions inventory development and the anchor year for the future year PM2.5 projections. In July, 2010, U.S. EPA proposed revisions to the 24-hour PM2.5 modeling attainment demonstration guidance. The new guidance suggests using five years of data, but instead of directly using quarterly calculated design values, the procedure requires the top 8 daily PM2.5 concentrations days in each quarter to reconstruct the annual 98th percentile. The logic in the analysis is twofold: by selecting the top 8 values in each quarter the 98th percentile concentration is guaranteed to be included in the calculation. Second, the analysis projects future year concentrations for each of the 32 days in a year (160 days over five years) to test the response of future year 24-hour PM2.5 to the proposed control strategy. Since the 32 days in each year include different meteorological conditions and particulate species profiles it is expected those individual days will respond independently to the projected future year emissions profile and that a new distribution of PM2.5 concentrations will result. Overall, the process is more robust in that the analysis is examining the impact of the control strategy implementation for a total of 160 days, covering a wide variety of potential meteorology and emissions combinations.

Table 5-1 provides the weighted 2008 annual and 24-hour average PM2.5 design values for the Basin.

TABLE 5-1

2008 Weighted 24-Hour PM2.5 Design Values ($\mu g/m^3$)

MONITORING SITE	24-HOURS
Anaheim	35.0
Los Angeles	40.1
Fontana	45.6
North Long Beach	34.4
South Long Beach	33.4
Mira Loma	47.9
Rubidoux	44.1

Relative Response Factors and Future Year Design Values

To bridge the gap between air quality model output evaluation and applicability to the health-based air quality standards, U.S. EPA guidance has proposed the use of relative response factors (RRF). The RRF concept was first used in the 2007 AQMP modeling attainment demonstrations. The RRF is simply a ratio of future year predicted air quality

with the control strategy fully implemented to the simulated air quality in the base year. The mechanics of the attainment demonstration are pollutant and averaging period specific. For 24-hour PM2.5, the top 10 percentile of modeled concentrations in each quarter of the simulation year are used to determine the quarterly RRFs. For the annual average PM2.5, the quarterly average RRFs are used for the future year projections. For the 8-hour average ozone simulations, the aggregated response of multiple episode days to the implementation of the control strategy is used to develop an averaged RRF for projecting a future year design value. Simply stated, the future year design value is estimated by multiplying the non-dimensional RRF by the base year design value. Thus, the simulated improvement in air quality, based on multiple meteorological episodes, is translated as a metric that directly determines compliance in the form of the standard.

The modeling analyses described in this chapter use the RRF and design value approach to demonstrate future year attainment of the standards.

PM2.5 Modeling

Within the Basin, PM2.5 particles are either directly emitted into the atmosphere (primary particles), or are formed through atmospheric chemical reactions from precursor gases (secondary particles). Primary PM2.5 includes road dust, diesel soot, combustion products, and other sources of fine particles. Secondary products, such as sulfates, nitrates, and complex carbon compounds are formed from reactions with oxides of sulfur, oxides of nitrogen, VOCs, and ammonia.

The Final 2012 AQMP employs the CMAQ air quality modeling platform with SAPRC99 chemistry and WRF meteorology as the primary tool used to demonstrate future year attainment of the 24-hour average PM2.5 standard. A detailed discussion of the features of the CMAQ approach is presented in Appendix V. The analysis was also conducted using the CAMx modeling platform using the "one atmosphere" approach comprised of the SAPRC99 gas phased chemistry and a static two-mode particle size aerosol module as the particulate modeling platform. Parallel testing was conducted to evaluate the CMAQ performance against CAMx and the results indicated that the two model/chemistry packages had similar performance. The CAMx results are provided in Appendix V as a component of the weight of evidence discussion.

The Final 2012 modeling attainment demonstrations using the CMAQ (and CAMx) platform were conducted in a vastly expanded modeling domain compared with the analysis conducted for the 2007 AQMP modeling attainment demonstration. In this analysis, the PM2.5 and ozone base and future simulations were modeled simultaneously. The simulations were conducted using a Lambert Conformal grid

projection where the western boundary of the domain was extended to 084 UTM, over 100 miles west of the ports of Los Angeles and Long Beach. The eastern boundary extended beyond the Colorado river while the northern and southern boundaries of the domain extend to the San Joaquin Valley and the Northern portions of Mexico (3543 UTM). The grid size has been reduced from 5 kilometers squared to 4 kilometers squared and the vertical resolution has been increased from 11 to 18 layers.

The final WRF meteorological fields were generated for the identical domain, layer structure and grid size. The WRF simulations were initialized from National Centers for Environmental Prediction (NCEP) analyses and run for 3-day increments with the option for four dimensional data assimilation (FDDA). Horizontal and vertical boundary conditions were designated using a "U.S. EPA clean boundary profile."

PM2.5 data measured as individual species at six-sites in the AQMD air monitoring network during 2008 provided the characterization for evaluation and validation of the CMAQ annual and episodic modeling. The six sites include the historical PM2.5 maximum location (Riverside- Rubidoux), the stations experiencing many of the highest county concentrations (among the 4-county jurisdiction including Fontana, North Long Beach and Anaheim) and source oriented key monitoring sites addressing goods movement (South Long Beach) and mobile source impacts (Central Los Angeles). It is important to note that the close proximity of Mira Loma to Rubidoux and the common in-Basin air flow and transport patterns enable the use of the Rubidoux speciated data as representative of the particulate speciation at Mira Loma. Both sites are directly downwind of the dairy production areas in Chino and the warehouse distribution centers located in the northwestern corner of Riverside County. Speciated data monitored at the selected sites for 2006-2007 and 2009-2010 were analyzed to corroborate the applicability of using the 2008 profiles.

Day-specific point source emissions were extracted from the District stationary source and RECLAIM inventories. Mobile source emissions included weekday, Saturday and Sunday profiles based on CARB's EMFAC2011 emissions model, CALTRANS weigh-in-motion profiles, and vehicle population data and transportation analysis zone (TAZ) data provided by SCAG. The mobile source data and selected area source data were subjected to daily temperature corrections to account for enhanced evaporative emissions on warmer days. Gridded daily biogenic VOC emissions were provided by CARB using BEIGIS biogenic emissions model. The simulations benefited from enhancements made to the emissions inventory including an updated ammonia inventory, improved emissions characterization that split organic compounds into coarse, fine and primary

particulate categories, and updated spatial allocation of primary paved road dust emissions.

Model performance was evaluated against speciated particulate PM2.5 air quality data for ammonium, nitrates, sulfates, secondary organic matter, elemental carbon, primary and total particulate mass for the six monitoring sites (Rubidoux, Central Los Angeles, Anaheim, South Long Beach, Long Beach, and Fontana).

The following section summarizes the PM2.5 modeling approach conducted in preparation for this Plan. Details of the PM2.5 modeling are presented in Appendix V.

24-Hour PM2.5 Modeling Approach

CMAQ simulations were conducted for each day in 2008. The simulations included 8784 consecutive hours from which daily 24-hour average PM2.5 concentrations (0000-2300 hours) were calculated. A set of RRFs were generated for each future year simulation. RRFs were generated for the ammonium ion (NH_4), nitrate ion (NO_3), sulfate ion (SO_4), organic carbon (OC), elemental carbon (EC) and a combined grouping of crustal, sea salts and metals (Others). A total of 24 RRFs were generated for each future year simulation (4 seasons and 6 monitoring sites).

Future year concentrations of the six component species were calculated by applying the model generated quarterly RRFs to the speciated 24-hour PM2.5 (FRM) data, sorted by quarter, for each of the five years used in the design value calculation. The 32 days in each year were then re-ranked to establish a new 98^{th} percentile concentration. The resulting future year 98^{th} percentile concentrations for the five years were subjected to weighted averaging for the attainment demonstration.

In this chapter, future year PM2.5 24-hour average design values are presented for 2014, and 2019 to (1) demonstrate the future baseline concentrations if no further controls are implemented; (2) identify the amount of air quality improvement needed to advance the attainment date to 2014; and (3) confirm the attainment demonstration given the proposed PM2.5 control strategy. In addition, Appendix V will include a discussion and demonstration that attainment will be satisfied for the entire modeling domain.

Weight of Evidence

PM2.5 modeling guidance strongly recommends the use of corroborating evidence to support the future year attainment demonstration. The weight of evidence demonstration for the Final 2012 AQMP includes brief discussions of the observed 24-hour PM2.5,

emissions trends, and future year PM2.5 predictions. Detailed discussions of all model results and the weight of evidence demonstration are provided in Appendix V.

FUTURE AIR QUALITY

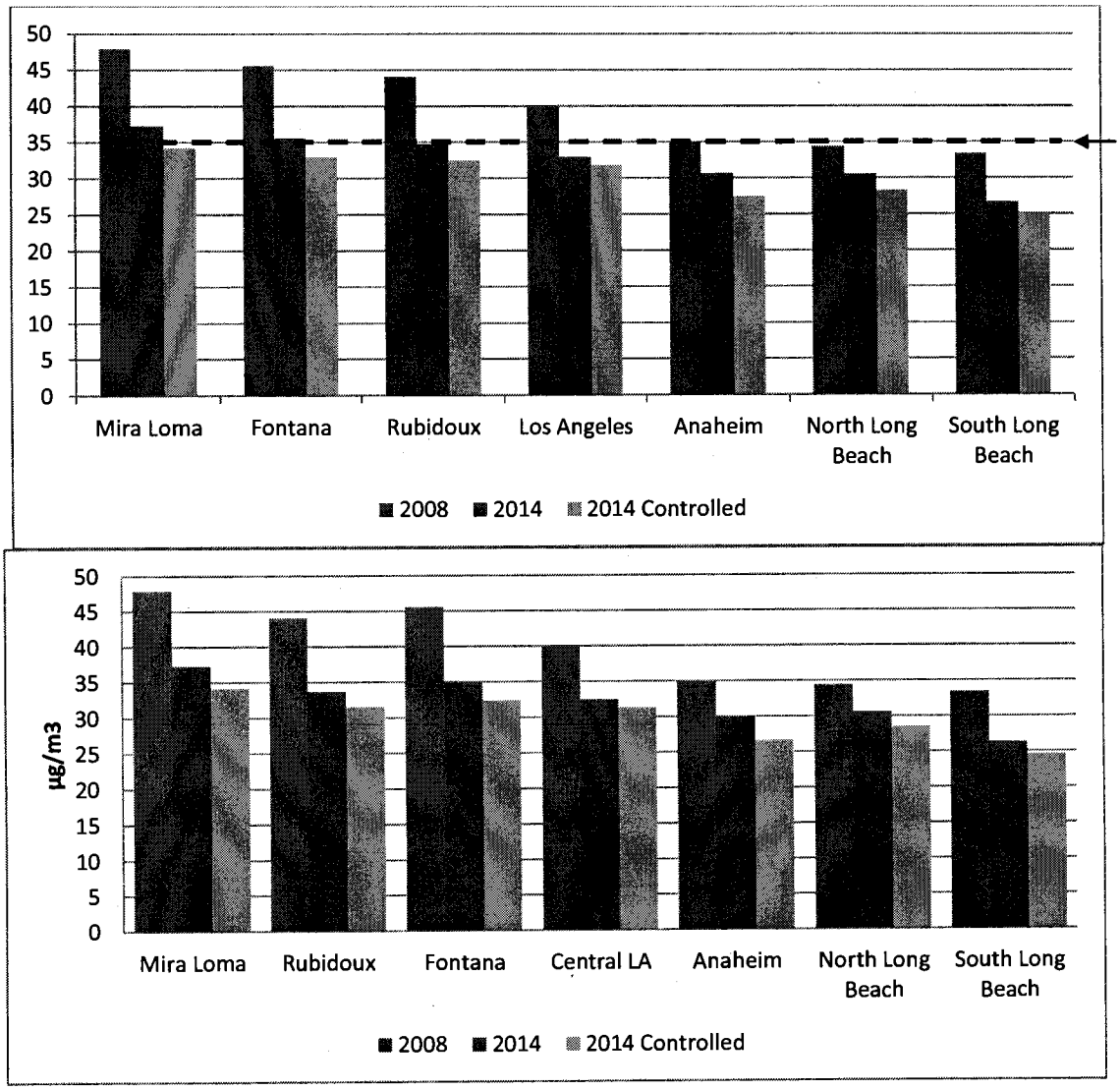
Under the federal Clean Air Act, the Basin must comply with the federal PM2.5 air quality standards by December, 2014 [Section 172(a)(2)(A)]. An extension of up-to five years (until 2019) could be granted if attainment cannot be demonstrated any earlier with all feasible control measures incorporated.

24-Hour PM2.5

A simulation of 2014 baseline emissions was conducted to substantiate the severity of the 24-hour PM2.5 problem in the Basin. The simulation used the projected emissions for 2014 which included all adopted control measures that will be implemented prior to and during 2014, including mobile source incentive projects under contract (Proposition 1B and Carl Moyer Programs). The resulting 2014 future-year Basin design value ($37.3\mu g/m^3$) failed to meet the federal standard. As a consequence additional controls are needed.

Simulation of the 2019 baseline emissions indicates that the Basin PM2.5 will attain the federal 24-hour PM2.5 standard in 2019 without additional controls. With the control program in place, the 24-hour PM2.5 simulations project that the 2014 design value will be 34.3 $\mu g/m^3$ and that the attainment date will advance from 2019 to 2014.

Figure 5-3 depicts future 24-hour PM2.5 air quality projections at the Basin design site (Mira Loma) and six PM2.5 monitoring sites having comprehensive particulate species characterization. Shown in the figure, are the base year design values for 2008 along with projections for 2014 with and without control measures in place. All of the sites with the exception of Mira Loma will meet the 24-hour PM2.5 standard by 2014 without additional controls. With implementation of the control measures, all sites in the Basin demonstrate attainment.



**No such state standard.*

FIGURE 5-3

Maximum 24-Hour Average PM2.5 Design Concentrations:
2008 Baseline, 2014 and 2014 Controlled

Spatial Projections of PM2.5 Design Values

Figure 5-4 provides a perspective of the Basin-wide spatial extent of 24-hour PM2.5 impacts in the base year 2008, with all adopted rules and measures implemented. Figures 5-5 and 5-6 provide a Basin-wide perspective of the spatial extent of 24-hour PM2.5 future impacts for baseline 2014 emissions and 2014 with the proposed control program in place. With no additional controls, several areas around the northwestern portion of Riverside and southwestern portion of San Bernardino Counties depict grid

cells with weighted PM2.5 24-hour design values exceeding 35 $\mu g/m^3$. By 2014, the number of grid cells with concentrations exceeding the federal standard is restricted to a small region surrounding the Mira Loma monitoring station in northwestern Riverside County. With the control program fully implemented in 2014, the Basin does not exhibit any grid cells exceeding the federal standard.

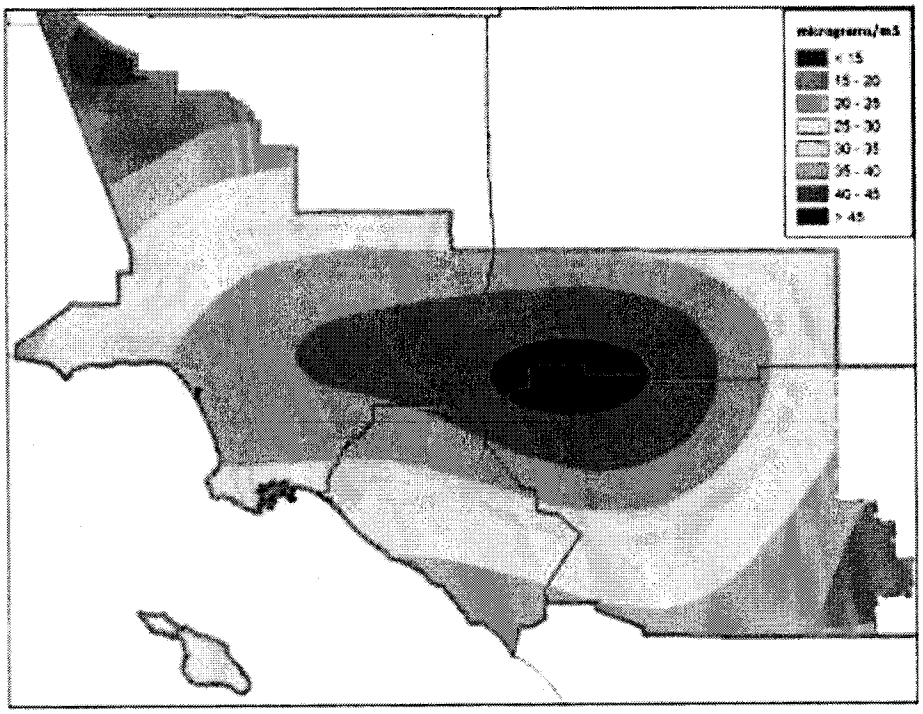


FIGURE 5-4

2008 Baseline 24-Hour PM2.5 Design Concentrations ($\mu g/m^3$)

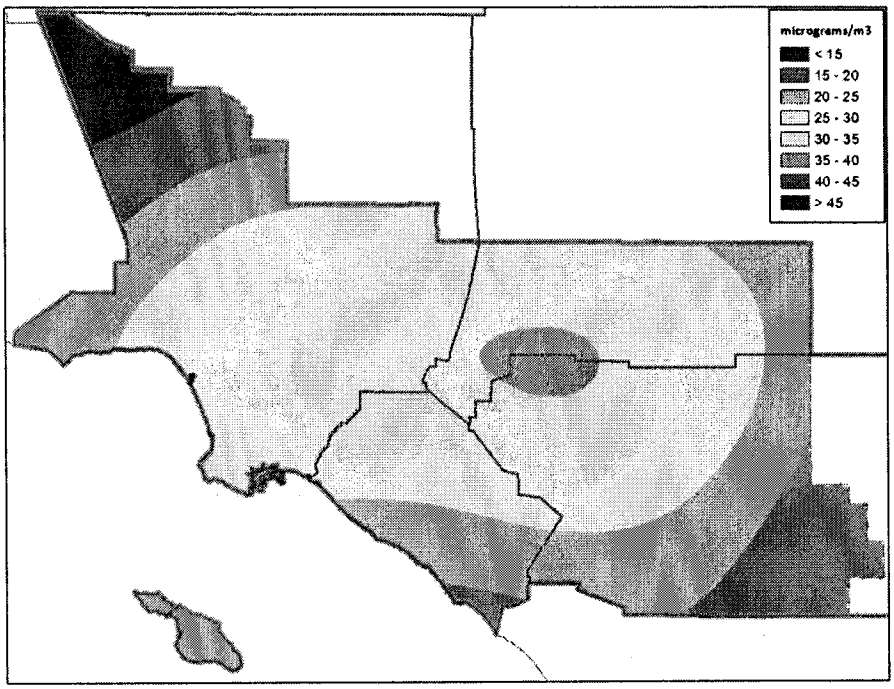


FIGURE 5-5

2014 Baseline 24-Hour PM2.5 Design Concentrations ($\mu g/m^3$)

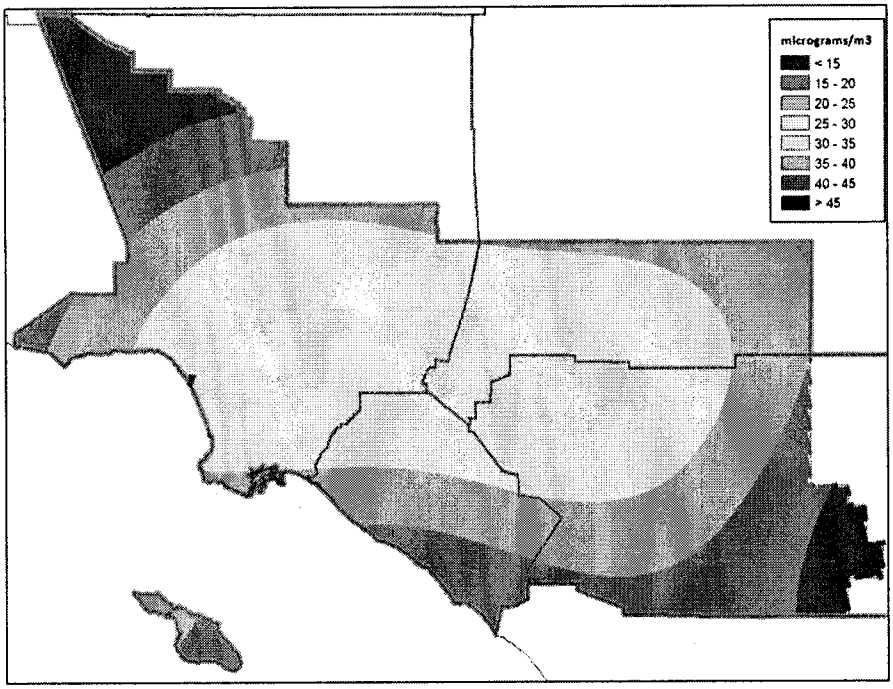


FIGURE 5-6

2014 Controlled 24-Hour PM2.5 Design Concentrations ($\mu g/m^3$)

Weight of Evidence Discussion

The weight of evidence discussion focuses on the trends of 24-hour PM2.5 and key precursor emissions to provide justification and confidence that the Basin will meet the federal standard by 2014.

Figure 5-7 depicts the long term trend of observed Basin 24-hour average PM2.5 design values with the CMAQ projected design value for 2014. Also superimposed on the graph is the linear best-fit trend line for the observed 24-hour average PM2.5 design values. The observed trend depicts a steady 49 percent decrease in observed design value concentrations between 2001 and 2011. The rate of improvement is just under 4 $\mu g/m^3$ per year. If the trend is extended beyond 2011, the projection suggests attainment of the PM2.5 24-hour standard in 2013, one year earlier than determined by the attainment demonstration. While the straight-line future year approximation is aggressive in its projection, it offers insight to the effectiveness of the ongoing control program and is consistent with the attainment demonstration.

Figures 5-8 depicts the long term trend of Basin NOx emissions for the same period. Figure 5-9 provides the corresponding emissions trend for directly emitted PM2.5. Base year NOx inventories between 2002 (from the 2007 AQMP) and 2008 experienced a 31 percent reduction while directly emitted PM2.5 experienced a 19 percent reduction over the 6-year period. The Basin 24-hour average PM2.5 design value experienced a concurrent 27 percent reduction between 2002 and 2008. The projected trend of NOx emissions indicates that the PM2.5 precursor associated with the formation of nitrate will continue to be reduced though 2019 by an additional 48 percent. Similarly, the projected trend of directly emitted PM2.5 projects a more moderate reduction of 13 percent through 2019. However, as discussed in the 2007 AQMP and in a later section of this chapter, directly emitted PM2.5 is a more effective contributor to the formation of ambient PM2.5 compared to NOx. While the projected NOx and direct PM2.5 emissions trends decrease at a reduced rate between 2012 and 2019, it is clearly evident that the overall significant reductions will continue to result in lower nitrate, elemental carbon and direct particulate contributions to 24-hour PM2.5 design values.

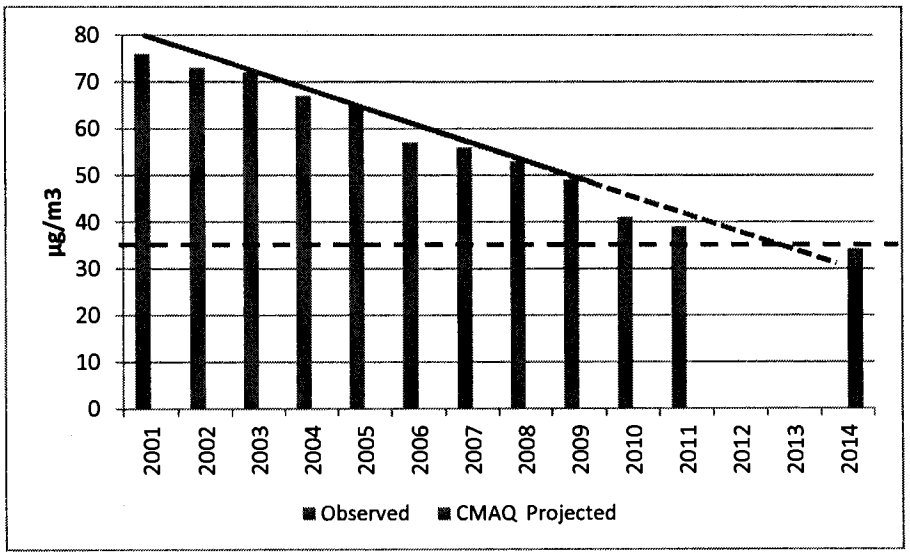


FIGURE 5-7

Basin Observed and CMAQ Projected
Future Year PM2.5 Design Concentrations ($\mu g/m^3$)

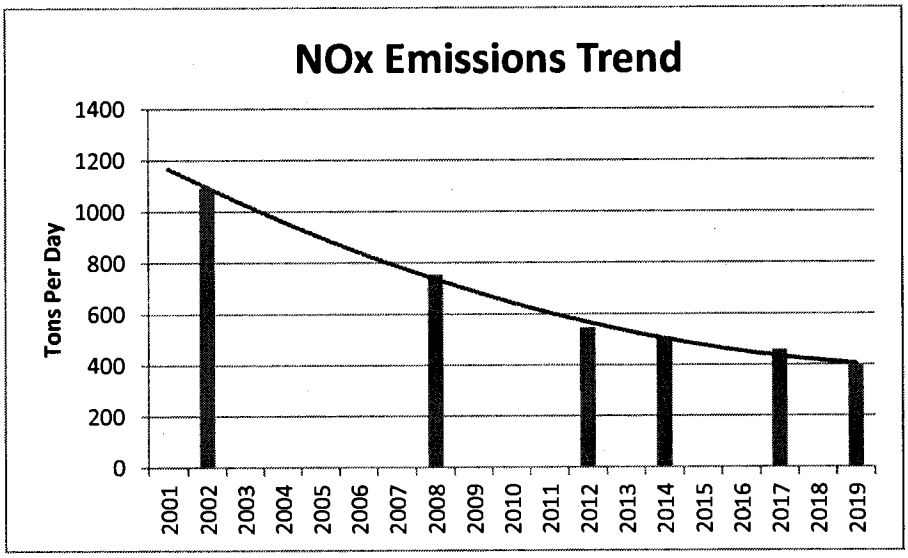


FIGURE 5-8

Trend of Basin NOx Emissions (Controlled)

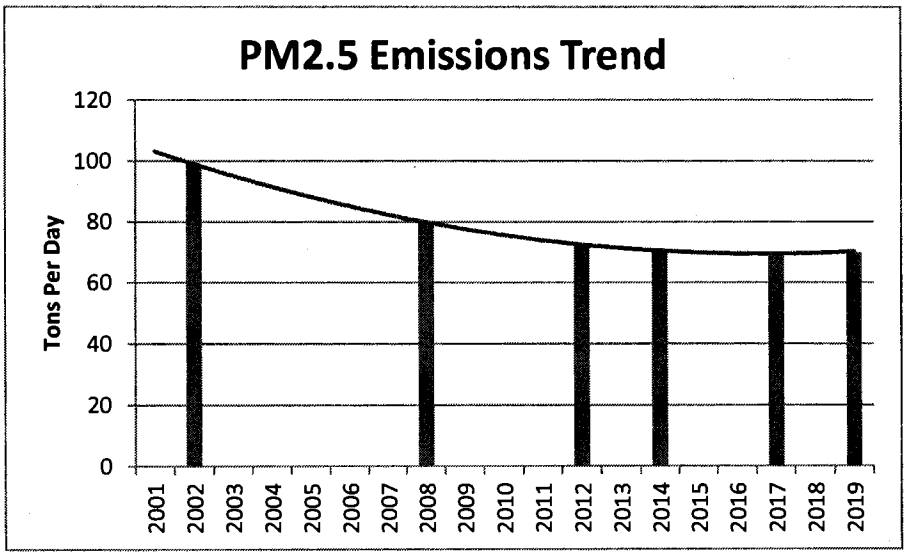


FIGURE 5-9

Trend of Basin PM2.5 Emissions (Controlled)

Control Strategy Choices

PM2.5 has five major precursors that contribute to the development of the ambient aerosol including ammonia, NOx, SOx, VOC, and directly emitted PM2.5. Various combinations of reductions in these pollutants could all provide a path to clean air. The 24-hour PM2.5 attainment strategy presented in this Final 2012 AQMP relies on a dual approach to first demonstrate attainment of the federal standard by 2019 and then focuses on controls that will be most effective in reducing PM2.5 to accelerate attainment to the earliest extent. The 2007 AQMP control measures since implemented will result in substantial reductions of SOx, direct PM2.5, VOC and NOx emissions. Newly proposed short-term measures, discussed in Chapter 4, will provide additional regional emissions reductions targeting directly emitted PM2.5 and NOx.

It is useful to weigh the value of the precursor emissions reductions (on a per ton basis) to microgram per cubic meter improvements in ambient PM2.5 levels. As presented in the weight of evidence discussion, trends of PM2.5 and NOx emissions suggest a direct response between lower emissions and improving air quality. The Final 2007 AQMP established a set of factors to relate regional per ton precursor emissions reductions to PM2.5 air quality improvements based on the annual average concentration. The Final 2012 AQMP CMAQ simulations provided a similar set of factors, but this time directed at 24-hour PM2.5. The analysis determined that VOC emissions reductions have the lowest return in terms of micrograms reduced per ton reduction, one third of the benefit of NOx reductions. SOx emissions were about eight times more effective than NOx

reductions. However, directly emitted PM2.5 reductions were approximately 15 times more effective than NOx reductions. It is important to note that the contribution of ammonia emissions is embedded as a component of the SOx and NOx factors since ammonium nitrate and ammonium sulfate are the resultant particulates formed in the ambient chemical process. Table 5-2 summarizes the relative importance of precursor emissions reductions to 24-hour PM2.5 air quality improvements based on the analysis. . (A comprehensive discussion of the emission reduction factors is presented in Attachment 8 of Appendix V of this document). Emission reductions due to existing programs and implementation of the 2012 AQMP control measures will result in projected 24-hour PM2.5 concentrations throughout the Basin that meet the standard by 2014 at all locations. Basin-wide curtailment of wood burning and open burning when the PM2.5 air quality is projected to exceed 30 $\mu g/m^3$ in Mira Loma will effectively accelerate attainment at Mira Loma from 2019 to 2014. Table 5-3 lists the mix of the four primary precursor's emissions reductions targeted for the staged control measure implementation approach.

TABLE 5-2

Relative Contributions of Precursor Emissions Reductions to Simulated Controlled Future-Year 24-hour PM2.5 Concentrations

PRECURSOR	PM2.5 COMPONENT ($\mu g/m^3$)	STANDARDIZED CONTRIBUTION TO AMBIENT PM2.5 MASS
VOC	Organic Carbon	Factor of 0.3
NOx	Nitrate	Factor of 1
SOx	Sulfate	Factor of 7.8
PM2.5	Elemental Carbon & Others	Factor of 14.8

TABLE 5-3

Final 2012 AQMP
24-hour PM2.5 Attainment Strategy
Allowable Emissions (TPD)

YEAR	SCENARIO	VOC	NOx	SOx	PM2.5
2014	Baseline	451	506	18	70
2014	Controlled	451	490	18	58*

*Winter episodic day emissions

ADDITIONAL MODELING ANALYSES

As a component of the Final 2012 AQMP, concurrent simulations were also conducted to update and assess the impacts to annual average PM2.5 and 8-hour ozone given the new modeling platform and emissions inventory. This update provides a confirmation that the control strategy will continue to move air quality expeditiously towards attainment of the relevant standards.

Annual PM2.5

Annual PM2.5 Modeling Approach

The Final 2012 AQMP annual PM2.5 modeling employs the same approach to estimating the future year annual PM2.5 as was described in the 2007 AQMP attainment demonstrations. Future year PM2.5 annual average air quality is determined using site

and species specific quarterly averaged RRFs applied to the weighted quarterly average 2008 PM2.5 design values per U.S. EPA guidance documents.

In this application, CMAQ and WRF were used to simulate 2008 meteorological and air quality to determine Basin annual average PM2.5 concentrations. The future year attainment demonstration was analyzed for 2015, the target set by the federal CAA. The 2014 simulation relies on implementation of all adopted rules and measures through 2014. This enables a full year-long demonstration based on a control strategy that would be fully implemented by January 1, 2015. It is important to note that the use of the quarterly design values for a 5-year period centered around 2008 (listed in Table 5-4) continue to be used in the projection of the future year annual average PM2.5 concentrations. The future year design reflects the weighted quarterly average concentration calculated from the projections over five years (20 quarters).

TABLE 5-4

2008 Weighted Annual PM2.5 Design Values* ($\mu g/m^3$)

MONITORING SITE	ANNUAL*
Anaheim	13.1
Los Angeles	15.4
Fontana	15.7
North Long Beach	13.6
South Long Beach	13.2
Mira Loma	18.6
Rubidoux	16.7

* Calculated based on quarterly observed data between 2006 – 2010

Future Annual PM2.5 Air Quality

The projections for the annual state and federal standards are shown in Figure 5-10. All areas will be in attainment of the federal annual standard (15.0 $\mu g/m^3$) by 2014. The 2014 design value is projected to be 9 percent below the federal standard. However, as shown in Figure 5-10, the Final 2012 AQMP does not achieve the California standard of 12 $\mu g/m^3$ by 2014. Additional controls would be needed to meet the California annual PM2.5 standard.

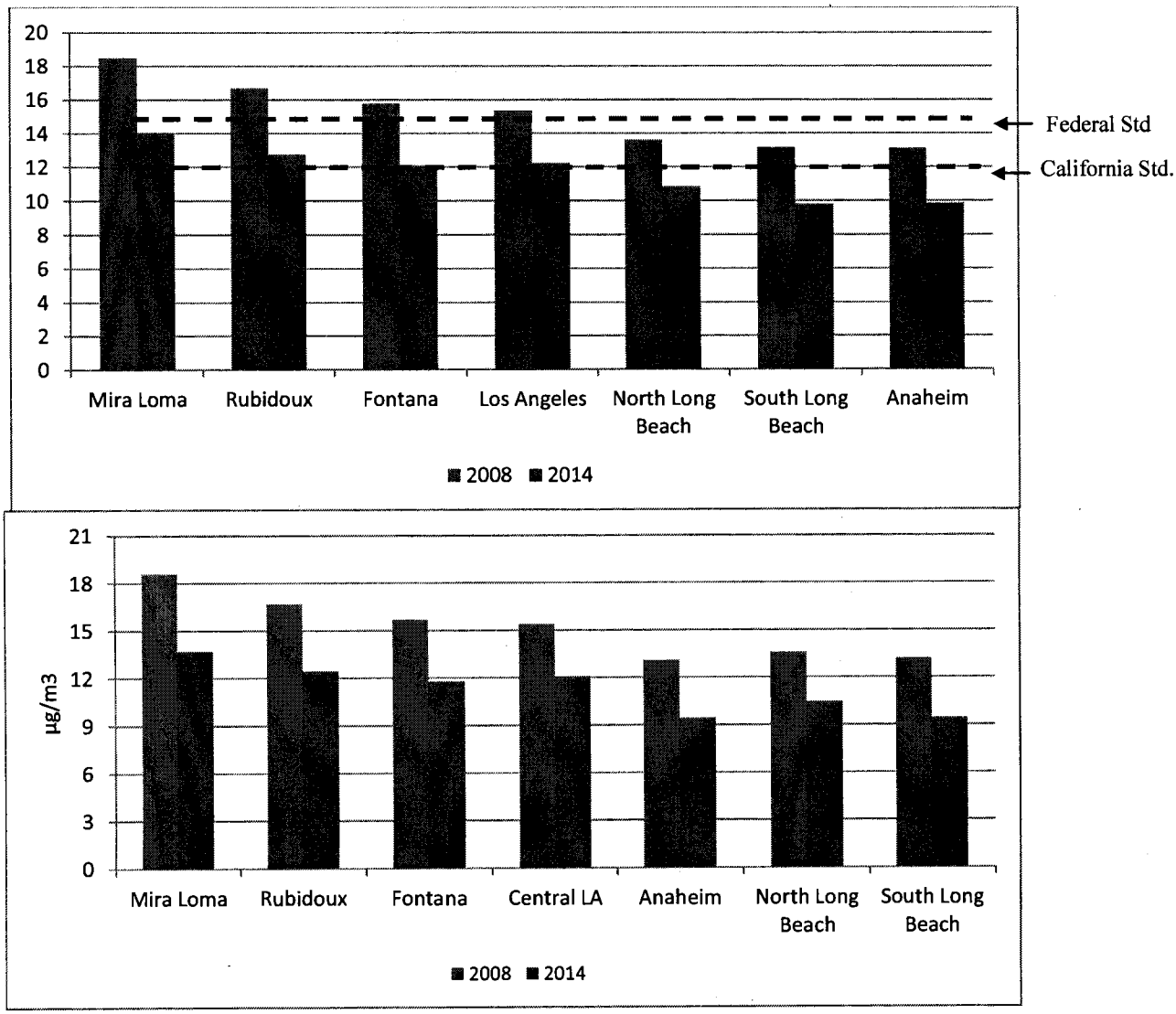


FIGURE 5-10

Annual Average PM2.5 Design Concentrations:
2008 and 2014 Controlled

Ozone Modeling

The 2007 AQMP provided a comprehensive 8-hour ozone analysis that demonstrated future year attainment of the 1997 federal ozone standard (80 ppb) by 2023 with implementation of short-term measures and CAA Section 182(e)(5) long term emissions reductions. The analysis concluded that NOx emissions needed to be reduced approximately 76 percent and VOC 22 percent from the 2023 baseline in order to demonstrate attainment. The 2023 base year VOC and NOx summer planning emissions inventories included 536 and 506 TPD, respectively.

INTRODUCTION

The purpose of the 2012 revision to the AQMP for the South Coast Air Basin is to set forth a comprehensive program that will assist in leading the Basin and those portions of the Salton Sea Air Basin under the District's jurisdiction into compliance with all federal and state air quality planning requirements. Specifically, the Final 2012 AQMP is designed to satisfy the SIP submittal requirements of the federal CAA to demonstrate attainment of the 24-hour PM2.5 ambient air quality standards, the California CAA triennial update requirements, and the District's commitment to update transportation emission budgets based on the latest approved motor vehicle emissions model and planning assumptions. Specific information related to the air quality and planning requirements for portions of the Salton Sea Air Basin under the District's jurisdiction are included in the Final 2012 AQMP and can be found in Chapter 7 – Current and Future Air Quality – Desert Nonattainment Area. The 2012 AQMP will be submitted to U.S. EPA as SIP revisions once approved by the District's Governing Board and CARB.

SPECIFIC 24-HOUR PM2.5 PLANNING REQUIREMENTS

In November 1990, Congress enacted a series of amendments to the CAA intended to intensify air pollution control efforts across the nation. One of the primary goals of the 1990 CAA Amendments was to overhaul the planning provisions for those areas not currently meeting the NAAQS. The CAA identifies specific emission reduction goals, requires both a demonstration of reasonable further progress and an attainment demonstration, and incorporates more stringent sanctions for failure to attain or to meet interim milestones. There are several sets of general planning requirements, both for nonattainment areas [Section 172(c)] and for implementation plans in general [Section 110(a)(2)]. These requirements are listed and briefly described in Chapter 1 (Tables 1-4 and 1-5). The general provisions apply to all applicable criteria pollutants unless superseded by pollutant-specific requirements. The following sections discuss the federal CAA requirements for the 24-hour PM2.5 standards.

FEDERAL AIR QUALITY STANDARDS FOR FINE PARTICULATES

The U.S. EPA promulgated the National Ambient Air Quality Standards for Fine Particles (PM2.5) in July 1997. Following legal actions, the statements were eventually upheld in March 2002. The annual standard was set at a level of 15 micrograms per cubic meter ($\mu g/m^3$), based on the 3-year average of annual mean PM2.5 concentrations. The 24-hour standard was set at a level of 65 $\mu g/m^3$ based on the 3-year average of the

98th percentile of 24-hour concentrations. U.S. EPA issued designations in December 2004, which became effective on April 5, 2005.

In January 2006, U.S. EPA proposed to lower the 24-hour PM2.5 standard. On September 21, 2006, U.S. EPA signed the "Final Revisions to the NAAQS for Particulate Matter." In promulgating the new standards, U.S. EPA followed an elaborate review process which led to the conclusion that existing standards for particulates were not adequate to protect public health. The studies indicated that for PM2.5, short-term exposures at levels below the 24-hour standard of 65 $\mu g/m^3$ were found to cause acute health effects, including asthma attacks and breathing and respiratory problems. As a result, the U.S. EPA established a new, lower 24-hour average standard for PM2.5 at 35 $\mu g/m^3$. No changes were made to the existing annual PM2.5 standard which remained at 15 $\mu g/m^3$ as discussed in Chapter 2. On June 14, 2012, U.S. EPA proposed revisions to this annual standard. The annual component of the standard was set to provide protection against typical day-to-day exposures as well as longer-term exposures, while the daily standard protects against more extreme short-term events. For the 2006 24-hour PM2.5 standard, the form of the standard continues to be based on the 98th percentile of 24-hour PM2.5 concentrations measured in a year (averaged over three years) at the monitoring site with the highest measured values in an area. This form of the standard was set to be health protective while providing a more stable metric to facilitate effective control programs. Table 6-1 summarizes the U.S. EPA's PM2.5 standards.

TABLE 6-1

U.S. EPA's PM2.5 Standards

	1997 STANDARDS		2006 STANDARDS	
	Annual	**24-Hour**	**Annual**	**24-Hour**
PM2.5	15 $\mu g/m^3$ Annual arithmetic mean, averaged over 3 years	65 $\mu g/m^3$ 24-hour average, 98th percentile, averaged over 3 years	15 $\mu g/m^3$ Annual arithmetic mean, averaged over 3 years	35 $\mu g/m^3$ 24-hour average, 98th percentile, averaged over 3 years

On December 14, 2009, the U.S. EPA designated the Basin as nonattainment for the 2006 24-hour PM2.5 NAAQS. A SIP revision is due to U.S. EPA no later than three years from the effective date of designation, December 14, 2012, demonstrating attainment with the standard by 2014. Under Section 172 of the CAA, U.S. EPA may grant an area an extension of the initial attainment date for a period of up to five years.

With implementation of all feasible measures as outlined in this Plan, the Basin will demonstrate attainment with the 24-hour PM2.5 standard by 2014, so no extension is being requested.

FEDERAL CLEAN AIR ACT REQUIREMENTS

For areas such as the Basin that are classified nonattainment for the 2006 24-hour PM2.5 NAAQS, Section 172 of subpart 1 of the CAA applies. Section 172(c) requires states with nonattainment areas to submit an attainment demonstration. Section 172(c)(2) requires that nonattainment areas demonstrate Reasonable Further Progress (RFP). Under subpart I of the CAA, all nonattainment area SIPs must include contingency measures. Section 172(c)(1) of the CAA requires nonattainment areas to provide for implementation of all reasonably available control measures (RACM) as expeditiously as possible, including the adoption of reasonably available control technology (RACT). Section 172 of the CAA requires the implementation of a new source review program including the use of "lowest achievable emission rate" for major sources referred to under state law as "Best Available Control Technology" (BACT) for major sources of PM2.5 and precursor emissions (i.e., precursors of secondary particulates).

This section describes how the Final 2012 AQMP meets the 2006 24-hour PM2.5 planning requirements for the Basin. The requirements specifically addressed for the Basin are:

1. Attainment demonstration and modeling [Section 172(a)(2)(A)];
2. Reasonable further progress [Section 172(c)(2)];
3. Reasonably available control technology (RACT) and Reasonably available control measures (RACM) [Section 172(c)(1)] ;
4. New source review (NSR) [Sections 172(c)(4) and (5)];
5. Contingency measures [Section 172(c)(9)]; and
6. Transportation control measures (as RACM).

Attainment Demonstration and Modeling

Under the CAA Section 172(a)(2)(A), each attainment plan should demonstrate that the area will attain the NAAQS "as expeditiously as practicable," but no later than five years from the effective date of the designation of the area. If attainment within five years is considered impracticable due to the severity of an area's air quality problem and the lack

of available control measures, the state may propose an attainment date of more than five years but not more than ten years from designation.

This attainment demonstration consists of: (1) technical analyses that locate, identify, and quantify sources of emissions that contribute to violations of the PM2.5 standard; (2) analysis of future year emission reductions and air quality improvement resulting from adopted and proposed control measures; (3) proposed emission reduction measures with schedules for implementation; and (4) analysis supporting the region's proposed attainment date by performing a detailed modeling analysis. Chapter 3 and Appendix III of the Final 2012 AQMP present base year and future year emissions inventories in the Basin, while Chapter 4 and Appendix IV provide descriptions of the proposed control measures, the resulting emissions reductions, and schedules for implementation of each measure. The detailed modeling analysis and attainment demonstration are summarized in Chapter 5 and documented in Appendix V.

Reasonable Further Progress (RFP)

The CAA requires SIPs for most nonattainment areas to demonstrate reasonable further progress (RFP) towards attainment through emission reductions phased in from the time of the SIP submission until the attainment date time frame. The RFP requirements in the CAA are intended to ensure that there are sufficient PM2.5 and precursor emission reductions in each nonattainment area to attain the 2006 24-hour PM2.5 NAAQS by December 14, 2014.

Per CAA Section 171(1), RFP is defined as "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." As stated in subsequent federal regulation, the goal of the RFP requirements is for areas to achieve generally linear progress toward attainment. To determine RFP for the 2006 24-hour PM2.5 attainment date, the plan should rely only on emission reductions achieved from sources within the nonattainment area.

Section 172(c)(2) of the CAA requires that nonattainment area plans show ongoing annual incremental emissions reductions toward attainment, which is commonly expressed in terms of benchmark emissions levels or air quality targets to be achieved by certain interim milestone years. The U.S. EPA recommends that the RFP inventories include direct PM2.5, and also PM precursors (such as SOx, NOx, and VOCs) that have been determined to be significant.

40 CFR 51.1009 requires any area that submits an approvable demonstration for an attainment date of more than five years from the effective date of designation to also submit an RFP plan. The Final 2012 AQMP demonstrates attainment with the 24-hour PM2.5 standard in 2014, which is five years from the 2009 designation date. Therefore, no separate RFP plan is required.

Reasonably Available Control Measures (RACM) and Reasonably Available Control Technology (RACT) Requirements

Section 172(c)(1) of the CAA requires nonattainment areas to

> *Provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.*

The District staff has completed its RACM analysis as presented in Appendix VI of the Final 2012 AQMP.

The U.S. EPA provided further guidance on the RACM in the preamble and the final "Clean Air Fine Particle Implementation Rule" to implement the 1997 PM2.5 NAAQS which were published in the Federal Register on November 1, 2005 and April 25, 2007, respectively.[1, 2] The U.S. EPA's long-standing interpretation of the RACM provision stated in the 1997 PM2.5 Implementation Rule is that the non-attainment air districts should consider all candidate measures that are available and technologically and economically feasible to implement within the non-attainment areas, including any measures that have been suggested; however, the districts are not obligated to adopt all measures, but should demonstrate that there are no additional reasonable measures available that would advance the attainment date by at least one year or contribute to reasonable further progress (RFP) for the area.

With regard to the identification of emission reduction programs, the U.S. EPA recommends that non-attainment air districts first identify the emission reduction programs that have already been implemented at the federal level and by other states and local air districts. Next, the U.S. EPA recommends that the air districts examine additional RACM/RACTs adopted for other non-attainment areas to attain the ambient air quality standards as expeditiously as practicable. The U.S. EPA also recommends the

[1] See 70FR 65984 (November 1, 2005)
[2] See 72FR 20586 (April 25, 2007)

air districts evaluate potential measures for sources of direct PM2.5, SOx and NOx first. VOC and ammonia are only considered if the area determines that they significantly contribute to the PM2.5 concentration in the non-attainment area (otherwise they are pressured not to significantly contribute). The PM2.5 Implementation Rule also requires that the air districts establish RACM/RACT emission standards that take into consideration the condensable fraction of direct PM2.5 emissions after January 1, 2011. In addition, the U.S. EPA recognizes that each non-attainment area has its own profile of emitting sources, and thus neither requires specific RACM/RACT to be implemented in every non-attainment area, nor includes a specific source size threshold for the RACM/RACT analysis.

A RACM/RACT demonstration must be provided within the SIP. For areas projected to attain within five years of designation, a limited RACM/RACT analysis including the review of available reasonable measures, the estimation of potential emission reductions, and the evaluation of the time needed to implement these measures is sufficient. The areas that cannot reach attainment within five years must conduct a thorough RACM/RACT analysis to demonstrate that sufficient control measures could not be adopted and implemented cumulatively in a practical manner in order to reach attainment at least one year earlier.

In regard to economic feasibility, the U.S. EPA did not propose a fixed dollar per ton cost threshold and recommended that air districts to include health benefits in the cost analysis. As indicated in the preamble of the 1997 PM2.5 Implementation Rule:

> *In regard to economic feasibility, U.S. EPA is not proposing a fixed dollar per ton cost threshold for RACM, just as it is not doing so for RACT...Where the severity of the non-attainment problem makes reductions more imperative or where essential reductions are more difficult to achieve, the acceptable cost of achieving those reductions could increase. In addition, we believe that in determining what are economically feasible emission reduction levels, the States should also consider the collective health benefits that can be realized in the area due to projected improvements.*

Subsequently, on March 2, 2012, the U.S. EPA issued a memorandum to confirm that the overall framework and policy approach stated in the PM2.5 Implementation Rule for the 1997 PM2.5 standards continues to be relevant and appropriate for addressing the 2006 24-hour PM2.5 standards.

As described in Appendix VI, the District has concluded that all District rules fulfilled RACT for the 2006 24-hour PM2.5 standard. In addition, pursuant to California Health

and Safety Code Section 39614 (SB 656), the District evaluated a statewide list of feasible and cost-effective control measures to reduce directly emitted PM2.5 and its potential precursor emissions (e.g., NOx, SOx, VOCs, and ammonia). The District has concluded that for the majority of stationary and area source categories, the District was identified as having the most stringent rules in California (see Appendix VI). Under the RACM guidelines, transportation control measures must be included in the analysis. Consequently, SCAG has completed a RACM determination for transportation control measures in the Final 2012 AQMP, included in Appendix IV-C.

New Source Review

New source review (NSR) for major and in some cases minor sources of PM2.5 and its precursors are presently addressed through the District's NSR and RECLAIM programs (Regulations XIII and XX). In particular, Rule 1325 has been adopted to satisfy NSR requirements for major sources of directly-emitted PM2.5.

Contingency Measures

Contingency Measure Requirements

Section 172(c)(9) of the CAA requires that SIPs include contingency measures.

> *Such plan shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or the Administrator.*

In subsequent NAAQS implementation regulations and SIP approvals/disapprovals published in the Federal Register, U.S. EPA has repeatedly reaffirmed that SIP contingency measures:

1. Must be fully adopted rules or control measures that are ready to be implemented, without significant additional action (or only minimal action) by the State, as expeditiously as practicable upon a determination by U.S. EPA that the area has failed to achieve, or maintain reasonable further progress, or attain the NAAQS by the applicable statutory attainment date (40 CFR § 51.1012, 73 FR 29184)

2. Must be measures not relied on in the plan to demonstrate RFP or attainment for the time period in which they serve as contingency measures and should provide SIP-creditable emissions reductions equivalent to one year of RFP, based on "generally

linear" progress towards achieving the overall level of reductions needed to demonstrate attainment (76 FR 69947, 73 FR 29184)

3. Should contain trigger mechanisms and specify a schedule for their implementation (72 FR 20642)

Furthermore, U.S. EPA has issued guidance that the contingency measure requirement could be satisfied with already adopted control measures, provided that the controls are above and beyond what is needed to demonstrate attainment with the NAAQS (76 FR 57891).

> *U.S. EPA guidance provides that contingency measures may be implemented early, i.e., prior to the milestone or attainment date. Consistent with this policy, States are allowed to use excess reductions from already adopted measures to meet the CAA sections 172(c)(9) and 182(c)(9)contingency measures requirement. This is because the purpose of contingency measures is to provide extra reductions that are not relied on for RFP or attainment, and that will provide a cushion while the plan is being revised to fully address the failure to meet the required milestone. Nothing in the CAA precludes a State from implementing such measures before they are triggered.*

Thus, an already adopted control measure with an implementation date prior to the milestone year or attainment year would obviate the need for an automatic trigger mechanism.

Air Quality Improvement Scenario

The U.S. EPA Guidance Memo issued March 2, 2012, "Implementation Guidance for the 2006 24-Hour Fine Particle (PM2.5) National Ambient Air Quality Standard (NAAQS)", provides the following discussion of contingency measures:

> *The preamble of the 2007 PM2.5 Implementation Rule (see 79 FR 20642-20645) notes that contingency measures "should provide for emission reductions equivalent to about one year of reductions needed for reasonable further progress (RFP)." The term "one year of reductions needed for RFP" requires clarification. This phrase may be confusing because all areas technically are not required to develop a separate RFP plan under the 2007 PM2.5 Implementation Rule. The basic concept is that an area's set of contingency measures should provide for an amount of emission reductions that would achieve "one year's worth" of air quality improvement proportional to the overall amount of air quality improvement to be achieved by the area's attainment plan; or alternatively, an amount of emission reductions (for all pollutants subject to control measures in the attainment plan) that would achieve one year's worth of emission reductions proportional to the overall amount of emission*

reductions needed to show attainment. Contingency measures can include measures that achieve emission reductions from outside the nonattainment area as well as from within the nonattainment area, provided that the measures produce the appropriate air quality impact within the nonattainment area.

The U.S. EPA believes a similar interpretation of the contingency measures requirements under section 172(c)(9) would be appropriate for the 2006 24-hour PM2.5 NAAQS.

The March 2, 2012 memo then provides an example describing two methods for determining the required magnitude of emissions reductions to be potentially achieved by implementation of contingency measures:

Assume that the state analysis uses a 2008 base year emissions inventory and a future year projection inventory for 2014. To demonstrate attainment, the area needs to reduce its air quality concentration from 41ug/m^3 in 2008 to 35 ug/m^3 in 2014, equal to a rate of change of 1 μg/m^3 per year. The attainment plan demonstrates that this level of air quality improvement would be achieved by reducing emissions between 2008 and 2014 by the following amounts: 1,200 tons of PM2.5; 6,000 tons of NOx; and 6,000 tons of SO2.

Thus, the target level for contingency measures for the area could be identified in two ways:

1) *The area would need to provide an air quality improvement of 1 ug/m^3 in the area, based on an adequate technical demonstration provided in the state plan. The emission reductions to be achieved by the contingency measures can be from any one or a combination of all pollutants addressed in the attainment plan, provided that the state plan shows that the cumulative effect of the adopted contingency measures would result in a 1 ug/m^3 improvement in the fine particle concentration in the nonattainment area; and*

2) *The contingency measures for the area would be one-sixth (or approximately 17%) of the overall emission reductions needed between 2008 and 2014 to show attainment. In this example, these amounts would be the following: 200 tons of PM2.5; 1,000 tons of NOx; and 1,000 tons of SO2.*

The two approaches are explicitly mentioned in regulatory form at 40 CFR § 51.1009:

(g) The RFP plan due three years after designation must demonstrate that emissions for the milestone year are either:

(1) At levels that are roughly equivalent to the benchmark emission levels for direct PM2.5 emissions and each PM2.5 attainment plan precursor to be addressed in the plan; or

(2) At levels included in an alternative scenario that is projected to result in a generally equivalent improvement in air quality by the milestone year as would be achieved under the benchmark RFP plan.

(h) The equivalence of an alternative scenario to the corresponding benchmark plan must be determined by comparing the expected air quality changes of the two scenarios at the design value monitor location. This comparison must use the information developed for the attainment plan to assess the relationship between emissions reductions of the direct PM2.5 emissions and each PM2.5 attainment plan precursor addressed in the attainment strategy and the ambient air quality improvement for the associated ambient species.

The first method in the example and the alternative scenario in the regulation, 40 CFR § 51.1009 (g)(2), base the required amount of contingency measure emission reductions on one year's worth of air quality improvements. The most accurate way of demonstrating that the emissions reductions will lead to air quality improvements is through air quality modeling such as that used in the attainment demonstration (40 CFR § 51.1009 (h) above). If the model results show the required air quality improvements, then the emissions reductions included in the model input are therefore shown to be sufficient to achieve those air quality improvements. The second method in the example, and (g)(1) in the regulation, is based solely on emission reductions, without a direct demonstration that there will be a corresponding improvement in air quality.

Logically, the method based on air quality is more robust than the method based solely on emissions reductions in that it demonstrates that emissions reductions will in fact lead to corresponding air quality improvements, which is the ultimate goal of the CAA and the SIP. The second method relying on overall emissions reductions alone does not account for the spatial and temporal variation of emissions, nor does it account for where and when the reductions will occur. As the relationship between emissions reductions and resulting air quality improvements is complex and not always linear, relying solely on prescribed emission reductions may not ensure that the desired air quality improvements will result when and where they are needed. Therefore, determining the magnitude of reductions required for contingency measures based on air quality improvements, derived from a modeling demonstration, is more effective in achieving the objective of this CAA requirement.

Magnitude of Contingency Measure Air Quality Improvements

The example for determining the required magnitude of air quality improvement to be achieved by contingency measures provided in the March 2, 2012 guidance memo uses the attainment demonstration base year as the base year in the calculation (2008). This is based on the memo's statement that *"contingency measures should provide for an amount of emission reductions that would achieve 'one year's worth' of air quality improvement proportional to the overall amount of air quality improvement to be achieved by the area's attainment plan.* The original preamble (79 FR 20642-20645) states that contingency measures *"should provide for emission reductions equivalent to about one year of reductions needed for reasonable further progress (RFP)."* The term "reasonable further progress" is defined in Section 171(1) of the CAA as *"such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date."*

40 CFR 51.1009 is explicit on how emissions reductions for RFP are to be calculated. In essence, the calculation is a linear interpolation between base-year emissions and attainment-year (full implementation) emissions. The Plan must then show that emissions or air quality in the milestone year (or attainment year) are "roughly equivalent" or "generally equivalent" to the RFP benchmark. As stated earlier in this chapter, given the 2014 attainment year, there are no interim milestone RFP requirements. The contingency measure requirements, therefore, only apply to the 2014 attainment year. In 2014, contingency measures must provide for about one year's worth of reductions or air quality improvement, proportional to the overall amount of air quality improvement to be achieved by the area's attainment plan.

The 2008 base year design value in the 24-hour PM2.5 attainment demonstration is 47.9 $\mu g/m^3$, and the 2014 attainment year design value must be less than 35.5 $\mu g/m^3$ (see Chapter 5). Linear progress towards attainment over the six year period yields one year's worth of air quality improvements equal to approximately 2 $\mu g/m^3$. Thus, contingency measures should provide for approximately 2 $\mu g/m^3$ of air quality improvements to be automatically implemented in 2015 if the Basin fails to attain the 24-hour PM2.5 standard in 2014.

Satisfying the Contingency Measure Requirements

As stated above, the contingency measure requirement can be satisfied by already adopted measures resulting in air quality improvements above and beyond those needed

for attainment. Since the attainment demonstration need only show an attainment year concentration below 35.5 $\mu g/m^3$, any measures leading to improvement in air quality beyond this level can serve as contingency measures. As shown in Chapter 5, the attainment demonstration yields a 2014 design value of 34.28 $\mu g/m^3$. The excess air quality improvement is therefore approximately 1.2 $\mu g/m^3$.

In addition to these air quality improvements beyond those needed for attainment, an additional contingency measure is proposed that will result in emissions reductions beyond those needed for attainment in 2014. Control Measure CMB-01 Phase I seeks to achieve an additional two tons per day of NOx emissions reductions from the RECLAIM market if the Basin fails to achieve the standard by the 2014 attainment date. CMB-01 Phase I is scheduled for near-term adoption and includes the appropriate automatic trigger mechanism and implementation schedule consistent with CAA contingency measure requirements. Taken together with the 1.2 $\mu g/m^3$ of excess air quality improvement described above, this represents a sufficient margin of "about one year's of progress" and "generally linear" progress to satisfy the contingency measure requirements. Note that based on the most recent air quality data at the design value site, Mira Loma, the actual measured air quality is already better (by over 4 $\mu g/m^3$ in 2011) than that projected by modeling based on linear interpolation between base year and attainment year.

To address U.S. EPA's comments regarding contingency measures, the excess air quality improvements beyond those needed to demonstrate attainment should also be expressed in terms of emissions reductions. This will facilitate their enforceability and any future needs to substitute emissions reductions from alternate measures to satisfy contingency measure requirements. For this purpose, Table 6-2 explicitly identifies the portions of emissions reductions from proposed measures that are designated as contingency measures. Table 6-2 also includes the total equivalent basin-wide NOx emissions reductions based on the PM2.5 formation potential ratios described in Chapter 5.

TABLE 6-2

Emissions Reductions for Contingency Measures (2014)

MEASURE	ASSOCIATED EMISSIONS REDUCTIONS FROM CONTINGENCY MEASURES (TONS/DAY)
BCM-01 – Residential Wood Burning[1,2]	2.84(PM2.5)
BCM-02 – Open Burning [1,2]	1.84(PM2.5)
CMB-01 – NOx reductions from RECLAIM	2 (NOx)
Total	71 ($NOx_{(e)}$)[3]

[1]40% of the reductions from these measures, as shown in Table 4-2, are designated for contingency purposes.

[2] Episodic emissions reductions occurring on burning curtailment days.

[3] NOx equivalent emissions based on PM2.5 formation potentials described in Chapter 5 (Table 5-2). The PM2.5:NOx ratio is 14.83:1.

Transportation Control Measures

As part of the requirement to demonstrate that RACM has been implemented, transportation control measures meeting the CAA requirements must be included in the plan. Updated transportation control measures included in this plan attainment of the federal 2006 24-hour PM2.5 standard are described in Appendix IV-C – Regional Transportation Strategy & Control Measures.

Section 182(d)(1)(A) of the CAA requires the District to include transportation control strategies (TCS) and transportation control measures (TCM) in its plans for ozone that offset any growth in emissions from growth in vehicle trips and vehicle miles traveled. Such control measures must be developed in accordance with the guidelines listed in Section 108(f) of the CAA. The programs listed in Section 108(f) of the CAA include, but are not limited to, public transit improvement projects, traffic flow improvement projects, the construction of high occupancy vehicle (HOV) facilities and other mobile source emission reduction programs. While this is not an ozone plan, TCMs may be

ATTACHMENT 17.

FINAL 2012 AQMP
APPENDIX IV-A

DISTRICT'S STATIONARY SOURCE CONTROL MEASURES

DECEMBER 2012

Table of Contents

SECTION 1 - STATIONARY SOURCE CONTROL MEASURES

SECTION 2 - SHORT-TERM PM2.5 CONTROL MEASURES

TABLE IV-A-1 (concluded)

Short-Term PM2.5 Control Measures

NUMBER	TITLE	ADOPTION	IMPLEMENTATION PERIOD	REDUCTION (TPD)
~~IND-01 (formerly MOB-03)~~	~~Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources [NOx, SOx, PM2.5]~~	~~2013~~	~~12 months after trigger~~	~~N/A~~ [f]
EDU-01 *(formerly MCS-02, MCS-03)*	Further Criteria Pollutant Reductions from Education, Outreach and Incentives [All Pollutants]	Ongoing	Ongoing	N/A [f]
MCS-01 *(formerly MCS-07)*	Application of All Feasible Measures Assessment [All Pollutants]	Ongoing	Ongoing	TBD [e]

a. Emission reductions are included in the SIP as a contingency measure.
b. Winter average day reductions based on episodic conditions and 75 percent compliance rate.
c. Reduction based on episodic day conditions.
d. Will submit into SIP once technically feasible and cost effective options are confirmed.
e. TBD are reductions to be determined once the technical assessment is complete, and inventory and control approach are identified.
f. N/A are reductions that cannot be quantified due to the nature of the measure (e.g., outreach, incentive programs) or if the measure is designed to ensure reductions that have been assumed to occur will in fact occur.

It should be noted that the emission reduction targets for the proposed control measures (those with quantified reductions) are established based on available or anticipated control methods or technologies. However, emission reductions associated with implementation of these and other control measures or rules in excess of the AQMP's projected reductions can be credited toward the overall emission reduction targets for the proposed control measures in this appendix.

Emission reductions associated with the District's SIP commitment to adopt and implement emission reductions from sources under the District's jurisdiction are being proposed. Once the SIP commitment is accepted, should there be emission reduction shortfalls in any given year, the District would identify and adopt other measures to make up the shortfall. Similarly, if excess emission reductions are achieved in a year, they can be used in that year or carried over to subsequent years if necessary to meet reduction goals. More detailed discussion on the District's SIP commitment is included in Chapter 4 of the Final 2012 AQMP.

The following sections provide a brief overview of the specific source category types targeted by short-term PM2.5 control measures.

Combustion Sources

This category includes one control measure that seeks further NOx emission reductions from RECLAIM sources.

IND-01: BACKSTOP MEASURE FOR INDIRECT SOURCES OF EMISSIONS FROM PORTS AND PORT-RELATED FACILITIES [NO_x, SO_x, PM2.5]

CONTROL MEASURE SUMMARY

SOURCE CATEGORY:	IF THE BACKSTOP MEASURE BECOMES EFFECTIVE (I.E. IF EMISSIONS FROM PORT-RELATED SOURCES EXCEED TARGETS FOR NOX, SOX, AND PM2.5), AFFECTED SOURCES WOULD BE PROPOSED BY THE PORTS AND COULD INCLUDE SOME OR ALL PORT-RELATED SOURCES (TRUCKS, CARGO HANDLING EQUIPMENT, HARBOR CRAFT, MARINE VESSELS, LOCOMOTIVES, AND STATIONARY EQUIPMENT), TO THE EXTENT COST EFFECTIVE STRATEGIES ARE AVAILABLE
CONTROL METHODS:	IF THE BACKSTOP MEASURE BECOMES EFFECTIVE, EMISSION REDUCTION METHODS WOULD BE PROPOSED BY THE PORTS AND POTENTIALLY COULD INCLUDE CLEAN TECHNOLOGY FUNDING PROGRAMS, LEASE PROVISIONS, PORT TARIFFS, OR INCENTIVES/DISINCENTIVES TO IMPLEMENT MEASURES, TO THE EXTENT COST EFFECTIVE AND FEASIBLE STRATEGIES ARE AVAILABLE

EMISSIONS (TONS/DAY):

ANNUAL AVERAGE	2008	2014	2019	2023
NOx INVENTORY*	78.6	51.2	47.2	39.2
NOx REDUCTION*		N/A	N/A	N/A
NOx REMAINING*		51.2	47.2	39.2
SOx INVENTORY*	25.5	1.8	2.3	2.7
SOx REDUCTION*		N/A	N/A	N/A
SOx REMAINING*		1.8	2.3	2.7
PM2.5 INVENTORY*	3.7	1.0	1.0	1.1
PM2.5 REDUCTION*		N/A	N/A	N/A
PM2.5 REMAINING*		1.0	1.0	1.1

CONTROL COST:	TBD
IMPLEMENTING AGENCY:	SCAQMD

** The purpose of this control measure is to ensure the emissions from port-related sources are at or below the AQMP baseline inventories for PM2.5 attainment demonstration. The emissions presented herein were used for attainment demonstration of the 24-hr PM 2.5 standard by 2014.*

DESCRIPTION OF SOURCE CATEGORY

This control measure is carried over from the 2007 AQMP/SIP. If the backstop measure goes into effect, affected sources would be proposed by the ports and could include some or all port-related sources (trucks, cargo handling equipment, harbor craft, marine vessels, locomotives, and stationary equipment), to the extent cost effective and feasible strategies are available.

Other sources – i.e. sources that are unrelated to the ports – would not in any way be subject to emission reductions under this measure (including through funding of emission reduction measures, or purchase of emission credits, by the ports or port tenants).

Background

Emissions and Progress. The ports of Los Angeles and Long Beach are the largest in the nation in terms of container throughput, and collectively are the single largest fixed source of air pollution in Southern California. Emissions from port-related sources have been reduced significantly since 2006 through efforts by the ports and a wide range of stakeholders. In large part, these emission reductions have resulted from programs developed and implemented by the ports in collaboration with port tenants, marine carriers, trucking interests and railroads. Regulatory agencies, including EPA, CARB and SCAQMD, have participated in these collaborative efforts from the outset, and some measures adopted by the ports have led the way for adoption of analogous regulatory requirements that are now applicable statewide. These port measures include the Clean Truck Program and actions to deploy shore power and low emission cargo handling equipment. The Ports of Los Angeles and Long Beach have also established incentive programs which have not subsequently been adopted as regulations. These include incentives for routing of vessels meeting IMO Tier 2 and 3 NOx standards, and vessel speed reduction. In addition, the ports are, in collaboration with the regulatory agencies, implementing an ambitious Technology Advancement Program to develop and deploy clean technologies of the future.

Port sources such as marine vessels, locomotives, trucks, harbor craft and cargo handling equipment, continue to be among the largest sources of $PM_{2.5}$ and $PM_{2.5}$ precursors in the region. Given the large magnitude of emissions from port-related sources, the substantial efforts described above play a critical part in the ability of the South Coast Air Basin to attain the national $PM_{2.5}$ ambient air standard by federal deadlines. This measure provides assurance that emissions from the Basin's largest fixed emission source will continue to support attainment of the federal 24-hour PM2.5 standard. . Reductions in PM2.5 emissions will also reduce cancer risks from diesel particulate matter.

Clean Air Action Plan. The emission control efforts described above largely began in 2006 when the Ports of Los Angeles and Long Beach, with the participation and cooperation of the staff of the SCAQMD, CARB, and U.S. EPA, adopted the San Pedro Bay Ports Clean Air Action Plan (CAAP). The CAAP was further amended in 2010, updating many of the goals and implementation strategies to reduce air emissions and health risks associated with port

operations while allowing port development to continue. In addition to addressing health risks from port-related sources, the CAAP sought the reduction of criteria pollutant emissions to the levels that assure port-related sources decrease their "fair share" of regional emissions to enable the Basin to attain state and federal ambient air quality standards.

The CAAP focuses primarily on reducing diesel particulate matter (DPM), along with NOx and SOx. The CAAP includes proposed strategies on port-related sources that are implemented through new leases or Port-wide tariffs, Memoranda of Understanding (MOU), voluntary action, grants or incentive programs.

The goals set forth in the CAAP include:

- Health Risk Reduction Standard: 85% reduction in population-weighted cancer risk by 2020
- Emission Reduction Standards:
  - By 2014, reduce emissions by 72% for DPM, 22% for NOx, and 93% for SOx
  - By 2023, reduce emissions by 77% for DPM, 59% for NOx, and 93% for SOx

In addition to the CAAP, the Ports have completed annual inventories of port-related sources since 2005. These inventories have been completed in conjunction with a technical working group composed of the SCAQMD, CARB, and U.S. EPA. Based on the latest inventories, it is estimated that the emissions from port-related sources will meet the 2012 AQMP emission targets necessary for meeting the 24-hr PM2.5 ambient air quality standard. The projected emissions from port related sources are included in the "baseline" emissions assumed in this plan to attain the PM2.5 standards.

While many of the emission reduction targets in the CAAP result from implementation of federal and state regulations (either adopted prior to or after the CAAP), some are contingent upon the Ports taking and maintaining actions which are not required by air quality regulations. These actions include the Expanded Vessel Speed Reduction Incentive Program, lower emission switching locomotives,and incentives for lower emission marine vessels. This AQMP control measure is designed to provide a "backstop" to the Ports' actions to provide assurance that, if emissions do not continue to meet projections, the ports will develop and implement plans to get back on track, to the extent that cost effective and feasible strategies are available. .

Regulatory History

The CAAP sets out the emission control programs and plans that will help mitigate air quality impacts from port-related sources. The CAAP relies on a combination of regulatory requirements and voluntary control strategies which go beyond U.S. EPA or CARB requirements, or are implemented faster than regulatory rules. The regulations which the CAAP relies on include international, federal and state requirements controlling port-related sources such as marine vessels, harbor craft, cargo handling equipment, locomotives, and trucks.

The International Maritime Organization (IMO) MARPOL Annex VI, which came into force in May 2005, set new international NO_x emission limits on Category 3 (>30 liters per cylinder displacement) marine engines installed on new vessels retroactive to the year 2000. In October

~~2008, the IMO adopted an amendment which places a global limit on marine fuel sulfur content of 0.1 percent by 2015 for specific areas known as Emission Control Areas (ECA). The South Coast District waters of the California coast are included in an ECA and ships calling at the Port of Los Angeles and Long Beach have to meet this new fuel standard. In addition, the 2008 IMO amendment required new ships built after January 1, 2016 which will be used in an Emission Control Area (ECA) to meet a Tier III NOx emission standard which is 80 percent lower than the original emission standard.~~

~~To reduce emissions from switch and line-haul locomotives, the U.S. EPA in 2008 established a series of increasingly strict emission standards for new or remanufactured locomotive engines. The emission standards are implemented by "Tier" with Tier 0 as the least stringent and Tier 4 being the most stringent. U.S. EPA also established remanufacture standards for both line haul and switch engines. For Tiers 0, 1, and 2, the remanufacture standards are more stringent than the new manufacture standards for those engines for some pollutants.~~

~~To reduce emissions from on-road, heavy-duty diesel trucks, U.S. EPA established a series of cleaner emission standards for new engines, starting in 1988. The U.S. EPA promulgated the final and cleanest standards with the 2007 Heavy Duty Highway Rule. Starting with model year 2010, all new heavy-duty trucks have to meet the final emission standards specified in the rule.~~

~~On December 8, 2005, CARB approved the Regulation for Mobile Cargo Handling Equipment (CHE) at Ports and Intermodal Rail Yards (Title 13, CCR, Section 2479), which is designed to use best available control technology (BACT) to reduce diesel PM and NO_x emissions from mobile cargo handling equipment at ports and intermodal rail yards. The regulation became effective December 31, 2006. Since January 1, 2007, the regulation imposes emission performance standards on new and in-use terminal equipment that vary by equipment type.~~

~~In 1998, the railroads and CARB entered into an MOU to accelerate the introduction of Tier 2 locomotives into the SCAB. The MOU includes provisions for a fleet average in the SCAB, equivalent to U.S. EPA's Tier 2 locomotive standard by 2010. The MOU addressed NOx emissions from locomotives. Under the MOU, NOx levels from locomotives are reduced by 67 percent.~~

~~On June 30, 2005, Union Pacific Railroad (UP) and Burlington Northern Santa Fe Railroad (BNSF) entered into a Statewide Rail Yard Agreement to Reduce Diesel PM at California Rail Yards with the CARB. The railroads committed to implementing certain actions from rail operations throughout the state. In addition, the railroads prepared equipment inventories and conducted dispersion modeling for Diesel PM.~~

~~In December 2007, CARB adopted a regulation which applies to heavy-duty diesel trucks operating at California ports and intermodal rail yards. This regulation eventually will require all drayage trucks to meet 2007 on-road emission standards by 2014.~~

~~Areas where the CAAP went beyond existing regulatory requirements or accelerated the implementation of current IMO, U.S. EPA, or CARB rules include emissions reductions from ocean-going vessels through lowering vessel speeds, accelerating the introduction of 2007/2010 on-road heavy-duty drayage trucks, maximizing the use of shore-side power for ocean-going~~

vessels while at berth, early use of low-sulfur fuel in ocean-going vessels, and the restriction of high-emitting locomotives on port property. Each of these strategies is highlighted below.

HDV1 – Performance Standards for On-Road Heavy Duty Vehicles (Clean Truck Program) – This control measure requires that all on-road trucks entering the ports comply with the Clean Truck Program. Several milestones occurred early in the program implementation, but the current requirement bans all trucks not meeting the 2007 on-road heavy-duty truck emission standards from port property. This program has the effect of accelerating the introduction of clean trucks sooner than would have occurred under the state-wide drayage truck regulation framework.

OGV1 – Vessel Speed Reduction Program (VSRP): Under this voluntary program, the Port requested that ships coming into the Ports reduce their speed to 12 knots or less within 20nm of the Point Fermin Lighthouse. The program started in May 2001. The Ports expanded the program out to 40 nm from the Point Fermin Lighthouse in 2010.

OGV3/OGV4 – Low Sulfur Fuel for Auxiliary and Main Engines and Auxiliary Boilers: OGV3 reduces emissions for auxiliary engines and auxiliary boilers of OGVs during their approach and departure from the ports, including hoteling, by switching to MGO or MDO with a fuel sulfur content of 0.2 percent or less within 40 nm from Point Fermin. OGV4 Control measure reduces emissions from main engines during their approach and departure from the ports. OGV3 and OVV4 are implemented as terminal leases are renewed.

RL-3 – New and Redeveloped Near-Dock Rail Yards: The Ports have committed to support the goal of accelerating the natural turnover of line-haul locomotive fleet to at least 95 percent Tier 4 by 2020. In addition, this control measure establishes the minimum standard goal that the Class 1 (UP and BNSF) locomotive fleet associated with new and redeveloped near-dock rail yards use 15-minute idle restrictors and ULSD or alternative fuels, and as part of the environmental review process for upcoming rail projects, 40% of line-haul locomotives accessing port property will meet a Tier 3 emission standard and 50% will meet Tier 4.

PROPOSED METHOD OF CONTROL

The goal of this measure is to ensure that NOx, SOx and PM2.5 emissions reductions from port-related sources are sufficient to attain the 24-hr federal PM2.5 ambient air quality standard. This measure would establish targets for NOx, SOx, and PM2.5 for 2014 that are based on emission reductions resulting from adopted rules and other measures such as railroad MOUs and vessel speed reduction that have been adopted and are being implemented. These emissions from port related sources are included in the "baseline" emissions assumed in this plan to attain the 24-hour $PM_{2.5}$ standard. Based on current and future emission inventory projections these rules and measures will be sufficient to achieve attainment of the 24-hr federal PM2.5 ambient air quality standard. Requirements adopted pursuant to this measure will become effective only if emission levels exceed the above targets. Once triggered, the ports will be required to develop and implement a plan to reduce emissions from port related sources to meet the emission targets over a time period. The time period to achieve and maintain emission targets will be established pursuant to procedures and criteria developed during rulemaking and specified in the rule.

~~This control measure will be implemented through a District rule. Through the rule development process the AQMD staff will establish a working group, hold a series of working group meetings, and hold public workshops. The purpose of the rule development process is to allow the AQMD staff to work with a variety of stakeholders such as the Ports, potentially affected industries, other agencies, and environmental and community groups. The rule development process will discuss the terms of the proposed backstop rule and, through an iterative public process, develop proposed rule language. In addition, the emissions inventory and targets will be reviewed and may be refined if necessary. This control measure applies to the Port of Los Angeles and the Port of Long Beach, acting through their respective Boards of Harbor Commissioners. The ports may have the option to comply separately or jointly with provisions of the backstop rule.~~

~~Elements of Backstop Rule~~

~~*Summary*: This control measure will establish enforceable nonattainment pollutant emission reduction targets for the ports in order to ensure implementation of the 24-hr PM2.5 attainment strategy in the 2012 AQMP. The "backstop" rule will go into effect if aggregate emissions from port related sources exceed specified emissions targets. If emissions do not exceed such targets, the ports will have no control obligations under this control measure.~~

~~*Emissions Targets:* The emissions inventories projected for the port related sources in the 2012 AQMP are an integral part of the 24-hr PM2.5 attainment demonstration for 2014 and its maintenance of attainment in subsequent years. These emissions serve as emission targets for meeting the 24-hr PM2.5 standard.~~

~~*Scope of Emissions Included:* Emissions from all sources associated with each port, including equipment on port property, marine vessels traveling to and from the port while in California Coastal Waters, locomotives and trucks traveling to and from port-owned property while within the South Coast Air Basin. This measure will make use of the Port's annual emission inventory, either jointly or individually, as the basis for the emission targets. The inventory methodology to estimate these emissions is consistent with the CAAP methodology. Other sources – i.e. sources that are unrelated to the ports – would not in any way be subject to emission reductions under this measure (including through funding of emission reduction measures, or purchase of emission credits, by the ports or port tenants).~~

~~*Circumstances Causing Backstop Rule Regulatory Requirements to Come Into Effect:* The "backstop" requirements will be triggered if the reported aggregate emissions for 2014 for all port related sources exceed the 2014 emissions targets. The rule may also provide that it will come into effect if the target is met in 2014 but exceeded in a subsequent year. If the target is not exceeded, the ports would have no obligations under this measure.~~

~~*Requirements if Backstop Rule Goes Into Effect:* If the "backstop" rule goes into effect, the Ports would submit an Emission Control Plan to the District. The plan would include measures sufficient to bring the Ports back into compliance with the 2014 emission targets. The Ports may choose which sources would be subject to additional emission controls, and may choose any number of implementation tools that can achieve the necessary reduction. These may include clean technology funding programs, lease provisions, port tariffs, or incentives/disincentives to~~

implement measures. As described below, the ports would have no obligation under this measure to implement measures which are not cost-effective and feasible, or where the ports lack the authority to adopt an implementation mechanism. The District would approve the plan if it met the requirements of the rule.

RULE COMPLIANCE AND TEST METHODS

Compliance with this control measure will depend on the type of control strategy implemented. Compliance will be verified through compliance plans, and enforced through submittal and review of records, reports, and emission inventories. Enforcement provisions will be discussed as part of the rule development process.

COST EFFECTIVENESS AND FEASIBILITY

The cost effectiveness of this measure will be based on the control option selected. A maximum cost-effectiveness threshold will be established for each pollutant during rule development. The rule will not require any additional control strategy to be implemented which exceeds the threshold, or which is not feasible. In addition, the rule would not require any strategy to be implemented if the ports lack authority to implement such strategy. If sufficient cost-effective and feasible measures with implementation authority are not available to achieve the emissions targets by the applicable date, the District will issue an extension of time to achieve the target. It is the District's intent that during such extension, the ports and regulatory agencies would work collaboratively to develop technologies and implementation mechanisms to achieve the target at the earliest date feasible.

IMPLEMENTING AGENCY

The District has authority to adopt regulations to reduce or mitigate emissions from indirect sources, i.e. facilities such as ports that attract on- and off-road mobile sources, and has certain authorities to control emissions from off-road mobile sources themselves. These authorities include the following:

Indirect Source Controls. State law provides the District authority to adopt rules to control emissions from "indirect sources." The Clean Air Act defines an indirect source as a "facility, building, structure, installation, real property, road or highway which attracts, or may attract, mobile sources of pollution." 42 U.S.C. § 7410(a)(5)(C); CAA § 110(a)(5)(C). Districts are authorized to adopt rules to "reduce or mitigate emissions from indirect sources" of pollution. (Health & Safety Code § 40716(a)(1)). The South Coast District is also required to adopt indirect source rules for areas where there are "high-level, localized concentrations of pollutants or with respect to any new source that will have a significant impact on air quality in the South Coast Air Basin." (Health & Safety Code § 40440(b)(3)). The federal Court of Appeals has held that an indirect source rule is not a preempted "emission standard." *National Association of Home Builders v. San Joaquin Valley Unified Air Pollution Control District*, 627 F.3d. 730 (9th Cir. 2010)

Nonvehicular (Off-Road) Source Emissions Standards. Under California law "local and regional authorities," including the ports and the District, have primary responsibility for the control of air pollution from all sources other than motor vehicles. (Health & Safety Code § 40000). Such "nonvehicular" sources include marine vessels, locomotives and other non-road equipment. CARB has concurrent authority under state law to regulate these sources. The federal Clean Air Act preempts states and local governments from adopting emission standards and other requirements for new locomotives (Clean Air Act § 209(e); 42 U.S.C.§ 7543(e)), but California may establish and enforce standards for other non-road sources upon receiving authorization from EPA (*Id.*). No such federal authorization is required for state or local fuel, operational, or mass emission limits for marine vessels, locomotives or other non-road equipment. (40 CFR Pt. 89, Subpt. A, App.A; *Engine Manufacturers Assn. v. Environmental Protection Agency*, 88 F.3d. 1075 (DC Cir. 1996)).

Fuel Sulfur Limits. With respect to non-road engines, including marine vessels and locomotives, the District and CARB have concurrent authority to establish fuel limits, such as those on sulfur content. As was noted above, fuel regulations for non-road equipment are not preempted by the Clean Air Act and do not require EPA authorization.

Operational Limits. The District has authority under state law to establish operational limits for nonvehicular sources such as marine vessels, locomotives, and cargo handling equipment (to the extent cargo handling equipment is "nonvehicular"). As was discussed above, operational limits for non-road equipment are not preempted by the Clean Air Act. In addition, the District may adopt operational limits for motor vehicles such as indirect source controls and transportation controls without receiving an authorization or waiver from U.S. EPA.

REFERENCES

San Pedro Bay Ports Clean Air Action Plan, 2010 Update, October 2010

Southern California International Gateway Project Draft Environmental Impact Report, Port of Los Angeles, September 2011

SCAQMD, 2007 Air Quality Management Plan, Appendix IV-A, June 2007

ATTACHMENT 18.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Final Supplement to the 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin

February 2015

Executive Officer
Barry R. Wallerstein, D. Env.

Deputy Executive Officer
Planning, Rule Development and Area Sources
Elaine Chang, DrPH

Assistant Deputy Executive Officer
Planning, Rule Development and Area Sources
Philip Fine, Ph.D.

Author:	Joseph Cassmassi	Planning and Rules Manager
	Sang-Mi Lee, Ph.D.	Program Supervisor
	Kalam Cheung, Ph.D.	Air Quality Specialist
	Michael Krause	Program Supervisor
Reviewed By:	Barbara Baird	Chief Deputy Counsel
	Megan Lorenz	Senior Deputy District Counsel

TABLE F-1

Updated 2012 SIP Emission Reduction Commitments to Attain 24-hour PM2.5 NAAQS *(35 μg/m³)*

Control Measure #	CONTROL MEASURE TITLE	2012 AQMP			PROPOSED in SUPPLEMENT		
		Adoption Date	COMMITMENT	ACHIEVED	Adoption Date	COMMITMENT	ACHIEVED
			2014	2014		2015	2015
PM2.5 EMISSIONS							
IND-01	Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Facilities [R4001]	2013	N/A[1]	N/A[1]	**2015**	N/A[1]	N/A[1]
BCM-01	Further Reductions from Residential Wood Burning Devices [R445]	2013	7.1	7.1	2013	7.1	7.1
BCM-02	Further Reductions from Open Burning [R444]	2013	4.6	4.6	2013	4.6	4.6
MCS-01	Application of All Feasible Measures Assessment	Ongoing	TBD[2]	TBD	Ongoing	TBD[2]	TBD
BCM-03	Emission Reductions from Under-Fired Charbroilers [R1138]	2015	TBD[3]	TBD	**2017**	TBD[3]	TBD
EDU-01	Further Criteria Pollutant Reductions from Education, Outreach and Incentives	Ongoing	N/A[4]	N/A	Ongoing	N/A[4]	N/A
	TOTAL PM2.5 EMISSION REDUCTIONS (TPD)		**11.7**	**11.7**	**--**	**11.7**	**11.7**
NOx EMISSIONS							
CMB-01	Further NOx Reductions from RECLAIM [Reg XX]	2013	2.0[5]	--	**2015**	2.0[5]	--
IND-01	Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Facilities [R4001]	2013	N/A[1]	N/A[1]	**2015**	N/A[1]	N/A[1]
	TOTAL NOx EMISSION REDUCTIONS (TPD)		**2.0**	--	--	**2.0**	--
SOx EMISSIONS							
IND-01	Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Facilities [R4001]	2013	N/A[1]	N/A[1]	**2015**	N/A[1]	N/A[1]
	TOTAL SOx EMISSION REDUCTIONS (TPD)		--	**N/A[1]**	--	--	**N/A[1]**
NH3 EMISSIONS							
BCM-04	Further Ammonia Reductions from Livestock Waste [R1127] - Phase I (*Tech Assessment*)	2013-2014	TBD[2]	TBD	**2015 - 2016**	TBD[2]	TBD
	-Phase II (*Rule Amendment*)	TBD	TBD[2]	TBD	TBD	TBD[2]	TBD
	TOTAL NH3 EMISSION REDUCTIONS (TPD)		TBD	TBD	--	--	--

[1] Measure is designed to ensure reductions assumed to occur will in fact occur
[2] Reductions to be determined once the technical assessment is complete, and inventory and control approach are identified
[3] Will submit into SIP once technically feasible and cost effective options are identified
[4] Reductions cannot be quantified due to the nature of the measure (e.g., outreach, incentive programs)
[5] Emission reductions are included in the SIP as a contingency measure, if triggered

ATTACHMENT 19.

BOARD MEETING DATE: February 6, 2015 AGENDA NO. 22

PROPOSAL: Supplement to 24-hour PM2.5 State Implementation Plan for South Coast Air Basin

SYNOPSIS: The purpose of this Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin is to demonstrate attainment of the 2006 24-hour PM2.5 National Ambient Air Quality Standard by 2015 under Clean Air Act, Title 1, Part D, Subpart 4, along with updates to the transportation conformity budgets, analysis of Reasonably Available Control Measures/Reasonably Available Control Technology, control measure commitments submitted in the 2012 AQMP, and other Subpart 4 requirements.

COMMITTEE: Mobile Source Committee, January 23, 2015, Reviewed

RECOMMENDED ACTIONS:
Adopt the attached resolution:

1. Determining that the Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin is exempt from the requirements of CEQA; and
2. Approving the attached Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin for Submittal into the SIP.

Barry R. Wallerstein, D.Env.
Executive Officer

BB EC:PF:MK

Background

The 2012 AQMP was approved by the SCAQMD Board in December 2012, with additional amendments approved in February 2013, and was subsequently submitted to CARB and the U.S. EPA for inclusion into the SIP. That plan demonstrated projected attainment of the 2006 24-hour PM2.5 National Ambient Air Quality Standards (NAAQS) (35 $\mu g/m^3$) by 2014. However, a recent court decision (*Natural Res. Def. Council v. EPA*, 706 F.3d 428 (D.C. Cir. 2013)) compels U.S. EPA to evaluate the 24-

ATTACHMENT B

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Draft Supplement to the 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin

January 2015

Executive Officer
Barry R. Wallerstein, D. Env.

Deputy Executive Officer
Planning, Rule Development and Area Sources
Elaine Chang, DrPH

Assistant Deputy Executive Officer
Planning, Rule Development and Area Sources
Philip Fine, Ph.D.

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	Michael Krause	Program Supervisor
Reviewed By:	Barbara Baird	Chief Deputy Counsel
	Megan Lorenz	Senior Deputy District Counsel

ATTACHMENT F

UPDATED LIST OF CONTROL STRATEGY COMMITMENTS

UPDATE OF COMMITMENTS

The short-term PM2.5 control measures in the 2012 AQMP included stationary source control measures, technology assessments, an indirect source measure and one education and outreach measure. The development of the control measures considered the emissions reductions and the adoption and implementation dates that would result in attainment of the 2006 24-hour PM2.5 standard of 35 $\mu g/m^3$. In some cases, only a range of possible emissions reductions could be determined, and for some others, the magnitude of potential reductions could not be determined at that time. The short-term PM2.5 control measures were presented in Table 4-2 (Chapter 4) of the 2012 AQMP, and the following table, Table F-1 updates that information, thus replacing Table 4-2 in the 2012 AQMP for inclusion in the 24-hour PM2.5 SIP. Note that these changes do not affect the magnitude or timing of emission reductions commitments supporting the attainment demonstration in the 2012 AQMP and this Supplement. The emission reduction commitment for CMB-01 (Further NOx Reductions from RECLAIM) was as a contingency measure only for PM2.5, and thus does not affect the attainment demonstrations.

The measures target a variety of source categories: Combustion Sources (CMB), PM Sources (BCM), Indirect Sources (IND), Educational Programs (EDU) and Multiple Component Sources (MCS).

Two PM2.5 control measures, BCM-01 (Further Reductions from Residential Wood Burning Devices) and BCM-02 (Further Reductions from Open Burning), were adopted in 2013 in the form of amendments to Rules 445 (Wood Burning Devices) and 444 (Open Burning), respectively. Together, these amendments generated a total of 11.7 tons of PM2.5 per day reductions on an episodic basis. Control measure CMB-01 (Further NOx Reductions from RECLAIM), which was submitted as a contingency measure, is anticipated to be considered by the SCAQMD Governing Board in the first half of 2015. The rulemaking process for control measure IND-01 (Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities) is underway, with anticipated SCAQMD Governing Board consideration in 2015 and the technology assessment for control measure BCM-04 (Further Ammonia Reductions from Livestock Waste) will now be adopted in the 2015 to 2016 timeframe with rulemaking to follow, if technically feasible and cost-effective. The BCM-03 (Emission Reductions from Under-Fired Charbroilers) technology assessment is ongoing and is expected to be completed by 2015 with rule development to follow by 2017.

Pursuant to CAA Section 172(c)(9), SIPs are required to include contingency measures to be undertaken if the area fails to make reasonable further progress or attain the NAAQS by the attainment date. The contingency measures "should provide for emission reductions equivalent to about one year of reductions needed for reasonable further progress (RFP)" (79 FR 20642-20645) The 2012 AQMP relied on excess air quality improvement from the control strategy as well as potential NOx reductions from control measure CMB-01 (Further NOx Reductions from

ATTACHMENT 20.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Final Supplement to the 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin

February 2015

Executive Officer
Barry R. Wallerstein, D. Env.

Deputy Executive Officer
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Reviewed By:	Barbara Baird	Chief Deputy Counsel
	Megan Lorenz	Senior Deputy District Counsel

TABLE F-1

Updated 2012 SIP Emission Reduction Commitments to Attain 24-hour PM2.5 NAAQS *(35 μg/m³)*

Control Measure #	CONTROL MEASURE TITLE	2012 AQMP			PROPOSED in SUPPLEMENT		
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	TOTAL PM2.5 EMISSION REDUCTIONS (TPD)		**11.7**	**11.7**	--	**11.7**	**11.7**
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CMB-01	Further NOx Reductions from RECLAIM [Reg XX]	2013	2.0[5]	--	**2015**	2.0[5]	--
IND-01	Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Facilities [R4001]	2013	N/A[1]	N/A[1]	**2015**	N/A[1]	N/A[1]
	TOTAL NOx EMISSION REDUCTIONS (TPD)		**2.0**	--	--	**2.0**	--
SOx EMISSIONS							
IND-01	Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Facilities [R4001]	2013	N/A[1]	N/A[1]	**2015**	N/A[1]	N/A[1]
	TOTAL SOx EMISSION REDUCTIONS (TPD)		--	**N/A[1]**	--	--	**N/A[1]**
NH3 EMISSIONS							
BCM-04	Further Ammonia Reductions from Livestock Waste [R1127] - Phase I (*Tech Assessment*)	2013-2014	TBD[2]	TBD	**2015 - 2016**	TBD[2]	TBD
	-Phase II (*Rule Amendment*)	TBD	TBD[2]	TBD	TBD	TBD[2]	TBD
	TOTAL NH3 EMISSION REDUCTIONS (TPD)		TBD	TBD	--	--	--

[1] Measure is designed to ensure reductions assumed to occur will in fact occur
[2] Reductions to be determined once the technical assessment is complete, and inventory and control approach are identified
[3] Will submit into SIP once technically feasible and cost effective options are identified
[4] Reductions cannot be quantified due to the nature of the measure (e.g., outreach, incentive programs)
[5] Emission reductions are included in the SIP as a contingency measure, if triggered

BOARD MEETING DATE: February 6, 2015 AGENDA NO. 22

PROPOSAL: Supplement to 24-hour PM2.5 State Implementation Plan for South Coast Air Basin

SYNOPSIS: The purpose of this Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin is to demonstrate attainment of the 2006 24-hour PM2.5 National Ambient Air Quality Standard by 2015 under Clean Air Act, Title 1, Part D, Subpart 4, along with updates to the transportation conformity budgets, analysis of Reasonably Available Control Measures/Reasonably Available Control Technology, control measure commitments submitted in the 2012 AQMP, and other Subpart 4 requirements.

COMMITTEE: Mobile Source Committee, January 23, 2015, Reviewed

RECOMMENDED ACTIONS:
Adopt the attached resolution:
1. Determining that the Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin is exempt from the requirements of CEQA; and
2. Approving the attached Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin for Submittal into the SIP.

Barry R. Wallerstein, D.Env.
Executive Officer

BB EC:PF:MK

Background

The 2012 AQMP was approved by the SCAQMD Board in December 2012, with additional amendments approved in February 2013, and was subsequently submitted to CARB and the U.S. EPA for inclusion into the SIP. That plan demonstrated projected attainment of the 2006 24-hour PM2.5 National Ambient Air Quality Standards (NAAQS) (35 $\mu g/m^3$) by 2014. However, a recent court decision (*Natural Res. Def. Council v. EPA*, 706 F.3d 428 (D.C. Cir. 2013)) compels U.S. EPA to evaluate the 24-

ATTACHMENT E

~~DEMONSTRATION OF COMPLIANCE WITH~~
CLEAN AIR ACT, SUBPART 4, SECTION 189(E)
AND OTHER PRECURSOR REQUIREMENTS

BACKGROUND

PM2.5 has four major precursors, other than direct PM2.5 emissions, that may contribute to the development of the ambient PM2.5: ammonia, NOx, SOx, and VOC. The 2012 AQMP modeling analysis resulted in a set of ratios that reflect the relative amounts of ambient PM2.5 improvements expected from reductions of PM2.5 precursors emissions. For instance, Table 5-2 in Chapter 5 of the 2012 AQMP demonstrates that one ton of VOC emission reductions is only 30 percent as effective as one ton of NOx for lowering 24-hour PM2.5 concentrations. VOC reductions are only four percent and two percent as effective as SOx and direct PM2.5 reductions, respectively, on a per ton basis. Thus, VOC controls have a much less significant impact on ambient 24-hour PM2.5 levels relative to other PM2.5 precursors.

EMISSIONS CONTRIBUTION

While similar relative contributions to PM2.5 have not been developed for ammonia, the mass contributions of ammonium sulfate and ammonium nitrate are accounted for in the SOx and NOx contributions. This essentially assumes that PM2.5 formation in the basin is not ammonia limited with sufficient ammonia in the atmosphere to combine with available nitrates and sulfates. Under these conditions, ammonia controls are much less effective at reducing ambient PM2.5 levels than other precursors.

While the 2012 AQMP ammonia emissions inventory was close to 100 ton per day (TPD), the inventory was highly variable in terms of source contributions and spatial distribution throughout the Basin. As presented in Table E-1, major sources accounted for 1.7 TPD or less than 2 percent of the Basin inventory. Furthermore, only four major source emitters were noted in the inventory with the single highest major source accounting for less than 0.50 TPD direct emissions. All four major sources are located in the western Basin.

TABLE E-1

VOC and Ammonia Emissions Contributions

POLLUTANT	ALL SOURCES *(Tons Per Day)*	MAJOR SOURCES *(Tons Per Day)*	RELATIVE CONTRIBUTION
VOC	451[1]	8.0[2]	1.8%
Ammonia	99[3]	1.7[2]	1.7%

[1] 2012 AQMP - Appendix III: Base and Future Year Emission Inventory; 2014 Annual Average Emissions by Source Category in South Coast Air Basin

[2] 2013 SCAQMD Annual Emission Reporting

[3] ARB Almanac 2013 – Appendix B: County Level Emissions and Air Quality by Air Basin; County Emission Trends

Prior to the 2003 AQMP, significant effort was undertaken to develop inter-pollutant trading ratios to meet NSR emissions reduction goals. The primary mechanism was to reduce SOx to offset PM emissions. Aerosol chemical mechanisms embedded in box and regional modeling platforms where used to estimate the formation rates of ammonium sulfate from local sulfur emissions to establish a SOx emissions to PM formation ratio. The analyses determined that the influence of ammonia emissions was spatially varying where coastal-metro zone (west Basin) trading ratios of SOX to PM valued more than 5:1 per unit SOx emissions to PM. Conversely, eastern Basin ratios valued 1:1 since ammonia emissions were abundant and all SOx emissions were likely to rapidly transform to particulate ammonium sulfate. The inter-pollutant trades made during this time were reviewed by U.S. EPA and were included by reference to the EPA sponsored Inter-Pollutant Trading Working Group[4].

As part of the controls strategy evaluation for future PM2.5 attainment, additional set of analyses were conducted to test the potential impact of the use of SCR as a NOx control mechanism for mobile sources in the Basin. The analyses assumed that light as well as heavy duty diesels would use the control equipment potentially resulting in a 78-85 percent increase in ammonia from those source categories. The results of the analysis, presented at the September 24, 2010 SCAQMD Mobile Source Committee Meeting[5], indicated that a 10 TPD increase in ammonia would result in a net 0.22 $\mu g/m^3$ increase in regional PM2.5 concentrations. The emissions mostly followed heavy traffic corridors including freeways and major arterials. Regardless, the minimal PM2.5 simulated increase from a 10 percent increase in the Basin inventory reflected the degree of saturation of ammonia in the Basin and minimal sensitivity of changes in ammonia emissions to PM2.5 production.

During the development of the 2012 AQMP, a sensitivity analysis was conducted to test the potential impact of using a feed supplement applied to dairy cows on a forecasted basis that would reduce bovine ammonia emissions by 50 percent. The analysis focused on the Mira Loma area where more than 70 percent of the Basin's dairy emissions originate. In the sensitivity analysis a total of 2.9 TPD emissions were reduced from 103 dairy sources, or an average of 0.028 TPD per source (roughly one tenth of major source threshold)[6]. Since the Mira Loma monitoring station was embedded among the dairy sources, the reduction of the ground level emissions resulted in an approximate 0.16 $\mu g/m^3$ reduction in PM2.5. As in the aforementioned analyses, the reduction in regional ammonia emissions resulted in a minimal PM2.5 impact per ton emissions reduced.

---

and Forecasts 2012 Emissions. NOTE: 2012 AQMP – Appendix III provides 2014 Annual Average of 102 tpd of NH3; the relative contribution would not change (1.7/102 = 1.7%)

[4] "Preliminary Assessment of Methods for Determining Interpollutant Offsets", Correspondence with Scott Bohning U.S. EPA Region IX, May 6, 2002.

[5] "Impact of Higher On- and Off-road Ammonia Emissions on Regional PM2.5," Item 3, SCAQMD, Mobile Source Committee, September 24, 2010.

[6] "2008 24-hour PM2.5 Model Performance/Preliminary Attainment Demonstration," Item #2, Scientific Technical Modeling Peer Group Advisory Committee, June 14, 2012.

Thus, ammonia controls also have a much less significant impact on 24-hour PM2.5 exceedances than other precursors. Note however, that the effect on annual PM2.5 levels will be further evaluated in the 2016 AQMP.

SECTION 189(E)

Clean Air Act (CAA), Title I, Part D, Subpart 4, Section 189(e) states that control requirements applicable to plans in effect for major stationary PM sources shall also apply to major stationary sources of PM precursors, except where such sources does not contribute significantly to PM levels which exceed the standard in the area. According to the U.S. EPA, a major source in a nonattainment area is a source with emission of any one air pollutant greater than or equal to the major source thresholds in a nonattainment area. This threshold is generally 100 tons per year (tpy) or lower depending on the nonattainment severity for all sources. Emissions are based on "potential to emit" and include the effect of add-on emission control technology, if enforceable (*must be able to show continual compliance with the limitation or requirement*).

Major stationary sources of NOx and SOx are already subject to emission offsets (e.g., Regulation XX (RECLAIM) and Regulation XII (New Source Review)). Thus, to demonstrate compliance with CAA Subpart 4, Section 189(e), an analysis was conducted of the emissions of VOC and ammonia from major stationary sources during rule development of amended Rule 1325 (*Federal PM2.5 New Source Review Program*) approved by the SCAQMD Governing Board on December 5, 2014 (http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2014/2014-dec5-038.pdf?sfvrsn=2). That analysis concluded that VOC and ammonia from major sources (emitting 100 tpy or greater) contribute less than 2% of the overall Basin-wide VOC and ammonia emissions (Table E-1), and by extension, do not contribute significantly to PM levels. Furthermore, both VOC and ammonia are subject to requirements for Best Available Control Technology (BACT) under existing New Source Review (NSR) at a zero threshold, so those emission will still be minimized. This analysis was also included in the final approved staff report for PAR 1325.

~~Thus, the SCAQMD believes the requirements of CAA Subpart 4, Section 189(e) are satisfied and thus request that the Administrator of U.S. EPA makes this determination pursuant to this Section.~~

NEW SOURCE REVIEW

Because ammonia from major stationary sources does not significantly contribute to PM levels (see Table E-1), ammonia emission sources have not historically been subject to NSR offset requirements. However, for permitted ammonia sources, SCAQMD Rule 1303 (*NSR Requirements)* requires denial of "the Permit to Construct for any relocation, or for any new or

modified source which results in an emission increase of any nonattainment air contaminant, any ozone depleting compound, or ammonia, unless BACT is employed for the new or relocated source or for the actual modification to an existing source." No new major stationary source of ammonia is expected to be introduced to the region given that these new sources would be subject to BACT requirements (under SCAQMD Rule 1303 (*NSR Requirements*), BACT shall be at least as stringent as Lowest Achievable Emissions Rate (LAER) as defined in the federal Clean Air Act Section 171(3) [42 U.S.C. Section 7501(3)]). As mentioned above, there are currently only four major sources of ammonia (emitting more than 100 tons per year) in the South Coast Air Basin. If these sources were new to the region, they would be subject to BACT as stringent as LAER and not expected to reach 100 tons per year so as to be classified as a major source, thus not subject to NSR offset requirements.

However unlikely, even if new or modified major sources of ammonia increase ammonia emissions in the Basin, the ammonia contribution from major sources in the South Coast Air Basin will still not be a significant contributor to PM2.5 levels given that all current major sources of ammonia account for less than two percent of the overall ammonia emissions inventory. For instance, in the extremely unlikely event that ammonia emissions from major sources double, they would still contribute less than five percent of the overall ammonia inventory.

ATTACHMENT 21.

ATTACHMENT A
RESOLUTION NO. 12-19

A Resolution of the South Coast Air Quality Management District (AQMD or District) Governing Board Certifying the Final Program Environmental Impact Report for the 2012 Air Quality Management Plan (AQMP), adopting the Draft Final 2012 AQMP, to be referred to after adoption as the Final 2012 AQMP, and to be submitted into the California State Implementation Plan.

WHEREAS, the U.S. Environmental Protection Agency (U.S. EPA) promulgated a 24-hour fine particulate matter (PM2.5) national ambient air quality standard (NAAQS or standard) in 2006, and 8-hour ozone NAAQS in 1997, followed up by implementation rules which set forth the classification and planning requirements for State Implementation Plans (SIP); and

WHEREAS, the South Coast Air Basin was classified as nonattainment for the 2006 24-hour PM2.5 standard on December 14, 2009, with an attainment date by December 14, 2014; and

WHEREAS, the U.S. EPA revoked the 1-hour ozone standard effective June 15, 2005, but on September 19, 2012 issued a proposed call for a California SIP revision for the South Coast to demonstrate attainment of the 1-hour ozone standard; and

WHEREAS, the 1997 8-hour ozone standard became effective on June 15, 2004, with an attainment date for the South Coast of **June 15**, 2024; and amended 12-7-12 sm

WHEREAS, the South Coast Air Basin was classified as "extreme" nonattainment for 8-hour ozone for the 1997 standard with attainment dates by 2024; and

WHEREAS, EPA approved the South Coast SIP for 8-hour ozone on March 1, 2012; and

WHEREAS, the federal Clean Air Act requires SIPs for regions not in attainment with the NAAQS be submitted no later than three years after the nonattainment area was designated, whereby, a SIP for the South Coast Air Basin must be submitted for 24-hour PM2.5 by December 14, 2012; and

WHEREAS, the South Coast Air Quality Management District has jurisdiction over the South Coast Air Basin and the desert portion of Riverside County known as the Coachella Valley; and

WHEREAS, 40 Code of Federal Regulations (CFR) Part 93 requires that transportation emission budgets for certain criteria pollutants be specified in the SIP, and

WHEREAS, 40 CFR Part 93.118(e)(4)(iv) requires a demonstration that transportation emission budgets submitted to U.S. EPA are "consistent with applicable requirements for reasonable further progress, attainment, or" maintenance (whichever is relevant to the given implementation plan submission); and

WHEREAS, the South Coast Air Quality Management District is committed to comply with the requirements of the federal Clean Air Act; and

WHEREAS, the Lewis-Presley Air Quality Management Act requires the District's Governing Board adopt an AQMP to achieve and maintain all state and federal air quality standards; to contain deadlines for compliance with federal primary ambient air quality standards; and to achieve the state standards and federal secondary air quality standards by the application of all reasonably available control measures, by the earliest date achievable (Health and Safety Code Section 40462) and the California Clean Air Act requires the District to endeavor to achieve and maintain state ambient air quality standards for ozone, carbon monoxide, sulfur dioxide, and nitrogen dioxide by the earliest practicable date (Health and Safety Code Section 40910); and

WHEREAS, the California Clean Air Act requires a nonattainment area to evaluate and, if necessary, update its AQMP under Health & Safety Code §40910 triennially to incorporate the most recent available technical information; and

WHEREAS, the South Coast Air Quality Management District Governing Board is committed to comply with the requirements of the California Clean Air Act; and

WHEREAS, the South Coast Air Quality Management District is unable to specify an attainment date for state ambient air quality standards for 8-hour ozone, PM2.5, and PM10, however, the 2012 AQMP, in conjunction with earlier AQMPs contains every feasible control strategy and measure to ensure progress toward attainment and the AQMP will be reviewed and revised to ensure that progress toward all standards is maintained; and

WHEREAS, the 2012 AQMP must meet all applicable requirements of state law and the federal Clean Air Act; and

WHEREAS, the South Coast Air Quality Management District Governing Board is committed to achieving healthful air in the South Coast Air Basin and all other parts of the District at the earliest possible date; and

WHEREAS, the 2012 AQMP is the result of 17 months of staff work, public review and debate, and has been revised in response to public comments; and

WHEREAS, the 2012 AQMP incorporates updated emissions inventories, ambient measurements, new meteorological episodes, improved air quality modeling analyses, and updated control strategies by the District, and the Southern California Association of Governments (SCAG) and will be forwarded to the California Air Resources Board (CARB) for any necessary additions and submission to EPA; and

WHEREAS, as part of the preparation of an AQMP, in conjunction or coordination with public health agencies such as CARB and the Office of Environmental Health Hazard Assessment (OEHHA), a report has been prepared and peer-reviewed by the Advisory Council on the health impacts of particulate matter air pollution in the South Coast Air Basin pursuant to California Health and Safety Code § 40471, which has been included as part of Appendix I (Health Effects) of the 2012 AQMP together with any required appendices; and

WHEREAS, the 2012 AQMP establishes transportation conformity budgets for the 24-hour PM2.5 standard based on the latest planning assumptions; and

WHEREAS, the AQMP satisfies all the attainment deadlines for federal ambient air quality standards for 24-hour PM2.5 and 1-hour ozone NAAQS; and

WHEREAS, the 2012 AQMP satisfies the planning requirements set forth in the federal and California Clean Air Acts; and

WHEREAS, the 2012 AQMP includes the 24-hour PM2.5 attainment demonstration plan, reasonably available control measure (RACM) and reasonably available control technology (RACT) determinations, and transportation conformity budgets for the South Coast Air Basin; and

WHEREAS, the 2012 AQMP updates the U.S. EPA approved 8-hour ozone control plan with new measures designed to reduce reliance on the federal Clean Air Act (CAA) Section 182(e)(5) long-term measures for NOx and VOC reductions; and

WHEREAS, in order to reduce reliance on the CAA Section 182(e)(5) long-term measures, the SCAQMD will need emission reductions from sources outside of its primary regulatory authority and from sources that may lack, in some cases, the financial wherewithal to implement technology with reduced air pollutant emissions; and

WHEREAS, a majority of the measures identified to reduce reliance on the CAA Section 182(e)(5) long-term measures rely on continued and sustained funding to incentivize the deployment of the cleanest on-road vehicles and off-road equipment; and

WHEREAS, the 2012 AQMP includes a new demonstration of 1-hour ozone attainment (Appendix VII) and vehicle miles travelled (VMT) emissions offsets (Appendix VIII), as per recent proposed U.S. EPA requirements; and

WHEREAS, the South Coast Air Quality Management District Governing Board finds and determines with certainty that the 2012 AQMP is considered a "project" pursuant to CEQA; and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA) a Notice of Preparation (NOP) of a Draft Program Environmental Impact Report (PEIR) and Initial Study for the 2012 AQMP was prepared and released for a 30-day public comment period, preliminarily setting forth the potential adverse environmental impacts of adopting and implementing the 2012 AQMP; and

WHEREAS, pursuant to CEQA a Draft PEIR on the 2012 AQMP (State Clearinghouse Number 2012061093), including the NOP and Initial Study and responses to comments on the NOP and Initial Study, was prepared and released for a 45-day public comment period, setting forth the potential adverse environmental impacts of adopting and implementing the 2012 AQMP; and

WHEREAS, the Draft PEIR on the 2012 AQMP included an evaluation of project-specific and cumulative direct and indirect impacts from the proposed project and four project alternatives; and

WHEREAS, the AQMD staff reviewed the 2012 AQMP and determined that it may have the potential to generate significant adverse environmental impacts; and

WHEREAS, the Draft PEIR on the 2012 AQMP has been revised based on comments received and modifications to the draft 2012 AQMP and all comments received were responded to, such that it is now a Final PEIR on the 2012 AQMP; and

WHEREAS, the Governing Board finds and determines, taking into consideration the factors in §(d)(4)(D) of the Governing Board Procedures, that the modifications that have been made to 2012 AQMP, since the Draft PEIR on the 2012 AQMP was made available for public review would not constitute significant new information within the meaning of the CEQA Guidelines; and

WHEREAS, none of the modifications to the 2012 AQMP alter any of the conclusions reached in the Draft PEIR on the 2012 AQMP, nor provide new information of substantial importance that would require recirculation of the Draft PEIR on the 2012 AQMP pursuant to CEQA Guidelines §15088.5; and

WHEREAS, it is necessary that the adequacy of the Final PEIR on the 2012 AQMP be determined by the AQMD Governing Board prior to its certification; and

WHEREAS, it is necessary that the adequacy of responses to all comments received on the Draft PEIR on the 2012 AQMP be determined prior to its certification; and

WHEREAS, it is necessary that the AQMD prepare Findings and a Statement of Overriding Considerations pursuant to CEQA Guidelines §§15091 and 15093, respectively, regarding adverse environmental impacts that cannot be mitigated to insignificance; and,

WHEREAS, Findings and a Statement of Overriding Considerations have been prepared and are included in Attachment 2 to this Resolution, which is attached and incorporated herein by reference; and

WHEREAS, the provisions of Public Resources Code §21081.6 – Mitigation Monitoring and Reporting - require the preparation and adoption of implementation plans for monitoring and reporting measures to mitigate adverse environmental impacts identified in environmental documents; and

WHEREAS, staff has prepared such a plan which sets forth the adverse environmental impacts, mitigation measures, methods, and procedures for monitoring and reporting mitigation measures, and agencies responsible for monitoring mitigation measure, which is included as Attachment 2 to the Resolution and incorporated herein by reference; and

WHEREAS, the South Coast Air Quality Management District Governing Board voting on this Resolution has reviewed and considered the Final Program Environmental Impact Report on the 2012 AQMP, including responses to comments on the Draft Program Environmental Impact Report on the 2012 AQMP, the Statement of Findings, Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting Plan; and

WHEREAS, the Draft Socioeconomic Report on the 2012 AQMP was prepared and released for public review and comment; and

WHEREAS, the Draft Socioeconomic Report for the 2012 AQMP is revised based on comments received and modifications to the Draft 2012 AQMP such that it is now a Draft Final Socioeconomic Report for the 2012 AQMP; and

WHEREAS, the 2012 AQMP includes every feasible measure and an expeditious adoption schedule; and

WHEREAS, the CARB and the U.S. EPA have the responsibility to control emissions from motor vehicles, motor vehicle fuels, and non-road engines and consumer products which are primarily under their jurisdiction representing over 80 percent of ozone precursor emissions in 2023; and

WHEREAS, significant emission reductions must be achieved from sources under state and federal jurisdiction for the South Coast Air Basin to attain the federal air quality standards; and

WHEREAS, the formal deadline for submission of the 24-hour PM2.5 attainment plan is December 14, 2012, and the formal deadline for submission of the 1-hour ozone SIP revision is expected to be late 2013 or early 2014, but since the emissions inventory and control strategy for ozone has already been developed for the 2012 AQMP, and attaining the 1-hour ozone standard can rely on the same strategy for the 8-hour ozone standard, an attainment demonstration for the 1-hour ozone standard is included as an Appendix to the 2012 AQMP; and

WHEREAS, the 1-hour ozone attainment demonstration (Appendix VII) uses the same base year (2008) and future year inventories as presented in Appendix III of the 2012 AQMP and satisfies the pre-base year offset requirement by including pre-base year emissions in the growth projections, consistent with 40 CFR § 51.165(a)(3)(i)(C)(1), as described on page III-2-54 of Appendix III of the 2012 AQMP.

WHEREAS the South Coast Air Quality Management District Governing Board hereby requests that CARB commit to submitting contingency measures as required by Section 182(e)(5) as necessary to meet the requirements for demonstrating attainment of the 1-hr ozone standard; and

WHEREAS, the South Coast Air Quality Management District Governing Board directs staff to move expeditiously to adopt and implement feasible new control measures to achieve long-term reductions while meeting all applicable public notice and other regulatory development requirements; and

WHEREAS, the South Coast Air Quality Management District has held six public workshops on the Draft 2012 AQMP, one public workshop on the Draft Socioeconomic Report, four public hearings throughout the four-county region in September on the Revised Draft 2012 AQMP, 14 AQMP Advisory Group meetings, 11 Scientific, Technical, and Modeling, Peer Review Advisory Group meetings, four public hearings in November throughout the four-county region on the Draft Final 2012 AQMP, and one adoption hearing pursuant to section 40466 of the Health and Safety Code; and

WHEREAS, pursuant to section 40471(b) of the Health and Safety Code, as part of the six public workshops on the Draft 2012 AQMP, four public hearings on the Revised Draft 2012 AQMP, the four public hearings on the Draft Final 2012 AQMP, and adoption hearing, public testimony and input were taken on Appendix I (Health Effects); and

WHEREAS, the record of the public hearing proceedings is located at South Coast Air Quality Management District, 21865 Copley Drive, Diamond Bar, California 91765, and the custodian of the record is the Clerk of the Board; and

WHEREAS, an extensive outreach program took place that included over 75 meetings with local stakeholders, key government agencies, focus groups, topical workshops, and over 65 presentations on the 2012 AQMP provided; and

WHEREAS, the record of the CEQA proceedings is located at South Coast Air Quality Management District, 21865 Copley Drive, Diamond Bar, California 91765, and the custodian of the record is the Assistant Deputy Executive Officer, Planning, Rule Development, and Area Sources.

NOW, THEREFORE BE IT RESOLVED, that the South Coast Air Quality Management District Governing Board does hereby certify that the Final PEIR for the 2012 AQMP including the responses to comments has been completed in compliance with the requirements of CEQA and finds that the Final PEIR on the 2012 AQMP, including responses to comments, was presented to the AQMD Governing Board, whose members reviewed, considered and approved the information therein prior to acting on the 2012 AQMP; and finds that the Final PEIR for the 2012 AQMP reflects the AQMD's independent judgment and analysis; and

BE IT FURTHER RESOLVED, that the District will develop, adopt, submit, and implement the short-term PM2.5 control measures as identified in Table 4-2 and the 8-hour ozone measures in Table 4-4 of Chapter 4 in the 2012 AQMP (Main Document) as expeditiously as possible in order to meet or exceed

the commitments identified in Tables 4-10 and 4-11 of the 2012 AQMP (Main Document), and to substitute any other measures as necessary to make up any emission reduction shortfall.

BE IT FURTHER RESOLVED, the District commits to update AQMP emissions inventories, baseline assumptions and control measures as needed to ensure that the best available data is utilized and attainment needs are met.

BE IT FURTHER RESOLVED, the District commits to conduct a review of its socioeconomic analysis methods during 2013, convene a panel of experts, and update assessment methods and approaches, as appropriate.

BE IT FURTHER RESOLVED, the District commits to continue working with the ports on the implementation of control measure IND-01 (Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Sources).

BE IT FURTHER RESOLVED, that the Executive Officer is hereby directed to enhance outreach and education efforts related to the "Check before you Burn" residential wood burning curtailment program, and to expand the current incentive programs for gas log buydown and to include potentially wood stove replacements working closely with U.S. EPA and other stakeholders.

amended 12-7-12 BA

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board does hereby direct staff to work in conjunction with CARB to provide annual reports to U.S. EPA describing progress towards meeting Section 182(e)(5) emission reduction commitments.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, pursuant to the requirements of Title 14 California Code of Regulations, does hereby adopt the Statement of Findings pursuant to §15091, and adopts the Statement of Overriding Considerations pursuant to §15093, included in Attachment 2 and incorporated by reference; and

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, does hereby adopt the Mitigation Monitoring and Reporting Plan, as required by Public Resources Code, Section 21081.6, attached hereto and incorporated by reference; and

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board finds that the mobile source control measures contained in Appendix IV-B are technically feasible and cost-effective and requests that CARB consider them in any future incentives programs or rulemaking.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board does hereby direct staff to work with state agencies and state legislators, federal agencies and U.S. Congressional and Senate members to identify funding sources and secure funding for the expedited replacement of older existing vehicles and off-road equipment to help reduce the reliance on the CAA Section 182(e)(5) long-term measures.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board finds that transportation emission budgets are "consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to the given implementation plan submission)" pursuant to 40 CFR 93.118(e)(4)(iv).

BE IT FURTHER RESOLVED, that the Executive Officer is hereby directed to finalize the 2012 AQMP including the main document, appendices, and related documents as adopted at the December 7, 2012 public hearing.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, whose members reviewed, considered and approved the information contained in the documents listed herein, adopts the 2012 AQMP dated December 7, 2012 consisting of the document entitled 2012 AQMP as amended by the final changes set forth by the AQMD Governing Board and the associated documents listed in Attachment 1 to this Resolution, the Draft Final Socioeconomic Report for the 2012 AQMP; the Final Program EIR for the 2012 AQMP, and the Statements of Findings and Overriding Considerations and Mitigation Monitoring Plan (Attachment 2 to this Resolution).

BE IT FURTHER RESOLVED, the Executive Officer is hereby directed to work with CARB and the U.S. EPA to ensure expeditious approval of this 2012 AQMP for PM2.5 and 1-hour ozone attainment.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, requests that the 2012 AQMP serve as the SIP revision submittal for the 24-hour PM2.5 attainment demonstration plan including the RACM/RACT determinations for the PM2.5 standard for the South Coast Air Basin, and the PM2.5 Transportation Conformity Budgets for the South Coast Air Basin.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, requests that the 2012 AQMP (Appendix VII) serve as the SIP revision submittal for the 1-hour ozone NAAQS attainment demonstration.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, requests that the 2012 AQMP (Appendix VIII) serve as the SIP revision submittal for a revised VMT emissions offset demonstration as required under Section 182(d)(1)(A) for both the 1-hour ozone and 8-hour ozone SIPs for the South Coast Air Basin.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, requests that the 2012 AQMP serve as an update to the approved 2007 8-hour ozone SIP for the South Coast Air Basin with specific control measures designed to further implement the 8-hour ozone SIP and reduce reliance on Section 182(e)(5) long term measures.

BE IT FURTHER RESOLVED, that the 2012 AQMP does not serve as a revision to the previously approved 8-hour ozone SIP with respect to emissions inventories, attainment demonstration, RFP, and transportation emissions budgets or any other required SIP elements.

BE IT FURTHER RESOLVED, that the Executive Officer is hereby directed to forward a copy of this Resolution, the 2012 AQMP and its appendices as amended by the final changes, to CARB, and to request that these documents be forwarded to the U.S. EPA for approval as part of the California State Implementation Plan. In addition, the Executive Officer is directed to forward a copy of this Resolution, comments on the 2012 AQMP and responses to comments, public notices, and any other information requested by the U.S. EPA for informational purposes.

Attachments

AYES: Benoit, Burke, Cacciotti, Gonzales, Loveridge, Lyou, Mitchell, Nelson, Parker, Pulido, and Yates.

NOES: None.

ABSTAIN: None.

ABSENT: Antonovich and Perry.

Dated: 12-7-2012

Saundra McDaniel
Clerk of the District Board

ATTACHMENT 1

The Final 2012 Air Quality Management Plan submitted for the South Coast Air Quality Management District Governing Board's consideration consists of the documents entitled:

- Draft Final 2012 AQMP (Attachment B) including the following appendices:
  - Appendix I - Health Effects
  - Appendix II - Current Air Quality
  - Appendix III - Base and Future Year Emission Inventory
  - Appendix IV (A) - District's Stationary Source Control Measures
  - Appendix IV (B) - Proposed 8-Hour Ozone Measures
  - Appendix IV (C) - Regional Transportation Strategies & Control Measures
  - Appendix V - Modeling & Attainment Demonstrations
  - Appendix VI - Reasonably Available Control Measures (RACM) Demonstration
  - Appendix VII - 1-Hour Ozone Attainment Demonstration
  - Appendix VIII - VMT Offset Requirement Demonstration
- Comments on the 2012 Air Quality Management Plan, and Responses to Comments (November 2012) – (Attachment C)
- Final Program Environmental Impact Report for the 2012 Air Quality Management Plan (Attachment D)
  - Findings, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Plan (Attachment 2 to the Resolution)
- Draft Final Socioeconomic Report for the 2012 Air Quality Management Plan (Attachment E)
- Changes to Control Measures IND-01, CMB-01, CTS-01 and CTS-04 (Attachment F)

ATTACHMENT 22.

State of California
AIR RESOURCES BOARD

SOUTH COAST AIR BASIN 2012 PM2.5 AND OZONE STATE IMPLEMENTATION PLANS

Resolution 13-3

January 25, 2013

Agenda Item No.: 13-2-2

WHEREAS, the Legislature in Health and Safety Code section 39602 has designated the State Air Resources Board (ARB or Board) as the air pollution control agency for all purposes set forth in federal law;

WHEREAS, the ARB is responsible for preparing the State Implementation Plan (SIP) for attaining and maintaining the National Ambient Air Quality Standards (standards) as required by the federal Clean Air Act (Act) (42 U.S.C. section 7401 et seq.), and to this end is directed by Health and Safety Code section 39602 to coordinate the activities of all local and regional air pollution control and air quality management districts (districts) as necessary to comply with the Act;

WHEREAS, section 41650 of the Health and Safety Code requires the ARB to approve the nonattainment area plan adopted by a district as part of the SIP unless the Board finds, after a public hearing, that the plan does not meet the requirements of the Act;

WHEREAS, the ARB has responsibility for ensuring that the districts meet their responsibilities under the Act pursuant to sections 39002, 39500, 39602, and 41650 of the Health and Safety Code;

WHEREAS, the ARB is authorized by section 39600 of the Health and Safety Code to do such acts as may be necessary for the proper execution of its powers and duties;

WHEREAS, sections 39515 and 39516 of the Health and Safety Code provide that any duty may be delegated to the Board's Executive Officer as the Board deems appropriate;

WHEREAS, the districts have primary responsibility for controlling air pollution from non-vehicular sources and for adopting control measures, rules, and regulations to attain the standards within their boundaries pursuant to sections 39002, 40000, 40001, 40701, 40702, and 41650 of the Health and Safety Code;

WHEREAS, the South Coast Air Basin (SCAB or Basin) includes Orange County, the southwestern two-thirds of Los Angeles County, southwestern San Bernardino County, and western Riverside County;

WHEREAS, the South Coast Air Quality Management District (District) is the local air district with jurisdiction over the SCAB, pursuant to sections 40410 and 40413 of the Health and Safety Code;

WHEREAS, the Southern California Association of Governments (SCAG) is the regional transportation agency for the SCAB and Coachella Valley and has responsibility for preparing and implementing transportation control measures to reduce vehicle trips, vehicle use, vehicle miles traveled, vehicle idling and traffic congestion for the purpose of reducing motor vehicle emissions pursuant to sections 40460(b) and 40465 of the Health and Safety Code;

WHEREAS, section 40463(b) of the Health and Safety Code specifies that the District board must establish a carrying capacity - the maximum level of emissions which would enable the attainment and maintenance of an ambient air quality standard for a pollutant - for the South Coast Air Basin with the active participation of SCAG;

WHEREAS, the South Coast 2012 Air Quality Management Plan (AQMP) includes State Implementation Plan (SIP) amendments for fine particulate matter (PM2.5) and ozone;

WHEREAS, in July 1997, the United States Environmental Protection Agency (U.S. EPA) promulgated 24-hour and annual standards for PM2.5 of 65 micrograms per cubic meter (ug/m^3) and 15 ug/m^3, respectively;

WHEREAS, in December 2004, U.S. EPA designated the South Coast Air Basin as nonattainment for the PM2.5 standards;

WHEREAS, in March 2007, U.S. EPA finalized the PM2.5 implementation rule (Rule) which established the framework and requirements that states must meet to develop annual average PM2.5 SIPs, set an initial attainment date of April 5, 2010, and allowed for an attainment date extension of up to five years;

WHEREAS, the Rule requires that PM2.5 SIPs include air quality and emissions data, a control strategy, a modeled attainment demonstration, transportation conformity emission budgets, reasonably available control measure/reasonably available technology (RACM/RACT) demonstration, and contingency measures;

WHEREAS, in July 1997, the U.S. EPA promulgated an 8-hour standard for ozone of 0.08 parts per million (ppm);

WHEREAS, on April 15, 2004, U.S. EPA designated the South Coast as nonattainment for the 0.08 ppm 8-hour ozone standard;

WHEREAS, in 2007, the District and ARB adopted SIP amendments demonstrating attainment of the annual PM2.5 standard by April 5, 2015, and of the 8-hour ozone standard by December 31, 2023, and submitted the SIP amendments to U.S. EPA;

WHEREAS, in 2009 and 2011, at U.S. EPA's request, ARB provided clarifying amendments to the annual PM2.5 and 8-hour ozone South Coast SIPs submitted in 2007;

WHEREAS, in 2011, U.S. EPA approved the control strategy, emission reduction commitment and attainment demonstration for the annual PM2.5 standard with an attainment date of April 5, 2015;

WHEREAS, in 2012, U.S. EPA approved the control strategy, emission reduction commitment and attainment demonstration for the 8-hour ozone standard with an attainment date of June 15, 2024;

WHEREAS, in December 2006, U.S. EPA lowered the 24-hour PM2.5 standard from 65 ug/m^3 to 35 ug/m^3;

WHEREAS, effective December 14, 2009, U.S. EPA designated the South Coast Air Basin as nonattainment for the 35 ug/m^3 PM2.5 standard;

WHEREAS, on March 12, 2012, U.S. EPA issued a memorandum that provided further guidance on the development of SIPs specific to the 35 ug/m^3 PM2.5 standard and set an initial attainment date of December 14, 2014, with a provision for an attainment date extension of up to five years;

WHEREAS, the 2012 AQMP Plan identifies directly-emitted PM2.5, nitrogen oxides (NOx), sulfur oxides (SOx) and volatile organic compounds (VOC) as PM2.5 attainment plan precursors consistent with the Rule;

WHEREAS, the emission reductions contained in the 2012 AQMP for PM2.5 attainment rely on adopted regulations and on new or revised District control measures;

WHEREAS, the 2012 AQMP's new PM2.5 measures include further strengthening of the District's wood burning curtailment program, outreach, and incentive programs;

WHEREAS, in accordance with section 172(b)(2) of the Act, the 2012 AQMP identifies 2014 as the most expeditious attainment date for the 24-hour PM2.5 standard;

WHEREAS, the attainment analysis in the 2012 AQMP demonstrates that the 24-hour PM2.5 standard will be met throughout the Basin by the proposed 2014 attainment date;

WHEREAS, consistent with section 172(c)(3) of the Act, the 2012 AQMP includes a comprehensive, accurate, current inventory of emissions data for directly emitted PM2.5 and PM2.5 precursors: oxides of nitrogen (NOx), reactive organic gases (ROG), sulfur oxides (SOx), and ammonia (NH3);

WHEREAS, consistent with section 172(c) of the Act, the 2012 AQMP demonstrates the implementation of RACM/RACT for direct PM2.5 and the area's relevant PM2.5 precursors;

WHEREAS, consistent with section 172(c)(9) of the Act, the 2012 AQMP includes contingency measures that provide extra emissions reductions that go into effect without further regulatory action if the area fails to make attainment of the 24-hour PM2.5 standard on time;

WHEREAS, consistent with section 176 of the Act, the 2012 AQMP establishes transportation conformity emission budgets, developed in consultation between the District, ARB staff, transportation agencies, and U.S. EPA, that conform to the attainment emission levels;

WHEREAS, the approved commitment for emission reductions is for total aggregate reductions that may be achieved through the measures identified in the SIP, alternative measures or incentive programs, and actual emission decreases that occur;

WHEREAS, the approved commitment for emission reductions allows for the substitution of reductions of one precursor for another using relative PM2.5 reductions values identified by the District;

WHEREAS, section 182(e)(5) of the Act provides that SIPs for extreme ozone nonattainment areas may rely in part upon the development of new technologies or the improvement of existing technologies;

WHEREAS, the approved SIP includes commitments to achieve additional reductions from advanced technology as provided for in section 182(e)(5) of the Act;

WHEREAS, in the Federal Register (Volume 77 Fed.Reg. 12674 at 12686 (March 1, 2012)) entry approving the ozone elements of the South Coast 8-hour ozone SIP, U.S. EPA stated that measures approved under section 182(e)(5) may include those that anticipate future technological developments as well as those that require complex analyses, decision making and coordination among a number of government agencies;

WHEREAS, the 2011 revision to the 8-hour ozone SIP included State commitments to develop, adopt, and submit contingency measures by 2020 if advanced technology measures do not achieve planned reductions;

WHEREAS, the 2012 AQMP includes actions to develop and put into use advanced transformational technologies to fulfill in part the approved SIP commitment for the Act section 182(e)(5) reductions;

WHEREAS, these actions described in the 2012 AQMP as seventeen mobile measures (five on-road measures, five off-road measures, and seven advanced technology measures), are consistent with U.S. EPA's interpretation of 182(e)(5) used in the approval of the South Coast 8-hour ozone SIP (77 Fed.Reg. 12674 at 12686 (March 1, 2012));

WHEREAS, on November 6, 1991, U.S. EPA designated the South Coast Air Basin an extreme nonattainment area for the 1-hour ozone standard with an attainment date of no later than November 15, 2010;

WHEREAS, in 2000 ARB submitted the 1999 Amendment to the South Coast 1997 AQMP, collectively called the 1997/1999 SIP revision, which included long-term measures pursuant to section 185(e)(5);

WHEREAS, in 2000 U.S. EPA approved the 1997/1999 revision to the South Coast 1-hour ozone SIP;

WHEREAS, in 2003 ARB submitted a revision to the South Coast 1-hour ozone SIP;

WHEREAS, in 2009 U.S. EPA disapproved the attainment demonstration in the 2003 revision;

WHEREAS, on February 2, 2011, the Ninth Circuit Court of Appeals remanded U.S. EPA's 2009 final action on the 2003 South Coast 1-hour ozone SIP and directed U.S. EPA to take further action to ensure that the State develop a plan demonstrating attainment of the 1-hour ozone standard, consistent with Clean Air Act requirements;

WHEREAS, on January 7, 2013, U.S. EPA issued a SIP call for the State to submit, within 12 months of the effective date of the SIP call, a SIP revision demonstrating attainment of the 1-hour ozone standard in the Basin;

WHEREAS, the 2012 AQMP's 1-hour ozone attainment demonstration relies on adopted state and local regulations, along with new local regulations including continued implementation of the approved 8-hour ozone SIP to reduce emissions by 2022;

WHEREAS, the 1-hour ozone attainment demonstration also relies upon section 182(e)(5) provisions for future reductions from developing new technologies or improving existing technologies;

WHEREAS, the actions to implement advanced technology measures for the approved 8-hour ozone SIP also describe actions to implement advanced technology measures for the 1-hour ozone attainment demonstration;

WHEREAS, section 182(e)(5) of the Act requires contingency measures be submitted no later than three years prior to the attainment year in the event that the anticipated long-term measures approved pursuant to section 182(e)(5) do not achieve planned reductions needed for attaining the 1-hour ozone standard;

WHEREAS, section 182(e)(5) contingency measures in the approved SIP meet the requirements for attainment contingency measures because section 182(e)(5) is not relied on for emission reductions prior to November 15, 2000;

WHEREAS, the 2012 AQMP demonstrates the Basin will attain the 1-hour ozone standard by 2022;

WHEREAS, consistent with section 172(c)(3) of the Act, the 2012 AQMP includes a comprehensive, accurate, current inventory of emissions data for precursors of ozone: oxides of nitrogen (NOx) and reactive organic gases (ROG);

WHEREAS, consistent with section 172(c) of the Act, the 2012 AQMP demonstrates the implementation of RACM/RACT for NOx and ROG;

WHEREAS, section 182(d)(1)(a) of the Act requires ozone nonattainment areas classified as severe and extreme to submit a vehicle miles traveled (VMT) offset demonstration showing no increase in motor vehicle emissions between the base year in the Act 1990 Amendments and the area's attainment year;

WHEREAS, in February 2011, the Ninth Circuit Court of Appeals held that section 182(d)(1)(a) of the Act requires additional transportation control strategies and transportation control measures to offset vehicle emissions whenever they are projected to be higher than if base year VMT had not increased;

WHEREAS, the Ninth Circuit Court of Appeals remanded the approval of the 2007 8-hour ozone SIP VMT emissions offsets demonstration to U.S. EPA;

WHEREAS, in September 2012, U.S. EPA proposed to withdraw its final approvals, and then disapprove, SIP revisions submitted to meet the section 182(d)(1)(a) VMT emissions offset requirements for the U.S. EPA approved South Coast Air Basin 1-hour and 8-hour ozone plans;

WHEREAS, in August 2012, U.S. EPA issued guidance entitled "Implementing Clean Air Act Section 182(d)(1)(A): Transportation Control Measures and Transportation Control Strategies to Offset growth in Emissions Due to Growth in Vehicle Miles Traveled";

WHEREAS, consistent with the requirements of section 182(d)(1)(A) as specified by the Ninth Circuit Court of Appeals ruling in 2011 and with U.S. EPA guidance in 2012, and in response to U.S. EPA's September 2012 proposal, the 2012 AQMP includes a VMT offset demonstration for both 1-hour and 8-hour ozone plans;

WHEREAS, the 2012 AQMP also includes a second VMT emissions offset demonstration for 8-hour ozone that meets an alternative VMT offset methodology proposed by U.S. EPA;

WHEREAS, the California Environmental Quality Act (CEQA) requires that no project which may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, pursuant to California Environmental Quality Act (CEQA), the District prepared a Program Environmental Impact Report (EIR) for the 2012 AQMP that was released for a 45-day public review and comment period from September 7, 2012 to October 23, 2012, and in the Final Program EIR the District responded to the 13 comment letters received;

WHEREAS, the District's Final Program EIR identified potentially significant and unavoidable project-specific adverse environmental impacts to air quality (CO and PM10 impacts from construction activities), energy demand, hazards (associated with accidental release of liquefied natural gas during transport), water demand, noise (from construction activities) and traffic (construction activities and operations), as well as potentially significant cumulative adverse impacts to air quality (construction), energy demand, hazards and hazardous materials, hydrology and water quality, noise, and transportation and traffic;

WHEREAS, the District Governing Board adopted a Statement of Findings and a Statement of Overriding Considerations finding the project's benefits outweigh the unavoidable adverse impacts, as well as a Mitigation Monitoring Plan;

WHEREAS, federal law set forth in section 110(l) of the Act and Title 40, Code of Federal Regulations (CFR), section 51.102, requires that one or more public hearings, preceded by at least 30 days notice and opportunity for public review, must be conducted prior to adopting and submitting any SIP revision to U.S. EPA;

WHEREAS, as required by federal law, the District made the 2012 AQMP available for public review at least 30 days before the District hearing;

WHEREAS, following a public hearing on December 7, 2012, the AQMD Governing Board voted to approve the 2012 AQMP including the 24-hour PM2.5 plan, the 8-hour ozone advanced technology actions and the 1-hour ozone plan;

WHEREAS, on December 20, 2012, the District transmitted the 2012 AQMP to ARB as a SIP revision, along with proof of public notice publication, and environmental documents in accordance with State and federal law; and

WHEREAS, the Board finds that:

1. The 2012 AQMP meets the applicable planning requirements established by the Act and the Rule for 24-hour PM2.5 SIPs, and includes the required air quality and emissions data, modeled attainment demonstrations, RACM/RACT demonstrations, new source review, transportation conformity emission budgets, and contingency measures;

2. The existing 2007 PM2.5 SIP, including benefits of ARB's adopted mobile source control measures, combined with the new District control measures identified in the adopted 2012 AQMP will provide the emission reductions needed for meeting the 24-hour PM2.5 standard by the December 14, 2014, attainment date;

3. The 2012 AQMP identifies contingency measures that will achieve additional emission reductions, beyond those relied on in the attainment demonstration, in the event that the South Coast Air Basin does not attain the 24-hour PM2.5 standard by 2014;

4. The 2012 AQMP meets applicable planning requirements established by the Act for 1-hour ozone SIPs, and includes the required air quality and emissions data, modeled attainment demonstrations, new source review and RACM/RACT demonstrations;

5. The 2012 AQMP VMT offset demonstrations meets the section 182(d)(1)(a) VMT offset requirements for both the 1-hour ozone and the 8-hour ozone plans; and

6. ARB has reviewed and considered the Final EIR prepared by the District and comments presented by interested parties, and find there are no additional feasible mitigation measures or alternatives within ARB's powers that would substantially lessen or avoid the project-specific impacts identified.

NOW, THEREFORE, BE IT RESOLVED the Board hereby approves the South Coast 2012 AQMP as an amendment to the SIP, excluding those portions not required to be submitted to U.S. EPA under federal law, and directs the Executive Officer to forward the 2012 AQMP as approved to U.S. EPA for inclusion in the SIP to be effective, for purposes of federal law, upon approval by U.S. EPA.

BE IT FURTHER RESOLVED that the Board commits to develop, adopt, and submit contingency measures by 2019 if advanced technology measures do not achieve planned reductions as required by section 182(e)(5)(B).

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to work with the District and U.S. EPA and take appropriate action to resolve any completeness or approvability issues that may arise regarding the SIP submission.

BE IT FURTHER RESOLVED that the Board authorizes the Executive Officer to include in the SIP submittal any technical corrections, clarifications, or additions that may be necessary to secure U.S. EPA approval.

BE IT FURTHER RESOLVED that the Board hereby certifies pursuant to 40 CFR section 51.102 that the District's 2012 AQMP was adopted after notice and public hearing as required by 40 CFR section 51.102.

I hereby certify that the above is a true and correct copy of Resolution 13-3, as adopted by the Air Resources Board.

Tracy Jensen, Clerk of the Board

SAN PEDRO BAY PORTS

CLEAN AIR ACTION PLAN

November 19, 2015

Ms. Wienke Tax
Air Planning Office (AIR-2)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

Re: Docket No. EPA-R09-OAR-2015-0204
U.S. Environmental Protection Agency
Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; California; South Coast Moderate Area Plan and Reclassification as Serious Nonattainment for the 2006 PM2.5 NAAQS

Dear Ms. Tax:

On behalf of the City of Long Beach acting by its Harbor Department and the City of Los Angeles acting by its Harbor Department (collectively, the Cities or the ports), we appreciate the opportunity to provide comments in response to the U.S. Environmental Protection Agency's (EPA) proposal for *Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; California; South Coast Moderate Area Plan and Reclassification as Serious Nonattainment for the 2006 PM2.5 NAAQS,* as published in the *Federal Register* on October 20, 2015 (Federal Register, Vol. 80. No 202).

I. Summary of Ports' Position.

The Cities urge the EPA to disapprove and exclude the South Coast Air Quality Management District (SCAQMD or District) Control Measure IND-01 and Proposed Rule 4001, *Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities* from the State Implementation Plan (SIP) submittal for the 2006 $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) in the South Coast Air Basin. The Cities recognize that emissions from nearly every business sector, including the maritime goods movement industry, need to be reduced in order for the State of California and SCAQMD to meet the NAAQS. For this reason, the two Cities implemented the highly successful voluntary San Pedro Bay Clean Air Action Plan (CAAP) to encourage the maritime goods movement industry to do its fair share in the South Coast Air Basin to reduce emissions. Most of the strategies included in the CAAP have since been overtaken by regulations enacted by the California Air Resources Board or International Maritime Organization. It is the Cities' understanding that the purpose of Control

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

Measure IND-01 and Proposed Rule 4001 is to allow the SCAQMD to enforce against the Cities their voluntary CAAP program in the event that the international, federal, and state regulatory programs don't achieve the $PM_{2.5}$ emissions inventory that SCAQMD assumed in the baseline for the years 2014 and 2019 in the 2012 AQMP.

The inclusion of Measure IND-01 and Proposed Rule 4001 in the AQMP and SIP is neither necessary nor legally proper, for reasons that will be explained below. SCAQMD proposes by Control Measure IND-01 to improperly designate the entire harbor districts of the Cities as "stationary sources" and "indirect sources," and then hold the two Cities legally responsible for actions by the maritime industry that the SCAQMD assumed in the $PM_{2.5}$ Plan. The Cities do not operate, own or control the emissions sources.

The Cities have long opposed the inclusion of any form of a "backstop" rule on the ports that would apply SCAQMD oversight and enforcement against the ports for failures of the SCAQMD and CARB in assuming maritime goods movement industry activities in the baseline.. We have also raised significant technical, jurisdictional, constitutional, and legal concerns with Proposed Rule 4001 in a series of comment letters sent to SCAQMD, CARB and EPA regarding the inclusion of Control Measure IND-01 in the 2012 Air Quality Management Plan and SIP, and the subsequent rulemaking process of SCAQMD Rule 4001. (See Attachments 1-15.) These letters are incorporated by reference as a part of this comment letter to EPA as if fully set forth herein. With respect to EPA's present rulemaking, as further discussed below in sections III-IV, the ports do not believe that Control Measure IND-01 and Proposed Rule 4001 are properly before EPA. Even if EPA determines there are no procedural infirmities and proceeds with the proposed rulemaking, there are numerous substantive legal reasons why EPA cannot approve Control Measure IND-01 or Proposed Rule 4001 as part of the SIP. These arguments are discussed below in section V.

II. Background.

The Cities and businesses that move goods in and out of the ports are vital to the regional, state, and national economy. The ports are home to the two busiest container seaports in the United States and, if taken together, are the fifth busiest in the world, moving more than $260 billion a year in trade. The international cargo handled by the ports also accounts for over 1.1 million jobs in California and 3.3 million jobs in the United States; however, competition for much of this cargo is intensifying particularly with other international ports (Panama Canal, Canada, Mexico).

The ports are global leaders, voluntarily working in partnership with several public agencies (EPA, CARB, and SCAQMD) and the maritime goods movement industry to achieve unprecedented success in reducing emissions from goods movement sources (ships, trains, trucks, cargo handling equipment, harbor craft) and improving air quality, while continuing to foster port development that is essential to Southern California's economy. On November 20, 2006, the Cities approved the landmark CAAP, the most comprehensive strategy to cut air pollution and reduce health risks ever adopted for a global seaport complex. The CAAP contained goals to achieve a 45% emissions reduction in diesel particulate matter (DPM), nitrogen oxides (NOx), and sulfur oxides (Sox) by the end of 2011 from the mobile sources operating in and around the ports. In 2007, the ports received the 8th Annual National U.S. EPA Clean Air Excellence Award in recognition of this groundbreaking work and commitment.

The Cities continued their pioneering work and commitment to clean air by adopting an update to the CAAP on November 22, 2010. The 2010 CAAP update established several aggressive goals: (1) by 2014, reduce emissions from mobile sources operating in and around the ports by 22% for NOx, 93% for SOx, and 72% for DPM from baseline emissions; (2) by 2023, reduce emissions from mobile sources operating in and around the ports by 59% for NOx, 92% for SOx and 77% for DPM; and, (3) aim by 2020 to lower the cancer risk related to diesel particulate pollution by 85% in the communities adjacent to the ports. The CAAP was initially developed as a voluntary effort not required by any state, federal or local law or regulation. The voluntary aspect of the CAAP is critical. The ports set stretch goals under an incentive-based and collaborative approach that has resulted in billions of dollars of investment by the Cities and private sector businesses in clean air programs and technology. More importantly, because the goals are in advance of regulations, much of the CAAP success is due to reliance on federal, state and SCAQMD grants that can only be obtained for "surplus" emission reductions that go beyond regulation –which will not be available under a required regulation such as PR 4001.

The Cities remain firm in their position that Control Measure IND-01 and Proposed Rule 4001 are unnecessary and counterproductive to a successful collaborative approach, and should not be included in the SIP. These measures would hold the ports, not the owners or operators of the emission sources, responsible for shortfalls in voluntary CAAP measures. This approach will deter the ports as well as other ports and industries from any type of voluntary emission reduction action in the future. The proposed rule would also unfairly impact only the ports in Southern California; no such rule exists for any other port in the United States or other parts of the world.

In addition, the Cities have shown that there is no demonstrated need for a backstop rule for equipment operating in and around the ports, nor is a ports' backstop rule necessary for the regional attainment of the 2006 $PM_{2.5}$ standard. (See Attachment 3, Cities' Letter to Dr. Randall Pasek, SCAQMD, January 15, 2014].). The attainment demonstration for the 2012 $PM_{2.5}$ Plan did not rely on any emission reductions from Control Measure IND-01. As indicated in SCAQMD's supplement to the 24-hour $PM_{2.5}$ SIP, unanticipated extreme weather conditions, not emissions from the maritime goods movement industry, have made attainment unlikely in 2014, citing the effects of the severe drought on the west coast of the United States.

Because any current shortfall in the regional attainment of the $PM_{2.5}$ emissions targets is not caused or controlled by the Cities, and not due to any actions or omissions on the part of the Cities, it is inappropriate and unnecessary to require Rule 4001 enforcement against the ports. The control measure was intended as a "backstop" that would go into effect only if the emission targets for NOx, SOx, and $PM_{2.5}$ from sources operating in or around the ports exceed the levels projected by the ports and assumed in the 2012 AQMP. In fact, the ports' most recently completed emissions inventories for calendar year 2014 show that the ports have **exceeded** the assumptions SCAQMD included in the 2012 $PM_{2.5}$ Plan.. Diesel particulate matter (DPM) emissions have been reduced by 85% over the 9 year period between 2005 and 2014. In addition, NOx emissions are down by 51%, and SOx emissions have been reduced by 97%. Instead of being rewarded for these extraordinary efforts, the Cities will instead be unnecessarily penalized with a port specific backstop rule. Since 2014 $PM_{2.5}$ CAAP goals were met and the ports are on track to maintain these reductions through 2019, there is no identified need or basis for including Proposed Rule 4001 in the SIP. In fact, the ports would be the *only* entities the SCAQMD regulates in this matter, notwithstanding these unprecedented voluntary efforts.

Table 3 of the Notice does not identify the anticipated implementation date and emissions reductions for Rule 4001, rather, listing "N/A". It is unreasonable to approve the inclusion of the Proposed Rule in the SIP without an indication of the implementation date and necessary emissions reductions from implementation of the rule to bring the South Coast Basin into attainment. A critical aspect of this related to the lack of need for an additional regulation on the ports is that many of the voluntary control strategies implemented under the CAAP have been superseded by source-specific state or international regulation. Approximately 98% of the emissions reductions from maritime goods movement emission sources that have been achieved to date rely on, and are largely the result of regulations at the state and international levels, including:

- CARB Truck and Bus Regulation
- CARB Ocean-going Vessel At-Berth Regulation
- CARB and International Ocean-going Vessels Low-Sulfur Fuel Regulations
- CARB Cargo-handling Equipment Regulation
- CARB Commercial Harbor Craft Regulation
- International Maritime Organization North American Emission Control Area

The Cities should not be held responsible for or mandated to backfill any potential emissions shortfalls from regulatory agencies not implementing emission reduction regulations as identified within the SIP, even if those regulations are related to equipment operating in or around the ports. The backstop measure should instead require EPA or CARB to enact applicable regulations under their air regulatory authority applied uniformly to the national ports or state ports, or to find the shortfall emission reductions from other sources in the SIP.

The Cities continually develop and support emission reduction strategies and programs that will result in cleaner air for the local communities and the region. These efforts have been entered into voluntarily, working cooperatively with the operators in the port area to reduce air quality impacts from the equipment they operate. The potential for additional regulation by the SCAQMD in the form of Rule 4001 on the ports brings significant uncertainty that will have broad negative effects on the goods movement industry and the economy as a whole, and will jeopardize the voluntary, collaborative partnership between the Cities, industry, and the air agencies that has led to the significant emissions reductions achieved to date.

III. Control Measure IND-01 Cannot Be Approved in the Final Rulemaking Because it Was Not Approved by the CARB Board for SIP Adoption, and Has Not Been Properly Submitted to EPA for Approval.

According to the Federal Register Notice (80 Fed. Reg. 63640), the SIP revisions encompassed in the proposed rulemaking are "the 2012 $PM_{2.5}$ Plan, submitted February 13, 2013, and the 2015 Supplement, submitted March 4, 2015." The 2012 $PM_{2.5}$ Plan submitted February 13, 2013, does ***not*** include IND-01 or Proposed Rule 4001. This is because on December 7, 2012, when the SCAQMD Governing Board considered the $PM_{2.5}$ Plan, the Governing Board specifically ***removed*** Control Measure IND-01 from the $PM_{2.5}$ Plan ***before*** adopting the Plan. (See Attachment 16.) On February 13, 2013, the CARB Executive Officer submitted the 2012 $PM_{2.5}$ Plan to EPA without Control Measure IND-01. In fact, the $PM_{2.5}$ Plan in the federal docket for this proposed rulemaking has IND-01 ***crossed out*** to confirm that it was removed from the $PM_{2.5}$ Plan before submittal to CARB and EPA. (See

Attachment 17.) The CARB Board, which is the only entity authorized to make SIP submittals, has never held a public meeting, offered to receive public comment on, or taken a Board vote to authorize the amendment of the SIP to include the submittal of IND-01 or Proposed Rule 4001 to EPA for inclusion as part of California's SIP for the South Coast Air Basin. The EPA Notice is based only on a control measure list with the date and title of Control Measure IND-01 included on Attachment F to the 2015 Supplement, with no evidence of CARB Board approval of its addition as a SIP supplement, which is legally insufficient as a SIP revision. EPA cites no other documents to demonstrate that Control Measure IND-01 was approved by the CARB Board and properly submitted to EPA as a proposed SIP revision.

Further, the 2015 Supplement did not constitute a submittal of Control Measure IND-01 or Proposed Rule 4001. As explained in EPA's proposed rulemaking (80 Fed. Reg. 63641), the 2015 Supplement was submitted in response to the appellate court's decision in *NRDC v. EPA*, 706 F/3d 428 (D.D. Cir. 2013), that EPA must consider the general implementation requirements of subpart 1 with the requirements specific to particulate matter nonattainment areas in subpart 4 of Part D, Title I of the Clean Air Act. The 2015 Supplement was intended to address the subpart 4 issues that had not been included in the $PM_{2.5}$ Plan. (80 Fed. Reg. 63641-63642.) The 2015 Supplement merely provides in Table F-1 a new proposed adoption date for Control Measure IND-01/Proposed Rule 4001 of 2015. (See Attachment 18.) The stated emission reduction "commitment" towards $PM_{2.5}$ attainment for Control Measure IND-01/Proposed Rule 4001 is "N/A" in both the $PM_{2.5}$ Plan and in the 2015 Supplement. The 2015 Supplement only states that Proposed Rule 4001 will not be approved in 2015 as stated in the 2015 Supplement. (See Attachment 19.)

EPA states that the $PM_{2.5}$ Plan or 2015 Supplement are considered complete SIP submittals under section 110(k)(1)(B) by operation of law without the inclusion of Control Measure IND-01 or Proposed Rule 4001. (80 Fed. Reg. 63642.) However, there is no text of either Control Measure IND-01 or Proposed Rule 4001 for EPA to assess in determining whether these actions comply with the applicable requirements of subparts 1 and 4. Since there is no Control Measure IND-01 or Proposed Rule 4001 in the $PM_{2.5}$ Plan or 2015 Supplement, these actions are not properly before EPA, and EPA cannot approve a commitment for SCAQMD to adopt Proposed Rule 4001 in its final rulemaking.

IV. Commitments to Adopt a Rule in the Future Cannot be Approved under Clean Air Act Section 110(k)(3).

To the extent that EPA will issue a final rule on the 2012 $PM_{2.5}$ Plan and 2015 Supplement, approval of SCAQMD's future commitments, specifically Control Measure IND-01 and Proposed Rule 4001, cannot be approved under Clean Air Act section 110(k)(3) as EPA proposes to do in the rulemaking. (80 Fed. Reg. 63650). According to EPA, under Section 110(k)(3), EPA considers three factors in determining whether to approve a control measure as an enforceable commitment. As discussed below, Control measure IND-01 and Proposed Rule 4001 are not enforceable commitments. However, EPA has determined it does not need to consider these factors because "the $PM_{2.5}$ Plan and 2015 Supplement do not rely on either the rule amendment commitments in its impracticability demonstration, RACM demonstration, RFP demonstration, or quantitative milestones, or to meet any other CAA requirement." (80 Fed. Reg. 63652.) Since the three-factor test has not been applied and Control Measure IND-01/Proposed Rule 4001 are not necessary to comply with the Clean Air Act

requirements, there is no basis for approving Control Measure IND-01/Proposed Rule 4001 under Section 110(k)(3).

V. Control Measure IND-01 and Proposed Rule 4001 are Legally Deficient.

If EPA decides that Control Measure IND-01 and Proposed Rule 4001 are properly before the agency, then the ports submit the following comments and concerns.

1. *Clean Air Act Subparts 1 and 4 Requirements Are Not Met.*

In accordance with Clean Air Act section 189(a)(1)(B), modeling is conducted for demonstrating attainment or that attainment by the applicable deadline is not practicable. Through Control Measure IND-01 and Proposed Rule 4001, SCAQMD is inappropriately attempting to enforce the modeling assumptions it utilized in the 2012 $PM_{2.5}$ Plan (that demonstrated attainment[1]) *for the ports only*. There is no justification as to why the port-only assumptions and no others must be enforced to achieve attainment. If EPA approves this novel and significant change in SIPs in its final rulemaking, it will be signaling to states and local agencies that they can enforce assumptions. This will undermine the SIP process and lead to serious disagreements and controversies over all assumptions states and local agencies include in their SIPs because the regulated community will be fearful that any technical assumptions included in the SIP will be enforced in the future. Technical assumptions estimated by scientists will become political decisions. Further, this approach has been disapproved by the Ninth Circuit Court of Appeals in *Bayview Hunters Point Community Advocates v. Metropolitan Transportation Commission*, 366 3d 692 (9th Cir. 2004).

The requirements in subparts 1 and 4 relative to RACM/RACT have not been met for Control Measure IND-01 and Proposed Rule 4001. EPA states that RACM includes any potential control measure for non-road emission sources that is both technologically and economically feasible. (80 Fed. Reg. 63647.) There must be an evaluation of technical feasibility that includes operation conditions, and non-air quality impacts as well as an economic feasibility that includes consideration of cost per ton of pollutant reduced, capital costs and annualized costs. There is no such analysis for Control Measure IND-01 or Proposed Rule 4001. SCAQMD cannot evade these requirements by calling Control Measure IND-01 an indirect source measure or a measure to simply enforce an attainment demonstration assumption.

Clean Air Act section 110(a)(2)(A) requires that control measures in the SIP be enforceable. As discussed herein, Control Measure IND-01 and Proposed Rule 4001 are not enforceable by the designated agencies and cannot be approved as Clean Air Act section 110(k)(3) commitments. As acknowledged by Table 3 in 80 Fed. Reg. 63651 there is no implementation date or emission reductions to be achieved by Control Measure IND-01 or Proposed Rule 4001. Further, EPA proposes to approve Control Measure IND-01 for ***NOx reductions*** in the $PM_{2.5}$ Plan. (80 Fed. Reg. 63652.) Control

[1] 80 Fed. Reg. 63644 incorrectly states that the 2012 PM2.5 Plan demonstrated that attainment by the moderate deadline is impracticable

Measure IND-01 is not evaluated in the attainment demonstration as a NOx control measure necessary to reduce $PM_{2.5}$ precursors. (See 42. U.S.C. § 7502(c).) (See Attachment 20.)

2. *The Ports Cannot Be Legally Responsible for Other Agencies' Actions.*

The CAAP's goals and control measures that SCAQMD seeks to codify as the responsibility of the ports are in fact the responsibility of other government agencies. As stated above, approximately 98% of voluntary CAAP measures have been superseded by state or international regulation, including:

- CARB Truck and Bus Regulation
- CARB Ocean-going Vessel At-Berth Regulation
- CARB and International Ocean-going Vessels Low-Sulfur Fuel Regulations
- CARB Cargo-handling Equipment Regulation
- CARB Commercial Harbor Craft Regulation
- International Maritime Organization North American Emission Control Area

The Cities should not be held legally responsible for or mandated to backfill any potential emissions shortfalls from regulatory agencies not implementing emission reduction regulations as identified within the SIP, even if those regulations are related to equipment operating at or in the vicinity of the ports or were originally identified as voluntary measures.

3. *Control Measure IND-01 and Proposed Rule 4001 are Not Required for Demonstrating Attainment.*

The SCAQMD Governing Board found that without Control Measure IND-01: (1) "the 2012 AQMP, in conjunction with earlier AQMPs contains every feasible control strategy and measure to ensure progress toward attainment…."; (2) "the AQMP satisfies all the attainment deadlines for federal ambient air quality standards for 24-hour $PM_{2.5}$ and 1-hour ozone NAAQS"; (3) "the 2012 AQMP satisfies the planning requirements set forth in the federal and California Clean Air Acts"; and, (4) "the 2012 AQMP includes every feasible measure and an expeditious adoption schedule". (Attachment 21, Resolution, motions, deleted Control Measure IND-01.)

On January 25, 2013, the CARB Board adopted Resolution No. 13-3. (Attachment 22, Resolution.) The CARB Board found that without Control Measure IND-01: (1) "the attainment analysis in the 2012 AQMP demonstrates that the 24-hour $PM_{2.5}$ standard will be met throughout the [South Coast Air] Basin by the proposed attainment date"; (2) the 2012 AQMP demonstrates the [South Coast Air] Basin will attain the 1-hour ozone standard by 2022"; (3) "[t]the 2012 AQMP meets the applicable planning requirements established by the [Clean Air] Act and the Rule for 24-hour $PM_{2.5}$ SIPs, and includes the required air quality and emissions data, modeled attainment demonstrations, RACM/RACT demonstrations, new source review, transportation conformity emission budgets, and contingency measures"; (4) "[t]he 2012 AQMP identifies contingency measures that will achieve additional emission reductions, beyond those relied on in the attainment demonstration, in the event that the South Coast Air Basin does not attain the 24-hour $PM_{2.5}$ standard by 2014"; and, (5) "[t]he 2012 AQMP meets applicable planning requirements established by the [Clean Air] Act for 1-hour ozone SIPs, and includes the required air quality and emissions data, modeled attainment demonstrations, new source review and RACM/RACT demonstrations".

EPA proposes to conclude that RACM/RACT have been met without Control Measure IND-01/Proposed Rule 4001. Because there is no need for Control Measure IND-01/Proposed Rule 4001, there is no basis for approving it as part of the SIP.

4. *Control Measure IND-01 and Proposed Rule 4001 Are Preempted by the Clean Air Act and SCAQMD Lacks Authority to Adopt and Implement these Committments.*

Congress vested the federal government with the authority to set nationwide emissions standards for mobile sources, including nonroad mobile engines and vehicles. (42 U.S.C. §§ 7521, 7547.) Congress expressly and impliedly preempted states from setting standards or other requirements relating to the control of emissions for mobile sources. (42 U.S.C. § 7543, (a) & (e) The goods movement sources that would be regulated by Proposed Rule 4001 are within the express and implied preemption.

The Clean Air Act allows California to seek authorization from the EPA to adopt "standards and other requirements relating to the control of emissions" for some but not all mobile sources that would be covered by Proposed Rule 4001. (42 U.S.C. §§ 7543, (b) & (e)(2)(A).) The Clean Air Act does not allow for California to seek an EPA waiver for every one of the goods movement emission sources, nor has CARB made such a request.

Control Measure IND-01/Proposed Rule 4001 sets standards relating to the control of emissions that are preempted by the Clean Air Act. Control Measure IND-01/Proposed Rule 4001 establishes an emission reduction target of 75% below 2008 emission levels. (See CAAP's goals and control measures above.) The ports do not own or operate the emitting equipment. If business-as-usual does not satisfy this requirement, then the ports' tenants (e.g., shipping companies) and customers (e.g., trucking companies) that own or operate the specific port-related sources will need to modify their current operations – the equivalent of complying with "other requirements."

Control Measure IND-01/Proposed Rule 4001 also sets "other requirements" relating to emissions from mobile sources because it requires the ports to ensure implementation of the rules and regulations of CARB, EPA and MARPOL. Proposed Rule 4001's emission inventory requirement will compel the ports to monitor compliance by mobile sources operating in and around the ports and identify and report reduction shortfalls. If emissions increase, exceeding the 75% emissions cap, the ports will have to identify the emission source and cause in order to adequately prepare a strategy for the Emission Reduction Plan required by the proposed rule to address and reduce these emissions. Yet, the ports have not been granted the authority by CARB, EPA and MARPOL to enforce their rules and regulations.

Under Control Measure IND-01/Proposed Rule 4001, if the Executive Officer decides the emission reduction target is not met, the ports would be required to prepare an Emission Reduction Plan that includes sufficient feasible control strategies expected to eliminate the identified shortfall and maintain the reduction target from maritime goods movement sources through calendar year 2020. This amounts to requiring the ports to impose "other requirements" upon the cargo movement that are more stringent than the requirements of CARB, EPA and MARPOL.

5. *SCAQMD Lacks Authority to Regulate Outside of Jurisdictional Boundaries.*

SCAQMD's authority to regulate is limited to its jurisdictional boundaries. SCAQMD was created by the California Legislature "in those portions of the Counties of Los Angeles, Orange,

Riverside, and San Bernardino included within the area of the South Coast Air Basin, as described in Section 60104 of Title 17 of the California Administrative Code, as now or hereafter amended." (Cal. Health & Safety Code, § 40410.)

The South Coast Air Basin includes the portion of Los Angeles County "[b]eginning at the Los Angeles-San Bernardino County boundary and running west along the township line common to T.3 N and T.2 N, San Bernardino Base and Meridian; then north along the range line common to R.8 W and R.9 W; then west along the township line common to T.4 N and T.3 N; then north along the range line common to R.12 W and R.13 W to the southeast corner of Section 12, T.5 N, R.13 W; then west along the south boundaries of Sections 12, 11, 10, 9, 8, 7, T.5 N, R.13 W to the boundary of the Angeles National Forest which is collinear with the range line common to R.13 W and R.14 W; then north and west along the Angeles National Forest boundary to the point of intersection with the township line common to T.7 N and T.6 N (point is at the northwest corner of Section 4 in T.6 N, R.14 W); then west along the township line common to T.7 N and T.6 N; then north along the range line common to R.15 W and R.16 W to the southeast corner of Section 13, T.7 N, R.16 W; then along the south boundaries of Sections 13, 14, 15, 16, 17, 18, T.7 N, R.16 W; then north along the range line common to R.16 W and R.17 W to the north boundary of the Angeles National Forest (collinear with township line common to T.8 N and T.7 N); then west and north along the Angeles National Forest boundary to the point of intersection with the south boundary of the Rancho La Liebre Land Grant; then west and north along this land grant boundary to the Los Angeles-Kern County boundary. (17 Cal. Code Regs., § 60104(d).)

SCAQMD's 2012 AQMP, which includes Control Measure IND-01 as an indirect source control strategy, applies only to the South Coast Air Basin. The 2012 AQMP acknowledges that SCAQMD's jurisdiction over the South Coast Air Basin "is bounded by the Pacific Ocean to the west and the San Gabriel, San Bernardino, and San Jacinto mountains to the north and east." (See 2012 AQMP, p. 1-2.) SCAQMD lacks authority to adopt and enforce Proposed Rule 4001 because it does not have jurisdiction to regulate emission sources outside of its geographical boundaries as would be required if the CAAP programs become mandatory. The Ocean Going Vessel (OGV) Vessel Speed Reduction program would require OGVs to slow vessel speed to 12 knots during their approach and departure from the ports at a distance of either 20 nm or 40 nm from Point Fermin, which is outside SCAQMD's jurisdictional boundary. The OGV Low Sulfur Fuel for Auxiliary Engines and Auxiliary Boilers program would require OGVs to switch to low sulfur distillate fuel within 40 nm from Point Fermin, which is outside of SCAQMD's jurisdictional boundary. The OGV Low Sulfur Fuel for Main Engines program would require OGVs to switch to low sulfur distillate fuel within 40 nm from Point Fermin, which is outside of SCAQMD's jurisdictional boundary.

This OGV Vessel Speed Reduction program is the only CAAP measure that is not already part of regulations adopted by other agencies. Yet, the ports also lack jurisdiction to mandate any OGV actions of the ship owners if CAAP voluntary incentive targets are not met for the reasons stated below in section V.6.

6. ***Control Measure IND-01 and Proposed Rule 4001 Violate IMO's MARPOL Annex VI and Maritime Pollution Prevention Act of 2008.***

OGVs are regulated by the federal government implementing its treaty obligations under MARPOL, administered by the IMO, specifically MARPOL Annex VI Regulations for the Prevention

of Air Pollution from Ships (Annex VI) which sets global limits for SOx, NOx, and PM emissions from OGVs. Congress vested MARPOL and Annex VI authority with the Secretary of the U.S. Coast Guard (Secretary) and the Administrator (Administrator) of the EPA. (33 U.S.C. § 1903.) The Secretary has exclusive MARPOL administrative and enforcement authority. (33 U.S.C. § 1903(a).) The Administrator has Annex VI administrative, regulatory, investigative, and enforcement authority. (33 U.S.C. §§ 1901 et seq.)

The SCAQMD's ability to adopt, enforce, and require the ports to comply with Control Measure IND-01/Proposed Rule 4001 is precluded and preempted by Annex VI and federal regulations. (40 CFR § 1043.10.) The federal government has historically been the principal regulator of emissions from U.S. and foreign-flagged ships (or OGVs) under Annex VI. (40 C.F.R. § 94; 40 C.F.R. § 1043, 33 C.F.R. § 151).

The ports are located within the North American Environmental Control Area (ECA) established under Annex VI. The North American ECA's limits are much stricter than Annex VI's global requirements. Control Measure IND-01/Proposed Rule 4001 unlawfully requires the ports to collect and report NOx, SOx, and PM emissions information from OGVs subject to Annex VI requirements in the North American ECA. (Proposed Rule 4001(d).) To collect this information, the ports must impose a reporting requirement for OGVs coming and going from the ports– effectively regulating them under Annex VI. The ports lack authority to regulate U.S. and foreign-flagged ships in this manner. (33 U.S.C. §§ 1903, 1907.) Federal recordkeeping and reporting requirements for fuel and marine engines are expressly allowed (40 C.F.R. § 1043.70(b)-(c)), but no other recordkeeping and reporting requirements are authorized by statute or regulation. Control Measure IND-01/Proposed Rule 4001's reporting requirement is thus preempted by both Annex VI's record-keeping requirements for NOx engine standards and sulfur content in fuel (Regulations 13 and 14, Annex VI; incorporated by reference at 40 C.F.R. § 1043.100) and federal regulatory record-keeping and reporting requirements (40 C.F.R. § 1043.70).

Control Measure IND-01/Proposed Rule 4001 is also preempted on enforcement grounds. Congress expressly reserved enforcement authority of Annex VI regulations to the U.S. Coast Guard and EPA. (33 U.S.C. §§ 1903, 1907.) Enforcement inspections will be conducted only by the U.S. Coast Guard and, when referred by the Secretary, investigated by the Administrator. (33 U.S.C. §§ 1907(f)(1)-(2).) The U.S. Coast Guard and EPA are authorized to impose civil penalties for violations of MARPOL (including Annex VI) and 33 U.S.C. §§ 1901 et seq., § 1908(b)(1). The ports and SCAQMD are not so authorized and cannot inspect, penalize, or undertake enforcement actions against OGVs under Annex VI and 33 U.S.C. §§ 1901 et seq.

Control Measure IND-01/Proposed Rule 4001 also gives the Executive Officer of the SCAQMD authority to decide that the emission target is not met. To satisfy the Emission Reduction Plan requirement, the ports may have to impose more stringent emissions requirements on U.S. and foreign-flagged vessels than required by Annex VI. The ports and SCAQMD both lack this authority.

7. ***Control Measure IND-01 and Proposed Rule 4001 Violate the Dormant Commerce Clause.***

Control Measure IND-01/Proposed Rule 4001 violates the dormant Commerce Clause and would impede the free and efficient flow of commerce imposing a heavy burden on ports, the shipping

industry, navigation and commerce without any local environmental benefit, or an insubstantial local benefit at best. Because SCAQMD's attainment demonstration shows the $PM_{2.5}$ NAAQS can be obtained without Control Measure IND-01/Proposed Rule 4001, it is unnecessary to require additional emissions reductions from the maritime goods movement industry to achieve attainment and the burdens on interstate commerce of Control Measure IND-01/Proposed Rule 4001 render it unreasonable and irrational.

8. ***SCAQMD Lacks Authority under the Clean Air Act to Designate and Regulate the Ports as "Indirect Sources."***

The Clean Air Act defines an indirect source as "a facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution." (42 U.S.C. § 7410(a)(5)(C).) An "indirect source review program" is "the facility-by-facility review of indirect sources of air pollution, including such measures as are necessary to assure, or assist in assuring, that a new or modified indirect source will not attract mobile sources of air pollution" that would contribute to the exceedance of the NAAQS. (42 U.S.C. § 7410(a)(5)(D)(i).) "Direct emissions sources or facilities at, within, or associated with, any indirect source shall not be deemed indirect sources for the purpose" of an indirect source review program. (42 U.S.C. § 7410(a)(5)(C).)

The ports are not a "Facility" as required by the Clean Air Act's indirect source provisions. Together, the Port of Los Angeles and Port of Long Beach encompass 10,700 acres, miles of waterfront and features 50 passenger and cargo terminals, including dry and liquid bulk, container, breakbulk, automobile and warehouse facilities, and a cruise passenger complexes. While some U.S. ports are "operating ports" that own and operate their terminals and equipment and hire longshoremen to handle cargo, the ports of Los Angeles and Long Beach are "non-operating" or "landlord" ports that hold the tidelands property in trust for the State of California and lease it out to port tenants that operate the terminals. Each port tenant is treated as an individual stationary source facility by the SCAQMD and their activities are separately regulated and permitted by the SCAQMD.

SCAQMD advances the novel theory in Control Measure IND-01/Proposed Rule 4001 that it can designate a geographic area of a city to be an "indirect source." Further, the geographic line drawn by SCAQMD does not respect political boundaries and lumps portions of the Cities together as a single indirect source. The SCAQMD believes it can draw any geographic boundary it desires and declare that area to be an "indirect source" without regard for whether the landowner operates or controls mobile sources that pass through the area. Under the SCAQMD's theory, a local air district could designate as a stationary source, and an indirect source any city or county that has natural features that attract ships or cars or other mobile sources, even if the city or county does not own, operate or control those sources. Is a city with oil fields a stationary source and indirect source because it attracts refineries, trucks and trains to transport the petroleum products? If Riverside County has increased the numbers of warehouses and distribution centers within its borders, is the governmental agency or county geographical area now a stationary source and indirect source because such distribution centers within their borders attract trucks and trains?

Control Measure IND-01/Proposed Rule 4001 uses the Clean Air Act's indirect source provisions as a guise to impermissibly regulate mobile sources. Proposed Rule 4001 regulates emissions from "***on- and off-road mobile sources operating at, and to and from***, the Ports, which includes ocean-

going vessels, locomotives, heavy duty trucks, harbor craft, trucks, and cargo handling equipment that emit NOx, SOx, or PM2.5." (Proposed Rule 4001(c)(7) [Emphasis added].) Proposed Rule 4001's language clearly regulates emissions from the tailpipes of on-road and off-road mobile sources listed above, which makes Proposed Rule 4001 a mobile source regulation. The language also plainly allows Proposed Rule 4001 to regulate off-site emissions (emissions occurring during transit "to and from" the purported "site"). Proposed Rule 4001 therefore regulates emissions from heavy duty trucks hauling a container from the ports to Oregon or OGVs hauling cargo containers from Asia to the ports – even when that truck or OGV is no longer physically operating within the ports' boundaries. Proposed Rule 4001 is therefore not a site-based program. Congress did not intend or authorize the use of the indirect source provisions of the Clean Air Act as a way to circumvent mobile source preemption.

Control Measure IND-01/Proposed Rule 4001 also fails as an indirect source review program because the ports are not a "new or modified indirect emissions source." The Clean Air Act defines modification as "any physical change in, or change in the method of operation, of a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of an air pollutant not previously emitted." (42 U.S.C. § 7411(a)(4).) The criteria pollutants targeted by Control Measure IND-01/Proposed Rule 4001 are among those that have been identified and reduced for the duration of the CAAP. Because the ports do not qualify as either a new or modified source, any attempt to regulate them as such exceeds the SCAQMD's authority.

Control Measure IND-01/Proposed Rule 4001 also violates the nexus requirement for indirect source review programs. The purpose of an indirect source review program is to ensure that mobile source emissions do not "cause or contribute to air pollution concentrations exceeding any national primary ambient air quality standard for a mobile-source related air pollutant." (42 U.S.C § 7410(a)(5)(D)(i).) SCAQMD's own $PM_{2.5}$ monitors show that emissions from mobile sources operating in and around the ports are not causing or contributing to the South Coast Air Basin's nonattainment of the $PM_{2.5}$ NAAQS. In the 2015 Supplement, SCAQMD attributes nonattainment to a single monitor – Mira Loma (Van Buren) – which is located in Riverside, approximately 60 miles northeast of the ports. This monitor has purportedly failed to attain the $PM_{2.5}$ NAAQS because of drought conditions in Southern California, even though all of the South Coast Air Basin has experienced the drought and none of SCAQMD's other monitors have failed to demonstrate attainment with the $PM_{2.5}$ NAAQS, including the two State and Local Air Monitoring Stations nearest to the Ports – in North and South Long Beach. The Long Beach monitors have consistently demonstrated attainment for at least the last four years and are projected to continue attaining the standard through 2019. The data thus suggest a nexus between nonattainment and a source located near the Mira Loma (Van Buren) monitor – ***not the ports***.

9. *SCAQMD Lacks Authority to Require the Ports to Regulate Air Quality*.

Control Measure IND-01/Proposed Rule 4001 unlawfully compels the Ports to regulate local air quality in violation of California Health and Safety Code sections 40414 and 40440. SCAQMD's authority is confined to air quality and cannot infringe on the land use authority of counties and cities. (42 U.S.C. § 7431; Cal. Health and Safety Code § 40414.) The ports, not SCAQMD, have the authority to determine their own land use needs to advance trade and commerce. The ports play a critical role in facilitating domestic and international maritime commerce. The Los Angeles City Charter charges the Port of Los Angeles with possession, management, and control of all navigable waters, tidelands, submerged lands, and other lands as specified in the City Charter. (City Charter, Sections 602 and 651.)

Similarly, the Long Beach City Charter vests in the Long Beach Harbor Department the authority to control and supervise the Harbor District to provide for the needs of commerce, navigation, recreation and fishery. (Long Beach charter Article X11.) As an exercise of this authority, the ports decided to develop an emission inventory and implement CAAP programs after having weighed the risks of losing business to other ports without a CAAP-equivalent program. These emissions are not caused by the ports' own equipment or operations – they are caused by tenants and other goods movement customers that operate in or near the ports.

The ports are not authorized by state or federal law to carry out the air quality responsibilities of an air district or state. (40 C.F.R. § 51.232(a).) The delegation requirements are also not met. (40 C.F.R. § 51.232(b).) Control Measure IND-01/Proposed Rule 4001 nevertheless requires the ports to conduct regulatory activities, such as developing and adopting emission reduction strategies for maritime goods movement emission sources, which may include retrofit, idling, or fuel requirements; seeking SCAQMD's approval to implement the ERP regulations; and establishing enforcement procedures to ensure that $PM_{2.5}$ emission reductions from mobile sources operating in or near the ports meet the 2012 AQMP assumptions. (See Proposed Rule 4001(f)(1)(C), (f)(1) and (2), and (f)(1)(D).)

10. *There is No Legal Authority for Including Control Measure IND-01 or Proposed Rule 4001 in the SIP*.

Indirect source control measures cannot be required as a condition of SIP approval by EPA or CARB. (42 U.S.C. § 7410(a)(5)(A)(ii); Cal. Health & Safety Code, § 40468.) There are no provisions in the Clean Air Act for including "backstop" measures like Control Measure IND-01 and rules like Proposed Rule 4001 in the California SIP. Only those provisions necessary to meet the requirements of the Clean Air Act can be included in the SIP. (Cal. Health & Safety Code, § 39602.) Control Measure IND-01/Proposed Rule 4001 is not necessary to meet the 24-hour $PM_{2.5}$ NAAQS requirements of Clean Air Act, and there is no emission reduction target for Control Measure IND-01 in the attainment strategy for the 2012 AQMP which Proposed Rule 4001 purports to implement. Thus, Proposed Rule 4001 does not comply with SIP submittal requirements. (See e.g., 40 C.F.R. §§ 51.112-51.114.)

The 2012 AQMP baseline assumptions SCAQMD seeks to enforce by Control Measure IND-01/Proposed Rule 4001 are not credited as emission reductions in the control attainment demonstration for the 2012 AQMP. There is no requirement under the Clean Air Act to enforce baseline assumptions in a SIP. CARB and SCAQMD must have legal authority to adopt, carry out and enforce each SIP measure before EPA can approve the SIP measure. (40 C.F.R. §§ 51.230-51.232; 40 C.F.R. § 51, App. V.) CARB and SCAQMD lack legal authority (preempted) because they cannot require the owners or operators of OGVs, locomotives, harbor craft, and CHE to implement all of the measures set forth in the CAAP, which Control Measure IND-01/Rule Proposed Rule 4001 requires. There is no agreement between CARB or SCAQMD with the Cities for the ports to agree to implement and enforce the sources covered by Proposed Rule 4001. (40 C.F.R. § 51.240.)

11. *Control Measure IND-01 and Proposed Rule 4001 Violate the Tidelands Trust Doctrine*.

The Cities' management of their tidelands is restricted by the public trust doctrine and the legislative acts that granted tidelands to the Cities. As tidelands trustees, the Cities are required to operate and use their tidelands property and revenues solely for the benefit of the entire State of

California, and not for purely local interest or benefit. The Cities have been granted the discretion over how to best fulfill the express trust purposes. SCAQMD cannot compel the ports through Proposed Rule 4001 to violate these Tidelands Trust obligations.

Control Measure IND-01/Proposed Rule 4001 strips the Cities of their discretion in administering the tidelands for the benefit of the State of California and compels the Cities to utilize their revenues for air quality purposes ahead of the purposes expressly set forth in the documents granting tidelands to the Cities. As a practical matter, Control Measure IND-01/Proposed Rule 4001 compliance will depend in part on the Cities providing financial incentives to the owners and operators of mobile sources to incentivize emission reductions. If the SCAQMD Executive Officer requires the ports to develop an Emission Reduction Plan and determines that more generous financial incentives must be offered by the ports to achieve the emission targets (which is permissible under Proposed Rule 4001), this would ultimately diminish the Cities' ability to execute their tidelands trust obligations by forcing revenue to be spent on complying with Proposed Rule 4001, and depleting revenues for express trust purposes.

In their discretion, the ports consider environmental quality to fall within the implied scope of the tidelands trust and have in fact made substantial expenditures when their operating budgets allow. The ports also fully comply with the California Environmental Quality Act when developing their properties for tenants' use, which may include providing mitigation such as air quality reduction measures to address any environmental impacts. However, the tidelands trust does not expressly require revenues be expended for "air quality improvement", and Control Measure IND-01/Proposed Rule 4001 appears to challenge the Cities' jurisdiction over their own funds, if the only way to increase compliance with a CAAP incentive program, for example, is to increase the amount of incentives.

Control Measure IND-01/Proposed Rule 4001 also compels the Cities to violate their Tidelands Trust obligations by mandating that the ports utilize trust funds for an entirely local air regulatory program to reduce PM 2.5, SOx, and NOx emissions. Proposed Rule 4001 applies to "commercial marine ports located in the South Coast Air Quality Management District." (Proposed Rule 4001(b).) The SCAQMD covers a sub-region within Southern California. (Cal. Health and Safety Code, § 40410.) "Commercial marine ports" means "the Port of Los Angeles and the Port of Long Beach." (Proposed Rule 4001(c)(2).) The funding to implement Proposed Rule 4001 will confer only an emission reduction benefit to the South Coast Air Basin and not the entire State of California. Thus, the benefits of Proposed Rule 4001 are strictly localized and conflict with the express terms of the tidelands trust provisions that the ports' property and revenues confer statewide, and not purely local, benefits. The implementation of Proposed Rule 4001 in the South Coast Air Basin will place the ports at a competitive disadvantage to other ports in California. If other ports secure cargo business meant for the Los Angeles or Long Beach ports, the Cities will lose revenues they need to fulfill their tidelands trust obligations.

Conclusion

Again, the ports appreciate the opportunity to comment on EPA's proposed rulemaking and urge the EPA to disapprove and exclude SCAQMD's Control Measure IND-01 and Proposed Rule 4001 from the SIP submittal for the 2006 $PM_{2.5}$ NAAQS in the South Coast Air Basin.

Sincerely,

Heather A. Tomley
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachments

1) March 25, 2014 Letter to Richard Corey, California Air Resources Board from Heather Tomley, Port of Los Angeles and Christopher Cannon, Port of Los Angeles
2) February 24, 2014 Letter from Deborah Jordan, EPA to Christopher Cannon, Port of Los Angeles and Matthew Arms, Port of Long Beach
3) January 31, 2014 Letter to Randall Pasek, Ph.D., South Coast Air Quality Management District from Matthew Arms, Port of Long Beach and Christopher Cannon, Port of Los Angeles
4) January 15, 2014 Letter to Jared Blumenfeld, U.S. Environmental Protection Agency, Region 9 from Matthew Arms, Port of Long Beach and Christopher Cannon, Port of Los Angeles
5) January 15, 2014 Letter to Barbara Radlein, South Coast Air Quality Management District from Matthew Arms, Port of Long Beach and Christopher Cannon, Port of Los Angeles
6) October 2, 2013 Letter to Randall Pasek, South Coast Air Quality Management District from Heather Tomley, Port of Long Beach and Christopher Cannon, Port of Los Angeles
7) August 21, 2013 Letter to Barbara Radlein, South Coast Air Quality Management District from Heather Tomley, Port of Long Beach and Christopher Cannon, Port of Los Angeles
8) November 27, 2012 Letter to Susan Nakamura, South Coast Air Quality Management District from Richard D. Cameron, Port of Long Beach and Christopher Cannon, Port of Los Angeles
9) November 19, 2012 Letter to Barry Wallerstein, South Coast Air Quality Management District from Richard D. Cameron, Port of Long Beach and Christopher Cannon, Port of Los Angeles
10) November 8, 2012 Letter to Barry Wallerstein, South Coast Air Quality Management District from Richard D. Cameron, Port of Long Beach and Christopher Cannon, Port of Los Angeles
11) October 31, 2012 Letter to Barry Wallerstein, South Coast Air Quality Management District from Richard D. Cameron, Port of Long Beach and Christopher Cannon, Port of Los Angeles from Chris Lytle, Port of Long Beach and Michael Christensen, Port of Los Angeles
12) October 22, 2012 Letter to Jeff Inabinet, South Coast Air Quality Management District from Richard D. Cameron, Port of Long Beach and Christopher Cannon, Port of Los Angeles

13) August 30, 2012 Letter to Barry Wallerstein, South Coast Air Quality Management District from Chris Lytle, Port of Long Beach and Geraldine Knatz, Port of Los Angeles

14) July 10, 2012 Letter to Barry Wallerstein, South Coast Air Quality Management District from Chris Lytle, Port of Long Beach and Michael Christensen, Port of Los Angeles

15) May 4, 2010 Letter to Susan Nakamura, South Coast Air Quality Management District, from Richard D. Cameron, Port of Long Beach and Ralph Appy, Port of Los Angeles

16) December 2012, SCAQMD Final 2012 Air Quality Management Plan, pp. 4-8, 4-12 to 4-13; and January 11, 2013 CARB Staff Report on Proposed Revisions to the PM2.5 and Ozone State Implementation Plans for the South Coast Air Basin, pp. 12-13.

17) December 2012, SCAQMD Final 2012 AQMD Appendix IV-A, District's Stationary Source Control Measures, pp. IV-A-2, IV-A-36 to IV-A-43

18) February 2015, SCAQMD Final Supplement to the 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin, Table F-1

19) February 6, 2015, SCAQMD Agenda No. 22, Supplement to 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin, Attachment F, p. F-1

20) February 2015, SCAQMD Final Supplement to the 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin, Table F-1; and February 6, 2015, SCAQMD Agenda No. 22, Supplement to 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin, Attachment E

21) December 7, 2012, SCAQMD Resolution 12-19

22) January 25, 2013, CARB Resolution 13-3

cc: The Honorable Barbara Boxer, United States Senate
The Honorable Janice Hahn, United States House of Representatives
The Honorable Alan Lowenthal, United State House of Representatives
The Honorable Edmund G. Brown, Jr., Governor, State of California
The Honorable Ricardo Lara, California State Senate
The Honorable Patrick O'Donnell, California State Assembly
The Honorable Robert Garcia, Mayor, City of Long Beach
The Honorable Eric Garcetti, Mayor, City of Los Angeles
Jon Slangerup, Chief Executive, Port of Long Beach
Gene Seroka, Executive Director, Port of Los Angeles
Richard Cameron, Managing Director, Port of Long Beach
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Barbara McTigue, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
Jared Blumenfeld, Administrator, EPA, Region 9
Deborah Jordan, Director, Air Division, EPA, Region 9
Elizabeth Adams, Deputy Director, Air Division, EPA, Region 9

Jeanhee Hong, Regional Counsel, EPA Region 9
Richard Corey, Executive Officer, CARB
Cynthia Marvin, Division Chief, Stationary Source Division, CARB
Doug Ito, Chief, Freight Transportation Branch, CARB
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD

ATTACHMENT 1.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

March 26, 2014

Richard Corey
Executive Officer
California Air Resources Board
1001 "I" Street
Sacramento, California 95814

Re: California State Implementation Plan (SIP) for $PM_{2.5}$ for South Coast Air Basin – South Coast 2012 Air Quality Management Plan (AQMP) Control Measure IND-01 *Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities*

Dear Mr. Corey:

The Ports of Long Beach and Los Angeles (Ports) would like to express our concern regarding the California Air Resources Board (ARB) procedure for inclusion of Control Measure IND-01 *Backstop Measure for Indirect Sources of Emissions from Ports and Port-related Facilities* (Measure IND-01) in the California State Implementation Plan (SIP) for particulate matter 2.5 microns or less ($PM_{2.5}$) for the South Coast Air Basin, which is currently pending United States Environmental Protection Agency (EPA) approval.

The Ports believe that ARB failed to follow the process for SIP revision submissions required by Clean Air Act Section 110(1) and California Health and Safety Code Section 41650. Under Clean Air Act Section 110(l), SIP revisions must be adopted by the State, and the State must provide for reasonable public notice and hearing prior to adoption. Pursuant to 40 CFR 52.102(a)(1), the State must hold a public hearing, not only for initial SIP approval, but also for any SIP revision, and must provide notice of the date, place, and time of a public hearing and opportunity to submit written comments. Under 40 CFR 51.102(d), reasonable public notice in this context refers to at least 30 days. Similarly, Health and Safety Code Section 41650 provides for a public hearing that would allow public comment as to whether the SIP meets the requirements of the Clean Air Act. By resolution dated January 25, 2013, the ARB approved the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) and directed the executive officer of the ARB to submit the AQMP to EPA for inclusion in the SIP. However, at the time of the January 25, 2013 ARB action, Measure IND-01 was not part of the AQMP. Because the AQMD Governing Board adopted the AQMP without Measure IND-01 on December 7, 2012 and did not adopt Measure IND-01 until February 1, 2013, the January 25 ARB action did not constitute approval of Measure IND-01 which had not yet been submitted to ARB for consideration. The

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425 S. Palos Verdes Street • San Pedro • CA 90731 • 310-732-3675

Port of Long Beach • Environmental Planning
925 Harbor Plaza • Long Beach • CA 90802 • 562-590-4160

The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

documents attached to the ARB's February 13, 2013 SIP submittal to the EPA include the December 7, 2012 resolution by the AQMD Governing Board and the December 20, 2012 AQMD letter to ARB transmitting the approved SIP, which pre-dated the AQMD Governing Board's approval of Measure IND-01. However, without the required public notice or public hearing and adoption by the ARB Governing Board, the submitted SIP includes the addition of Measure IND-01 by Executive Order S-13-004, dated April 9, 2014.

Furthermore, the Ports were made aware of this Executive Order, which occurred without public hearing or Governing Board approval through a letter from EPA to the Ports dated February 24, 2014. This letter stated that ARB had approved the revised SIP containing Measure IND-01and had forwarded it to EPA under cover of a letter dated April 9, 2013. After a search of the ARB website, however, we were unable to find a copy of the April 9, 2013, submission to the EPA, and the only ARB action posted on the ARB website was the February 13, 2013, SIP submission without Measure IND-01 and the ARB Board's resolution dated January 23, 2013, also without Measure IND-01. We made inquiry to ARB staff and for the first time, on March 18, 2014, received a copy of the April 9, 2013 submission and ARB Executive Order S-13-004, neither of which are available on the ARB website even as of this date.

Perhaps more important than the procedural issue described above, we respectfully request that ARB consider the Ports' many legal, jurisdictional, operational, and technical concerns regarding the substance of Measure IND-01 and its implementing Rule 4001 as set forth in the attached letter to AQMD, dated January 31, 2014, which we hereby incorporate by reference as comments to the ARB on Measure IND-01, since ARB has never formally noticed a public comment period, in violation of the Clean Air Act and Health and Safety Code Section 41650.

The Ports value our partnership with ARB, working together to improve air quality, and we look forward to continuing our collaboration on projects such as ARB's new Sustainable Freight Strategy effort. Rather than introduce counterproductive regulation such as Measure IND-01 or Proposed Rule 4001, the Ports strongly urge ARB to recognize that a multi-agency agreement, using a collaborative process for development of potential programs, is the most effective way to ensure that emission reduction goals continue to be incentivized, and are actually realized. We respectfully request that ARB rescind Executive Order S-13-004, withdraw Measure IND-01 from the SIP, and meet with the Ports to work on a collaborative path forward.

Sincerely,

Heather Tomley
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

LW

Attachment: Port of Long Beach and Port of Los Angeles January 31, 2014 Letter to Mr. Randall Pasek, AQMD, *Re: Comments on South Coast Air Quality Management District Proposed Rule 4001 — Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports*

cc: Al Moro, Acting Executive Director, Port of Long Beach
Gary Lee Moore, Interim Executive Director, Port of Los Angeles
Richard D. Cameron, Managing Director, Port of Long Beach
Michael Christensen, Deputy Executive Director, Port of Los Angeles
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
Mary Nichols, Chairman, ARB
Members of the California Air Resources Board (*c/o Clerk of the Board, Attachment on CD*)
Cynthia Marvin, Division Chief, Stationary Source Division, ARB

ATTACHMENT 2.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

FEB 2 4 2014

Mr. Christopher Cannon
Director of Environmental Management
Port of Los Angeles
425 S. Palos Verdes Street
San Pedro, CA 90731

Mr. Matthew Arms
Acting Director of Environmental Planning
Port of Long Beach
925 Harbor Plaza
Long Beach, CA 90802

Dear Mr. Cannon and Mr. Arms:

Thank you for your letter dated January 15, 2014, to the U.S. Environmental Protection Agency Region 9's Regional Administrator Jared Blumenfeld, expressing your concerns about the South Coast Air Quality Management District's (SCAMQD) Control Measure IND-01, *Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities.* We appreciate the Port of Long Beach's and the Port of Los Angeles' input on Control Measure IND-01.

We agree with your statement that California Air Resources Board's (CARB) January 25, 2013 adoption of the South Coast 2012 Air Quality Management Plan (2012 AQMP) did not include Control Measure IND-01. The SCAQMD Governing Board voted to delay that measure when it adopted the 2012 AQMP pending further work by SCAQMD staff. The measure was approved by the SCAQMD Governing Board in February 2013 and CARB adopted it and submitted it to EPA on April 9, 2013. To date, we have not received South Coast Rule 4001, which will implement Control Measure IND-01, as a revision to the California State Implementation Plan. Once we receive the rule, we are obligated to review and act on the rule.

In the mean time, I propose that my staff schedule a teleconference call with your staff to discuss the concerns you raised in your letter. If you have any questions, please contact Elizabeth Adams, Air Division Deputy Director, at (415) 972-3183.

Sincerely,

Deborah Jordan
Director, Air Division

ATTACHMENT 3.

January 31, 2014

VIA E-MAIL – rpasek@aqmd.gov

Mr. Randall Pasek, Ph.D.
Planning Manager, Off-Road Section
Mobile Source Division
Science and Technology Advancement
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91756-4178

Re: Comments on South Coast Air Quality Management District Proposed Rule 4001 — *Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports*

Dear Mr. Pasek and Staff of the South Coast Air Quality Management District:

On behalf of the City of Long Beach (referred to herein as "COLB") and the City of Los Angeles acting by and through their respective Harbor Departments ("COLA"), and collectively with COLB referred to herein as the "Cities"), we appreciate this opportunity to submit comments on the South Coast Air Quality Management District's ("District") recently published draft "Proposed Rule 4001 – *Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports*" ("PR 4001"), which attempts to implement "Stationary Source Measure IND-01—*Backstop Measures for Indirect Sources of Emissions from Ports and Port-related Facilities*" ("Measure IND-01") in the 2012 Air Quality Management Plan for the South Coast Air Basin ("AQMP").

As the District is well aware, the Cities have been dedicated, innovative, and effective leaders in the efforts of public agencies to improve air quality despite the fact that we have no air quality regulatory authority or control over emissions sources. The potential of additional regulation by the District in the form of PR 4001 on the ports of Long Beach and Los Angeles ("Ports") brings significant uncertainty that will have broad negative effects on the goods movement industry and the economy as a whole, and destroys the voluntary, collaborative partnership among the Cities, industry and all of the air agencies that has led to unparalleled emission reductions. PR 4001 raises questions of fairness and unacceptable delegation of responsibility from federal, state and local air regulators to individual cities.

The Cities have previously commented on, and objected to PR 4001 and Measure IND-01, and have expressed our grave concerns about the District's rulemaking approach, attempting to craft an ostensible "backstop rule" that would regulate the Cities and their respective Ports in an unprecedented manner. This letter provides the Cities' comments on PR 4001 and the District's Preliminary Draft Staff Report ("PDSR") for PR 4001 and concludes that:

I. The substance of Measure IND-01 and PR 4001 is deeply flawed from technical, jurisdictional, legal, and public policy perspectives, in ways that cannot be cured;

II. District is acting beyond its authority to adopt PR 4001;

III. The procedural process for development, public participation and adoption of Measure IND-01 and PR4001 is similarly flawed under both state and federal law; and

IV. Measure IND-01 and PR 4001 fail the requirements for inclusion in a State Implementation Plan (SIP) under the federal Clean Air Act and applicable state law and their existence within the SIP threatens the its success.

Each of these four conclusions is explained in detail below.

I. SUBSTANTIVE FLAWS IN PR 4001

A. There Is No Demonstrated Need for PR 4001

The District has failed to and cannot provide any demonstration of "need" or justification for either Measure IND-01 or PR 4001. The District's persistent demand for the Cities – and the Cities alone – to be subjected to a redundant rule to "backstop" existing and effective emission regulations, reduction plans and policies is arbitrary, discriminatory, and remains unjustified by evidence or legal authority.

We respectfully point out that the District previously proposed a "port backstop rule" as a "Mobile Source Measure MOB-03" ("Measure MOB-03") as part of the District's 2007 Air Quality Management Plan, although Measure MOB-03 included as regulated parties, the port-related emission sources. However, following the Cities' objections to that similarly-unjustified proposal, the California Air Resources Board ("CARB") excluded the Port-related emission reduction targets and the proposed MOB-03 "backstop" measure from the 2007 SIP. Despite that rejection, and despite its repeated and manifest failure to demonstrate any legitimate need the District introduced an even more unjustified form of backstop that targets the Cities alone, in the form of PR 4001.

Implementation of PR 4001 would transform the Cities' voluntary San Pedro Bay Ports Clean Air Action Plan ("CAAP") into the District's mandatory regulation of the Cities. The CAAP was a voluntary cooperative effort of Cities and all of the air regulatory agencies (including the District, CARB and the United States Environmental Protection Agency ("USEPA") designed to encourage the industry operators of emission sources to go beyond regulation. PR 4001 would improperly and illogically subject the Cities to the District's regulation for industry's failure to achieve anticipated emissions reductions from equipment not operated, owned or controlled by the Cities, or even to the potential loss of federal and state funding for emission reduction measures if the PR 4001 is adopted and included in the SIP and approved by the USEPA.

As the Cities have previously shown, there is no demonstrated need for the rule, nor is this rule necessary for regional attainment of the 2014 $PM_{2.5}$ standard. PR 4001 is unnecessarily duplicative of regulations already in place for port-related sources.[1] This violates the federal Clean Air Act and State of California Health & Safety regulations that require SIP provisions to be "necessary." The Ports' 2012 air emissions inventories show that diesel particulate emissions (DPM) have been reduced by 80% over the seven year period between 2005 and 2012, exceeding the commitments we made for 2014 and 2023 in the CAAP. Further, the Cities estimate that by 2014**, 98%** of the $PM_{2.5}$ equivalent emission reduction that PR 4001 seeks to backstop will occur as the result of regulations adopted by CARB and the International Maritime Organization (IMO).[2] The remaining **2%** of $PM_{2.5}$ equivalent emission reductions is primarily attributed to the Cities' successful voluntary vessel speed reduction incentive program which is part of the Cities' CAAP.

B. A VMEP Should Be Used To Achieve Reductions Rather than Rulemaking

To the extent the District may be seeking to ensure the emission benefits of the Cities' voluntary vessel speed reduction incentive program, there is a more appropriate and focused method in the form of the USEPA's policy and guidance for the Voluntary Mobile Source

[1] The term "port-related sources" may occasionally be used in this letter, merely for convenience and consistency with usage of that colloquial term by the District, as shorthand for the range of discrete sources of air emissions, mostly mobile, which happen to operate at or near the geographic boundaries of the respective Ports. The Ports themselves, however, are "non-operating ports" and therefore not "sources" of emissions, and there is no statutory reference to anything called "port-related sources" for purposes of air quality regulation. The Cities are governmental entities having jurisdiction over defined geographic areas, like the District, and are no more the "sources" of emissions than is the District.

[2] CARB Port Drayage Truck Rule, CARB Truck and Bus Rule, CARB Ocean-Going Vessel (OGV) Shore Power Rule, OGV Low-Sulfur Fuel Rule, CARB Cargo-Handling Equipment at Ports Rule, CARB Commercial Harbor Craft Rule, IMO North American Emission Control Area

Emission Reduction Program (VMEP). This USEPA policy provides an established process to grant SIP credit for emission reductions resulting from voluntary mobile source measures that go beyond existing regulations. The VMEP approach was intended for exactly the type of successful voluntary program such as the Cities' landmark CAAP, and should be used to account for the 2% of port-related emissions not currently backstopped by regulation. Use of the VMEP would allow the continuation of a successful voluntary approach that has industry support eliminating the risk of cargo diversion that would be caused by the uncertainty inherent in the ill-conceived regulatory structure of PR 4001.

The USEPA's established VMEP process that was conceptualized for programs such as the Cities' vessel speed reduction incentive program and other CAAP measures is a feasible and preferable alternative to PR 4001 as it will accomplish the objectives sought by Measure IND-01 and PR 4001 and ensure that the emissions reductions achieved by the program are credited in the SIP. Further, a VMEP, which can be implemented by a memorandum of understanding, will achieve the same emissions reductions while allowing grant funds to continue to remain available for actions going beyond regulations and will do so in a collaborative manner. It will also encourage other port partners, as well as cities and regions throughout the nation, to develop and pursue innovative voluntary programs and solutions that best fit their needs to improve air quality and public health. The Cities are open to discussing mechanisms, contractual or otherwise, by which the Cities and the District can formalize a VMEP to ensure the voluntary emission reductions are maintained in future years.

C. PR 4001 Emissions Reduction Target Methodology is Flawed

Table 5 of the District's Preliminary Draft Staff Report shows the overall combined 2014 target emission reduction of 75% resulting from the application of the Cities' CAAP 2014 emissions reduction goals for NOx, SOx, and DPM compared to the CAAP 2005 baseline, but fails to specify a mechanism to harmonize the AQMP inventory values with the Cities' reported air emissions inventories. Furthermore, the use of a fortuitous similarity in 'percent reduction' cannot be the basis of any type of backstop rule.

Since the 2012 Final AQMP emissions inventory uses a baseline year of 2008 that includes the Cities' 2008 emissions inventories, the 2005 baseline emissions should be replaced with the more appropriate 2008 emissions estimates to determine the overall $PM_{2.5}$ equivalent emissions reduction target. Based on the Cities' calculation, using the District staff's methodology, by applying the CAAP reduction factors to the 2008 baseline inventory, the overall combined target $PM_{2.5}$ equivalent emission reduction is 68%, as shown in the following table:

Emissions Inventory	NOx	SOx	$PM_{2.5}$	$PM_{2.5}$Eq
	(tons per day)			
CAAP 2005 Baseline[1, 3]	87.45	33.39	4.73	28.54
Ports Combined 2008 Total Port-Related Emissions[2, 3]	78.6	25.5	3.7	22.7
CAAP 2014 Reduction[4]	22%	93%	72%*	-----
2014 Estimated Inventory[3]	68.21	2.34	1.32	7.34
Overall $PM_{2.5}$ Equivalent Reduction Between 2008 and 2014				68%

[1] From Table 2 of Preliminary Draft Staff Report for PR 4001
[2] From Table 3 of Preliminary Draft Staff Report for PR 4001
[3] 2005 and 2008 emissions are based on the Ports' 2011 emission estimation methodologies.
[4] CAAP 2014 Bay-Wide Standards emission reduction goals for NOx, SOx and DPM
*Please note that that the CAAP 2014 emission reduction goal of 72% is for DPM, not for PM.

In determining the 2014 emission reduction targets for PR 4001, District staff applied the Basin-wide percent reductions from 2008 to 2014 and 2019 to the Cities' 2008 inventory to arrive at the forecasted net emissions reduction percentages of 75% for 2014 and 2019 (page 11 of Preliminary Draft Staff Report). This approach is not appropriate because the Basin-wide percent reductions are based on an inventory of emissions from overall sources (including non-port-related) in the South Coast Air Basin (SCAB). Therefore, the approach taken in PR 4001, is not directly applicable to what the Rule describes as "port-related emissions." Since the SCAB estimates include emissions from what the District erroneously describes as the "port-related source" categories, as well as sources operating elsewhere in the SCAB, the 75% emission reduction target specific to the ports of Long Beach and Los Angeles is questionable. As an example, SCAB-specific emissions from heavy-duty vehicles includes emissions from all heavy-duty trucks operating in the basin, including those associated with construction activities, public fleets, utility, intrastate, interstate, and drayage trucks, while the ports-specific heavy-duty truck emissions inventory only includes activity and emissions associated with port-related drayage trucks.

It is also important to note that the District's December 2013 Preliminary Draft Staff Report for PR 4001 erroneously assumes that $PM_{2.5}$ emissions are equivalent to diesel particulate matter (DPM) emissions. The Cities' 2014 CAAP emission reduction goal of 72% is specific to DPM, not $PM_{2.5}$ as assumed in the calculation of the $PM_{2.5}$ equivalent emissions reduction goal of 75%. Each of the Port's annual air emissions inventories separately estimate DPM and $PM_{2.5}$. As shown in their annual reports, the resulting emissions of DPM and $PM_{2.5}$ **are not equivalent**.

Please refer to Table 8.4 of the Port of Long Beach 2012 Air Emissions Inventory Report[3] and Table 9.4 of the Port of Los Angeles 2012 Inventory of Air Emissions Report[4].

A comparison of the $PM_{2.5}$ equivalent factors used in the 2007 AQMP , 2012 AQMP, and PR 4001 shows that there is inconsistency in how the $PM_{2.5}$ equivalent factors were derived and applied, as shown in the table below:

$PM_{2.5}$ Equivalent Factors

	VOC	NOx	$PM_{2.5}$	SOx
2007 AQMP	0.04	0.10	1.00	1.52
2012 AQMP	0.02	0.07	1.00	0.53
PR 4001	NA	0.07	1.00	0.53

In the 2007 AQMP, emissions reductions were simulated between 2005 and 2014, whereas for the 2012 AQMP, emissions reductions were simulated between 2008 and 2014. In the 2007 AQMP, the effect of each pollutant precursor's reduction on the 2014 $PM_{2.5}$concentration was considered on an annual basis, while the 2012 AQMP considers 24-hour $PM_{2.5}$concentrations. Also, the 2007 AQMP used the annual $PM_{2.5}$ concentration which was based on the average concentrations from all air monitoring stations in the South Coast Air Basin, while the 2012 AQMP only uses the average from six regional locations—Riverside-Rubidoux, Downtown Los Angeles, Fontana, Long Beach, South Long Beach, and Anaheim. The Basin-averaged conversion factors resulting from the 2007 analysis were submitted as part of the 2007 SIP (Appendix C, of the CARB staff report, "$PM_{2.5}$ Reasonable Further Progress Calculations") and were approved by the USEPA.

In addition, PR 4001(c)(6) defines "$PM_{2.5}$ Equivalent" as "the aggregate of the NOx, SOx, and $PM_{2.5}$ emissions (in tons per day) as defined by the following formula provided in the Final 2012 AQMP:

$$PM_{2.5}\text{ Equivalent} = 0.07 * NOx + 0.53 * SOx + 1.0 * PM2.5$$

The formula provided in PR 4001 does not reflect the $PM_{2.5}$ equivalent formula provided in the Final 2012 AQMP, which includes emissions of VOCs in the calculation. In PR 4001, without explanation, the District has erroneously "dropped" the contribution of VOC from the $PM_{2.5}$ equivalent formula, although the District's emissions modeling simulation shows VOCs as a contributing factor.

[3] Port of Long Beach 2012 Air Emissions Inventory. www.polb.com/emissions
[4] Port of Los Angeles 2012 Inventory of Air Emissions. www.portoflosangeles.org/environment/studies_reports.asp

Given that there have been several revisions to the $PM_{2.5}$ equivalent calculations, the text and formulae used in PR 4001 for those calculations do not appear consistent with previous approaches to such determinations. Prior to proceeding any further with PR 4001, the Cities request a scientific technical evaluation and obtain confirmation from the USEPA that the revised $PM_{2.5}$ equivalent factors and formula to calculate $PM_{2.5}$ equivalent emissoins used in the 2012 AQMP and in PR 4001 are appropriate.

D. PR 4001 Fails to Provide an Accurate and Appropriate Definition of Emissions "Shortfall"

PR 4001 would require the Cities to develop and submit an emissions reduction plan ("Plan") identifying control strategies to eliminate some potential future "shortfall" in attainment of reduction targets. The proposed rule, however, fails to identify the environmental baseline or other parameters that would be required in order for the Cities or the District to determine the extent of any emissions "shortfall" to be addressed in the potential Plan. Under PR 4001, the existence of a "shortfall" would appear to be the necessary prerequisite to trigger some responsive action on the part of the Cities, but the draft text of PR 4001 fails to provide for a timely and objective process to ascertain when and whether such a "shortfall" may have arisen.

The term "shortfall" first appears in the proposed rule in paragraph (d)(1)(A), where it appears to call for a Plan to report on progress in "meeting the shortfall." However, that would appear to be inconsistent with the structure of the proposed rule, i.e., under PR 4001, the District cannot require the Cities to submit an emissions reduction plan unless and until the annually-reported emissions reductions "show that the percent reduction in $PM_{2.5}$ from the baseline emissions is less than the reduction target" of 75% (Paragraph (e)(1)B)). There would not be any "shortfall" identified until that time; therefore, it would be premature and illogical to require the Cities to submit a Plan that "reports the progress in meeting the shortfall."

To the limited extent that the draft text of PR 4001 describes the shortfall that might trigger the need to prepare a Plan, the provisions for annual estimating or reporting of the emissions appear imprecise and vague. Also, paragraph (f) appears to contemplate that once a "shortfall" is determined to exist in one year, then the District could demand a revised Plan in following years if targets still are not met. What happens if the shortfall is "corrected" in subsequent years and targets are again being met?

PR 4001 fails to provide for any process for review or appeal of a possible District "determination" that a "shortfall" has occurred. PR 4001 fails to provide adequate time for the Cities to prepare a Plan, if required, or adequate time or procedures for the Cities to study the proposed Plan, to conduct environmental review of the Plan, or to conduct public hearings and gather input on any Plan that may be deemed to be appropriate if PR 4001 is properly triggered.

Development of a Plan should not be mandated if any eventual determination of an emissions "shortfall" is due to reasons outside of the Cities' control. As previously stated, by 2014, the emissions sources ostensibly targeted by PR 4001 are already controlled by state, federal, and international regulations. Should there be a shortfall in attaining the emissions targets, it will likely be due to factors not caused or controlled by the Cities, and not due to any action or derelictions on the part of the Cities or their tenants or users. The obligation to go through a burdensome process to prepare and approve a new Plan or to take active measures to make up for a shortfall in meeting emission reduction targets should not fall on the two Cities. The Cities are independent governmental entities who are not directly producing emissions or otherwise directly responsible for the targeted emissions or for the attainment of emission targets. The Cities are certainly not air agencies created by federal or state law with specific regulatory authority to control emissions.

E. <u>PR 4001 Improperly Provides for Moving Emissions Reduction Targets</u>

PR 4001 paragraph (c)(4) defines the "Emissions Target" as the "emissions forecast that is based on the Ports' 2008 baseline emissions **forecasted** for a specific year as provided in Appendix IV-A page IV-A-36 of the Final 2012 AQMP." This definition is confusing, as it is assumed that this reference is contained in the Final 2012 AQMP. In the description of this measure in Appendix IV, page IV-A-36, only projected levels of NOx, $PM_{2.5}$, and SOx are shown for calendar years 2014 and 2019. However, PR 4001 and the District's Preliminary Draft Staff Report discuss a 75% reduction in $PM_{2.5}$ equivalent emissions in 2014 compared to 2008 baseline levels. Again, there is a clear inconsistency between PR 4001 and the text of Measure IND-01 as actually approved by the District's Governing Board.

PR 4001 paragraph (e)(2) requires the District's Executive Officer to review the reduction target based on the latest information available including future year emission estimates in the 2016 AQMP and purports to allow the Executive Officer, by July 1, 2017 to "update," if necessary, the emission reduction target. This provision is unauthorized by IND-01 or any other rule, regulation, plan or statute, and would unlawfully vest apparently unfettered power on the Executive Officer to **change the previously-approved reduction targets**. By what authority would these targets be "revised" in the future? Under what objective standards? What public process would the District's Executive Officer need to follow in order to "develop" a proposed amendment to PR 4001 changing the targets? What environmental review/public outreach processes would be required before the Executive Officer could change the reduction targets and how would the environmental/socioeconomic impacts of such changes be addressed? How would such a moving target affect the Cities, the port communities, tenants, users, and the existing plans and policies which have proven effective in attaining the agreed and approved reduction targets?

F. The Processes For Development, Approval and Disapproval of Emission Reduction Plans Are Flawed

In the event the emissions reduction targets are not met, PR 4001 requires the Cities to submit an Emissions Reduction Plan "to address the emission reduction 'shortfall'." In addition, PR 4001 dictates the public processes of other government agencies: "…the Ports shall conduct at least one duly noticed public meeting before the Plan is presented to each respective Board of Harbor Commissioners for approval." This is an improper attempt by the District to control and dictate the exercise of "discretion" conferred on the Boards of Harbor Commissioners regarding their own notice, agenda setting, public hearing procedures and substantive decision making processes under their own applicable governing laws and rules. Neither the District's staff nor its Governing Board can require approval of the District's desired measures or override the discretion of the Board of Harbor Commissioners including decisions related to the management of the port or how port resources are allocated.

Moreover, if the Board of Harbor Commissioners disagrees that a Plan is required or specific terms of a Plan requested by the District, what process is provided for resolution of such disagreements? Under what authority would PR 4001 purport to allow the District's Executive Officer, acting alone, without even District Governing Board authority, to "disapprove" a Plan or compel a Plan to be approved by the Cities' own governing authorities? Although the Cities dispute that the District can compel or disapprove a Plan at all due to conflicting governmental authority, certainly such approval or disapproval of any Emission Reduction Plan cannot be at the sole discretion of a single District staff member.

G. PR 4001 Would Violate Constitutional Requirements of Due Process

PR 4001 also raises several questions regarding violations of Due Process. As noted above, PR 4001 would unlawfully purport to vest the District's Executive Officer with unilateral authority to "approve" or "disapprove" a Plan submitted by the Cities, without any process for public hearing, review by the District Board, or other guarantees of procedural due process for those concerned about such actions. PR 4001 also improperly fails to provide any requirement that the Executive Officer must make "findings" of "non-compliance" with some provision of paragraph (f)(1) of PR 4001, or that the Executive Officer's decisions must be based on some reasonable and objective standards.

PR 4001 fails to provide for the District giving the Cities any particular notice or justification for disapproval of a Plan, or any process for the Cities to seek review or appeal of the District's disapproval.

What would be the procedure if the PR 4001 triggered the obligation of the Cities to prepare a Plan, and the Cities duly submitted a Plan, but the District (either by its Executive

Officer or its Hearing Board) "disapproved" the Plan (per paragraph (f)(2)(C))? The Cities would apparently be required to submit a revised Plan within 60 days of the disapproval; however, that time would not be sufficient for the Boards of Harbor Commissioners and their staffs to prepare a new revised Plan, to hold new "public meetings" and gather public input, or otherwise take meaningful action on the revised Plan. PR 4001 fails to provide adequate time or process for the Boards of Harbor Commissioners to prepare, conduct CEQA review and public outreach, or to consider and approve a new revised Plan within the arbitrary 60 day time frame set by the rule.

H. PR 4001 Improperly Changes the Definition of "Feasibility" In Control Strategies and Alternatives

PR 4001 proposes to change the definition of "feasible control strategy" so that it is not consistent with the obligations that could potentially be imposed on the Cities under Measure IND-01 as adopted by the District Governing Board. Instead, PR 4001 (at paragraph (c)(1)) has changed the limitations on the proposed obligations of the Cities to achieve additional emissions reductions under PR 4001. Previously, the proposed rule was described as requiring the Cities to "propose additional emission reduction methods …[but only] *to the extent cost-effective strategies are technically feasible* and within the Ports' authority." PR 4001 has inexplicably omitted (at several points) the prior limitation on the Cities' potential obligations to measures that are "*technically feasible.*" Again, this is not consistent with the text of Measure IND-01 or any other legal or regulatory authority identified by the District.

The Cities assert that feasibility must be defined as technically, operationally, commercially, financially, and legally feasible, and within the legal and jurisdictional authority of the Cities. Further, the District must acknowledge that feasibility is also subject to the Cities' and their Boards of Harbor Commissioners' own legal and trustee obligations as governmental agencies under their City Charters and applicable laws.

The District also fails to show how it expects the Cities as governmental agencies to legally overcome the same doctrines of international and federal preemption that prevent the District from regulating mobile sources such as ocean-going vessels, rail locomotives and trucks. If the District intends that the Cities shall be compelled to pay incentives for District programs if they are unable to legally regulate mobile sources, then again this raises the jurisdictional conflict with the Cities' Boards' independent governmental discretion and legal obligations to manage their properties and revenues to serve Tidelands purposes for the benefit of the State. In this era of ever diminishing resources and increased competition the District is seemingly ignoring the lawful obligations of the Cities' Boards and insisting they place District priorities (which they themselves cannot legally accomplish) before the established responsibilities of the respective City Boards.

I. The PR 4001 Enforcement Scheme is Unconstitutionally Vague and Impermissible

PR 4001 does not describe how the District would determine the "consequences" for violation of PR 4001, nor does it identify how it would determine the sufficiency of the Cities' efforts to manage activities within the Ports. If the Cities were deemed to be in violation simply because the District may choose to "disapprove" a Plan or revised Plan, under what legal authority would the District purport to sanction the Cities in the event of some perceived "violation"?

PR 4001 fails to provide objective standards appropriate for the District to judge the sufficiency of any plans or measures proposed by the Cities to achieve the emission reduction targets. The proposed rule fails to provide sufficient detail at paragraph (f)(2)(F)(iii) as to what the consequence would be if the District were to disapprove a City's revised Plan. Also, the reference here that the Cities "shall be in violation of this Rule…" must be clarified.

Similarly, the terse discussion of the Variance and Appeal Process outlined in paragraph (g)(1) and (2) of PR 4001 is vague and fails to identify criteria or the process for the Cities to petition the District Hearing Board for a variance. PR 4001 also fails to explain the outcome should the District grant a variance.

Both Measure IND-01 and PR 4001 are unconstitutionally vague in their failure to explain exactly what fines, penalties or other administrative enforcement would be imposed on the Cities in the event that targets are missed or the District's Executive Officer disapproves a plan. The District also fails to explain how it purports to impose penalties or corrective action against another governmental entity for failure of private third party emissions sources to achieve emissions reductions that such other governmental entity is also preempted from regulating.

The District has failed to show any constitutional or statutory basis for requiring a governmental entity to devote public resources, pay exactions, administrative fines or suffer penalties for pollution caused by private entities. Similarly, the District has not shown any authority for PR 4001's attempt to shift onto the Cities liability for emission shortfalls by other parties assigned AQMP emissions reduction responsibility. The District has failed to show how PR 4001 would not violate constitutional limitations requiring exactions or penalties imposed on a party to be reasonably related to and proportional to the party's deleterious public impacts. This is especially true when PR 4001 only applies to the Cities, which are non-operating ports, while failing to include all parties involved in the CAAP including the other air agencies that jointly sponsored the CAAP, or actual owners and operators of emission sources. The District also fails to define how it would allocate liability to COLB versus COLA, when they are two separate legal entities with independent Boards as decision makers that may approve different Plans or no Plan at all. In any event, neither City is in direct control of the actual emissions sources and rudimentary principals of justice require that they should not be burdened with

sanctions, penalties, or Plan-writing responsibilities to cure the "shortfalls" of others or to act as a delegated air regulator that has no such authority.

J. PR 4001 Fails to Consider Legal Limits on Grant Funding

In the Cities' actual operating experience, demonstration that proposed activities go beyond, rather than merely comply with, enforceable regulations, is a basic requirement in both state and federal grant funding applications. The District has claimed that its adoption of PR 4001 as an enforceable rule or regulation would not prevent the Cities from continuing to be eligible for the types of grant funding that the Cities have used successfully to fund emission reduction programs. However, the District has failed to provide legal citation in support of how the governmental agencies typically funding such programs might continue to legally fund activities for the purpose of complying with existing mandates, without violating constitutional limits prohibiting payment to comply with the law as "gifts of public funds."

K. Reporting Requirements under PR 4001 are Excessive

PR 4001 paragraph (f) requires annual revisions to the Emission Reduction Plan. This is new and excessive regulation, well beyond backstopping achievement of 2014 targets, and is duplicative, unnecessarily burdensome, and has not been sanctioned or in any way approved by the District's Governing Board. Even CARB in its state oversight over the District's plans, only requires three-year updates to the AQMP. Furthermore, PR 4001 is placing greater air quality regulatory burden on the Cities (and their Ports) than the federal government places on AQMD or other air agencies.

L. Annual Emission Inventory Requirements under PR 4001 are Inappropriate and Vague

PR 4001 paragraph (d) outlines requirements for annual emissions reporting. An initial inventory for 2014 would be required by November 2014 "from all port-related sources for the 2014 calendar year based on actual activity information available prior to November 1st of the calendar year and projected activity information for the remainder of the year." Although Distract staff indicated that specific requirements for this November 2014 submittal would be provided, neither the rule nor the accompanying Staff Report list any specifics. The Cities will incur additional costs based on this requirement to prepare a 2014 inventory based on incomplete data in November 2014.

The majority of the sources tracked in the Cities' current emission inventories of port-related sources are not owned, operated or controlled by the Cities. Therefore, emissions inventories that will be used to evaluate compliance with PR 4001 should only include those port-related sources over which the Cities have direct control.

II. LACK OF AUTHORITY

A. PR 4001 is NOT Consistent with the District's Governing Board Approved Control Measure IND-01

Control Measure IND-01 provided a description of the Cities' successful CAAP and its various emissions reduction goals: "This AQMP Control Measure is designed to provide a "backstop" to the Ports' actions to provide assurance that, if emissions do not continue to meet projections, the Ports will develop and implement plans to get back on track, to the extent that cost effective and feasible strategies are available." (Final 2012 AQMP Appendix IV-A, page 3). PR 4001, by contrast, describes its purpose differently: "The purpose of this rule is to establish actions to be taken in the event that emissions from port-related sources do not meet the emission targets assumed in the Final 2012 Air Quality Management Plan for the purpose of meeting the federal 24-hour $PM_{2.5}$ standard in 2014 and maintenance of attainment in subsequent years" (PR 4001 paragraph (a)). District Staff has apparently drafted PR 4001 so as to eliminate the references in Measure IND-01 as adopted by the District's Governing Board to backstopping the Cities CAAP targets to the extent cost effective and feasible strategies are available and has replaced that "backstop control measure" with a traditional regulation by the District to meet District-set targets.

In addition, the District Staff (apparently without Board approval) has **changed** the concern from assuring "the attainment demonstration" for 2014 $PM_{2.5}$ emission targets (as described in the 2012 AQMP) to add "maintenance of the air quality standard in subsequent years." (PR 4001 paragraph (a)). This change adds a new undefined and open-ended element into PR 4001 that is not consistent with Control Measure IND-01 as publicly adopted by the District's Board in February 2013. Most importantly, to the extent the provisions of PR 4001 vary in purpose and scope from Measure IND-01, they are not authorized by the District Governing Board.

B. The District Fails to Show Any Basis to "Indirectly" Regulate Mobile Sources or Delegate Authority Without Clean Air Act Waivers from the USEPA

The District has failed to show any constitutional or statutory basis for attempting to regulate mobile sources "indirectly" that it is preempted from regulating directly. The District's use of the term "port related sources" appears to be a euphemism for "mobile sources" that may be located at or operate at the areas governed by the Cities. "Mobile sources" of emissions are, of course, generally beyond the limited regulatory authority conferred by the Legislature on local or regional districts. (e.g., Health & Safety Code § 40001(a); also see, 76 Ops. Cal. Atty. Gen. 11 (1993); 75 Ops. Cal. Atty. Gen. 256 (1992); 74 Ops. Cal. Atty. Gen. 196 (1991); 73 Ops. Cal. Atty. Gen. 229, 234-35 (1990).)

The District has failed to show any authority for attempting to regulate mobile sources by making another governmental entity that lacks any air regulatory authority its agent for enforcement of its desired mobile source emission reductions. (See, e.g., *Association of American Railroads et al. v. South Coast Air Quality Management District et al.*, 622 F.3d 1094, 1096 (9th Cir. 2010), invalidating several train-idling emissions rules enacted by the District, on the basis of federal preemption under the Interstate Commerce Termination Act of 1995 (ICCTA).) Moreover, the District does not have mobile source regulatory authority itself to delegate, as it does not have a waiver under the Clean Air Act from the USEPA. The District should instead work on stronger regulations from USEPA or CARB, which does have certain USEPA waivers to regulate mobile sources.

PR 4001 impermissibly requires the Cities to become air pollution control agencies, responsible for "achieving" reductions of emissions that are actually from other private parties that operate or control equipment largely used in goods movement within the geographic boundaries of the Cities. There is no statutory or other legal basis for imposing such a requirement on another governmental agency. For example, does this mean that a city that has a significant number of factories or refineries within its borders becomes a stationary source and indirect source for those emissions? Evidently the District does not distinguish between "operating ports" such as the Port of Charleston, S.C., which actually operates the terminals within the port, and "non-operating ports" such as the Cities, which are landlords that do not operate the marine terminals and other facilities within the harbor districts.

The emission reduction plan required by PR 4001 strongly resembles the State Implementation Plan requirements of the Clean Air Act (42USC§7410). Specifically PR 4001(f)(1)(A)(i) states, "…Ports shall engage [CARB, USEPA and the District] to discuss legal jurisdiction and authority to implement potential strategies to address the shortfall…" Based on the Clean Air Act, the enforcing agency should be the state of California through CARB and the District; however, PR 4001 places the burden of enforcement of emission reductions on the Cities. Based on this, if the port-related sources don't meet the emission reduction target specified by PR 4001, it should be the District and/or CARB that are responsible for preparing and enforcing the emission reduction plan against the emissions sources. If the District insists that the Cities prepare an emission reduction plan, then the plan must be subject to the limits on authority, preemption and feasibility issues described above. Further, USEPA, CARB and the District should provide funding to the Cities to support programs for incentives, since the Cities will no longer have available grant funding for voluntary programs.

C. PR 4001 Violates Cities' Charter Authorities and Tidelands Obligations

Control Measure IND-01 and PR 4001 are illegal, abusing the District's limited statutory power in an unprecedented manner that exceeds its authority. There is no legal precedent or

authority for the District's attempted regulation of the Port Authorities of the Cities, or the District's imposition of an arbitrary, unnecessary and discriminatory rule on the Cities, and thereby dictate the Cities' governing Boards of Harbor Commissioners' ("Boards") decisions regarding the exercise of their police power authority, the management of their respective properties and expenditures of the Cities in order to satisfy the District-defined targets for a single district within the State.

PR 4001 acknowledges that funding will be necessary to implement a plan to satisfy District targets, but fails to provide District funds or specify the source of such funds. The District cannot legally compel the Cities' Boards to make expenditure of Tidelands Trust revenues for the purpose of incentives or funding emission reduction programs as contemplated in District enforcement activity under PR 4001. Such proposed unfettered District authority would unlawfully supplant the trustee judgment and legal obligations of the Cities to operate the port properties and their revenues solely for the benefit of the entire State of California under the Tidelands Trust doctrine (promoting maritime commerce, navigation and fisheries) rather than for limited municipal or a single District's purposes.

Worse yet, PR 4001 proposes that a single District Executive Officer acting alone (rather than the District's full Governing Board) would wield the sole discretion to approve or disapprove the independent jurisdictional decisions of the Boards regarding conditions they impose on their properties or expenditures of their Harbor Revenue Funds, violating the Tidelands Trust and the Cities' charters.

D. <u>There is No Statutory Authority for District to Impose PR 4001 On Cities</u>

The District has failed to cite any statutory authority for regulating the Cities—governmental entities—as purported "sources" of emissions. As the Cities have repeatedly explained, neither the Cities nor the Ports are "sources" of emissions—direct, indirect, or otherwise. The District has not provided any authority that would support the District's attempted characterization of the Cities, or the Ports, as "indirect sources" of emission, solely based on the confluence of distinct privately-owned activities, vessels, vehicles, equipment, and uses within the geographic area and jurisdiction of the respective Ports.

"An air pollution control district, as a special district, 'has only such powers as are given to it by the statute and is an entity, the powers and functions of which are derived entirely from the Legislature.'" (74 Ops. Cal. Atty. Gen. 196 (1991)[citations omitted].) "No matter how altruistic its motives, an administrative agency has no discretion to promulgate a regulation that is inconsistent with the governing statutes." (*Terhune v. Superior Court* (1998) 65 Cal.App.4th 864, 874.) The District has failed to cite any statute or grant of authority from the Legislature for the proposed PR 4001.

Under the District's 2007 Air Quality Management Plan, a proposed "Port Backstop Rule" was proposed as a "Mobile Source Measure MOB-03" that defined the operators of marine terminals and rail yards, as well as the Cities, as indirect sources, Measure IND-01 and PR 4001 inexplicably exclude the operators of the mobile sources that had been in MOB-03 and instead propose to regulate and punish solely the Cities, effectively insulating from responsibility, the private sector entities that do own, operate and control the equipment producing the emissions.

The District Staff has previously referred to a clearly erroneous, overbroad interpretation of Health & Safety Code §§40716 (a)(1); 40440 (b)(3), as potential authority for attempting to justify Measure IND-01 and PR 4001 as forms of indirect source review, as applied to the Cities. However, such lax interpretations apparently ignore the Legislature's explicit limitations on any such "indirect source" regulatory authority—precluding application of PR 4001 against the Cities (e.g., Health & Safety Code § 40716(b): "Nothing in this section constitutes an infringement on the existing authority of counties and cities to plan or control land use, and nothing in this section provides or transfers new authority over such land use to a district.")

Similarly, any District reliance on Health & Safety Code § 40440 is clearly misplaced. The introductory clause of § 40440(b)(3), for example, states that indirect source controls must be "[c]onsistent with Section 40414." Importantly, Health & Safety Code §40414 [specifically governing the District] states: "No provision of this chapter shall constitute an infringement on the existing authority of counties and cities to plan or control land use, and no provision of this chapter shall be interpreted as providing or transferring new authority over such land use to either the south coast district, the Southern California Association of Governments, or the state board." Not only does this provision apply generally to Chapter 5.5 [governing the District] but it is also specifically referenced in § 40440(b)(3), leaving little doubt that any District rule related to indirect source controls may not overreach or infringe on the Cities' police power to control land use in their jurisdictions or Tidelands Trustee duties for benefit of the State.

Finally, the District Staff's reference to two cases involving the very distinct "indirect source review" adopted by the San Joaquin Valley APCD is misplaced. Those cases, *California Building Industry Association v. San Joaquin Valley Air Pollution Control District*, 178 Cal. App. 4th 120 (2009) and *Nat'l Ass'n of Home Builders v. San Joaquin Valley Air Pollution Control District*, 627 F. 3d 730 (9th Cir. 2010), involved quite different circumstances and a distinct and specific statute permitting an indirect source review program and in-lieu fees to be imposed on new construction sites. The holdings of those cases were narrow, and based on the nature of the emission sources being regulated. "Because the court's approval of the rule depended on the nature of the source being regulated, mobile non-road construction equipment, indirect sources are not categorically permissible after NAHB." (39 ECOLOGY LAW QUARTERLY 667 (2012).) Those cases are thus irrelevant, and do not support District Staff's assertion of some authority for the District to impose rules on the Cities under the guise of Measure IND-01 or PR 4001.

III. PROCEDURAL FLAWS

A. General Comments

The PR 4001 developmental and procedural process is on an accelerated timeline that is unusually short for a rule of this unprecedented nature that has generated such controversy and so many unanswered questions from other public agencies and stakeholders. The District should provide a comprehensive rule development schedule, including key milestones of staff report revisions, staff report analyses, workshops, workgroup meetings, etc. and provide the stakeholders, and the public adequate time for review and comment after release of actual substantive information necessary to evaluate the proposed rule.

Instead, the District was late with release of the actual text of PR 4001, not releasing it until November 26, 2013. The text of the PR 4001 is severely lacking explanation of many material elements, leaving continued unanswered questions that had been posed literally for years, even under the development of Measure IND-01 and early working group consultation meetings. The Preliminary Draft Staff Report for PR 4001 offers little help, as the Staff Report does not contain technical data and analyses necessary for a complete review. The PR 4001 Preliminary Staff Report lacks substance and does not meet important specificity requirements (see specific comments below related to the Preliminary Staff Report).

Lastly, the District's environmental assessment of the PR 4001 has also been extremely flawed and we incorporate by reference the comment letters previously submitted by the Cities on the Notice of Preparation and Recirculated Notice of Preparation under the California Environmental Quality Act, which are attached hereto.

B. The District's Preliminary Draft Staff Report on PR 4001 Fails to Comply With Statutory Requirements for Rule Adoption

The District's December 2013 Preliminary Draft Staff Report fails to comply with statutory requirements for rule adoption as discussed below.

1. Non-compliance with Health & Safety Code § 40440.5 – Notice of Proposed Action:

The District must give public notice of the Board hearing to consider PR 4001 not less than 30 days prior to the hearing date, and must include specified information in that Notice:

(a) A "summary description of the effect of the proposal" as required by Section 40725(b);
(b) Description of the air quality objective of the rule, and reasons for the rule;
(c) A list of supporting information and documents relevant to the PR 4001, and any environmental assessment; and
(d) A statement that a staff report on the proposed rule "has been prepared" and the contact information to obtain that staff report.[5]
(e) The statutes further specify the required contents of the Staff Report that must be prepared and made available at least 30 days prior to the hearing date:

Whenever the proposed rule or regulation will significantly affect air quality or emissions limitations, the staff report shall include the full text of the proposed rule or regulations, an analysis of alternative control measures, a list of reference materials used in developing the proposed rule regulation, an environmental assessment, exhibits, and draft findings for consideration by the District Governing Board pursuant to Health & Safety Code §40727. Further, if an environmental assessment is prepared, the staff report shall also include social, economic, and public health analyses.

2. Non-compliance with Health & Safety Code § 40727 – Required Findings:

Before the District's Board could approve the PR 4001, it would need to make the findings required by Section 40727 (and to provide the public with sufficient information/substantial evidence in the record to support those mandatory findings). The District's Preliminary Draft Staff Report (December 2013) fails to satisfy these requirements. The findings must address:

(a) "necessity" – Since PR 4001 is by definition a "backstop" measure intended to address emissions issues that are not currently a problem (and which are not shown to be likely to occur), it is inherently difficult for the District to make such a finding of "necessity" for the rule (also see the detailed discussion demonstrating the District's failure to demonstrate "necessity" for PR 4001 set forth above). Moreover, the District Governing Board found Measure IND-01 necessary in the 2012 AQMP, but not PR 4001, as stated in the Staff Report.

[5] This wording indicates that the Staff Report must already be prepared before the Notice of the Board meeting goes out. If the District intends to rely upon the "Preliminary Draft Staff Report" issued in December 2013, it would be deficient because that PDSR fails to include all of the information required by statute.

(b) "authority" – As pointed out above, the District has failed to demonstrate its legal authority for PR 4001, if any. By what authority can the District "delegate" (or "foist") its own responsibilities for regulating air quality emissions onto the Cities? The District cites no authority for imposing a rule on independent governmental agencies to take specific land use, environmental, or fiscal actions (fees, tariffs, etc.) Also, the District fails to address the statutory limitations on its authority in Health & Safety Code § 40414: the District may not infringe on the existing authority of Cities to plan or control land use.

(c) "clarity" – The lack of clarity in the draft text of PR 4001 is addressed throughout this comment letter. In addition, the lack of clarity in PR 4001 is exemplified in the circular argument of PR 4001(d)(2)(A) and PR 4001(f)(1)(D). PR 4001(d)(2)(A) specifies that that, in the case of triggering an Emission Reduction Plan, the Port shall report the progress in meeting the shortfall "based on the process developed pursuant to subparagraph (f)(1)(D)." However PR 4001(f)(1)(D) specifies the Emission Reduction Plan "shall provide a process for submittal of progress reports toward eliminating the emission reduction shortfall pursuant to subparagraph (d)(2)(A)."

(d) "consistency" –PR 4001 is inconsistent with Measure IND-01; it is also inconsistent with the CAAP and the Cities' general plans, harbor area plans, transportation management plans, etc, as well as state Tidelands Trust policies. In addition, PR 4001 is inconsistent with, and preempted by federal laws (e.g., ICCTA; FAAAA) and regulations of IMO (MARPOL / APPS) as well as federal regulations of trucks, locomotives, etc.. Also, PR 4001 is inconsistent with the California Clean Air Act and the statutory limitations on the regulatory authority of the District, and further is inconsistent with CARB polices.

(e) "nonduplication" – PR 4001 would unnecessarily – by definition – duplicate and "backstop" existing plans and policies such as CAAP and the aforementioned regulations;

(f) "reference" – The District has failed to demonstrate what law or court decision is purportedly being implemented by PR 4001.

3. <u>Non-compliance with Health & Safety Code § 40727.2 – Written Analysis of Rule</u>:

Does the District contend that its Preliminary Draft Staff Report satisfies this requirement that it produce a written analysis of PR 4001? If so, it fails to comply with § 40727.2(e). The Preliminary Draft Staff Report only indicates that the technical impact

assessment is underway. Without the Impact Assessment section, the staff report is incomplete. The Impact Assessment section must include the District's explanation of differences between PR 4001 and existing guidelines, such as in CAAP or AQMP, as well as address regulation cost effectiveness, including costs beyond mere control equipment costs.

4. Non-compliance with Health & Safety Code § 40440.8 – Assessment of Socioeconomic Impacts of PR 4001:

This requirement is also imposed by Section 40428.5, and the need for such a socioeconomic analysis was addressed, at least in brief, in the NOP comment letter. The Preliminary Draft Staff Report (page 18) erroneously describes the likely socioeconomic impacts of PR 4001 as being limited to the Cities' costs incurred for emissions forecasting and reporting. This grossly understates the likely impacts, including impacts of additional control measures that could be required under PR 4001 impacting the entire use and economic viability of the Ports. The staff report must include a socioeconomic assessment and must certainly address the threat of diversion resulting from potential undefined, regulatory-mandated, emission control measures. The Preliminary Draft Staff Report erroneously suggests that "a detailed assessment cannot be made at this time" and should be deferred, which is in violation of the statutory requirement. The Staff Report also indicates that a socioeconomic assessment will be made available 30 days prior to the public hearing. The significant potential impact and novel nature of this rule warrants a 60 day review period of the socioeconomic assessment.

5. Non –compliance with Health & Safety Code § 40440.8(b)(4) – Alternatives to PR 4001:

The socioeconomic assessment must address "the availability and cost-effectiveness of alternatives to the rule." (§ 40440.8(b)(4)) However, the Preliminary Draft Staff Report fails to even mention any "alternatives" to the Rule, much less to evaluate the availability and cost-effectiveness of alternatives, such as VMEP.

6. Non-compliance with Health & Safety Code § 40440(c): "Cost-effectiveness"

The District failed to demonstrate that the adoption of PR 4001 would comply with the requirement of Section 40440(c) that all of the District's rules "are efficient and cost-effective..." Also, Section 40703 requires the District to make available to the public, and requires the Board to make findings, as to the cost effectiveness of control measures, and similarly Section 40922 requires the District to consider "the relative cost effectiveness of the [control] measure..." The District has not done so.

C. Additional Analysis is Required Before Rule Development Can Proceed

The Cities have put into place a voluntary program with documented air quality improvements in the face of economic growth. It is AQMD's responsibility to perform a regulatory impact assessment documenting that PR 4001 will not reverse voluntary gains made by the Cities and endanger future programs. This includes the analysis of lost grant funding that would have otherwise been available to fund equipment replacement and other emissions reductions, due to conversion of voluntary program to regulation.

D. The District Must Acknowledge and Respond to All Comments Submitted on Measure IND-01 and PR 4001

The draft findings in the next staff report must acknowledge and respond to all comments submitted on Measure IND-01 and PR 4001, including all comments on the environmental assessment such as the Notice of Preparation and Initial Study for PR 4001.

IV. FAILED REQUIREMENTS FOR SIP INCLUSION

The District has claimed that adoption of PR 4001 is necessary to ensure SIP credit for the Cities' voluntary emission reduction programs. However, neither this Proposed Rule nor its precursor, "Control Measure IND-01" can be justified on this pretext, and neither PR 4001 nor Measure IND-01 meet the criteria for SIP inclusion. The Cities have raised significant technical, jurisdictional, constitutional and other legal concerns with Measure IND-01 and PR 4001, as set forth in public comment letters sent to the District during the 2012 AQMP adoption process and PR 4001 development process, which are provided as attachments.

A. Measure IND-01 and PR 4001 Violate Health & Safety Code § 39602

Measure IND-01 and PR 4001 violate California Health & Safety Code § 39602, which provides that the SIP shall only include those provisions **necessary** to meet the requirements of the Clean Air Act. The Cities have shown that there is no demonstrated need for the rule, nor is this rule necessary for regional attainment of the 2014 $PM_{2.5}$ standard. PR 4001 is duplicative of regulations already in place and effectively reducing emissions from port-related sources. As noted above, the Cities estimate that in 2014, 98% of the $PM_{2.5}$ equivalent emission reductions that PR 4001 seeks to "backstop" will occur as the result of regulations adopted by CARB and

the IMO.[6] The remaining 2% of $PM_{2.5}$ equivalent emission reductions is primarily attributed to the Cities' successful voluntary vessel speed reduction incentive program which is part of the Cities' Clean Air Action Plan.

More importantly, there are significant legal questions regarding the District's attempt to invoke " indirect source review" as authority to impose a new rule on governmental agencies. PR 4001 clearly infringes upon, and potentially usurps the Cities' authority to plan and control land use and exercise police power, in contravention of Health & Safety Code §§ 40716(b) and 40414, and compels compliance and punishes them for non-achievement of emissions targets for equipment the Cities do not own, control or operate, and are preempted from regulating.

B. <u>The District Failed to Timely Submit Proposed "Control Measure IND-01" to CARB for Public Consideration and Approval As Part of the SIP Submitted to USEPA on January 25, 2013</u>

Under CAA section 110(l), SIP revisions must be adopted by the State, and the State must provide for reasonable public notice and hearing prior to adoption. EPA cannot approve Measure IND-01 as part of the SIP because the District did not approve and forward IND-01 in time for CARB to follow the process for public consideration and State adoption required by CAA Section 110(1) and California Health and Safety Code Section 41650 for SIP submissions, and CARB failed to do so.

Under 40 CFR 51.102(d), reasonable public notice in this context refers to at least 30 days. Similarly, Health and Safety Code Section 41650 provides for a public hearing that would allow public comment as to whether the SIP meets the requirements of the CAA. By resolution dated January 25, 2013, CARB approved the District's 2012 AQMP and directed the executive officer of CARB to submit the AQMP to the USEPA for inclusion in the SIP. However, at the time of the January 25, 2013 CARB action**, Measure IND-01 was not part of the AQMP**. Because the District Governing Board adopted the AQMP without Measure IND-01 on December 7, 2012, and in fact, did not adopt Measure IND-01 until February 1, 2013, the January 25 CARB action did not constitute approval of Measure IND-01 which had not yet been submitted to CARB for consideration.

The documents attached to CARB's February 13, 2013 SIP submittal to the USEPA include the December 7, 2012 resolution by the District Governing Board and the December 20, 2012 District letter to CARB transmitting the approved SIP, which pre-dated the District

[6] CARB Port Drayage Truck Rule, CARB Truck and Bus Rule, CARB Ocean-Going Vessel (OGV) Shore Power Rule, OGV Low-Sulfur Fuel Rule, CARB Cargo-Handling Equipment at Ports Rule, CARB Commercial Harbor Craft Rule, IMO North American Emission Control Area

Governing Board's approval of Measure IND-01. Inexplicably, without the required public notice or public hearing and adoption by the CARB Governing Board, the submitted SIP includes the addition of Measure IND-01. Until this procedural error is corrected, and the Cities and the public are given the opportunity to comment at a public hearing, and CARB is able to properly consider proposed Measure IND-01 at such a properly-noticed public hearing, Measure IND-01 is not properly before the USEPA and cannot be approved as part of the SIP.

C. The Many Flaws of Measure IND-01 and PR 4001 Harm Rather Than Help the SIP

As a result of the above-mentioned extensive technical, jurisdictional, constitutional, statutory and other legal problems, inclusion of IND-01 in the SIP and attempted implementation through PR 4001 creates unnecessary risks of disputes and legal challenges to the AQMP and SIP. The unprecedented nature and legal and jurisdictional conflicts of PR 4001 and Measure IND-01 require significant explanation of the legal underpinnings of the Measure. Instead a single paragraph of generalities ignoring the jurisdictional conflict and lack of legal authority for classification of Cities as stationary sources or indirect sources was produced to justify PR 4001.

Conclusion

The ports of Long Beach and Los Angeles are a major economic engine for the region and nation. PR 4001 and the uncertainty it creates will have a substantial negative impact on the goods movement industry and the local economy, resulting in cargo diversion, job losses and business closures. Moreover, rather than improving air quality, PR 4001 eliminates all incentive for voluntary participation in emission reduction efforts at the Ports that have been so successful.

The Cities have a proven track record of developing and implementing appropriate and effective emission reduction strategies, working with the port industry and the air quality regulatory agencies. Since the CAAP was adopted in 2006, essentially all of the Cities' early actions have been overtaken by regulations from state, federal, and international agencies. The majority of emission reductions are already being achieved by regulations. Therefore, there is clearly no need for additional regulation.

The Cities share the air emission reduction goals of the District, CARB, and USEPA, and strongly believe that the voluntary cooperative CAAP process established by the Cities remains the most appropriate forum to discuss technical and policy issues related to implementing appropriate strategies for reducing emissions from port-related sources. There are feasible alternatives that would effectively ensure emission reduction goals are met, including the USEPA's VMEP that would allow for the small percentage of emissions reductions needed beyond regulations to be credited in the SIP. The Cities hope you will work with us to discuss various mechanisms, contractual or otherwise, by which the VMEP can be implemented in San

Pedro Bay, and move forward as a possible resolution to the issues currently under discussion regarding PR 4001.

We appreciate your consideration. Thank you.

Sincerely,

Matthew Arms
Acting Director of
Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachments:

- January 15, 2014 Letter; Port of Long Beach and Port of Los Angeles to South Coast Air Quality Management District (SCAQMD)*; Comments on Notice of Preparation, Initial Study and Scope of Proposed Program Environmental Assessment*
- August 21, 2013 Letter; Port of Long Beach and Port of Los Angeles to SCAQMD; *Comments on Notice of Preparation, Initial Study, and Scope of Proposed Environmental Assessment*
- October 2, 2013 Letter; Port of Long Beach and Port of Los Angeles to SCAQMD, *Initial Comments for Public Consultation on Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets are Met at Commercial Marine Ports"*

cc: Al Moro, Acting Executive Director, Port of Long Beach
Richard Cameron, Managing Director, Port of Long Beach
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Gary Lee Moore, Interim Executive Director, Port of Los Angeles
Michael Christensen, Deputy Executive Director, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
Barry Wallerstein, Executive Officer, SCAQMD

Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Randall Pasek, Planning and Rules Manager, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Governing Board Members, SCAQMD
Richard Corey, Executive Officer, CARB
Cynthia Marvin, Division Chief, Stationary Source Division, CARB
Doug Ito, Chief, Freight Transportation Branch, CARB
Jared Blumenfeld, Administrator, USEPA, Region 9
Deborah Jordan, Director, Air Division, USEPA, Region 9
Elizabeth Adams, Deputy Director, USEPA, Region 9

ATTACHMENT 4.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

January 15, 2014

Jared Blumenfeld
Regional Administrator
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

Re: California State Implementation Plan for PM2.5 for South Coast Air Basin (SIP) - South Coast 2012 Air Quality Management Plan (AQMP) Control Measure IND-01 *Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities* and EPA *Voluntary Mobile Source Emission Reduction Program* (VMEP)

Dear Mr. Blumenfeld:

On behalf of the City of Long Beach acting by its Harbor Department and the City of Los Angeles acting by its Harbor Department (collectively, the Cities), we raise serious concerns regarding Control Measure IND-01 *Backstop Measure for Indirect Sources of Emissions from Ports and Port-related Facilities* (Measure IND-01) in the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP). The Cities request that the United States Environmental Protection Agency (EPA) disapprove and exclude Measure IND-01 from the California State Implementation Plan (SIP) for particulate matter 2.5 microns or less (PM2.5) for the South Coast Air Basin, which is currently pending EPA approval. As set forth below, both the substance of Measure IND-01 and the California Air Resources Board (ARB) procedure for inclusion of Measure IND-01in the SIP violate all five prongs of the standard test used by EPA to evaluate a SIP's compliance with Clean Air Act (CAA) requirements.[1]

1. Did the State provide adequate public notice and comment periods?

EPA cannot approve Measure IND-01 as part of the SIP because the ARB failed to follow the process for SIP submissions required by CAA Section 110(1) and California Health and Safety Code Section 41650. Under CAA section 110(l), SIP revisions must be adopted by the State, and the State must provide for reasonable public notice and hearing prior to adoption. Under 40 CFR 51.102(d), reasonable public notice in this context refers to at least 30 days. Similarly, Health and Safety Code Section 41650 provides for a public hearing that would allow public comment as to whether the SIP meets the requirements of the CAA. By resolution dated January 25, 2013,

[1] See, e.g., CAA Sections 110(a)(2)(A), 110(a)(2)(E), 110(l).

the ARB approved the AQMD 2012 AQMP and directed the executive officer of the ARB to submit the AQMP to EPA for inclusion in the SIP. However, at the time of the January 25, 2013 ARB action, Measure IND-01 was not part of the AQMP. Because the AQMD Governing Board adopted the AQMP without Measure IND-01 on December 7, 2012 and did not adopt Measure IND-01 until February 1, 2013, the January 25 ARB action did not constitute approval of Measure IND-01 which had not yet been submitted to ARB for consideration. The documents attached to the ARB's February 13, 2013 SIP submittal to the EPA include the December 7, 2012 resolution by the AQMD Governing Board and the December 20, 2012 AQMD letter to ARB transmitting the approved SIP, which pre-dated the AQMD Governing Board's approval of Measure IND-01. Inexplicably, without the required public notice or public hearing and adoption by the ARB Governing Board, the submitted SIP includes the addition of Measure IND-01. Until this procedural error is corrected, and the Cities and the public are given the opportunity to comment at a public hearing, Measure IND-01 is not properly before EPA and cannot be approved as part of the SIP.

2. Does the State have adequate legal authority to implement the regulations?

As you may know, the AQMD is now pursuing adoption of Proposed Rule 4001—*Maintenance of AQMD Emission Reduction Targets at Commercial Marine Ports* (PR 4001) – ostensibly to implement Measure IND-01 and ensure SIP credit for voluntary emission reduction programs of the Cities. The Cities have raised significant technical, jurisdictional, constitutional and other legal concerns with Measure IND-01 and PR 4001, as set forth in public comment letters sent to AQMD during the AQMP adoption process. Measure IND-01 and PR 4001 violate California Health and Safety Code Section 39602, which provides that the State Implementation Plan shall only include those provisions necessary to meet the requirements of the Clean Air Act. The Cities have shown that there is no demonstrated need for the rule, nor is this rule necessary for regional attainment of the 2014 PM2.5 standard. The Cities estimate that by 2014, 99.5 percent of the PM2.5 equivalent emission reduction that PR 4001 seeks to backstop will occur as the result of regulations adopted by ARB and the International Maritime Organization (IMO).[2] The remaining 0.5 percent of PM2.5 equivalent emission reductions is primarily attributed to the Cities' successful voluntary vessel speed reduction incentive program which is part of the Cities' Clean Air Action Plan. More importantly, there are significant legal questions regarding AQMD's attempt to apply an indirect source rule to governmental agencies in a manner that potentially usurps the Cities authority and compels compliance and punishes them for non-achievement of emissions targets for equipment the Cities do not own, control or operate, and are preempted from regulating.

[2] CARB Port Drayage Truck Rule, CARB Truck and Bus Rule, CARB Ocean-Going Vessel (OGV) Shore Power Rule, OGV Low-Sulfur Fuel Rule, CARB Cargo-Handling Equipment at Ports Rule, CARB Commercial Harbor Craft Rule, IMO North American Emission Control Area

3. Are the regulations enforceable as required under CAA section 110(a)(2)?

Because the Cities are not regulatory agencies and, therefore, are limited in their authority to impose requirements on mobile sources operated by the goods movement industry that call at port facilities, IND-01 and PR 4001 are inappropriate and ineffective mechanisms for achieving emission reductions.

4. Will the State have adequate personnel and funding for the regulations?

Measure IND-01 does not specify the source of funding for its regulation of the Cities but implies that it will come from the Cities. However, AQMD and ARB have no authority to require Cities' expenditures which are subject to the Cities' own requirements as governmental agencies. Furthermore, because it converts a voluntary program into enforceable regulation, the financial effect of Measure IND-01 will be to remove previously available funding from Federal and State grants that are only given for voluntary programs that go beyond regulation, making it less likely that the Cities will have funds to assist the goods movement industry with meeting the AQMP targets.[3]

5. Do the regulations interfere with reasonable further progress and attainment or any other applicable requirement of the Act?

Measure IND-01 interferes with reasonable further progress of the Cities' voluntary programs by reduction of available funding as mentioned above, and providing disincentives to Cities and goods movement industry to pursue programs like the voluntary Clean Air Action Plan.

The Solution: Voluntary Mobile Source Emission Reduction Program (VMEP)

To the extent the ARB and AQMD seek to ensure the emission benefits of the Cities' voluntary vessel speed reduction program, there is a more appropriate method in the form of the EPA's policy and guidance for the Voluntary Mobile Source Emission Reduction Program (VMEP), which constitutes an established process to grant SIP credit for emission reductions resulting from voluntary mobile source measures that go beyond existing regulations. The VMEP approach was intended for exactly the type of successful voluntary program such as the Cities' landmark Clean Air Action Plan, and should be used to account for the 0.5 percent of port-related emissions not currently backstopped by regulation. The VMEP would also reduce the industry and jurisdictional uncertainty that could divert cargo away from the Ports and hurt our local economy.

[3] Many of the Cities programs for equipment replacement or emissions reductions projects have been funded by federal and state grants that require funded activities must go beyond regulations. See e.g., California Proposition 1B Goods Movement and federal Diesel Emission Reduction programs.

We urge the EPA to disapprove and exclude the AQMD's Measure IND-01 from the SIP, and insist that the AQMD use the EPA's established VMEP process that was developed for programs such as the Cities' vessel speed reduction program and other Clean Air Action Plan measures. Use of the established VMEP will accomplish the objective sought by Measure IND-01 and PR 4001 and ensure that the emissions reductions achieved by the program are credited in the SIP. Further, the implementation of a VMEP will achieve the same emissions reductions while ensuring that grant funds remain available for actions going beyond regulations and will do so in a collaborative manner. It will also encourage other cities and regions throughout the nation to develop and pursue innovative voluntary programs and solutions that best fit their needs to improve air quality and public health.

The Cities share the air emission reduction goals of the AQMD, ARB, and EPA, and strongly believe that the VMEP is the most effective way to ensure that emission reduction goals are met in a manner that will allow the SIP to move forward without unnecessary disputes or challenges. The Cities look forward to discussing the various mechanisms, contractual or otherwise, by which the VMEP can be implemented in San Pedro Bay.

Sincerely,

Matthew Arms
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

LW

cc: Al Moro, Acting Executive Director, Port of Long Beach
Gary Lee Moore, Interim Executive Director, Port of Los Angeles
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Randall Pasek, Planning and Rules Manager, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Richard Corey, Executive Officer, ARB

Cynthia Marvin, Division Chief, Stationary Source Division, ARB
Doug Ito, Chief, Freight Transportation Branch, ARB
Deborah Jordan, Director, Air Division, EPA, Region 9
Elizabeth Adams, Deputy Director, U.S. EPA, Region 9

ATTACHMENT 5.

January 15, 2014

VIA E-MAIL – bradlein@aqmd.gov
VIA FACSIMILE – (909) 396-3324

Ms. Barbara Radlein
c/o CEQA
SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT
21865 Copley Drive
Diamond Bar, California 91756-4178

Re: Recirculated Notice of Preparation and Initial Study
Proposed Rule 4001— Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports
November 2013

SCAQMD File No. 0722013BAR
SCH No.: 2013071072

Comments on Recirculated Notice of Preparation, Initial Study, and Scope of Proposed Program Environmental Assessment and Alternatives Analysis

Dear Ms. Radlein and Staff of the South Coast Air Quality Management District:

On behalf of the City of Long Beach (referred to herein as "COLB)" and the City of Los Angeles acting by and through their respective Harbor Department ("COLA", and collectively with COLB referred to herein as the "Cities"), we appreciate this opportunity to submit responses and comments on the District's recent "Recirculated Notice of Preparation of a Draft Program Environmental Assessment" ("Recirculated NOP") and the accompanying Initial Study ("IS") prepared in connection with the District's consideration of the proposed project entitled "Rule 4001: Maintenance of AQMP Emission Reduction Targets At Commercial Marine Ports" (the "Project" or "PR 4001"). We appreciate that the District has extended the public comment period to January 16, 2014, in light of the serious and substantial issues raised by this Project and the original comment period scheduled over the holidays limiting stakeholder time for review.

This letter is organized in the following manner:

A. Introductory Comments
B. General Comments on the Recirculated NOP and Initial Study
C. Specific Comments on the Recirculated Initial Study
    1. Comments on Chapter 1
    2. Comments on Chapter 2 (Environmental Checklist)
D. Conclusion

Additionally, the Cities' previous comment letter on the original NOP dated August 21, 2013 has been attached for reference.

A. Introductory Comments:

We have previously commented on, and objected to, Air Quality Management Plan (AQMP) Control Measure IND-01 (Measure IND-01) and have expressed our grave concerns about the District's rulemaking approach to craft a ostensible "backstop rule" that would be applicable only to the Cities and their respective San Pedro Bay Ports ("Ports") such as that embodied in the new draft PR 4001. As the District is well aware, the Cities have been dedicated, innovative, and effective leaders in the efforts of public agencies to improve air quality despite the fact that we have no regulatory authority or control over the emissions sources. Working collaboratively and voluntarily with the District, our efforts have been successful in helping the maritime goods movement industry achieve very substantial reductions in emissions from the wide range of industrial and mobile sources they operate at or near the Ports, and we look forward to continuing to work with the District, other air regulatory agencies, and industry in building on these successes.

While we appreciate that the District staff has finally released the draft text of PR 4001, together with the recirculation of a new NOP and Initial Study, we find that many of the questions and issues raised in our previous comments remain unanswered or contain the same deficiencies in the new description of the "Project" and the Recirculated NOP, and still fail to identify or address feasible alternatives to PR 4001. Therefore, we respectfully reiterate and incorporate by reference all of our previous comments and objections (including, but not limited to, our letter dated August 21, 2013, and comments on the District's 2012 Air Quality Management Plan ("AQMP") and Control Measure IND-01), in addition to our new comments on the Recirculated NOP and IS.

Our responses are submitted in light of the California Environmental Quality Act ("CEQA") which calls for public review, critical evaluation, and comment on the scope of the environmental review proposed to be conducted in response to a Notice of Preparation, including the significant environmental issues, alternatives, and mitigation measures that should be analyzed in the proposed draft EIR (or Environmental Assessment, "EA") (14 CCR

15082(b)(1).) (See, CEQA Guidelines, at Title 14 Cal. Code of Regulations, §§ 15000, *et seq*..) Since it is anticipated that the proposed Project will have substantial impacts on the Cities and other communities served by the Ports, it is particularly important that the scope of this proposed review take into account jurisdictional and legal limitations, established state and local plans and policies, and other potentially feasible and less-impactful alternatives to the Project. In addition, it will be important to consider the impacts of the proposed Project on the important missions, facilities, and operations of the San Pedro Bay Ports.

In that context, we respectfully submit the following comments regarding the Recirculated NOP as well as questions, concerns and objections related to the omissions of critical information, unsupported assumptions, or analytical deficiencies in the Initial Study, and comments as to the scope of the proposed environmental assessment ("EA") as contemplated and invited by the District's Recirculated NOP.

B. General Comments on the Recirculated NOP and Initial Study.

1. **Changed Project Title**: What is the authority of the District to change the proposed Project from a "*Backstop Measure for Indirect Sources of Emissions from Ports and Port-related Facilities*" authorized by the District's Governing Board, to a new Project title of "*Maintenance of AQMP Emission Reduction Targets At Commercial Marine Ports*"? The District inexplicably no longer describes this as "a backstop measure" – although such a "contingency measure" concept has been the basis for District consideration of this type of proposed rule going back to Control Measure IND – 01 and a similar mobile source port backstop rule in the 2007 AQMP/SIP. What is the significance of this change and has the District now moved from a backstop of the voluntary Clean Air Action Plan goals of the Cities, which it sold to its board, to full District regulation setting District targets for the Cities' ports beyond backstopping voluntary programs? Does this change require the approval of the District's board? In any event, the Cities repeat their strong protest of both Project concepts and further comment on this issue below.

2. **Changed Project Description:** The Recirculated NOP/IS cover letter (11/22/2013) acknowledges that "changes were made to the project description *and* the environmental analysis subsequent to release of the original NOP/IS on July 23, 2013." However, the new NOP/IS fails to describe the "changes" in "the Project" and fails to describe or evaluate the significance of those Project changes. We note at least a few changes between the previous Initial Study and this new Recirculated NOP/IS:

(a) The Project Description now includes *the draft text of the Proposed Rule*. The new Initial Study states (p. 1-3) that the prior NOP/IS had tried to use the text of Control Measure IND-01 as a surrogate for the Project, because the rule language for PR 4001 had not been developed. However, **the draft text of PR 4001 is not the same as Control Measure**

IND-01. The distinct jurisdictional, legal, administrative, due process and procedural issues posed by the draft text of PR 4001 (as well as its semantic ambiguities) add new levels of complexity to the evaluation of the environmental impacts of the Project, which are not adequately explained or evaluated in the new Initial Study.

As detailed below, the draft text now creates uncertainty as to how and when the requirements of the new PR 4001 that the Cities "take actions" would be triggered, as well as the scope of their obligations to act under the new Rule. Indeed, the draft text of PR 4001 raises questions as to whether the Project as now described is even consistent with the Final 2012 AQMP, the EIR for that AQMP, or with subsequently-adopted Control Measure IND-01, or other state and regional plans. Most importantly, to the extent the provisions of PR 4001 vary in purpose and scope from Measure IND-01, they are not authorized by the AQMD Governing Board.

(b) The initial Project description (and Control Measure IND-01) would have required "actions to be taken" [by the Cities] only "in the event that emissions from port-related sources *do not meet* the emission targets assumed in the final 2012 AQMP. Similarly, Control Measure IND-01 represented that the "backstop" requirements will be triggered "if the reported aggregate emissions *for 2014* for all port-related sources exceed the 2014 emissions targets." (Final 2012 AQMP, Appendix IV-A-41.) By contrast, however, the new Project description would apparently require the Cities to "take actions" in the event that "port-related sources do not meet *or are not on track to maintain* the emission targets ... *for the purpose of meeting and maintaining the federal 24-hrs PM2.5 standard*." The new version of the Project description appears to have expanded the "triggering" events, and extended the trigger period, beyond those events and time periods contemplated in the 2012 Final AQMP. Accordingly, the new version of PR 4001 may no longer be consistent with the AQMP or with the environmental review of that document.

(c) The new NOP and Initial Study changed the type of CEQA document from an Environmental Assessment to a Program Environmental Assessment for the Project that will be programmatic in nature (as described in 14 CCR 15168) rather than a project-specific environmental review, and suggests that the District may thereby intend to *defer* more detailed CEQA analysis to some undefined future stage of "the Project" (p. 1-2). The District has already prepared and certified a Final Program Environmental Impact Report (Program EIR) for the 2012 AQMP which was considered to be the appropriate document pursuant to CEQA Guidelines Section 15168(a)(3) and included a programmatic analysis of Control Measure IND-01. However, the District has now presented the adoption of PR 4001 as "the Project" but is still preparing yet another Program Environmental Assessment with the same reasoning as it did in the prior CEQA analysis. It is not clear how the District believes two program-level environmental documents can be prepared for the same rule and when, if at all, the District may intend to provide such more specific "project-level" analysis as required under CEQA.

Moreover, this part of the new Initial Study implies a commitment that the "program CEQA document" would include "consideration of broad policy alternatives and program-wide mitigation measures." (*id*.). However, *the new Initial Study fails to identify or discuss any such "policy alternatives" or "program-wide mitigation measures"* and gives no indication that *the scope* of the eventual EA will in fact include any such policy alternatives or mitigation measures.

In their prior comment letter on the Draft 2012 AQMP Program EIR dated October 22, 2012, the Cities expressed very similar concerns over the vague and deficient "project description" of backstop Measure IND-01. In the District's response to comment #5-4 in the Final Program EIR, the District represented that: "*The exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted.*" The District also committed, in its response to the same comment #504 in the AQMP Final Program EIR, that "*further details regarding the future requirements* [a Rule implementing Control Measure IND-01] *will be determined more appropriately* ***during the rule development process***."

The new Initial Study indicates that the District may be reneging on these commitments to provide the necessary analysis of "the exact impacts" of PR 4001 "during the rule-development process, in violation of CEQA and in violation of the District's own Rule 110.

(d) The District also appears to have made other subtle changes to the Project Description, without announcement, which are **not consistent with Control Measure IND-01**, and which may have potentially significant – but unaddressed -- impacts. For example:

i. The new Initial Study has changed the description of the Project from adoption of a "backstop measure" to the adoption of "backstop *requirement*" and has made other changes to the Project which are not consistent with Control Measure IND-01 as adopted (p. 1-1.) Control Measure IND-01 provides a description of the Cities' successful Clean Air Action Plan (CAAP) and its various emissions reductions goals. "This AQMP Control Measure is designed to provide a "backstop" to the Ports' actions to provide assurance that, if emissions do not continue to meet projections, the Ports will develop and implement plans to get back on track, to the extent that cost effective and feasible strategies are available." (Final 2012 AQMP Appendix IV-A, page 3) The Proposed Project describes its purpose as: "The purpose of the rule is to establish actions to be taken in the event that emissions from port-related sources do not meet the emission targets assumed in the Final 2012 Air Quality Management Plan for the purpose of meeting the federal 24-hour $PM_{2.5}$ standard in 2014 and maintenance of attainment in subsequent years." (PR 4001, Section (a)) The proposed

Project has eliminated the references in its Board-adopted IND-01 to backstopping the Ports Clean Air Action Plan targets to the extent cost effective and feasible strategies are available and replaced with a traditional regulation by the District to meet District-set targets.

ii. The new Initial Study has apparently changed the District's concern from assuring "the attainment demonstration" for 2014 PM2.5 emission targets (as embodied in the 2012 AQMP) to add "*maintenance of the air quality standard in subsequent years*." (p. 1-1.) This change in the Project appears to add a new undefined and open-ended element into the Project, not consistent with the District's adopted Control Measure IND-01.

(e) **Changed Definition of "Feasible Control Strategy:"** The draft text for the new PR 4001 proposes to change the definition of "feasible control strategy" so that it is *not consistent with* the obligations that could potentially be imposed on the Cities under *Control Measure IND -01* as adopted by the District Board. Instead, the draft of PR 4001 (at Paragraph (c)(1)) and the new Initial Study have *changed the limitations* on the proposed obligations of the Cities to achieve additional emission reductions under PR 4001. Previously, the Project was described as requiring the Cities to "propose additional emission reduction methods ... [but only] *to the extent cost-effective strategies are technically feasible* and within the Ports' authority." However, new PR 4001, and the new Initial Study (p. 1-1) have inexplicably omitted (at several points*)* the prior limitation on the Cities' potential obligations to measures that are "*technically feasible*." Again, these subtle changes in the Project description are not consistent with the text of IND-01 or any other legal or regulatory authority identified by the District in the new Initial Study. The Initial Study should address (i) whether these changes have been authorized by the District's Board, and (2) what potential environmental impacts (as well as socio-economic impacts) may arise from the changes in the concept of "feasible control strategies."

(f) The District should clearly identify all other "changes" in the Project.

Other comments on the flawed "project description" are set out in Section C(1), below.

3. **Changed Environmental Analysis:** We appreciate that the Recirculated NOP/IS has expanded the range of environmental subjects which it now acknowledges may be subject to the proposed Project's significant adverse environmental impacts, perhaps partly in response to our previous comments. However, the scope of the proposed environmental analysis still does not take into account all of our concerns and still fails to comply with CEQA, e.g., by failing to identify potential significant environmental impacts, failing to propose a range of feasible

alternatives, and failing to evaluate reasonable mitigation measures. We therefore reiterate our prior comments on the scope of the proposed EA.

4. **Reiteration and Incorporation of Prior Comments:** The new NOP/IS states that it "replaces the July 23, 2013 NOP/IS" and that there will be no District responses to previously-submitted comments. We recognize that the Recirculated NOP purports to reflect changes made, in part, to previously submitted comments on the July 2013 NOP/IS. However, the new NOP/IS does not take into account all of our previous comments nor do the changes made in the new NOP/IS necessarily reflect or satisfy the requests made in our previous comments. Accordingly, we incorporate and include our previous comments as detailed in our letter dated August 21, 2013.

5. **Failure to Adequately Identify and Include Feasible Alternatives:** The Recirculated NOP/IS still fails to comply with CEQA's requirements for identification and consideration of all feasible project alternatives. Like the original IS, the new IS fails to identify a single "alternative" to the District Board's adoption of PR 4001. The superficial mention of "alternatives" on page 1-15 of the IS merely recites the legal obligations of the District to "discuss and compare" a range of "reasonable alternatives" to the proposed Project. This fails to fulfill the "scoping" purpose of an Initial Study. The District should analyze, among a range of alternatives, a collaborative Memorandum of Agreement between all of the stakeholders, as previously suggested by the Cities and recommended by the District to its Board (which speaks well to its feasibility as an alternative). The District should also evaluate the use of the EPA's policy and guidance for the Voluntary Mobile Source Emission Reduction Program (VMEP), which was developed for voluntary emission reduction programs of the sort outlined in the CAAP.

"The scoping process is the screening process by which a local agency makes its initial determination as to which alternatives are feasible and merit in-depth consideration, and which do not." (*Goleta II, supra*, 52 Cal.3d at p. 569; see Guidelines §15083.) It involves "consult[ation] directly with any person or organization [the lead agency] believes will be concerned with the environmental effects of the project" in hopes of "solv[ing] many potential problems that would arise in more serious forms later in the review process." (Guidelines, § 15083.)" "The determination of whether to include an alternative during the scoping process is whether the alternative is potentially feasible (*Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 489 (*Mira Mar*)), and the EIR "is required to make an in-depth discussion of those alternatives identified as at least potentially feasible." (*Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1505, fn. 5].)" (*South County Citizens for Smart Growth v. County of Nevada* (3d Dist. 2013) 221 Cal.App.4th 316, 327 (*South County*.)

"A lead agency must give reasons for rejecting an alternative as 'infeasible' during the scoping process (Guidelines, § 15126.6, subd. (c)), the scoping process takes place prior to

completion of the draft EIR. (*Gilroy Citizens for Responsible Planning v. City of Gilroy*, *supra*, 140 Cal.App.4th at p. 917, fn. 5; Guidelines, § 15083.)" (*South County*, p. 328.)[1]

The Initial Study also uses the wrong legal standard in its passing acknowledgement of the District's duty to consider alternatives: the Initial Study must identify "potentially feasible" alternatives ("feasibility" is a defined, and critical, term under CEQA), rather than "reasonable" alternatives (as mis-stated in the IS on page 1-15.)

6. **Deficient Initial Study:** The CEQA Guidelines contemplate that an Initial Study is to be used in defining the scope of environmental review (14 CCR §§ 15006(d), 15063(a), 15143.) However, as a result of the omissions, inconsistencies, and deficiencies in the Initial Study, the District's proposed scope of environmental assessment for this Project will be unduly narrowed and limited, and is likely to erroneously exclude issues, feasible alternatives, and mitigation measures from the proposed Environmental Assessment. (More detailed comments on the deficient Initial Study are set out in Section D, below.)

As detailed below in Section C, the new Initial Study does not provide the information, potentially feasible alternatives, evidence, or analysis required by the CEQA Guidelines (14 C.C.R. §15063, subd. (d)):

(1) A description of the Project including the location of the Project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries . . .

(4) A discussion of ways to mitigate the significant effects identified, if any;

(5) An examination of whether the Project would be consistent with existing zoning, plans, and other applicable land use controls;

(6) The name of the person or persons who prepared or participated in the initial study."

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[1] "Differing factors come into play when the final decision on project approval is made; at that juncture the decisionmaking body evaluates whether the alternatives are actually feasible. (Guidelines, § 15091, subd. (a)(3).) "[T]he decision makers may reject as infeasible alternatives that were identified in the EIR as potentially feasible." (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 981.)" (*South County*, p. 327.)

An Initial Study that fails to provide all of the information, analysis, and evidence called for by CEQA may be deemed to be inadequate and not a valid basis for CEQA review or Project approval (See, e.g., *City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, at pp. 407–408, invalidating the County's proposed general plan amendments because of a deficient initial study: "[T]he initial threshold study is inadequate because it fails to provide sufficient evidence or analysis of the potential environmental effects of the amendments.")

7. **Request for Correction and Recirculation of Corrected NOP and IS:**

For the multiple reasons summarized above, and detailed below, it is essential that the Recirculated NOP and Initial Study be withdrawn and further revised and corrected in order to properly fulfill their role in seeking meaningful public input on the appropriate "scope" of the proposed environmental assessment for the Project. A more accurate, complete, and CEQA-compliant Initial Study that addresses specific project-level impacts should be prepared and released for public review, along with a new set of public meetings, to provide the public with sufficient time and opportunity to comment on the scope and adequacy of the revised NOP/IS.

The District has already commenced its Rule- development process. It appears from the District's records that District staff has already committed to the District Board that the Proposed Rule will be adopted in April of 2014. District documents also indicate that District staff has further committed to shortly thereafter embarking on revisiting and changing the emissions targets that are the subject of this Proposed Rule, likely placing even more burdensome requirements on the Cities It is imperative, not only for Due Process reasons but also for reasons of sound public policy, meaningful community input, and well-informed decision-making, that the District provide adequate, complete, and accurate information – and time -- to allow the Project to be fully vetted before it is rushed to the District's Board for consideration.

It is therefore respectfully urged that the Recirculated Initial Study (and the related NOP) be recalled, corrected, and again be recirculated for public review and comment as corrected before the District proceeds with any further action in connection with the proposed Project.

The comments on the Recirculated Initial Study included in this letter are organized in the same format used by the Initial Study, i.e., comments on "*Chapter 1 – Project Description*" in Section C, below, followed by comments on "*Chapter 2 – Environmental Checklist*" in Section D. The comments are limited to those matters which appear in the Recirculated Initial Study, but we reserve the right to provide further comments in the event that additional or different information about the proposed Project becomes available.

C. Specific Comments on the Recirculated Initial Study:

1. Chapter 1 of the Initial Study -- Inadequate "Project" Description.

(a). Deficient "Project Description" – In General

"A correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA." (*Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 267).

> **The initial study must include a description of the project.**" (*City of Redlands, supra,* 96 Cal.App.4th at pp. 405–406, fns. omitted.) **An accurate and complete project description is necessary** to fully evaluate the project's potential environmental effects. [Citations.]" (*El Dorado County, supra,* 122 Cal.App.4th at p. 1597.) (*Id*.)

As noted above (Section B(2)), the District's cover letter for the Recirculated NOP states that "the Project" has been changed, and that the Project description has been "changed." However, the Recirculated NOP and Initial Study do not explain the "changes" in the Project, and they still fail to provide an accurate and complete description of the Project as mandated by CEQA. The failure of the Initial Study and NOP to provide an accurate, complete, and coherent description of the "Project" is a fundamental deficiency, which permeates the entire document.

The Initial Study fails to describe additional planned or reasonably foreseeable activities or actions by the District (e.g., changes to emissions targets) or by other agencies in response to or associated with the proposed Rule, or to address cumulative impacts of this proposed Project in light of other related actions and plans.

The Initial Study suggests, instead, that the intent of PR 4001 would be to delegate the District's responsibilities for regulating or reducing emissions of NOx, SOx, and PM2.5 air emissions to other agencies, specifically the officials governing the ports of Long Beach and Los Angeles. The Initial Study further 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 Rule 4001 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 entire project*, improper project "segmentation," *improper deferral* of impact analysis and mitigation, failure to identify and evaluate *potentially feasible project alternatives*, etc.)

The absence of such a clear description of the proposed Project inherently prevents the IS from facilitating meaningful review and analysis of the proposed "Project," and violates the requirements of CEQA. (See, e.g., CEQA Guidelines, 14 CCR § 15124; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376.)

The Initial Study falls far short of these requirements in describing the proposed Project, and thus falls short of serving the "public awareness" purposes mandated by CEQA:

> An accurate and complete project description is necessary for an intelligent evaluation of the potential 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, citing *Aberdeen & Rockfish RR. v. SCRAP* (1975) 422 U.S. 289, 322 [an accurate, complete and consistent project description is the sine qua non of informative, legally adequate CEQA review].) (*City of Redlands v. County of San Bernardino, supra,* 96 Cal. App. 4th at pp. 407–408.)

In sum, the Recirculated NOP/IS still erroneously limits the scope of the required environmental analysis and calls for impermissible speculation or impossible prescience on the part of the Cities or other members of the concerned public to undertake effective analysis of the proposed Project, or to provide meaningful comments as to the scope of review of the Project, until and unless the District provides an adequate and complete description of the "Project."

Incomplete Description of Environmental Setting

The Initial Study also fails to provide an adequate description of "the environmental setting" of the proposed Project.

While the CEQA Guidelines do not specifically define "environmental setting" with regard to an initial study, they do explain, in regard to EIR preparation, that the "environmental setting" must be informative: "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." (Guidelines, § 15125, subd. (a).) A description of the environmental setting must be sufficient to allow "an understanding of the significant effects of the proposed projects and its alternatives" but "no longer." (Guidelines, § 15125, subd. (a).) That description should place "[s]pecial emphasis" "on environmental resources that are rare or unique to that region and would be affected by the project" and "must permit the significant effects of the project to be considered in the full environmental context." (Guidelines, § 15125, subd. (c).)

Failure to Examine All Phases of the Entire Project as Proposed

"The Initial Study must include a description of the project, and the scope of the environmental review conducted for the initial study must include the *entire* project." (*Nelson v. County of Kern, supra*, 190 Cal.App.4th at 270, emph. in original.)

The Initial Study here improperly fails to describe "the entire Project" and fails to consider all phases of the proposed Project. The CEQA Guidelines (14 C.C.R §15063(a)(1)) make clear that an initial study must take a comprehensive view of the proposed project *as a whole*. "All phases of project planning, implementation, and operation must be considered in the initial study of the project."

Since the Project also contemplates the possibility of future discretionary actions and measures on the part of the Cities, if compelled under PR 4001, which may in themselves have additional, not-yet-identified environmental impacts, the Initial Study should call for the scope of the EA to be expanded to include such issues.

The scope of the environmental review conducted for the initial study must include the entire project. (*Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1222.) Thus, a correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA. (*Nelson v. County of Kern, supra*, 190 Cal.App.4th at 267.)

The NOP/IS indicates that proposed Rule 4001 is intended to require actions by the Cities, to adopt and implement plans and strategies to address any "shortfall" in emissions reductions. The Initial Study improperly fails, however, to address or to provide information and analysis relating to the environmental impacts of the anticipated "subsequent approvals," "discretionary permits" and amendments to the Cities' plans and regulations that appear to be proposed as parts of the Project, or the physical environmental effects of social or economic impacts that may result from those anticipated changes in land use regulations. (Guidelines § 15063.) Such anticipated and intended actions by other governmental agencies thus appear to be part of this Project, and must be identified and evaluated in the Project EA, along with their potential impacts. As such, we reiterate our prior comment on the Draft 2012 AQMP Program EIR dated October 22, 2012 where it is stated that the District has failed to fully disclose the details of Measure IND-01 and as a result is segmenting or piecemealing its CEQA analysis.

Failure to Describe Existing Land Use Regulations

The Initial Study does not include an examination of whether the Project would be consistent with existing zoning, plans and other applicable land use controls, as required by CEQA Guideline Section 15063. Although the Initial Study includes some background discussion of the CAAP, it provides little or no description of the existing planning and zoning designations applicable to the "Project" location, and relies on (unsupported) assertions that the Project would be in furtherance of the CAAP. It provides no information or analysis of other existing plans or policies applicable in the Harbor Districts, which may be affected or impacted by the Project. Additionally, the Initial Study contemplates impacts beyond the Harbor Districts but does not specifically define these areas nor the applicable land-use regulations.

Uncertain and Inadequate Identification of "Baseline" Used for Review

It is critical under CEQA that any level of environmental review make it clear as to the "baseline" being used as the basis for analysis of the significance of potential Project impacts. (CEQA Guidelines Section 15125(a).) Normally, the "baseline" will be the existing environmental conditions in the vicinity of the Project. (Guideline Section 15125(a); see also, 48 Cal.4th 310, 315 [the baseline for an agency's primary environmental analysis under CEQA must ordinarily be the *actually* existing physical conditions rather than *hypothetical* conditions that could have existed under applicable permits or regulations].) The Supreme Court has explained that the requirement for identification and use of the appropriate "baseline" applies in the context of an Initial Study as well as in an EIR. (*Communities for a Better Environment, supra*, 48 Cal.4th at 512, and n. 5.)

The Initial Study here, however, fails to make it clear as to what "baseline" is being used. In many places the Initial Study compares the anticipated "impacts" of adopting proposed Rule 4001 to the permitted emissions levels anticipated (in the future) under the 2012 AQMP, or alternatively to the (future) emission reduction targets of the CAAP -- rather than to the existing environmental conditions. While the recent Supreme Court decision in *Neighbors for Smart Rail v. Exposition Metroline Constr. Authority* (2013) 57 Cal.4th 439, 451-52 indicates that the baseline need not always be the existing physical conditions, and that "projected future conditions" may be used in rare situations as a baseline "if their use in place of measure existing conditions ... is justified by unusual aspects of the project or the surrounding conditions", it does not detract from the rule that the Initial Study must accurately and consistently describe the baseline being used. Nor does it permit the use of "future conditions" in the absence of a showing of unusual circumstances. The Initial Study in this case does neither.

For each of these fundamental reasons, the Recirculated NOP/IS should be rescinded in order that it may be revised, completed and corrected to meet CEQA requirements.

(b) The Initial Study Improperly Fails to Identify or Address Alternatives to the Proposed Project:

As noted above, CEQA requires that an Initial Study identify a range of "potentially feasible alternatives" to the proposed project which are to be more carefully analyzed in the draft environmental study. (14 CCR § 15083; "The determination of whether to include an alternative during the scoping process is whether the alternative is potentially feasible (*Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 489.)

However, the new Initial Study totally fails to identify any alternatives for study in the eventual EA. Instead, it merely "commits" the District to "discuss and compare alternatives" in the future, as part of the Draft EA. This is insufficient. The Initial Study also suggests the District is looking to the public or other agencies to identify "alternatives" during the scoping process. The Cities previously (January 2013) submitted such a potential alternative to PR 4001, in the form of a proposed Memorandum of Agreement. The District Board directed District staff to follow up and confer with the Cities on that approach. Nevertheless, it is not even mentioned in the Initial Study. Additionally, the EPA's long-established VMEP program is not considered as an alternative although it was developed for this very purpose.

If the District is authorized to prepare a PEA, rather than an EIR, the PEA must at least comply with Guideline Section 15252. Section 15252(a) requires that a substitute document, like a PEA, must include at least – a description of the proposed activity, and "**alternatives** to the activity and **mitigation measures** to avoid or reduce and significant or potentially significant effects that the project may have on the environment."

The No Project Alternative is not defined in the NOP/IS. In accordance with CEQA Guidelines Section 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. Therefore, the Draft EA should consider the impacts that would occur under the existing 2012 AQMP without Control Measure IND-01 or proposed Rule 4001.

As an example, an analysis should be conducted of the grant funding that would be available under the No Project Alternative that would not be available if the proposed Project constitutes regulation, and the environmental impact if grant funding necessary to make certain actions economically feasible is no longer available under the proposed Project. If the District's position is that there is no loss of grant funding in order to comply with Rule 4001 as a regulation that the District purports to make enforceable under the State Implementation Plan and the Clean Air Act, the District must explain in the Rule its basis for this conclusion in the context of why grants made for compliance with a regulation is not a gift of public funds.

Due to the District's failure to satisfy this CEQA requirement of alternatives development, the Cities direct the District to review the feasible alternative to the Project set forth in their January 16, 2014 letter to the United States Environmental Protection Agency Region 9, copied to the District. The Cities have noted the problems with including Measure IND-01 in the California State Implementation Plan (SIP) and recommended to the US EPA to instead apply as an alternative, the Voluntary Mobile Source Emission Reduction Program (VMEP) to grant SIP credit for the small percentage of emission reductions that are not already achieved by other regulations. The VMEP can work with or similarly to the memorandum of agreement approach that was suggested by the Cities to the District as an alternative to Measure IND-01 last year. One additional alternative would be for the District to formulate its own "backstop" measures and strategies for addressing any shortfall in emission reduction targets, relying on the District or CARB regulatory authority, expertise and resources, rather than pursuing proposed Rule 4001, which appears to be an attempt to solely rely upon the Cities, which lack regulatory authority or control over the actual sources, or use of the EPA's VMEP.

(c) Comments on the District's new Proposed Rule 4001:

The "project description" in the Recirculated Initial Study includes the *draft text* of PR 4001, at Appendix B. Notwithstanding the inclusion of a draft of the text of the proposed Rule, the "project description" remains incomplete and deficient. The Initial Study does <u>not</u> provide an adequate description of how the proposed Rule would work in practice (as distinct from the superficial summary of the text at pages 1-7 through 1-10) or how it would be likely to impact the Cities, the tenants and users of the Ports, and the surrounding communities and environments. The Cities anticipate the submission of additional, more detailed, comments on inconsistencies and problems raised by the draft text of PR 4001 itself and additional questions and concerns about the District's "rule-making" process.

Other deficiencies and questions about the draft text of PR 4001 include the following:

<u>What Is the District'scLegal Authority for PR 4001?</u>

The new Initial Study asserts that if the "backstop requirement" of PR 4001 "becomes effective," then the new Rule would require the Cities to submit an Emissions Reduction Plan "to address the emission reduction "shortfall."" Under what legal authority does the District believe that its proposed Rule 4001 may purport to compel distinct governmental bodies (the Cities and the Boards of Harbor Commissioners) to legislate or to exercise their discretion in particular ways to achieve District objectives?

The new NOP continues to dodge the questions (previously raised) about the District's legal authority – if any – to adopt PR 4001 or to compel the Ports to participate in the new backstop planning process contemplated by the rule. The NOP includes only the perfunctory

assertion that PR 4001 would "implement Control Measure IND-01" – as though that were an independent and sufficient source of authority. However, even the District's Final 2012 AQMP document acknowledges that it confers no new authority on the District, and CEQA similarly cautions that it confers no new or additional legal authority on agencies independent of the powers granted to the agency by other laws. (Guidelines, sec. 15040(b).)

Moreover, as noted previously, to the extent that the draft of PR 4001 is not consistent with the Control Measure IND -01 as approved by the District's Board, it is unauthorized.

The source of the District's purported legal authority for processing this PR 4001 is important for determining whether or not the District may claim to be acting within the scope of the District's "Certified Regulatory Program" – and thus outside of CEQA. The CEQA Guidelines limit that "certified regulatory program" exemption to "that portion of the regulatory program of the SCAQMD which involves the adoption, amendment, and repeal of regulations *pursuant to the Health & Safety Code*." (Guideline, sec. 15251(l).)

If the NOP/IS seeks to justify the District preparing an environmental assessment under its "certified regulatory program" rather than an EIR under CEQA, then the District should clearly demonstrate that the PR 4001 would be enacted pursuant to some specific statutory authority in the Health & Safety Code.

The District previously sought to characterize Control Measure IND-01 as an "indirect source rule." The current references to proposed Rule 4001 in the NOP/IS have omitted all mention of an "indirect source rule." However, the new Initial Study does not cite any authority the District is relying on for its processing of the proposed Rule. This should be corrected so that the public can perceive and comment on whatever "legal authority" may be invoked by the District.

Is it anticipated that the "plans" and strategies that would be required to be adopted by the legislative boards of the two Cities under the mandate of proposed Rule 4001 would be within SCAQMD's regulating authority and subject to the District's approval or disapproval? If so, why would SCAQMD not directly adopt such "backstop" strategies and plans itself? If not, is the Rule being proposed in order accomplish something indirectly that SCAQMD itself cannot do directly? (Cf., *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 [same].)

The vague disclaimer in the Initial Study to the effect that proposed Rule 4001 would not require any measure that *lacks legal authority* raises more questions than it answers. (Note also the new Initial Study, and PR 4001, no longer disclaim any intent to require the Cities to adopt measures that are not "*technically feasible*.") Whatever types of "emissions reduction plans"

may be anticipated by PR 4001 should be identified by the District in the NOP/IS so that the feasibility and legality of such approaches can be evaluated as part of the environmental assessment for the Project. (The new Initial Study omitted the examples of 'control strategies' that had been in the previous Initial Study.)

On What Basis Would PR 4001 Impose "Requirements" on the Cities

The NOP/IS states that none of the CAAP strategies would be "prescribed in PR 4001." Instead, the NOP states that if proposed Rule 4001 becomes effective, the Cities (presumably the Boards of Harbor Commissioners) -- "individually or jointly" -- would be required to identify sources that could undergo potential emission reduction to "make up for the shortfall."

Why would/should the obligation to make up for a possible shortfall in meeting emission reduction targets (which are primarily the responsibility of the District to attain) be shifted so as to fall upon two independent governmental entities? The Cities are governmental entities, and are not directly producing emissions or otherwise directly responsible for the targeted emissions or for the attainment of the emissions reduction targets.

Moreover, if there were to be a "shortfall" in attaining the targets, it could well be due to factors not caused or controlled by the Cities, and not due to any actions or derelictions on the part of the Cities or their tenants or users. Would uncontrollable/unforeseeable factors resulting in all or part of a shortfall be excluded from whatever obligation may be imposed on the Cities? Would it be required/permitted that any such "shortfall" be allocated to sources or causes bearing some actual responsibility for the lack of attainment? How would any shortfall be "allocated" between the Cities?

Would proposed Rule 4001 take into account the statutory limits on the jurisdiction and authority of the Cities (i.e, the Boards of Harbor Commissioners) to impose restrictions on most mobile sources of emissions?

The NOP/IS mentions a possible "option" that would "allow" the Cities to reduce emissions from "non-port-related sources." This vague reference requires clarification before it may be evaluated in connection with the Project. Direct and indirect effects would need to be considered that may occur beyond the geographic boundaries of the Harbor Districts. Therefore, it is premature for the District to conclude that any changes based on the working group or public scoping comments will be within the scope of the analysis in the NOP/IS.

What is meant by an "Emissions Shortfall"?

What environmental baseline and other parameters would be required by proposed Rule 4001 in order for the Cities to determine the extent of any "emissions shortfall" that may need to

be addressed in the Cities' plans in the event they were to undertake to submit plans under the Rule?

The term "shortfall" first appears in the Proposed Rule in (d)(1)(A), where it appears to call for a Plan to report on progress in "meeting the shortfall" but that seems logically inconsistent with the structure of the Proposed Rule, i.e., the District can't require the Ports to submit an emissions reduction plan unless and until the annually-reported emissions reductions "show that the percent reduction in PM2.5 from the baseline emissions is less than the reduction target of 75%" (Para (e)(1)B).) So there would not be any "shortfall" identified until that time; and therefore it would seem premature and illogical to require the Ports to submit a Plan that "reports the progress in meeting the shortfall" that was just identified.?

To the limited extent the PR 4001 describes the shortfall that might trigger the need to prepare a Plan, the provisions for annual estimating or reporting of the emissions appear imprecise and vague. Para (f) appears to contemplate that once a 'shortfall' had been determined in one year, then the District could demand a Revised Plan in following years if targets are still not met; but what happens if the shortfall is "corrected" in subsequent years and targets are again being met?

Does an Emissions Reduction Plan, once required by the District, ever go away?

<u>On What Authority Would the District Purport to "Revise the Reduction Target"?</u>

The new Initial Study reports (p. 1-8) that PR 4001 (e)(2) purports to require the District's Executive Officer to review the reduction target before July 2017, and to "develop a proposed amendment to Rule 4001..." that would "revise the reduction target as necessary to conform to the 2016 AQMP reduction target."

By what authority would these targets be "revised" in the future? Under what objective standards? What public process would the Executive Officer need to follow in order to "develop" a proposed "amendment" to PR 4001? How would such a "moving target" affect the Cities and what environmental impacts would be possible consequences of such "revisions"?

<u>Does PR 4001 Provide a Clear and Feasible Process for Cities to Develop a "Plan"?</u>

Para (f) (E) would require that "the Plan shall be approved by the Board of Harbor Commissioners" at each Port, and would require the Port to conduct at least one "public meeting" ... but is this an improper attempt by the District to control and dictate the exercise of discretion" conferred on the Board of Harbor Commissioners? The Board of Harbor Commissioners may in fact disagree that a plan is required or may exercise its own discretion, as required by law, that it cannot commit expenditures to a program desired by the District. Under what authority can the District's Executive Officer, acting alone without even District Governing

Board authority, disapprove a plan or compel a plan to be approved by the Cities' own governing authorities? What is the District's intended mystery penalty or consequence, which the proposed Project still has not revealed to the cities and the public in PR 4001? Furthermore, discretionary action by the Boards of Harbor Commissioners requires compliance with CEQA. What type of CEQA review would be triggered for the emission reduction plans if the Program Environmental Assessment being prepared by the District is only programmatic in nature and how is the timing for either a consistency review or project-specific analysis, if warranted, accounted for in PR 4001?

Would PR 4001 Create Violations of Due Process?

The draft of PR 4001 raises several questions regarding apparent violations of Due Process:

Para (f)(2)(B) -- the District's Executive Officer would be given nearly unfettered discretion to "disapprove" a Plan submitted by the Cities?

There must be some requirement at least that the Executive Officer must make "findings" of "non-compliance" with some provision of (f)(1) of the Rule, based on some objective standards.

What would be the procedure if the Cities submitted a Plan, and the District (either by its Executive Officer or its Hearing Board) "disapproved" the Plan (per Para (f)(2)(C))? The Port would apparently be required to submit a Revised Plan within 60 days of the disapproval. But what about the Harbor Commissioners holding a new "public meeting" for input on the Revised Plan? And would there be any time or procedure for the Harbor Commissioners to consider and approve a new Revised Plan and comply with CEQA within that arbitrary 60 day time frame?

At the end of Para (g)(2) is the threat again that if the District Board denies the Port's appeal from a "disapproval" of the Port's emissions reduction plan, then the "*Ports shall comply* with ... [or subparagraph (f)(2)(F)]" -- which means the Port shall be self-confessed as "in violation" of the Rule? This would appear to inflict a denial of Due Process on the Cities.

Variance: PR 4001 must provide more detail as to what is meant by Para (g) - petitioning for a "variance" ? What are the criteria? What would the process be? What would be the effect of the District granting a variance?

How Would the District Determine the "Consequences" for "Violation" of PR 4001?

By what authority would the District sit in judgment as to the sufficiency of the Cities' efforts to manage activities and uses of the Ports? What might the consequences be if a City were to be deemed to be "in violation" simply because the District may choose to "disapprove" a

Revised Plan, and by what legal authority would the District purport to sanction the Cities in the event of some perceived "violation"?

By what objective standards would the District judge the sufficiency of any plans or measures proposed by the Cities to achieve the emission reduction targets?

What is the consequence of disapproval of a City plan by the District? The rule should provide more detail at Para (f)(2)(F) (iii) -- what is meant by the obscure reference here that the Ports "shall be in violation of this Rule... "?

Does PR 4001 Provide for Judicial Review of District Actions?

Should the Rule make provision for judicial review of the actions of the District in enforcing or interpreting the Proposed Rule?

As drafted, PR 4001, at Para (h): "Severability" appears to contemplate that a "judicial order" could hold some provision of the Rule to be invalid? Otherwise the Rule is silent on Judicial Review.

Are the Cities Supposed to Regulate Off-Site "Sources"?

The Initial Study indicates (p. 1-4) that the District anticipates that the "control strategies" contemplated by this Project "may potentially include" measures for the Cities to adopt and implement policies or programs extending beyond their jurisdictions or to try to reduce emissions from sources *not entering* onto port properties. What does this mean? By what legal authority might the Cities try to regulate *off-site* sources that do not come within the jurisdiction of the respective Harbor Commissions? (Municipal police power authority may generally be exercised only within the territorial boundaries of their jurisdiction, and the Boards of Harbor Commissioners have special Tidelands limits on their authority.)

Would such (unidentified) measures be part of Rule 4001, or would proposed Rule 4001 require that the Cities formulate (unidentified) measures in the future to somehow regulate *off-site* "sources?"

How Does the District Contemplate Funding of Backstop Measures?

The draft of PR 4001 implies that "funding" would be necessary for many of the potential future emission reduction measures that may be compelled under proposed Rule 4001. Would such funding be provided by the District? What other "funding" sources are contemplated?

The conversion of the Cities' voluntary programs into PR 4001 as a district regulation and potentially state and federal law if adopted into an approved SIP, will impose constitutional

or common law "gift of public funds" restrictions on federal and state grant funding currently relied upon by the Cities for emission reduction activities under their CAAP.

To the extent the District expects the Cities to fund future programs, this demonstrates a lack of understanding of the Cities' own governmental authority and obligations. The Boards of Harbor Commissioners of the Cities are trustees for the Tidelands Trust funds they are entrusted to manage and have specific legal obligations to meet, including promotion of maritime commerce, navigation and fisheries and keeping their budgets in balance amidst a current global shipping economy with many dynamic and threatening competitive pressures to retain market share. By what authority may the Harbor Commissioners impose taxes, assessments, and charges on users of the Harbor Districts, given the restrictions of various state laws, including, among others, Proposition 26?

(d) Specific Comments and Questions re "Project Description" and Text

The following comments and questions refer to specific portions or pages of Chapter 1 of the new Initial Study:

Pp. 1-1 - 1-2 – Introduction

(i) *Erroneous Characterization of Existing Emission Reduction Requirements:* The Introduction states, in the first sentence of the third paragraph on page 1-1, that Control Measure IND-01 "...does not call for additional emission reductions beyond those realized with existing regulations and emission reductions programs implemented at the Ports to date." This is an untrue statement. The CAAP is only a planning document which specifically provides for discretionary future decisions to be made regarding implementation by each of the Cities' respective Board of Harbor Commissioners, and the resolution adopting the CAAP update states:

> The CAAP is a living document intended to establish a process to develop solutions, not a static document binding the Ports to particular future actions….The CAAP is a planning document that identifies goals and potential implementation strategies to guide further actions, and as such does not constrain the discretion of either Board of Harbor Commissioners with respect to any particular action.[2]

[2] Los Angeles Resolution No. 10-7041 adopted by the Board of Harbor Commissioners of the City of Los Angeles and Long Beach Resolution No. HD 2600 adopted by the Board of Harbor Commissioners of the City of Long Beach on November 22, 2010.

Not all individual Board actions that may be required in order to achieve the CAAP's goals and activities have been adopted; in fact, many of these goals were stretch targets with uncertainty as to whether they could be achieved. Control Measure IND-01 and Rule 4001 propose to *require* the Cities to potentially adopt future discretionary, quasi-legislative actions that create potentially-conflicting authorities between the District, as regulator, and the Cities, as independent governmental agencies regulated by the District, so as to force the Cities to exercise their discretionary police power authority in a particular way. The Constitution does not permit such usurpation of the Cities' authority.

(ii) *Misleading and Inaccurate References to "Port-Related" Sources of Emissions:* The new Initial Study and Recirculated NOP continue to describe PR 4001 in the misleading context of "port-related sources" of PM2.5 emissions, and as ensuring that emissions from "port-related sources" meet the targets included in the Final 2012 AQMP. The term "port-related sources", however, is not used in the federal Clean Air Act ("CAA") or Health &Safety Code. As described in the NOP, "port related sources" are mobile and vehicular sources ("ocean-going vessels, on-road trucks, locomotives, harbor craft, and cargo-handling equipment"). Those *actual* "sources" of emissions are distinct from the geographic area in which they operate and are generally and comprehensively regulated by other State and federal agencies, not regional air quality districts.

The District's continued references to "port-related sources" of emissions are misleading and are no more accurate or descriptive than would be similarly generic references to "coastal-related sources" or "County-related sources" or "Air District-related sources" of emissions.

(iii). *Misleading Failure of the Project to Limit the Cities' New Obligations to "Technically Feasible" Measures:* The previous Initial Study for PR 4001 at least made it clear that the District only intended to require the Cities to propose additional emission reduction methods for vessels, trucks, locomotives, etc., "to the extent cost-effective strategies are *technically feasible* and within the Ports' authority." (Similar limitations on the Cities' new obligations under the proposed 'backstop measure' are included in IND-01.) However, the new Initial Study no longer includes any limitation to "technically-feasible" measures that could be required of the Cities (p. 1-1.) This omission creates uncertainty about the District's intentions as to the scope of PR 4001, i.e. whether it might be construed to be a "technology-forcing" regulation or not.

(iv). *Inconsistent or Uncertain Emissions Reduction Targets.* The Introduction states, in the last paragraph beginning on Page 1-1, that the emission targets for "port-related sources" are those assumed in the 2012 AQMP emissions inventory. The draft text of PR 4001 now purports to define "emissions target" by reference to page IV-A-36 of Appendix IV to the Final 2012 AQMP. The Cities raised questions during the Measure IND-01 adoption process regarding the District's calculation of these targets, which are *different* from the emissions targets set under the

CAAP. Although the specific emission targets of the proposed Project do not appear at all in the NOP (which omission itself is a defect), the District has verbally advised the Cities and a working group on August 8, 2013, that the Rule will be such as to be triggered on set emission targets for 2014 and 2019. Those comments, however, left the Cities and working group participants with many questions about how the District set the emissions inventory, particularly for 2019, which was not in the CAAP. These examples are provided to illustrate that the Initial Study's description of the applicable emission reduction targets to be covered by PR 4001 are uncertain, or inconsistent.

P. 1-4 - Project Location

The new Initial Study provides no finite "project location." It again refers to the District's jurisdictional boundaries. It then states that "PR 4001 would apply to POLA and POLB, both of which are located within Los Angeles County." It is unclear if this was an attempt to state that the Project location would be Harbor Districts of the Cities. The lack of clarity regarding the Project location is further compounded by the Rule's reference to "sources not entering Port," and by a new but vague reference to the effect that the unidentified "strategies proposed by the Ports" under compulsion of PR 4001 could extend the "project location" beyond Los Angeles County.

Is it the intention that any portion of the Project may be implemented outside the geographic areas of the two Ports? It remains unclear from this description whether the Project may have impacts or foreseeably result in actions being taken outside the geographic areas of the two ports. This may have jurisdictional implications which cannot be evaluated without additional information.

Also, the Initial Study fails to disclose or analyze the possibility that if the option for the Cities to reduce emissions from sources not entering Port properties is included in proposed Rule 4001, even the vague "project location" and geographic scope of the proposed Rule in the Initial Study would not be accurate and would need to be modified in the NOP/IS.

P. 1-5 – Project Background

The new Initial Study appears to recognize that distinct "emission sources at the Ports" such as vehicles, engines, ships, trains, trucks and other cargo-moving equipment operated by distinct tenants, users, and visitors of the ports are the intended targets of the Project's emission reductions requirements. It also acknowledges that the Ports themselves adopted the San Pedro Bay Ports Clean Air Action Plan ("CAAP") in 2006, and further that emissions from these so-called "port-related sources" have been "substantially reduced since 2006" as a result of collaborative and voluntary programs and regulations developed by both Ports. (p. 1-6).

These acknowledgements raise again the question of the need or justification for the Project, or for the attempt by the District to foist the responsibilities for regulating emissions from such mobile or vehicular sources of emissions from state and federal agencies onto the Cities.

Also, on Page 1-6, the new Initial Study states that the intent of PR 4001 is to "provide a backstop to the Ports' actions" in case emission reductions "from port-related sources do not meet *or are not on track to maintain the emissions targets*..." This appears to be an unauthorized change in the Project description and is not consistent with IND-01. Also, notion that the District would be empowered by PR 4001 to enforce sanctions against the Cities if the District somehow deems that they are "not on track" to maintain targets is ambiguous, and without objective standards or legally-necessary procedural protections.

Pp. 1-11 -- Technology Overview/Implementation Strategies

The new Initial Study refers to some emission reduction strategies included in the CAAP, but the Initial Study does not explain how these may relate to proposed Rule 4001, or whether they should be considered as part of the Project.

The suggestion in the Initial Study of possible "tariff changes" or "impact fees" on the activities of users of the Harbor Districts raises other questions (e.g., legal authority, funding for studies and public review processes required before such measures could be considered or adopted, indemnification for costs of defense, etc.) requiring identification and study. Moreover, such measures may themselves be considered as "projects" subject to CEQA review and may have impacts on the activities of Harbor District users that themselves would require analysis or mitigation.

The Initial Study also includes reference to "Port funded incentives" as possible measures to reduce emissions, but also observes that there is not adequate funding for such strategies in the Cities' budgets or other grant programs. The source of funding any "Port-funded" measures contemplated by proposed Rule 4001 should be clearly identified and evaluated.

Any such contemplated implementation strategies should be included in the "Project description" and better identified in a more complete NOP/IS, so that they may be evaluated along with the rest of the Project.

Feasibility: The new Initial Study abjures any consideration of technical feasibility or other concepts of "feasibility" despite CEQA's recognition of feasibility as a critical limitation on environmental regulation. The scope of the EA should be expanded to address the legal, technological and economic feasibility of the seven bulleted items listed in this section.

2. Chapter 2 of the Initial Study – The "Environmental Checklist"

(a) General Comments on the Environmental Checklist

The Recirculated NOP/IS relies on a standard CEQA environmental checklist to identify those "impact areas" it recognizes to be potentially affected by the Project. In several respects, however, the Initial Study appears to merely assume the absence of potentially significant impacts, rather than factually demonstrating that significant impacts will not occur if the Project is adopted and implemented. This is insufficient under CEQA, and under the District's own rules. (SCAQMD Rule 110; *City of Redlands, supra*, 96 Cal.App.4th at 408-09; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296).

The new NOP includes many statements that the PEA will rely on "conservative assumptions" about the possible environmental impacts of the Proposed Rule. Reliance on any assumptions in CEQA analysis is unsound, and if assumptions are to be used, the District must explain why it would rely on "conservative" assumptions about the scope of impacts.

Furthermore, it is contrary to the District's response to comment #5-4 in the Final Program EIR, which indicates that "[t]he exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted."

We appreciate that the new Initial Study has expanded the number of environmental areas to be studied in the eventual EA from the six (6) topics identified in the previous Initial Study to thirteen areas now recognized as being subject to potentially significant impacts if the Project is approved. The new Initial Study now recognizes the following *additional areas* of potential environmental impact to be addressed in the EA: (1) Aesthetics, (2) Biological Resources, (3) Cultural Resources, (4) Land Use and Planning, (5) Noise, (6) Public Services, and (7) *broadened evaluation* of potential impacts and issues in the areas of Energy, Hazards and Hazardous Materials, Air Quality, and Transportation and Traffic.

However, the new Initial Study continues to provide only superficial and inadequate discussion of the areas of environmental impact, and thus fails to properly indicate the necessary scope for the eventual EA. Unless and until those areas are more fully addressed, the new NOP/IS still improperly limits the scope of the proposed EA, and still erroneously exclude areas requiring further assessment.

(b) Specific Comments on the Environmental Checklist

As detailed below, there are numerous areas of potential environmental impact in the checklist as to which the Initial Study either omits required evidence to support its conclusions of "no potential impact" or treats with insufficient detail.

Even as to those areas that are now identified in the new Initial Study as having potential impacts, the new Checklist still errs by limiting the scope of the potential impacts identified for further study based on unfounded assumptions as to the environmentally benign intent behind the Project. However, the law is clear that environmentally "benign" objectives for a project do not excuse non-compliance with CEQA and do not justify reliance on assumptions in lieu of evidence to demonstrate the absence of potential impacts. *See, e.g., California Farm Bureau v. California Wildlife Conservation Board* (2006) 143 Cal.App.4th 173, 196, emph. added [State environmental agency violated CEQA by exempting environmentally beneficial habitat project from review]:

"[I]t cannot be assumed that activities intended to protect or preserve the environment are immune from environmental review. [Citations.]" (*Davidon Homes, supra*, 54 Cal.App.4th 106, at p. 119; see, e.g., *Dunn-Edwards Corp. v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644 (disapproved on other grounds in *Western States Petroleum Assn. v. Superior Court, supra*, 9 Cal.4th 559, 570.) **There may be environmental costs to an environmentally beneficial project, which must be considered and assessed**.

P. 2-4 -- Preliminary Discussion of Checklist

First Paragraph: We reiterate the same comment as noted above, regarding Cities not being the "source" of emissions. It is "the operational activities by the Ports' tenants" [and other users of the area] that produce emissions (as the new Initial Study more accurately recognizes) and which should be the true District targets as the sources of emissions.

First Paragraph, Last Sentence: The Initial Study states that "some emission reductions [assumed by the District's 2012 AQMP] may be contingent upon the Ports taking and maintaining *actions which are not required by air quality regulations*." This suggests that one of the purposes for District proposal of proposed Rule 4001 may be to establish a new regulatory "authority" over the Cities (and the communities served by and dependent upon the Harbor Departments of the Cities) that is not in fact already provided by existing federal, state, or regional air quality regulations. The policy implications of such a Project may well include significant impacts on the environment, if regulatory authority over activities, facilities, and uses of the Harbor Districts is shifted or arrogated to the District. (See, e.g., *City of Redlands, supra,* 96 Cal. App. 4th 398 [proposed new County policy re exercise of County authority over annexations and sphere of influence was not supported by adequate CEQA review].)

Page 2-5: The new Initial Study makes reference to a "survey" of existing CEQA documents to try to identify projects "similar to the types of projects the Ports may choose to implement in an Emission Reduction Plan." It then suggests that "reasonably foreseeable projects" resulting from this survey will be evaluated in the EA. While we respect these goals, we submit that the new Initial Study is vague as to what may be deemed to be "reasonably

foreseeable projects" warranting analysis in the EA, and would request that more objective criteria be provided.

(1) **Aesthetic Impacts:**

The brief discussion of "potentially significant" Aesthetic impacts in the new IS does not address many of the Cities' prior comments on these impacts, and we reincorporate those comments.

(2) **Biological Resources:**

The new discussion of impacts on Biological Resources does not address the Cities' prior comments re possible impacts on migratory birds and least terns, and we reincorporate those comments.

(3) **Energy:**

The new Initial Study section VI (c) must be expanded to also consider and analyze 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 required in the event of a major disaster. Also some types of emission control measures, facilities, or technologies contemplated by the Project could increase or shift demand for different types of energy or fuel usage. Although "risk of upset" is not considered in the new Initial Study checklist. The scope of the proposed EA should be expanded to include this additional analysis.

(4) **Hazards and Hazardous Materials:**

In addition to our comments on the prior Initial Study, the new Initial Study section VIII(f) must be expanded to also consider and analyze the increase reliance on alternative fuels or electrical powered technologies that would require sufficient supply and emergency storage in the event of a major disaster. Although interference with emergency response plans was marginally addressed in this section, "risk of upset" is not considered in the new Initial Study Checklist. The scope of the proposed EA should be expanded to include this additional analysis.

(5) **Land Use & Planning Impacts:**

The new IS now identifies Land Use and Planning as an area involving potential significant impacts, to be studied in the EA. However, the new IS states that such impacts will be considered in the EA only "if the project conflicts with the land use and zoning designations established by local jurisdictions." This is insufficient.

We previously pointed out that the PR would cause conflicts with existing land use plans and policies, circulations plans, congestion management plans, etc. The prior IS itself admitted that the Project would cause potentially significant impacts or conflicts with existing land use plans (but was only going to address them in the Transportation section). This should be a definite area for evaluation in the EA, not a 'conditional' topic of study.

We also note that the new Initial Study is internally inconsistent. It makes the remarkable assertion (inexplicably placed in its discussion of impacts on Biological Resources, at p. 2-18) that "there are no provisions in the proposed project that would adversely affect land use plans, local policies, ordinances or regulations. LAND USE AND OTHER PLANNING CONSIDERATIONS ARE DETERMINED BY LOCAL GOVERNMENTS AND NO LAND USE OR PLANNING REQUIREMENTS WOULD BE ALTERED BY THE PROPOSED PROJECT." We strongly disagree, as pointed out in our prior comments, which are incorporated.

The measures contemplated in the Initial Study include the adoption of new "regulatory requirements," new "impact fees" on the movement of cargo or sources, and changing the tariffs for use of the Harbor Districts – all of which would cause at least potential "conflicts" with applicable plans and policies. (Cf., *Orinda Ass'n v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1169 [the CEQA requirements for initial study examination of non-conformity with existing land use plans are intended to allow lead agency to modify the Project to avoid inconsistencies with existing plans – not vice versa].)

The Initial Study itself acknowledges that the Project is anticipated to cause "potentially significant impacts" or conflicts with "an applicable plan ... for the performance of the circulation system" and conflicts with "an applicable congestion management plan." (Initial Study, p. 2-44.) Although the Initial Study proposes to address those admitted conflicts in the "transportation" section of the EA, these acknowledged conflicts confirm the necessity for including "land use and planning" impacts in the proposed EA as well.

Also, the proposed Project would seemingly create conflicts with the Cities' 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 are detailed in the previous port letters included in Attachment A to this letter. In addition, the proposed Project would create inconsistencies with the Clean Air Action Plan.

The proposed Rule is apparently structured in a way that would impermissibly usurp the (non-delegable) police power authority of the Cities and their respective Boards of Harbor Commissioners to plan, implement, and regulate land use policies and actions in their respective jurisdictions. (This comment has also been raised above, in Project Description comments.)

The numerous inconsistencies between the Project as proposed and the existing plans and policies require identification in the Initial Study and inclusion in the proposed EA. (Guidelines § 15125(d).) The scope of the proposed EA should be expanded to include environmental analysis of all of these potential impacts on land use and planning.

The EA should also include analysis of the impacts of the proposed/anticipated Project-related subsequent amendments to the Cities' plans, policies, and other land use regulations. (See, e.g., *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1197 [CEQA review failed to consider incidental results from adoption of revised policy; incidental impacts could not be disregarded in an initial study based upon "net" environmental impact of the change in policy being benign since CEQA requires each environmental impact of project be discretely evaluated].) "Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project." (Guidelines, § 15064, subd. (e); see §§ 21080, subd. (e)(2), 21082.2, subd. (c).)

The scope of the EIR should be expanded to include analysis of possible physical changes in port facilities and operations that might be caused by economic or social effects of the Project itself or by the anticipated amendments to land use and zoning policies by the Cities subsequent implementation of the Project.

(6) **Transportation and Traffic Impacts**

The new Initial Study fails to adequately describe and analyze potential impacts to rail and marine vessel traffic and ignores the significance criteria identified as "[w]ater borne, rail car or air traffic is substantially altered" on page 2-45. The new Initial Study erroneously considers vehicular traffic impacts to local roadways.

Socioeconomics Analysis

The proposed EA needs to include a broad-based analysis of the socioeconomic effects of Proposed Rule 4001, including the potential for job loss, business closures, and diversion of cargo to other ports due to the potential loss of regional competitiveness. The socioeconomic analysis needs to consider both the existence of the rule, even if not triggered, and the future enforcement of the rule. Because these conditions have the potential to physically change the environment in and around the ports, these impacts should be identified and assessed in the EA. (See CEQA Guidelines §§ 15064€ and 15131; *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3rd433,445 [EIR must consider possibility of economic blight from rezoning].) Moreover, this assessment should not be limited to businesses and operations within the ports, but should extend to those facilities, business and operations that while located outside of the Harbor Districts are dependent upon the flow of cargo for their continued operations.

This CEQA analysis of the socioeconomics effects of PR 4001 in the proposed PEA would be separate from, and in addition to, the assessment of socioeconomic impacts of the proposed Rule that the District is required to prepare in compliance with Health & Safety Code § 40728.5 and § 40440.8.

D. Conclusion:

The current version of the Recirculated NOP/IS still fails to comply with CEQA or with the District's own Rules for environmental review, and fails to properly provide an adequate "scope" for the eventual Environmental Assessment to be prepared for analysis of the Proposed Rule 4001. The Initial Study must therefore be revised, corrected, and re-circulated with all of the descriptions and other content required by CEQA.

While it is clear that an EA is called for in connection with this proposed Project, it is equally clear that the EA should be more complete than what is envisioned by the current NOP/IS. More fundamentally, its scope must be determined by a legally-adequate revised NOP/IS. The EA for the Project must, of course, be supported by credible and substantial evidence, including independent professional analysis.

Even this inadequate NOP/IS makes it clear that **the scope of the proposed EA has been unduly narrowed and fails to identify any potentially feasible alternatives to the Project.** Consequently any ensuing environmental review will be limited in a way that erroneously fails to provide the relevant decision-makers, affected public agencies, residents and the public generally with sufficient evidence and analysis of all potential impacts from the Project as a whole, or of all potentially feasible mitigation measures or appropriate Project alternatives as required by CEQA.

We respectfully request that these comments and questions be considered before the District embarks on preparation of the EA and all of the other required independent studies in connection with the CEQA review of the proposed Project. We therefore look forward to working with the District, and any study teams or working groups tasked with evaluation of the proposed Rule 4001.

The NOP requests that we provide you with a contact person for each responding agency. For the **COLB,** the contact persons are as follows:

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We appreciate your consideration. Thank you.

Sincerely,

Matthew Arms
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachments:

- August 21, 2013 Letter; Port of Long Beach and Port of Los Angeles to SCAQMD; *Comments on Notice of Preparation, Initial Study, and Scope of Proposed Environmental Assessment*

- October 2, 2013 Letter; Port of Long Beach and Port of Los Angeles to SCAQMD, *Initial Comments for Public Consultation on Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets are Met at Commercial Marine Ports"*

cc: Al Moro, Acting Executive Director, Port of Long Beach
Gary Lee Moore, Interim Executive Director, Port of Los Angeles
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Randall Pasek, Planning and Rules Manager, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Richard Corey, Executive Officer, CARB
Cynthia Marvin, Division Chief, Stationary Source Division, CARB
Doug Ito, Chief, Freight Transportation Branch, CARB
Jared Blumenfeld, Administrator, U.S. EPA, Region 9
Deborah Jordan, Director, Air Division, U.S. EPA, Region 9
Elizabeth Adams, Deputy Director, U.S. EPA, Region 9

ATTACHMENT 6.

October 2, 2013

VIA ELECTRONIC MAIL – rpasek@aqmd.gov
VIA FACSIMILE - (909) 396-3324

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Science and Technology Advancement
South Coast Air Quality Management District
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Re: Initial Comments for Public Consultation on Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports"

Dear Mr. Pasek and Staff of the South Coast Air Quality Management District:

We appreciate this opportunity to submit comments during the public consultation period on the South Coast Air Quality Management District's (AQMD's) proposed "Rule 4001: Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports" on behalf of the City of Long Beach acting by and through its Harbor Department (referred to herein as "COLB") and the City of Los Angeles acting by and through its Harbor Department ("COLA," collectively with COLB, the "Cities" or the "Ports").

The Cities take their role as environmental leaders seriously and through the years have achieved tremendous success in obtaining substantial emissions reductions through the efforts guided by the joint San Pedro Bay Ports Clean Air Action Plan ("CAAP"). The Cities continue to support programs that will result in cleaner air for the local communities and the region and have worked aggressively with the port industry to reduce air quality impacts from the equipment they operate. As a result, the recently released emissions inventories have shown that between 2005 and 2012, emissions from sources at both the Port of Long Beach and Port of Los Angeles were reduced by 80% for diesel particulate matter and 55% for nitrogen oxides. However, the Cities continue to disagree with the AQMD's current proposal to inappropriately and unnecessarily regulate the Cities. The Cities have been consistent in our comments to the AQMD about the serious concerns and objections to the proposed rulemaking approach. A compilation of these comments was recently submitted to the AQMD in our comment letter on the Notice of Preparation and Initial Study for Proposed Rule 4001, dated August 21, 2013.

As for the comments the AQMD is currently seeking, we have concerns that the process recently initiated by the AQMD to solicit comments on Proposed Rule 4001 deviates from the rule-

making procedures called for by the Health & Safety Code and by the AQMD's own rules (Rule 110), in several respects. For example, it is essential that a copy of the Proposed Rule, or the text of the Proposed Rule, "be made available to the general public in connection with a request for comments" on a proposed rule in order to commence a legally-compliant rule-making process. (E,g., H & S Code §§ 40727.2, 40727(i).) The Cities have previously pointed out the inherent inconsistency of inviting public comment on Proposed Rule 4001 before the AQMD has publicly-disclosed the text of the Proposed Rule, as well as the resulting limitations on the ability of the Cities and other members of the public to provide specific input on the Proposed Rule. As a result of the failure to provide the text of the Proposed Rule, or necessary information regarding the Proposed Rule, a meaningful and legally valid rule-making procedure has not yet been commenced, and it is premature for the AQMD to demand the submission of comments on the anticipated but still undefined new "backstop" rule.

Further, it appears that the AQMD is attempting to limit comment by setting an agenda for the items on which they are seeking input, as shown on slide 8 "Soliciting Inputs/Comments" of the presentation provided during the CEQA Scoping Meeting on August 14, 2013. In addition, limiting the public process primarily to a small working group with seats set at a small table does not allow for significant input from the broader affected public, including the port tenants and operators. Input could be more meaningfully provided if the Proposed Rule was released with sufficient time for the Cities and the public to review and provide detailed comment.

The Cities are further concerned that not enough time is being included in the schedule for rule development. To date, a draft of the Proposed Rule has not been released, nor is it expected to be released for at least several weeks; however, a hearing date for the AQMD Board to consider approval of the Proposed Rule has already been identified for early December. Well in advance of any such hearing, the AQMD must provide the public with substantial information and analysis of the Proposed Rule as required by the Health & Safety Code and AQMD rules (e.g., H & S Code §§ 40727.2; Rule 110(b), (c), and (d).), as well as responses to the public comments. The AQMD also must provide the comprehensive assessment of socioeconomic impacts required by Section 40728.5.

This timeline for review and comment is unacceptably short for a rule of this magnitude. The failure to provide the draft rule language with adequate time for the public to review and submit comments to AQMD, and for those comments to be meaningfully considered by AQMD staff, is a denial of due process.

In this regard, we also have concerns about the demand that comments be submitted by September 6, 2013. There is no explanation, nor any apparent legal basis, for imposing such a deadline for public comments. It is unreasonable, particularly in light of the absence of text or details regarding the Proposed Rule, and fails to provide due process to the Cities or other members of the public who may be burdened or affected by the Proposed Rule, to demand comments by such an early cut-off. The imposition of such a premature deadline for submission

of comments appears arbitrary, and in conflict with Health & Safety Code § 40726, which states that the AQMD "shall provide for the submission of statements, arguments, or contentions, either oral or written or both," up until the time of the public hearing on the Proposed Rule. We therefore respectfully object to the imposition of a deadline for submission of comments on the Proposed Rule, and reserve all rights to comment on the Proposed Rule in the manner, and at the times, provided by state law and the AQMD rules, and to insist on compliance with the procedures and rights afforded by state law and AQMD rules.

The Cities are therefore providing these comments on a preliminary (and non-binding) basis, considering only the limited information on Proposed Rule 4001 thus far provided by the AQMD, based upon presentations by AQMD staff about the general concepts of the approach. The Cities reserve our rights, however, to make further comments after the September 6 deadline and to continue to provide input throughout the process, including submission of additional or different comments after the draft rule is made available.

First, there is an issue of need. As a rule that is contained in the proposed State Implementation Plan, Proposed Rule 4001 violates Section 39602 of the California Health and Safety Code, which states that the State Implementation Plan shall only include those provisions necessary to meet the requirements of the Clean Air Act. There is no need for Proposed Rule 4001 since the AQMP's emissions targets for port industry equipment in 2014 will be met by United States Environmental Protection Agency (EPA) and California Air Resources Board (CARB) regulations and existing Clean Ocean Vessel Voluntary Incentive Programs. Further, AQMD staff has suggested that Proposed Rule 4001 will require the Ports to develop a "Contingency Plan" immediately following rule adoption, prior to any indication that an emissions shortfall may occur. This approach is punitive, requiring the Ports to invest resources into a type of corrective action, when there is no identified need for that action, and therefore goes against the Act and is inconsistent with due process.

Second, there is an issue of legal authority and jurisdiction. The AQMD has failed to cite any legal authority for characterization of governmental entities as a stationary source, or imposing an indirect source rule on governmental entities that do not own, operate or control the sources of emissions, based merely upon the location of facilities operated by private parties within the government entities' geographic area. The Ports are not "indirect sources" and no authority has been cited to authorize the use of an indirect source rule against fellow governmental agencies that have their own jurisdiction and responsibilities by law and do not have regulatory authority to issue air regulations. The AQMD has failed to cite any legal authority for imposing an indirect source rule on Trustees for the Tidelands of California or how it could legally compel the Ports to make expenditure of Tidelands Trust revenues for the purpose of incentives or to adopt other emission reduction programs to be funded as contemplated in AQMD enforcement activity under Measure IND-01. The AQMD has failed to show any legal authority that would allow it to (1) regulate mobile sources by making another governmental entity, that is not an air regulator, its agent for enforcement of its desired mobile source emission reductions, or (2) "enforce" the

Proposed Rule, which under AQMD administrative rules would eventually mean fines and penalties, against such other governmental entity that does not control the emissions of indirect sources located within its jurisdictional boundaries. The AQMD has failed to show any constitutional or statutory basis for attempting to regulate mobile sources "indirectly" that it is preempted from regulating directly, or to purport to impose penalties or corrective action against another governmental entity for failure of private third party emissions sources to achieve emissions reductions that such other governmental entity is also preempted from regulating.

Third, while the Cities remain firm in our position that the rulemaking is unnecessary, counterproductive and beyond the AQMD's jurisdiction, if AQMD does continue to proceed, the following significant issues must be addressed.

AQMD staff appears to be proceeding with development of the proposed rule in a manner that is inconsistent with the provisions of AQMP Measure IND-01 and the discussion between the AQMD Board and the staff during the approval of AQMP Measure IND-01 at the Board Meeting of February 1, 2013. During that discussion, it was identified that the requirements under any proposed rule would only be triggered if the ports failed to meet their goals for the target year. The proposed rulemaking concepts that have been presented by AQMD staff more recently have indicated that the Ports may be required to develop corrective action plans in advance of any identified shortfall. Further, it appears AQMD staff is considering that the Ports will be required to submit emission inventories to AQMD for approval each year through 2020 and that compliance action may be triggered for any potential shortfalls that may occur during interim years, prior to the target years. These potential requirements are inappropriate and go beyond the direction from the AQMD Board.

Also, because the Cities are not regulatory agencies, have not been granted authority to regulate sources of air pollution, and have limitations on their ability to impose requirements on sources operating within their jurisdiction, AQMD must ensure that Proposed Rule 4001 does not mandate that the Cities implement strategies that are outside of their authority or ability to implement. AQMD must recognize that the Cities do not even have contractual relationships with many of the emissions sources that AQMD has attributed to the Cities' "responsibility" for emissions reductions under Proposed Rule 4001, and that even if Cities have leases with some of the operators, they are negotiated business agreements that constrain the Cities' ability to unilaterally impose new terms in response to whatever new conditions AQMD may desire.

In addition, the Boards of Harbor Commissioners of the Cities have the discretion for making business decisions related to the ports and their tenants, consistent with the Tidelands Trust and California Coastal Act. Neither AQMD staff nor its Board can override the discretion of the Harbor Commissions including decisions related to the management of the port or how port funds are spent. Therefore, AQMD cannot disapprove an Emission Reduction Plan simply because AQMD disagrees with the chosen strategies.

Moreover, approval or disapproval of any Emission Reduction Plan cannot be at the sole discretion of AQMD staff. Any plan development should be coordinated with the agencies involved in the development of the CAAP, specifically EPA, CARB and the AQMD. The partnerships established through the CAAP process, and the actions over the past seven years that have been taken by the regulatory agencies, in addition to the Ports, have been critical in the success that has been achieved. As CARB has stated[1], "[s]uccessful implementation of the CARB emission reduction plan will depend upon actions at all levels of government and partnership with the private sector. No single entity can solve this problem in isolation." Therefore, AQMD staff should not place themselves in a position to be the sole authority to approve or deny plans for emission reductions at the Ports. Any plans should be developed in partnership, with input by all agencies, and final approval on actions to be taken specifically by the Cities should be at the discretion of the Boards of Harbor Commissioners.

Slide 8 of the AQMD presentation at the August 14 Scoping Meeting identified that AQMD is seeking input on "[f]lexibility to garnish emission reductions/air quality benefits off port property". Under the Tidelands Trust, the Boards of Harbor Commissioners are limited in their ability to spend Tidelands funds outside of the Tidelands areas. The Cities cannot be mandated by an AQMD rule to mitigate emissions that are unrelated to port-operations outside of the Harbor Districts and the Tidelands areas.

AQMD has stated that the goal of the Proposed Rule is to ensure that the Cities meet their commitments outlined in the CAAP. The Cities have clearly demonstrated over the past seven years that they are committed to working with the industry and will do what they can to reduce, from port-related sources, the port sector's fair share of regional air emissions. If other non-port related sectors within the region do not achieve their share of emissions reductions, the Cities cannot be held responsible for making up for those shortfalls, regardless of whether or not those shortfalls are anticipated to result in a delay in regional attainment of the $PM_{2.5}$ Standard in 2014.

In addition, the Cities should not be held responsible for any potential emissions shortfalls from regulatory agencies not implementing emission reduction regulations as identified within the SIP, even if those regulations are related to equipment operating at the ports. If an agency makes a decision to delay a regulation schedule, or if a regulation is overturned due to a court decision that the requirements are not within their authority to implement, the Cities should not then be mandated to backfill the potential shortfall.

The last update to the CAAP took over two years to develop and cost over $1 million. The Cities should not be required by the Proposed Rule to prepare an Emission Reduction Plan when no need for such a plan has been identified (e.g. region is anticipated to reach attainment with the $PM_{2.5}$ Standard, emission reductions will be achieved by in-place regulations, no emission shortfall has been identified, etc.). Further, development of a plan should not be mandated if the

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[1] *Emission Reduction Plan for Ports and Goods Movement in California*, Executive Summary, ES-1, CARB, 2006.

reasons for any emissions shortfall are due to reasons outside of the Cities control or if no feasible strategies are available. Any plan that is required by AQMD should be streamlined and focused solely on actions that will be taken by the Ports and/or agencies to make up for any identified shortfall.

As identified in the 2012 Air Quality Management Plan, it was determined that the 2014 $PM_{2.5}$ Standard could be achieved by 2014 and no request for an extension would be needed[2]. Therefore, it is inappropriate for the AQMD to require an emission target year of 2019 in the Proposed Rule.

As stated above, these comments represent the Cities' initial concerns with the AQMD's proposed approach. Further comments will be provided as the process progresses and as more information is made available by AQMD.

We appreciate your consideration. Thank you.

Sincerely,

Heather Tomley
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

cc: Al Moro, Acting Executive Director Port of Long Beach
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Rick Cameron, Acting Managing Director of Environmental Affairs and Planning, POLB
Mike Christensen, Deputy Executive Director, POLA
Dominic Holzhaus, Principal Deputy City Attorney City of Long Beach
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Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Cynthia Marvin, Division Chief, California Air Resources Board
Elizabeth Adams, Deputy Director, U.S. Environmental Protection Agency, Region 9

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[2] *2012 Air Quality Management Plan*, Executive Summary, ES-11, AQMD, 2013.

ATTACHMENT 7.

August 21, 2013

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Re: Notice of Preparation and Initial Study
Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports"

SCAQMD File No. 0722013BAR
SCH No. 2013071072

Comments on Notice of Preparation, Initial Study, and Scope of Proposed Environmental Assessment

Dear Ms. Radlein and Staff of the South Coast Air Quality Management District:

We appreciate this opportunity to submit comments on the Notice of Preparation ("NOP") and the accompanying Initial Study prepared in connection with the District's consideration of the proposed project entitled "Rule 4001: Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports" (the "Project") on behalf of the City of Long Beach acting by and through its Harbor Department (referred to herein as "COLB") and the City of Los Angeles acting by and through its Harbor Department ("COLA", collectively with COLB, the "Cities").

As environmental leaders nationwide, the Cities have achieved tremendous success in obtaining substantial emissions reductions from their joint San Pedro Bay Ports Clean Air Action Plan ("CAAP") and other air quality measures implemented under the Cities' initiatives. The Cities continue to be supportive of projects and programs that are intended to contribute to improvement of air quality and promote other environmental values. However, the Cities must fundamentally disagree with the District's current proposal to unnecessarily convert an effective voluntary plan, built on multi-agency and industry cooperation, into potentially punitive regulations imposed unlawfully on the Cities. The Cities have previously sought to make the District aware of the serious concerns and objections to this approach. The Cities incorporate by reference their previous comments on the 2012 Air Quality Management Plan ("AQMP")

The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

Measure IND-01 Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities ("Measure IND-01") as comments on the proposed Project. The Cities' comments on Measure IND-01 are Attachment "A" to this letter.

We are also mindful that the California Environmental Quality Act ("CEQA") calls for public review, critical evaluation, and comment on the scope of the environmental review to be conducted prior to approval of proposed projects. Such review and critique 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. Thorough identification of the proposed Project, and candid disclosure of all phases of the Project and their potential impacts, is essential to assure 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, mitigation measures, and alternatives. In addition, it will be important to consider the impacts of the proposed Project on the San Pedro Bay Ports' communities, missions, 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 NOP for this "Project" as well as questions, concerns and objections related to the omissions of critical information, unsupported assumptions, or analytical deficiencies in the Initial Study, and comments as to the scope of the proposed environmental assessment ("EA") as contemplated and invited by the District's NOP.

A. General Comments on the Initial Study

While we recognize the effort that has gone into preparation of the current Initial Study, it is apparent that the Initial Study does not provide the information, evidence, or analysis required under CEQA. The Initial Study thus fails to fulfill its critical role as mandated by CEQA in educating the public generally, other affected regulatory agencies and governments, such as the Cities, 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 initial study are described in the CEQA Guidelines (14 C.C.R. §15063, subd. (d)). An initial study must "contain in brief form:

(1) A description of the Project including the location of the Project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries . . . ;

(4) A discussion of ways to mitigate the significant effects identified, if any;

(5) An examination of whether the Project would be consistent with existing zoning, plans, and other applicable land use controls;

(6) The name of the person or persons who prepared or participated in the initial study."

An initial study that fails to provide all of the information, analysis, and evidence called for by CEQA may be deemed to be inadequate and not a valid basis for CEQA review or project approval. (See, e.g., *City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, at pp. 407–408, [invalidating the County's proposed general plan amendments because of a deficient initial study: "[T]he initial threshold study is inadequate because it fails to provide sufficient evidence or analysis of the potential environmental effects of the amendments."].)

It is therefore respectfully urged that the Initial Study (and the related NOP) be revised, corrected, and recirculated for public review and comment before the District proceeds with any further action or EA in connection with the proposed Project.

The CEQA Guidelines contemplate that an initial study is to be used in defining the scope of environmental review (Guidelines, Sections 15006(d), 15063(a), 15143). However, as a result of the omissions, open questions, and deficiencies in the Initial Study as noted below, it appears to have unduly narrowed the District's proposed scope of environmental assessment, and to have caused the NOP to erroneously exclude critical issues and topics from the proposed scope of the EA.

The comments on the current Initial Study included in this letter are organized in the same format used by the Initial Study, i.e., comments on "Chapter 1 – Project Description" followed by comments on "Chapter 2 – Environmental Checklist." The comments are limited to those matters that appear in the current version of the Initial Study, and we reserve the right to provide further comments in the event that additional or different information about the proposed Project becomes available, or the District provides a revised and CEQA-compliant Initial Study.

B. Request for Revision of NOP and Re-Circulation of Revised NOP/IS To Include a Legally-Adequate "Project" Description and Text of Proposed Rule 4001

It is essential that the NOP and the Initial Study be revised to include an adequate "project description" including the text of the proposed Rule that is the "project" before the public, or the Cities, can be expected to provide comments and input.

In their prior comment letter on the Draft 2012 AQMP Program EIR dated October 22, 2012, the Cities expressed the very same concern over the vague and deficient "project description" of backstop Measure IND-01. In the District's response to comment #5-4 in the

Final Program EIR, the District stated: "*The exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted*." The District also committed, in its response to the same comment #5-4 in the AQMP Final Program EIR, that "*further details regarding the future requirements* [a Rule implementing Control Measure IND-01] *will be determined more appropriately during the rule development process.*"

The District has already commenced the rule development process. However, it has not yet provided even a draft of the proposed Rule 4001. To the contrary, at a public meeting held on August 8, 2013, the District's staff announced that the Rule will be developed after various public meetings with a "Rule 4001 working group," with a goal of releasing a draft of the Rule on August 28, 2013. Such a deferred release date for the "draft" of the proposed Rule would be one week after the deadline for comments on this NOP. The details and text of the promised Rule must be developed and disclosed before the "particular methods" and "exact impacts" anticipated may be analyzed or the subject of comment. Accordingly, it is still not possible for the District to proceed with appropriate project-level CEQA review or to issue an accurate NOP/IS at this stage if the details of proposed Rule 4001 are under development.

It is necessary that the current NOP and Initial Study be revised to include a revised "Project" Description, to incorporate the text of the draft Rule 4001 in detail, and to recirculate the revised documents for public review. A new set of public meetings, including a new "scoping meeting" should be scheduled to provide the public with sufficient time and opportunity to comment on the scope and adequacy of the revised NOP/IS.

C. Comments on the Initial Study

1. Chapter 1 of the Initial Study -- Inadequate "Project" Description

(a) Deficient "Project" Description – In General

The failure of the Initial Study and NOP to provide an accurate, complete, and coherent description of the "Project" is a fundamental deficiency, which permeates the entire document. The absence of such a clear description of the proposed Project inherently prevents the Initial Study from facilitating meaningful review and analysis of the proposed Rule 4001, and violates the requirements of CEQA. (See, e.g., CEQA Guidelines, Section 15124; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376.)

The Initial Study does not include or even describe the text of the proposed Rule that is supposed to be the "Project." The section of the Initial Study that purports to "describe" the Project, "PR 4001," includes nothing more than summaries of "key concepts provided in the 2012 AQMP Control Measure IND- 01." Those summaries and "concepts" are insufficient to describe the Project itself, and prevent effective public review and comment. Moreover, since

the 2012 AQMP Control Measure IND- 01 has already been adopted, it is perplexing that the District would use that measure as a substitute for the Project description.

The Initial Study does not provide a description of how the proposed Rule would work. It fails to describe reasonably foreseeable activities or actions of other agencies in response to or associated with the proposed Rule. This Initial Study suggests, instead, that the intent of proposed Rule 4001 would be to delegate the District's responsibilities for regulating or reducing emissions of NOx, SOx, and PM2.5 air emissions to other agencies, specifically the public officials governing the ports of Long Beach and Los Angeles, 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 Rule 4001 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 evaluation project alternatives, etc.).

The importance of providing an accurate and informative project description in an Initial Study was re-emphasized in *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 267, emph. added:

> "**The initial study must include a description of the project.**" (*City of Redlands, supra,* 96 Cal.App.4th at pp. 405–406, fns. omitted.) "Where an agency fails to provide an accurate project description, or fails to gather information and undertake an adequate environmental analysis in its initial study, a negative declaration is inappropriate. [Citation.] An accurate and complete project description is necessary to fully evaluate the project's potential environmental effects. [Citations.]" (*El Dorado County, supra*, 122 Cal.App.4th at p. 1597.)
>
> "**The scope of the environmental review conducted for the initial study must include the entire project**." (*Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1222.) Thus, a correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA. (*Tuolumne County Citizens, supra*, at p. 1222.)

The Initial Study currently falls far short of these requirements in describing the proposed Project, and thus falls equally short of serving the "public awareness" purposes described above and mandated by CEQA:

> An accurate and complete project description is necessary for an intelligent evaluation of the potential 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, citing *Aberdeen & Rockfish RR. v. SCRAP* (1975) 422 U.S. 289, 322 [an accurate, complete and consistent project description is the sine qua non of informative, legally adequate CEQA review].) (*City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, 407–408.)

The Initial Study (p. 1-5) indicates that "the approaches and concepts considered in this NOP/IS may be subject to change" based on comments from the working group. In light of the District's initiative in forming a "working group" of interested participants to help formulate the proposed Rule, and thereby provide an actual "project description," it would be more appropriate to undertake CEQA analysis and compliance after the actual Rule is developed. Furthermore, it is premature for the District to assume or conclude that any changes received from the working group as well as comments received relative to this NOP/IS will all be within the scope of the analysis in the NOP/IS.

In brief, the NOP/IS erroneously limits the scope of the analysis and inherently calls for impermissible speculation or impossible prescience on the part of the Cities or other members of the concerned public to undertake effective analysis of the proposed Project, or to provide meaningful comments as to the scope of review of the Project, until and unless the District provides an adequate description of the "Project."

(b) Specific Comments and Questions re "Project Description" and Text

The following comments and questions refer to specific portions or pages of Chapter 1 of the Initial Study:

Pp. 1-1 - 1-2 – Introduction

The Introduction states, in the first sentence of the third paragraph on page 1-1, that Control Measure IND-01 "...does not call for additional emission reductions beyond those realized with existing regulations and emission reductions programs implemented at the Ports to date." This is an untrue statement. The CAAP is only a planning document which specifically provides for discretionary future decisions to be made regarding implementation by each of the Cities' respective Board of Harbor Commissioners, and resolution adopting the CAAP update states: "The CAAP is a living document intended to establish a process to develop solutions, not a static document binding the Ports to particular future actions….The CAAP is a planning document that identifies goals and potential implementation strategies to guide further actions, and as such does not constrain the discretion of either Board of Harbor Commissioners with

respect to any particular action."[1] Not all individual Board actions that may be required in order to achieve the CAAP's goals and activities have been adopted, many of which goals were stretch targets with uncertainty as to whether they could be achieved. Measure IND-01 and Rule 4001 propose to require the Cities to potentially adopt future actions that create potentially-conflicting authorities between the District, as regulator, and the Cities, as independent governmental agencies regulated by the District, so as to force the Cities to exercise their discretionary police power authority in a particular way. The Constitution does not permit such usurpation of the Cities' authority.

The Introduction states, in the last paragraph beginning on Page 1-1, that the emission targets for port-related sources are those assumed in the 2012 AQMP emissions inventory. The Cities raised questions during the Measure IND-01 adoption process regarding the District's calculation of these targets, which are different from the emissions targets set under the CAAP. Although the specific emission targets of the proposed Project do not appear at all in the NOP (which omission itself is a defect), the District has verbally advised the Cities and a working group on August 8, 2013, that the Rule will be such as to be triggered on set emission targets for 2014 and 2019. Those comments, however, left the Cities and working group participants with many questions about how the District set the emissions inventory, particularly for 2019, which was not in the CAAP. These examples are provided to illustrate that the NOP's description of the proposed Rule is not only flawed but missing altogether.

P. 1-3 - Project Location

The Initial Study provides no finite "project location." It describes the District's jurisdictional boundaries. It then states that "PR 4001 would apply to POLA and POLB, both of which are located within Los Angeles County." It is unclear if this was an attempt to state that the Project location would be Harbor Districts of the Cities. The lack of clarity regarding the Project location is further compounded by the Rule's reference to "sources not entering Port properties." During the August 14th Scoping Meeting, Mr. Hogo attempted to clarify this reference by referencing an undefined area outside of but near the two Harbor Districts. Unfortunately, Mr. Hogo's statement did not clarify the proposed Project's location.

Is it the intention that any portion of the Project may be implemented outside the geographic areas of the Harbor Districts of the Cities? It is unclear from this description whether the Project may have impacts or foreseeably result in actions being taken outside these Harbor Districts. This may have jurisdictional implications which cannot be evaluated without additional information.

[1] Los Angeles Resolution No. 10-7041 adopted by the Board of Harbor Commissioners of the City of Los Angeles and Long Beach Resolution No. HD 2600 adopted by the Board of Harbor Commissioners of the City of Long Beach on November 22, 2010.

Also, the Initial Study fails to disclose or analyze the possibility that if the option for the Cities to reduce emissions from sources not entering Port properties is included in proposed Rule 4001, even the vague "project location" and geographic scope of the proposed Rule in the Initial Study would not be accurate and would need to be modified in the NOP/IS.

P. 1-4 – Project Background

The Initial Study's description of the "Project Background" implies that the two Cities' ports themselves actually conduct cargo operations. For example, the text states that the COLA "serves approximately 80 shipping companies." This illustrates a fundamental lack of understanding by the District of how ports work. There are two types of business models of ports: some are "operating ports," that conduct cargo operations directly, such as the Port of Charleston, South Carolina and some are "landlord ports," such as the Ports of Los Angeles and Long Beach, that merely lease wharves and land to operators who conduct cargo operations.

The Ports of Los Angeles and Long Beach are not, "the single largest fixed source of air pollution in Southern California." The EA should clarify that the referenced sources of air emissions are the vehicles, engines, ships, trains, trucks and other cargo-moving equipment operated by distinct tenants, users, and visitors of the ports, not the Harbor Districts or the Cities.

P. 1-5 – Legal Authority for PR 4001

The Initial Study suggests that if the (unspecified) "backstop measure" that would be mandated under PR 4001 "becomes effective," then the new Rule would require the Cities to take (unspecified) action "to develop and implement plans to get back on track" regarding attainment of emissions targets. Under what legal authority does the District believe that its proposed Rule 4001 may purport to compel distinct governmental bodies (the Cities and the Boards of Harbor Commissioners) to legislate or to exercise their discretion in particular ways to achieve District objectives?

Measure IND-01 was prominently referred to as an "indirect source rule." The current general references to proposed Rule 4001 in the NOP/IS have lost all mention of an "indirect source rule." However, the references to proposed Rule 4001 do not cite to any authority the District is relying on for its processing of the proposed Rule. This should be corrected so that the public can comment on whatever legal authority may be invoked by the District.

Is it anticipated that the "plans" and strategies that would be required to be adopted by the legislative boards of the two Cities under the mandate of proposed Rule 4001 would be within SCAQMD's regulating authority and subject to the District's approval or disapproval? If so, why would SCAQMD not directly adopt such "backstop" strategies and plans itself? If not, is the Rule being proposed in order accomplish something indirectly that SCAQMD itself cannot do directly? (Cf., *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 [same].)

P. 1-5 – Call for Cities to Regulate Off-Site "Sources"

The Initial Study indicates that the District will be inviting and considering proposals, as part of this "Project," regarding potential measures for the Cities to adopt and implement to try to reduce emission from sources *not entering* onto port properties. What does this mean? What legal authority might the Cities have to try to regulate *off-site* sources that do not come within the jurisdiction of the respective Harbor Commissions? (Municipal police power authority may generally be exercised only within the territorial boundaries of their jurisdiction, and the Boards of Harbor Commissioners have special Tidelands limits on their authority.)

Would such (unidentified) measures be part of Rule 4001, or would proposed Rule 4001 require that the Cities formulate (unidentified) measures in the future to somehow regulate *off-site* "sources?"

Until such options are identified, shown to be legally authorized and technically feasible, how can the CEQA analysis for proposed Rule 4001 be undertaken?

P. 1-6 – First Bullet – Imposing "Requirements" on the Cities?

The Initial Study indicates that if proposed Rule 4001 becomes effective the Cities "would be required to submit an emissions reduction plan to address the emissions reduction shortfall."

As noted above, this raises questions as to the intent and legal authority behind the Rule. Has the District identified legal authority for a rule that would require other governmental agencies (the Boards of Harbor Commissioners for the respective Cities) to exercise their legislative discretion/authority in any particular manner? Does the District intend to reserve to itself some authority to approve or disapprove any such plans submitted by the Cities?

What is the consequence of disapproval by the District?

What environmental baseline and other parameters would be required by proposed Rule 4001 in order for the Cities to determine the extent of any "emissions shortfall" that may need to be addressed in the Cities' plans in the event they were to undertake to submit plans under the Rule?

P. 1-6 – Second Bullet -- Funding

This bullet point implies that "funding" would be necessary for many of the potential future emission reduction measures that may be compelled under proposed Rule 4001. Would such funding be provided by the District? What other "funding" sources are contemplated? Will

there be constitutional or common law "gift of public funds" restrictions on funding imposed on the Cities for activities under their CAAP if Rule 4001 makes CAAP compliance a potential state or even federal regulation?

Are the Cities expected to fund these programs from Tidelands Funds? By what authority may the Harbor Commissioners impose taxes, assessments, and charges on users of the Harbor Districts, given the restrictions of various state laws, including, among others, Proposition 26?

The vague disclaimer in the Initial Study to the effect that proposed Rule 4001 would not require any measure that lacks legal authority or feasibility raises more questions than it answers. Whatever types of "emissions reduction plans" may be anticipated by proposed Rule 4001 should identified by the District in the NOP/IS so that the feasibility and legality of such approaches can be evaluated as part of the environmental assessment for the Project.

Pp. 1-6 – 1-7 -- Technology Overview/Implementation Strategies

This refers to some emission reduction strategies included in the CAAP, but the Initial Study does not explain how these may relate to proposed Rule 4001, or whether they should be considered as part of the Project.

The suggestion in the Initial Study of possible "tariff change" or "impact fees" on the activities of users of the Harbor Districts raises other questions (e.g., legal authority, funding for studies and public review processes required before such measures could be considered or adopted, indemnification for costs of defense, etc.) requiring identification and study. Moreover, such measures may themselves be considered as "projects" subject to CEQA review and may have impacts on the activities of Harbor District users that themselves would require analysis or mitigation.

The Initial Study also includes reference to "Port funded incentives" as possible measures to reduce emissions, but also observes that there is not adequate funding for such strategies in the Cities' budgets or other grant program. The source of funding any "Port-funded" measures contemplated by proposed Rule 4001 should be clearly identified and evaluated.

Any such contemplated implementation strategies should be included in the "Project description" and better identified in a more complete NOP/IS, so that they may be evaluated along with the rest of the Project.

Pp. 1-10 – 1-11 -- Imposition of "Requirements" on the Cities

The NOP/IS states that none of the CAAP strategies would be "prescribed in PR 4001." Instead, the NOP states that if proposed Rule 4001 becomes effective, the Cities (presumably the Boards of Harbor Commissioners) -- "individually or jointly" -- would be required to identify sources that could undergo potential emission reduction to "make up for the shortfall."

Why would/should the obligation to make up for a possible shortfall in meeting emission reduction targets (which are primarily the responsibility of the District to attain) be shifted so as to fall upon two independent governmental entities? The Cities are governmental entities, and are not directly producing emissions or otherwise directly responsible for the targeted emissions or for the attainment of the emissions reduction targets. Moreover, if there were to be a "shortfall" in attaining the targets, it could well be due to factors not caused or controlled by the Cities, and not due to any actions or derelictions on the part of the Cities or their tenants or users.

Other issues: How would a "shortfall" be measured or determined? Would any such "shortfall" be allocated to sources or causes bearing some actual responsibility for the lack of attainment? How would it be "allocated" between the Cities? Would uncontrollable/unforeseeable factors resulting in all or part of a shortfall be excluded from whatever obligation may be imposed on the Cities?

Would proposed Rule 4001 take into account the statutory limits on the jurisdiction and authority of the Cities (i.e, the Boards of Harbor Commissioners) to impose restrictions on most mobile sources of emissions?

Footnote 6 (on page 1-11)

The NOP/IS mentions a possible "option" that would "allow" the Cities to reduce emissions from "non-port-related sources." This vague reference requires clarification before it may be evaluated in connection with the Project. Direct and indirect effects would need to be considered that may occur beyond the geographic boundaries of the Harbor Districts. Therefore, it is premature for the District to conclude that any changes based on the working group or public scoping comments will be within the scope of the analysis in the NOP/IS.

P. 1-11 -- Technologies

The EA should be expanded to address the legal, technological and economic feasibility of the seven bulleted items listed in this section.

P. 1-12 -- Alternatives

No alternatives have been identified for study in the NOP/IS. Instead, it merely commits the District to "discuss and compare alternatives" in the future, as part of the Draft EA.

It also suggests the District is looking to the public or other agencies to identify "alternatives" during the scoping process. As previously explained however, how can alternatives realistically be suggested when the Project itself has not been identified or described?

The No Project Alternative is not defined in the NOP/IS. In accordance with CEQA Guidelines Section 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. Therefore, the Draft EA should consider the impacts that would occur under the existing 2012 AQMP without Control Measure IND-01 or proposed Rule 4001. In particular, an analysis should be conducted of the grant funding that would be available under the No Project Alternative that would not be available if the proposed Project constitutes regulation, and the environmental impact if grant funding necessary to make certain actions economically feasible is no longer available under the proposed Project. If the District's position is that there is no loss of grant funding in order to comply with Rule 4001 as a regulation that the District purports to make enforceable under the State Implementation Plan and the Clean Air Act, the District must explain in the Rule its basis for this conclusion in the context of why grants made for compliance with a regulation is not a gift of public funds.

In light of the technical complexities of the issues and the ambiguities as to what the District is actually seeking to accomplish by way of proposed Rule 4001, it seems unreasonable to expect others to develop the project alternatives. One suggested alternative would be for the District to formulate its own "backstop" measures and strategies for addressing any shortfall in emission reduction targets, relying on the District legal authority, expertise and resources, rather than pursuing proposed Rule 4001, which appears to be an attempt to rely upon presumed authority of the Cities. Another suggested alternative would be, the memorandum of understanding approach that was suggested by the Cities and proposed by staff as an alternative to Measure IND-01.

(c) Other Comments on Chapter 1 - "Project Description"

Incomplete Description of Environmental Setting

The Initial Study also fails to provide an adequate description of "the environmental setting" of the proposed Project.

While the CEQA Guidelines do not specially define "environmental setting" with regard to an initial study, they do explain, in regard to EIR preparation, that the "environmental setting" must be informative: "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." (Guidelines, § 15125, subd. (a).) A description of the environmental setting must be sufficient to allow "an understanding of the significant effects of the proposed projects and its alternatives" but "no longer." (Guidelines, § 15125, subd. (a).) That description should place "[s]pecial emphasis" "on environmental resources that are rare or unique to that region and would be affected by the project" and "must permit the significant effects of the project to be considered in the full environmental context." (Guidelines, § 15125, subd. (c).)

Failure to Examine All Phases of the Entire Project as Proposed

"The Initial Study must include a description of the project, and 'the scope of the environmental review conducted for the initial study must include the *entire* project." (*Nelson v. County of Kern, supra*, 190 Cal.App.4th at 270, emph. in original.)

The Initial Study here improperly fails to describe "the entire Project" and fails to consider all phases of the proposed Project. The CEQA Guidelines (14 C.C.R §15063(a)(1)) make clear that an initial study must take a comprehensive view of the proposed project *as a whole*. "All phases of project planning, implementation, and operation must be considered in the initial study of the project."

The NOP/IS indicates that proposed Rule 4001 is intended to require actions by the Cities, to adopt and implement plans and strategies to address any "shortfall" in emissions reductions. The Initial Study improperly fails to address or to provide information and analysis relating to the environmental impacts of the anticipated "subsequent approvals," "discretionary permits" and amendments to the Cities' plans and regulations that appear to be proposed as parts of the Project, or the physical environmental effects of social or economic impacts that may result from those anticipated and apparently necessary changes in land use regulations." (Guidelines § 15063.) Such anticipated and intended actions by other governmental agencies thus appear to be part of this Project, and must be identified and evaluated in the Project EA, along with their potential impacts. As such, we reiterate our prior comment on the Draft 2012 AQMP Program EIR dated October 22, 2012 where it is stated that the District has failed to fully disclose the details of Measure IND-01 and as a result is segmenting or piecemealing its CEQA analysis.

Failure to Describe Existing Land Use Regulations

The Initial Study does not include an examination of whether the Project would be consistent with existing zoning, plans and other applicable land use controls, as required by CEQA Guideline Section 15063. Although the Initial Study includes some background discussion of the CAAP, it provides little or no description of the existing planning and zoning designations applicable to the "Project" location, and relies on (unsupported) assertions that the Project would be in furtherance of the CAAP. It provides no information or analysis of other existing plans or policies applicable in the Harbor Districts, which may be affected or impacted by the Project.

Uncertain and Inadequate Identification of "Baseline" Used for Review

It is critical under CEQA that any level of environmental review make it clear as to the "baseline" being used as the basis for analysis of the significance of potential Project impacts. (CEQA Guidelines Section 15125(a).) Normally, the "baseline" will be the existing environmental conditions in the vicinity of the Project. (Guideline Section 15125(a); see also,

Communities for a Better Environment v. South Coast Air Quality Management District (2010) 48 Cal.4th 310, 315 [the baseline for an agency's primary environmental analysis under CEQA must ordinarily be the *actually* existing physical conditions rather than *hypothetical* conditions that could have existed under applicable permits or regulations].) The Supreme Court has explained that the requirement for identification and use of the appropriate "baseline" applies in the context of an Initial Study as well as in an EIR. (*Communities for a Better Environment, supra*, 48 Cal.4th at 512, and n. 5.)

The Initial Study here, however, fails to make it clear as to what "baseline" is being used. In many places the Initial Study compares the anticipated "impacts" of adopting proposed Rule 4001 to the permitted emissions levels anticipated (in the future) under the 2012 AQMP, or alternatively to the (future) emission reduction targets of the CAAP -- rather than to the existing environmental conditions. While the recent Supreme Court decision in *Neighbors for Smart Rail v. Exposition Metroline Constr. Authority* (8/5/2013, No. S202828) ___ Cal.4th ___, indicates that the baseline need not always be the existing physical conditions, and that "projected future conditions" may be used in rare situations as a baseline "if their use in place of measure existing conditions ... is justified by unusual aspects of the project or the surrounding conditions" (Slip Opinion, p. 11), it does not detract from the rule that the Initial Study must accurately and consistently describe the baseline being used. Nor does it permit the use of "future conditions" in the absence of a showing of unusual circumstances. The Initial Study in this case does neither.

For each of these fundamental reasons, the NOP/IS should be rescinded in order that it may be revised, completed and corrected to meet CEQA requirements.

2. Chapter 2 of the Initial Study – The "Environmental Checklist"

(a) General Comments and Questions on the Environmental Checklist

The NOP/IS apparently relied on a standard CEQA environmental checklist to identify those "impact areas" it recognizes to be potentially affected by the Project. In several respects, however, the Initial Study appears to merely assume 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, supra*, 96 Cal.App.4th at 408-09; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296). Furthermore, it is contrary to the District's response to comment #5-4 in the Final Program EIR, which indicates that "[t]he exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted."

The NOP/IS currently indicates that the scope of the proposed EA for this "Project" will be limited to the six topics listed at p. 2-2. Compliance with CEQA, however, would require not only a new and corrected Initial Study, providing an adequate "Project description" but also a more comprehensive EA that addressed additional areas of potentially significant impact, including (without limitation): (1) Aesthetics, (2) Biological Resources, (3) Cultural Resources, (4) Land Use and Planning, (5) Noise, (6) Public Services, and (7) *broadened evaluation* of potential impacts and issues in the areas of Energy, Hazards and Hazardous Materials, Air Quality, and Transportation and Traffic.

Unless and until those areas are more fully addressed, the NOP/IS appears to improperly limit the scope of the proposed EA, and to erroneously exclude areas requiring further assessment.

(b) Specific Comments and Questions on the Environmental Checklist

As detailed below, there are numerous areas of potential environmental impact in the checklist as to which the Initial Study either omits required evidence to support its conclusions of "no potential impact" or treats with insufficient detail.

More specific questions and comments follow:

P. 2-4 -- Preliminary Discussion of Checklist

First Paragraph: We reiterate the same comment as noted on page 1-4 regarding Cities being the source of emissions. The geographic location itself does not produce emissions. It is the users of the area that produce impacts. The users of the two ports are the owners and operators of the ships, trains, trucks and equipment which the District targets as the sources of emissions.

First Paragraph, Last Sentence: The Initial Study states that "some emission reductions [assumed by the District's 2012 AQMP] may be contingent upon the Ports taking and maintaining *actions which are not required by air quality regulations*." This suggests that one of the purposes for District proposal of proposed Rule 4001 may be to establish a new regulatory "authority" over the Cities (and the communities served by and dependent upon the Harbor Departments of the Cities) that is not in fact already provided by existing federal, state, or regional air quality regulations. The policy implications of such a Project may well include significant impacts on the environment, if regulatory authority over activities, facilities, and uses of the Harbor Districts is shifted or arrogated to the District. (See, e.g., *City of Redlands, supra,* 96 Cal. App. 4th 398 [proposed new County policy re exercise of County authority over annexations and sphere of influence was not supported by adequate CEQA review].)

Second Paragraph, Last Sentence: Same comment as page 1-5.

Third Paragraph. The NOP/IS states that the checklist responses focus on "the above mentioned actions." This is extremely vague. Is the reference intended to be the items referenced in the paragraph immediately above, or in the earlier pages?

Identification of precisely what measures are being assumed or proposed in proposed Rule 4001 is essential to being able to review the Initial Study.

Aesthetics -- P. 2-5

Discussion of I a), b) and c). The Initial Study suggests that "because PR 4001 would implement IND-01" the District may simply assume that this Project would not be expected to generate significant adverse aesthetics impacts. However, given that the measures that would be used to implement IND-01 are not identified, the Initial Study does not provide evidence to demonstrate that proposed Rule 4001 has no potential for impact. To the contrary, the Initial Study admits that "PR 4001 will primarily affect operations at two ports" and but then simply assumes from the industrial and commercial zoning of the Harbor Districts that there could not be a potential for impacts on "scenic vistas" nor any potential degradation of the visual character of the areas around the Harbor Districts.

The Initial Study fails to describe the environmental setting and include any evidence or analysis to support its assumption that whatever is done to implement proposed Rule 4001 would "likely easily blend in" with the surrounding activities, especially since what would be done to implement the Rule is not yet known. Specifically, the Initial Study 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. 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 Harbor Districts and if modified, through obstruction, alteration, or demolition could have a negative aesthetic impact. Without a clearly defined project, project location, or description of the environmental setting, it is not possible to conclude that any port modifications will have little or no noticeable effect on adjacent areas and would blend in with the visual setting.

The Initial Study indicates that "Control devices may include hoods or bonnets on ship exhaust stacks to capture emissions and are expected to be as high as 80 feet (POLB, 2006)" and concludes that "these control devices would be similar to other structures used within the heavily industrialized portions of the Ports…" First, the "POLB" citation is missing in the list of references. Second, it is speculative and erroneous to assume that control devices as high as 80 feet would have "no visual impact" without knowing the location, dimensions, color scheme or critical viewpoints. No such analysis has been considered here and the impact is dismissed with no evidence to support the conclusion.

The last sentence of the first paragraph (on p. 2-6; I. d) suggests there are no residential areas "next to" the Harbor Districts, and thus the Initial Study may dispense with analysis of light and glare impacts. It is evident however that was an inaccurate assumption given the residential communities of San Pedro, Wilmington and Long Beach located adjacent to the Harbor Districts. This is also contradictory to the description of surrounding land uses and setting on page 2-1 which indicates "potentially residential."

The Initial Study further errs by dispensing with environmental analysis or evidence, simply because of the (assumed) beneficial air quality goals of proposed Rule 4001. The law is clear that environmentally "benign" objectives for a project do not excuse non-compliance with CEQA and do not justify reliance on assumptions in lieu of evidence to demonstrate the absence of potential impacts. *See, e.g., California Farm Bureau v. California Wildlife Conservation Board* (2006) 143 Cal.App.4th 173, 196, emph. added [State environmental agency violated CEQA by exempting environmentally beneficial habitat project from review]:

> "[I]t cannot be assumed that activities intended to protect or preserve the environment are immune from environmental review. [Citations.]" (*Davidon Homes, supra*, 54 Cal.App.4th 106, at p. 119; see, e.g., *Dunn-Edwards Corp. v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644 (disapproved on other grounds in *Western States Petroleum Assn. v. Superior Court, supra*, 9 Cal.4th 559, 570.) **There may be environmental costs to an environmentally beneficial project, which must be considered and assessed**.

This topic should not be dismissed. Given the nature of proposed Rule 4001, it cannot be determined that its implementation would have no impact on aesthetics. The EA therefore should include "Aesthetics" as a potentially impacted area of study.

Air Quality -- P. 2-11, Discussion

In the first paragraph (p. 2-11), last sentence, the stated assumption is speculative given there is no information about what physical changes to the environment proposed Rule 4001 will entail. There is no evidence to support the assumption in the Initial Study that proposed Rule 4001 would be identical to Measure IND -01 or have identical (previously-studied) impacts on air quality.

P. 2-11, III.a

The first paragraph, last sentence, again raises the question of why it should become the obligation of the Cities to take actions on their own to fulfill the obligations of the District for reaching emissions reductions targets? What is the legal authority for this shifting (or delegation) of the District's air quality responsibility?

In the second paragraph, the Initial Study relies on an assumption that "the Port" would be installing control equipment. Again, this erroneously confuses the Harbor Departments of the Cities with the operators of vessels, vehicles, and equipment. The Harbor Boards serve as trustees of tideland assets.

The conclusion in this section assumes that the undefined strategies and approaches suggested in conceptual description of proposed Rule 4001 will be successful. That is dependent on the feasibility of the approaches, which must be identified and assessed. Therefore, this topic should be analyzed in the EA.

P. 2-12, III.b, c, and g

Given the total lack of information regarding what proposed Rule 4001 would entail and whether it's implementation is feasible, it is premature to assess impacts in this category. These details must be provided and these topics should also be identified and assessed in the EA.

P. 2-13, III.e

There is no factual basis in the Initial Study upon which to conclude that implementation of proposed Rule 4001 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 Initial Study analysis only applies to construction odors and ignores any potential odors that may occur during long-term operations.

The NOP should be amended to make clear that at least these additional areas of potential impacts on air quality should also be identified and assessed in the EA.

Biological Resources – P. 2-14

The Initial Study fails to adequately describe, and improperly minimizes, possible impacts to biological resources, including least terns and migratory birds.

The scope of the proposed EA should be expanded to include environmental analysis of the Project's potential impacts on biological resources.

Cultural Resources – P. 2-16

The Initial Study fails to adequately describe, and improperly minimizes, possible impacts to cultural resources. Not all areas within the Harbor Districts are devoid of cultural resources or have cultural resources that have been previously disturbed, as concluded in the Initial Study on page 2-18 in section V(b), (c), and (d). There are known recorded historic and prehistoric sites throughout the Harbor Districts. For example, see COLA's website at http://www.portoflosangeles.org/idx_history.asp. Without knowing the location and extent of ground disturbance from possible construction activities associated with proposed Rule 4001, it

is speculative to assume that no significant adverse cultural resources impacts are expected from implementing proposed Rule 4001. The conclusion in the Initial Study is unsupported and lacks evidence or facts to support the findings.

The scope of the proposed EA should be expanded to include environmental analysis of the Project's potential impacts on cultural resources.

Energy – P. 2-18

The Initial Study section VI(c) must be expanded to also consider and analyze 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 required in the event of a major disaster. Also, some types of emissions control measures, facilities, or technologies contemplated by the Project could increase or shift demand for different types of energy or fuel usage. Although "risk of upset" is not considered in the Initial Study checklist, it should be cross referenced here and addressed in the Hazards section of the Initial Study.

The scope of the proposed EA should be expanded to include this additional analysis.

Hazards and Hazardous Materials – P. 2-24

The Initial Study section VIII(f) must be expanded to also consider and analyze the increased reliance on alternative fuels or electrical powered technologies that would require sufficient supply and emergency storage in the event of a major disaster. Although interference with emergency response plans was marginally addressed in this section, "risk of upset" is not considered in the Initial Study checklist.

The scope of the proposed EA should be expanded to include this additional analysis.

Land Use and Planning – P. 2-34

The Initial Study fails to adequately describe, and improperly minimizes, possible inconsistencies between the proposed Project and the existing and applicable land use plans and policies.

The Initial Study erroneously claims that "there are no provisions in PR 4001 that would affect land use plans, policies, or regulations." (P. 2-34.) The Initial Study does not support that conclusion with any substantial evidence.

First, the NOP/IS fails to identify any of "the provisions of PR 4001" so the statement cannot be supported or evaluated.

Second, and more importantly, however, the Initial Study repeatedly references "implementation strategies," "plans" and other new measures that it anticipates the Cities will be required to enact if proposed Rule 4001 becomes effective. Presumably this is because of inconsistencies between the existing plans and policies and the requirements of the new Rule. (See, e.g., pages 1-6 through 1-11.) The measures contemplated in the Initial Study include the adoption of new "regulatory requirements," new "impact fees" on the movement of cargo or sources, and changing the tariffs for use of the Harbor Districts – all of which would cause at least potential "conflicts" with applicable plans and policies. (Cf., *Orinda Ass'n v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1169 [the CEQA requirements for initial study examination of non-conformity with existing land use plans are intended to allow lead agency to modify the Project to avoid inconsistencies with existing plans – not vice versa].)

Third, the Initial Study itself acknowledges that the Project is anticipated to cause "potentially significant impacts" or conflicts with "an applicable plan ... for the performance of the circulation system" and conflicts with "an applicable congestion management plan." (Initial Study, p. 2-44.) Although the Initial Study proposes to address those admitted conflicts in the "transportation" section of the EA, these acknowledged conflicts confirm the necessity for including "land use and planning" impacts in the proposed EA as well.

Fourth, the proposed Project would seemingly create conflicts with the Cities' 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 are detailed in the previous port letters included in Attachment A to this letter. In addition, the proposed Project would create inconsistencies with the Clean Air Action Plan.

Fifth, the proposed Rule is apparently structured in a way that would impermissibly usurp the (non-delegable) police power authority of the Cities and their respective Boards of Harbor Commissioners to plan, implement, and regulate land use policies and actions in their respective jurisdictions. (This comment has also been raised above, in Project Description comments.)

The numerous inconsistencies between the Project as proposed and the existing plans and policies require identification in the Initial Study and inclusion in the proposed EA. (Guidelines § 15125(d).)

The scope of the proposed EA should be expanded to include environmental analysis of the Project's potential impacts on land use and planning.

The EA should also include analysis of the impacts of the proposed/anticipated Project-related subsequent amendments to the Cities' plans, policies, and other land use regulations. (See, e.g., *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1197 [CEQA review failed to consider incidental results from adoption of revised policy; incidental impacts could not be disregarded in an initial study based upon "net" environmental impact of the change in policy being benign since CEQA requires each environmental impact of

project be discretely evaluated].) "Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project." (Guidelines, § 15064, subd. (e); see §§ 21080, subd. (e)(2), 21082.2, subd. (c).)

The scope of the EIR should be expanded to include analysis of possible physical changes in port facilities and operations that might be caused by economic or social effects of the Project itself or by the anticipated amendments to land use and zoning policies by the Cities subsequent implementation of the Project.

Noise – P. 2-36

The NOP/IS acknowledges that approval of the Project and "triggering" of the PR 4001 could result in the construction or installation of new control equipment. The Initial Study improperly dismisses the potential noise impacts from such work as "not expected to be in excess of current operations." There is no substantial evidence in the Initial Study to justify such assumptions.

Similarly, there is no evidence cited in the Initial Study to support its further assumption that additional permanent noise impacts anticipated from the operations of new control equipment would not "substantially increase ambient operational noise levels in the area."

This section of the Initial Study is littered with mere "expectations" unsupported by any evidence regarding the magnitude of new noise impacts, even though such new impacts are anticipated by the Initial Study. Nor is there any analysis of the potential for significant adverse impacts from new noise generators related to the Project.

The NOP/IS must be revised, and the scope of the proposed EA expanded to include a detailed analysis, supported by evidence, regarding these anticipated new noise impacts, alternatives, and possible mitigation measures.

Public Services – P. 2-39

The Initial Study assumes that the Project would not generate any increased need for public services. However, the Initial Study does not provide any substantial evidence to support its assumptions regarding the "absence of impact" on additional public services or facilities.

The Initial Study should be expanded to address potential impacts that may arise from the increased "diversion" of existing "dirty" vehicles and vessels into solid waste sites if proposed Rule 4001 is triggered.

Transportation and Traffic – P. 2-44

The Initial Study fails to adequately describe and analyze potential impacts to rail and marine vessel traffic and ignores the significance criteria identified as "[w]ater borne, rail car or air traffic is substantially altered" on page 2-45. The Initial Study erroneously considers only vehicular traffic impacts to local roadways.

The NOP/IS must be revised, and the scope of the proposed EA expanded to include a detailed analysis, supported by evidence, regarding potential impacts to rail and marine vessel traffic.

Socioeconomics Analysis

The EA needs to include a broad-based analysis of the socioeconomic effects of the proposed Rule 4001, including the potential for job loss, business closures, and diversion of cargo to other ports due to the potential loss of regional competitiveness. The socioeconomic analysis needs to consider both the existence of the rule, even if not triggered, and the future enforcement of the rule. Because these conditions have the potential to physically change the environment in and around the ports, these impacts should be identified and assessed in the EA. (See CEQA Guidelines §§ 15064(e) and 15131; *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3rd 433, 445 [EIR must consider possibility of economic blight from rezoning].) Moreover, this assessment should not be limited to businesses and operations within the ports, but should extend to those facilities, businesses and operations that while located outside of the Harbor Districts are dependent upon the flow of cargo for their continued operations.

Too-Narrowly "Focused" Environmental Review

We note in closing that the Initial Study appears to reflect a preliminary decision to conduct less-than-full disclosure or environmental review of the proposed Project. Although the Initial Study concludes that "the proposed Project may have a significant effect on the environment and an Environmental Assessment will be required," it nevertheless appears that environmental review in the admittedly-required EA is proposed to be curtailed and "focused" on just the six topics listed in the current the NOP. One obvious indication of this is the miniscule list of references that were relied upon to support the Initial Study analysis; the list is limited to three sources.

It is respectfully submitted that such an approach would be too narrow and not in conformance with the requirements of CEQA, or with the District's own policies and rules for environmental analysis. While the CEQA Guidelines call for emphasis and "focus" on the significant environmental impacts of the Project, the authority to use such focus is misapplied in the Initial Study. For example, CEQA Guideline § 15143 explains that such focus may be used to limit the analysis in an EIR [or, in this case, EA] 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 NOP/IS here, by contrast, appears to exclude from consideration in the EA numerous effects that it has not shown to be "clearly insignificant and unlikely to occur."

D. Conclusion

The current version of the NOP/IS fails to adequately describe the "Project" thereby thwarting effective public review and comment on proposed Rule 4001. The Initial Study must therefore be revised, corrected, and re-circulated with all of the descriptions and other content required by CEQA.

Even this inadequate NOP/IS makes it clear that **the scope of the proposed EA has been unduly narrowed**, and that environmental review will be limited in a way that erroneously fails to provide the relevant decision-makers, affected public agencies, residents and the public generally with sufficient evidence and analysis of all anticipated and potential impacts from the Project as a whole, or of all potentially feasible mitigation measures or appropriate Project alternatives as required by CEQA.

While it is clear that an EA is called for in connection with this proposed Project, it is equally clear that the EA should be more complete than what is envisioned by the current NOP/IS. More fundamentally, its scope must be determined by a legally-adequate revised NOP/IS. The EA for the Project must, of course, be supported by credible and substantial evidence, including independent professional analysis.

We respectfully request that these comments and questions be considered before the District embarks on preparation of the EA and all of the other required independent studies in connection with the CEQA review of the proposed Project. We therefore look forward to working with the District, and any study teams or working groups tasked with evaluation of the proposed Rule 4001.

The NOP requests that we provide you with a contact person for each responding agency. For the COLB, the contact persons are as follows:

Heather Tomley
Acting Director of Environmental Planning
Port of Long Beach
925 Harbor Plaza
Long Beach, CA 90802
(562) 283-7100
e-mail: heather.tomley@polb.com

With copies to:

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For COLA, the contact persons are as follows:

Christopher Cannon
Director of Environmental Management
Port of Los Angeles
425 South Palos Verdes Street
San Pedro, CA 90731
(310) 732-3763
e-mail: ccannon@portla.org

With a copy to:

Joy Crose, Assistant General Counsel
City of Los Angeles, Harbor Division
425 South Palos Verdes Street
San Pedro, CA 90731
(310) 732-3750
e-mail: jcrose@portla.org

We appreciate your consideration. Thank you.

Sincerely,

Heather Tomley
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachment A:

Letters dated July 10, 2012; July 27, 2012; August 30, 2012 (which includes letter dated May 4, 2010); October 22, 2012; October 31, 2012; November 8, 2012; November 19, 2012; and November 27, 2012 from Port of Los Angeles and Port of Long Beach to SCAQMD

cc: Al Moro, Acting Executive Director Port of Long Beach
Geraldine Knatz, Executive Director Port of Los Angeles
Dominic Holzhaus, Principal Deputy City Attorney City of Long Beach
Joy Crose, Assistant General Counsel City of Los Angeles, Harbor Division
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Randall Pasek, Planning and Rules Manager, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Cynthia Marvin, Division Chief, California Air Resources Board
Elizabeth Adams, Deputy Director, U.S. Environmental Protection Agency, Region 9

ATTACHMENT 8.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

November 27, 2012

Ms. Susan Nakamura
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Ports' Comments on South Coast Air Quality Management District (AQMD) Revisions to Measure IND-01 in Draft 2012 Air Quality Management Plan

Dear Ms. Nakamura:

Thank you for the AQMD's proposed revisions to Measure IND-01, "Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities" (IND-01) in the Draft 2012 Air Quality Management Plan (AQMP). We appreciate that efforts were made by AQMD staff to address the concerns that the ports of Long Beach and Los Angeles (Ports) have raised in our various comments letters on the AQMP and in our meeting on November 15, 2012 among the Ports' staff, AQMD staff and AQMD Boardmember Judy Mitchell.

However, the ports are disappointed that the fundamental structure of Measure IND-01, to treat the ports as "stationary sources" and "indirect sources," and convert the ports' voluntary Clean Air Action Plan into enforceable regulation by AQMD, was not altered in any respect. The ports do not own or operate any of the targeted equipment, and the ports are not regulatory agencies. The ports can't accept any regulatory action by the AQMD that will result in AQMD oversight and approvals of port actions, or enforcement actions by AQMD on the ports for failure of the port industry to meet the ports' emission reduction goals. Therefore the Ports continue to object to Measure IND-01's inclusion and request that it be removed from the AQMP. Measure IND-01 contains the fatal flaw of defining the ports as stationary and indirect sources responsible for the emissions from equipment they do not regulate, own, or control. We also believe that this measure is beyond AQMD's authority.

We reiterate our prior requests that AQMD reconsider its approach and allow the continuation of the successful collaborative work by the ports, regulatory agencies and other stakeholders under the voluntary Clean Air Action Plan and San Pedro Bay Standards. Moving forward with Measure IND-01 in this current draft form will actually reduce rather than improve the future success of programs, since conversion of voluntary plans into regulation will reduce voluntary

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

cooperation by the industry with port programs, and will eliminate the ability of the ports, agencies and industry emissions sources to obtain grants to accelerate emission reductions from port industry equipment.

Thank you for your continued attention to this matter and we hope that we can continue with the successful, cooperative partnership that we have built over the past seven years.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

HAT:s

cc: AQMD Boardmember Judy Mitchell
Barry Wallerstein, South Coast Air Quality Management District
Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Chris Lytle, Port of Long Beach
Robert Kanter, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Geraldine Knatz, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 9.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

November 19, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Ports' Proposed Revision and Resolution Language for the Draft 2012 Air Quality Management Plan

Dear Dr. Wallerstein:

On November 15, 2012, staff from the ports of Long Beach and Los Angeles met with AQMD Boardmember Judy Mitchell and AQMD staff to discuss concerns and comments that have been raised by the ports in previous comment letters on the Draft 2012 Air Quality Management Plan (AQMP). At the conclusion of the meeting, it was determined that staff would continue to work together to attempt to resolve the concerns that have been raised.

In that spirit, the ports of Long Beach and Los Angeles propose the following revisions to the 2012 AQMP, consistent with our past comment letters to AQMD:

1. Measure IND-01 must be removed from the 2012 Air Quality Management Plan if it continues to apply or recommend any form of AQMD oversight and approvals of the ports' actions, or enforcement (in terms of fines, penalties, administrative actions) against the Ports for failures of the Port industry to achieve designated emissions reductions. This includes the intent to develop such enforcement actions in later IND-01 rulemaking after adoption of the AQMP, even if such details regarding enforcement activity are absent from the draft AQMP.

2. With the removal of the Measure IND-01, the following language could be added to the adopting resolution for the 2012 Air Quality Management Plan:

   BE IT FURTHER RESOLVED, the District commits to continue working with the Port of Long Beach and the Port of Los Angeles on the implementation of the San Pedro Bay Ports Clean Air Action Plan (CAAP) in order to meet the emission reduction goals identified in the San Pedro Bay Standards, and as a part of the annual report to the Board, District staff will continue to provide information on the progress of the ports in implementing the CAAP.

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BE IT FURTHER RESOLVED, if the ports do not demonstrate sufficient progress for achieving the San Pedro Bay Standards, the District will work with the ports, the other air quality regulatory agencies, and port industry emission sources that are stakeholders under the CAAP, to identify additional feasible strategies for implementation within the ports' jurisdiction.

We look forward to discussing these recommendations with you.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

HAT:s

cc: AQMD Boardmember Judy Mitchell
Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Susan Nakamura, South Coast Air Quality Management District
Robert Kanter, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 10.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

November 8, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Dear Dr. Wallerstein:

SUBJECT: COMMENTS ON THE DRAFT SOCIOECONOMIC REPORT FOR THE DRAFT 2012 AIR QUALITY MANAGEMENT PLAN

The ports of Los Angeles and Long Beach (Ports) appreciate the opportunity to comment on the South Coast Air Quality Management District's (AQMD) Draft Socioeconomic Report for the Draft 2012 Air Quality Management Plan (AQMP).

The Draft Socioeconomic Report states that "District staff performs a socioeconomic analysis of the Draft Plan in order to further inform public discussions and the decision making process of the Draft Plan." However, the Draft Socioeconomic Report shows that no cost data have been developed for Measure IND-01 – Backstop Measures for Indirect Sources of Emissions from the Ports and Port-Related Sources, despite the fact that there are real and significant costs to the Port industry to implement the emission controls that could result from the proposed Backstop Measure. Presentation of this measure to AQMD's Board, as well as the public, is incomplete without an associated socioeconomic analysis. Potential regulation of the Port could have a very significant economic effect on the region that AQMD does not address, and therefore the Ports believe that it is inappropriate to move forward with inclusion of this measure in the Draft AQMP without a full socioeconomic analysis.

By not including a socioeconomic analysis of Measure IND-01, the AQMD is completely ignoring the economic importance of the Ports. The Ports are a major economic engine for the region and nation, and port-related industry generates $5.1 billion and $21.5 billion in state and federal tax revenue, respectively. The Ports account for over 1.1 million jobs in California and 3.3 million jobs in the United States. Additionally, for every one job created by a Port customer, nearly 1.7 additional jobs are created elsewhere in the region.

Even just the potential of additional regulation of the Ports brings with it a significant uncertainty for the Port industry that may result in the diversion of goods to other ports outside of this region. There are more environmental requirements on the Port industry operating in this region than anywhere else in the world. The threat of additional regulatory requirements, especially when no details have been provided as to what those requirements would be, results in significant concerns for these operators and a significant potential for loss of regional economic benefits due to diversion. The Draft Socioeconomic Report fails to analyze this potential impact.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

Additionally, AQMD has indicated that Measure IND-01 does not have a socioeconomic analysis associated with it because there are no emission reductions associated/committed with this measure. As noted in our comment letter on the Draft AQMP dated August 30, 2012, Section 39602 of the California Health and Safety Code states that, the State Implementation Plan (SIP) shall only include those provisions necessary to meet the requirements of the Clean Air Act. Hence, there is no identified need or legal basis for implementing Measure IND-01. AQMD's proposed measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

Finally, as stated in our letter dated October 31, 2012, Measure IND-01 should not move forward because the AQMP makes a commitment to implement it before AQMD has developed or released details of its intended compliance actions against the Ports, or the socioeconomic and other analyses for such actions. Failing to disclose the AQMD's intended actions against the Ports violates due process, depriving the public and the Ports of the opportunity to adequately review and comment on this measure prior to finalizing the AQMP.

For the reasons listed above and those presented in our previous letters, the Ports reiterate our consistent position that Measure IND-01 should be eliminated from the AQMP. Further, we continue to believe that the successful, collaborative approach established by the Ports and the regulatory agencies remains the best mechanism for identifying and implementing strategies to reduce emissions from Port-related sources.

Sincerely,

CHRISTOPHER CANNON
Director of Environmental Management
Port of Los Angeles

RICHARD D. CAMERON
Director of Environmental Planning
Port of Long Beach

CC:CLP:KM:LW:myd
ADP No.: 061024-605

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Robert Kanter, Port of Long Beach
Mike Christensen, City of Los Angeles Harbor Department, Deputy Executive Director
Dominic Holzhaus, City of Long Beach, Deputy City Attorney
Joy Crose, City of Los Angeles Harbor Department, General Counsel

ATTACHMENT 11.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

October 31, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Supplemental Comments on the Revised Draft 2012 Air Quality Management Plan

Dear Dr. Wallerstein:

The Port of Long Beach and Port of Los Angeles (ports) are submitting this comment letter to add to comments previously submitted on August 30, 2012.

As members of the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) Advisory Committee, the ports have worked with AQMD staff to provide comments on the draft plan, including the emissions data being used. Included in this effort, ports' staff provided the 2008 base year emissions inventories for the port sources based on the most recent methodologies agreed upon by the Technical Working Group (TWG) in the ports' 2011 air emissions inventories.

As noted in the Draft AQMP, *"An effective AQMP relies on an adequate emission inventory."* Discrepancies exist between the emissions inventories prepared by the ports and the inventory prepared by the AQMD. The emissions shown in the Draft 2012 AQMP are different from those prepared by the ports in cooperation with the AQMD, California Air Resources Board, and Environmental Protection Agency, during development of the San Pedro Bay Standards. If the AQMD's emissions projections for achieving attainment are incorrect, the concerns expressed in our August 30 comments are greatly increased. The emissions projections drive both the Measure IND-01 analysis and the PM2.5 analysis. The basis for the Draft 2012 AQMP emissions projections is impossible to determine, because the assumptions and methodologies (including control factors and growth factors) are not disclosed.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

Additionally, it concerns the ports that the AQMP has made a commitment to Measure IND-01 before AQMD has released details of its intended implementation actions against the ports, or the socioeconomic and other analyses for such actions. Elaine Chang admitted at the AQMD's October 24, 2012, meeting that it is unknown what a port compliance plan would include and that AQMD would develop it during a future rulemaking process. This violates due process, to commit to implement an AQMP measure without disclosing what AQMD's actions against the ports will be under the backstop measure, as it deprives the public and the ports of the opportunity to review and comment to influence the decision, prior to committing to it in the AQMP.

This further demonstrates that the collaborative process established by the ports and the air quality regulatory agencies remains the most appropriate forum to identify and implement strategies to reduce emissions from port-related sources.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

AT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
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Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Robert Kanter, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 12.

October 22, 2012

Jeff Inabinet
c/o Office of Planning, Rule Development, and Area Sources/CEQA Facilities
South Coast Air Quality Management District Development and Planning Branch
21865 Copley Drive
Diamond Bar, CA 91765-4182

Subject: Draft 2012 AQMP Program Environmental Impact Report

Dear Mr. Inabinet:

The Port of Long Beach (POLB) and Port of Los Angeles (POLA) appreciate the opportunity to comment on the Draft Program Environmental Impact Report (Draft EIR) developed for the 2012 Air Quality Management Program (AQMP). The ports appreciate that AQMD staff took steps to address the scoping comments provided by the ports, specifically the inclusion of a transportation and traffic impact analysis as part of the Draft EIR.

However, the ports must reiterate their concerns relating to AQMP Control Measure IND-01 (Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources). As the AQMD knows from prior comment letters submitted by the ports (please see AQMP comment letters dated August 30, 2012; July 10, 2012; and May 4, 2010), the ports believe that Measure IND-01 exceeds the AQMD's authority and should not be included in the AQMP for the reasons set forth in the referenced letters.

Measure IND-01 also contains various flaws which contribute to the inadequacy of the Draft EIR and failure to comply with the California Environmental Quality Act (CEQA). First, Measure IND-01, as described in the project description of the Draft EIR and in the AQMP itself, is unconstitutionally vague and lacks sufficient description of exactly what it proposes to impose on the ports or substantial evidence in support. The Draft EIR's failure to describe the project fully makes it impossible for AQMD, the ports, or the public to assess its 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. Because of the importance and consequences of the AQMP to the State of California's State Implementation Plan (SIP) if adopted by California Air Resources Board (ARB), and to the Federal Clean Air Act enforcement if approved by the U.S. Environmental Protection Agency (EPA), the AQMD is required to fully disclose the details of Measure IND-01 before adoption, and CEQA requires a full disclosure and discussion, which AQMD has failed to do.

Second, to the extent the AQMD intends to approve the Draft EIR and AQMP containing the vague current version of Measure IND-01, and later, as a part of future rulemaking, provide details regarding its proposed actions against the ports including an environmental assessment, that would be segmentation or piecemealing of its CEQA analysis.

Third, Measure IND-01 has serious problems of infeasibility which the Draft EIR has failed to analyze at all. Measure IND-01 in effect attempts to convert the ports' various aspirational goals, set forth in their voluntary Clean Air Action Plan (CAAP), into enforceable regulation against the ports. However, the CAAP goals depend upon future technology advancement which has not yet occurred, all of which are beyond the control of the ports. Therefore, there are technology feasibility issues with the AQMD making the ports' goals into required emissions limits. Further, as the ports are not air regulators and they do not themselves own, operate, or control the emissions equipment operated by the port industry, there are legal feasibility questions over the ports' ability to exercise authority to carry out the actions of Measure IND-01. There are also serious legal feasibility questions including federal preemption asserted by railroads in connection with locomotive specifications and rail operations, and international preemption asserted over ocean vessels. The Draft EIR is flawed in its failure to discuss these infeasibility issues, and had it done so, it would lead to the conclusion that Measure IND-01 should be removed from the AQMP.

Fourth, the AQMD has concluded in the air quality analysis that specific measures associated with Measure IND-01 "are unknown, and therefore the impacts are speculative," (see page 4.2-7 of Draft EIR). This is yet another reason why the Draft EIR is flawed. CEQA Guidelines Section 15145 specifies that if, after thorough investigation, a Lead Agency finds that a particular impact is too speculative for evaluation the agency should note its conclusion and terminate discussion of the impact. Instead, the AQMD proceeded to analyze secondary impacts to air quality that are based on speculative assumptions regarding construction emissions, energy demand, and operations.

Lastly, to the extent that Measure IND-01 proposes to impose upon the ports a form of enforcement for port industry's failure to meet the CAAP's target emissions reduction goals, when the ports do not own, operate, or control the emissions sources, it violates constitutional limitations requiring that exactions imposed on a party must be proportional to the party's contribution, when it fails to include all parties involved in the CAAP, including the actual emissions sources.

Given these deficiencies and speculation under CEQA and with the AQMP rulemaking, Measure IND-01 should be removed from the final EIR and the AQMP, and the analysis should be revised accordingly. With this change, the ports can support the revised AQMP and can continue to work with AQMD, other agencies, and the port industry in the collaborative manner that has made the ports' voluntary CAAP a success.

Thank you for considering the above comments. If you have any questions, please contact Dylan Porter, Port of Long Beach, at (562) 283-7100 or Lisa Wunder, Port of Los Angeles, at (310) 732-7688.

Sincerely,

Richard D. Cameron
Director of Environmental Planning, Port of Long Beach

Christopher Cannon
Director of Environmental Management, Port of Los Angeles

DP:s

cc: Elaine Chang, South Coast Air Quality Management District
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 13.

August 30, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Comments on the Draft 2012 Air Quality Management Plan

Dear Dr. Wallerstein:

The Port of Long Beach and Port of Los Angeles (Ports) appreciate the opportunity to serve on the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) Advisory Committee. We support the AQMD's clean air goals and have a proven leadership record of developing and implementing appropriate and effective strategies that have resulted in the port-related goods movement industry's achievement of real and dramatic emissions reductions. Although the Ports do not own or control the emission sources, the Ports have worked cooperatively with business operators in the port area and the air quality regulatory agencies (i.e. Environmental Protection Agency, California Air Resources Board, and AQMD) to help the port industry reduce its fair share of air quality impacts to the region from port-related operations, as outlined in the San Pedro Bay Ports Clean Air Action Plan (CAAP) and the associated San Pedro Bay Standards. As a result, between 2005 and 2011 emissions from port-related sources were reduced by 73 percent for diesel particulate matter (DPM) and by 50 percent for nitrogen oxides (NOx). The Ports' San Pedro Bay Standards for 2014 established goals to reduce port-related DPM by 72 percent and NOx by 22 percent. Therefore, as a result of implementation of aggressive actions by the port industry, port-related emission reductions have exceeded our goals several years ahead of schedule.

While we remain a committed partner in the effort to improve air quality in the region, we have significant concerns with several proposed control measures in the Draft 2012 AQMP that improperly misclassify the Ports as "stationary sources" or "indirect sources" under AQMP Stationary Source measures, or as "implementing agencies" of specific AQMP mobile source measures. In particular, the proposed Stationary Source Measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources" contains many legal flaws, as explained in greater detail below, and inappropriately proposes to impose enforcement actions on the Ports for emissions generated by emissions sources that the Ports do not own,

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

operate, or control, which is counterproductive to the cooperative relationship that our agencies have established since we began working together on the voluntary CAAP in 2006.

This letter provides the Ports' specific comments on the control measures in the Draft 2012 AQMP that we believe must be addressed prior to finalization and adoption by your agency.

Proposed Stationary Source Measure IND-01

There are three fundamental problems with Proposed Measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources." First, the proposed backstop rule would transform the Ports' voluntary CAAP into the AQMD's mandatory regulation of the Ports. This would jeopardize the Ports and the Port-related emissions sources' grant funding for equipment replacement and modernization if it is now necessary to comply with regulation, while offering nothing to assist the Ports with compliance in terms of additional technologies, facilitating regulations, tools, or funding. Second, although the CAAP was a voluntary cooperative effort of the Ports and the air agencies designed to encourage the industry operators of regulated equipment to go beyond regulation, the proposed backstop rule would improperly subject the Ports to the AQMD's enforcement action for industry's missed emissions reductions by equipment not operated or controlled by the Ports, or even potential loss of federal funding under federal conformity principles if the AQMP is adopted into the State Implementation Plan (SIP) and approved by the U.S. EPA as federal law. Third, the proposed backstop rule exceeds the AQMD's authority and if implemented may violate the State Tidelands Trust. If Measure IND-01 (as well as the Offroad Mobile Source Measures discussed below) are in reality the AQMD's regulation of Port-related mobile emissions sources such as locomotives, ships, rail, and trucks, then this is beyond AQMD's legal authority and AQMD should obtain a waiver under the Clean Air Act from the U.S. EPA. The Ports provide further detailed comments on Proposed Measure IND-01 below, and object to it being included in the 2012 AQMP.

Based upon the AQMD's modeling results, existing control measures are expected to result in attainment of the Federal 24-hour PM2.5 standard by the 2014 deadline without Measure IND-01. Section 39602 of the California Health and Safety Code states that the State Implementation Plan (SIP) shall only include those provisions necessary to meet the requirements of the Clean Air Act. Hence, there is no identified need or legal basis for implementing Measure IND-01. The AQMD's proposed measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

The Ports are neither "direct emissions sources" nor "stationary sources" subject to AQMD permitting, and the AQMD has not complied with requirements for regulation under Health and Safety Code. The Ports are also not "indirect sources" subject to an AQMD indirect source review program within the meaning of the Clean Air Act, and the AQMD has not complied with requirements of the Clean Air Act, 42 U.S.C. §7410 and various other requirements for indirect source classification. The Ports are also not air agency regulators. The Ports do not own, operate, regulate, or control any of the goods movement equipment serving the Ports that are

targeted emissions sources under Measure IND-01. Additionally, the equipment are mobile sources regulated by state, federal, and/or international regulation, sometimes under jurisdiction preempting Port or AQMD action. It is inappropriate for the AQMD to regulate the Ports without the Ports' ownership, operation, or jurisdiction to regulate the various industry businesses actually causing the emissions within our boundaries.

The proposed backstop measure continues to state that if there is a South Coast Air Basin-wide shortfall in emission reductions, then the AQMD will mandate additional emission reductions from the Ports, even if the port-related sources have already met their commitments. This moving target standard is unconstitutionally vague and therefore illegal. The Ports are unfairly targeted, as there are no backstop measures proposed for other entities or source categories should other modeling assumptions not come to pass, such as anticipated natural fleet turnover, or other non-regulated initiatives failing to meet their goals, such as those expected by the Carl Moyer Program. If the AQMD's emissions projections for achieving attainment are incorrect, including control factors and growth rates, this measure appears to imply that the Ports will be specifically tasked with rectifying the shortfall. If the Basin fails to achieve the federal air quality standard, the proper channel to address this is through the established SIP process, not to establish a contingency rule to unfairly burden one specific industry out of the entire Basin.

AQMD staff has indicated that Measure IND-01 is proposed to account for measures that are not backed by enforceable requirements. However, significant programs such as the CAAP's Clean Truck Program, Ocean-going Vessel Low Sulfur Fuel Program, Cargo-handling Equipment requirements, and the Shore-side Power/Alternative Maritime Power programs are currently backstopped by CARB and International Maritime Organization (IMO) regulations. The Ports also require higher rates of vessel or equipment compliance than regulation through terminal leases, when such commercial opportunities are able to be negotiated with tenants. Therefore, Proposed Measure IND-01 is unnecessary.

Measure IND-01 is vague and incomplete. It is unclear whether the AQMD has taken credit for actual/current emission reductions in the baseline only, or if assumptions have been made for future year reductions. We take issue with a measure moving forward where emissions projections are "on-going." Further, no detail is provided on the level of emission reductions that are needing to be maintained. This is further complicated by the differences that exist between the emissions inventories produced by the Ports and the inventory used for the AQMP. It is unclear if a specific emission reduction shortfall will trigger implementation of the measure, or if it is simply left to the discretion of the AQMD. Additionally, the control costs have not yet been developed or justified in a cost-benefit analysis.

The CAAP is a planning document that provides a guideline of strategies and targets that are often "stretch goals," which ultimately are implemented through individual actions adopted by the Long Beach and Los Angeles Boards of Harbor Commissioners (Boards). The Ports are sovereign Tidelands granted to the cities of Los Angeles and Long Beach by the state under the oversight of the State Lands Commission. Each city has been appointed as a trustee and has established their respective Board of Harbor Commissioners with exclusive control and management of the Tidelands and revenues and expenditures from the Tidelands. However,

such discretion must be exercised in accordance with their obligations to prudently manage Tidelands assets and revenues within a nexus and proportionality to the Tidelands Trust interests, as well as in accordance with applicable laws such as the California Environmental Quality Act (CEQA) and principles of federal preemption.[1] The AQMD cannot mandate action by each Port's Board of Harbor Commissioners, nor can the AQMD direct how the Ports obligate state Tidelands money; only the appointed trustee can make discretionary actions to obligate state Tidelands funds. Specifically, the CAAP measures listed in the Draft 2012 AQMP each require the Boards to authorize the expenditure of incentive monies and program costs, or to approve conditions of infrastructure project development in their discretion as CEQA lead agency and as Tidelands trustees.

We strongly believe that the voluntary and cooperative CAAP process established by the Ports remains the most appropriate forum for the Ports and the air regulatory agencies to discuss technical and policy issues related to reducing emissions from port-related sources. As stated above, we remain committed to achieving the clean air goals identified in the CAAP and working with port industry and the air regulatory agencies on implementation of appropriate strategies.

For your reference, attached is our comment letter dated July 10, 2012, expressing our preliminary concerns related to the proposed Measure IND-01 and a comment letter dated May 4, 2010, in which the Ports initially expressed concerns regarding backstop rules.

Proposed Off-Road Mobile Source and Advanced Control Technology Measures

The Draft 2012 AQMP also identifies the San Pedro Bay Ports as "Implementing Agencies" for several of the proposed Off-Road measures (OFFRD-02, OFFRD-04, and OFFRD-05) and Advanced Control Technology measures (ADV-01, ADV-02, ADV-03, ADV-04, and ADV-05). The Ports should not be listed as Implementing Agencies, which the AQMP Appendix IV-A defines as "the agency(ies) responsible for implementing the control measure." While the Ports have been moving forward with voluntary efforts in these areas, as mentioned above, the Ports are not air agency regulators. We also do not own or operate the equipment identified in the proposed measures, and therefore we do not have direct control over any of the sources listed. During the Advisory Committee meetings, AQMD staff has provided clarification that the Ports are listed as Implementing Agencies because of our voluntary commitments to work on these

[1] The Ports' experience with the first phase of the 2006-2010 CAAP showed that in actual implementation, many CAAP measures were carried out in a different manner than originally conceptualized, or not carried out at all, based on limitations on the Boards' opportunities and their exercise of their discretion to manage Tidelands assets and funds under real-world circumstances. Some of the CAAP measures can only be implemented if businesses apply to the Ports for permits to build or expand their lease premises and CEQA mitigation required by law or lease conditions that can be negotiated with a Port tenant. Other CAAP measures involve emissions sources (rail or ocean vessels) that may assert federal preemption against efforts to compel use of specific technology, so the CAAP goals involve the Ports offering economic incentives in voluntary compliance programs, such as the Ocean Vessel incentive programs. However, only the Boards have the legal authority to fund such incentives or impose CEQA mitigation or lease conditions to project approval, which decisions also fall within the Boards' sole discretion regarding their respective Port's properties and their individual Harbor Revenue Fund budgets, which may be affected by the global economy.

efforts, and that being listed as an implementation agency does not obligate the Ports to any specific requirement, however, this is contrary to the language of the AQMP that implementing agencies are "responsible for implementing the control measure." We believe that listing the Ports, and not including all of the other public and private partners that are also working on these efforts, gives the impression that the Ports do have an assigned obligation, or that the Ports must bear a larger burden in the effort to implement these programs. We also repeat our comment stated above that the AQMD cannot mandate in the AQMP that the Ports must expend monies in these voluntary efforts, since most of these Off-Road and Advanced Control Technology measures require incentive monies to fund demonstration projects or accelerated use of new technology.

We believe that the appropriate Implementing Agencies for these measures are the United States Environmental Protection Agency and the California Air Resources Board.

The Ports urge AQMD to make all of the above-requested changes to the draft 2012 AQMP, in particular, to eliminate Measure IND-01 Port Backstop Rule as a legally unnecessary measure exceeding AQMD's authority and violating the State Tidelands Trust. We believe it is much more effective to advance our mutual clean air goals for our agencies to continue working cooperatively together, but if the AQMD takes the above 2012 AQMP measures forward, the Ports will have no choice but to vigorously oppose such action through the administrative and legal process.

Sincerely,

Chris Lytle
Executive Director
Port of Long Beach

Geraldine Knatz
Executive Director
Port of Los Angeles

HAT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Susan Nakamura, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Port of Long Beach Harbor Commission
Port of Los Angeles Harbor Commission
Robert Kanter, Port of Long Beach
Rick Cameron, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Chris Cannon, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles
David Reich, Los Angeles City Mayor's Office

ATTACHMENT 14.

July 10, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Initial Comments on the Proposed 2012 Air Quality Management Plan, Control Measure IND-01

Dear Dr. Wallerstein:

The Port of Long Beach and Port of Los Angeles (Ports) appreciate the opportunity to participate in the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) Advisory Committee. We support the AQMD's clean air goals and have worked aggressively with the port industry to reduce our fair share of air quality impacts to the region from port-related operations, as outlined in the San Pedro Bay Ports Clean Air Action Plan (CAAP) and the associated San Pedro Bay Standards. As a result, between 2005 and 2010, emissions from port-related sources were reduced by 70 percent for diesel particulate matter and by 49 percent for nitrogen oxides. Emissions inventory work currently underway indicates additional, continued emission reductions in 2011.

While we continue to remain a committed partner in the effort to improve air quality in the region, we disagree with AQMD's proposed control strategy for port-related sources in the Draft 2012 AQMP. The inclusion of proposed measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources," is unnecessary and counter-productive.

The two Ports have a proven track record of developing and implementing appropriate and effective emission reduction strategies. These efforts have been entered into voluntarily, working cooperatively with operators in the port area and the air quality regulatory agencies (i.e. Environmental Protection Agency, California Air Resources Board and AQMD). Since the Ports initially implemented the CAAP, many of the port-related control strategies have been or will be superseded by state or international requirements, such as the rules for replacing drayage trucks, switching to cleaner marine fuels, and using shore power while at berth. The Ports' emissions inventories in 2010 show reductions that are meeting or are in excess of the emission reductions that the Ports committed to in the San Pedro Bay Standards. However, it is important to note that in order to remain on track to meet the Standards, a collaborative and concerted effort with our agency partners is essential, with the understanding that while the Ports can achieve significant emission

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

reductions, no single entity can accomplish this task. The previous State Implementation Plan identified several regulatory strategies that have not yet materialized into regulations for various reasons. Moving forward, the Ports will need agency assistance, particularly on the development and deployment of zero-emission technologies and at-berth controls for non-regulated vessels, as well as on the preferential deployment of cleaner vessels to the basin.

The Ports are sustaining and growing long-standing successful CAAP programs, such as the Vessel Speed Reduction Incentive Program and, on July 1, 2012, the Ports implemented new, groundbreaking incentive programs to encourage cleaner ocean-going vessels to call at the Ports. With programs such as these, along with the above-referenced regulatory rules becoming effective and ensuring significant additional emission reductions by 2014, there is no identified need for implementing a backstop measure. The AQMD's proposed backstop measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

It is inappropriate for the AQMD to attempt to regulate the Ports, which are the Harbor Departments of the cities of Long Beach and Los Angeles, in an attempt to control emissions from equipment within our boundaries, but which we do not own or operate. Further, the proposed backstop measure identifies that the "…requirements will be triggered if the reported emissions for 2014 for port-related sources exceed the 2014 target milestone, *or the Basin fails to meet the 24-hour PM2.5 standard as demonstrated in the 2012 AQMP and basin-wide reductions are needed, in which case a new reduction target for each pollutant will be established*." (emphasis added). While clarification has been provided by AQMD staff that any effort to make up for a basin-wide shortfall will be the responsibility of all sectors, not just the Ports, this statement still implies that if the port industry meets their targeted emission reductions, but other sectors fail to meet their fair share obligations, then the AQMD will mandate additional reductions from the Ports. This is counter to the cooperative relationship that our agencies have established since we began working together on the CAAP in 2006, and ignores the tremendous air quality benefits that have been gained from voluntary actions.

Lastly, based on the preliminary calculations by AQMD, the majority of the region is expected to be in attainment for PM2.5 by the target year of 2014, with the remainder anticipated to be in attainment by the expected extension date of 2019. The inclusion of IND-01 is therefore unnecessary for the region to reach attainment. If these emission reductions are needed in the baseline emissions calculation, there is precedent for mechanisms other than control measures to be used for this purpose, and we would like to discuss those options with your staff.

We strongly believe that the voluntary and cooperative CAAP process established by the Ports remains the most appropriate forum for the Ports and the air regulatory agencies to discuss technical and policy issues related to reducing emissions from port-related sources. As stated above, we remain committed to achieving our fair share of clean air goals identified in the CAAP and working with port industry and the air regulatory agencies on implementation of appropriate strategies.

For your reference, attached is a comment letter dated May 4, 2010, in which the Ports initially expressed concerns regarding backstop rules. The letter was submitted as a public comment on the proposed Rules 4010 and 4020, which were proposed backstop rules for health risk and criteria pollutant emissions.

We look forward to working with AQMD on resolving our concerns related to the proposed backstop measure in the Draft 2012 AQMP.

Sincerely,

CHRIS LYTLE
Executive Director
Port of Long Beach

MICHAEL R. CHRISTENSEN
Deputy Executive Director, Development
Port of Los Angeles

HAT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Susan Nakamura, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Robert Kanter, Port of Long Beach
Rick Cameron, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Chris Cannon, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 15.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

San Pedro Bay Ports Clean Air Action Plan

May 4, 2010

Susan Nakamura
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Subject: AQMD Proposed Rules 4010 and 4020

Dear Ms. Nakamura:

This letter is on behalf of the Ports of Long Beach and Los Angeles (Ports) as a preliminary response to the "backstop" Rules 4010 and 4020 (Proposed Rules) proposed by the South Coast Air Quality Management District (AQMD). As will be explained below, based upon the limited amount of information released by the AQMD about the Proposed Rules thus far, the Ports have a number of preliminary questions and concerns at this stage of the first public consultation meeting and will be providing more detailed comments on the Proposed Rules at a later stage.

The Ports have had tremendous success with implementing the San Pedro Bay Port Clean Air Action Plan (CAAP). The development of the original CAAP and the update to the CAAP has been conducted through a cooperative effort with staff from the AQMD, the United States Environmental Protection Agency (EPA), and the California Air Resources Board (CARB). The Ports strongly believe that this partnership of over four years, and the collaboration that has occurred throughout that time, have aided in the success of the CAAP and the emissions reductions that have been achieved.

Since the CAAP was adopted in late 2006, the Ports have exceeded our interim emissions reductions milestones and are well on our way to meeting the original forecasted emissions reductions of at least 45% by 2011, compared to uncontrolled conditions. This has been accomplished through the steadfast implementation of CAAP measures, highlighted as follows:

- Development, approval, and implementation of the Clean Trucks Program in which two major milestones have been achieved resulting in truck pollution reductions of nearly 80% (January 2010), almost two years ahead of schedule (HDV1).
  - October 2008: ban pre-1989 trucks.
  - January 2010: ban pre-1993 trucks; 1994-2003 trucks require Level 3 plus NO_x retrofit.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

- Facilitated construction of an LNG on-road truck fueling station in the port area. Fueling operations have been underway since early 2009. In addition the Ports have contributed to funding the construction of two additional LNG on-road truck fueling stations in the Port area, due to open later in 2010 (HDV2).
- Over $6.5 million in incentives for vessels participating in the voluntary Vessel Speed Reduction Program and Vessel Fuel Incentive Program (OGV1, OGV4).
- Design, construction, and operation of shore power infrastructure completed at 5 berths and underway for over 40 additional berths (OGV2).
- Replaced entire fleet of port switching locomotives with new, cleaner locomotives in 2008, and a subsequent fleet turnover to cleaner locomotives anticipated by end of 2011 (RL1).
- Provided funding of $5.4 million toward projects through our Technology Advancement Program, conducted with input from an Advisory Committee consisting of AQMD, EPA, and CARB.
- The Ports' 2008 Emissions Inventories show combined emission reductions of 20% diesel particulate matter (DPM), 10% nitrogen oxides (NOx) and 24% sulfur oxides (SOx) compared to the 2005 baseline. The 2009 Emissions Inventories, which are expected to be finalized and published in June, will show an even greater level of emission reductions as additional CAAP efforts have come into effect.

In addition to the implementation efforts listed above, the Ports have also worked in coordination with CARB and EPA on development of rules and regulations affecting port sources. These regulatory requirements have helped to ensure that emissions reductions from specific equipment types operating at the Ports will continue into the future. The Ports look forward to continuing these cooperative efforts on regulatory development with CARB and EPA, with the support of AQMD, to ensure that the early action measures being taken by the Ports are supported and implemented more broadly.

Further, as you are aware, the Ports recently released our draft CAAP Update, where we revisited and updated each of the control measures and proposed aggressive, long-term goals for emissions reductions and health risk reductions, titled the San Pedro Bay Standards. Once the CAAP Update is adopted, the Ports will quantitatively measure our progress against these long-term goals and will make adjustments to our implementation efforts over time as necessary to ensure that we remain on track for achieving these goals.

With these demonstrated results carried out voluntarily, and further efforts underway, the Ports regard the AQMD's proposed Rules 4010 and 4020 as unnecessary, and raise several questions regarding the Proposed Rules and the rulemaking process. Below is a list of preliminary questions to help us gain a better understanding of the AQMD's proposed approach:

Emissions and Health Risk Reduction Targets

Proposed Rule 4020 Sections (d) (1) and (2) will include targets for criteria pollutant and health risk reductions to be met by the Ports to avoid triggering the backstop provisions. The Ports have the following concerns and questions regarding the targets:

1. How were the targets developed? In June 2007, the Ports provided AQMD with detailed comments and concerns regarding the methodology and the specific port-related emission reduction targets contained in the 2007 Air Quality Management Plan (AQMP). CARB declined to adopt the port targets into the 2007 State Implementation Plan (SIP). In the AQMD Governing Board's resolution adopting the 2007 AQMP, it committed that AQMD staff would work with the Ports and, based on its technical review, would recommend any appropriate adjustments to the AQMP criteria pollutant targets attributable to the Ports. Although initial coordination efforts have occurred, the AQMD has not completed detailed analyses necessary for the Ports to understand how the AQMP targets and the targets contained in the Proposed Rules have been developed, or to understand how these targets differ from the Emission Reduction Standards contained in the Draft 2010 CAAP Update. We request that the AQMD present the methodology and resulting targets to a Stakeholder Working Group, including the Ports, before progressing further with the rulemaking process. Further, to the extent that the targets in proposed Rule 4020 go beyond the 2007 SIP/AQMP targets to address future regulations that have not yet been adopted, the Ports have even greater concerns.

2. The Emission Reduction Standards contained in the Draft 2010 CAAP Update were developed by the Ports in coordination with the EPA, CARB, and AQMD. Achievement of these Standards will require aggressive implementation of strategies by the Ports and the port operators. Further, the Standards are predicated on a conservative 2007 cargo forecast developed before the recent economic crisis and assume that the Ports reach capacity in 2023. Instead, there has been a significant downturn in cargo volumes from 2008 to present, such that the Ports do not anticipate returning to 2007 cargo throughput levels until 2014-2015, and reaching capacity until approximately 2035. This has reduced the Ports' emissions footprint, as well as potentially reduced the Ports' proportion of basin-wide pollution. Nonetheless, to be conservative and to voluntarily strive to ensure a "fair share" contribution of port-related sources to regional attainment goals, the Ports retained the higher growth forecast in the CAAP. It is important to note that, even with these higher than anticipated rates of future emissions growth, the Ports project DPM reductions greater than 70%, SOx reductions greater than 90%, and NOx reductions of nearly 60% by 2023.

3. The 2007 SIP identified several regulatory and technology strategies to be undertaken by EPA and CARB to contribute to the reduction in port-related emissions. This is consistent with the philosophy that achieving emission reductions from port-related sources must be a cooperative partnership effort, because no one entity can meet the need by itself. Since the 2007 SIP was developed, for various reasons including technical feasibility, technology availability, and cost-effectiveness, several key federal and state regulatory and technology strategies have failed to occur. These include, but are not limited to: commercial availability of Tier 4 line haul and switcher locomotive engines in 2012, implementation of a statewide regulation requiring use of shoreside power for all vessel types while at berth, and implementation of a statewide regulation requiring retrofitting of existing ocean-going vessels and the preferential deployment of progressively cleaner new build vessels to California ports. The Ports are concerned that the emission reductions associated with these proposed EPA and CARB strategies are now being fully assigned to the Ports through the proposed targets in order to make the

SIP "whole," even though the strategies may not be technically feasible and/or cost-effective. Further, as you know, the Ports do not own or operate the emissions sources targeted by this regulation and the Ports may not have implementation mechanisms available within their jurisdiction to implement the controls even if they were deemed feasible and cost-effective.

DISTRICT RULEMAKING PROCESS

The Ports have a number of initial questions geared towards gaining a better understanding of AQMD's intended rulemaking process for the Proposed Rules.

4. As suggested above, will the AQMD form a Stakeholder Working Group, including the Ports, to discuss the AQMD's Proposed Rules and analysis?

5. What is the AQMD's authority for regulating the Ports under the Proposed Rules?

6. The Ports would like to understand what level of CEQA analysis the AQMD is proposing for this rulemaking. Will there be a scoping meeting?

7. When will the AQMD release a Preliminary Draft Staff Report (PDSR)? Given the unprecedented nature and broad technical, practical, regulatory, and legal implications of these Proposed Rules, we believe that the PDSR must be very detailed or the Ports, air agencies, and other stakeholders will not have the information necessary to participate fully in the rule development process. We request that the PDSR include:
    a. Technical analysis of the Proposed Rules, targets, etc.
    b. An analysis of potential Draft Findings required under Health and Safety Code (e.g., Necessity, Authority, Clarity, Consistency, Non-Duplication, and References)
    c. Detailed information on control technologies and programs that the AQMD believes the Ports and affected sources would need to implement to meet the proposed rule reduction requirements.
    d. As part of cost-effectiveness analysis, detailed information on the feasibility, control effectiveness, and costs of these technologies and programs, including who would bear those costs. The AQMD should work with the Ports, their tenants, and others in the goods movement industry to estimate these costs.
    e. A preliminary Socioeconomic Impact Report (SIR) based on input from the Ports, their tenants, and other affected industries. Given the broad implications to the region's economy, the Ports recommend a detailed preliminary SIR be prepared and released with the PDSR.
    f. AQMD's proposal for how it will specifically apply the scheme of fines, penalties, or other enforcement provisions of the Health and Safety Code to the Ports to enforce the Proposed Rules, including providing an understanding of how the enforcement action would be assessed, given that the Ports are two separate and distinct departments of their respective cities.

The Ports look forward to receiving AQMD's responses to these preliminary questions. We will follow up with additional questions and comments later, as more information is provided by AQMD on the proposed rules.

The Ports are committed to achieving aggressive and feasible emissions reductions and health risk reductions from port-related sources, and have already proven that such reductions can be achieved while allowing the Ports to continue to move forward as a strong economic engine for the region. The Ports remain committed to implementing the CAAP and working in cooperation with the agencies and the industry to achieve our goals. We believe the Proposed Rules are unnecessary and that the AQMD should consider alternative mechanisms to achieve the AQMD's goals. We bring to your attention that the Bay Area AQMD initiated a backstop measure but ultimately determined to pursue a Memorandum of Agreement approach for similar work with the Bay Area ports.

If you have any questions regarding this correspondence, please contact Heather Tomley, Assistant Director of Environmental Planning, Port of Long Beach, at (562) 590-4160; or Christopher Patton, Environmental Affairs Officer, Port of Los Angeles, at (310) 732-3677.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Director of Environmental Management
Port of Los Angeles

cc: Dick Steinke, Executive Director, POLB
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Mike Christensen, Deputy Executive Director, POLA
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Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 16.

FINAL 2012 AIR QUALITY MANAGEMENT PLAN

DECEMBER 2012

TABLE 4-2

List of District's Adoption/Implementation Dates and Estimated Emission Reductions from Short-Term PM2.5 Control Measures

NUMBER	TITLE	ADOPTION	IMPLEMENTATION PERIOD	REDUCTION (TPD)
CMB-01	Further NOx Reductions from RECLAIM [NOx] –*Phase I (Contingency)*	2013	2014	2-3 [a]
BCM-01	Further Reductions from Residential Wood Burning Devices [PM2.5]	2013	2013-2014	7.1 [b]
BCM-02	Further Reductions from Open Burning [PM2.5]	2013	2013-2014	4.6 [c]
BCM-03 (*formerly BCM-05*)	Emission Reductions from Under-Fired Charbroilers [PM2.5]	Phase I – 2013 (*Tech Assessment*) Phase II - TBD	TBD	1 [d]
BCM-04	Further Ammonia Reductions from Livestock Waste [NH3]	Phase I – 2013-2014 (*Tech Assessment*) Phase II - TBD	TBD	TBD [e]
~~IND-01 (*formerly MOB-03*)~~	~~Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources [NOx, SOx, PM2.5]~~	~~2013~~	~~12 months after trigger~~	~~N/A~~ [f]
EDU-01 (*formerly MCS-02, MCS-03*)	Further Criteria Pollutant Reductions from Education, Outreach and Incentives [All Pollutants]	Ongoing	Ongoing	N/A [f]
MCS-01 (*formerly MCS-07*)	Application of All Feasible Measures Assessment [All Pollutants]	Ongoing	Ongoing	TBD [e]

a. Emission reductions are included in the SIP as a contingency measure.
b. Winter average day reductions based on episodic conditions and 75 percent compliance rate.
c. Reductions based on episodic day conditions.
d. Will submit into SIP once technically feasible and cost effective options are confirmed.
e. TBD are reductions to be determined once the technical assessment is complete, and inventory and control approach are identified.
f. N/A are reductions that cannot be quantified due to the nature of the measure (e.g., outreach, incentive programs) or if the measure is designed to ensure reductions that have been assumed to occur will in fact occur.

requirements regarding manure removal, handling, and composting; however, the rule does not focus on fresh manure, which is one of the largest dairy sources of ammonia emissions. An assessment will be conducted to evaluate the use of sodium bisulfate (SBS) at local dairies to evaluate the technical and economic feasibility of its application, as well as potential impacts to ground water, and the health and safety of both workers and dairy stock. Reducing pH level in manure through the application of acidulant additives (acidifier), such as SBS, is one of the potential mitigations for ammonia. SBS is currently being considered for use in animal housing areas where high concentrations of fresh manure are located. Research indicates that best results occur when SBS is used on "hot spots". SBS can also be applied to manure stock piles and at fencelines, and upon scraping manure to reduce ammonia spiking from the leftover remnants of manure and urine. SBS application may be required seasonally or episodically during times when high ambient PM2.5 levels are forecast.

Multiple Component Sources

There is one short-term control measure for all feasible measures.

MCS-01: APPLICATION OF ALL FEASIBLE MEASURES ASSESSMENT: This control measure is to address the state law requirement for all feasible measures for ozone. Existing rules and regulations for pollutants such as VOC, NOx, SOx and PM reflect current best available retrofit control technology (BARCT). However, BARCT continually evolves as new technology becomes available that is feasible and cost-effective. Through this proposed control measure, the District would commit to the adoption and implementation of the new retrofit control technology standards. Finally, staff will review actions taken by other air districts for applicability in our region.

Indirect Sources

This category includes a proposed control measure carried over from the 2007 AQMP (formerly MOB-03) that establishes a backstop measure for indirect sources of emissions at ports.

~~**IND-01 BACKSTOP MEASURE FOR INDIRECT SOURCES OF EMISSIONS FROM PORTS AND PORT-RELATED SOURCES:** The goal of this measure is to ensure that NOx, SOx and PM2.5 emissions reductions from port-related sources are sufficient to attain the 24-hr federal PM2.5 ambient air quality~~

~~standard. If emission levels projected to result from the current regulatory requirements and voluntary reduction strategies specified by the Ports are not realized, the 24-hr federal PM2.5 ambient air quality standard may not be achieved. This control measure is designed to ensure that the necessary emission reductions from port-related sources projected in the 2012 AQMP milestone years are achieved or if it is later determined through a SIP amendment that additional region-wide reductions are needed due to the change in Basin-wide carrying capacity for PM2.5 attainment. In this case, the ports will be required to further reduce their emissions on a "fair-share" basis.~~

Educational Programs

There is one proposed educational program within this category.

EDU-01: FURTHER CRITERIA POLLUTANT REDUCTIONS FROM EDUCATION, OUTREACH AND INCENTIVES: This proposed control measure seeks to provide educational outreach and incentives for consumers to contribute to clean air efforts. Examples include the usage of energy efficient products, new lighting technology, "super compliant" coatings, tree planting, and the use of lighter colored roofing and paving materials which reduce energy usage by lowering the ambient temperature. In addition, this proposed measure intends to increase the effectiveness of energy conservation programs through public education and awareness as to the environmental and economic benefits of conservation. Educational and incentive tools to be used include social comparison applications (comparing your personal environmental impacts with other individuals), social media, and public/private partnerships.

PROPOSED PM2.5 CONTINGENCY MEASURES

Pursuant to CAA section 172(c)(9), contingency measures are emission reduction measures that are to be automatically triggered and implemented if an area fails to attain the national ambient air quality standard by the applicable attainment date, or fails to make reasonable further progress (RFP) toward attainment. Further detailed descriptions of contingency requirements can be found in Chapter 6 – Clean Air Act Requirements. As discussed in Chapter 6 and consistent with U.S. EPA guidance, the District is proposing to use excess air quality improvement from the proposed control strategy, as well as potential NOx reductions from CMB-01 listed above, to demonstrate compliance with this federal requirement.

The Final 2012 AQMP relies on a set of five years of particulate data centered on 2008, the base year selected for the emissions inventory development and the anchor year for the future year PM2.5 projections. In July, 2010, U.S. EPA proposed revisions to the 24-hour PM2.5 modeling attainment demonstration guidance. The new guidance suggests using five years of data, but instead of directly using quarterly calculated design values, the procedure requires the top 8 daily PM2.5 concentrations days in each quarter to reconstruct the annual 98th percentile. The logic in the analysis is twofold: by selecting the top 8 values in each quarter the 98th percentile concentration is guaranteed to be included in the calculation. Second, the analysis projects future year concentrations for each of the 32 days in a year (160 days over five years) to test the response of future year 24-hour PM2.5 to the proposed control strategy. Since the 32 days in each year include different meteorological conditions and particulate species profiles it is expected those individual days will respond independently to the projected future year emissions profile and that a new distribution of PM2.5 concentrations will result. Overall, the process is more robust in that the analysis is examining the impact of the control strategy implementation for a total of 160 days, covering a wide variety of potential meteorology and emissions combinations.

Table 5-1 provides the weighted 2008 annual and 24-hour average PM2.5 design values for the Basin.

TABLE 5-1

2008 Weighted 24-Hour PM2.5 Design Values ($\mu g/m^3$)

MONITORING SITE	24-HOURS
Anaheim	35.0
Los Angeles	40.1
Fontana	45.6
North Long Beach	34.4
South Long Beach	33.4
Mira Loma	47.9
Rubidoux	44.1

Relative Response Factors and Future Year Design Values

To bridge the gap between air quality model output evaluation and applicability to the health-based air quality standards, U.S. EPA guidance has proposed the use of relative response factors (RRF). The RRF concept was first used in the 2007 AQMP modeling attainment demonstrations. The RRF is simply a ratio of future year predicted air quality

with the control strategy fully implemented to the simulated air quality in the base year. The mechanics of the attainment demonstration are pollutant and averaging period specific. For 24-hour PM2.5, the top 10 percentile of modeled concentrations in each quarter of the simulation year are used to determine the quarterly RRFs. For the annual average PM2.5, the quarterly average RRFs are used for the future year projections. For the 8-hour average ozone simulations, the aggregated response of multiple episode days to the implementation of the control strategy is used to develop an averaged RRF for projecting a future year design value. Simply stated, the future year design value is estimated by multiplying the non-dimensional RRF by the base year design value. Thus, the simulated improvement in air quality, based on multiple meteorological episodes, is translated as a metric that directly determines compliance in the form of the standard.

The modeling analyses described in this chapter use the RRF and design value approach to demonstrate future year attainment of the standards.

PM2.5 Modeling

Within the Basin, PM2.5 particles are either directly emitted into the atmosphere (primary particles), or are formed through atmospheric chemical reactions from precursor gases (secondary particles). Primary PM2.5 includes road dust, diesel soot, combustion products, and other sources of fine particles. Secondary products, such as sulfates, nitrates, and complex carbon compounds are formed from reactions with oxides of sulfur, oxides of nitrogen, VOCs, and ammonia.

The Final 2012 AQMP employs the CMAQ air quality modeling platform with SAPRC99 chemistry and WRF meteorology as the primary tool used to demonstrate future year attainment of the 24-hour average PM2.5 standard. A detailed discussion of the features of the CMAQ approach is presented in Appendix V. The analysis was also conducted using the CAMx modeling platform using the "one atmosphere" approach comprised of the SAPRC99 gas phased chemistry and a static two-mode particle size aerosol module as the particulate modeling platform. Parallel testing was conducted to evaluate the CMAQ performance against CAMx and the results indicated that the two model/chemistry packages had similar performance. The CAMx results are provided in Appendix V as a component of the weight of evidence discussion.

The Final 2012 modeling attainment demonstrations using the CMAQ (and CAMx) platform were conducted in a vastly expanded modeling domain compared with the analysis conducted for the 2007 AQMP modeling attainment demonstration. In this analysis, the PM2.5 and ozone base and future simulations were modeled simultaneously. The simulations were conducted using a Lambert Conformal grid

projection where the western boundary of the domain was extended to 084 UTM, over 100 miles west of the ports of Los Angeles and Long Beach. The eastern boundary extended beyond the Colorado river while the northern and southern boundaries of the domain extend to the San Joaquin Valley and the Northern portions of Mexico (3543 UTM). The grid size has been reduced from 5 kilometers squared to 4 kilometers squared and the vertical resolution has been increased from 11 to 18 layers.

The final WRF meteorological fields were generated for the identical domain, layer structure and grid size. The WRF simulations were initialized from National Centers for Environmental Prediction (NCEP) analyses and run for 3-day increments with the option for four dimensional data assimilation (FDDA). Horizontal and vertical boundary conditions were designated using a "U.S. EPA clean boundary profile."

PM2.5 data measured as individual species at six-sites in the AQMD air monitoring network during 2008 provided the characterization for evaluation and validation of the CMAQ annual and episodic modeling. The six sites include the historical PM2.5 maximum location (Riverside- Rubidoux), the stations experiencing many of the highest county concentrations (among the 4-county jurisdiction including Fontana, North Long Beach and Anaheim) and source oriented key monitoring sites addressing goods movement (South Long Beach) and mobile source impacts (Central Los Angeles). It is important to note that the close proximity of Mira Loma to Rubidoux and the common in-Basin air flow and transport patterns enable the use of the Rubidoux speciated data as representative of the particulate speciation at Mira Loma. Both sites are directly downwind of the dairy production areas in Chino and the warehouse distribution centers located in the northwestern corner of Riverside County. Speciated data monitored at the selected sites for 2006-2007 and 2009-2010 were analyzed to corroborate the applicability of using the 2008 profiles.

Day-specific point source emissions were extracted from the District stationary source and RECLAIM inventories. Mobile source emissions included weekday, Saturday and Sunday profiles based on CARB's EMFAC2011 emissions model, CALTRANS weigh-in-motion profiles, and vehicle population data and transportation analysis zone (TAZ) data provided by SCAG. The mobile source data and selected area source data were subjected to daily temperature corrections to account for enhanced evaporative emissions on warmer days. Gridded daily biogenic VOC emissions were provided by CARB using BEIGIS biogenic emissions model. The simulations benefited from enhancements made to the emissions inventory including an updated ammonia inventory, improved emissions characterization that split organic compounds into coarse, fine and primary

particulate categories, and updated spatial allocation of primary paved road dust emissions.

Model performance was evaluated against speciated particulate PM2.5 air quality data for ammonium, nitrates, sulfates, secondary organic matter, elemental carbon, primary and total particulate mass for the six monitoring sites (Rubidoux, Central Los Angeles, Anaheim, South Long Beach, Long Beach, and Fontana).

The following section summarizes the PM2.5 modeling approach conducted in preparation for this Plan. Details of the PM2.5 modeling are presented in Appendix V.

24-Hour PM2.5 Modeling Approach

CMAQ simulations were conducted for each day in 2008. The simulations included 8784 consecutive hours from which daily 24-hour average PM2.5 concentrations (0000-2300 hours) were calculated. A set of RRFs were generated for each future year simulation. RRFs were generated for the ammonium ion (NH_4), nitrate ion (NO_3), sulfate ion (SO_4), organic carbon (OC), elemental carbon (EC) and a combined grouping of crustal, sea salts and metals (Others). A total of 24 RRFs were generated for each future year simulation (4 seasons and 6 monitoring sites).

Future year concentrations of the six component species were calculated by applying the model generated quarterly RRFs to the speciated 24-hour PM2.5 (FRM) data, sorted by quarter, for each of the five years used in the design value calculation. The 32 days in each year were then re-ranked to establish a new 98^{th} percentile concentration. The resulting future year 98^{th} percentile concentrations for the five years were subjected to weighted averaging for the attainment demonstration.

In this chapter, future year PM2.5 24-hour average design values are presented for 2014, and 2019 to (1) demonstrate the future baseline concentrations if no further controls are implemented; (2) identify the amount of air quality improvement needed to advance the attainment date to 2014; and (3) confirm the attainment demonstration given the proposed PM2.5 control strategy. In addition, Appendix V will include a discussion and demonstration that attainment will be satisfied for the entire modeling domain.

Weight of Evidence

PM2.5 modeling guidance strongly recommends the use of corroborating evidence to support the future year attainment demonstration. The weight of evidence demonstration for the Final 2012 AQMP includes brief discussions of the observed 24-hour PM2.5,

emissions trends, and future year PM2.5 predictions. Detailed discussions of all model results and the weight of evidence demonstration are provided in Appendix V.

FUTURE AIR QUALITY

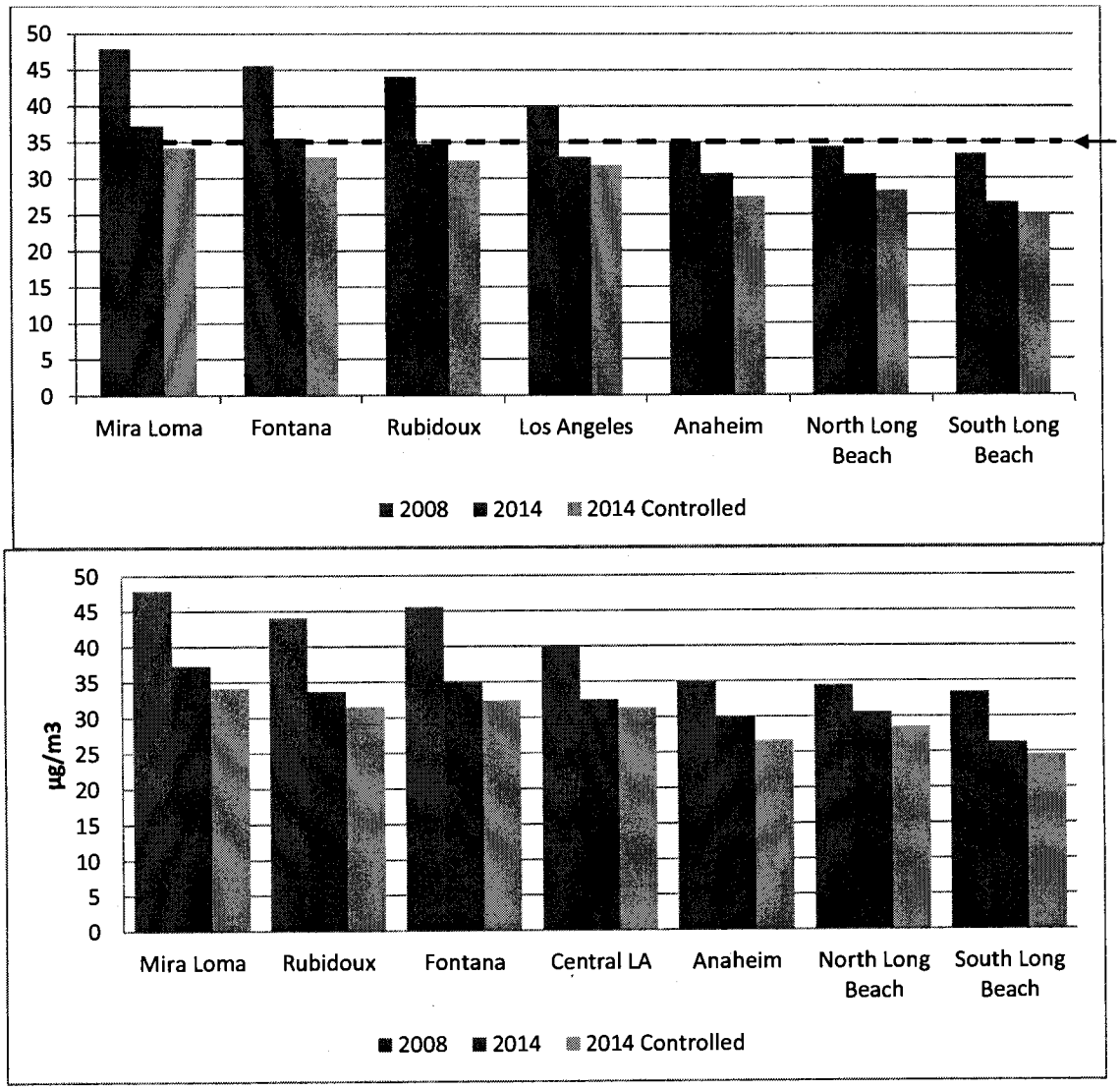
Under the federal Clean Air Act, the Basin must comply with the federal PM2.5 air quality standards by December, 2014 [Section 172(a)(2)(A)]. An extension of up-to five years (until 2019) could be granted if attainment cannot be demonstrated any earlier with all feasible control measures incorporated.

24-Hour PM2.5

A simulation of 2014 baseline emissions was conducted to substantiate the severity of the 24-hour PM2.5 problem in the Basin. The simulation used the projected emissions for 2014 which included all adopted control measures that will be implemented prior to and during 2014, including mobile source incentive projects under contract (Proposition 1B and Carl Moyer Programs). The resulting 2014 future-year Basin design value ($37.3\mu g/m^3$) failed to meet the federal standard. As a consequence additional controls are needed.

Simulation of the 2019 baseline emissions indicates that the Basin PM2.5 will attain the federal 24-hour PM2.5 standard in 2019 without additional controls. With the control program in place, the 24-hour PM2.5 simulations project that the 2014 design value will be 34.3 $\mu g/m^3$ and that the attainment date will advance from 2019 to 2014.

Figure 5-3 depicts future 24-hour PM2.5 air quality projections at the Basin design site (Mira Loma) and six PM2.5 monitoring sites having comprehensive particulate species characterization. Shown in the figure, are the base year design values for 2008 along with projections for 2014 with and without control measures in place. All of the sites with the exception of Mira Loma will meet the 24-hour PM2.5 standard by 2014 without additional controls. With implementation of the control measures, all sites in the Basin demonstrate attainment.



**No such state standard.*

FIGURE 5-3

Maximum 24-Hour Average PM2.5 Design Concentrations:
2008 Baseline, 2014 and 2014 Controlled

Spatial Projections of PM2.5 Design Values

Figure 5-4 provides a perspective of the Basin-wide spatial extent of 24-hour PM2.5 impacts in the base year 2008, with all adopted rules and measures implemented. Figures 5-5 and 5-6 provide a Basin-wide perspective of the spatial extent of 24-hour PM2.5 future impacts for baseline 2014 emissions and 2014 with the proposed control program in place. With no additional controls, several areas around the northwestern portion of Riverside and southwestern portion of San Bernardino Counties depict grid

cells with weighted PM2.5 24-hour design values exceeding 35 $\mu g/m^3$. By 2014, the number of grid cells with concentrations exceeding the federal standard is restricted to a small region surrounding the Mira Loma monitoring station in northwestern Riverside County. With the control program fully implemented in 2014, the Basin does not exhibit any grid cells exceeding the federal standard.

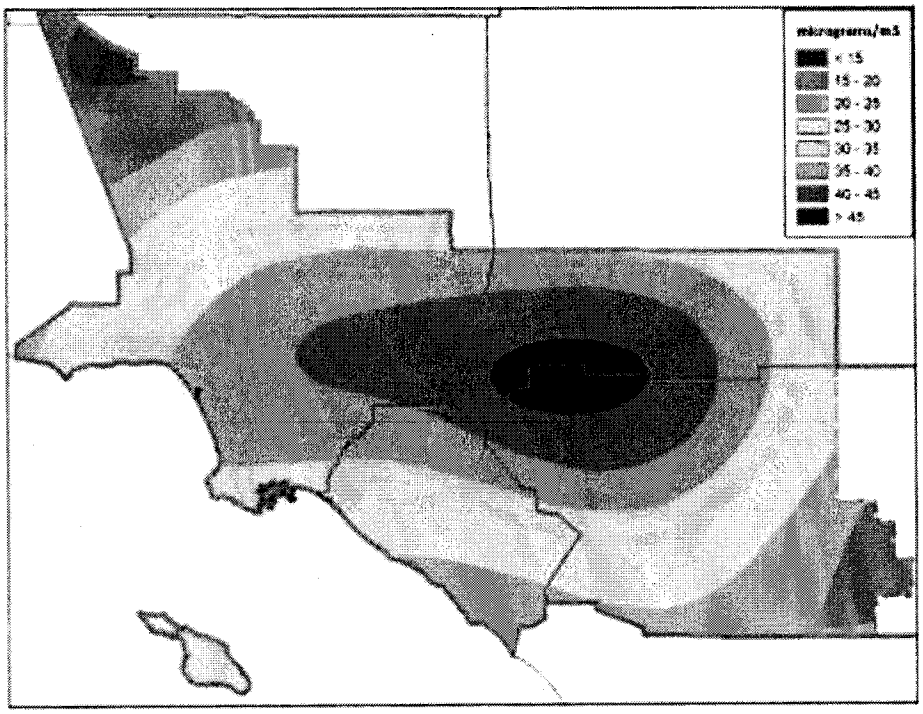


FIGURE 5-4

2008 Baseline 24-Hour PM2.5 Design Concentrations ($\mu g/m^3$)

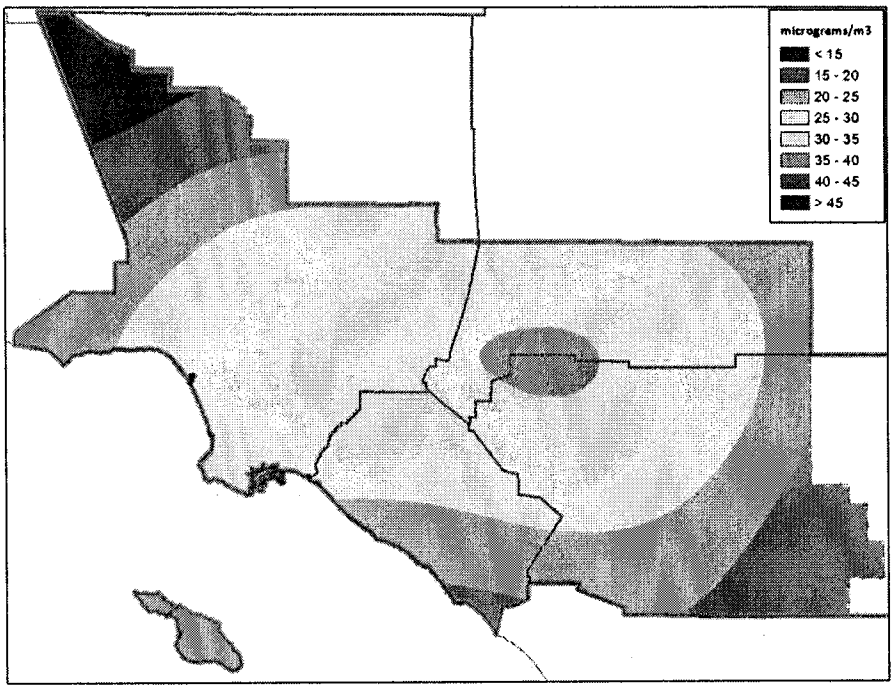


FIGURE 5-5

2014 Baseline 24-Hour PM2.5 Design Concentrations ($\mu g/m^3$)

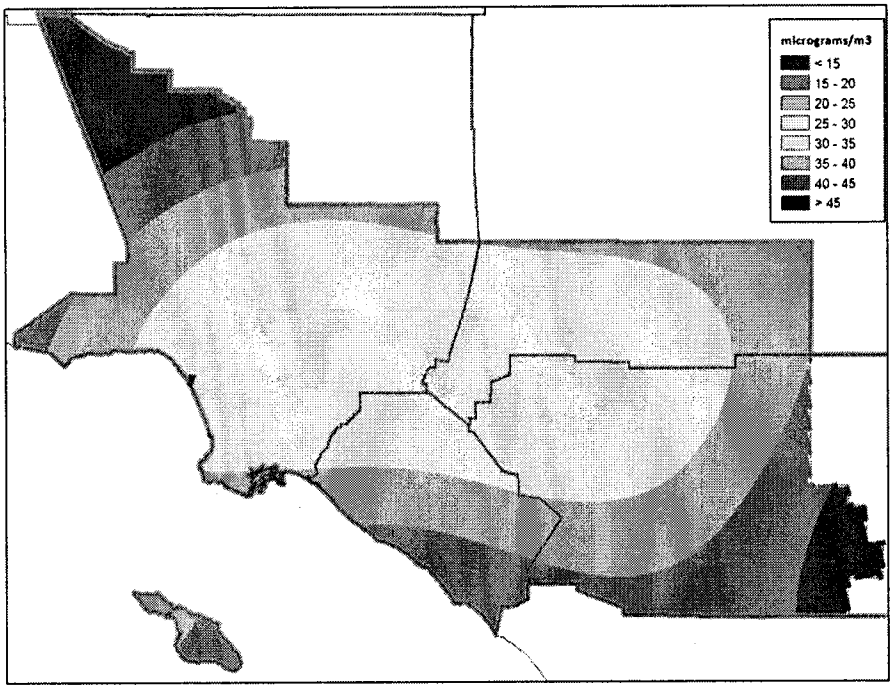


FIGURE 5-6

2014 Controlled 24-Hour PM2.5 Design Concentrations ($\mu g/m^3$)

Weight of Evidence Discussion

The weight of evidence discussion focuses on the trends of 24-hour PM2.5 and key precursor emissions to provide justification and confidence that the Basin will meet the federal standard by 2014.

Figure 5-7 depicts the long term trend of observed Basin 24-hour average PM2.5 design values with the CMAQ projected design value for 2014. Also superimposed on the graph is the linear best-fit trend line for the observed 24-hour average PM2.5 design values. The observed trend depicts a steady 49 percent decrease in observed design value concentrations between 2001 and 2011. The rate of improvement is just under 4 $\mu g/m^3$ per year. If the trend is extended beyond 2011, the projection suggests attainment of the PM2.5 24-hour standard in 2013, one year earlier than determined by the attainment demonstration. While the straight-line future year approximation is aggressive in its projection, it offers insight to the effectiveness of the ongoing control program and is consistent with the attainment demonstration.

Figures 5-8 depicts the long term trend of Basin NOx emissions for the same period. Figure 5-9 provides the corresponding emissions trend for directly emitted PM2.5. Base year NOx inventories between 2002 (from the 2007 AQMP) and 2008 experienced a 31 percent reduction while directly emitted PM2.5 experienced a 19 percent reduction over the 6-year period. The Basin 24-hour average PM2.5 design value experienced a concurrent 27 percent reduction between 2002 and 2008. The projected trend of NOx emissions indicates that the PM2.5 precursor associated with the formation of nitrate will continue to be reduced though 2019 by an additional 48 percent. Similarly, the projected trend of directly emitted PM2.5 projects a more moderate reduction of 13 percent through 2019. However, as discussed in the 2007 AQMP and in a later section of this chapter, directly emitted PM2.5 is a more effective contributor to the formation of ambient PM2.5 compared to NOx. While the projected NOx and direct PM2.5 emissions trends decrease at a reduced rate between 2012 and 2019, it is clearly evident that the overall significant reductions will continue to result in lower nitrate, elemental carbon and direct particulate contributions to 24-hour PM2.5 design values.

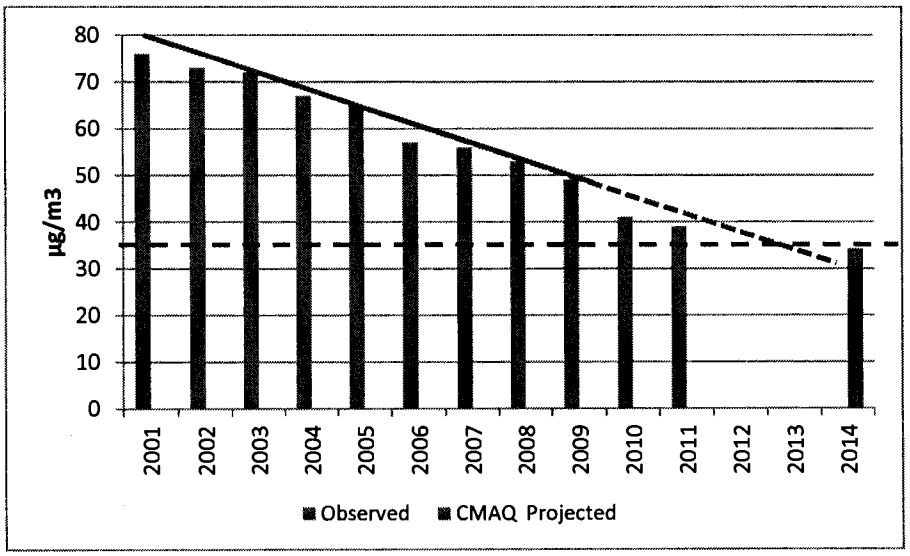


FIGURE 5-7

Basin Observed and CMAQ Projected
Future Year PM2.5 Design Concentrations ($\mu g/m^3$)

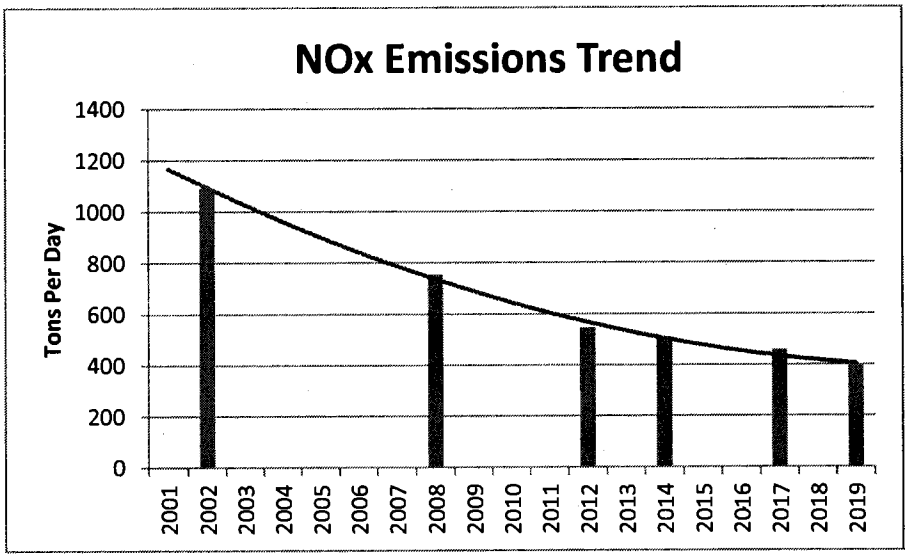


FIGURE 5-8

Trend of Basin NOx Emissions (Controlled)

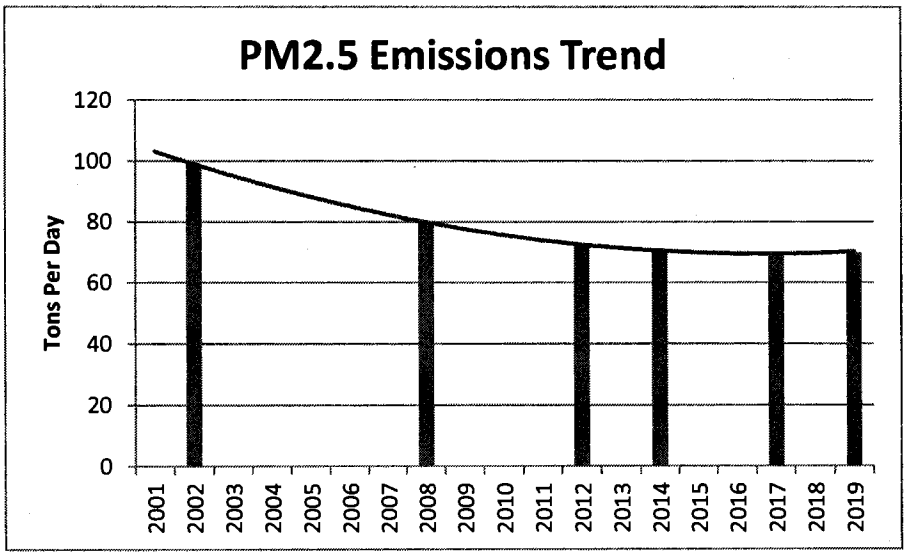


FIGURE 5-9

Trend of Basin PM2.5 Emissions (Controlled)

Control Strategy Choices

PM2.5 has five major precursors that contribute to the development of the ambient aerosol including ammonia, NOx, SOx, VOC, and directly emitted PM2.5. Various combinations of reductions in these pollutants could all provide a path to clean air. The 24-hour PM2.5 attainment strategy presented in this Final 2012 AQMP relies on a dual approach to first demonstrate attainment of the federal standard by 2019 and then focuses on controls that will be most effective in reducing PM2.5 to accelerate attainment to the earliest extent. The 2007 AQMP control measures since implemented will result in substantial reductions of SOx, direct PM2.5, VOC and NOx emissions. Newly proposed short-term measures, discussed in Chapter 4, will provide additional regional emissions reductions targeting directly emitted PM2.5 and NOx.

It is useful to weigh the value of the precursor emissions reductions (on a per ton basis) to microgram per cubic meter improvements in ambient PM2.5 levels. As presented in the weight of evidence discussion, trends of PM2.5 and NOx emissions suggest a direct response between lower emissions and improving air quality. The Final 2007 AQMP established a set of factors to relate regional per ton precursor emissions reductions to PM2.5 air quality improvements based on the annual average concentration. The Final 2012 AQMP CMAQ simulations provided a similar set of factors, but this time directed at 24-hour PM2.5. The analysis determined that VOC emissions reductions have the lowest return in terms of micrograms reduced per ton reduction, one third of the benefit of NOx reductions. SOx emissions were about eight times more effective than NOx

reductions. However, directly emitted PM2.5 reductions were approximately 15 times more effective than NOx reductions. It is important to note that the contribution of ammonia emissions is embedded as a component of the SOx and NOx factors since ammonium nitrate and ammonium sulfate are the resultant particulates formed in the ambient chemical process. Table 5-2 summarizes the relative importance of precursor emissions reductions to 24-hour PM2.5 air quality improvements based on the analysis. . (A comprehensive discussion of the emission reduction factors is presented in Attachment 8 of Appendix V of this document). Emission reductions due to existing programs and implementation of the 2012 AQMP control measures will result in projected 24-hour PM2.5 concentrations throughout the Basin that meet the standard by 2014 at all locations. Basin-wide curtailment of wood burning and open burning when the PM2.5 air quality is projected to exceed 30 $\mu g/m^3$ in Mira Loma will effectively accelerate attainment at Mira Loma from 2019 to 2014. Table 5-3 lists the mix of the four primary precursor's emissions reductions targeted for the staged control measure implementation approach.

TABLE 5-2

Relative Contributions of Precursor Emissions Reductions to Simulated Controlled Future-Year 24-hour PM2.5 Concentrations

PRECURSOR	PM2.5 COMPONENT ($\mu g/m^3$)	STANDARDIZED CONTRIBUTION TO AMBIENT PM2.5 MASS
VOC	Organic Carbon	Factor of 0.3
NOx	Nitrate	Factor of 1
SOx	Sulfate	Factor of 7.8
PM2.5	Elemental Carbon & Others	Factor of 14.8

TABLE 5-3

Final 2012 AQMP
24-hour PM2.5 Attainment Strategy
Allowable Emissions (TPD)

YEAR	SCENARIO	VOC	NOx	SOx	PM2.5
2014	Baseline	451	506	18	70
2014	Controlled	451	490	18	58*

*Winter episodic day emissions

ADDITIONAL MODELING ANALYSES

As a component of the Final 2012 AQMP, concurrent simulations were also conducted to update and assess the impacts to annual average PM2.5 and 8-hour ozone given the new modeling platform and emissions inventory. This update provides a confirmation that the control strategy will continue to move air quality expeditiously towards attainment of the relevant standards.

Annual PM2.5

Annual PM2.5 Modeling Approach

The Final 2012 AQMP annual PM2.5 modeling employs the same approach to estimating the future year annual PM2.5 as was described in the 2007 AQMP attainment demonstrations. Future year PM2.5 annual average air quality is determined using site

and species specific quarterly averaged RRFs applied to the weighted quarterly average 2008 PM2.5 design values per U.S. EPA guidance documents.

In this application, CMAQ and WRF were used to simulate 2008 meteorological and air quality to determine Basin annual average PM2.5 concentrations. The future year attainment demonstration was analyzed for 2015, the target set by the federal CAA. The 2014 simulation relies on implementation of all adopted rules and measures through 2014. This enables a full year-long demonstration based on a control strategy that would be fully implemented by January 1, 2015. It is important to note that the use of the quarterly design values for a 5-year period centered around 2008 (listed in Table 5-4) continue to be used in the projection of the future year annual average PM2.5 concentrations. The future year design reflects the weighted quarterly average concentration calculated from the projections over five years (20 quarters).

TABLE 5-4

2008 Weighted Annual PM2.5 Design Values* ($\mu g/m^3$)

MONITORING SITE	ANNUAL*
Anaheim	13.1
Los Angeles	15.4
Fontana	15.7
North Long Beach	13.6
South Long Beach	13.2
Mira Loma	18.6
Rubidoux	16.7

* Calculated based on quarterly observed data between 2006 – 2010

Future Annual PM2.5 Air Quality

The projections for the annual state and federal standards are shown in Figure 5-10. All areas will be in attainment of the federal annual standard (15.0 $\mu g/m^3$) by 2014. The 2014 design value is projected to be 9 percent below the federal standard. However, as shown in Figure 5-10, the Final 2012 AQMP does not achieve the California standard of 12 $\mu g/m^3$ by 2014. Additional controls would be needed to meet the California annual PM2.5 standard.

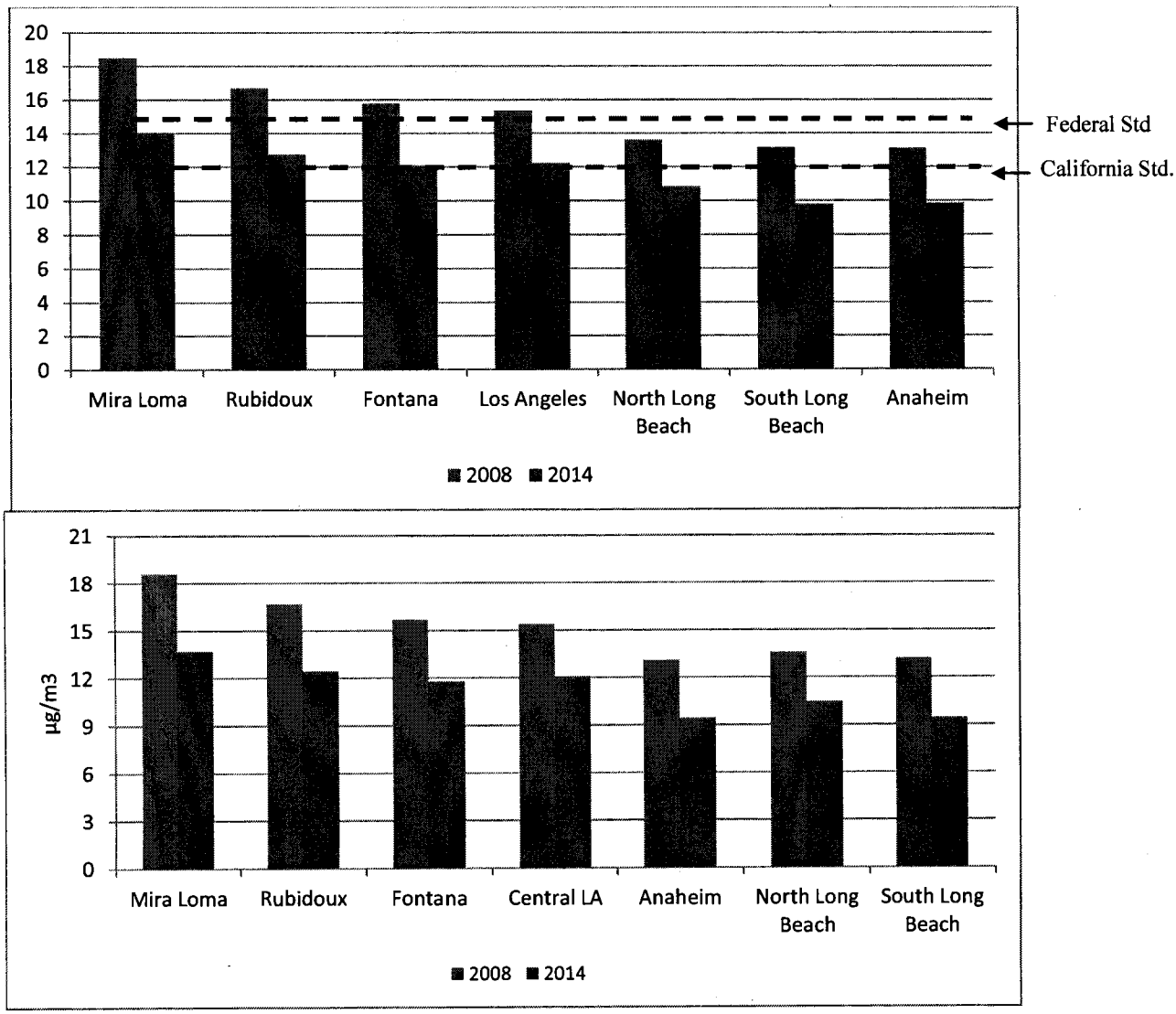


FIGURE 5-10

Annual Average PM2.5 Design Concentrations:
2008 and 2014 Controlled

Ozone Modeling

The 2007 AQMP provided a comprehensive 8-hour ozone analysis that demonstrated future year attainment of the 1997 federal ozone standard (80 ppb) by 2023 with implementation of short-term measures and CAA Section 182(e)(5) long term emissions reductions. The analysis concluded that NOx emissions needed to be reduced approximately 76 percent and VOC 22 percent from the 2023 baseline in order to demonstrate attainment. The 2023 base year VOC and NOx summer planning emissions inventories included 536 and 506 TPD, respectively.

INTRODUCTION

The purpose of the 2012 revision to the AQMP for the South Coast Air Basin is to set forth a comprehensive program that will assist in leading the Basin and those portions of the Salton Sea Air Basin under the District's jurisdiction into compliance with all federal and state air quality planning requirements. Specifically, the Final 2012 AQMP is designed to satisfy the SIP submittal requirements of the federal CAA to demonstrate attainment of the 24-hour PM2.5 ambient air quality standards, the California CAA triennial update requirements, and the District's commitment to update transportation emission budgets based on the latest approved motor vehicle emissions model and planning assumptions. Specific information related to the air quality and planning requirements for portions of the Salton Sea Air Basin under the District's jurisdiction are included in the Final 2012 AQMP and can be found in Chapter 7 – Current and Future Air Quality – Desert Nonattainment Area. The 2012 AQMP will be submitted to U.S. EPA as SIP revisions once approved by the District's Governing Board and CARB.

SPECIFIC 24-HOUR PM2.5 PLANNING REQUIREMENTS

In November 1990, Congress enacted a series of amendments to the CAA intended to intensify air pollution control efforts across the nation. One of the primary goals of the 1990 CAA Amendments was to overhaul the planning provisions for those areas not currently meeting the NAAQS. The CAA identifies specific emission reduction goals, requires both a demonstration of reasonable further progress and an attainment demonstration, and incorporates more stringent sanctions for failure to attain or to meet interim milestones. There are several sets of general planning requirements, both for nonattainment areas [Section 172(c)] and for implementation plans in general [Section 110(a)(2)]. These requirements are listed and briefly described in Chapter 1 (Tables 1-4 and 1-5). The general provisions apply to all applicable criteria pollutants unless superseded by pollutant-specific requirements. The following sections discuss the federal CAA requirements for the 24-hour PM2.5 standards.

FEDERAL AIR QUALITY STANDARDS FOR FINE PARTICULATES

The U.S. EPA promulgated the National Ambient Air Quality Standards for Fine Particles (PM2.5) in July 1997. Following legal actions, the statements were eventually upheld in March 2002. The annual standard was set at a level of 15 micrograms per cubic meter ($\mu g/m^3$), based on the 3-year average of annual mean PM2.5 concentrations. The 24-hour standard was set at a level of 65 $\mu g/m^3$ based on the 3-year average of the

98th percentile of 24-hour concentrations. U.S. EPA issued designations in December 2004, which became effective on April 5, 2005.

In January 2006, U.S. EPA proposed to lower the 24-hour PM2.5 standard. On September 21, 2006, U.S. EPA signed the "Final Revisions to the NAAQS for Particulate Matter." In promulgating the new standards, U.S. EPA followed an elaborate review process which led to the conclusion that existing standards for particulates were not adequate to protect public health. The studies indicated that for PM2.5, short-term exposures at levels below the 24-hour standard of 65 $\mu g/m^3$ were found to cause acute health effects, including asthma attacks and breathing and respiratory problems. As a result, the U.S. EPA established a new, lower 24-hour average standard for PM2.5 at 35 $\mu g/m^3$. No changes were made to the existing annual PM2.5 standard which remained at 15 $\mu g/m^3$ as discussed in Chapter 2. On June 14, 2012, U.S. EPA proposed revisions to this annual standard. The annual component of the standard was set to provide protection against typical day-to-day exposures as well as longer-term exposures, while the daily standard protects against more extreme short-term events. For the 2006 24-hour PM2.5 standard, the form of the standard continues to be based on the 98th percentile of 24-hour PM2.5 concentrations measured in a year (averaged over three years) at the monitoring site with the highest measured values in an area. This form of the standard was set to be health protective while providing a more stable metric to facilitate effective control programs. Table 6-1 summarizes the U.S. EPA's PM2.5 standards.

TABLE 6-1

U.S. EPA's PM2.5 Standards

	1997 STANDARDS		2006 STANDARDS	
	Annual	**24-Hour**	**Annual**	**24-Hour**
PM2.5	15 $\mu g/m^3$ Annual arithmetic mean, averaged over 3 years	65 $\mu g/m^3$ 24-hour average, 98th percentile, averaged over 3 years	15 $\mu g/m^3$ Annual arithmetic mean, averaged over 3 years	35 $\mu g/m^3$ 24-hour average, 98th percentile, averaged over 3 years

On December 14, 2009, the U.S. EPA designated the Basin as nonattainment for the 2006 24-hour PM2.5 NAAQS. A SIP revision is due to U.S. EPA no later than three years from the effective date of designation, December 14, 2012, demonstrating attainment with the standard by 2014. Under Section 172 of the CAA, U.S. EPA may grant an area an extension of the initial attainment date for a period of up to five years.

With implementation of all feasible measures as outlined in this Plan, the Basin will demonstrate attainment with the 24-hour PM2.5 standard by 2014, so no extension is being requested.

FEDERAL CLEAN AIR ACT REQUIREMENTS

For areas such as the Basin that are classified nonattainment for the 2006 24-hour PM2.5 NAAQS, Section 172 of subpart 1 of the CAA applies. Section 172(c) requires states with nonattainment areas to submit an attainment demonstration. Section 172(c)(2) requires that nonattainment areas demonstrate Reasonable Further Progress (RFP). Under subpart I of the CAA, all nonattainment area SIPs must include contingency measures. Section 172(c)(1) of the CAA requires nonattainment areas to provide for implementation of all reasonably available control measures (RACM) as expeditiously as possible, including the adoption of reasonably available control technology (RACT). Section 172 of the CAA requires the implementation of a new source review program including the use of "lowest achievable emission rate" for major sources referred to under state law as "Best Available Control Technology" (BACT) for major sources of PM2.5 and precursor emissions (i.e., precursors of secondary particulates).

This section describes how the Final 2012 AQMP meets the 2006 24-hour PM2.5 planning requirements for the Basin. The requirements specifically addressed for the Basin are:

1. Attainment demonstration and modeling [Section 172(a)(2)(A)];
2. Reasonable further progress [Section 172(c)(2)];
3. Reasonably available control technology (RACT) and Reasonably available control measures (RACM) [Section 172(c)(1)] ;
4. New source review (NSR) [Sections 172(c)(4) and (5)];
5. Contingency measures [Section 172(c)(9)]; and
6. Transportation control measures (as RACM).

Attainment Demonstration and Modeling

Under the CAA Section 172(a)(2)(A), each attainment plan should demonstrate that the area will attain the NAAQS "as expeditiously as practicable," but no later than five years from the effective date of the designation of the area. If attainment within five years is considered impracticable due to the severity of an area's air quality problem and the lack

of available control measures, the state may propose an attainment date of more than five years but not more than ten years from designation.

This attainment demonstration consists of: (1) technical analyses that locate, identify, and quantify sources of emissions that contribute to violations of the PM2.5 standard; (2) analysis of future year emission reductions and air quality improvement resulting from adopted and proposed control measures; (3) proposed emission reduction measures with schedules for implementation; and (4) analysis supporting the region's proposed attainment date by performing a detailed modeling analysis. Chapter 3 and Appendix III of the Final 2012 AQMP present base year and future year emissions inventories in the Basin, while Chapter 4 and Appendix IV provide descriptions of the proposed control measures, the resulting emissions reductions, and schedules for implementation of each measure. The detailed modeling analysis and attainment demonstration are summarized in Chapter 5 and documented in Appendix V.

Reasonable Further Progress (RFP)

The CAA requires SIPs for most nonattainment areas to demonstrate reasonable further progress (RFP) towards attainment through emission reductions phased in from the time of the SIP submission until the attainment date time frame. The RFP requirements in the CAA are intended to ensure that there are sufficient PM2.5 and precursor emission reductions in each nonattainment area to attain the 2006 24-hour PM2.5 NAAQS by December 14, 2014.

Per CAA Section 171(1), RFP is defined as "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." As stated in subsequent federal regulation, the goal of the RFP requirements is for areas to achieve generally linear progress toward attainment. To determine RFP for the 2006 24-hour PM2.5 attainment date, the plan should rely only on emission reductions achieved from sources within the nonattainment area.

Section 172(c)(2) of the CAA requires that nonattainment area plans show ongoing annual incremental emissions reductions toward attainment, which is commonly expressed in terms of benchmark emissions levels or air quality targets to be achieved by certain interim milestone years. The U.S. EPA recommends that the RFP inventories include direct PM2.5, and also PM precursors (such as SOx, NOx, and VOCs) that have been determined to be significant.

40 CFR 51.1009 requires any area that submits an approvable demonstration for an attainment date of more than five years from the effective date of designation to also submit an RFP plan. The Final 2012 AQMP demonstrates attainment with the 24-hour PM2.5 standard in 2014, which is five years from the 2009 designation date. Therefore, no separate RFP plan is required.

Reasonably Available Control Measures (RACM) and Reasonably Available Control Technology (RACT) Requirements

Section 172(c)(1) of the CAA requires nonattainment areas to

> *Provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.*

The District staff has completed its RACM analysis as presented in Appendix VI of the Final 2012 AQMP.

The U.S. EPA provided further guidance on the RACM in the preamble and the final "Clean Air Fine Particle Implementation Rule" to implement the 1997 PM2.5 NAAQS which were published in the Federal Register on November 1, 2005 and April 25, 2007, respectively.[1, 2] The U.S. EPA's long-standing interpretation of the RACM provision stated in the 1997 PM2.5 Implementation Rule is that the non-attainment air districts should consider all candidate measures that are available and technologically and economically feasible to implement within the non-attainment areas, including any measures that have been suggested; however, the districts are not obligated to adopt all measures, but should demonstrate that there are no additional reasonable measures available that would advance the attainment date by at least one year or contribute to reasonable further progress (RFP) for the area.

With regard to the identification of emission reduction programs, the U.S. EPA recommends that non-attainment air districts first identify the emission reduction programs that have already been implemented at the federal level and by other states and local air districts. Next, the U.S. EPA recommends that the air districts examine additional RACM/RACTs adopted for other non-attainment areas to attain the ambient air quality standards as expeditiously as practicable. The U.S. EPA also recommends the

[1] See 70FR 65984 (November 1, 2005)
[2] See 72FR 20586 (April 25, 2007)

air districts evaluate potential measures for sources of direct PM2.5, SOx and NOx first. VOC and ammonia are only considered if the area determines that they significantly contribute to the PM2.5 concentration in the non-attainment area (otherwise they are pressured not to significantly contribute). The PM2.5 Implementation Rule also requires that the air districts establish RACM/RACT emission standards that take into consideration the condensable fraction of direct PM2.5 emissions after January 1, 2011. In addition, the U.S. EPA recognizes that each non-attainment area has its own profile of emitting sources, and thus neither requires specific RACM/RACT to be implemented in every non-attainment area, nor includes a specific source size threshold for the RACM/RACT analysis.

A RACM/RACT demonstration must be provided within the SIP. For areas projected to attain within five years of designation, a limited RACM/RACT analysis including the review of available reasonable measures, the estimation of potential emission reductions, and the evaluation of the time needed to implement these measures is sufficient. The areas that cannot reach attainment within five years must conduct a thorough RACM/RACT analysis to demonstrate that sufficient control measures could not be adopted and implemented cumulatively in a practical manner in order to reach attainment at least one year earlier.

In regard to economic feasibility, the U.S. EPA did not propose a fixed dollar per ton cost threshold and recommended that air districts to include health benefits in the cost analysis. As indicated in the preamble of the 1997 PM2.5 Implementation Rule:

> *In regard to economic feasibility, U.S. EPA is not proposing a fixed dollar per ton cost threshold for RACM, just as it is not doing so for RACT...Where the severity of the non-attainment problem makes reductions more imperative or where essential reductions are more difficult to achieve, the acceptable cost of achieving those reductions could increase. In addition, we believe that in determining what are economically feasible emission reduction levels, the States should also consider the collective health benefits that can be realized in the area due to projected improvements.*

Subsequently, on March 2, 2012, the U.S. EPA issued a memorandum to confirm that the overall framework and policy approach stated in the PM2.5 Implementation Rule for the 1997 PM2.5 standards continues to be relevant and appropriate for addressing the 2006 24-hour PM2.5 standards.

As described in Appendix VI, the District has concluded that all District rules fulfilled RACT for the 2006 24-hour PM2.5 standard. In addition, pursuant to California Health

and Safety Code Section 39614 (SB 656), the District evaluated a statewide list of feasible and cost-effective control measures to reduce directly emitted PM2.5 and its potential precursor emissions (e.g., NOx, SOx, VOCs, and ammonia). The District has concluded that for the majority of stationary and area source categories, the District was identified as having the most stringent rules in California (see Appendix VI). Under the RACM guidelines, transportation control measures must be included in the analysis. Consequently, SCAG has completed a RACM determination for transportation control measures in the Final 2012 AQMP, included in Appendix IV-C.

New Source Review

New source review (NSR) for major and in some cases minor sources of PM2.5 and its precursors are presently addressed through the District's NSR and RECLAIM programs (Regulations XIII and XX). In particular, Rule 1325 has been adopted to satisfy NSR requirements for major sources of directly-emitted PM2.5.

Contingency Measures

Contingency Measure Requirements

Section 172(c)(9) of the CAA requires that SIPs include contingency measures.

> *Such plan shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or the Administrator.*

In subsequent NAAQS implementation regulations and SIP approvals/disapprovals published in the Federal Register, U.S. EPA has repeatedly reaffirmed that SIP contingency measures:

1. Must be fully adopted rules or control measures that are ready to be implemented, without significant additional action (or only minimal action) by the State, as expeditiously as practicable upon a determination by U.S. EPA that the area has failed to achieve, or maintain reasonable further progress, or attain the NAAQS by the applicable statutory attainment date (40 CFR § 51.1012, 73 FR 29184)

2. Must be measures not relied on in the plan to demonstrate RFP or attainment for the time period in which they serve as contingency measures and should provide SIP-creditable emissions reductions equivalent to one year of RFP, based on "generally

linear" progress towards achieving the overall level of reductions needed to demonstrate attainment (76 FR 69947, 73 FR 29184)

3. Should contain trigger mechanisms and specify a schedule for their implementation (72 FR 20642)

Furthermore, U.S. EPA has issued guidance that the contingency measure requirement could be satisfied with already adopted control measures, provided that the controls are above and beyond what is needed to demonstrate attainment with the NAAQS (76 FR 57891).

> *U.S. EPA guidance provides that contingency measures may be implemented early, i.e., prior to the milestone or attainment date. Consistent with this policy, States are allowed to use excess reductions from already adopted measures to meet the CAA sections 172(c)(9) and 182(c)(9)contingency measures requirement. This is because the purpose of contingency measures is to provide extra reductions that are not relied on for RFP or attainment, and that will provide a cushion while the plan is being revised to fully address the failure to meet the required milestone. Nothing in the CAA precludes a State from implementing such measures before they are triggered.*

Thus, an already adopted control measure with an implementation date prior to the milestone year or attainment year would obviate the need for an automatic trigger mechanism.

Air Quality Improvement Scenario

The U.S. EPA Guidance Memo issued March 2, 2012, "Implementation Guidance for the 2006 24-Hour Fine Particle (PM2.5) National Ambient Air Quality Standard (NAAQS)", provides the following discussion of contingency measures:

> *The preamble of the 2007 PM2.5 Implementation Rule (see 79 FR 20642-20645) notes that contingency measures "should provide for emission reductions equivalent to about one year of reductions needed for reasonable further progress (RFP)." The term "one year of reductions needed for RFP" requires clarification. This phrase may be confusing because all areas technically are not required to develop a separate RFP plan under the 2007 PM2.5 Implementation Rule. The basic concept is that an area's set of contingency measures should provide for an amount of emission reductions that would achieve "one year's worth" of air quality improvement proportional to the overall amount of air quality improvement to be achieved by the area's attainment plan; or alternatively, an amount of emission reductions (for all pollutants subject to control measures in the attainment plan) that would achieve one year's worth of emission reductions proportional to the overall amount of emission*

reductions needed to show attainment. Contingency measures can include measures that achieve emission reductions from outside the nonattainment area as well as from within the nonattainment area, provided that the measures produce the appropriate air quality impact within the nonattainment area.

The U.S. EPA believes a similar interpretation of the contingency measures requirements under section 172(c)(9) would be appropriate for the 2006 24-hour PM2.5 NAAQS.

The March 2, 2012 memo then provides an example describing two methods for determining the required magnitude of emissions reductions to be potentially achieved by implementation of contingency measures:

Assume that the state analysis uses a 2008 base year emissions inventory and a future year projection inventory for 2014. To demonstrate attainment, the area needs to reduce its air quality concentration from 41ug/m^3 in 2008 to 35 ug/m^3 in 2014, equal to a rate of change of 1 μg/m^3 per year. The attainment plan demonstrates that this level of air quality improvement would be achieved by reducing emissions between 2008 and 2014 by the following amounts: 1,200 tons of PM2.5; 6,000 tons of NOx; and 6,000 tons of SO2.

Thus, the target level for contingency measures for the area could be identified in two ways:

1) *The area would need to provide an air quality improvement of 1 ug/m^3 in the area, based on an adequate technical demonstration provided in the state plan. The emission reductions to be achieved by the contingency measures can be from any one or a combination of all pollutants addressed in the attainment plan, provided that the state plan shows that the cumulative effect of the adopted contingency measures would result in a 1 ug/m^3 improvement in the fine particle concentration in the nonattainment area; and*

2) *The contingency measures for the area would be one-sixth (or approximately 17%) of the overall emission reductions needed between 2008 and 2014 to show attainment. In this example, these amounts would be the following: 200 tons of PM2.5; 1,000 tons of NOx; and 1,000 tons of SO2.*

The two approaches are explicitly mentioned in regulatory form at 40 CFR § 51.1009:

(g) The RFP plan due three years after designation must demonstrate that emissions for the milestone year are either:

(1) At levels that are roughly equivalent to the benchmark emission levels for direct PM2.5 emissions and each PM2.5 attainment plan precursor to be addressed in the plan; or

(2) At levels included in an alternative scenario that is projected to result in a generally equivalent improvement in air quality by the milestone year as would be achieved under the benchmark RFP plan.

(h) The equivalence of an alternative scenario to the corresponding benchmark plan must be determined by comparing the expected air quality changes of the two scenarios at the design value monitor location. This comparison must use the information developed for the attainment plan to assess the relationship between emissions reductions of the direct PM2.5 emissions and each PM2.5 attainment plan precursor addressed in the attainment strategy and the ambient air quality improvement for the associated ambient species.

The first method in the example and the alternative scenario in the regulation, 40 CFR § 51.1009 (g)(2), base the required amount of contingency measure emission reductions on one year's worth of air quality improvements. The most accurate way of demonstrating that the emissions reductions will lead to air quality improvements is through air quality modeling such as that used in the attainment demonstration (40 CFR § 51.1009 (h) above). If the model results show the required air quality improvements, then the emissions reductions included in the model input are therefore shown to be sufficient to achieve those air quality improvements. The second method in the example, and (g)(1) in the regulation, is based solely on emission reductions, without a direct demonstration that there will be a corresponding improvement in air quality.

Logically, the method based on air quality is more robust than the method based solely on emissions reductions in that it demonstrates that emissions reductions will in fact lead to corresponding air quality improvements, which is the ultimate goal of the CAA and the SIP. The second method relying on overall emissions reductions alone does not account for the spatial and temporal variation of emissions, nor does it account for where and when the reductions will occur. As the relationship between emissions reductions and resulting air quality improvements is complex and not always linear, relying solely on prescribed emission reductions may not ensure that the desired air quality improvements will result when and where they are needed. Therefore, determining the magnitude of reductions required for contingency measures based on air quality improvements, derived from a modeling demonstration, is more effective in achieving the objective of this CAA requirement.

Magnitude of Contingency Measure Air Quality Improvements

The example for determining the required magnitude of air quality improvement to be achieved by contingency measures provided in the March 2, 2012 guidance memo uses the attainment demonstration base year as the base year in the calculation (2008). This is based on the memo's statement that *"contingency measures should provide for an amount of emission reductions that would achieve 'one year's worth' of air quality improvement proportional to the overall amount of air quality improvement to be achieved by the area's attainment plan.* The original preamble (79 FR 20642-20645) states that contingency measures *"should provide for emission reductions equivalent to about one year of reductions needed for reasonable further progress (RFP)."* The term "reasonable further progress" is defined in Section 171(1) of the CAA as *"such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date."*

40 CFR 51.1009 is explicit on how emissions reductions for RFP are to be calculated. In essence, the calculation is a linear interpolation between base-year emissions and attainment-year (full implementation) emissions. The Plan must then show that emissions or air quality in the milestone year (or attainment year) are "roughly equivalent" or "generally equivalent" to the RFP benchmark. As stated earlier in this chapter, given the 2014 attainment year, there are no interim milestone RFP requirements. The contingency measure requirements, therefore, only apply to the 2014 attainment year. In 2014, contingency measures must provide for about one year's worth of reductions or air quality improvement, proportional to the overall amount of air quality improvement to be achieved by the area's attainment plan.

The 2008 base year design value in the 24-hour PM2.5 attainment demonstration is 47.9 $\mu g/m^3$, and the 2014 attainment year design value must be less than 35.5 $\mu g/m^3$ (see Chapter 5). Linear progress towards attainment over the six year period yields one year's worth of air quality improvements equal to approximately 2 $\mu g/m^3$. Thus, contingency measures should provide for approximately 2 $\mu g/m^3$ of air quality improvements to be automatically implemented in 2015 if the Basin fails to attain the 24-hour PM2.5 standard in 2014.

Satisfying the Contingency Measure Requirements

As stated above, the contingency measure requirement can be satisfied by already adopted measures resulting in air quality improvements above and beyond those needed

for attainment. Since the attainment demonstration need only show an attainment year concentration below 35.5 $\mu g/m^3$, any measures leading to improvement in air quality beyond this level can serve as contingency measures. As shown in Chapter 5, the attainment demonstration yields a 2014 design value of 34.28 $\mu g/m^3$. The excess air quality improvement is therefore approximately 1.2 $\mu g/m^3$.

In addition to these air quality improvements beyond those needed for attainment, an additional contingency measure is proposed that will result in emissions reductions beyond those needed for attainment in 2014. Control Measure CMB-01 Phase I seeks to achieve an additional two tons per day of NOx emissions reductions from the RECLAIM market if the Basin fails to achieve the standard by the 2014 attainment date. CMB-01 Phase I is scheduled for near-term adoption and includes the appropriate automatic trigger mechanism and implementation schedule consistent with CAA contingency measure requirements. Taken together with the 1.2 $\mu g/m^3$ of excess air quality improvement described above, this represents a sufficient margin of "about one year's of progress" and "generally linear" progress to satisfy the contingency measure requirements. Note that based on the most recent air quality data at the design value site, Mira Loma, the actual measured air quality is already better (by over 4 $\mu g/m^3$ in 2011) than that projected by modeling based on linear interpolation between base year and attainment year.

To address U.S. EPA's comments regarding contingency measures, the excess air quality improvements beyond those needed to demonstrate attainment should also be expressed in terms of emissions reductions. This will facilitate their enforceability and any future needs to substitute emissions reductions from alternate measures to satisfy contingency measure requirements. For this purpose, Table 6-2 explicitly identifies the portions of emissions reductions from proposed measures that are designated as contingency measures. Table 6-2 also includes the total equivalent basin-wide NOx emissions reductions based on the PM2.5 formation potential ratios described in Chapter 5.

TABLE 6-2

Emissions Reductions for Contingency Measures (2014)

MEASURE	ASSOCIATED EMISSIONS REDUCTIONS FROM CONTINGENCY MEASURES (TONS/DAY)
BCM-01 – Residential Wood Burning[1,2]	2.84(PM2.5)
BCM-02 – Open Burning [1,2]	1.84(PM2.5)
CMB-01 – NOx reductions from RECLAIM	2 (NOx)
Total	71 ($NOx_{(e)}$)[3]

[1]40% of the reductions from these measures, as shown in Table 4-2, are designated for contingency purposes.

[2] Episodic emissions reductions occurring on burning curtailment days.

[3] NOx equivalent emissions based on PM2.5 formation potentials described in Chapter 5 (Table 5-2). The PM2.5:NOx ratio is 14.83:1.

Transportation Control Measures

As part of the requirement to demonstrate that RACM has been implemented, transportation control measures meeting the CAA requirements must be included in the plan. Updated transportation control measures included in this plan attainment of the federal 2006 24-hour PM2.5 standard are described in Appendix IV-C – Regional Transportation Strategy & Control Measures.

Section 182(d)(1)(A) of the CAA requires the District to include transportation control strategies (TCS) and transportation control measures (TCM) in its plans for ozone that offset any growth in emissions from growth in vehicle trips and vehicle miles traveled. Such control measures must be developed in accordance with the guidelines listed in Section 108(f) of the CAA. The programs listed in Section 108(f) of the CAA include, but are not limited to, public transit improvement projects, traffic flow improvement projects, the construction of high occupancy vehicle (HOV) facilities and other mobile source emission reduction programs. While this is not an ozone plan, TCMs may be

ATTACHMENT 17.

FINAL 2012 AQMP
APPENDIX IV-A

DISTRICT'S STATIONARY SOURCE CONTROL MEASURES

DECEMBER 2012

Table of Contents

SECTION 1 - STATIONARY SOURCE CONTROL MEASURES

SECTION 2 - SHORT-TERM PM2.5 CONTROL MEASURES

TABLE IV-A-1 (concluded)

Short-Term PM2.5 Control Measures

NUMBER	TITLE	ADOPTION	IMPLEMENTATION PERIOD	REDUCTION (TPD)
~~IND-01 (formerly MOB-03)~~	~~Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources [NOx, SOx, PM2.5]~~	~~2013~~	~~12 months after trigger~~	~~N/A~~ [f]
EDU-01 *(formerly MCS-02, MCS-03)*	Further Criteria Pollutant Reductions from Education, Outreach and Incentives [All Pollutants]	Ongoing	Ongoing	N/A [f]
MCS-01 *(formerly MCS-07)*	Application of All Feasible Measures Assessment [All Pollutants]	Ongoing	Ongoing	TBD [e]

a. Emission reductions are included in the SIP as a contingency measure.
b. Winter average day reductions based on episodic conditions and 75 percent compliance rate.
c. Reduction based on episodic day conditions.
d. Will submit into SIP once technically feasible and cost effective options are confirmed.
e. TBD are reductions to be determined once the technical assessment is complete, and inventory and control approach are identified.
f. N/A are reductions that cannot be quantified due to the nature of the measure (e.g., outreach, incentive programs) or if the measure is designed to ensure reductions that have been assumed to occur will in fact occur.

It should be noted that the emission reduction targets for the proposed control measures (those with quantified reductions) are established based on available or anticipated control methods or technologies. However, emission reductions associated with implementation of these and other control measures or rules in excess of the AQMP's projected reductions can be credited toward the overall emission reduction targets for the proposed control measures in this appendix.

Emission reductions associated with the District's SIP commitment to adopt and implement emission reductions from sources under the District's jurisdiction are being proposed. Once the SIP commitment is accepted, should there be emission reduction shortfalls in any given year, the District would identify and adopt other measures to make up the shortfall. Similarly, if excess emission reductions are achieved in a year, they can be used in that year or carried over to subsequent years if necessary to meet reduction goals. More detailed discussion on the District's SIP commitment is included in Chapter 4 of the Final 2012 AQMP.

The following sections provide a brief overview of the specific source category types targeted by short-term PM2.5 control measures.

Combustion Sources

This category includes one control measure that seeks further NOx emission reductions from RECLAIM sources.

IND-01: BACKSTOP MEASURE FOR INDIRECT SOURCES OF EMISSIONS FROM PORTS AND PORT-RELATED FACILITIES [NO_x, SO_x, PM2.5]

CONTROL MEASURE SUMMARY

SOURCE CATEGORY:	IF THE BACKSTOP MEASURE BECOMES EFFECTIVE (I.E. IF EMISSIONS FROM PORT-RELATED SOURCES EXCEED TARGETS FOR NOX, SOX, AND PM2.5), AFFECTED SOURCES WOULD BE PROPOSED BY THE PORTS AND COULD INCLUDE SOME OR ALL PORT-RELATED SOURCES (TRUCKS, CARGO HANDLING EQUIPMENT, HARBOR CRAFT, MARINE VESSELS, LOCOMOTIVES, AND STATIONARY EQUIPMENT), TO THE EXTENT COST EFFECTIVE STRATEGIES ARE AVAILABLE
CONTROL METHODS:	IF THE BACKSTOP MEASURE BECOMES EFFECTIVE, EMISSION REDUCTION METHODS WOULD BE PROPOSED BY THE PORTS AND POTENTIALLY COULD INCLUDE CLEAN TECHNOLOGY FUNDING PROGRAMS, LEASE PROVISIONS, PORT TARIFFS, OR INCENTIVES/DISINCENTIVES TO IMPLEMENT MEASURES, TO THE EXTENT COST EFFECTIVE AND FEASIBLE STRATEGIES ARE AVAILABLE

EMISSIONS (TONS/DAY):

ANNUAL AVERAGE	2008	2014	2019	2023
NOx INVENTORY*	78.6	51.2	47.2	39.2
NOx REDUCTION*		N/A	N/A	N/A
NOx REMAINING*		51.2	47.2	39.2
SOx INVENTORY*	25.5	1.8	2.3	2.7
SOx REDUCTION*		N/A	N/A	N/A
SOx REMAINING*		1.8	2.3	2.7
PM2.5 INVENTORY*	3.7	1.0	1.0	1.1
PM2.5 REDUCTION*		N/A	N/A	N/A
PM2.5 REMAINING*		1.0	1.0	1.1

CONTROL COST:	TBD
IMPLEMENTING AGENCY:	SCAQMD

** The purpose of this control measure is to ensure the emissions from port-related sources are at or below the AQMP baseline inventories for PM2.5 attainment demonstration. The emissions presented herein were used for attainment demonstration of the 24-hr PM 2.5 standard by 2014.*

DESCRIPTION OF SOURCE CATEGORY

This control measure is carried over from the 2007 AQMP/SIP. If the backstop measure goes into effect, affected sources would be proposed by the ports and could include some or all port-related sources (trucks, cargo handling equipment, harbor craft, marine vessels, locomotives, and stationary equipment), to the extent cost effective and feasible strategies are available.

Other sources – i.e. sources that are unrelated to the ports – would not in any way be subject to emission reductions under this measure (including through funding of emission reduction measures, or purchase of emission credits, by the ports or port tenants).

Background

Emissions and Progress. The ports of Los Angeles and Long Beach are the largest in the nation in terms of container throughput, and collectively are the single largest fixed source of air pollution in Southern California. Emissions from port-related sources have been reduced significantly since 2006 through efforts by the ports and a wide range of stakeholders. In large part, these emission reductions have resulted from programs developed and implemented by the ports in collaboration with port tenants, marine carriers, trucking interests and railroads. Regulatory agencies, including EPA, CARB and SCAQMD, have participated in these collaborative efforts from the outset, and some measures adopted by the ports have led the way for adoption of analogous regulatory requirements that are now applicable statewide. These port measures include the Clean Truck Program and actions to deploy shore power and low emission cargo handling equipment. The Ports of Los Angeles and Long Beach have also established incentive programs which have not subsequently been adopted as regulations. These include incentives for routing of vessels meeting IMO Tier 2 and 3 NOx standards, and vessel speed reduction. In addition, the ports are, in collaboration with the regulatory agencies, implementing an ambitious Technology Advancement Program to develop and deploy clean technologies of the future.

Port sources such as marine vessels, locomotives, trucks, harbor craft and cargo handling equipment, continue to be among the largest sources of $PM_{2.5}$ and $PM_{2.5}$ precursors in the region. Given the large magnitude of emissions from port-related sources, the substantial efforts described above play a critical part in the ability of the South Coast Air Basin to attain the national $PM_{2.5}$ ambient air standard by federal deadlines. This measure provides assurance that emissions from the Basin's largest fixed emission source will continue to support attainment of the federal 24-hour PM2.5 standard. . Reductions in PM2.5 emissions will also reduce cancer risks from diesel particulate matter.

Clean Air Action Plan. The emission control efforts described above largely began in 2006 when the Ports of Los Angeles and Long Beach, with the participation and cooperation of the staff of the SCAQMD, CARB, and U.S. EPA, adopted the San Pedro Bay Ports Clean Air Action Plan (CAAP). The CAAP was further amended in 2010, updating many of the goals and implementation strategies to reduce air emissions and health risks associated with port

operations while allowing port development to continue. In addition to addressing health risks from port-related sources, the CAAP sought the reduction of criteria pollutant emissions to the levels that assure port-related sources decrease their "fair share" of regional emissions to enable the Basin to attain state and federal ambient air quality standards.

The CAAP focuses primarily on reducing diesel particulate matter (DPM), along with NOx and SOx. The CAAP includes proposed strategies on port-related sources that are implemented through new leases or Port-wide tariffs, Memoranda of Understanding (MOU), voluntary action, grants or incentive programs.

The goals set forth in the CAAP include:

- Health Risk Reduction Standard: 85% reduction in population-weighted cancer risk by 2020
- Emission Reduction Standards:
  - By 2014, reduce emissions by 72% for DPM, 22% for NOx, and 93% for SOx
  - By 2023, reduce emissions by 77% for DPM, 59% for NOx, and 93% for SOx

In addition to the CAAP, the Ports have completed annual inventories of port-related sources since 2005. These inventories have been completed in conjunction with a technical working group composed of the SCAQMD, CARB, and U.S. EPA. Based on the latest inventories, it is estimated that the emissions from port-related sources will meet the 2012 AQMP emission targets necessary for meeting the 24-hr PM2.5 ambient air quality standard. The projected emissions from port related sources are included in the "baseline" emissions assumed in this plan to attain the PM2.5 standards.

While many of the emission reduction targets in the CAAP result from implementation of federal and state regulations (either adopted prior to or after the CAAP), some are contingent upon the Ports taking and maintaining actions which are not required by air quality regulations. These actions include the Expanded Vessel Speed Reduction Incentive Program, lower emission switching locomotives,and incentives for lower emission marine vessels. This AQMP control measure is designed to provide a "backstop" to the Ports' actions to provide assurance that, if emissions do not continue to meet projections, the ports will develop and implement plans to get back on track, to the extent that cost effective and feasible strategies are available. .

Regulatory History

The CAAP sets out the emission control programs and plans that will help mitigate air quality impacts from port-related sources. The CAAP relies on a combination of regulatory requirements and voluntary control strategies which go beyond U.S. EPA or CARB requirements, or are implemented faster than regulatory rules. The regulations which the CAAP relies on include international, federal and state requirements controlling port-related sources such as marine vessels, harbor craft, cargo handling equipment, locomotives, and trucks.

The International Maritime Organization (IMO) MARPOL Annex VI, which came into force in May 2005, set new international NO_x emission limits on Category 3 (>30 liters per cylinder displacement) marine engines installed on new vessels retroactive to the year 2000. In October

~~2008, the IMO adopted an amendment which places a global limit on marine fuel sulfur content of 0.1 percent by 2015 for specific areas known as Emission Control Areas (ECA). The South Coast District waters of the California coast are included in an ECA and ships calling at the Port of Los Angeles and Long Beach have to meet this new fuel standard. In addition, the 2008 IMO amendment required new ships built after January 1, 2016 which will be used in an Emission Control Area (ECA) to meet a Tier III NOx emission standard which is 80 percent lower than the original emission standard.~~

~~To reduce emissions from switch and line-haul locomotives, the U.S. EPA in 2008 established a series of increasingly strict emission standards for new or remanufactured locomotive engines. The emission standards are implemented by "Tier" with Tier 0 as the least stringent and Tier 4 being the most stringent. U.S. EPA also established remanufacture standards for both line haul and switch engines. For Tiers 0, 1, and 2, the remanufacture standards are more stringent than the new manufacture standards for those engines for some pollutants.~~

~~To reduce emissions from on-road, heavy-duty diesel trucks, U.S. EPA established a series of cleaner emission standards for new engines, starting in 1988. The U.S. EPA promulgated the final and cleanest standards with the 2007 Heavy Duty Highway Rule. Starting with model year 2010, all new heavy-duty trucks have to meet the final emission standards specified in the rule.~~

~~On December 8, 2005, CARB approved the Regulation for Mobile Cargo Handling Equipment (CHE) at Ports and Intermodal Rail Yards (Title 13, CCR, Section 2479), which is designed to use best available control technology (BACT) to reduce diesel PM and NO_x emissions from mobile cargo handling equipment at ports and intermodal rail yards. The regulation became effective December 31, 2006. Since January 1, 2007, the regulation imposes emission performance standards on new and in-use terminal equipment that vary by equipment type.~~

~~In 1998, the railroads and CARB entered into an MOU to accelerate the introduction of Tier 2 locomotives into the SCAB. The MOU includes provisions for a fleet average in the SCAB, equivalent to U.S. EPA's Tier 2 locomotive standard by 2010. The MOU addressed NOx emissions from locomotives. Under the MOU, NOx levels from locomotives are reduced by 67 percent.~~

~~On June 30, 2005, Union Pacific Railroad (UP) and Burlington Northern Santa Fe Railroad (BNSF) entered into a Statewide Rail Yard Agreement to Reduce Diesel PM at California Rail Yards with the CARB. The railroads committed to implementing certain actions from rail operations throughout the state. In addition, the railroads prepared equipment inventories and conducted dispersion modeling for Diesel PM.~~

~~In December 2007, CARB adopted a regulation which applies to heavy-duty diesel trucks operating at California ports and intermodal rail yards. This regulation eventually will require all drayage trucks to meet 2007 on-road emission standards by 2014.~~

~~Areas where the CAAP went beyond existing regulatory requirements or accelerated the implementation of current IMO, U.S. EPA, or CARB rules include emissions reductions from ocean-going vessels through lowering vessel speeds, accelerating the introduction of 2007/2010 on-road heavy-duty drayage trucks, maximizing the use of shore-side power for ocean-going~~

vessels while at berth, early use of low-sulfur fuel in ocean-going vessels, and the restriction of high-emitting locomotives on port property. Each of these strategies is highlighted below.

HDV1 – Performance Standards for On-Road Heavy Duty Vehicles (Clean Truck Program) – This control measure requires that all on-road trucks entering the ports comply with the Clean Truck Program. Several milestones occurred early in the program implementation, but the current requirement bans all trucks not meeting the 2007 on-road heavy-duty truck emission standards from port property. This program has the effect of accelerating the introduction of clean trucks sooner than would have occurred under the state-wide drayage truck regulation framework.

OGV1 – Vessel Speed Reduction Program (VSRP): Under this voluntary program, the Port requested that ships coming into the Ports reduce their speed to 12 knots or less within 20nm of the Point Fermin Lighthouse. The program started in May 2001. The Ports expanded the program out to 40 nm from the Point Fermin Lighthouse in 2010.

OGV3/OGV4 – Low Sulfur Fuel for Auxiliary and Main Engines and Auxiliary Boilers: OGV3 reduces emissions for auxiliary engines and auxiliary boilers of OGVs during their approach and departure from the ports, including hoteling, by switching to MGO or MDO with a fuel sulfur content of 0.2 percent or less within 40 nm from Point Fermin. OGV4 Control measure reduces emissions from main engines during their approach and departure from the ports. OGV3 and OVV4 are implemented as terminal leases are renewed.

RL-3 – New and Redeveloped Near-Dock Rail Yards: The Ports have committed to support the goal of accelerating the natural turnover of line-haul locomotive fleet to at least 95 percent Tier 4 by 2020. In addition, this control measure establishes the minimum standard goal that the Class 1 (UP and BNSF) locomotive fleet associated with new and redeveloped near-dock rail yards use 15-minute idle restrictors and ULSD or alternative fuels, and as part of the environmental review process for upcoming rail projects, 40% of line-haul locomotives accessing port property will meet a Tier 3 emission standard and 50% will meet Tier 4.

PROPOSED METHOD OF CONTROL

The goal of this measure is to ensure that NOx, SOx and PM2.5 emissions reductions from port-related sources are sufficient to attain the 24-hr federal PM2.5 ambient air quality standard. This measure would establish targets for NOx, SOx, and PM2.5 for 2014 that are based on emission reductions resulting from adopted rules and other measures such as railroad MOUs and vessel speed reduction that have been adopted and are being implemented. These emissions from port related sources are included in the "baseline" emissions assumed in this plan to attain the 24-hour $PM_{2.5}$ standard. Based on current and future emission inventory projections these rules and measures will be sufficient to achieve attainment of the 24-hr federal PM2.5 ambient air quality standard. Requirements adopted pursuant to this measure will become effective only if emission levels exceed the above targets. Once triggered, the ports will be required to develop and implement a plan to reduce emissions from port related sources to meet the emission targets over a time period. The time period to achieve and maintain emission targets will be established pursuant to procedures and criteria developed during rulemaking and specified in the rule.

~~This control measure will be implemented through a District rule. Through the rule development process the AQMD staff will establish a working group, hold a series of working group meetings, and hold public workshops. The purpose of the rule development process is to allow the AQMD staff to work with a variety of stakeholders such as the Ports, potentially affected industries, other agencies, and environmental and community groups. The rule development process will discuss the terms of the proposed backstop rule and, through an iterative public process, develop proposed rule language. In addition, the emissions inventory and targets will be reviewed and may be refined if necessary. This control measure applies to the Port of Los Angeles and the Port of Long Beach, acting through their respective Boards of Harbor Commissioners. The ports may have the option to comply separately or jointly with provisions of the backstop rule.~~

~~Elements of Backstop Rule~~

~~*Summary*: This control measure will establish enforceable nonattainment pollutant emission reduction targets for the ports in order to ensure implementation of the 24-hr PM2.5 attainment strategy in the 2012 AQMP. The "backstop" rule will go into effect if aggregate emissions from port related sources exceed specified emissions targets. If emissions do not exceed such targets, the ports will have no control obligations under this control measure.~~

~~*Emissions Targets:* The emissions inventories projected for the port related sources in the 2012 AQMP are an integral part of the 24-hr PM2.5 attainment demonstration for 2014 and its maintenance of attainment in subsequent years. These emissions serve as emission targets for meeting the 24-hr PM2.5 standard.~~

~~*Scope of Emissions Included:* Emissions from all sources associated with each port, including equipment on port property, marine vessels traveling to and from the port while in California Coastal Waters, locomotives and trucks traveling to and from port-owned property while within the South Coast Air Basin. This measure will make use of the Port's annual emission inventory, either jointly or individually, as the basis for the emission targets. The inventory methodology to estimate these emissions is consistent with the CAAP methodology. Other sources – i.e. sources that are unrelated to the ports – would not in any way be subject to emission reductions under this measure (including through funding of emission reduction measures, or purchase of emission credits, by the ports or port tenants).~~

~~*Circumstances Causing Backstop Rule Regulatory Requirements to Come Into Effect:* The "backstop" requirements will be triggered if the reported aggregate emissions for 2014 for all port related sources exceed the 2014 emissions targets. The rule may also provide that it will come into effect if the target is met in 2014 but exceeded in a subsequent year. If the target is not exceeded, the ports would have no obligations under this measure.~~

~~*Requirements if Backstop Rule Goes Into Effect:* If the "backstop" rule goes into effect, the Ports would submit an Emission Control Plan to the District. The plan would include measures sufficient to bring the Ports back into compliance with the 2014 emission targets. The Ports may choose which sources would be subject to additional emission controls, and may choose any number of implementation tools that can achieve the necessary reduction. These may include clean technology funding programs, lease provisions, port tariffs, or incentives/disincentives to~~

implement measures. As described below, the ports would have no obligation under this measure to implement measures which are not cost-effective and feasible, or where the ports lack the authority to adopt an implementation mechanism. The District would approve the plan if it met the requirements of the rule.

RULE COMPLIANCE AND TEST METHODS

Compliance with this control measure will depend on the type of control strategy implemented. Compliance will be verified through compliance plans, and enforced through submittal and review of records, reports, and emission inventories. Enforcement provisions will be discussed as part of the rule development process.

COST EFFECTIVENESS AND FEASIBILITY

The cost effectiveness of this measure will be based on the control option selected. A maximum cost-effectiveness threshold will be established for each pollutant during rule development. The rule will not require any additional control strategy to be implemented which exceeds the threshold, or which is not feasible. In addition, the rule would not require any strategy to be implemented if the ports lack authority to implement such strategy. If sufficient cost-effective and feasible measures with implementation authority are not available to achieve the emissions targets by the applicable date, the District will issue an extension of time to achieve the target. It is the District's intent that during such extension, the ports and regulatory agencies would work collaboratively to develop technologies and implementation mechanisms to achieve the target at the earliest date feasible.

IMPLEMENTING AGENCY

The District has authority to adopt regulations to reduce or mitigate emissions from indirect sources, i.e. facilities such as ports that attract on- and off-road mobile sources, and has certain authorities to control emissions from off-road mobile sources themselves. These authorities include the following:

Indirect Source Controls. State law provides the District authority to adopt rules to control emissions from "indirect sources." The Clean Air Act defines an indirect source as a "facility, building, structure, installation, real property, road or highway which attracts, or may attract, mobile sources of pollution." 42 U.S.C. § 7410(a)(5)(C); CAA § 110(a)(5)(C). Districts are authorized to adopt rules to "reduce or mitigate emissions from indirect sources" of pollution. (Health & Safety Code § 40716(a)(1)). The South Coast District is also required to adopt indirect source rules for areas where there are "high-level, localized concentrations of pollutants or with respect to any new source that will have a significant impact on air quality in the South Coast Air Basin." (Health & Safety Code § 40440(b)(3)). The federal Court of Appeals has held that an indirect source rule is not a preempted "emission standard." *National Association of Home Builders v. San Joaquin Valley Unified Air Pollution Control District*, 627 F.3d. 730 (9th Cir. 2010)

Nonvehicular (Off-Road) Source Emissions Standards. Under California law "local and regional authorities," including the ports and the District, have primary responsibility for the control of air pollution from all sources other than motor vehicles. (Health & Safety Code § 40000). Such "nonvehicular" sources include marine vessels, locomotives and other non-road equipment. CARB has concurrent authority under state law to regulate these sources. The federal Clean Air Act preempts states and local governments from adopting emission standards and other requirements for new locomotives (Clean Air Act § 209(e); 42 U.S.C.§ 7543(e)), but California may establish and enforce standards for other non-road sources upon receiving authorization from EPA (*Id.*). No such federal authorization is required for state or local fuel, operational, or mass emission limits for marine vessels, locomotives or other non-road equipment. (40 CFR Pt. 89, Subpt. A, App.A; *Engine Manufacturers Assn. v. Environmental Protection Agency*, 88 F.3d. 1075 (DC Cir. 1996)).

Fuel Sulfur Limits. With respect to non-road engines, including marine vessels and locomotives, the District and CARB have concurrent authority to establish fuel limits, such as those on sulfur content. As was noted above, fuel regulations for non-road equipment are not preempted by the Clean Air Act and do not require EPA authorization.

Operational Limits. The District has authority under state law to establish operational limits for nonvehicular sources such as marine vessels, locomotives, and cargo handling equipment (to the extent cargo handling equipment is "nonvehicular"). As was discussed above, operational limits for non-road equipment are not preempted by the Clean Air Act. In addition, the District may adopt operational limits for motor vehicles such as indirect source controls and transportation controls without receiving an authorization or waiver from U.S. EPA.

REFERENCES

San Pedro Bay Ports Clean Air Action Plan, 2010 Update, October 2010

Southern California International Gateway Project Draft Environmental Impact Report, Port of Los Angeles, September 2011

SCAQMD, 2007 Air Quality Management Plan, Appendix IV-A, June 2007

ATTACHMENT 18.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Final Supplement to the 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin

February 2015

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Barry R. Wallerstein, D. Env.

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TABLE F-1

Updated 2012 SIP Emission Reduction Commitments to Attain 24-hour PM2.5 NAAQS *(35 μg/m³)*

Control Measure #	CONTROL MEASURE TITLE	2012 AQMP			PROPOSED in SUPPLEMENT		
		Adoption Date	COMMITMENT	ACHIEVED	Adoption Date	COMMITMENT	ACHIEVED
			2014	2014		2015	2015
PM2.5 EMISSIONS							
IND-01	Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Facilities [R4001]	2013	N/A[1]	N/A[1]	**2015**	N/A[1]	N/A[1]
BCM-01	Further Reductions from Residential Wood Burning Devices [R445]	2013	7.1	7.1	2013	7.1	7.1
BCM-02	Further Reductions from Open Burning [R444]	2013	4.6	4.6	2013	4.6	4.6
MCS-01	Application of All Feasible Measures Assessment	Ongoing	TBD[2]	TBD	Ongoing	TBD[2]	TBD
BCM-03	Emission Reductions from Under-Fired Charbroilers [R1138]	2015	TBD[3]	TBD	**2017**	TBD[3]	TBD
EDU-01	Further Criteria Pollutant Reductions from Education, Outreach and Incentives	Ongoing	N/A[4]	N/A	Ongoing	N/A[4]	N/A
	TOTAL PM2.5 EMISSION REDUCTIONS (TPD)		**11.7**	**11.7**	**--**	**11.7**	**11.7**
NOx EMISSIONS							
CMB-01	Further NOx Reductions from RECLAIM [Reg XX]	2013	2.0[5]	--	**2015**	2.0[5]	--
IND-01	Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Facilities [R4001]	2013	N/A[1]	N/A[1]	**2015**	N/A[1]	N/A[1]
	TOTAL NOx EMISSION REDUCTIONS (TPD)		**2.0**	--	--	**2.0**	--
SOx EMISSIONS							
IND-01	Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Facilities [R4001]	2013	N/A[1]	N/A[1]	**2015**	N/A[1]	N/A[1]
	TOTAL SOx EMISSION REDUCTIONS (TPD)		--	**N/A[1]**	--	--	**N/A[1]**
NH3 EMISSIONS							
BCM-04	Further Ammonia Reductions from Livestock Waste [R1127] - Phase I (*Tech Assessment*)	2013-2014	TBD[2]	TBD	**2015 - 2016**	TBD[2]	TBD
	-Phase II (*Rule Amendment*)	TBD	TBD[2]	TBD	TBD	TBD[2]	TBD
	TOTAL NH3 EMISSION REDUCTIONS (TPD)		TBD	TBD	--	--	--

[1] Measure is designed to ensure reductions assumed to occur will in fact occur
[2] Reductions to be determined once the technical assessment is complete, and inventory and control approach are identified
[3] Will submit into SIP once technically feasible and cost effective options are identified
[4] Reductions cannot be quantified due to the nature of the measure (e.g., outreach, incentive programs)
[5] Emission reductions are included in the SIP as a contingency measure, if triggered

ATTACHMENT 19.

BOARD MEETING DATE: February 6, 2015 AGENDA NO. 22

PROPOSAL: Supplement to 24-hour PM2.5 State Implementation Plan for South Coast Air Basin

SYNOPSIS: The purpose of this Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin is to demonstrate attainment of the 2006 24-hour PM2.5 National Ambient Air Quality Standard by 2015 under Clean Air Act, Title 1, Part D, Subpart 4, along with updates to the transportation conformity budgets, analysis of Reasonably Available Control Measures/Reasonably Available Control Technology, control measure commitments submitted in the 2012 AQMP, and other Subpart 4 requirements.

COMMITTEE: Mobile Source Committee, January 23, 2015, Reviewed

RECOMMENDED ACTIONS:
Adopt the attached resolution:

1. Determining that the Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin is exempt from the requirements of CEQA; and
2. Approving the attached Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin for Submittal into the SIP.

Barry R. Wallerstein, D.Env.
Executive Officer

BB EC:PF:MK

Background

The 2012 AQMP was approved by the SCAQMD Board in December 2012, with additional amendments approved in February 2013, and was subsequently submitted to CARB and the U.S. EPA for inclusion into the SIP. That plan demonstrated projected attainment of the 2006 24-hour PM2.5 National Ambient Air Quality Standards (NAAQS) (35 $\mu g/m^3$) by 2014. However, a recent court decision (*Natural Res. Def. Council v. EPA*, 706 F.3d 428 (D.C. Cir. 2013)) compels U.S. EPA to evaluate the 24-

ATTACHMENT B

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Draft Supplement to the 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin

January 2015

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	Megan Lorenz	Senior Deputy District Counsel

ATTACHMENT F

UPDATED LIST OF CONTROL STRATEGY COMMITMENTS

UPDATE OF COMMITMENTS

The short-term PM2.5 control measures in the 2012 AQMP included stationary source control measures, technology assessments, an indirect source measure and one education and outreach measure. The development of the control measures considered the emissions reductions and the adoption and implementation dates that would result in attainment of the 2006 24-hour PM2.5 standard of 35 $\mu g/m^3$. In some cases, only a range of possible emissions reductions could be determined, and for some others, the magnitude of potential reductions could not be determined at that time. The short-term PM2.5 control measures were presented in Table 4-2 (Chapter 4) of the 2012 AQMP, and the following table, Table F-1 updates that information, thus replacing Table 4-2 in the 2012 AQMP for inclusion in the 24-hour PM2.5 SIP. Note that these changes do not affect the magnitude or timing of emission reductions commitments supporting the attainment demonstration in the 2012 AQMP and this Supplement. The emission reduction commitment for CMB-01 (Further NOx Reductions from RECLAIM) was as a contingency measure only for PM2.5, and thus does not affect the attainment demonstrations.

The measures target a variety of source categories: Combustion Sources (CMB), PM Sources (BCM), Indirect Sources (IND), Educational Programs (EDU) and Multiple Component Sources (MCS).

Two PM2.5 control measures, BCM-01 (Further Reductions from Residential Wood Burning Devices) and BCM-02 (Further Reductions from Open Burning), were adopted in 2013 in the form of amendments to Rules 445 (Wood Burning Devices) and 444 (Open Burning), respectively. Together, these amendments generated a total of 11.7 tons of PM2.5 per day reductions on an episodic basis. Control measure CMB-01 (Further NOx Reductions from RECLAIM), which was submitted as a contingency measure, is anticipated to be considered by the SCAQMD Governing Board in the first half of 2015. The rulemaking process for control measure IND-01 (Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities) is underway, with anticipated SCAQMD Governing Board consideration in 2015 and the technology assessment for control measure BCM-04 (Further Ammonia Reductions from Livestock Waste) will now be adopted in the 2015 to 2016 timeframe with rulemaking to follow, if technically feasible and cost-effective. The BCM-03 (Emission Reductions from Under-Fired Charbroilers) technology assessment is ongoing and is expected to be completed by 2015 with rule development to follow by 2017.

Pursuant to CAA Section 172(c)(9), SIPs are required to include contingency measures to be undertaken if the area fails to make reasonable further progress or attain the NAAQS by the attainment date. The contingency measures "should provide for emission reductions equivalent to about one year of reductions needed for reasonable further progress (RFP)" (79 FR 20642-20645) The 2012 AQMP relied on excess air quality improvement from the control strategy as well as potential NOx reductions from control measure CMB-01 (Further NOx Reductions from

ATTACHMENT 20.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Final Supplement to the 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin

February 2015

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TABLE F-1

Updated 2012 SIP Emission Reduction Commitments to Attain 24-hour PM2.5 NAAQS *(35 μg/m³)*

Control Measure #	CONTROL MEASURE TITLE	2012 AQMP			PROPOSED in SUPPLEMENT		
		Adoption Date	COMMITMENT	ACHIEVED	Adoption Date	COMMITMENT	ACHIEVED
			2014	2014		2015	2015
PM2.5 EMISSIONS							
IND-01	Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Facilities [R4001]	2013	N/A[1]	N/A[1]	**2015**	N/A[1]	N/A[1]
BCM-01	Further Reductions from Residential Wood Burning Devices [R445]	2013	7.1	7.1	2013	7.1	7.1
BCM-02	Further Reductions from Open Burning [R444]	2013	4.6	4.6	2013	4.6	4.6
MCS-01	Application of All Feasible Measures Assessment	Ongoing	TBD[2]	TBD	Ongoing	TBD[2]	TBD
BCM-03	Emission Reductions from Under-Fired Charbroilers [R1138]	2015	TBD[3]	TBD	**2017**	TBD[3]	TBD
EDU-01	Further Criteria Pollutant Reductions from Education, Outreach and Incentives	Ongoing	N/A[4]	N/A	Ongoing	N/A[4]	N/A
	TOTAL PM2.5 EMISSION REDUCTIONS (TPD)		**11.7**	**11.7**	--	**11.7**	**11.7**
NOx EMISSIONS							
CMB-01	Further NOx Reductions from RECLAIM [Reg XX]	2013	2.0[5]	--	**2015**	2.0[5]	--
IND-01	Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Facilities [R4001]	2013	N/A[1]	N/A[1]	**2015**	N/A[1]	N/A[1]
	TOTAL NOx EMISSION REDUCTIONS (TPD)		**2.0**	--	--	**2.0**	--
SOx EMISSIONS							
IND-01	Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Facilities [R4001]	2013	N/A[1]	N/A[1]	**2015**	N/A[1]	N/A[1]
	TOTAL SOx EMISSION REDUCTIONS (TPD)		--	**N/A[1]**	--	--	**N/A[1]**
NH3 EMISSIONS							
BCM-04	Further Ammonia Reductions from Livestock Waste [R1127] - Phase I (*Tech Assessment*)	2013-2014	TBD[2]	TBD	**2015 - 2016**	TBD[2]	TBD
	-Phase II (*Rule Amendment*)	TBD	TBD[2]	TBD	TBD	TBD[2]	TBD
	TOTAL NH3 EMISSION REDUCTIONS (TPD)		TBD	TBD	--	--	--

[1] Measure is designed to ensure reductions assumed to occur will in fact occur
[2] Reductions to be determined once the technical assessment is complete, and inventory and control approach are identified
[3] Will submit into SIP once technically feasible and cost effective options are identified
[4] Reductions cannot be quantified due to the nature of the measure (e.g., outreach, incentive programs)
[5] Emission reductions are included in the SIP as a contingency measure, if triggered

BOARD MEETING DATE: February 6, 2015 AGENDA NO. 22

PROPOSAL: Supplement to 24-hour PM2.5 State Implementation Plan for South Coast Air Basin

SYNOPSIS: The purpose of this Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin is to demonstrate attainment of the 2006 24-hour PM2.5 National Ambient Air Quality Standard by 2015 under Clean Air Act, Title 1, Part D, Subpart 4, along with updates to the transportation conformity budgets, analysis of Reasonably Available Control Measures/Reasonably Available Control Technology, control measure commitments submitted in the 2012 AQMP, and other Subpart 4 requirements.

COMMITTEE: Mobile Source Committee, January 23, 2015, Reviewed

RECOMMENDED ACTIONS:
Adopt the attached resolution:
1. Determining that the Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin is exempt from the requirements of CEQA; and
2. Approving the attached Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin for Submittal into the SIP.

Barry R. Wallerstein, D.Env.
Executive Officer

BB EC:PF:MK

Background

The 2012 AQMP was approved by the SCAQMD Board in December 2012, with additional amendments approved in February 2013, and was subsequently submitted to CARB and the U.S. EPA for inclusion into the SIP. That plan demonstrated projected attainment of the 2006 24-hour PM2.5 National Ambient Air Quality Standards (NAAQS) (35 $\mu g/m^3$) by 2014. However, a recent court decision (*Natural Res. Def. Council v. EPA*, 706 F.3d 428 (D.C. Cir. 2013)) compels U.S. EPA to evaluate the 24-

ATTACHMENT E

~~DEMONSTRATION OF COMPLIANCE WITH~~
CLEAN AIR ACT, SUBPART 4, SECTION 189(E)
AND OTHER PRECURSOR REQUIREMENTS

BACKGROUND

PM2.5 has four major precursors, other than direct PM2.5 emissions, that may contribute to the development of the ambient PM2.5: ammonia, NOx, SOx, and VOC. The 2012 AQMP modeling analysis resulted in a set of ratios that reflect the relative amounts of ambient PM2.5 improvements expected from reductions of PM2.5 precursors emissions. For instance, Table 5-2 in Chapter 5 of the 2012 AQMP demonstrates that one ton of VOC emission reductions is only 30 percent as effective as one ton of NOx for lowering 24-hour PM2.5 concentrations. VOC reductions are only four percent and two percent as effective as SOx and direct PM2.5 reductions, respectively, on a per ton basis. Thus, VOC controls have a much less significant impact on ambient 24-hour PM2.5 levels relative to other PM2.5 precursors.

EMISSIONS CONTRIBUTION

While similar relative contributions to PM2.5 have not been developed for ammonia, the mass contributions of ammonium sulfate and ammonium nitrate are accounted for in the SOx and NOx contributions. This essentially assumes that PM2.5 formation in the basin is not ammonia limited with sufficient ammonia in the atmosphere to combine with available nitrates and sulfates. Under these conditions, ammonia controls are much less effective at reducing ambient PM2.5 levels than other precursors.

While the 2012 AQMP ammonia emissions inventory was close to 100 ton per day (TPD), the inventory was highly variable in terms of source contributions and spatial distribution throughout the Basin. As presented in Table E-1, major sources accounted for 1.7 TPD or less than 2 percent of the Basin inventory. Furthermore, only four major source emitters were noted in the inventory with the single highest major source accounting for less than 0.50 TPD direct emissions. All four major sources are located in the western Basin.

TABLE E-1

VOC and Ammonia Emissions Contributions

POLLUTANT	ALL SOURCES *(Tons Per Day)*	MAJOR SOURCES *(Tons Per Day)*	RELATIVE CONTRIBUTION
VOC	451[1]	8.0[2]	1.8%
Ammonia	99[3]	1.7[2]	1.7%

[1] 2012 AQMP - Appendix III: Base and Future Year Emission Inventory; 2014 Annual Average Emissions by Source Category in South Coast Air Basin

[2] 2013 SCAQMD Annual Emission Reporting

[3] ARB Almanac 2013 – Appendix B: County Level Emissions and Air Quality by Air Basin; County Emission Trends

Prior to the 2003 AQMP, significant effort was undertaken to develop inter-pollutant trading ratios to meet NSR emissions reduction goals. The primary mechanism was to reduce SOx to offset PM emissions. Aerosol chemical mechanisms embedded in box and regional modeling platforms where used to estimate the formation rates of ammonium sulfate from local sulfur emissions to establish a SOx emissions to PM formation ratio. The analyses determined that the influence of ammonia emissions was spatially varying where coastal-metro zone (west Basin) trading ratios of SOX to PM valued more than 5:1 per unit SOx emissions to PM. Conversely, eastern Basin ratios valued 1:1 since ammonia emissions were abundant and all SOx emissions were likely to rapidly transform to particulate ammonium sulfate. The inter-pollutant trades made during this time were reviewed by U.S. EPA and were included by reference to the EPA sponsored Inter-Pollutant Trading Working Group[4].

As part of the controls strategy evaluation for future PM2.5 attainment, additional set of analyses were conducted to test the potential impact of the use of SCR as a NOx control mechanism for mobile sources in the Basin. The analyses assumed that light as well as heavy duty diesels would use the control equipment potentially resulting in a 78-85 percent increase in ammonia from those source categories. The results of the analysis, presented at the September 24, 2010 SCAQMD Mobile Source Committee Meeting[5], indicated that a 10 TPD increase in ammonia would result in a net 0.22 $\mu g/m^3$ increase in regional PM2.5 concentrations. The emissions mostly followed heavy traffic corridors including freeways and major arterials. Regardless, the minimal PM2.5 simulated increase from a 10 percent increase in the Basin inventory reflected the degree of saturation of ammonia in the Basin and minimal sensitivity of changes in ammonia emissions to PM2.5 production.

During the development of the 2012 AQMP, a sensitivity analysis was conducted to test the potential impact of using a feed supplement applied to dairy cows on a forecasted basis that would reduce bovine ammonia emissions by 50 percent. The analysis focused on the Mira Loma area where more than 70 percent of the Basin's dairy emissions originate. In the sensitivity analysis a total of 2.9 TPD emissions were reduced from 103 dairy sources, or an average of 0.028 TPD per source (roughly one tenth of major source threshold)[6]. Since the Mira Loma monitoring station was embedded among the dairy sources, the reduction of the ground level emissions resulted in an approximate 0.16 $\mu g/m^3$ reduction in PM2.5. As in the aforementioned analyses, the reduction in regional ammonia emissions resulted in a minimal PM2.5 impact per ton emissions reduced.

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and Forecasts 2012 Emissions. NOTE: 2012 AQMP – Appendix III provides 2014 Annual Average of 102 tpd of NH3; the relative contribution would not change (1.7/102 = 1.7%)

[4] "Preliminary Assessment of Methods for Determining Interpollutant Offsets", Correspondence with Scott Bohning U.S. EPA Region IX, May 6, 2002.

[5] "Impact of Higher On- and Off-road Ammonia Emissions on Regional PM2.5," Item 3, SCAQMD, Mobile Source Committee, September 24, 2010.

[6] "2008 24-hour PM2.5 Model Performance/Preliminary Attainment Demonstration," Item #2, Scientific Technical Modeling Peer Group Advisory Committee, June 14, 2012.

Thus, ammonia controls also have a much less significant impact on 24-hour PM2.5 exceedances than other precursors. Note however, that the effect on annual PM2.5 levels will be further evaluated in the 2016 AQMP.

SECTION 189(E)

Clean Air Act (CAA), Title I, Part D, Subpart 4, Section 189(e) states that control requirements applicable to plans in effect for major stationary PM sources shall also apply to major stationary sources of PM precursors, except where such sources does not contribute significantly to PM levels which exceed the standard in the area. According to the U.S. EPA, a major source in a nonattainment area is a source with emission of any one air pollutant greater than or equal to the major source thresholds in a nonattainment area. This threshold is generally 100 tons per year (tpy) or lower depending on the nonattainment severity for all sources. Emissions are based on "potential to emit" and include the effect of add-on emission control technology, if enforceable (*must be able to show continual compliance with the limitation or requirement*).

Major stationary sources of NOx and SOx are already subject to emission offsets (e.g., Regulation XX (RECLAIM) and Regulation XII (New Source Review)). Thus, to demonstrate compliance with CAA Subpart 4, Section 189(e), an analysis was conducted of the emissions of VOC and ammonia from major stationary sources during rule development of amended Rule 1325 (*Federal PM2.5 New Source Review Program*) approved by the SCAQMD Governing Board on December 5, 2014 (http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2014/2014-dec5-038.pdf?sfvrsn=2). That analysis concluded that VOC and ammonia from major sources (emitting 100 tpy or greater) contribute less than 2% of the overall Basin-wide VOC and ammonia emissions (Table E-1), and by extension, do not contribute significantly to PM levels. Furthermore, both VOC and ammonia are subject to requirements for Best Available Control Technology (BACT) under existing New Source Review (NSR) at a zero threshold, so those emission will still be minimized. This analysis was also included in the final approved staff report for PAR 1325.

~~Thus, the SCAQMD believes the requirements of CAA Subpart 4, Section 189(e) are satisfied and thus request that the Administrator of U.S. EPA makes this determination pursuant to this Section.~~

NEW SOURCE REVIEW

Because ammonia from major stationary sources does not significantly contribute to PM levels (see Table E-1), ammonia emission sources have not historically been subject to NSR offset requirements. However, for permitted ammonia sources, SCAQMD Rule 1303 (*NSR Requirements)* requires denial of "the Permit to Construct for any relocation, or for any new or

modified source which results in an emission increase of any nonattainment air contaminant, any ozone depleting compound, or ammonia, unless BACT is employed for the new or relocated source or for the actual modification to an existing source." No new major stationary source of ammonia is expected to be introduced to the region given that these new sources would be subject to BACT requirements (under SCAQMD Rule 1303 (*NSR Requirements*), BACT shall be at least as stringent as Lowest Achievable Emissions Rate (LAER) as defined in the federal Clean Air Act Section 171(3) [42 U.S.C. Section 7501(3)]). As mentioned above, there are currently only four major sources of ammonia (emitting more than 100 tons per year) in the South Coast Air Basin. If these sources were new to the region, they would be subject to BACT as stringent as LAER and not expected to reach 100 tons per year so as to be classified as a major source, thus not subject to NSR offset requirements.

However unlikely, even if new or modified major sources of ammonia increase ammonia emissions in the Basin, the ammonia contribution from major sources in the South Coast Air Basin will still not be a significant contributor to PM2.5 levels given that all current major sources of ammonia account for less than two percent of the overall ammonia emissions inventory. For instance, in the extremely unlikely event that ammonia emissions from major sources double, they would still contribute less than five percent of the overall ammonia inventory.

ATTACHMENT 21.

ATTACHMENT A
RESOLUTION NO. 12-19

A Resolution of the South Coast Air Quality Management District (AQMD or District) Governing Board Certifying the Final Program Environmental Impact Report for the 2012 Air Quality Management Plan (AQMP), adopting the Draft Final 2012 AQMP, to be referred to after adoption as the Final 2012 AQMP, and to be submitted into the California State Implementation Plan.

WHEREAS, the U.S. Environmental Protection Agency (U.S. EPA) promulgated a 24-hour fine particulate matter (PM2.5) national ambient air quality standard (NAAQS or standard) in 2006, and 8-hour ozone NAAQS in 1997, followed up by implementation rules which set forth the classification and planning requirements for State Implementation Plans (SIP); and

WHEREAS, the South Coast Air Basin was classified as nonattainment for the 2006 24-hour PM2.5 standard on December 14, 2009, with an attainment date by December 14, 2014; and

WHEREAS, the U.S. EPA revoked the 1-hour ozone standard effective June 15, 2005, but on September 19, 2012 issued a proposed call for a California SIP revision for the South Coast to demonstrate attainment of the 1-hour ozone standard; and

WHEREAS, the 1997 8-hour ozone standard became effective on June 15, 2004, with an attainment date for the South Coast of **June 15**, 2024; and amended 12-7-12 sm

WHEREAS, the South Coast Air Basin was classified as "extreme" nonattainment for 8-hour ozone for the 1997 standard with attainment dates by 2024; and

WHEREAS, EPA approved the South Coast SIP for 8-hour ozone on March 1, 2012; and

WHEREAS, the federal Clean Air Act requires SIPs for regions not in attainment with the NAAQS be submitted no later than three years after the nonattainment area was designated, whereby, a SIP for the South Coast Air Basin must be submitted for 24-hour PM2.5 by December 14, 2012; and

WHEREAS, the South Coast Air Quality Management District has jurisdiction over the South Coast Air Basin and the desert portion of Riverside County known as the Coachella Valley; and

WHEREAS, 40 Code of Federal Regulations (CFR) Part 93 requires that transportation emission budgets for certain criteria pollutants be specified in the SIP, and

WHEREAS, 40 CFR Part 93.118(e)(4)(iv) requires a demonstration that transportation emission budgets submitted to U.S. EPA are "consistent with applicable requirements for reasonable further progress, attainment, or" maintenance (whichever is relevant to the given implementation plan submission); and

WHEREAS, the South Coast Air Quality Management District is committed to comply with the requirements of the federal Clean Air Act; and

WHEREAS, the Lewis-Presley Air Quality Management Act requires the District's Governing Board adopt an AQMP to achieve and maintain all state and federal air quality standards; to contain deadlines for compliance with federal primary ambient air quality standards; and to achieve the state standards and federal secondary air quality standards by the application of all reasonably available control measures, by the earliest date achievable (Health and Safety Code Section 40462) and the California Clean Air Act requires the District to endeavor to achieve and maintain state ambient air quality standards for ozone, carbon monoxide, sulfur dioxide, and nitrogen dioxide by the earliest practicable date (Health and Safety Code Section 40910); and

WHEREAS, the California Clean Air Act requires a nonattainment area to evaluate and, if necessary, update its AQMP under Health & Safety Code §40910 triennially to incorporate the most recent available technical information; and

WHEREAS, the South Coast Air Quality Management District Governing Board is committed to comply with the requirements of the California Clean Air Act; and

WHEREAS, the South Coast Air Quality Management District is unable to specify an attainment date for state ambient air quality standards for 8-hour ozone, PM2.5, and PM10, however, the 2012 AQMP, in conjunction with earlier AQMPs contains every feasible control strategy and measure to ensure progress toward attainment and the AQMP will be reviewed and revised to ensure that progress toward all standards is maintained; and

WHEREAS, the 2012 AQMP must meet all applicable requirements of state law and the federal Clean Air Act; and

WHEREAS, the South Coast Air Quality Management District Governing Board is committed to achieving healthful air in the South Coast Air Basin and all other parts of the District at the earliest possible date; and

WHEREAS, the 2012 AQMP is the result of 17 months of staff work, public review and debate, and has been revised in response to public comments; and

WHEREAS, the 2012 AQMP incorporates updated emissions inventories, ambient measurements, new meteorological episodes, improved air quality modeling analyses, and updated control strategies by the District, and the Southern California Association of Governments (SCAG) and will be forwarded to the California Air Resources Board (CARB) for any necessary additions and submission to EPA; and

WHEREAS, as part of the preparation of an AQMP, in conjunction or coordination with public health agencies such as CARB and the Office of Environmental Health Hazard Assessment (OEHHA), a report has been prepared and peer-reviewed by the Advisory Council on the health impacts of particulate matter air pollution in the South Coast Air Basin pursuant to California Health and Safety Code § 40471, which has been included as part of Appendix I (Health Effects) of the 2012 AQMP together with any required appendices; and

WHEREAS, the 2012 AQMP establishes transportation conformity budgets for the 24-hour PM2.5 standard based on the latest planning assumptions; and

WHEREAS, the AQMP satisfies all the attainment deadlines for federal ambient air quality standards for 24-hour PM2.5 and 1-hour ozone NAAQS; and

WHEREAS, the 2012 AQMP satisfies the planning requirements set forth in the federal and California Clean Air Acts; and

WHEREAS, the 2012 AQMP includes the 24-hour PM2.5 attainment demonstration plan, reasonably available control measure (RACM) and reasonably available control technology (RACT) determinations, and transportation conformity budgets for the South Coast Air Basin; and

WHEREAS, the 2012 AQMP updates the U.S. EPA approved 8-hour ozone control plan with new measures designed to reduce reliance on the federal Clean Air Act (CAA) Section 182(e)(5) long-term measures for NOx and VOC reductions; and

WHEREAS, in order to reduce reliance on the CAA Section 182(e)(5) long-term measures, the SCAQMD will need emission reductions from sources outside of its primary regulatory authority and from sources that may lack, in some cases, the financial wherewithal to implement technology with reduced air pollutant emissions; and

WHEREAS, a majority of the measures identified to reduce reliance on the CAA Section 182(e)(5) long-term measures rely on continued and sustained funding to incentivize the deployment of the cleanest on-road vehicles and off-road equipment; and

WHEREAS, the 2012 AQMP includes a new demonstration of 1-hour ozone attainment (Appendix VII) and vehicle miles travelled (VMT) emissions offsets (Appendix VIII), as per recent proposed U.S. EPA requirements; and

WHEREAS, the South Coast Air Quality Management District Governing Board finds and determines with certainty that the 2012 AQMP is considered a "project" pursuant to CEQA; and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA) a Notice of Preparation (NOP) of a Draft Program Environmental Impact Report (PEIR) and Initial Study for the 2012 AQMP was prepared and released for a 30-day public comment period, preliminarily setting forth the potential adverse environmental impacts of adopting and implementing the 2012 AQMP; and

WHEREAS, pursuant to CEQA a Draft PEIR on the 2012 AQMP (State Clearinghouse Number 2012061093), including the NOP and Initial Study and responses to comments on the NOP and Initial Study, was prepared and released for a 45-day public comment period, setting forth the potential adverse environmental impacts of adopting and implementing the 2012 AQMP; and

WHEREAS, the Draft PEIR on the 2012 AQMP included an evaluation of project-specific and cumulative direct and indirect impacts from the proposed project and four project alternatives; and

WHEREAS, the AQMD staff reviewed the 2012 AQMP and determined that it may have the potential to generate significant adverse environmental impacts; and

WHEREAS, the Draft PEIR on the 2012 AQMP has been revised based on comments received and modifications to the draft 2012 AQMP and all comments received were responded to, such that it is now a Final PEIR on the 2012 AQMP; and

WHEREAS, the Governing Board finds and determines, taking into consideration the factors in §(d)(4)(D) of the Governing Board Procedures, that the modifications that have been made to 2012 AQMP, since the Draft PEIR on the 2012 AQMP was made available for public review would not constitute significant new information within the meaning of the CEQA Guidelines; and

WHEREAS, none of the modifications to the 2012 AQMP alter any of the conclusions reached in the Draft PEIR on the 2012 AQMP, nor provide new information of substantial importance that would require recirculation of the Draft PEIR on the 2012 AQMP pursuant to CEQA Guidelines §15088.5; and

WHEREAS, it is necessary that the adequacy of the Final PEIR on the 2012 AQMP be determined by the AQMD Governing Board prior to its certification; and

WHEREAS, it is necessary that the adequacy of responses to all comments received on the Draft PEIR on the 2012 AQMP be determined prior to its certification; and

WHEREAS, it is necessary that the AQMD prepare Findings and a Statement of Overriding Considerations pursuant to CEQA Guidelines §§15091 and 15093, respectively, regarding adverse environmental impacts that cannot be mitigated to insignificance; and,

WHEREAS, Findings and a Statement of Overriding Considerations have been prepared and are included in Attachment 2 to this Resolution, which is attached and incorporated herein by reference; and

WHEREAS, the provisions of Public Resources Code §21081.6 – Mitigation Monitoring and Reporting - require the preparation and adoption of implementation plans for monitoring and reporting measures to mitigate adverse environmental impacts identified in environmental documents; and

WHEREAS, staff has prepared such a plan which sets forth the adverse environmental impacts, mitigation measures, methods, and procedures for monitoring and reporting mitigation measures, and agencies responsible for monitoring mitigation measure, which is included as Attachment 2 to the Resolution and incorporated herein by reference; and

WHEREAS, the South Coast Air Quality Management District Governing Board voting on this Resolution has reviewed and considered the Final Program Environmental Impact Report on the 2012 AQMP, including responses to comments on the Draft Program Environmental Impact Report on the 2012 AQMP, the Statement of Findings, Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting Plan; and

WHEREAS, the Draft Socioeconomic Report on the 2012 AQMP was prepared and released for public review and comment; and

WHEREAS, the Draft Socioeconomic Report for the 2012 AQMP is revised based on comments received and modifications to the Draft 2012 AQMP such that it is now a Draft Final Socioeconomic Report for the 2012 AQMP; and

WHEREAS, the 2012 AQMP includes every feasible measure and an expeditious adoption schedule; and

WHEREAS, the CARB and the U.S. EPA have the responsibility to control emissions from motor vehicles, motor vehicle fuels, and non-road engines and consumer products which are primarily under their jurisdiction representing over 80 percent of ozone precursor emissions in 2023; and

WHEREAS, significant emission reductions must be achieved from sources under state and federal jurisdiction for the South Coast Air Basin to attain the federal air quality standards; and

WHEREAS, the formal deadline for submission of the 24-hour PM2.5 attainment plan is December 14, 2012, and the formal deadline for submission of the 1-hour ozone SIP revision is expected to be late 2013 or early 2014, but since the emissions inventory and control strategy for ozone has already been developed for the 2012 AQMP, and attaining the 1-hour ozone standard can rely on the same strategy for the 8-hour ozone standard, an attainment demonstration for the 1-hour ozone standard is included as an Appendix to the 2012 AQMP; and

WHEREAS, the 1-hour ozone attainment demonstration (Appendix VII) uses the same base year (2008) and future year inventories as presented in Appendix III of the 2012 AQMP and satisfies the pre-base year offset requirement by including pre-base year emissions in the growth projections, consistent with 40 CFR § 51.165(a)(3)(i)(C)(1), as described on page III-2-54 of Appendix III of the 2012 AQMP.

WHEREAS the South Coast Air Quality Management District Governing Board hereby requests that CARB commit to submitting contingency measures as required by Section 182(e)(5) as necessary to meet the requirements for demonstrating attainment of the 1-hr ozone standard; and

WHEREAS, the South Coast Air Quality Management District Governing Board directs staff to move expeditiously to adopt and implement feasible new control measures to achieve long-term reductions while meeting all applicable public notice and other regulatory development requirements; and

WHEREAS, the South Coast Air Quality Management District has held six public workshops on the Draft 2012 AQMP, one public workshop on the Draft Socioeconomic Report, four public hearings throughout the four-county region in September on the Revised Draft 2012 AQMP, 14 AQMP Advisory Group meetings, 11 Scientific, Technical, and Modeling, Peer Review Advisory Group meetings, four public hearings in November throughout the four-county region on the Draft Final 2012 AQMP, and one adoption hearing pursuant to section 40466 of the Health and Safety Code; and

WHEREAS, pursuant to section 40471(b) of the Health and Safety Code, as part of the six public workshops on the Draft 2012 AQMP, four public hearings on the Revised Draft 2012 AQMP, the four public hearings on the Draft Final 2012 AQMP, and adoption hearing, public testimony and input were taken on Appendix I (Health Effects); and

WHEREAS, the record of the public hearing proceedings is located at South Coast Air Quality Management District, 21865 Copley Drive, Diamond Bar, California 91765, and the custodian of the record is the Clerk of the Board; and

WHEREAS, an extensive outreach program took place that included over 75 meetings with local stakeholders, key government agencies, focus groups, topical workshops, and over 65 presentations on the 2012 AQMP provided; and

WHEREAS, the record of the CEQA proceedings is located at South Coast Air Quality Management District, 21865 Copley Drive, Diamond Bar, California 91765, and the custodian of the record is the Assistant Deputy Executive Officer, Planning, Rule Development, and Area Sources.

NOW, THEREFORE BE IT RESOLVED, that the South Coast Air Quality Management District Governing Board does hereby certify that the Final PEIR for the 2012 AQMP including the responses to comments has been completed in compliance with the requirements of CEQA and finds that the Final PEIR on the 2012 AQMP, including responses to comments, was presented to the AQMD Governing Board, whose members reviewed, considered and approved the information therein prior to acting on the 2012 AQMP; and finds that the Final PEIR for the 2012 AQMP reflects the AQMD's independent judgment and analysis; and

BE IT FURTHER RESOLVED, that the District will develop, adopt, submit, and implement the short-term PM2.5 control measures as identified in Table 4-2 and the 8-hour ozone measures in Table 4-4 of Chapter 4 in the 2012 AQMP (Main Document) as expeditiously as possible in order to meet or exceed

the commitments identified in Tables 4-10 and 4-11 of the 2012 AQMP (Main Document), and to substitute any other measures as necessary to make up any emission reduction shortfall.

BE IT FURTHER RESOLVED, the District commits to update AQMP emissions inventories, baseline assumptions and control measures as needed to ensure that the best available data is utilized and attainment needs are met.

BE IT FURTHER RESOLVED, the District commits to conduct a review of its socioeconomic analysis methods during 2013, convene a panel of experts, and update assessment methods and approaches, as appropriate.

BE IT FURTHER RESOLVED, the District commits to continue working with the ports on the implementation of control measure IND-01 (Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Sources).

BE IT FURTHER RESOLVED, that the Executive Officer is hereby directed to enhance outreach and education efforts related to the "Check before you Burn" residential wood burning curtailment program, and to expand the current incentive programs for gas log buydown and to include potentially wood stove replacements working closely with U.S. EPA and other stakeholders.

amended 12-7-12 BA

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board does hereby direct staff to work in conjunction with CARB to provide annual reports to U.S. EPA describing progress towards meeting Section 182(e)(5) emission reduction commitments.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, pursuant to the requirements of Title 14 California Code of Regulations, does hereby adopt the Statement of Findings pursuant to §15091, and adopts the Statement of Overriding Considerations pursuant to §15093, included in Attachment 2 and incorporated by reference; and

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, does hereby adopt the Mitigation Monitoring and Reporting Plan, as required by Public Resources Code, Section 21081.6, attached hereto and incorporated by reference; and

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board finds that the mobile source control measures contained in Appendix IV-B are technically feasible and cost-effective and requests that CARB consider them in any future incentives programs or rulemaking.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board does hereby direct staff to work with state agencies and state legislators, federal agencies and U.S. Congressional and Senate members to identify funding sources and secure funding for the expedited replacement of older existing vehicles and off-road equipment to help reduce the reliance on the CAA Section 182(e)(5) long-term measures.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board finds that transportation emission budgets are "consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to the given implementation plan submission)" pursuant to 40 CFR 93.118(e)(4)(iv).

BE IT FURTHER RESOLVED, that the Executive Officer is hereby directed to finalize the 2012 AQMP including the main document, appendices, and related documents as adopted at the December 7, 2012 public hearing.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, whose members reviewed, considered and approved the information contained in the documents listed herein, adopts the 2012 AQMP dated December 7, 2012 consisting of the document entitled 2012 AQMP as amended by the final changes set forth by the AQMD Governing Board and the associated documents listed in Attachment 1 to this Resolution, the Draft Final Socioeconomic Report for the 2012 AQMP; the Final Program EIR for the 2012 AQMP, and the Statements of Findings and Overriding Considerations and Mitigation Monitoring Plan (Attachment 2 to this Resolution).

BE IT FURTHER RESOLVED, the Executive Officer is hereby directed to work with CARB and the U.S. EPA to ensure expeditious approval of this 2012 AQMP for PM2.5 and 1-hour ozone attainment.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, requests that the 2012 AQMP serve as the SIP revision submittal for the 24-hour PM2.5 attainment demonstration plan including the RACM/RACT determinations for the PM2.5 standard for the South Coast Air Basin, and the PM2.5 Transportation Conformity Budgets for the South Coast Air Basin.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, requests that the 2012 AQMP (Appendix VII) serve as the SIP revision submittal for the 1-hour ozone NAAQS attainment demonstration.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, requests that the 2012 AQMP (Appendix VIII) serve as the SIP revision submittal for a revised VMT emissions offset demonstration as required under Section 182(d)(1)(A) for both the 1-hour ozone and 8-hour ozone SIPs for the South Coast Air Basin.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, requests that the 2012 AQMP serve as an update to the approved 2007 8-hour ozone SIP for the South Coast Air Basin with specific control measures designed to further implement the 8-hour ozone SIP and reduce reliance on Section 182(e)(5) long term measures.

BE IT FURTHER RESOLVED, that the 2012 AQMP does not serve as a revision to the previously approved 8-hour ozone SIP with respect to emissions inventories, attainment demonstration, RFP, and transportation emissions budgets or any other required SIP elements.

BE IT FURTHER RESOLVED, that the Executive Officer is hereby directed to forward a copy of this Resolution, the 2012 AQMP and its appendices as amended by the final changes, to CARB, and to request that these documents be forwarded to the U.S. EPA for approval as part of the California State Implementation Plan. In addition, the Executive Officer is directed to forward a copy of this Resolution, comments on the 2012 AQMP and responses to comments, public notices, and any other information requested by the U.S. EPA for informational purposes.

Attachments

AYES: Benoit, Burke, Cacciotti, Gonzales, Loveridge, Lyou, Mitchell, Nelson, Parker, Pulido, and Yates.

NOES: None.

ABSTAIN: None.

ABSENT: Antonovich and Perry.

Dated: 12-7-2012

Saundra McDaniel
Clerk of the District Board

ATTACHMENT 1

The Final 2012 Air Quality Management Plan submitted for the South Coast Air Quality Management District Governing Board's consideration consists of the documents entitled:

- Draft Final 2012 AQMP (Attachment B) including the following appendices:
  - Appendix I - Health Effects
  - Appendix II - Current Air Quality
  - Appendix III - Base and Future Year Emission Inventory
  - Appendix IV (A) - District's Stationary Source Control Measures
  - Appendix IV (B) - Proposed 8-Hour Ozone Measures
  - Appendix IV (C) - Regional Transportation Strategies & Control Measures
  - Appendix V - Modeling & Attainment Demonstrations
  - Appendix VI - Reasonably Available Control Measures (RACM) Demonstration
  - Appendix VII - 1-Hour Ozone Attainment Demonstration
  - Appendix VIII - VMT Offset Requirement Demonstration
- Comments on the 2012 Air Quality Management Plan, and Responses to Comments (November 2012) – (Attachment C)
- Final Program Environmental Impact Report for the 2012 Air Quality Management Plan (Attachment D)
  - Findings, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Plan (Attachment 2 to the Resolution)
- Draft Final Socioeconomic Report for the 2012 Air Quality Management Plan (Attachment E)
- Changes to Control Measures IND-01, CMB-01, CTS-01 and CTS-04 (Attachment F)

ATTACHMENT 22.

State of California
AIR RESOURCES BOARD

SOUTH COAST AIR BASIN 2012 PM2.5 AND OZONE STATE IMPLEMENTATION PLANS

Resolution 13-3

January 25, 2013

Agenda Item No.: 13-2-2

WHEREAS, the Legislature in Health and Safety Code section 39602 has designated the State Air Resources Board (ARB or Board) as the air pollution control agency for all purposes set forth in federal law;

WHEREAS, the ARB is responsible for preparing the State Implementation Plan (SIP) for attaining and maintaining the National Ambient Air Quality Standards (standards) as required by the federal Clean Air Act (Act) (42 U.S.C. section 7401 et seq.), and to this end is directed by Health and Safety Code section 39602 to coordinate the activities of all local and regional air pollution control and air quality management districts (districts) as necessary to comply with the Act;

WHEREAS, section 41650 of the Health and Safety Code requires the ARB to approve the nonattainment area plan adopted by a district as part of the SIP unless the Board finds, after a public hearing, that the plan does not meet the requirements of the Act;

WHEREAS, the ARB has responsibility for ensuring that the districts meet their responsibilities under the Act pursuant to sections 39002, 39500, 39602, and 41650 of the Health and Safety Code;

WHEREAS, the ARB is authorized by section 39600 of the Health and Safety Code to do such acts as may be necessary for the proper execution of its powers and duties;

WHEREAS, sections 39515 and 39516 of the Health and Safety Code provide that any duty may be delegated to the Board's Executive Officer as the Board deems appropriate;

WHEREAS, the districts have primary responsibility for controlling air pollution from non-vehicular sources and for adopting control measures, rules, and regulations to attain the standards within their boundaries pursuant to sections 39002, 40000, 40001, 40701, 40702, and 41650 of the Health and Safety Code;

WHEREAS, the South Coast Air Basin (SCAB or Basin) includes Orange County, the southwestern two-thirds of Los Angeles County, southwestern San Bernardino County, and western Riverside County;

WHEREAS, the South Coast Air Quality Management District (District) is the local air district with jurisdiction over the SCAB, pursuant to sections 40410 and 40413 of the Health and Safety Code;

WHEREAS, the Southern California Association of Governments (SCAG) is the regional transportation agency for the SCAB and Coachella Valley and has responsibility for preparing and implementing transportation control measures to reduce vehicle trips, vehicle use, vehicle miles traveled, vehicle idling and traffic congestion for the purpose of reducing motor vehicle emissions pursuant to sections 40460(b) and 40465 of the Health and Safety Code;

WHEREAS, section 40463(b) of the Health and Safety Code specifies that the District board must establish a carrying capacity - the maximum level of emissions which would enable the attainment and maintenance of an ambient air quality standard for a pollutant - for the South Coast Air Basin with the active participation of SCAG;

WHEREAS, the South Coast 2012 Air Quality Management Plan (AQMP) includes State Implementation Plan (SIP) amendments for fine particulate matter (PM2.5) and ozone;

WHEREAS, in July 1997, the United States Environmental Protection Agency (U.S. EPA) promulgated 24-hour and annual standards for PM2.5 of 65 micrograms per cubic meter (ug/m^3) and 15 ug/m^3, respectively;

WHEREAS, in December 2004, U.S. EPA designated the South Coast Air Basin as nonattainment for the PM2.5 standards;

WHEREAS, in March 2007, U.S. EPA finalized the PM2.5 implementation rule (Rule) which established the framework and requirements that states must meet to develop annual average PM2.5 SIPs, set an initial attainment date of April 5, 2010, and allowed for an attainment date extension of up to five years;

WHEREAS, the Rule requires that PM2.5 SIPs include air quality and emissions data, a control strategy, a modeled attainment demonstration, transportation conformity emission budgets, reasonably available control measure/reasonably available technology (RACM/RACT) demonstration, and contingency measures;

WHEREAS, in July 1997, the U.S. EPA promulgated an 8-hour standard for ozone of 0.08 parts per million (ppm);

WHEREAS, on April 15, 2004, U.S. EPA designated the South Coast as nonattainment for the 0.08 ppm 8-hour ozone standard;

WHEREAS, in 2007, the District and ARB adopted SIP amendments demonstrating attainment of the annual PM2.5 standard by April 5, 2015, and of the 8-hour ozone standard by December 31, 2023, and submitted the SIP amendments to U.S. EPA;

WHEREAS, in 2009 and 2011, at U.S. EPA's request, ARB provided clarifying amendments to the annual PM2.5 and 8-hour ozone South Coast SIPs submitted in 2007;

WHEREAS, in 2011, U.S. EPA approved the control strategy, emission reduction commitment and attainment demonstration for the annual PM2.5 standard with an attainment date of April 5, 2015;

WHEREAS, in 2012, U.S. EPA approved the control strategy, emission reduction commitment and attainment demonstration for the 8-hour ozone standard with an attainment date of June 15, 2024;

WHEREAS, in December 2006, U.S. EPA lowered the 24-hour PM2.5 standard from 65 ug/m^3 to 35 ug/m^3;

WHEREAS, effective December 14, 2009, U.S. EPA designated the South Coast Air Basin as nonattainment for the 35 ug/m^3 PM2.5 standard;

WHEREAS, on March 12, 2012, U.S. EPA issued a memorandum that provided further guidance on the development of SIPs specific to the 35 ug/m^3 PM2.5 standard and set an initial attainment date of December 14, 2014, with a provision for an attainment date extension of up to five years;

WHEREAS, the 2012 AQMP Plan identifies directly-emitted PM2.5, nitrogen oxides (NOx), sulfur oxides (SOx) and volatile organic compounds (VOC) as PM2.5 attainment plan precursors consistent with the Rule;

WHEREAS, the emission reductions contained in the 2012 AQMP for PM2.5 attainment rely on adopted regulations and on new or revised District control measures;

WHEREAS, the 2012 AQMP's new PM2.5 measures include further strengthening of the District's wood burning curtailment program, outreach, and incentive programs;

WHEREAS, in accordance with section 172(b)(2) of the Act, the 2012 AQMP identifies 2014 as the most expeditious attainment date for the 24-hour PM2.5 standard;

WHEREAS, the attainment analysis in the 2012 AQMP demonstrates that the 24-hour PM2.5 standard will be met throughout the Basin by the proposed 2014 attainment date;

WHEREAS, consistent with section 172(c)(3) of the Act, the 2012 AQMP includes a comprehensive, accurate, current inventory of emissions data for directly emitted PM2.5 and PM2.5 precursors: oxides of nitrogen (NOx), reactive organic gases (ROG), sulfur oxides (SOx), and ammonia (NH3);

WHEREAS, consistent with section 172(c) of the Act, the 2012 AQMP demonstrates the implementation of RACM/RACT for direct PM2.5 and the area's relevant PM2.5 precursors;

WHEREAS, consistent with section 172(c)(9) of the Act, the 2012 AQMP includes contingency measures that provide extra emissions reductions that go into effect without further regulatory action if the area fails to make attainment of the 24-hour PM2.5 standard on time;

WHEREAS, consistent with section 176 of the Act, the 2012 AQMP establishes transportation conformity emission budgets, developed in consultation between the District, ARB staff, transportation agencies, and U.S. EPA, that conform to the attainment emission levels;

WHEREAS, the approved commitment for emission reductions is for total aggregate reductions that may be achieved through the measures identified in the SIP, alternative measures or incentive programs, and actual emission decreases that occur;

WHEREAS, the approved commitment for emission reductions allows for the substitution of reductions of one precursor for another using relative PM2.5 reductions values identified by the District;

WHEREAS, section 182(e)(5) of the Act provides that SIPs for extreme ozone nonattainment areas may rely in part upon the development of new technologies or the improvement of existing technologies;

WHEREAS, the approved SIP includes commitments to achieve additional reductions from advanced technology as provided for in section 182(e)(5) of the Act;

WHEREAS, in the Federal Register (Volume 77 Fed.Reg. 12674 at 12686 (March 1, 2012)) entry approving the ozone elements of the South Coast 8-hour ozone SIP, U.S. EPA stated that measures approved under section 182(e)(5) may include those that anticipate future technological developments as well as those that require complex analyses, decision making and coordination among a number of government agencies;

WHEREAS, the 2011 revision to the 8-hour ozone SIP included State commitments to develop, adopt, and submit contingency measures by 2020 if advanced technology measures do not achieve planned reductions;

WHEREAS, the 2012 AQMP includes actions to develop and put into use advanced transformational technologies to fulfill in part the approved SIP commitment for the Act section 182(e)(5) reductions;

WHEREAS, these actions described in the 2012 AQMP as seventeen mobile measures (five on-road measures, five off-road measures, and seven advanced technology measures), are consistent with U.S. EPA's interpretation of 182(e)(5) used in the approval of the South Coast 8-hour ozone SIP (77 Fed.Reg. 12674 at 12686 (March 1, 2012));

WHEREAS, on November 6, 1991, U.S. EPA designated the South Coast Air Basin an extreme nonattainment area for the 1-hour ozone standard with an attainment date of no later than November 15, 2010;

WHEREAS, in 2000 ARB submitted the 1999 Amendment to the South Coast 1997 AQMP, collectively called the 1997/1999 SIP revision, which included long-term measures pursuant to section 185(e)(5);

WHEREAS, in 2000 U.S. EPA approved the 1997/1999 revision to the South Coast 1-hour ozone SIP;

WHEREAS, in 2003 ARB submitted a revision to the South Coast 1-hour ozone SIP;

WHEREAS, in 2009 U.S. EPA disapproved the attainment demonstration in the 2003 revision;

WHEREAS, on February 2, 2011, the Ninth Circuit Court of Appeals remanded U.S. EPA's 2009 final action on the 2003 South Coast 1-hour ozone SIP and directed U.S. EPA to take further action to ensure that the State develop a plan demonstrating attainment of the 1-hour ozone standard, consistent with Clean Air Act requirements;

WHEREAS, on January 7, 2013, U.S. EPA issued a SIP call for the State to submit, within 12 months of the effective date of the SIP call, a SIP revision demonstrating attainment of the 1-hour ozone standard in the Basin;

WHEREAS, the 2012 AQMP's 1-hour ozone attainment demonstration relies on adopted state and local regulations, along with new local regulations including continued implementation of the approved 8-hour ozone SIP to reduce emissions by 2022;

WHEREAS, the 1-hour ozone attainment demonstration also relies upon section 182(e)(5) provisions for future reductions from developing new technologies or improving existing technologies;

WHEREAS, the actions to implement advanced technology measures for the approved 8-hour ozone SIP also describe actions to implement advanced technology measures for the 1-hour ozone attainment demonstration;

WHEREAS, section 182(e)(5) of the Act requires contingency measures be submitted no later than three years prior to the attainment year in the event that the anticipated long-term measures approved pursuant to section 182(e)(5) do not achieve planned reductions needed for attaining the 1-hour ozone standard;

WHEREAS, section 182(e)(5) contingency measures in the approved SIP meet the requirements for attainment contingency measures because section 182(e)(5) is not relied on for emission reductions prior to November 15, 2000;

WHEREAS, the 2012 AQMP demonstrates the Basin will attain the 1-hour ozone standard by 2022;

WHEREAS, consistent with section 172(c)(3) of the Act, the 2012 AQMP includes a comprehensive, accurate, current inventory of emissions data for precursors of ozone: oxides of nitrogen (NOx) and reactive organic gases (ROG);

WHEREAS, consistent with section 172(c) of the Act, the 2012 AQMP demonstrates the implementation of RACM/RACT for NOx and ROG;

WHEREAS, section 182(d)(1)(a) of the Act requires ozone nonattainment areas classified as severe and extreme to submit a vehicle miles traveled (VMT) offset demonstration showing no increase in motor vehicle emissions between the base year in the Act 1990 Amendments and the area's attainment year;

WHEREAS, in February 2011, the Ninth Circuit Court of Appeals held that section 182(d)(1)(a) of the Act requires additional transportation control strategies and transportation control measures to offset vehicle emissions whenever they are projected to be higher than if base year VMT had not increased;

WHEREAS, the Ninth Circuit Court of Appeals remanded the approval of the 2007 8-hour ozone SIP VMT emissions offsets demonstration to U.S. EPA;

WHEREAS, in September 2012, U.S. EPA proposed to withdraw its final approvals, and then disapprove, SIP revisions submitted to meet the section 182(d)(1)(a) VMT emissions offset requirements for the U.S. EPA approved South Coast Air Basin 1-hour and 8-hour ozone plans;

WHEREAS, in August 2012, U.S. EPA issued guidance entitled "Implementing Clean Air Act Section 182(d)(1)(A): Transportation Control Measures and Transportation Control Strategies to Offset growth in Emissions Due to Growth in Vehicle Miles Traveled";

WHEREAS, consistent with the requirements of section 182(d)(1)(A) as specified by the Ninth Circuit Court of Appeals ruling in 2011 and with U.S. EPA guidance in 2012, and in response to U.S. EPA's September 2012 proposal, the 2012 AQMP includes a VMT offset demonstration for both 1-hour and 8-hour ozone plans;

WHEREAS, the 2012 AQMP also includes a second VMT emissions offset demonstration for 8-hour ozone that meets an alternative VMT offset methodology proposed by U.S. EPA;

WHEREAS, the California Environmental Quality Act (CEQA) requires that no project which may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, pursuant to California Environmental Quality Act (CEQA), the District prepared a Program Environmental Impact Report (EIR) for the 2012 AQMP that was released for a 45-day public review and comment period from September 7, 2012 to October 23, 2012, and in the Final Program EIR the District responded to the 13 comment letters received;

WHEREAS, the District's Final Program EIR identified potentially significant and unavoidable project-specific adverse environmental impacts to air quality (CO and PM10 impacts from construction activities), energy demand, hazards (associated with accidental release of liquefied natural gas during transport), water demand, noise (from construction activities) and traffic (construction activities and operations), as well as potentially significant cumulative adverse impacts to air quality (construction), energy demand, hazards and hazardous materials, hydrology and water quality, noise, and transportation and traffic;

WHEREAS, the District Governing Board adopted a Statement of Findings and a Statement of Overriding Considerations finding the project's benefits outweigh the unavoidable adverse impacts, as well as a Mitigation Monitoring Plan;

WHEREAS, federal law set forth in section 110(l) of the Act and Title 40, Code of Federal Regulations (CFR), section 51.102, requires that one or more public hearings, preceded by at least 30 days notice and opportunity for public review, must be conducted prior to adopting and submitting any SIP revision to U.S. EPA;

WHEREAS, as required by federal law, the District made the 2012 AQMP available for public review at least 30 days before the District hearing;

WHEREAS, following a public hearing on December 7, 2012, the AQMD Governing Board voted to approve the 2012 AQMP including the 24-hour PM2.5 plan, the 8-hour ozone advanced technology actions and the 1-hour ozone plan;

WHEREAS, on December 20, 2012, the District transmitted the 2012 AQMP to ARB as a SIP revision, along with proof of public notice publication, and environmental documents in accordance with State and federal law; and

WHEREAS, the Board finds that:

1. The 2012 AQMP meets the applicable planning requirements established by the Act and the Rule for 24-hour PM2.5 SIPs, and includes the required air quality and emissions data, modeled attainment demonstrations, RACM/RACT demonstrations, new source review, transportation conformity emission budgets, and contingency measures;

2. The existing 2007 PM2.5 SIP, including benefits of ARB's adopted mobile source control measures, combined with the new District control measures identified in the adopted 2012 AQMP will provide the emission reductions needed for meeting the 24-hour PM2.5 standard by the December 14, 2014, attainment date;

3. The 2012 AQMP identifies contingency measures that will achieve additional emission reductions, beyond those relied on in the attainment demonstration, in the event that the South Coast Air Basin does not attain the 24-hour PM2.5 standard by 2014;

4. The 2012 AQMP meets applicable planning requirements established by the Act for 1-hour ozone SIPs, and includes the required air quality and emissions data, modeled attainment demonstrations, new source review and RACM/RACT demonstrations;

5. The 2012 AQMP VMT offset demonstrations meets the section 182(d)(1)(a) VMT offset requirements for both the 1-hour ozone and the 8-hour ozone plans; and

6. ARB has reviewed and considered the Final EIR prepared by the District and comments presented by interested parties, and find there are no additional feasible mitigation measures or alternatives within ARB's powers that would substantially lessen or avoid the project-specific impacts identified.

NOW, THEREFORE, BE IT RESOLVED the Board hereby approves the South Coast 2012 AQMP as an amendment to the SIP, excluding those portions not required to be submitted to U.S. EPA under federal law, and directs the Executive Officer to forward the 2012 AQMP as approved to U.S. EPA for inclusion in the SIP to be effective, for purposes of federal law, upon approval by U.S. EPA.

BE IT FURTHER RESOLVED that the Board commits to develop, adopt, and submit contingency measures by 2019 if advanced technology measures do not achieve planned reductions as required by section 182(e)(5)(B).

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to work with the District and U.S. EPA and take appropriate action to resolve any completeness or approvability issues that may arise regarding the SIP submission.

BE IT FURTHER RESOLVED that the Board authorizes the Executive Officer to include in the SIP submittal any technical corrections, clarifications, or additions that may be necessary to secure U.S. EPA approval.

BE IT FURTHER RESOLVED that the Board hereby certifies pursuant to 40 CFR section 51.102 that the District's 2012 AQMP was adopted after notice and public hearing as required by 40 CFR section 51.102.

I hereby certify that the above is a true and correct copy of Resolution 13-3, as adopted by the Air Resources Board.

Tracy Jensen, Clerk of the Board

November 19, 2015

Geoffrey L. Wilcox, Esq.
EPA Docket Center
U.S. Environmental Protection Agency
Mailcode: 2822T
1200 Pennsylvania Avenue, NW.
Washington, DC 20460-0001

Re: Docket No. EPA-HQ-OGC-2015-0677
U.S. Environmental Protection Agency
Proposed Consent Decree, Clean Air Act Citizen Suit:
Sierra Club, et al. v. EPA, No. 2:15-cv-3798-ODW (ASx) (C.D. CA.)

Dear Mr. Wilcox:

On behalf of the City of Long Beach acting by its Harbor Department and the City of Los Angeles acting by its Harbor Department (collectively, the Cities or the ports), we appreciate the opportunity to provide comments in response to the U.S. Environmental Protection Agency's (EPA) *Proposed Consent Decree, Clean Air Act Citizen Suit: Sierra Club, et al. v. EPA, No. 2:15-cv-3798-ODW (ASx) (C.D. CA.)*, as published in the *Federal Register* on October 21, 2015 (Federal Register, Vol. 80. No 203).

I. The Proposed Consent Decree Should Be Re-Noticed.

Clean Air Act section 113(g) (42 U.S.C. § 7413(g)) requires public notice of proposed consent decrees to be published in the federal register for 30 days before becoming final or filed with the court. The Notice for the Proposed Consent Decree must be re-noticed to ensure meaningful public review and comment. First, the Notice indicates that the proposed "partial" Consent Decree is available for public review on the website, www.regulations.gov, under docket number EPA-OGC-2015-0677. (80 FR 63783.) However, the docket failed to contain the Proposed Consent Decree. As of the date of this letter, the Proposed Consent Decree is still not available in the docket. Second, the Cities understand from discussions with EPA that the Proposed Consent Decree would provide a full instead of "partial" resolution of the *Sierra Club* litigation as erroneously stated in the federal register notice. The Notice was therefore vague and misleading. Third, while the Cities were ultimately able to locate the docket with EPA's assistance, the Cities experienced considerable problems accessing the docket using

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The Green Port
Port of Long Beach | Environmental Planning
4801 Airport Plaza Drive | Long Beach, CA 90815
562.283.7100

THE PORT OF LOS ANGELES
Port of Los Angeles | Environmental Management
425 S. Palos Verdes Street | San Pedro, CA 90731
310.732.3675

The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

the docket number provided in the Notice. This problem may have also affected other public members seeking to comment and who were unable to do so. We therefore request that EPA re-issue the notice.

II. The Proposed Consent Decree Does and Cannot Compel EPA to Take Final Action on Control Measure IND-01 Because It Is Not Properly Before EPA.

According to the Notice and terms of the Proposed Consent Decree (¶ 1), the final rulemaking would require EPA, by March 15, 2016, to take final action on the portions of the February 13, 2013 submission of South Coast Air Quality Management District's (SCAQMD) 2012 Air Quality Management Plan that address attainment of the 2006 fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard (2012 $PM_{2.5}$ Plan). The Consent Decree cannot address Control Measure IND-01 because Control Measure IND-01 is not before EPA for approval (80 FR 63640). (See Cities' November 19, 2015 Letter to EPA re: Docket No. EPA-R09-OAR-2015-0204, which is attached hereto and incorporated as if fully set forth.) On December 7, 2012, when the SCAQMD Governing Board considered the $PM_{2.5}$ Plan, the Governing Board specifically ***removed*** Control Measure IND-01 from the $PM_{2.5}$ Plan ***before*** adoption. On February 13, 2013, the CARB Executive Officer submitted the 2012 $PM_{2.5}$ Plan to EPA without Control Measure IND-01. This is the version that is subject to EPA's proposed rulemaking. (80 FR 63640).

Thank you again for the opportunity to comment on the proposed action.

Sincerely,

Heather A. Tomley
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachments

1) November 19, 2015 Letter from City of Long Beach acting by its Harbor Department and City of Los Angeles acting by its Harbor Department to U.S. Environmental Protection Agency Re: Docket No. EPA-R09-OAR-2015-0204

cc:

The Honorable Barbara Boxer, United States Senate
The Honorable Janice Hahn, United States House of Representatives
The Honorable Alan Lowenthal, United State House of Representatives
The Honorable Edmund G. Brown, Jr., Governor, State of California
The Honorable Ricardo Lara, California State Senate
The Honorable Patrick O'Donnell, California State Assembly
The Honorable Robert Garcia, Mayor, City of Long Beach

The Honorable Eric Garcetti, Mayor, City of Los Angeles
Jon Slangerup, Chief Executive, Port of Long Beach
Gene Seroka, Executive Director, Port of Los Angeles
Richard Cameron, Managing Director, Port of Long Beach
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Barbara McTigue, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
Jared Blumenfeld, Administrator, EPA, Region 9
Deborah Jordan, Director, Air Division, EPA, Region 9
Elizabeth Adams, Deputy Director, Air Division, EPA, Region 9
Jeanhee Hong, Regional Counsel, EPA Region 9
Richard Corey, Executive Officer, CARB
Cynthia Marvin, Division Chief, Stationary Source Division, CARB
Doug Ito, Chief, Freight Transportation Branch, CARB
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD

ATTACHMENT

SAN PEDRO BAY PORTS

CLEAN AIR ACTION PLAN

November 19, 2015

Ms. Wienke Tax
Air Planning Office (AIR-2)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

Re: Docket No. EPA-R09-OAR-2015-0204
U.S. Environmental Protection Agency
Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; California; South Coast Moderate Area Plan and Reclassification as Serious Nonattainment for the 2006 PM2.5 NAAQS

Dear Ms. Tax:

On behalf of the City of Long Beach acting by its Harbor Department and the City of Los Angeles acting by its Harbor Department (collectively, the Cities or the ports), we appreciate the opportunity to provide comments in response to the U.S. Environmental Protection Agency's (EPA) proposal for *Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; California; South Coast Moderate Area Plan and Reclassification as Serious Nonattainment for the 2006 PM2.5 NAAQS,* as published in the *Federal Register* on October 20, 2015 (Federal Register, Vol. 80. No 202).

I. Summary of Ports' Position.

The Cities urge the EPA to disapprove and exclude the South Coast Air Quality Management District (SCAQMD or District) Control Measure IND-01 and Proposed Rule 4001, *Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities* from the State Implementation Plan (SIP) submittal for the 2006 $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) in the South Coast Air Basin. The Cities recognize that emissions from nearly every business sector, including the maritime goods movement industry, need to be reduced in order for the State of California and SCAQMD to meet the NAAQS. For this reason, the two Cities implemented the highly successful voluntary San Pedro Bay Clean Air Action Plan (CAAP) to encourage the maritime goods movement industry to do its fair share in the South Coast Air Basin to reduce emissions. Most of the strategies included in the CAAP have since been overtaken by regulations enacted by the California Air Resources Board or International Maritime Organization. It is the Cities' understanding that the purpose of Control

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

Measure IND-01 and Proposed Rule 4001 is to allow the SCAQMD to enforce against the Cities their voluntary CAAP program in the event that the international, federal, and state regulatory programs don't achieve the $PM_{2.5}$ emissions inventory that SCAQMD assumed in the baseline for the years 2014 and 2019 in the 2012 AQMP.

The inclusion of Measure IND-01 and Proposed Rule 4001 in the AQMP and SIP is neither necessary nor legally proper, for reasons that will be explained below. SCAQMD proposes by Control Measure IND-01 to improperly designate the entire harbor districts of the Cities as "stationary sources" and "indirect sources," and then hold the two Cities legally responsible for actions by the maritime industry that the SCAQMD assumed in the $PM_{2.5}$ Plan. The Cities do not operate, own or control the emissions sources.

The Cities have long opposed the inclusion of any form of a "backstop" rule on the ports that would apply SCAQMD oversight and enforcement against the ports for failures of the SCAQMD and CARB in assuming maritime goods movement industry activities in the baseline.. We have also raised significant technical, jurisdictional, constitutional, and legal concerns with Proposed Rule 4001 in a series of comment letters sent to SCAQMD, CARB and EPA regarding the inclusion of Control Measure IND-01 in the 2012 Air Quality Management Plan and SIP, and the subsequent rulemaking process of SCAQMD Rule 4001. (See Attachments 1-15.) These letters are incorporated by reference as a part of this comment letter to EPA as if fully set forth herein. With respect to EPA's present rulemaking, as further discussed below in sections III-IV, the ports do not believe that Control Measure IND-01 and Proposed Rule 4001 are properly before EPA. Even if EPA determines there are no procedural infirmities and proceeds with the proposed rulemaking, there are numerous substantive legal reasons why EPA cannot approve Control Measure IND-01 or Proposed Rule 4001 as part of the SIP. These arguments are discussed below in section V.

II. Background.

The Cities and businesses that move goods in and out of the ports are vital to the regional, state, and national economy. The ports are home to the two busiest container seaports in the United States and, if taken together, are the fifth busiest in the world, moving more than $260 billion a year in trade. The international cargo handled by the ports also accounts for over 1.1 million jobs in California and 3.3 million jobs in the United States; however, competition for much of this cargo is intensifying particularly with other international ports (Panama Canal, Canada, Mexico).

The ports are global leaders, voluntarily working in partnership with several public agencies (EPA, CARB, and SCAQMD) and the maritime goods movement industry to achieve unprecedented success in reducing emissions from goods movement sources (ships, trains, trucks, cargo handling equipment, harbor craft) and improving air quality, while continuing to foster port development that is essential to Southern California's economy. On November 20, 2006, the Cities approved the landmark CAAP, the most comprehensive strategy to cut air pollution and reduce health risks ever adopted for a global seaport complex. The CAAP contained goals to achieve a 45% emissions reduction in diesel particulate matter (DPM), nitrogen oxides (NOx), and sulfur oxides (Sox) by the end of 2011 from the mobile sources operating in and around the ports. In 2007, the ports received the 8th Annual National U.S. EPA Clean Air Excellence Award in recognition of this groundbreaking work and commitment.

The Cities continued their pioneering work and commitment to clean air by adopting an update to the CAAP on November 22, 2010. The 2010 CAAP update established several aggressive goals: (1) by 2014, reduce emissions from mobile sources operating in and around the ports by 22% for NOx, 93% for SOx, and 72% for DPM from baseline emissions; (2) by 2023, reduce emissions from mobile sources operating in and around the ports by 59% for NOx, 92% for SOx and 77% for DPM; and, (3) aim by 2020 to lower the cancer risk related to diesel particulate pollution by 85% in the communities adjacent to the ports. The CAAP was initially developed as a voluntary effort not required by any state, federal or local law or regulation. The voluntary aspect of the CAAP is critical. The ports set stretch goals under an incentive-based and collaborative approach that has resulted in billions of dollars of investment by the Cities and private sector businesses in clean air programs and technology. More importantly, because the goals are in advance of regulations, much of the CAAP success is due to reliance on federal, state and SCAQMD grants that can only be obtained for "surplus" emission reductions that go beyond regulation –which will not be available under a required regulation such as PR 4001.

The Cities remain firm in their position that Control Measure IND-01 and Proposed Rule 4001 are unnecessary and counterproductive to a successful collaborative approach, and should not be included in the SIP. These measures would hold the ports, not the owners or operators of the emission sources, responsible for shortfalls in voluntary CAAP measures. This approach will deter the ports as well as other ports and industries from any type of voluntary emission reduction action in the future. The proposed rule would also unfairly impact only the ports in Southern California; no such rule exists for any other port in the United States or other parts of the world.

In addition, the Cities have shown that there is no demonstrated need for a backstop rule for equipment operating in and around the ports, nor is a ports' backstop rule necessary for the regional attainment of the 2006 $PM_{2.5}$ standard. (See Attachment 3, Cities' Letter to Dr. Randall Pasek, SCAQMD, January 15, 2014].). The attainment demonstration for the 2012 $PM_{2.5}$ Plan did not rely on any emission reductions from Control Measure IND-01. As indicated in SCAQMD's supplement to the 24-hour $PM_{2.5}$ SIP, unanticipated extreme weather conditions, not emissions from the maritime goods movement industry, have made attainment unlikely in 2014, citing the effects of the severe drought on the west coast of the United States.

Because any current shortfall in the regional attainment of the $PM_{2.5}$ emissions targets is not caused or controlled by the Cities, and not due to any actions or omissions on the part of the Cities, it is inappropriate and unnecessary to require Rule 4001 enforcement against the ports. The control measure was intended as a "backstop" that would go into effect only if the emission targets for NOx, SOx, and $PM_{2.5}$ from sources operating in or around the ports exceed the levels projected by the ports and assumed in the 2012 AQMP. In fact, the ports' most recently completed emissions inventories for calendar year 2014 show that the ports have **exceeded** the assumptions SCAQMD included in the 2012 $PM_{2.5}$ Plan.. Diesel particulate matter (DPM) emissions have been reduced by 85% over the 9 year period between 2005 and 2014. In addition, NOx emissions are down by 51%, and SOx emissions have been reduced by 97%. Instead of being rewarded for these extraordinary efforts, the Cities will instead be unnecessarily penalized with a port specific backstop rule. Since 2014 $PM_{2.5}$ CAAP goals were met and the ports are on track to maintain these reductions through 2019, there is no identified need or basis for including Proposed Rule 4001 in the SIP. In fact, the ports would be the *only* entities the SCAQMD regulates in this matter, notwithstanding these unprecedented voluntary efforts.

Table 3 of the Notice does not identify the anticipated implementation date and emissions reductions for Rule 4001, rather, listing "N/A". It is unreasonable to approve the inclusion of the Proposed Rule in the SIP without an indication of the implementation date and necessary emissions reductions from implementation of the rule to bring the South Coast Basin into attainment. A critical aspect of this related to the lack of need for an additional regulation on the ports is that many of the voluntary control strategies implemented under the CAAP have been superseded by source-specific state or international regulation. Approximately 98% of the emissions reductions from maritime goods movement emission sources that have been achieved to date rely on, and are largely the result of regulations at the state and international levels, including:

- CARB Truck and Bus Regulation
- CARB Ocean-going Vessel At-Berth Regulation
- CARB and International Ocean-going Vessels Low-Sulfur Fuel Regulations
- CARB Cargo-handling Equipment Regulation
- CARB Commercial Harbor Craft Regulation
- International Maritime Organization North American Emission Control Area

The Cities should not be held responsible for or mandated to backfill any potential emissions shortfalls from regulatory agencies not implementing emission reduction regulations as identified within the SIP, even if those regulations are related to equipment operating in or around the ports. The backstop measure should instead require EPA or CARB to enact applicable regulations under their air regulatory authority applied uniformly to the national ports or state ports, or to find the shortfall emission reductions from other sources in the SIP.

The Cities continually develop and support emission reduction strategies and programs that will result in cleaner air for the local communities and the region. These efforts have been entered into voluntarily, working cooperatively with the operators in the port area to reduce air quality impacts from the equipment they operate. The potential for additional regulation by the SCAQMD in the form of Rule 4001 on the ports brings significant uncertainty that will have broad negative effects on the goods movement industry and the economy as a whole, and will jeopardize the voluntary, collaborative partnership between the Cities, industry, and the air agencies that has led to the significant emissions reductions achieved to date.

III. Control Measure IND-01 Cannot Be Approved in the Final Rulemaking Because it Was Not Approved by the CARB Board for SIP Adoption, and Has Not Been Properly Submitted to EPA for Approval.

According to the Federal Register Notice (80 Fed. Reg. 63640), the SIP revisions encompassed in the proposed rulemaking are "the 2012 $PM_{2.5}$ Plan, submitted February 13, 2013, and the 2015 Supplement, submitted March 4, 2015." The 2012 $PM_{2.5}$ Plan submitted February 13, 2013, does ***not*** include IND-01 or Proposed Rule 4001. This is because on December 7, 2012, when the SCAQMD Governing Board considered the $PM_{2.5}$ Plan, the Governing Board specifically ***removed*** Control Measure IND-01 from the $PM_{2.5}$ Plan ***before*** adopting the Plan. (See Attachment 16.) On February 13, 2013, the CARB Executive Officer submitted the 2012 $PM_{2.5}$ Plan to EPA without Control Measure IND-01. In fact, the $PM_{2.5}$ Plan in the federal docket for this proposed rulemaking has IND-01 ***crossed out*** to confirm that it was removed from the $PM_{2.5}$ Plan before submittal to CARB and EPA. (See

Attachment 17.) The CARB Board, which is the only entity authorized to make SIP submittals, has never held a public meeting, offered to receive public comment on, or taken a Board vote to authorize the amendment of the SIP to include the submittal of IND-01 or Proposed Rule 4001 to EPA for inclusion as part of California's SIP for the South Coast Air Basin. The EPA Notice is based only on a control measure list with the date and title of Control Measure IND-01 included on Attachment F to the 2015 Supplement, with no evidence of CARB Board approval of its addition as a SIP supplement, which is legally insufficient as a SIP revision. EPA cites no other documents to demonstrate that Control Measure IND-01 was approved by the CARB Board and properly submitted to EPA as a proposed SIP revision.

Further, the 2015 Supplement did not constitute a submittal of Control Measure IND-01 or Proposed Rule 4001. As explained in EPA's proposed rulemaking (80 Fed. Reg. 63641), the 2015 Supplement was submitted in response to the appellate court's decision in *NRDC v. EPA*, 706 F/3d 428 (D.D. Cir. 2013), that EPA must consider the general implementation requirements of subpart 1 with the requirements specific to particulate matter nonattainment areas in subpart 4 of Part D, Title I of the Clean Air Act. The 2015 Supplement was intended to address the subpart 4 issues that had not been included in the $PM_{2.5}$ Plan. (80 Fed. Reg. 63641-63642.) The 2015 Supplement merely provides in Table F-1 a new proposed adoption date for Control Measure IND-01/Proposed Rule 4001 of 2015. (See Attachment 18.) The stated emission reduction "commitment" towards $PM_{2.5}$ attainment for Control Measure IND-01/Proposed Rule 4001 is "N/A" in both the $PM_{2.5}$ Plan and in the 2015 Supplement. The 2015 Supplement only states that Proposed Rule 4001 will not be approved in 2015 as stated in the 2015 Supplement. (See Attachment 19.)

EPA states that the $PM_{2.5}$ Plan or 2015 Supplement are considered complete SIP submittals under section 110(k)(1)(B) by operation of law without the inclusion of Control Measure IND-01 or Proposed Rule 4001. (80 Fed. Reg. 63642.) However, there is no text of either Control Measure IND-01 or Proposed Rule 4001 for EPA to assess in determining whether these actions comply with the applicable requirements of subparts 1 and 4. Since there is no Control Measure IND-01 or Proposed Rule 4001 in the $PM_{2.5}$ Plan or 2015 Supplement, these actions are not properly before EPA, and EPA cannot approve a commitment for SCAQMD to adopt Proposed Rule 4001 in its final rulemaking.

IV. Commitments to Adopt a Rule in the Future Cannot be Approved under Clean Air Act Section 110(k)(3).

To the extent that EPA will issue a final rule on the 2012 $PM_{2.5}$ Plan and 2015 Supplement, approval of SCAQMD's future commitments, specifically Control Measure IND-01 and Proposed Rule 4001, cannot be approved under Clean Air Act section 110(k)(3) as EPA proposes to do in the rulemaking. (80 Fed. Reg. 63650). According to EPA, under Section 110(k)(3), EPA considers three factors in determining whether to approve a control measure as an enforceable commitment. As discussed below, Control measure IND-01 and Proposed Rule 4001 are not enforceable commitments. However, EPA has determined it does not need to consider these factors because "the $PM_{2.5}$ Plan and 2015 Supplement do not rely on either the rule amendment commitments in its impracticability demonstration, RACM demonstration, RFP demonstration, or quantitative milestones, or to meet any other CAA requirement." (80 Fed. Reg. 63652.) Since the three-factor test has not been applied and Control Measure IND-01/Proposed Rule 4001 are not necessary to comply with the Clean Air Act

requirements, there is no basis for approving Control Measure IND-01/Proposed Rule 4001 under Section 110(k)(3).

V. Control Measure IND-01 and Proposed Rule 4001 are Legally Deficient.

If EPA decides that Control Measure IND-01 and Proposed Rule 4001 are properly before the agency, then the ports submit the following comments and concerns.

1. *Clean Air Act Subparts 1 and 4 Requirements Are Not Met.*

In accordance with Clean Air Act section 189(a)(1)(B), modeling is conducted for demonstrating attainment or that attainment by the applicable deadline is not practicable. Through Control Measure IND-01 and Proposed Rule 4001, SCAQMD is inappropriately attempting to enforce the modeling assumptions it utilized in the 2012 $PM_{2.5}$ Plan (that demonstrated attainment[1]) *for the ports only*. There is no justification as to why the port-only assumptions and no others must be enforced to achieve attainment. If EPA approves this novel and significant change in SIPs in its final rulemaking, it will be signaling to states and local agencies that they can enforce assumptions. This will undermine the SIP process and lead to serious disagreements and controversies over all assumptions states and local agencies include in their SIPs because the regulated community will be fearful that any technical assumptions included in the SIP will be enforced in the future. Technical assumptions estimated by scientists will become political decisions. Further, this approach has been disapproved by the Ninth Circuit Court of Appeals in *Bayview Hunters Point Community Advocates v. Metropolitan Transportation Commission*, 366 3d 692 (9th Cir. 2004).

The requirements in subparts 1 and 4 relative to RACM/RACT have not been met for Control Measure IND-01 and Proposed Rule 4001. EPA states that RACM includes any potential control measure for non-road emission sources that is both technologically and economically feasible. (80 Fed. Reg. 63647.) There must be an evaluation of technical feasibility that includes operation conditions, and non-air quality impacts as well as an economic feasibility that includes consideration of cost per ton of pollutant reduced, capital costs and annualized costs. There is no such analysis for Control Measure IND-01 or Proposed Rule 4001. SCAQMD cannot evade these requirements by calling Control Measure IND-01 an indirect source measure or a measure to simply enforce an attainment demonstration assumption.

Clean Air Act section 110(a)(2)(A) requires that control measures in the SIP be enforceable. As discussed herein, Control Measure IND-01 and Proposed Rule 4001 are not enforceable by the designated agencies and cannot be approved as Clean Air Act section 110(k)(3) commitments. As acknowledged by Table 3 in 80 Fed. Reg. 63651 there is no implementation date or emission reductions to be achieved by Control Measure IND-01 or Proposed Rule 4001. Further, EPA proposes to approve Control Measure IND-01 for ***NOx reductions*** in the $PM_{2.5}$ Plan. (80 Fed. Reg. 63652.) Control

[1] 80 Fed. Reg. 63644 incorrectly states that the 2012 PM2.5 Plan demonstrated that attainment by the moderate deadline is impracticable

Measure IND-01 is not evaluated in the attainment demonstration as a NOx control measure necessary to reduce $PM_{2.5}$ precursors. (See 42. U.S.C. § 7502(c).) (See Attachment 20.)

2. *The Ports Cannot Be Legally Responsible for Other Agencies' Actions.*

The CAAP's goals and control measures that SCAQMD seeks to codify as the responsibility of the ports are in fact the responsibility of other government agencies. As stated above, approximately 98% of voluntary CAAP measures have been superseded by state or international regulation, including:

- CARB Truck and Bus Regulation
- CARB Ocean-going Vessel At-Berth Regulation
- CARB and International Ocean-going Vessels Low-Sulfur Fuel Regulations
- CARB Cargo-handling Equipment Regulation
- CARB Commercial Harbor Craft Regulation
- International Maritime Organization North American Emission Control Area

The Cities should not be held legally responsible for or mandated to backfill any potential emissions shortfalls from regulatory agencies not implementing emission reduction regulations as identified within the SIP, even if those regulations are related to equipment operating at or in the vicinity of the ports or were originally identified as voluntary measures.

3. *Control Measure IND-01 and Proposed Rule 4001 are Not Required for Demonstrating Attainment.*

The SCAQMD Governing Board found that without Control Measure IND-01: (1) "the 2012 AQMP, in conjunction with earlier AQMPs contains every feasible control strategy and measure to ensure progress toward attainment…."; (2) "the AQMP satisfies all the attainment deadlines for federal ambient air quality standards for 24-hour $PM_{2.5}$ and 1-hour ozone NAAQS"; (3) "the 2012 AQMP satisfies the planning requirements set forth in the federal and California Clean Air Acts"; and, (4) "the 2012 AQMP includes every feasible measure and an expeditious adoption schedule". (Attachment 21, Resolution, motions, deleted Control Measure IND-01.)

On January 25, 2013, the CARB Board adopted Resolution No. 13-3. (Attachment 22, Resolution.) The CARB Board found that without Control Measure IND-01: (1) "the attainment analysis in the 2012 AQMP demonstrates that the 24-hour $PM_{2.5}$ standard will be met throughout the [South Coast Air] Basin by the proposed attainment date"; (2) the 2012 AQMP demonstrates the [South Coast Air] Basin will attain the 1-hour ozone standard by 2022"; (3) "[t]the 2012 AQMP meets the applicable planning requirements established by the [Clean Air] Act and the Rule for 24-hour $PM_{2.5}$ SIPs, and includes the required air quality and emissions data, modeled attainment demonstrations, RACM/RACT demonstrations, new source review, transportation conformity emission budgets, and contingency measures"; (4) "[t]he 2012 AQMP identifies contingency measures that will achieve additional emission reductions, beyond those relied on in the attainment demonstration, in the event that the South Coast Air Basin does not attain the 24-hour $PM_{2.5}$ standard by 2014"; and, (5) "[t]he 2012 AQMP meets applicable planning requirements established by the [Clean Air] Act for 1-hour ozone SIPs, and includes the required air quality and emissions data, modeled attainment demonstrations, new source review and RACM/RACT demonstrations".

EPA proposes to conclude that RACM/RACT have been met without Control Measure IND-01/Proposed Rule 4001. Because there is no need for Control Measure IND-01/Proposed Rule 4001, there is no basis for approving it as part of the SIP.

4. *Control Measure IND-01 and Proposed Rule 4001 Are Preempted by the Clean Air Act and SCAQMD Lacks Authority to Adopt and Implement these Committments.*

Congress vested the federal government with the authority to set nationwide emissions standards for mobile sources, including nonroad mobile engines and vehicles. (42 U.S.C. §§ 7521, 7547.) Congress expressly and impliedly preempted states from setting standards or other requirements relating to the control of emissions for mobile sources. (42 U.S.C. § 7543, (a) & (e) The goods movement sources that would be regulated by Proposed Rule 4001 are within the express and implied preemption.

The Clean Air Act allows California to seek authorization from the EPA to adopt "standards and other requirements relating to the control of emissions" for some but not all mobile sources that would be covered by Proposed Rule 4001. (42 U.S.C. §§ 7543, (b) & (e)(2)(A).) The Clean Air Act does not allow for California to seek an EPA waiver for every one of the goods movement emission sources, nor has CARB made such a request.

Control Measure IND-01/Proposed Rule 4001 sets standards relating to the control of emissions that are preempted by the Clean Air Act. Control Measure IND-01/Proposed Rule 4001 establishes an emission reduction target of 75% below 2008 emission levels. (See CAAP's goals and control measures above.) The ports do not own or operate the emitting equipment. If business-as-usual does not satisfy this requirement, then the ports' tenants (e.g., shipping companies) and customers (e.g., trucking companies) that own or operate the specific port-related sources will need to modify their current operations – the equivalent of complying with "other requirements."

Control Measure IND-01/Proposed Rule 4001 also sets "other requirements" relating to emissions from mobile sources because it requires the ports to ensure implementation of the rules and regulations of CARB, EPA and MARPOL. Proposed Rule 4001's emission inventory requirement will compel the ports to monitor compliance by mobile sources operating in and around the ports and identify and report reduction shortfalls. If emissions increase, exceeding the 75% emissions cap, the ports will have to identify the emission source and cause in order to adequately prepare a strategy for the Emission Reduction Plan required by the proposed rule to address and reduce these emissions. Yet, the ports have not been granted the authority by CARB, EPA and MARPOL to enforce their rules and regulations.

Under Control Measure IND-01/Proposed Rule 4001, if the Executive Officer decides the emission reduction target is not met, the ports would be required to prepare an Emission Reduction Plan that includes sufficient feasible control strategies expected to eliminate the identified shortfall and maintain the reduction target from maritime goods movement sources through calendar year 2020. This amounts to requiring the ports to impose "other requirements" upon the cargo movement that are more stringent than the requirements of CARB, EPA and MARPOL.

5. *SCAQMD Lacks Authority to Regulate Outside of Jurisdictional Boundaries.*

SCAQMD's authority to regulate is limited to its jurisdictional boundaries. SCAQMD was created by the California Legislature "in those portions of the Counties of Los Angeles, Orange,

Riverside, and San Bernardino included within the area of the South Coast Air Basin, as described in Section 60104 of Title 17 of the California Administrative Code, as now or hereafter amended." (Cal. Health & Safety Code, § 40410.)

The South Coast Air Basin includes the portion of Los Angeles County "[b]eginning at the Los Angeles-San Bernardino County boundary and running west along the township line common to T.3 N and T.2 N, San Bernardino Base and Meridian; then north along the range line common to R.8 W and R.9 W; then west along the township line common to T.4 N and T.3 N; then north along the range line common to R.12 W and R.13 W to the southeast corner of Section 12, T.5 N, R.13 W; then west along the south boundaries of Sections 12, 11, 10, 9, 8, 7, T.5 N, R.13 W to the boundary of the Angeles National Forest which is collinear with the range line common to R.13 W and R.14 W; then north and west along the Angeles National Forest boundary to the point of intersection with the township line common to T.7 N and T.6 N (point is at the northwest corner of Section 4 in T.6 N, R.14 W); then west along the township line common to T.7 N and T.6 N; then north along the range line common to R.15 W and R.16 W to the southeast corner of Section 13, T.7 N, R.16 W; then along the south boundaries of Sections 13, 14, 15, 16, 17, 18, T.7 N, R.16 W; then north along the range line common to R.16 W and R.17 W to the north boundary of the Angeles National Forest (collinear with township line common to T.8 N and T.7 N); then west and north along the Angeles National Forest boundary to the point of intersection with the south boundary of the Rancho La Liebre Land Grant; then west and north along this land grant boundary to the Los Angeles-Kern County boundary. (17 Cal. Code Regs., § 60104(d).)

SCAQMD's 2012 AQMP, which includes Control Measure IND-01 as an indirect source control strategy, applies only to the South Coast Air Basin. The 2012 AQMP acknowledges that SCAQMD's jurisdiction over the South Coast Air Basin "is bounded by the Pacific Ocean to the west and the San Gabriel, San Bernardino, and San Jacinto mountains to the north and east." (See 2012 AQMP, p. 1-2.) SCAQMD lacks authority to adopt and enforce Proposed Rule 4001 because it does not have jurisdiction to regulate emission sources outside of its geographical boundaries as would be required if the CAAP programs become mandatory. The Ocean Going Vessel (OGV) Vessel Speed Reduction program would require OGVs to slow vessel speed to 12 knots during their approach and departure from the ports at a distance of either 20 nm or 40 nm from Point Fermin, which is outside SCAQMD's jurisdictional boundary. The OGV Low Sulfur Fuel for Auxiliary Engines and Auxiliary Boilers program would require OGVs to switch to low sulfur distillate fuel within 40 nm from Point Fermin, which is outside of SCAQMD's jurisdictional boundary. The OGV Low Sulfur Fuel for Main Engines program would require OGVs to switch to low sulfur distillate fuel within 40 nm from Point Fermin, which is outside of SCAQMD's jurisdictional boundary.

This OGV Vessel Speed Reduction program is the only CAAP measure that is not already part of regulations adopted by other agencies. Yet, the ports also lack jurisdiction to mandate any OGV actions of the ship owners if CAAP voluntary incentive targets are not met for the reasons stated below in section V.6.

6. ***Control Measure IND-01 and Proposed Rule 4001 Violate IMO's MARPOL Annex VI and Maritime Pollution Prevention Act of 2008.***

OGVs are regulated by the federal government implementing its treaty obligations under MARPOL, administered by the IMO, specifically MARPOL Annex VI Regulations for the Prevention

of Air Pollution from Ships (Annex VI) which sets global limits for SOx, NOx, and PM emissions from OGVs. Congress vested MARPOL and Annex VI authority with the Secretary of the U.S. Coast Guard (Secretary) and the Administrator (Administrator) of the EPA. (33 U.S.C. § 1903.) The Secretary has exclusive MARPOL administrative and enforcement authority. (33 U.S.C. § 1903(a).) The Administrator has Annex VI administrative, regulatory, investigative, and enforcement authority. (33 U.S.C. §§ 1901 et seq.)

The SCAQMD's ability to adopt, enforce, and require the ports to comply with Control Measure IND-01/Proposed Rule 4001 is precluded and preempted by Annex VI and federal regulations. (40 CFR § 1043.10.) The federal government has historically been the principal regulator of emissions from U.S. and foreign-flagged ships (or OGVs) under Annex VI. (40 C.F.R. § 94; 40 C.F.R. § 1043, 33 C.F.R. § 151).

The ports are located within the North American Environmental Control Area (ECA) established under Annex VI. The North American ECA's limits are much stricter than Annex VI's global requirements. Control Measure IND-01/Proposed Rule 4001 unlawfully requires the ports to collect and report NOx, SOx, and PM emissions information from OGVs subject to Annex VI requirements in the North American ECA. (Proposed Rule 4001(d).) To collect this information, the ports must impose a reporting requirement for OGVs coming and going from the ports– effectively regulating them under Annex VI. The ports lack authority to regulate U.S. and foreign-flagged ships in this manner. (33 U.S.C. §§ 1903, 1907.) Federal recordkeeping and reporting requirements for fuel and marine engines are expressly allowed (40 C.F.R. § 1043.70(b)-(c)), but no other recordkeeping and reporting requirements are authorized by statute or regulation. Control Measure IND-01/Proposed Rule 4001's reporting requirement is thus preempted by both Annex VI's record-keeping requirements for NOx engine standards and sulfur content in fuel (Regulations 13 and 14, Annex VI; incorporated by reference at 40 C.F.R. § 1043.100) and federal regulatory record-keeping and reporting requirements (40 C.F.R. § 1043.70).

Control Measure IND-01/Proposed Rule 4001 is also preempted on enforcement grounds. Congress expressly reserved enforcement authority of Annex VI regulations to the U.S. Coast Guard and EPA. (33 U.S.C. §§ 1903, 1907.) Enforcement inspections will be conducted only by the U.S. Coast Guard and, when referred by the Secretary, investigated by the Administrator. (33 U.S.C. §§ 1907(f)(1)-(2).) The U.S. Coast Guard and EPA are authorized to impose civil penalties for violations of MARPOL (including Annex VI) and 33 U.S.C. §§ 1901 et seq., § 1908(b)(1). The ports and SCAQMD are not so authorized and cannot inspect, penalize, or undertake enforcement actions against OGVs under Annex VI and 33 U.S.C. §§ 1901 et seq.

Control Measure IND-01/Proposed Rule 4001 also gives the Executive Officer of the SCAQMD authority to decide that the emission target is not met. To satisfy the Emission Reduction Plan requirement, the ports may have to impose more stringent emissions requirements on U.S. and foreign-flagged vessels than required by Annex VI. The ports and SCAQMD both lack this authority.

7. ***Control Measure IND-01 and Proposed Rule 4001 Violate the Dormant Commerce Clause.***

Control Measure IND-01/Proposed Rule 4001 violates the dormant Commerce Clause and would impede the free and efficient flow of commerce imposing a heavy burden on ports, the shipping

industry, navigation and commerce without any local environmental benefit, or an insubstantial local benefit at best. Because SCAQMD's attainment demonstration shows the $PM_{2.5}$ NAAQS can be obtained without Control Measure IND-01/Proposed Rule 4001, it is unnecessary to require additional emissions reductions from the maritime goods movement industry to achieve attainment and the burdens on interstate commerce of Control Measure IND-01/Proposed Rule 4001 render it unreasonable and irrational.

8. ***SCAQMD Lacks Authority under the Clean Air Act to Designate and Regulate the Ports as "Indirect Sources."***

The Clean Air Act defines an indirect source as "a facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution." (42 U.S.C. § 7410(a)(5)(C).) An "indirect source review program" is "the facility-by-facility review of indirect sources of air pollution, including such measures as are necessary to assure, or assist in assuring, that a new or modified indirect source will not attract mobile sources of air pollution" that would contribute to the exceedance of the NAAQS. (42 U.S.C. § 7410(a)(5)(D)(i).) "Direct emissions sources or facilities at, within, or associated with, any indirect source shall not be deemed indirect sources for the purpose" of an indirect source review program. (42 U.S.C. § 7410(a)(5)(C).)

The ports are not a "Facility" as required by the Clean Air Act's indirect source provisions. Together, the Port of Los Angeles and Port of Long Beach encompass 10,700 acres, miles of waterfront and features 50 passenger and cargo terminals, including dry and liquid bulk, container, breakbulk, automobile and warehouse facilities, and a cruise passenger complexes. While some U.S. ports are "operating ports" that own and operate their terminals and equipment and hire longshoremen to handle cargo, the ports of Los Angeles and Long Beach are "non-operating" or "landlord" ports that hold the tidelands property in trust for the State of California and lease it out to port tenants that operate the terminals. Each port tenant is treated as an individual stationary source facility by the SCAQMD and their activities are separately regulated and permitted by the SCAQMD.

SCAQMD advances the novel theory in Control Measure IND-01/Proposed Rule 4001 that it can designate a geographic area of a city to be an "indirect source." Further, the geographic line drawn by SCAQMD does not respect political boundaries and lumps portions of the Cities together as a single indirect source. The SCAQMD believes it can draw any geographic boundary it desires and declare that area to be an "indirect source" without regard for whether the landowner operates or controls mobile sources that pass through the area. Under the SCAQMD's theory, a local air district could designate as a stationary source, and an indirect source any city or county that has natural features that attract ships or cars or other mobile sources, even if the city or county does not own, operate or control those sources. Is a city with oil fields a stationary source and indirect source because it attracts refineries, trucks and trains to transport the petroleum products? If Riverside County has increased the numbers of warehouses and distribution centers within its borders, is the governmental agency or county geographical area now a stationary source and indirect source because such distribution centers within their borders attract trucks and trains?

Control Measure IND-01/Proposed Rule 4001 uses the Clean Air Act's indirect source provisions as a guise to impermissibly regulate mobile sources. Proposed Rule 4001 regulates emissions from "***on- and off-road mobile sources operating at, and to and from***, the Ports, which includes ocean-

going vessels, locomotives, heavy duty trucks, harbor craft, trucks, and cargo handling equipment that emit NOx, SOx, or PM2.5." (Proposed Rule 4001(c)(7) [Emphasis added].) Proposed Rule 4001's language clearly regulates emissions from the tailpipes of on-road and off-road mobile sources listed above, which makes Proposed Rule 4001 a mobile source regulation. The language also plainly allows Proposed Rule 4001 to regulate off-site emissions (emissions occurring during transit "to and from" the purported "site"). Proposed Rule 4001 therefore regulates emissions from heavy duty trucks hauling a container from the ports to Oregon or OGVs hauling cargo containers from Asia to the ports – even when that truck or OGV is no longer physically operating within the ports' boundaries. Proposed Rule 4001 is therefore not a site-based program. Congress did not intend or authorize the use of the indirect source provisions of the Clean Air Act as a way to circumvent mobile source preemption.

Control Measure IND-01/Proposed Rule 4001 also fails as an indirect source review program because the ports are not a "new or modified indirect emissions source." The Clean Air Act defines modification as "any physical change in, or change in the method of operation, of a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of an air pollutant not previously emitted." (42 U.S.C. § 7411(a)(4).) The criteria pollutants targeted by Control Measure IND-01/Proposed Rule 4001 are among those that have been identified and reduced for the duration of the CAAP. Because the ports do not qualify as either a new or modified source, any attempt to regulate them as such exceeds the SCAQMD's authority.

Control Measure IND-01/Proposed Rule 4001 also violates the nexus requirement for indirect source review programs. The purpose of an indirect source review program is to ensure that mobile source emissions do not "cause or contribute to air pollution concentrations exceeding any national primary ambient air quality standard for a mobile-source related air pollutant." (42 U.S.C § 7410(a)(5)(D)(i).) SCAQMD's own $PM_{2.5}$ monitors show that emissions from mobile sources operating in and around the ports are not causing or contributing to the South Coast Air Basin's nonattainment of the $PM_{2.5}$ NAAQS. In the 2015 Supplement, SCAQMD attributes nonattainment to a single monitor – Mira Loma (Van Buren) – which is located in Riverside, approximately 60 miles northeast of the ports. This monitor has purportedly failed to attain the $PM_{2.5}$ NAAQS because of drought conditions in Southern California, even though all of the South Coast Air Basin has experienced the drought and none of SCAQMD's other monitors have failed to demonstrate attainment with the $PM_{2.5}$ NAAQS, including the two State and Local Air Monitoring Stations nearest to the Ports – in North and South Long Beach. The Long Beach monitors have consistently demonstrated attainment for at least the last four years and are projected to continue attaining the standard through 2019. The data thus suggest a nexus between nonattainment and a source located near the Mira Loma (Van Buren) monitor – ***not the ports***.

9. *SCAQMD Lacks Authority to Require the Ports to Regulate Air Quality*.

Control Measure IND-01/Proposed Rule 4001 unlawfully compels the Ports to regulate local air quality in violation of California Health and Safety Code sections 40414 and 40440. SCAQMD's authority is confined to air quality and cannot infringe on the land use authority of counties and cities. (42 U.S.C. § 7431; Cal. Health and Safety Code § 40414.) The ports, not SCAQMD, have the authority to determine their own land use needs to advance trade and commerce. The ports play a critical role in facilitating domestic and international maritime commerce. The Los Angeles City Charter charges the Port of Los Angeles with possession, management, and control of all navigable waters, tidelands, submerged lands, and other lands as specified in the City Charter. (City Charter, Sections 602 and 651.)

Similarly, the Long Beach City Charter vests in the Long Beach Harbor Department the authority to control and supervise the Harbor District to provide for the needs of commerce, navigation, recreation and fishery. (Long Beach charter Article X11.) As an exercise of this authority, the ports decided to develop an emission inventory and implement CAAP programs after having weighed the risks of losing business to other ports without a CAAP-equivalent program. These emissions are not caused by the ports' own equipment or operations – they are caused by tenants and other goods movement customers that operate in or near the ports.

The ports are not authorized by state or federal law to carry out the air quality responsibilities of an air district or state. (40 C.F.R. § 51.232(a).) The delegation requirements are also not met. (40 C.F.R. § 51.232(b).) Control Measure IND-01/Proposed Rule 4001 nevertheless requires the ports to conduct regulatory activities, such as developing and adopting emission reduction strategies for maritime goods movement emission sources, which may include retrofit, idling, or fuel requirements; seeking SCAQMD's approval to implement the ERP regulations; and establishing enforcement procedures to ensure that $PM_{2.5}$ emission reductions from mobile sources operating in or near the ports meet the 2012 AQMP assumptions. (See Proposed Rule 4001(f)(1)(C), (f)(1) and (2), and (f)(1)(D).)

10. *There is No Legal Authority for Including Control Measure IND-01 or Proposed Rule 4001 in the SIP*.

Indirect source control measures cannot be required as a condition of SIP approval by EPA or CARB. (42 U.S.C. § 7410(a)(5)(A)(ii); Cal. Health & Safety Code, § 40468.) There are no provisions in the Clean Air Act for including "backstop" measures like Control Measure IND-01 and rules like Proposed Rule 4001 in the California SIP. Only those provisions necessary to meet the requirements of the Clean Air Act can be included in the SIP. (Cal. Health & Safety Code, § 39602.) Control Measure IND-01/Proposed Rule 4001 is not necessary to meet the 24-hour $PM_{2.5}$ NAAQS requirements of Clean Air Act, and there is no emission reduction target for Control Measure IND-01 in the attainment strategy for the 2012 AQMP which Proposed Rule 4001 purports to implement. Thus, Proposed Rule 4001 does not comply with SIP submittal requirements. (See e.g., 40 C.F.R. §§ 51.112-51.114.)

The 2012 AQMP baseline assumptions SCAQMD seeks to enforce by Control Measure IND-01/Proposed Rule 4001 are not credited as emission reductions in the control attainment demonstration for the 2012 AQMP. There is no requirement under the Clean Air Act to enforce baseline assumptions in a SIP. CARB and SCAQMD must have legal authority to adopt, carry out and enforce each SIP measure before EPA can approve the SIP measure. (40 C.F.R. §§ 51.230-51.232; 40 C.F.R. § 51, App. V.) CARB and SCAQMD lack legal authority (preempted) because they cannot require the owners or operators of OGVs, locomotives, harbor craft, and CHE to implement all of the measures set forth in the CAAP, which Control Measure IND-01/Rule Proposed Rule 4001 requires. There is no agreement between CARB or SCAQMD with the Cities for the ports to agree to implement and enforce the sources covered by Proposed Rule 4001. (40 C.F.R. § 51.240.)

11. *Control Measure IND-01 and Proposed Rule 4001 Violate the Tidelands Trust Doctrine*.

The Cities' management of their tidelands is restricted by the public trust doctrine and the legislative acts that granted tidelands to the Cities. As tidelands trustees, the Cities are required to operate and use their tidelands property and revenues solely for the benefit of the entire State of

California, and not for purely local interest or benefit. The Cities have been granted the discretion over how to best fulfill the express trust purposes. SCAQMD cannot compel the ports through Proposed Rule 4001 to violate these Tidelands Trust obligations.

Control Measure IND-01/Proposed Rule 4001 strips the Cities of their discretion in administering the tidelands for the benefit of the State of California and compels the Cities to utilize their revenues for air quality purposes ahead of the purposes expressly set forth in the documents granting tidelands to the Cities. As a practical matter, Control Measure IND-01/Proposed Rule 4001 compliance will depend in part on the Cities providing financial incentives to the owners and operators of mobile sources to incentivize emission reductions. If the SCAQMD Executive Officer requires the ports to develop an Emission Reduction Plan and determines that more generous financial incentives must be offered by the ports to achieve the emission targets (which is permissible under Proposed Rule 4001), this would ultimately diminish the Cities' ability to execute their tidelands trust obligations by forcing revenue to be spent on complying with Proposed Rule 4001, and depleting revenues for express trust purposes.

In their discretion, the ports consider environmental quality to fall within the implied scope of the tidelands trust and have in fact made substantial expenditures when their operating budgets allow. The ports also fully comply with the California Environmental Quality Act when developing their properties for tenants' use, which may include providing mitigation such as air quality reduction measures to address any environmental impacts. However, the tidelands trust does not expressly require revenues be expended for "air quality improvement", and Control Measure IND-01/Proposed Rule 4001 appears to challenge the Cities' jurisdiction over their own funds, if the only way to increase compliance with a CAAP incentive program, for example, is to increase the amount of incentives.

Control Measure IND-01/Proposed Rule 4001 also compels the Cities to violate their Tidelands Trust obligations by mandating that the ports utilize trust funds for an entirely local air regulatory program to reduce PM 2.5, SOx, and NOx emissions. Proposed Rule 4001 applies to "commercial marine ports located in the South Coast Air Quality Management District." (Proposed Rule 4001(b).) The SCAQMD covers a sub-region within Southern California. (Cal. Health and Safety Code, § 40410.) "Commercial marine ports" means "the Port of Los Angeles and the Port of Long Beach." (Proposed Rule 4001(c)(2).) The funding to implement Proposed Rule 4001 will confer only an emission reduction benefit to the South Coast Air Basin and not the entire State of California. Thus, the benefits of Proposed Rule 4001 are strictly localized and conflict with the express terms of the tidelands trust provisions that the ports' property and revenues confer statewide, and not purely local, benefits. The implementation of Proposed Rule 4001 in the South Coast Air Basin will place the ports at a competitive disadvantage to other ports in California. If other ports secure cargo business meant for the Los Angeles or Long Beach ports, the Cities will lose revenues they need to fulfill their tidelands trust obligations.

Conclusion

Again, the ports appreciate the opportunity to comment on EPA's proposed rulemaking and urge the EPA to disapprove and exclude SCAQMD's Control Measure IND-01 and Proposed Rule 4001 from the SIP submittal for the 2006 $PM_{2.5}$ NAAQS in the South Coast Air Basin.

Sincerely,

Heather A. Tomley
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachments

1) March 25, 2014 Letter to Richard Corey, California Air Resources Board from Heather Tomley, Port of Los Angeles and Christopher Cannon, Port of Los Angeles
2) February 24, 2014 Letter from Deborah Jordan, EPA to Christopher Cannon, Port of Los Angeles and Matthew Arms, Port of Long Beach
3) January 31, 2014 Letter to Randall Pasek, Ph.D., South Coast Air Quality Management District from Matthew Arms, Port of Long Beach and Christopher Cannon, Port of Los Angeles
4) January 15, 2014 Letter to Jared Blumenfeld, U.S. Environmental Protection Agency, Region 9 from Matthew Arms, Port of Long Beach and Christopher Cannon, Port of Los Angeles
5) January 15, 2014 Letter to Barbara Radlein, South Coast Air Quality Management District from Matthew Arms, Port of Long Beach and Christopher Cannon, Port of Los Angeles
6) October 2, 2013 Letter to Randall Pasek, South Coast Air Quality Management District from Heather Tomley, Port of Long Beach and Christopher Cannon, Port of Los Angeles
7) August 21, 2013 Letter to Barbara Radlein, South Coast Air Quality Management District from Heather Tomley, Port of Long Beach and Christopher Cannon, Port of Los Angeles
8) November 27, 2012 Letter to Susan Nakamura, South Coast Air Quality Management District from Richard D. Cameron, Port of Long Beach and Christopher Cannon, Port of Los Angeles
9) November 19, 2012 Letter to Barry Wallerstein, South Coast Air Quality Management District from Richard D. Cameron, Port of Long Beach and Christopher Cannon, Port of Los Angeles
10) November 8, 2012 Letter to Barry Wallerstein, South Coast Air Quality Management District from Richard D. Cameron, Port of Long Beach and Christopher Cannon, Port of Los Angeles
11) October 31, 2012 Letter to Barry Wallerstein, South Coast Air Quality Management District from Richard D. Cameron, Port of Long Beach and Christopher Cannon, Port of Los Angeles from Chris Lytle, Port of Long Beach and Michael Christensen, Port of Los Angeles
12) October 22, 2012 Letter to Jeff Inabinet, South Coast Air Quality Management District from Richard D. Cameron, Port of Long Beach and Christopher Cannon, Port of Los Angeles

13) August 30, 2012 Letter to Barry Wallerstein, South Coast Air Quality Management District from Chris Lytle, Port of Long Beach and Geraldine Knatz, Port of Los Angeles

14) July 10, 2012 Letter to Barry Wallerstein, South Coast Air Quality Management District from Chris Lytle, Port of Long Beach and Michael Christensen, Port of Los Angeles

15) May 4, 2010 Letter to Susan Nakamura, South Coast Air Quality Management District, from Richard D. Cameron, Port of Long Beach and Ralph Appy, Port of Los Angeles

16) December 2012, SCAQMD Final 2012 Air Quality Management Plan, pp. 4-8, 4-12 to 4-13; and January 11, 2013 CARB Staff Report on Proposed Revisions to the PM2.5 and Ozone State Implementation Plans for the South Coast Air Basin, pp. 12-13.

17) December 2012, SCAQMD Final 2012 AQMD Appendix IV-A, District's Stationary Source Control Measures, pp. IV-A-2, IV-A-36 to IV-A-43

18) February 2015, SCAQMD Final Supplement to the 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin, Table F-1

19) February 6, 2015, SCAQMD Agenda No. 22, Supplement to 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin, Attachment F, p. F-1

20) February 2015, SCAQMD Final Supplement to the 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin, Table F-1; and February 6, 2015, SCAQMD Agenda No. 22, Supplement to 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin, Attachment E

21) December 7, 2012, SCAQMD Resolution 12-19

22) January 25, 2013, CARB Resolution 13-3

cc: The Honorable Barbara Boxer, United States Senate
The Honorable Janice Hahn, United States House of Representatives
The Honorable Alan Lowenthal, United State House of Representatives
The Honorable Edmund G. Brown, Jr., Governor, State of California
The Honorable Ricardo Lara, California State Senate
The Honorable Patrick O'Donnell, California State Assembly
The Honorable Robert Garcia, Mayor, City of Long Beach
The Honorable Eric Garcetti, Mayor, City of Los Angeles
Jon Slangerup, Chief Executive, Port of Long Beach
Gene Seroka, Executive Director, Port of Los Angeles
Richard Cameron, Managing Director, Port of Long Beach
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Barbara McTigue, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
Jared Blumenfeld, Administrator, EPA, Region 9
Deborah Jordan, Director, Air Division, EPA, Region 9
Elizabeth Adams, Deputy Director, Air Division, EPA, Region 9

Jeanhee Hong, Regional Counsel, EPA Region 9
Richard Corey, Executive Officer, CARB
Cynthia Marvin, Division Chief, Stationary Source Division, CARB
Doug Ito, Chief, Freight Transportation Branch, CARB
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD

ATTACHMENT 1.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

March 26, 2014

Richard Corey
Executive Officer
California Air Resources Board
1001 "I" Street
Sacramento, California 95814

Re: California State Implementation Plan (SIP) for $PM_{2.5}$ for South Coast Air Basin – South Coast 2012 Air Quality Management Plan (AQMP) Control Measure IND-01 *Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities*

Dear Mr. Corey:

The Ports of Long Beach and Los Angeles (Ports) would like to express our concern regarding the California Air Resources Board (ARB) procedure for inclusion of Control Measure IND-01 *Backstop Measure for Indirect Sources of Emissions from Ports and Port-related Facilities* (Measure IND-01) in the California State Implementation Plan (SIP) for particulate matter 2.5 microns or less ($PM_{2.5}$) for the South Coast Air Basin, which is currently pending United States Environmental Protection Agency (EPA) approval.

The Ports believe that ARB failed to follow the process for SIP revision submissions required by Clean Air Act Section 110(1) and California Health and Safety Code Section 41650. Under Clean Air Act Section 110(l), SIP revisions must be adopted by the State, and the State must provide for reasonable public notice and hearing prior to adoption. Pursuant to 40 CFR 52.102(a)(1), the State must hold a public hearing, not only for initial SIP approval, but also for any SIP revision, and must provide notice of the date, place, and time of a public hearing and opportunity to submit written comments. Under 40 CFR 51.102(d), reasonable public notice in this context refers to at least 30 days. Similarly, Health and Safety Code Section 41650 provides for a public hearing that would allow public comment as to whether the SIP meets the requirements of the Clean Air Act. By resolution dated January 25, 2013, the ARB approved the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) and directed the executive officer of the ARB to submit the AQMP to EPA for inclusion in the SIP. However, at the time of the January 25, 2013 ARB action, Measure IND-01 was not part of the AQMP. Because the AQMD Governing Board adopted the AQMP without Measure IND-01 on December 7, 2012 and did not adopt Measure IND-01 until February 1, 2013, the January 25 ARB action did not constitute approval of Measure IND-01 which had not yet been submitted to ARB for consideration. The

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425 S. Palos Verdes Street • San Pedro • CA 90731 • 310-732-3675

Port of Long Beach • Environmental Planning
925 Harbor Plaza • Long Beach • CA 90802 • 562-590-4160

The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

documents attached to the ARB's February 13, 2013 SIP submittal to the EPA include the December 7, 2012 resolution by the AQMD Governing Board and the December 20, 2012 AQMD letter to ARB transmitting the approved SIP, which pre-dated the AQMD Governing Board's approval of Measure IND-01. However, without the required public notice or public hearing and adoption by the ARB Governing Board, the submitted SIP includes the addition of Measure IND-01 by Executive Order S-13-004, dated April 9, 2014.

Furthermore, the Ports were made aware of this Executive Order, which occurred without public hearing or Governing Board approval through a letter from EPA to the Ports dated February 24, 2014. This letter stated that ARB had approved the revised SIP containing Measure IND-01and had forwarded it to EPA under cover of a letter dated April 9, 2013. After a search of the ARB website, however, we were unable to find a copy of the April 9, 2013, submission to the EPA, and the only ARB action posted on the ARB website was the February 13, 2013, SIP submission without Measure IND-01 and the ARB Board's resolution dated January 23, 2013, also without Measure IND-01. We made inquiry to ARB staff and for the first time, on March 18, 2014, received a copy of the April 9, 2013 submission and ARB Executive Order S-13-004, neither of which are available on the ARB website even as of this date.

Perhaps more important than the procedural issue described above, we respectfully request that ARB consider the Ports' many legal, jurisdictional, operational, and technical concerns regarding the substance of Measure IND-01 and its implementing Rule 4001 as set forth in the attached letter to AQMD, dated January 31, 2014, which we hereby incorporate by reference as comments to the ARB on Measure IND-01, since ARB has never formally noticed a public comment period, in violation of the Clean Air Act and Health and Safety Code Section 41650.

The Ports value our partnership with ARB, working together to improve air quality, and we look forward to continuing our collaboration on projects such as ARB's new Sustainable Freight Strategy effort. Rather than introduce counterproductive regulation such as Measure IND-01 or Proposed Rule 4001, the Ports strongly urge ARB to recognize that a multi-agency agreement, using a collaborative process for development of potential programs, is the most effective way to ensure that emission reduction goals continue to be incentivized, and are actually realized. We respectfully request that ARB rescind Executive Order S-13-004, withdraw Measure IND-01 from the SIP, and meet with the Ports to work on a collaborative path forward.

Sincerely,

Heather Tomley
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

LW

Attachment: Port of Long Beach and Port of Los Angeles January 31, 2014 Letter to Mr. Randall Pasek, AQMD, *Re: Comments on South Coast Air Quality Management District Proposed Rule 4001 — Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports*

cc: Al Moro, Acting Executive Director, Port of Long Beach
Gary Lee Moore, Interim Executive Director, Port of Los Angeles
Richard D. Cameron, Managing Director, Port of Long Beach
Michael Christensen, Deputy Executive Director, Port of Los Angeles
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
Mary Nichols, Chairman, ARB
Members of the California Air Resources Board (*c/o Clerk of the Board, Attachment on CD*)
Cynthia Marvin, Division Chief, Stationary Source Division, ARB

ATTACHMENT 2.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

FEB 2 4 2014

Mr. Christopher Cannon
Director of Environmental Management
Port of Los Angeles
425 S. Palos Verdes Street
San Pedro, CA 90731

Mr. Matthew Arms
Acting Director of Environmental Planning
Port of Long Beach
925 Harbor Plaza
Long Beach, CA 90802

Dear Mr. Cannon and Mr. Arms:

Thank you for your letter dated January 15, 2014, to the U.S. Environmental Protection Agency Region 9's Regional Administrator Jared Blumenfeld, expressing your concerns about the South Coast Air Quality Management District's (SCAMQD) Control Measure IND-01, *Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities.* We appreciate the Port of Long Beach's and the Port of Los Angeles' input on Control Measure IND-01.

We agree with your statement that California Air Resources Board's (CARB) January 25, 2013 adoption of the South Coast 2012 Air Quality Management Plan (2012 AQMP) did not include Control Measure IND-01. The SCAQMD Governing Board voted to delay that measure when it adopted the 2012 AQMP pending further work by SCAQMD staff. The measure was approved by the SCAQMD Governing Board in February 2013 and CARB adopted it and submitted it to EPA on April 9, 2013. To date, we have not received South Coast Rule 4001, which will implement Control Measure IND-01, as a revision to the California State Implementation Plan. Once we receive the rule, we are obligated to review and act on the rule.

In the mean time, I propose that my staff schedule a teleconference call with your staff to discuss the concerns you raised in your letter. If you have any questions, please contact Elizabeth Adams, Air Division Deputy Director, at (415) 972-3183.

Sincerely,

Deborah Jordan
Director, Air Division

ATTACHMENT 3.

January 31, 2014

VIA E-MAIL – rpasek@aqmd.gov

Mr. Randall Pasek, Ph.D.
Planning Manager, Off-Road Section
Mobile Source Division
Science and Technology Advancement
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91756-4178

Re: Comments on South Coast Air Quality Management District Proposed Rule 4001 — *Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports*

Dear Mr. Pasek and Staff of the South Coast Air Quality Management District:

On behalf of the City of Long Beach (referred to herein as "COLB") and the City of Los Angeles acting by and through their respective Harbor Departments ("COLA"), and collectively with COLB referred to herein as the "Cities"), we appreciate this opportunity to submit comments on the South Coast Air Quality Management District's ("District") recently published draft "Proposed Rule 4001 – *Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports*" ("PR 4001"), which attempts to implement "Stationary Source Measure IND-01—*Backstop Measures for Indirect Sources of Emissions from Ports and Port-related Facilities*" ("Measure IND-01") in the 2012 Air Quality Management Plan for the South Coast Air Basin ("AQMP").

As the District is well aware, the Cities have been dedicated, innovative, and effective leaders in the efforts of public agencies to improve air quality despite the fact that we have no air quality regulatory authority or control over emissions sources. The potential of additional regulation by the District in the form of PR 4001 on the ports of Long Beach and Los Angeles ("Ports") brings significant uncertainty that will have broad negative effects on the goods movement industry and the economy as a whole, and destroys the voluntary, collaborative partnership among the Cities, industry and all of the air agencies that has led to unparalleled emission reductions. PR 4001 raises questions of fairness and unacceptable delegation of responsibility from federal, state and local air regulators to individual cities.

The Cities have previously commented on, and objected to PR 4001 and Measure IND-01, and have expressed our grave concerns about the District's rulemaking approach, attempting to craft an ostensible "backstop rule" that would regulate the Cities and their respective Ports in an unprecedented manner. This letter provides the Cities' comments on PR 4001 and the District's Preliminary Draft Staff Report ("PDSR") for PR 4001 and concludes that:

I. The substance of Measure IND-01 and PR 4001 is deeply flawed from technical, jurisdictional, legal, and public policy perspectives, in ways that cannot be cured;

II. District is acting beyond its authority to adopt PR 4001;

III. The procedural process for development, public participation and adoption of Measure IND-01 and PR4001 is similarly flawed under both state and federal law; and

IV. Measure IND-01 and PR 4001 fail the requirements for inclusion in a State Implementation Plan (SIP) under the federal Clean Air Act and applicable state law and their existence within the SIP threatens the its success.

Each of these four conclusions is explained in detail below.

I. SUBSTANTIVE FLAWS IN PR 4001

A. There Is No Demonstrated Need for PR 4001

The District has failed to and cannot provide any demonstration of "need" or justification for either Measure IND-01 or PR 4001. The District's persistent demand for the Cities – and the Cities alone – to be subjected to a redundant rule to "backstop" existing and effective emission regulations, reduction plans and policies is arbitrary, discriminatory, and remains unjustified by evidence or legal authority.

We respectfully point out that the District previously proposed a "port backstop rule" as a "Mobile Source Measure MOB-03" ("Measure MOB-03") as part of the District's 2007 Air Quality Management Plan, although Measure MOB-03 included as regulated parties, the port-related emission sources. However, following the Cities' objections to that similarly-unjustified proposal, the California Air Resources Board ("CARB") excluded the Port-related emission reduction targets and the proposed MOB-03 "backstop" measure from the 2007 SIP. Despite that rejection, and despite its repeated and manifest failure to demonstrate any legitimate need the District introduced an even more unjustified form of backstop that targets the Cities alone, in the form of PR 4001.

Implementation of PR 4001 would transform the Cities' voluntary San Pedro Bay Ports Clean Air Action Plan ("CAAP") into the District's mandatory regulation of the Cities. The CAAP was a voluntary cooperative effort of Cities and all of the air regulatory agencies (including the District, CARB and the United States Environmental Protection Agency ("USEPA") designed to encourage the industry operators of emission sources to go beyond regulation. PR 4001 would improperly and illogically subject the Cities to the District's regulation for industry's failure to achieve anticipated emissions reductions from equipment not operated, owned or controlled by the Cities, or even to the potential loss of federal and state funding for emission reduction measures if the PR 4001 is adopted and included in the SIP and approved by the USEPA.

As the Cities have previously shown, there is no demonstrated need for the rule, nor is this rule necessary for regional attainment of the 2014 $PM_{2.5}$ standard. PR 4001 is unnecessarily duplicative of regulations already in place for port-related sources.[1] This violates the federal Clean Air Act and State of California Health & Safety regulations that require SIP provisions to be "necessary." The Ports' 2012 air emissions inventories show that diesel particulate emissions (DPM) have been reduced by 80% over the seven year period between 2005 and 2012, exceeding the commitments we made for 2014 and 2023 in the CAAP. Further, the Cities estimate that by 2014**, 98%** of the $PM_{2.5}$ equivalent emission reduction that PR 4001 seeks to backstop will occur as the result of regulations adopted by CARB and the International Maritime Organization (IMO).[2] The remaining **2%** of $PM_{2.5}$ equivalent emission reductions is primarily attributed to the Cities' successful voluntary vessel speed reduction incentive program which is part of the Cities' CAAP.

B. A VMEP Should Be Used To Achieve Reductions Rather than Rulemaking

To the extent the District may be seeking to ensure the emission benefits of the Cities' voluntary vessel speed reduction incentive program, there is a more appropriate and focused method in the form of the USEPA's policy and guidance for the Voluntary Mobile Source

[1] The term "port-related sources" may occasionally be used in this letter, merely for convenience and consistency with usage of that colloquial term by the District, as shorthand for the range of discrete sources of air emissions, mostly mobile, which happen to operate at or near the geographic boundaries of the respective Ports. The Ports themselves, however, are "non-operating ports" and therefore not "sources" of emissions, and there is no statutory reference to anything called "port-related sources" for purposes of air quality regulation. The Cities are governmental entities having jurisdiction over defined geographic areas, like the District, and are no more the "sources" of emissions than is the District.

[2] CARB Port Drayage Truck Rule, CARB Truck and Bus Rule, CARB Ocean-Going Vessel (OGV) Shore Power Rule, OGV Low-Sulfur Fuel Rule, CARB Cargo-Handling Equipment at Ports Rule, CARB Commercial Harbor Craft Rule, IMO North American Emission Control Area

Emission Reduction Program (VMEP). This USEPA policy provides an established process to grant SIP credit for emission reductions resulting from voluntary mobile source measures that go beyond existing regulations. The VMEP approach was intended for exactly the type of successful voluntary program such as the Cities' landmark CAAP, and should be used to account for the 2% of port-related emissions not currently backstopped by regulation. Use of the VMEP would allow the continuation of a successful voluntary approach that has industry support eliminating the risk of cargo diversion that would be caused by the uncertainty inherent in the ill-conceived regulatory structure of PR 4001.

The USEPA's established VMEP process that was conceptualized for programs such as the Cities' vessel speed reduction incentive program and other CAAP measures is a feasible and preferable alternative to PR 4001 as it will accomplish the objectives sought by Measure IND-01 and PR 4001 and ensure that the emissions reductions achieved by the program are credited in the SIP. Further, a VMEP, which can be implemented by a memorandum of understanding, will achieve the same emissions reductions while allowing grant funds to continue to remain available for actions going beyond regulations and will do so in a collaborative manner. It will also encourage other port partners, as well as cities and regions throughout the nation, to develop and pursue innovative voluntary programs and solutions that best fit their needs to improve air quality and public health. The Cities are open to discussing mechanisms, contractual or otherwise, by which the Cities and the District can formalize a VMEP to ensure the voluntary emission reductions are maintained in future years.

C. PR 4001 Emissions Reduction Target Methodology is Flawed

Table 5 of the District's Preliminary Draft Staff Report shows the overall combined 2014 target emission reduction of 75% resulting from the application of the Cities' CAAP 2014 emissions reduction goals for NOx, SOx, and DPM compared to the CAAP 2005 baseline, but fails to specify a mechanism to harmonize the AQMP inventory values with the Cities' reported air emissions inventories. Furthermore, the use of a fortuitous similarity in 'percent reduction' cannot be the basis of any type of backstop rule.

Since the 2012 Final AQMP emissions inventory uses a baseline year of 2008 that includes the Cities' 2008 emissions inventories, the 2005 baseline emissions should be replaced with the more appropriate 2008 emissions estimates to determine the overall $PM_{2.5}$ equivalent emissions reduction target. Based on the Cities' calculation, using the District staff's methodology, by applying the CAAP reduction factors to the 2008 baseline inventory, the overall combined target $PM_{2.5}$ equivalent emission reduction is 68%, as shown in the following table:

Emissions Inventory	NOx	SOx	$PM_{2.5}$	$PM_{2.5}$Eq
	(tons per day)			
CAAP 2005 Baseline[1, 3]	87.45	33.39	4.73	28.54
Ports Combined 2008 Total Port-Related Emissions[2, 3]	78.6	25.5	3.7	22.7
CAAP 2014 Reduction[4]	22%	93%	72%*	-----
2014 Estimated Inventory[3]	68.21	2.34	1.32	7.34
Overall $PM_{2.5}$ Equivalent Reduction Between 2008 and 2014				68%

[1] From Table 2 of Preliminary Draft Staff Report for PR 4001
[2] From Table 3 of Preliminary Draft Staff Report for PR 4001
[3] 2005 and 2008 emissions are based on the Ports' 2011 emission estimation methodologies.
[4] CAAP 2014 Bay-Wide Standards emission reduction goals for NOx, SOx and DPM
*Please note that that the CAAP 2014 emission reduction goal of 72% is for DPM, not for PM.

In determining the 2014 emission reduction targets for PR 4001, District staff applied the Basin-wide percent reductions from 2008 to 2014 and 2019 to the Cities' 2008 inventory to arrive at the forecasted net emissions reduction percentages of 75% for 2014 and 2019 (page 11 of Preliminary Draft Staff Report). This approach is not appropriate because the Basin-wide percent reductions are based on an inventory of emissions from overall sources (including non-port-related) in the South Coast Air Basin (SCAB). Therefore, the approach taken in PR 4001, is not directly applicable to what the Rule describes as "port-related emissions." Since the SCAB estimates include emissions from what the District erroneously describes as the "port-related source" categories, as well as sources operating elsewhere in the SCAB, the 75% emission reduction target specific to the ports of Long Beach and Los Angeles is questionable. As an example, SCAB-specific emissions from heavy-duty vehicles includes emissions from all heavy-duty trucks operating in the basin, including those associated with construction activities, public fleets, utility, intrastate, interstate, and drayage trucks, while the ports-specific heavy-duty truck emissions inventory only includes activity and emissions associated with port-related drayage trucks.

It is also important to note that the District's December 2013 Preliminary Draft Staff Report for PR 4001 erroneously assumes that $PM_{2.5}$ emissions are equivalent to diesel particulate matter (DPM) emissions. The Cities' 2014 CAAP emission reduction goal of 72% is specific to DPM, not $PM_{2.5}$ as assumed in the calculation of the $PM_{2.5}$ equivalent emissions reduction goal of 75%. Each of the Port's annual air emissions inventories separately estimate DPM and $PM_{2.5}$. As shown in their annual reports, the resulting emissions of DPM and $PM_{2.5}$ **are not equivalent**.

Please refer to Table 8.4 of the Port of Long Beach 2012 Air Emissions Inventory Report[3] and Table 9.4 of the Port of Los Angeles 2012 Inventory of Air Emissions Report[4].

A comparison of the $PM_{2.5}$ equivalent factors used in the 2007 AQMP , 2012 AQMP, and PR 4001 shows that there is inconsistency in how the $PM_{2.5}$ equivalent factors were derived and applied, as shown in the table below:

$PM_{2.5}$ Equivalent Factors

	VOC	NOx	$PM_{2.5}$	SOx
2007 AQMP	0.04	0.10	1.00	1.52
2012 AQMP	0.02	0.07	1.00	0.53
PR 4001	NA	0.07	1.00	0.53

In the 2007 AQMP, emissions reductions were simulated between 2005 and 2014, whereas for the 2012 AQMP, emissions reductions were simulated between 2008 and 2014. In the 2007 AQMP, the effect of each pollutant precursor's reduction on the 2014 $PM_{2.5}$concentration was considered on an annual basis, while the 2012 AQMP considers 24-hour $PM_{2.5}$concentrations. Also, the 2007 AQMP used the annual $PM_{2.5}$ concentration which was based on the average concentrations from all air monitoring stations in the South Coast Air Basin, while the 2012 AQMP only uses the average from six regional locations—Riverside-Rubidoux, Downtown Los Angeles, Fontana, Long Beach, South Long Beach, and Anaheim. The Basin-averaged conversion factors resulting from the 2007 analysis were submitted as part of the 2007 SIP (Appendix C, of the CARB staff report, "$PM_{2.5}$ Reasonable Further Progress Calculations") and were approved by the USEPA.

In addition, PR 4001(c)(6) defines "$PM_{2.5}$ Equivalent" as "the aggregate of the NOx, SOx, and $PM_{2.5}$ emissions (in tons per day) as defined by the following formula provided in the Final 2012 AQMP:

$$PM_{2.5}\text{ Equivalent} = 0.07 * NOx + 0.53 * SOx + 1.0 * PM2.5$$

The formula provided in PR 4001 does not reflect the $PM_{2.5}$ equivalent formula provided in the Final 2012 AQMP, which includes emissions of VOCs in the calculation. In PR 4001, without explanation, the District has erroneously "dropped" the contribution of VOC from the $PM_{2.5}$ equivalent formula, although the District's emissions modeling simulation shows VOCs as a contributing factor.

[3] Port of Long Beach 2012 Air Emissions Inventory. www.polb.com/emissions
[4] Port of Los Angeles 2012 Inventory of Air Emissions. www.portoflosangeles.org/environment/studies_reports.asp

Given that there have been several revisions to the $PM_{2.5}$ equivalent calculations, the text and formulae used in PR 4001 for those calculations do not appear consistent with previous approaches to such determinations. Prior to proceeding any further with PR 4001, the Cities request a scientific technical evaluation and obtain confirmation from the USEPA that the revised $PM_{2.5}$ equivalent factors and formula to calculate $PM_{2.5}$ equivalent emissoins used in the 2012 AQMP and in PR 4001 are appropriate.

D. PR 4001 Fails to Provide an Accurate and Appropriate Definition of Emissions "Shortfall"

PR 4001 would require the Cities to develop and submit an emissions reduction plan ("Plan") identifying control strategies to eliminate some potential future "shortfall" in attainment of reduction targets. The proposed rule, however, fails to identify the environmental baseline or other parameters that would be required in order for the Cities or the District to determine the extent of any emissions "shortfall" to be addressed in the potential Plan. Under PR 4001, the existence of a "shortfall" would appear to be the necessary prerequisite to trigger some responsive action on the part of the Cities, but the draft text of PR 4001 fails to provide for a timely and objective process to ascertain when and whether such a "shortfall" may have arisen.

The term "shortfall" first appears in the proposed rule in paragraph (d)(1)(A), where it appears to call for a Plan to report on progress in "meeting the shortfall." However, that would appear to be inconsistent with the structure of the proposed rule, i.e., under PR 4001, the District cannot require the Cities to submit an emissions reduction plan unless and until the annually-reported emissions reductions "show that the percent reduction in $PM_{2.5}$ from the baseline emissions is less than the reduction target" of 75% (Paragraph (e)(1)B)). There would not be any "shortfall" identified until that time; therefore, it would be premature and illogical to require the Cities to submit a Plan that "reports the progress in meeting the shortfall."

To the limited extent that the draft text of PR 4001 describes the shortfall that might trigger the need to prepare a Plan, the provisions for annual estimating or reporting of the emissions appear imprecise and vague. Also, paragraph (f) appears to contemplate that once a "shortfall" is determined to exist in one year, then the District could demand a revised Plan in following years if targets still are not met. What happens if the shortfall is "corrected" in subsequent years and targets are again being met?

PR 4001 fails to provide for any process for review or appeal of a possible District "determination" that a "shortfall" has occurred. PR 4001 fails to provide adequate time for the Cities to prepare a Plan, if required, or adequate time or procedures for the Cities to study the proposed Plan, to conduct environmental review of the Plan, or to conduct public hearings and gather input on any Plan that may be deemed to be appropriate if PR 4001 is properly triggered.

Development of a Plan should not be mandated if any eventual determination of an emissions "shortfall" is due to reasons outside of the Cities' control. As previously stated, by 2014, the emissions sources ostensibly targeted by PR 4001 are already controlled by state, federal, and international regulations. Should there be a shortfall in attaining the emissions targets, it will likely be due to factors not caused or controlled by the Cities, and not due to any action or derelictions on the part of the Cities or their tenants or users. The obligation to go through a burdensome process to prepare and approve a new Plan or to take active measures to make up for a shortfall in meeting emission reduction targets should not fall on the two Cities. The Cities are independent governmental entities who are not directly producing emissions or otherwise directly responsible for the targeted emissions or for the attainment of emission targets. The Cities are certainly not air agencies created by federal or state law with specific regulatory authority to control emissions.

E. <u>PR 4001 Improperly Provides for Moving Emissions Reduction Targets</u>

PR 4001 paragraph (c)(4) defines the "Emissions Target" as the "emissions forecast that is based on the Ports' 2008 baseline emissions **forecasted** for a specific year as provided in Appendix IV-A page IV-A-36 of the Final 2012 AQMP." This definition is confusing, as it is assumed that this reference is contained in the Final 2012 AQMP. In the description of this measure in Appendix IV, page IV-A-36, only projected levels of NOx, $PM_{2.5}$, and SOx are shown for calendar years 2014 and 2019. However, PR 4001 and the District's Preliminary Draft Staff Report discuss a 75% reduction in $PM_{2.5}$ equivalent emissions in 2014 compared to 2008 baseline levels. Again, there is a clear inconsistency between PR 4001 and the text of Measure IND-01 as actually approved by the District's Governing Board.

PR 4001 paragraph (e)(2) requires the District's Executive Officer to review the reduction target based on the latest information available including future year emission estimates in the 2016 AQMP and purports to allow the Executive Officer, by July 1, 2017 to "update," if necessary, the emission reduction target. This provision is unauthorized by IND-01 or any other rule, regulation, plan or statute, and would unlawfully vest apparently unfettered power on the Executive Officer to **change the previously-approved reduction targets**. By what authority would these targets be "revised" in the future? Under what objective standards? What public process would the District's Executive Officer need to follow in order to "develop" a proposed amendment to PR 4001 changing the targets? What environmental review/public outreach processes would be required before the Executive Officer could change the reduction targets and how would the environmental/socioeconomic impacts of such changes be addressed? How would such a moving target affect the Cities, the port communities, tenants, users, and the existing plans and policies which have proven effective in attaining the agreed and approved reduction targets?

F. The Processes For Development, Approval and Disapproval of Emission Reduction Plans Are Flawed

In the event the emissions reduction targets are not met, PR 4001 requires the Cities to submit an Emissions Reduction Plan "to address the emission reduction 'shortfall'." In addition, PR 4001 dictates the public processes of other government agencies: "…the Ports shall conduct at least one duly noticed public meeting before the Plan is presented to each respective Board of Harbor Commissioners for approval." This is an improper attempt by the District to control and dictate the exercise of "discretion" conferred on the Boards of Harbor Commissioners regarding their own notice, agenda setting, public hearing procedures and substantive decision making processes under their own applicable governing laws and rules. Neither the District's staff nor its Governing Board can require approval of the District's desired measures or override the discretion of the Board of Harbor Commissioners including decisions related to the management of the port or how port resources are allocated.

Moreover, if the Board of Harbor Commissioners disagrees that a Plan is required or specific terms of a Plan requested by the District, what process is provided for resolution of such disagreements? Under what authority would PR 4001 purport to allow the District's Executive Officer, acting alone, without even District Governing Board authority, to "disapprove" a Plan or compel a Plan to be approved by the Cities' own governing authorities? Although the Cities dispute that the District can compel or disapprove a Plan at all due to conflicting governmental authority, certainly such approval or disapproval of any Emission Reduction Plan cannot be at the sole discretion of a single District staff member.

G. PR 4001 Would Violate Constitutional Requirements of Due Process

PR 4001 also raises several questions regarding violations of Due Process. As noted above, PR 4001 would unlawfully purport to vest the District's Executive Officer with unilateral authority to "approve" or "disapprove" a Plan submitted by the Cities, without any process for public hearing, review by the District Board, or other guarantees of procedural due process for those concerned about such actions. PR 4001 also improperly fails to provide any requirement that the Executive Officer must make "findings" of "non-compliance" with some provision of paragraph (f)(1) of PR 4001, or that the Executive Officer's decisions must be based on some reasonable and objective standards.

PR 4001 fails to provide for the District giving the Cities any particular notice or justification for disapproval of a Plan, or any process for the Cities to seek review or appeal of the District's disapproval.

What would be the procedure if the PR 4001 triggered the obligation of the Cities to prepare a Plan, and the Cities duly submitted a Plan, but the District (either by its Executive

Officer or its Hearing Board) "disapproved" the Plan (per paragraph (f)(2)(C))? The Cities would apparently be required to submit a revised Plan within 60 days of the disapproval; however, that time would not be sufficient for the Boards of Harbor Commissioners and their staffs to prepare a new revised Plan, to hold new "public meetings" and gather public input, or otherwise take meaningful action on the revised Plan. PR 4001 fails to provide adequate time or process for the Boards of Harbor Commissioners to prepare, conduct CEQA review and public outreach, or to consider and approve a new revised Plan within the arbitrary 60 day time frame set by the rule.

H. PR 4001 Improperly Changes the Definition of "Feasibility" In Control Strategies and Alternatives

PR 4001 proposes to change the definition of "feasible control strategy" so that it is not consistent with the obligations that could potentially be imposed on the Cities under Measure IND-01 as adopted by the District Governing Board. Instead, PR 4001 (at paragraph (c)(1)) has changed the limitations on the proposed obligations of the Cities to achieve additional emissions reductions under PR 4001. Previously, the proposed rule was described as requiring the Cities to "propose additional emission reduction methods …[but only] *to the extent cost-effective strategies are technically feasible* and within the Ports' authority." PR 4001 has inexplicably omitted (at several points) the prior limitation on the Cities' potential obligations to measures that are "*technically feasible.*" Again, this is not consistent with the text of Measure IND-01 or any other legal or regulatory authority identified by the District.

The Cities assert that feasibility must be defined as technically, operationally, commercially, financially, and legally feasible, and within the legal and jurisdictional authority of the Cities. Further, the District must acknowledge that feasibility is also subject to the Cities' and their Boards of Harbor Commissioners' own legal and trustee obligations as governmental agencies under their City Charters and applicable laws.

The District also fails to show how it expects the Cities as governmental agencies to legally overcome the same doctrines of international and federal preemption that prevent the District from regulating mobile sources such as ocean-going vessels, rail locomotives and trucks. If the District intends that the Cities shall be compelled to pay incentives for District programs if they are unable to legally regulate mobile sources, then again this raises the jurisdictional conflict with the Cities' Boards' independent governmental discretion and legal obligations to manage their properties and revenues to serve Tidelands purposes for the benefit of the State. In this era of ever diminishing resources and increased competition the District is seemingly ignoring the lawful obligations of the Cities' Boards and insisting they place District priorities (which they themselves cannot legally accomplish) before the established responsibilities of the respective City Boards.

I. The PR 4001 Enforcement Scheme is Unconstitutionally Vague and Impermissible

PR 4001 does not describe how the District would determine the "consequences" for violation of PR 4001, nor does it identify how it would determine the sufficiency of the Cities' efforts to manage activities within the Ports. If the Cities were deemed to be in violation simply because the District may choose to "disapprove" a Plan or revised Plan, under what legal authority would the District purport to sanction the Cities in the event of some perceived "violation"?

PR 4001 fails to provide objective standards appropriate for the District to judge the sufficiency of any plans or measures proposed by the Cities to achieve the emission reduction targets. The proposed rule fails to provide sufficient detail at paragraph (f)(2)(F)(iii) as to what the consequence would be if the District were to disapprove a City's revised Plan. Also, the reference here that the Cities "shall be in violation of this Rule…" must be clarified.

Similarly, the terse discussion of the Variance and Appeal Process outlined in paragraph (g)(1) and (2) of PR 4001 is vague and fails to identify criteria or the process for the Cities to petition the District Hearing Board for a variance. PR 4001 also fails to explain the outcome should the District grant a variance.

Both Measure IND-01 and PR 4001 are unconstitutionally vague in their failure to explain exactly what fines, penalties or other administrative enforcement would be imposed on the Cities in the event that targets are missed or the District's Executive Officer disapproves a plan. The District also fails to explain how it purports to impose penalties or corrective action against another governmental entity for failure of private third party emissions sources to achieve emissions reductions that such other governmental entity is also preempted from regulating.

The District has failed to show any constitutional or statutory basis for requiring a governmental entity to devote public resources, pay exactions, administrative fines or suffer penalties for pollution caused by private entities. Similarly, the District has not shown any authority for PR 4001's attempt to shift onto the Cities liability for emission shortfalls by other parties assigned AQMP emissions reduction responsibility. The District has failed to show how PR 4001 would not violate constitutional limitations requiring exactions or penalties imposed on a party to be reasonably related to and proportional to the party's deleterious public impacts. This is especially true when PR 4001 only applies to the Cities, which are non-operating ports, while failing to include all parties involved in the CAAP including the other air agencies that jointly sponsored the CAAP, or actual owners and operators of emission sources. The District also fails to define how it would allocate liability to COLB versus COLA, when they are two separate legal entities with independent Boards as decision makers that may approve different Plans or no Plan at all. In any event, neither City is in direct control of the actual emissions sources and rudimentary principals of justice require that they should not be burdened with

sanctions, penalties, or Plan-writing responsibilities to cure the "shortfalls" of others or to act as a delegated air regulator that has no such authority.

J. PR 4001 Fails to Consider Legal Limits on Grant Funding

In the Cities' actual operating experience, demonstration that proposed activities go beyond, rather than merely comply with, enforceable regulations, is a basic requirement in both state and federal grant funding applications. The District has claimed that its adoption of PR 4001 as an enforceable rule or regulation would not prevent the Cities from continuing to be eligible for the types of grant funding that the Cities have used successfully to fund emission reduction programs. However, the District has failed to provide legal citation in support of how the governmental agencies typically funding such programs might continue to legally fund activities for the purpose of complying with existing mandates, without violating constitutional limits prohibiting payment to comply with the law as "gifts of public funds."

K. Reporting Requirements under PR 4001 are Excessive

PR 4001 paragraph (f) requires annual revisions to the Emission Reduction Plan. This is new and excessive regulation, well beyond backstopping achievement of 2014 targets, and is duplicative, unnecessarily burdensome, and has not been sanctioned or in any way approved by the District's Governing Board. Even CARB in its state oversight over the District's plans, only requires three-year updates to the AQMP. Furthermore, PR 4001 is placing greater air quality regulatory burden on the Cities (and their Ports) than the federal government places on AQMD or other air agencies.

L. Annual Emission Inventory Requirements under PR 4001 are Inappropriate and Vague

PR 4001 paragraph (d) outlines requirements for annual emissions reporting. An initial inventory for 2014 would be required by November 2014 "from all port-related sources for the 2014 calendar year based on actual activity information available prior to November 1st of the calendar year and projected activity information for the remainder of the year." Although Distract staff indicated that specific requirements for this November 2014 submittal would be provided, neither the rule nor the accompanying Staff Report list any specifics. The Cities will incur additional costs based on this requirement to prepare a 2014 inventory based on incomplete data in November 2014.

The majority of the sources tracked in the Cities' current emission inventories of port-related sources are not owned, operated or controlled by the Cities. Therefore, emissions inventories that will be used to evaluate compliance with PR 4001 should only include those port-related sources over which the Cities have direct control.

II. LACK OF AUTHORITY

A. PR 4001 is NOT Consistent with the District's Governing Board Approved Control Measure IND-01

Control Measure IND-01 provided a description of the Cities' successful CAAP and its various emissions reduction goals: "This AQMP Control Measure is designed to provide a "backstop" to the Ports' actions to provide assurance that, if emissions do not continue to meet projections, the Ports will develop and implement plans to get back on track, to the extent that cost effective and feasible strategies are available." (Final 2012 AQMP Appendix IV-A, page 3). PR 4001, by contrast, describes its purpose differently: "The purpose of this rule is to establish actions to be taken in the event that emissions from port-related sources do not meet the emission targets assumed in the Final 2012 Air Quality Management Plan for the purpose of meeting the federal 24-hour $PM_{2.5}$ standard in 2014 and maintenance of attainment in subsequent years" (PR 4001 paragraph (a)). District Staff has apparently drafted PR 4001 so as to eliminate the references in Measure IND-01 as adopted by the District's Governing Board to backstopping the Cities CAAP targets to the extent cost effective and feasible strategies are available and has replaced that "backstop control measure" with a traditional regulation by the District to meet District-set targets.

In addition, the District Staff (apparently without Board approval) has **changed** the concern from assuring "the attainment demonstration" for 2014 $PM_{2.5}$ emission targets (as described in the 2012 AQMP) to add "maintenance of the air quality standard in subsequent years." (PR 4001 paragraph (a)). This change adds a new undefined and open-ended element into PR 4001 that is not consistent with Control Measure IND-01 as publicly adopted by the District's Board in February 2013. Most importantly, to the extent the provisions of PR 4001 vary in purpose and scope from Measure IND-01, they are not authorized by the District Governing Board.

B. The District Fails to Show Any Basis to "Indirectly" Regulate Mobile Sources or Delegate Authority Without Clean Air Act Waivers from the USEPA

The District has failed to show any constitutional or statutory basis for attempting to regulate mobile sources "indirectly" that it is preempted from regulating directly. The District's use of the term "port related sources" appears to be a euphemism for "mobile sources" that may be located at or operate at the areas governed by the Cities. "Mobile sources" of emissions are, of course, generally beyond the limited regulatory authority conferred by the Legislature on local or regional districts. (e.g., Health & Safety Code § 40001(a); also see, 76 Ops. Cal. Atty. Gen. 11 (1993); 75 Ops. Cal. Atty. Gen. 256 (1992); 74 Ops. Cal. Atty. Gen. 196 (1991); 73 Ops. Cal. Atty. Gen. 229, 234-35 (1990).)

The District has failed to show any authority for attempting to regulate mobile sources by making another governmental entity that lacks any air regulatory authority its agent for enforcement of its desired mobile source emission reductions. (See, e.g., *Association of American Railroads et al. v. South Coast Air Quality Management District et al.*, 622 F.3d 1094, 1096 (9th Cir. 2010), invalidating several train-idling emissions rules enacted by the District, on the basis of federal preemption under the Interstate Commerce Termination Act of 1995 (ICCTA).) Moreover, the District does not have mobile source regulatory authority itself to delegate, as it does not have a waiver under the Clean Air Act from the USEPA. The District should instead work on stronger regulations from USEPA or CARB, which does have certain USEPA waivers to regulate mobile sources.

PR 4001 impermissibly requires the Cities to become air pollution control agencies, responsible for "achieving" reductions of emissions that are actually from other private parties that operate or control equipment largely used in goods movement within the geographic boundaries of the Cities. There is no statutory or other legal basis for imposing such a requirement on another governmental agency. For example, does this mean that a city that has a significant number of factories or refineries within its borders becomes a stationary source and indirect source for those emissions? Evidently the District does not distinguish between "operating ports" such as the Port of Charleston, S.C., which actually operates the terminals within the port, and "non-operating ports" such as the Cities, which are landlords that do not operate the marine terminals and other facilities within the harbor districts.

The emission reduction plan required by PR 4001 strongly resembles the State Implementation Plan requirements of the Clean Air Act (42USC§7410). Specifically PR 4001(f)(1)(A)(i) states, "…Ports shall engage [CARB, USEPA and the District] to discuss legal jurisdiction and authority to implement potential strategies to address the shortfall…" Based on the Clean Air Act, the enforcing agency should be the state of California through CARB and the District; however, PR 4001 places the burden of enforcement of emission reductions on the Cities. Based on this, if the port-related sources don't meet the emission reduction target specified by PR 4001, it should be the District and/or CARB that are responsible for preparing and enforcing the emission reduction plan against the emissions sources. If the District insists that the Cities prepare an emission reduction plan, then the plan must be subject to the limits on authority, preemption and feasibility issues described above. Further, USEPA, CARB and the District should provide funding to the Cities to support programs for incentives, since the Cities will no longer have available grant funding for voluntary programs.

C. PR 4001 Violates Cities' Charter Authorities and Tidelands Obligations

Control Measure IND-01 and PR 4001 are illegal, abusing the District's limited statutory power in an unprecedented manner that exceeds its authority. There is no legal precedent or

authority for the District's attempted regulation of the Port Authorities of the Cities, or the District's imposition of an arbitrary, unnecessary and discriminatory rule on the Cities, and thereby dictate the Cities' governing Boards of Harbor Commissioners' ("Boards") decisions regarding the exercise of their police power authority, the management of their respective properties and expenditures of the Cities in order to satisfy the District-defined targets for a single district within the State.

PR 4001 acknowledges that funding will be necessary to implement a plan to satisfy District targets, but fails to provide District funds or specify the source of such funds. The District cannot legally compel the Cities' Boards to make expenditure of Tidelands Trust revenues for the purpose of incentives or funding emission reduction programs as contemplated in District enforcement activity under PR 4001. Such proposed unfettered District authority would unlawfully supplant the trustee judgment and legal obligations of the Cities to operate the port properties and their revenues solely for the benefit of the entire State of California under the Tidelands Trust doctrine (promoting maritime commerce, navigation and fisheries) rather than for limited municipal or a single District's purposes.

Worse yet, PR 4001 proposes that a single District Executive Officer acting alone (rather than the District's full Governing Board) would wield the sole discretion to approve or disapprove the independent jurisdictional decisions of the Boards regarding conditions they impose on their properties or expenditures of their Harbor Revenue Funds, violating the Tidelands Trust and the Cities' charters.

D. <u>There is No Statutory Authority for District to Impose PR 4001 On Cities</u>

The District has failed to cite any statutory authority for regulating the Cities—governmental entities—as purported "sources" of emissions. As the Cities have repeatedly explained, neither the Cities nor the Ports are "sources" of emissions—direct, indirect, or otherwise. The District has not provided any authority that would support the District's attempted characterization of the Cities, or the Ports, as "indirect sources" of emission, solely based on the confluence of distinct privately-owned activities, vessels, vehicles, equipment, and uses within the geographic area and jurisdiction of the respective Ports.

"An air pollution control district, as a special district, 'has only such powers as are given to it by the statute and is an entity, the powers and functions of which are derived entirely from the Legislature.'" (74 Ops. Cal. Atty. Gen. 196 (1991)[citations omitted].) "No matter how altruistic its motives, an administrative agency has no discretion to promulgate a regulation that is inconsistent with the governing statutes." (*Terhune v. Superior Court* (1998) 65 Cal.App.4th 864, 874.) The District has failed to cite any statute or grant of authority from the Legislature for the proposed PR 4001.

Under the District's 2007 Air Quality Management Plan, a proposed "Port Backstop Rule" was proposed as a "Mobile Source Measure MOB-03" that defined the operators of marine terminals and rail yards, as well as the Cities, as indirect sources, Measure IND-01 and PR 4001 inexplicably exclude the operators of the mobile sources that had been in MOB-03 and instead propose to regulate and punish solely the Cities, effectively insulating from responsibility, the private sector entities that do own, operate and control the equipment producing the emissions.

The District Staff has previously referred to a clearly erroneous, overbroad interpretation of Health & Safety Code §§40716 (a)(1); 40440 (b)(3), as potential authority for attempting to justify Measure IND-01 and PR 4001 as forms of indirect source review, as applied to the Cities. However, such lax interpretations apparently ignore the Legislature's explicit limitations on any such "indirect source" regulatory authority—precluding application of PR 4001 against the Cities (e.g., Health & Safety Code § 40716(b): "Nothing in this section constitutes an infringement on the existing authority of counties and cities to plan or control land use, and nothing in this section provides or transfers new authority over such land use to a district.")

Similarly, any District reliance on Health & Safety Code § 40440 is clearly misplaced. The introductory clause of § 40440(b)(3), for example, states that indirect source controls must be "[c]onsistent with Section 40414." Importantly, Health & Safety Code §40414 [specifically governing the District] states: "No provision of this chapter shall constitute an infringement on the existing authority of counties and cities to plan or control land use, and no provision of this chapter shall be interpreted as providing or transferring new authority over such land use to either the south coast district, the Southern California Association of Governments, or the state board." Not only does this provision apply generally to Chapter 5.5 [governing the District] but it is also specifically referenced in § 40440(b)(3), leaving little doubt that any District rule related to indirect source controls may not overreach or infringe on the Cities' police power to control land use in their jurisdictions or Tidelands Trustee duties for benefit of the State.

Finally, the District Staff's reference to two cases involving the very distinct "indirect source review" adopted by the San Joaquin Valley APCD is misplaced. Those cases, *California Building Industry Association v. San Joaquin Valley Air Pollution Control District*, 178 Cal. App. 4th 120 (2009) and *Nat'l Ass'n of Home Builders v. San Joaquin Valley Air Pollution Control District*, 627 F. 3d 730 (9th Cir. 2010), involved quite different circumstances and a distinct and specific statute permitting an indirect source review program and in-lieu fees to be imposed on new construction sites. The holdings of those cases were narrow, and based on the nature of the emission sources being regulated. "Because the court's approval of the rule depended on the nature of the source being regulated, mobile non-road construction equipment, indirect sources are not categorically permissible after NAHB." (39 ECOLOGY LAW QUARTERLY 667 (2012).) Those cases are thus irrelevant, and do not support District Staff's assertion of some authority for the District to impose rules on the Cities under the guise of Measure IND-01 or PR 4001.

III. PROCEDURAL FLAWS

A. General Comments

The PR 4001 developmental and procedural process is on an accelerated timeline that is unusually short for a rule of this unprecedented nature that has generated such controversy and so many unanswered questions from other public agencies and stakeholders. The District should provide a comprehensive rule development schedule, including key milestones of staff report revisions, staff report analyses, workshops, workgroup meetings, etc. and provide the stakeholders, and the public adequate time for review and comment after release of actual substantive information necessary to evaluate the proposed rule.

Instead, the District was late with release of the actual text of PR 4001, not releasing it until November 26, 2013. The text of the PR 4001 is severely lacking explanation of many material elements, leaving continued unanswered questions that had been posed literally for years, even under the development of Measure IND-01 and early working group consultation meetings. The Preliminary Draft Staff Report for PR 4001 offers little help, as the Staff Report does not contain technical data and analyses necessary for a complete review. The PR 4001 Preliminary Staff Report lacks substance and does not meet important specificity requirements (see specific comments below related to the Preliminary Staff Report).

Lastly, the District's environmental assessment of the PR 4001 has also been extremely flawed and we incorporate by reference the comment letters previously submitted by the Cities on the Notice of Preparation and Recirculated Notice of Preparation under the California Environmental Quality Act, which are attached hereto.

B. The District's Preliminary Draft Staff Report on PR 4001 Fails to Comply With Statutory Requirements for Rule Adoption

The District's December 2013 Preliminary Draft Staff Report fails to comply with statutory requirements for rule adoption as discussed below.

1. Non-compliance with Health & Safety Code § 40440.5 – Notice of Proposed Action:

The District must give public notice of the Board hearing to consider PR 4001 not less than 30 days prior to the hearing date, and must include specified information in that Notice:

(a) A "summary description of the effect of the proposal" as required by Section 40725(b);
(b) Description of the air quality objective of the rule, and reasons for the rule;
(c) A list of supporting information and documents relevant to the PR 4001, and any environmental assessment; and
(d) A statement that a staff report on the proposed rule "has been prepared" and the contact information to obtain that staff report.[5]
(e) The statutes further specify the required contents of the Staff Report that must be prepared and made available at least 30 days prior to the hearing date:

Whenever the proposed rule or regulation will significantly affect air quality or emissions limitations, the staff report shall include the full text of the proposed rule or regulations, an analysis of alternative control measures, a list of reference materials used in developing the proposed rule regulation, an environmental assessment, exhibits, and draft findings for consideration by the District Governing Board pursuant to Health & Safety Code §40727. Further, if an environmental assessment is prepared, the staff report shall also include social, economic, and public health analyses.

2. Non-compliance with Health & Safety Code § 40727 – Required Findings:

Before the District's Board could approve the PR 4001, it would need to make the findings required by Section 40727 (and to provide the public with sufficient information/substantial evidence in the record to support those mandatory findings). The District's Preliminary Draft Staff Report (December 2013) fails to satisfy these requirements. The findings must address:

(a) "necessity" – Since PR 4001 is by definition a "backstop" measure intended to address emissions issues that are not currently a problem (and which are not shown to be likely to occur), it is inherently difficult for the District to make such a finding of "necessity" for the rule (also see the detailed discussion demonstrating the District's failure to demonstrate "necessity" for PR 4001 set forth above). Moreover, the District Governing Board found Measure IND-01 necessary in the 2012 AQMP, but not PR 4001, as stated in the Staff Report.

[5] This wording indicates that the Staff Report must already be prepared before the Notice of the Board meeting goes out. If the District intends to rely upon the "Preliminary Draft Staff Report" issued in December 2013, it would be deficient because that PDSR fails to include all of the information required by statute.

(b) "authority" – As pointed out above, the District has failed to demonstrate its legal authority for PR 4001, if any. By what authority can the District "delegate" (or "foist") its own responsibilities for regulating air quality emissions onto the Cities? The District cites no authority for imposing a rule on independent governmental agencies to take specific land use, environmental, or fiscal actions (fees, tariffs, etc.) Also, the District fails to address the statutory limitations on its authority in Health & Safety Code § 40414: the District may not infringe on the existing authority of Cities to plan or control land use.

(c) "clarity" – The lack of clarity in the draft text of PR 4001 is addressed throughout this comment letter. In addition, the lack of clarity in PR 4001 is exemplified in the circular argument of PR 4001(d)(2)(A) and PR 4001(f)(1)(D). PR 4001(d)(2)(A) specifies that that, in the case of triggering an Emission Reduction Plan, the Port shall report the progress in meeting the shortfall "based on the process developed pursuant to subparagraph (f)(1)(D)." However PR 4001(f)(1)(D) specifies the Emission Reduction Plan "shall provide a process for submittal of progress reports toward eliminating the emission reduction shortfall pursuant to subparagraph (d)(2)(A)."

(d) "consistency" –PR 4001 is inconsistent with Measure IND-01; it is also inconsistent with the CAAP and the Cities' general plans, harbor area plans, transportation management plans, etc, as well as state Tidelands Trust policies. In addition, PR 4001 is inconsistent with, and preempted by federal laws (e.g., ICCTA; FAAAA) and regulations of IMO (MARPOL / APPS) as well as federal regulations of trucks, locomotives, etc.. Also, PR 4001 is inconsistent with the California Clean Air Act and the statutory limitations on the regulatory authority of the District, and further is inconsistent with CARB polices.

(e) "nonduplication" – PR 4001 would unnecessarily – by definition – duplicate and "backstop" existing plans and policies such as CAAP and the aforementioned regulations;

(f) "reference" – The District has failed to demonstrate what law or court decision is purportedly being implemented by PR 4001.

3. <u>Non-compliance with Health & Safety Code § 40727.2 – Written Analysis of Rule</u>:

Does the District contend that its Preliminary Draft Staff Report satisfies this requirement that it produce a written analysis of PR 4001? If so, it fails to comply with § 40727.2(e). The Preliminary Draft Staff Report only indicates that the technical impact

assessment is underway. Without the Impact Assessment section, the staff report is incomplete. The Impact Assessment section must include the District's explanation of differences between PR 4001 and existing guidelines, such as in CAAP or AQMP, as well as address regulation cost effectiveness, including costs beyond mere control equipment costs.

4. Non-compliance with Health & Safety Code § 40440.8 – Assessment of Socioeconomic Impacts of PR 4001:

This requirement is also imposed by Section 40428.5, and the need for such a socioeconomic analysis was addressed, at least in brief, in the NOP comment letter. The Preliminary Draft Staff Report (page 18) erroneously describes the likely socioeconomic impacts of PR 4001 as being limited to the Cities' costs incurred for emissions forecasting and reporting. This grossly understates the likely impacts, including impacts of additional control measures that could be required under PR 4001 impacting the entire use and economic viability of the Ports. The staff report must include a socioeconomic assessment and must certainly address the threat of diversion resulting from potential undefined, regulatory-mandated, emission control measures. The Preliminary Draft Staff Report erroneously suggests that "a detailed assessment cannot be made at this time" and should be deferred, which is in violation of the statutory requirement. The Staff Report also indicates that a socioeconomic assessment will be made available 30 days prior to the public hearing. The significant potential impact and novel nature of this rule warrants a 60 day review period of the socioeconomic assessment.

5. Non –compliance with Health & Safety Code § 40440.8(b)(4) – Alternatives to PR 4001:

The socioeconomic assessment must address "the availability and cost-effectiveness of alternatives to the rule." (§ 40440.8(b)(4)) However, the Preliminary Draft Staff Report fails to even mention any "alternatives" to the Rule, much less to evaluate the availability and cost-effectiveness of alternatives, such as VMEP.

6. Non-compliance with Health & Safety Code § 40440(c): "Cost-effectiveness"

The District failed to demonstrate that the adoption of PR 4001 would comply with the requirement of Section 40440(c) that all of the District's rules "are efficient and cost-effective..." Also, Section 40703 requires the District to make available to the public, and requires the Board to make findings, as to the cost effectiveness of control measures, and similarly Section 40922 requires the District to consider "the relative cost effectiveness of the [control] measure..." The District has not done so.

C. Additional Analysis is Required Before Rule Development Can Proceed

The Cities have put into place a voluntary program with documented air quality improvements in the face of economic growth. It is AQMD's responsibility to perform a regulatory impact assessment documenting that PR 4001 will not reverse voluntary gains made by the Cities and endanger future programs. This includes the analysis of lost grant funding that would have otherwise been available to fund equipment replacement and other emissions reductions, due to conversion of voluntary program to regulation.

D. The District Must Acknowledge and Respond to All Comments Submitted on Measure IND-01 and PR 4001

The draft findings in the next staff report must acknowledge and respond to all comments submitted on Measure IND-01 and PR 4001, including all comments on the environmental assessment such as the Notice of Preparation and Initial Study for PR 4001.

IV. FAILED REQUIREMENTS FOR SIP INCLUSION

The District has claimed that adoption of PR 4001 is necessary to ensure SIP credit for the Cities' voluntary emission reduction programs. However, neither this Proposed Rule nor its precursor, "Control Measure IND-01" can be justified on this pretext, and neither PR 4001 nor Measure IND-01 meet the criteria for SIP inclusion. The Cities have raised significant technical, jurisdictional, constitutional and other legal concerns with Measure IND-01 and PR 4001, as set forth in public comment letters sent to the District during the 2012 AQMP adoption process and PR 4001 development process, which are provided as attachments.

A. Measure IND-01 and PR 4001 Violate Health & Safety Code § 39602

Measure IND-01 and PR 4001 violate California Health & Safety Code § 39602, which provides that the SIP shall only include those provisions **necessary** to meet the requirements of the Clean Air Act. The Cities have shown that there is no demonstrated need for the rule, nor is this rule necessary for regional attainment of the 2014 $PM_{2.5}$ standard. PR 4001 is duplicative of regulations already in place and effectively reducing emissions from port-related sources. As noted above, the Cities estimate that in 2014, 98% of the $PM_{2.5}$ equivalent emission reductions that PR 4001 seeks to "backstop" will occur as the result of regulations adopted by CARB and

the IMO.[6] The remaining 2% of $PM_{2.5}$ equivalent emission reductions is primarily attributed to the Cities' successful voluntary vessel speed reduction incentive program which is part of the Cities' Clean Air Action Plan.

More importantly, there are significant legal questions regarding the District's attempt to invoke " indirect source review" as authority to impose a new rule on governmental agencies. PR 4001 clearly infringes upon, and potentially usurps the Cities' authority to plan and control land use and exercise police power, in contravention of Health & Safety Code §§ 40716(b) and 40414, and compels compliance and punishes them for non-achievement of emissions targets for equipment the Cities do not own, control or operate, and are preempted from regulating.

B. <u>The District Failed to Timely Submit Proposed "Control Measure IND-01" to CARB for Public Consideration and Approval As Part of the SIP Submitted to USEPA on January 25, 2013</u>

Under CAA section 110(l), SIP revisions must be adopted by the State, and the State must provide for reasonable public notice and hearing prior to adoption. EPA cannot approve Measure IND-01 as part of the SIP because the District did not approve and forward IND-01 in time for CARB to follow the process for public consideration and State adoption required by CAA Section 110(1) and California Health and Safety Code Section 41650 for SIP submissions, and CARB failed to do so.

Under 40 CFR 51.102(d), reasonable public notice in this context refers to at least 30 days. Similarly, Health and Safety Code Section 41650 provides for a public hearing that would allow public comment as to whether the SIP meets the requirements of the CAA. By resolution dated January 25, 2013, CARB approved the District's 2012 AQMP and directed the executive officer of CARB to submit the AQMP to the USEPA for inclusion in the SIP. However, at the time of the January 25, 2013 CARB action**, Measure IND-01 was not part of the AQMP**. Because the District Governing Board adopted the AQMP without Measure IND-01 on December 7, 2012, and in fact, did not adopt Measure IND-01 until February 1, 2013, the January 25 CARB action did not constitute approval of Measure IND-01 which had not yet been submitted to CARB for consideration.

The documents attached to CARB's February 13, 2013 SIP submittal to the USEPA include the December 7, 2012 resolution by the District Governing Board and the December 20, 2012 District letter to CARB transmitting the approved SIP, which pre-dated the District

[6] CARB Port Drayage Truck Rule, CARB Truck and Bus Rule, CARB Ocean-Going Vessel (OGV) Shore Power Rule, OGV Low-Sulfur Fuel Rule, CARB Cargo-Handling Equipment at Ports Rule, CARB Commercial Harbor Craft Rule, IMO North American Emission Control Area

Governing Board's approval of Measure IND-01. Inexplicably, without the required public notice or public hearing and adoption by the CARB Governing Board, the submitted SIP includes the addition of Measure IND-01. Until this procedural error is corrected, and the Cities and the public are given the opportunity to comment at a public hearing, and CARB is able to properly consider proposed Measure IND-01 at such a properly-noticed public hearing, Measure IND-01 is not properly before the USEPA and cannot be approved as part of the SIP.

C. The Many Flaws of Measure IND-01 and PR 4001 Harm Rather Than Help the SIP

As a result of the above-mentioned extensive technical, jurisdictional, constitutional, statutory and other legal problems, inclusion of IND-01 in the SIP and attempted implementation through PR 4001 creates unnecessary risks of disputes and legal challenges to the AQMP and SIP. The unprecedented nature and legal and jurisdictional conflicts of PR 4001 and Measure IND-01 require significant explanation of the legal underpinnings of the Measure. Instead a single paragraph of generalities ignoring the jurisdictional conflict and lack of legal authority for classification of Cities as stationary sources or indirect sources was produced to justify PR 4001.

Conclusion

The ports of Long Beach and Los Angeles are a major economic engine for the region and nation. PR 4001 and the uncertainty it creates will have a substantial negative impact on the goods movement industry and the local economy, resulting in cargo diversion, job losses and business closures. Moreover, rather than improving air quality, PR 4001 eliminates all incentive for voluntary participation in emission reduction efforts at the Ports that have been so successful.

The Cities have a proven track record of developing and implementing appropriate and effective emission reduction strategies, working with the port industry and the air quality regulatory agencies. Since the CAAP was adopted in 2006, essentially all of the Cities' early actions have been overtaken by regulations from state, federal, and international agencies. The majority of emission reductions are already being achieved by regulations. Therefore, there is clearly no need for additional regulation.

The Cities share the air emission reduction goals of the District, CARB, and USEPA, and strongly believe that the voluntary cooperative CAAP process established by the Cities remains the most appropriate forum to discuss technical and policy issues related to implementing appropriate strategies for reducing emissions from port-related sources. There are feasible alternatives that would effectively ensure emission reduction goals are met, including the USEPA's VMEP that would allow for the small percentage of emissions reductions needed beyond regulations to be credited in the SIP. The Cities hope you will work with us to discuss various mechanisms, contractual or otherwise, by which the VMEP can be implemented in San

Pedro Bay, and move forward as a possible resolution to the issues currently under discussion regarding PR 4001.

We appreciate your consideration. Thank you.

Sincerely,

Matthew Arms
Acting Director of
Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachments:

- January 15, 2014 Letter; Port of Long Beach and Port of Los Angeles to South Coast Air Quality Management District (SCAQMD)*; Comments on Notice of Preparation, Initial Study and Scope of Proposed Program Environmental Assessment*
- August 21, 2013 Letter; Port of Long Beach and Port of Los Angeles to SCAQMD; *Comments on Notice of Preparation, Initial Study, and Scope of Proposed Environmental Assessment*
- October 2, 2013 Letter; Port of Long Beach and Port of Los Angeles to SCAQMD, *Initial Comments for Public Consultation on Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets are Met at Commercial Marine Ports"*

cc: Al Moro, Acting Executive Director, Port of Long Beach
Richard Cameron, Managing Director, Port of Long Beach
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Gary Lee Moore, Interim Executive Director, Port of Los Angeles
Michael Christensen, Deputy Executive Director, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
Barry Wallerstein, Executive Officer, SCAQMD

Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Randall Pasek, Planning and Rules Manager, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Governing Board Members, SCAQMD
Richard Corey, Executive Officer, CARB
Cynthia Marvin, Division Chief, Stationary Source Division, CARB
Doug Ito, Chief, Freight Transportation Branch, CARB
Jared Blumenfeld, Administrator, USEPA, Region 9
Deborah Jordan, Director, Air Division, USEPA, Region 9
Elizabeth Adams, Deputy Director, USEPA, Region 9

ATTACHMENT 4.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

January 15, 2014

Jared Blumenfeld
Regional Administrator
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

Re: California State Implementation Plan for PM2.5 for South Coast Air Basin (SIP) - South Coast 2012 Air Quality Management Plan (AQMP) Control Measure IND-01 *Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities* and EPA *Voluntary Mobile Source Emission Reduction Program* (VMEP)

Dear Mr. Blumenfeld:

On behalf of the City of Long Beach acting by its Harbor Department and the City of Los Angeles acting by its Harbor Department (collectively, the Cities), we raise serious concerns regarding Control Measure IND-01 *Backstop Measure for Indirect Sources of Emissions from Ports and Port-related Facilities* (Measure IND-01) in the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP). The Cities request that the United States Environmental Protection Agency (EPA) disapprove and exclude Measure IND-01 from the California State Implementation Plan (SIP) for particulate matter 2.5 microns or less (PM2.5) for the South Coast Air Basin, which is currently pending EPA approval. As set forth below, both the substance of Measure IND-01 and the California Air Resources Board (ARB) procedure for inclusion of Measure IND-01in the SIP violate all five prongs of the standard test used by EPA to evaluate a SIP's compliance with Clean Air Act (CAA) requirements.[1]

1. Did the State provide adequate public notice and comment periods?

EPA cannot approve Measure IND-01 as part of the SIP because the ARB failed to follow the process for SIP submissions required by CAA Section 110(1) and California Health and Safety Code Section 41650. Under CAA section 110(l), SIP revisions must be adopted by the State, and the State must provide for reasonable public notice and hearing prior to adoption. Under 40 CFR 51.102(d), reasonable public notice in this context refers to at least 30 days. Similarly, Health and Safety Code Section 41650 provides for a public hearing that would allow public comment as to whether the SIP meets the requirements of the CAA. By resolution dated January 25, 2013,

[1] See, e.g., CAA Sections 110(a)(2)(A), 110(a)(2)(E), 110(l).

the ARB approved the AQMD 2012 AQMP and directed the executive officer of the ARB to submit the AQMP to EPA for inclusion in the SIP. However, at the time of the January 25, 2013 ARB action, Measure IND-01 was not part of the AQMP. Because the AQMD Governing Board adopted the AQMP without Measure IND-01 on December 7, 2012 and did not adopt Measure IND-01 until February 1, 2013, the January 25 ARB action did not constitute approval of Measure IND-01 which had not yet been submitted to ARB for consideration. The documents attached to the ARB's February 13, 2013 SIP submittal to the EPA include the December 7, 2012 resolution by the AQMD Governing Board and the December 20, 2012 AQMD letter to ARB transmitting the approved SIP, which pre-dated the AQMD Governing Board's approval of Measure IND-01. Inexplicably, without the required public notice or public hearing and adoption by the ARB Governing Board, the submitted SIP includes the addition of Measure IND-01. Until this procedural error is corrected, and the Cities and the public are given the opportunity to comment at a public hearing, Measure IND-01 is not properly before EPA and cannot be approved as part of the SIP.

2. Does the State have adequate legal authority to implement the regulations?

As you may know, the AQMD is now pursuing adoption of Proposed Rule 4001—*Maintenance of AQMD Emission Reduction Targets at Commercial Marine Ports* (PR 4001) – ostensibly to implement Measure IND-01 and ensure SIP credit for voluntary emission reduction programs of the Cities. The Cities have raised significant technical, jurisdictional, constitutional and other legal concerns with Measure IND-01 and PR 4001, as set forth in public comment letters sent to AQMD during the AQMP adoption process. Measure IND-01 and PR 4001 violate California Health and Safety Code Section 39602, which provides that the State Implementation Plan shall only include those provisions necessary to meet the requirements of the Clean Air Act. The Cities have shown that there is no demonstrated need for the rule, nor is this rule necessary for regional attainment of the 2014 PM2.5 standard. The Cities estimate that by 2014, 99.5 percent of the PM2.5 equivalent emission reduction that PR 4001 seeks to backstop will occur as the result of regulations adopted by ARB and the International Maritime Organization (IMO).[2] The remaining 0.5 percent of PM2.5 equivalent emission reductions is primarily attributed to the Cities' successful voluntary vessel speed reduction incentive program which is part of the Cities' Clean Air Action Plan. More importantly, there are significant legal questions regarding AQMD's attempt to apply an indirect source rule to governmental agencies in a manner that potentially usurps the Cities authority and compels compliance and punishes them for non-achievement of emissions targets for equipment the Cities do not own, control or operate, and are preempted from regulating.

[2] CARB Port Drayage Truck Rule, CARB Truck and Bus Rule, CARB Ocean-Going Vessel (OGV) Shore Power Rule, OGV Low-Sulfur Fuel Rule, CARB Cargo-Handling Equipment at Ports Rule, CARB Commercial Harbor Craft Rule, IMO North American Emission Control Area

3. Are the regulations enforceable as required under CAA section 110(a)(2)?

Because the Cities are not regulatory agencies and, therefore, are limited in their authority to impose requirements on mobile sources operated by the goods movement industry that call at port facilities, IND-01 and PR 4001 are inappropriate and ineffective mechanisms for achieving emission reductions.

4. Will the State have adequate personnel and funding for the regulations?

Measure IND-01 does not specify the source of funding for its regulation of the Cities but implies that it will come from the Cities. However, AQMD and ARB have no authority to require Cities' expenditures which are subject to the Cities' own requirements as governmental agencies. Furthermore, because it converts a voluntary program into enforceable regulation, the financial effect of Measure IND-01 will be to remove previously available funding from Federal and State grants that are only given for voluntary programs that go beyond regulation, making it less likely that the Cities will have funds to assist the goods movement industry with meeting the AQMP targets.[3]

5. Do the regulations interfere with reasonable further progress and attainment or any other applicable requirement of the Act?

Measure IND-01 interferes with reasonable further progress of the Cities' voluntary programs by reduction of available funding as mentioned above, and providing disincentives to Cities and goods movement industry to pursue programs like the voluntary Clean Air Action Plan.

The Solution: Voluntary Mobile Source Emission Reduction Program (VMEP)

To the extent the ARB and AQMD seek to ensure the emission benefits of the Cities' voluntary vessel speed reduction program, there is a more appropriate method in the form of the EPA's policy and guidance for the Voluntary Mobile Source Emission Reduction Program (VMEP), which constitutes an established process to grant SIP credit for emission reductions resulting from voluntary mobile source measures that go beyond existing regulations. The VMEP approach was intended for exactly the type of successful voluntary program such as the Cities' landmark Clean Air Action Plan, and should be used to account for the 0.5 percent of port-related emissions not currently backstopped by regulation. The VMEP would also reduce the industry and jurisdictional uncertainty that could divert cargo away from the Ports and hurt our local economy.

[3] Many of the Cities programs for equipment replacement or emissions reductions projects have been funded by federal and state grants that require funded activities must go beyond regulations. See e.g., California Proposition 1B Goods Movement and federal Diesel Emission Reduction programs.

We urge the EPA to disapprove and exclude the AQMD's Measure IND-01 from the SIP, and insist that the AQMD use the EPA's established VMEP process that was developed for programs such as the Cities' vessel speed reduction program and other Clean Air Action Plan measures. Use of the established VMEP will accomplish the objective sought by Measure IND-01 and PR 4001 and ensure that the emissions reductions achieved by the program are credited in the SIP. Further, the implementation of a VMEP will achieve the same emissions reductions while ensuring that grant funds remain available for actions going beyond regulations and will do so in a collaborative manner. It will also encourage other cities and regions throughout the nation to develop and pursue innovative voluntary programs and solutions that best fit their needs to improve air quality and public health.

The Cities share the air emission reduction goals of the AQMD, ARB, and EPA, and strongly believe that the VMEP is the most effective way to ensure that emission reduction goals are met in a manner that will allow the SIP to move forward without unnecessary disputes or challenges. The Cities look forward to discussing the various mechanisms, contractual or otherwise, by which the VMEP can be implemented in San Pedro Bay.

Sincerely,

Matthew Arms
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

LW

cc: Al Moro, Acting Executive Director, Port of Long Beach
Gary Lee Moore, Interim Executive Director, Port of Los Angeles
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Randall Pasek, Planning and Rules Manager, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Richard Corey, Executive Officer, ARB

Cynthia Marvin, Division Chief, Stationary Source Division, ARB
Doug Ito, Chief, Freight Transportation Branch, ARB
Deborah Jordan, Director, Air Division, EPA, Region 9
Elizabeth Adams, Deputy Director, U.S. EPA, Region 9

ATTACHMENT 5.

January 15, 2014

VIA E-MAIL – bradlein@aqmd.gov
VIA FACSIMILE – (909) 396-3324

Ms. Barbara Radlein
c/o CEQA
SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT
21865 Copley Drive
Diamond Bar, California 91756-4178

Re: Recirculated Notice of Preparation and Initial Study
Proposed Rule 4001— Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports
November 2013

SCAQMD File No. 0722013BAR
SCH No.: 2013071072

Comments on Recirculated Notice of Preparation, Initial Study, and Scope of Proposed Program Environmental Assessment and Alternatives Analysis

Dear Ms. Radlein and Staff of the South Coast Air Quality Management District:

On behalf of the City of Long Beach (referred to herein as "COLB)" and the City of Los Angeles acting by and through their respective Harbor Department ("COLA", and collectively with COLB referred to herein as the "Cities"), we appreciate this opportunity to submit responses and comments on the District's recent "Recirculated Notice of Preparation of a Draft Program Environmental Assessment" ("Recirculated NOP") and the accompanying Initial Study ("IS") prepared in connection with the District's consideration of the proposed project entitled "Rule 4001: Maintenance of AQMP Emission Reduction Targets At Commercial Marine Ports" (the "Project" or "PR 4001"). We appreciate that the District has extended the public comment period to January 16, 2014, in light of the serious and substantial issues raised by this Project and the original comment period scheduled over the holidays limiting stakeholder time for review.

This letter is organized in the following manner:

A. Introductory Comments
B. General Comments on the Recirculated NOP and Initial Study
C. Specific Comments on the Recirculated Initial Study
    1. Comments on Chapter 1
    2. Comments on Chapter 2 (Environmental Checklist)
D. Conclusion

Additionally, the Cities' previous comment letter on the original NOP dated August 21, 2013 has been attached for reference.

A. Introductory Comments:

We have previously commented on, and objected to, Air Quality Management Plan (AQMP) Control Measure IND-01 (Measure IND-01) and have expressed our grave concerns about the District's rulemaking approach to craft a ostensible "backstop rule" that would be applicable only to the Cities and their respective San Pedro Bay Ports ("Ports") such as that embodied in the new draft PR 4001. As the District is well aware, the Cities have been dedicated, innovative, and effective leaders in the efforts of public agencies to improve air quality despite the fact that we have no regulatory authority or control over the emissions sources. Working collaboratively and voluntarily with the District, our efforts have been successful in helping the maritime goods movement industry achieve very substantial reductions in emissions from the wide range of industrial and mobile sources they operate at or near the Ports, and we look forward to continuing to work with the District, other air regulatory agencies, and industry in building on these successes.

While we appreciate that the District staff has finally released the draft text of PR 4001, together with the recirculation of a new NOP and Initial Study, we find that many of the questions and issues raised in our previous comments remain unanswered or contain the same deficiencies in the new description of the "Project" and the Recirculated NOP, and still fail to identify or address feasible alternatives to PR 4001. Therefore, we respectfully reiterate and incorporate by reference all of our previous comments and objections (including, but not limited to, our letter dated August 21, 2013, and comments on the District's 2012 Air Quality Management Plan ("AQMP") and Control Measure IND-01), in addition to our new comments on the Recirculated NOP and IS.

Our responses are submitted in light of the California Environmental Quality Act ("CEQA") which calls for public review, critical evaluation, and comment on the scope of the environmental review proposed to be conducted in response to a Notice of Preparation, including the significant environmental issues, alternatives, and mitigation measures that should be analyzed in the proposed draft EIR (or Environmental Assessment, "EA") (14 CCR

15082(b)(1).) (See, CEQA Guidelines, at Title 14 Cal. Code of Regulations, §§ 15000, *et seq*..) Since it is anticipated that the proposed Project will have substantial impacts on the Cities and other communities served by the Ports, it is particularly important that the scope of this proposed review take into account jurisdictional and legal limitations, established state and local plans and policies, and other potentially feasible and less-impactful alternatives to the Project. In addition, it will be important to consider the impacts of the proposed Project on the important missions, facilities, and operations of the San Pedro Bay Ports.

In that context, we respectfully submit the following comments regarding the Recirculated NOP as well as questions, concerns and objections related to the omissions of critical information, unsupported assumptions, or analytical deficiencies in the Initial Study, and comments as to the scope of the proposed environmental assessment ("EA") as contemplated and invited by the District's Recirculated NOP.

B. General Comments on the Recirculated NOP and Initial Study.

1. **Changed Project Title**: What is the authority of the District to change the proposed Project from a "*Backstop Measure for Indirect Sources of Emissions from Ports and Port-related Facilities*" authorized by the District's Governing Board, to a new Project title of "*Maintenance of AQMP Emission Reduction Targets At Commercial Marine Ports*"? The District inexplicably no longer describes this as "a backstop measure" – although such a "contingency measure" concept has been the basis for District consideration of this type of proposed rule going back to Control Measure IND – 01 and a similar mobile source port backstop rule in the 2007 AQMP/SIP. What is the significance of this change and has the District now moved from a backstop of the voluntary Clean Air Action Plan goals of the Cities, which it sold to its board, to full District regulation setting District targets for the Cities' ports beyond backstopping voluntary programs? Does this change require the approval of the District's board? In any event, the Cities repeat their strong protest of both Project concepts and further comment on this issue below.

2. **Changed Project Description:** The Recirculated NOP/IS cover letter (11/22/2013) acknowledges that "changes were made to the project description *and* the environmental analysis subsequent to release of the original NOP/IS on July 23, 2013." However, the new NOP/IS fails to describe the "changes" in "the Project" and fails to describe or evaluate the significance of those Project changes. We note at least a few changes between the previous Initial Study and this new Recirculated NOP/IS:

(a) The Project Description now includes *the draft text of the Proposed Rule*. The new Initial Study states (p. 1-3) that the prior NOP/IS had tried to use the text of Control Measure IND-01 as a surrogate for the Project, because the rule language for PR 4001 had not been developed. However, **the draft text of PR 4001 is not the same as Control Measure**

IND-01. The distinct jurisdictional, legal, administrative, due process and procedural issues posed by the draft text of PR 4001 (as well as its semantic ambiguities) add new levels of complexity to the evaluation of the environmental impacts of the Project, which are not adequately explained or evaluated in the new Initial Study.

As detailed below, the draft text now creates uncertainty as to how and when the requirements of the new PR 4001 that the Cities "take actions" would be triggered, as well as the scope of their obligations to act under the new Rule. Indeed, the draft text of PR 4001 raises questions as to whether the Project as now described is even consistent with the Final 2012 AQMP, the EIR for that AQMP, or with subsequently-adopted Control Measure IND-01, or other state and regional plans. Most importantly, to the extent the provisions of PR 4001 vary in purpose and scope from Measure IND-01, they are not authorized by the AQMD Governing Board.

(b) The initial Project description (and Control Measure IND-01) would have required "actions to be taken" [by the Cities] only "in the event that emissions from port-related sources *do not meet* the emission targets assumed in the final 2012 AQMP. Similarly, Control Measure IND-01 represented that the "backstop" requirements will be triggered "if the reported aggregate emissions *for 2014* for all port-related sources exceed the 2014 emissions targets." (Final 2012 AQMP, Appendix IV-A-41.) By contrast, however, the new Project description would apparently require the Cities to "take actions" in the event that "port-related sources do not meet *or are not on track to maintain* the emission targets ... *for the purpose of meeting and maintaining the federal 24-hrs PM2.5 standard*." The new version of the Project description appears to have expanded the "triggering" events, and extended the trigger period, beyond those events and time periods contemplated in the 2012 Final AQMP. Accordingly, the new version of PR 4001 may no longer be consistent with the AQMP or with the environmental review of that document.

(c) The new NOP and Initial Study changed the type of CEQA document from an Environmental Assessment to a Program Environmental Assessment for the Project that will be programmatic in nature (as described in 14 CCR 15168) rather than a project-specific environmental review, and suggests that the District may thereby intend to *defer* more detailed CEQA analysis to some undefined future stage of "the Project" (p. 1-2). The District has already prepared and certified a Final Program Environmental Impact Report (Program EIR) for the 2012 AQMP which was considered to be the appropriate document pursuant to CEQA Guidelines Section 15168(a)(3) and included a programmatic analysis of Control Measure IND-01. However, the District has now presented the adoption of PR 4001 as "the Project" but is still preparing yet another Program Environmental Assessment with the same reasoning as it did in the prior CEQA analysis. It is not clear how the District believes two program-level environmental documents can be prepared for the same rule and when, if at all, the District may intend to provide such more specific "project-level" analysis as required under CEQA.

Moreover, this part of the new Initial Study implies a commitment that the "program CEQA document" would include "consideration of broad policy alternatives and program-wide mitigation measures." (*id*.). However, *the new Initial Study fails to identify or discuss any such "policy alternatives" or "program-wide mitigation measures"* and gives no indication that *the scope* of the eventual EA will in fact include any such policy alternatives or mitigation measures.

In their prior comment letter on the Draft 2012 AQMP Program EIR dated October 22, 2012, the Cities expressed very similar concerns over the vague and deficient "project description" of backstop Measure IND-01. In the District's response to comment #5-4 in the Final Program EIR, the District represented that: "*The exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted.*" The District also committed, in its response to the same comment #504 in the AQMP Final Program EIR, that "*further details regarding the future requirements* [a Rule implementing Control Measure IND-01] *will be determined more appropriately* ***during the rule development process***."

The new Initial Study indicates that the District may be reneging on these commitments to provide the necessary analysis of "the exact impacts" of PR 4001 "during the rule-development process, in violation of CEQA and in violation of the District's own Rule 110.

(d) The District also appears to have made other subtle changes to the Project Description, without announcement, which are **not consistent with Control Measure IND-01**, and which may have potentially significant – but unaddressed -- impacts. For example:

i. The new Initial Study has changed the description of the Project from adoption of a "backstop measure" to the adoption of "backstop *requirement*" and has made other changes to the Project which are not consistent with Control Measure IND-01 as adopted (p. 1-1.) Control Measure IND-01 provides a description of the Cities' successful Clean Air Action Plan (CAAP) and its various emissions reductions goals. "This AQMP Control Measure is designed to provide a "backstop" to the Ports' actions to provide assurance that, if emissions do not continue to meet projections, the Ports will develop and implement plans to get back on track, to the extent that cost effective and feasible strategies are available." (Final 2012 AQMP Appendix IV-A, page 3) The Proposed Project describes its purpose as: "The purpose of the rule is to establish actions to be taken in the event that emissions from port-related sources do not meet the emission targets assumed in the Final 2012 Air Quality Management Plan for the purpose of meeting the federal 24-hour $PM_{2.5}$ standard in 2014 and maintenance of attainment in subsequent years." (PR 4001, Section (a)) The proposed

Project has eliminated the references in its Board-adopted IND-01 to backstopping the Ports Clean Air Action Plan targets to the extent cost effective and feasible strategies are available and replaced with a traditional regulation by the District to meet District-set targets.

ii. The new Initial Study has apparently changed the District's concern from assuring "the attainment demonstration" for 2014 PM2.5 emission targets (as embodied in the 2012 AQMP) to add "*maintenance of the air quality standard in subsequent years*." (p. 1-1.) This change in the Project appears to add a new undefined and open-ended element into the Project, not consistent with the District's adopted Control Measure IND-01.

(e) **Changed Definition of "Feasible Control Strategy:"** The draft text for the new PR 4001 proposes to change the definition of "feasible control strategy" so that it is *not consistent with* the obligations that could potentially be imposed on the Cities under *Control Measure IND -01* as adopted by the District Board. Instead, the draft of PR 4001 (at Paragraph (c)(1)) and the new Initial Study have *changed the limitations* on the proposed obligations of the Cities to achieve additional emission reductions under PR 4001. Previously, the Project was described as requiring the Cities to "propose additional emission reduction methods ... [but only] *to the extent cost-effective strategies are technically feasible* and within the Ports' authority." However, new PR 4001, and the new Initial Study (p. 1-1) have inexplicably omitted (at several points*)* the prior limitation on the Cities' potential obligations to measures that are "*technically feasible*." Again, these subtle changes in the Project description are not consistent with the text of IND-01 or any other legal or regulatory authority identified by the District in the new Initial Study. The Initial Study should address (i) whether these changes have been authorized by the District's Board, and (2) what potential environmental impacts (as well as socio-economic impacts) may arise from the changes in the concept of "feasible control strategies."

(f) The District should clearly identify all other "changes" in the Project.

Other comments on the flawed "project description" are set out in Section C(1), below.

3. **Changed Environmental Analysis:** We appreciate that the Recirculated NOP/IS has expanded the range of environmental subjects which it now acknowledges may be subject to the proposed Project's significant adverse environmental impacts, perhaps partly in response to our previous comments. However, the scope of the proposed environmental analysis still does not take into account all of our concerns and still fails to comply with CEQA, e.g., by failing to identify potential significant environmental impacts, failing to propose a range of feasible

alternatives, and failing to evaluate reasonable mitigation measures. We therefore reiterate our prior comments on the scope of the proposed EA.

4. **Reiteration and Incorporation of Prior Comments:** The new NOP/IS states that it "replaces the July 23, 2013 NOP/IS" and that there will be no District responses to previously-submitted comments. We recognize that the Recirculated NOP purports to reflect changes made, in part, to previously submitted comments on the July 2013 NOP/IS. However, the new NOP/IS does not take into account all of our previous comments nor do the changes made in the new NOP/IS necessarily reflect or satisfy the requests made in our previous comments. Accordingly, we incorporate and include our previous comments as detailed in our letter dated August 21, 2013.

5. **Failure to Adequately Identify and Include Feasible Alternatives:** The Recirculated NOP/IS still fails to comply with CEQA's requirements for identification and consideration of all feasible project alternatives. Like the original IS, the new IS fails to identify a single "alternative" to the District Board's adoption of PR 4001. The superficial mention of "alternatives" on page 1-15 of the IS merely recites the legal obligations of the District to "discuss and compare" a range of "reasonable alternatives" to the proposed Project. This fails to fulfill the "scoping" purpose of an Initial Study. The District should analyze, among a range of alternatives, a collaborative Memorandum of Agreement between all of the stakeholders, as previously suggested by the Cities and recommended by the District to its Board (which speaks well to its feasibility as an alternative). The District should also evaluate the use of the EPA's policy and guidance for the Voluntary Mobile Source Emission Reduction Program (VMEP), which was developed for voluntary emission reduction programs of the sort outlined in the CAAP.

"The scoping process is the screening process by which a local agency makes its initial determination as to which alternatives are feasible and merit in-depth consideration, and which do not." (*Goleta II, supra*, 52 Cal.3d at p. 569; see Guidelines §15083.) It involves "consult[ation] directly with any person or organization [the lead agency] believes will be concerned with the environmental effects of the project" in hopes of "solv[ing] many potential problems that would arise in more serious forms later in the review process." (Guidelines, § 15083.)" "The determination of whether to include an alternative during the scoping process is whether the alternative is potentially feasible (*Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 489 (*Mira Mar*)), and the EIR "is required to make an in-depth discussion of those alternatives identified as at least potentially feasible." (*Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1505, fn. 5].)" (*South County Citizens for Smart Growth v. County of Nevada* (3d Dist. 2013) 221 Cal.App.4th 316, 327 (*South County*.)

"A lead agency must give reasons for rejecting an alternative as 'infeasible' during the scoping process (Guidelines, § 15126.6, subd. (c)), the scoping process takes place prior to

completion of the draft EIR. (*Gilroy Citizens for Responsible Planning v. City of Gilroy*, *supra*, 140 Cal.App.4th at p. 917, fn. 5; Guidelines, § 15083.)" (*South County*, p. 328.)[1]

The Initial Study also uses the wrong legal standard in its passing acknowledgement of the District's duty to consider alternatives: the Initial Study must identify "potentially feasible" alternatives ("feasibility" is a defined, and critical, term under CEQA), rather than "reasonable" alternatives (as mis-stated in the IS on page 1-15.)

6. **Deficient Initial Study:** The CEQA Guidelines contemplate that an Initial Study is to be used in defining the scope of environmental review (14 CCR §§ 15006(d), 15063(a), 15143.) However, as a result of the omissions, inconsistencies, and deficiencies in the Initial Study, the District's proposed scope of environmental assessment for this Project will be unduly narrowed and limited, and is likely to erroneously exclude issues, feasible alternatives, and mitigation measures from the proposed Environmental Assessment. (More detailed comments on the deficient Initial Study are set out in Section D, below.)

As detailed below in Section C, the new Initial Study does not provide the information, potentially feasible alternatives, evidence, or analysis required by the CEQA Guidelines (14 C.C.R. §15063, subd. (d)):

(1) A description of the Project including the location of the Project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries . . .

(4) A discussion of ways to mitigate the significant effects identified, if any;

(5) An examination of whether the Project would be consistent with existing zoning, plans, and other applicable land use controls;

(6) The name of the person or persons who prepared or participated in the initial study."

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[1] "Differing factors come into play when the final decision on project approval is made; at that juncture the decisionmaking body evaluates whether the alternatives are actually feasible. (Guidelines, § 15091, subd. (a)(3).) "[T]he decision makers may reject as infeasible alternatives that were identified in the EIR as potentially feasible." (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 981.)" (*South County*, p. 327.)

An Initial Study that fails to provide all of the information, analysis, and evidence called for by CEQA may be deemed to be inadequate and not a valid basis for CEQA review or Project approval (See, e.g., *City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, at pp. 407–408, invalidating the County's proposed general plan amendments because of a deficient initial study: "[T]he initial threshold study is inadequate because it fails to provide sufficient evidence or analysis of the potential environmental effects of the amendments.")

7. **Request for Correction and Recirculation of Corrected NOP and IS:**

For the multiple reasons summarized above, and detailed below, it is essential that the Recirculated NOP and Initial Study be withdrawn and further revised and corrected in order to properly fulfill their role in seeking meaningful public input on the appropriate "scope" of the proposed environmental assessment for the Project. A more accurate, complete, and CEQA-compliant Initial Study that addresses specific project-level impacts should be prepared and released for public review, along with a new set of public meetings, to provide the public with sufficient time and opportunity to comment on the scope and adequacy of the revised NOP/IS.

The District has already commenced its Rule- development process. It appears from the District's records that District staff has already committed to the District Board that the Proposed Rule will be adopted in April of 2014. District documents also indicate that District staff has further committed to shortly thereafter embarking on revisiting and changing the emissions targets that are the subject of this Proposed Rule, likely placing even more burdensome requirements on the Cities It is imperative, not only for Due Process reasons but also for reasons of sound public policy, meaningful community input, and well-informed decision-making, that the District provide adequate, complete, and accurate information – and time -- to allow the Project to be fully vetted before it is rushed to the District's Board for consideration.

It is therefore respectfully urged that the Recirculated Initial Study (and the related NOP) be recalled, corrected, and again be recirculated for public review and comment as corrected before the District proceeds with any further action in connection with the proposed Project.

The comments on the Recirculated Initial Study included in this letter are organized in the same format used by the Initial Study, i.e., comments on "*Chapter 1 – Project Description*" in Section C, below, followed by comments on "*Chapter 2 – Environmental Checklist*" in Section D. The comments are limited to those matters which appear in the Recirculated Initial Study, but we reserve the right to provide further comments in the event that additional or different information about the proposed Project becomes available.

C. Specific Comments on the Recirculated Initial Study:

1. Chapter 1 of the Initial Study -- Inadequate "Project" Description.

(a). Deficient "Project Description" – In General

"A correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA." (*Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 267).

> **The initial study must include a description of the project.**" (*City of Redlands, supra,* 96 Cal.App.4th at pp. 405–406, fns. omitted.) **An accurate and complete project description is necessary** to fully evaluate the project's potential environmental effects. [Citations.]" (*El Dorado County, supra,* 122 Cal.App.4th at p. 1597.) (*Id*.)

As noted above (Section B(2)), the District's cover letter for the Recirculated NOP states that "the Project" has been changed, and that the Project description has been "changed." However, the Recirculated NOP and Initial Study do not explain the "changes" in the Project, and they still fail to provide an accurate and complete description of the Project as mandated by CEQA. The failure of the Initial Study and NOP to provide an accurate, complete, and coherent description of the "Project" is a fundamental deficiency, which permeates the entire document.

The Initial Study fails to describe additional planned or reasonably foreseeable activities or actions by the District (e.g., changes to emissions targets) or by other agencies in response to or associated with the proposed Rule, or to address cumulative impacts of this proposed Project in light of other related actions and plans.

The Initial Study suggests, instead, that the intent of PR 4001 would be to delegate the District's responsibilities for regulating or reducing emissions of NOx, SOx, and PM2.5 air emissions to other agencies, specifically the officials governing the ports of Long Beach and Los Angeles. The Initial Study further 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 Rule 4001 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 entire project*, improper project "segmentation," *improper deferral* of impact analysis and mitigation, failure to identify and evaluate *potentially feasible project alternatives*, etc.)

The absence of such a clear description of the proposed Project inherently prevents the IS from facilitating meaningful review and analysis of the proposed "Project," and violates the requirements of CEQA. (See, e.g., CEQA Guidelines, 14 CCR § 15124; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376.)

The Initial Study falls far short of these requirements in describing the proposed Project, and thus falls short of serving the "public awareness" purposes mandated by CEQA:

> An accurate and complete project description is necessary for an intelligent evaluation of the potential 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, citing *Aberdeen & Rockfish RR. v. SCRAP* (1975) 422 U.S. 289, 322 [an accurate, complete and consistent project description is the sine qua non of informative, legally adequate CEQA review].) (*City of Redlands v. County of San Bernardino, supra,* 96 Cal. App. 4th at pp. 407–408.)

In sum, the Recirculated NOP/IS still erroneously limits the scope of the required environmental analysis and calls for impermissible speculation or impossible prescience on the part of the Cities or other members of the concerned public to undertake effective analysis of the proposed Project, or to provide meaningful comments as to the scope of review of the Project, until and unless the District provides an adequate and complete description of the "Project."

Incomplete Description of Environmental Setting

The Initial Study also fails to provide an adequate description of "the environmental setting" of the proposed Project.

While the CEQA Guidelines do not specifically define "environmental setting" with regard to an initial study, they do explain, in regard to EIR preparation, that the "environmental setting" must be informative: "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." (Guidelines, § 15125, subd. (a).) A description of the environmental setting must be sufficient to allow "an understanding of the significant effects of the proposed projects and its alternatives" but "no longer." (Guidelines, § 15125, subd. (a).) That description should place "[s]pecial emphasis" "on environmental resources that are rare or unique to that region and would be affected by the project" and "must permit the significant effects of the project to be considered in the full environmental context." (Guidelines, § 15125, subd. (c).)

Failure to Examine All Phases of the Entire Project as Proposed

"The Initial Study must include a description of the project, and the scope of the environmental review conducted for the initial study must include the *entire* project." (*Nelson v. County of Kern, supra*, 190 Cal.App.4th at 270, emph. in original.)

The Initial Study here improperly fails to describe "the entire Project" and fails to consider all phases of the proposed Project. The CEQA Guidelines (14 C.C.R §15063(a)(1)) make clear that an initial study must take a comprehensive view of the proposed project *as a whole*. "All phases of project planning, implementation, and operation must be considered in the initial study of the project."

Since the Project also contemplates the possibility of future discretionary actions and measures on the part of the Cities, if compelled under PR 4001, which may in themselves have additional, not-yet-identified environmental impacts, the Initial Study should call for the scope of the EA to be expanded to include such issues.

The scope of the environmental review conducted for the initial study must include the entire project. (*Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1222.) Thus, a correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA. (*Nelson v. County of Kern, supra*, 190 Cal.App.4th at 267.)

The NOP/IS indicates that proposed Rule 4001 is intended to require actions by the Cities, to adopt and implement plans and strategies to address any "shortfall" in emissions reductions. The Initial Study improperly fails, however, to address or to provide information and analysis relating to the environmental impacts of the anticipated "subsequent approvals," "discretionary permits" and amendments to the Cities' plans and regulations that appear to be proposed as parts of the Project, or the physical environmental effects of social or economic impacts that may result from those anticipated changes in land use regulations. (Guidelines § 15063.) Such anticipated and intended actions by other governmental agencies thus appear to be part of this Project, and must be identified and evaluated in the Project EA, along with their potential impacts. As such, we reiterate our prior comment on the Draft 2012 AQMP Program EIR dated October 22, 2012 where it is stated that the District has failed to fully disclose the details of Measure IND-01 and as a result is segmenting or piecemealing its CEQA analysis.

Failure to Describe Existing Land Use Regulations

The Initial Study does not include an examination of whether the Project would be consistent with existing zoning, plans and other applicable land use controls, as required by CEQA Guideline Section 15063. Although the Initial Study includes some background discussion of the CAAP, it provides little or no description of the existing planning and zoning designations applicable to the "Project" location, and relies on (unsupported) assertions that the Project would be in furtherance of the CAAP. It provides no information or analysis of other existing plans or policies applicable in the Harbor Districts, which may be affected or impacted by the Project. Additionally, the Initial Study contemplates impacts beyond the Harbor Districts but does not specifically define these areas nor the applicable land-use regulations.

Uncertain and Inadequate Identification of "Baseline" Used for Review

It is critical under CEQA that any level of environmental review make it clear as to the "baseline" being used as the basis for analysis of the significance of potential Project impacts. (CEQA Guidelines Section 15125(a).) Normally, the "baseline" will be the existing environmental conditions in the vicinity of the Project. (Guideline Section 15125(a); see also, 48 Cal.4th 310, 315 [the baseline for an agency's primary environmental analysis under CEQA must ordinarily be the *actually* existing physical conditions rather than *hypothetical* conditions that could have existed under applicable permits or regulations].) The Supreme Court has explained that the requirement for identification and use of the appropriate "baseline" applies in the context of an Initial Study as well as in an EIR. (*Communities for a Better Environment, supra*, 48 Cal.4th at 512, and n. 5.)

The Initial Study here, however, fails to make it clear as to what "baseline" is being used. In many places the Initial Study compares the anticipated "impacts" of adopting proposed Rule 4001 to the permitted emissions levels anticipated (in the future) under the 2012 AQMP, or alternatively to the (future) emission reduction targets of the CAAP -- rather than to the existing environmental conditions. While the recent Supreme Court decision in *Neighbors for Smart Rail v. Exposition Metroline Constr. Authority* (2013) 57 Cal.4th 439, 451-52 indicates that the baseline need not always be the existing physical conditions, and that "projected future conditions" may be used in rare situations as a baseline "if their use in place of measure existing conditions ... is justified by unusual aspects of the project or the surrounding conditions", it does not detract from the rule that the Initial Study must accurately and consistently describe the baseline being used. Nor does it permit the use of "future conditions" in the absence of a showing of unusual circumstances. The Initial Study in this case does neither.

For each of these fundamental reasons, the Recirculated NOP/IS should be rescinded in order that it may be revised, completed and corrected to meet CEQA requirements.

(b) The Initial Study Improperly Fails to Identify or Address Alternatives to the Proposed Project:

As noted above, CEQA requires that an Initial Study identify a range of "potentially feasible alternatives" to the proposed project which are to be more carefully analyzed in the draft environmental study. (14 CCR § 15083; "The determination of whether to include an alternative during the scoping process is whether the alternative is potentially feasible (*Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 489.)

However, the new Initial Study totally fails to identify any alternatives for study in the eventual EA. Instead, it merely "commits" the District to "discuss and compare alternatives" in the future, as part of the Draft EA. This is insufficient. The Initial Study also suggests the District is looking to the public or other agencies to identify "alternatives" during the scoping process. The Cities previously (January 2013) submitted such a potential alternative to PR 4001, in the form of a proposed Memorandum of Agreement. The District Board directed District staff to follow up and confer with the Cities on that approach. Nevertheless, it is not even mentioned in the Initial Study. Additionally, the EPA's long-established VMEP program is not considered as an alternative although it was developed for this very purpose.

If the District is authorized to prepare a PEA, rather than an EIR, the PEA must at least comply with Guideline Section 15252. Section 15252(a) requires that a substitute document, like a PEA, must include at least – a description of the proposed activity, and "**alternatives** to the activity and **mitigation measures** to avoid or reduce and significant or potentially significant effects that the project may have on the environment."

The No Project Alternative is not defined in the NOP/IS. In accordance with CEQA Guidelines Section 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. Therefore, the Draft EA should consider the impacts that would occur under the existing 2012 AQMP without Control Measure IND-01 or proposed Rule 4001.

As an example, an analysis should be conducted of the grant funding that would be available under the No Project Alternative that would not be available if the proposed Project constitutes regulation, and the environmental impact if grant funding necessary to make certain actions economically feasible is no longer available under the proposed Project. If the District's position is that there is no loss of grant funding in order to comply with Rule 4001 as a regulation that the District purports to make enforceable under the State Implementation Plan and the Clean Air Act, the District must explain in the Rule its basis for this conclusion in the context of why grants made for compliance with a regulation is not a gift of public funds.

Due to the District's failure to satisfy this CEQA requirement of alternatives development, the Cities direct the District to review the feasible alternative to the Project set forth in their January 16, 2014 letter to the United States Environmental Protection Agency Region 9, copied to the District. The Cities have noted the problems with including Measure IND-01 in the California State Implementation Plan (SIP) and recommended to the US EPA to instead apply as an alternative, the Voluntary Mobile Source Emission Reduction Program (VMEP) to grant SIP credit for the small percentage of emission reductions that are not already achieved by other regulations. The VMEP can work with or similarly to the memorandum of agreement approach that was suggested by the Cities to the District as an alternative to Measure IND-01 last year. One additional alternative would be for the District to formulate its own "backstop" measures and strategies for addressing any shortfall in emission reduction targets, relying on the District or CARB regulatory authority, expertise and resources, rather than pursuing proposed Rule 4001, which appears to be an attempt to solely rely upon the Cities, which lack regulatory authority or control over the actual sources, or use of the EPA's VMEP.

(c) Comments on the District's new Proposed Rule 4001:

The "project description" in the Recirculated Initial Study includes the *draft text* of PR 4001, at Appendix B. Notwithstanding the inclusion of a draft of the text of the proposed Rule, the "project description" remains incomplete and deficient. The Initial Study does <u>not</u> provide an adequate description of how the proposed Rule would work in practice (as distinct from the superficial summary of the text at pages 1-7 through 1-10) or how it would be likely to impact the Cities, the tenants and users of the Ports, and the surrounding communities and environments. The Cities anticipate the submission of additional, more detailed, comments on inconsistencies and problems raised by the draft text of PR 4001 itself and additional questions and concerns about the District's "rule-making" process.

Other deficiencies and questions about the draft text of PR 4001 include the following:

<u>What Is the District'scLegal Authority for PR 4001?</u>

The new Initial Study asserts that if the "backstop requirement" of PR 4001 "becomes effective," then the new Rule would require the Cities to submit an Emissions Reduction Plan "to address the emission reduction "shortfall."" Under what legal authority does the District believe that its proposed Rule 4001 may purport to compel distinct governmental bodies (the Cities and the Boards of Harbor Commissioners) to legislate or to exercise their discretion in particular ways to achieve District objectives?

The new NOP continues to dodge the questions (previously raised) about the District's legal authority – if any – to adopt PR 4001 or to compel the Ports to participate in the new backstop planning process contemplated by the rule. The NOP includes only the perfunctory

assertion that PR 4001 would "implement Control Measure IND-01" – as though that were an independent and sufficient source of authority. However, even the District's Final 2012 AQMP document acknowledges that it confers no new authority on the District, and CEQA similarly cautions that it confers no new or additional legal authority on agencies independent of the powers granted to the agency by other laws. (Guidelines, sec. 15040(b).)

Moreover, as noted previously, to the extent that the draft of PR 4001 is not consistent with the Control Measure IND -01 as approved by the District's Board, it is unauthorized.

The source of the District's purported legal authority for processing this PR 4001 is important for determining whether or not the District may claim to be acting within the scope of the District's "Certified Regulatory Program" – and thus outside of CEQA. The CEQA Guidelines limit that "certified regulatory program" exemption to "that portion of the regulatory program of the SCAQMD which involves the adoption, amendment, and repeal of regulations *pursuant to the Health & Safety Code*." (Guideline, sec. 15251(l).)

If the NOP/IS seeks to justify the District preparing an environmental assessment under its "certified regulatory program" rather than an EIR under CEQA, then the District should clearly demonstrate that the PR 4001 would be enacted pursuant to some specific statutory authority in the Health & Safety Code.

The District previously sought to characterize Control Measure IND-01 as an "indirect source rule." The current references to proposed Rule 4001 in the NOP/IS have omitted all mention of an "indirect source rule." However, the new Initial Study does not cite any authority the District is relying on for its processing of the proposed Rule. This should be corrected so that the public can perceive and comment on whatever "legal authority" may be invoked by the District.

Is it anticipated that the "plans" and strategies that would be required to be adopted by the legislative boards of the two Cities under the mandate of proposed Rule 4001 would be within SCAQMD's regulating authority and subject to the District's approval or disapproval? If so, why would SCAQMD not directly adopt such "backstop" strategies and plans itself? If not, is the Rule being proposed in order accomplish something indirectly that SCAQMD itself cannot do directly? (Cf., *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 [same].)

The vague disclaimer in the Initial Study to the effect that proposed Rule 4001 would not require any measure that *lacks legal authority* raises more questions than it answers. (Note also the new Initial Study, and PR 4001, no longer disclaim any intent to require the Cities to adopt measures that are not "*technically feasible*.") Whatever types of "emissions reduction plans"

may be anticipated by PR 4001 should be identified by the District in the NOP/IS so that the feasibility and legality of such approaches can be evaluated as part of the environmental assessment for the Project. (The new Initial Study omitted the examples of 'control strategies' that had been in the previous Initial Study.)

On What Basis Would PR 4001 Impose "Requirements" on the Cities

The NOP/IS states that none of the CAAP strategies would be "prescribed in PR 4001." Instead, the NOP states that if proposed Rule 4001 becomes effective, the Cities (presumably the Boards of Harbor Commissioners) -- "individually or jointly" -- would be required to identify sources that could undergo potential emission reduction to "make up for the shortfall."

Why would/should the obligation to make up for a possible shortfall in meeting emission reduction targets (which are primarily the responsibility of the District to attain) be shifted so as to fall upon two independent governmental entities? The Cities are governmental entities, and are not directly producing emissions or otherwise directly responsible for the targeted emissions or for the attainment of the emissions reduction targets.

Moreover, if there were to be a "shortfall" in attaining the targets, it could well be due to factors not caused or controlled by the Cities, and not due to any actions or derelictions on the part of the Cities or their tenants or users. Would uncontrollable/unforeseeable factors resulting in all or part of a shortfall be excluded from whatever obligation may be imposed on the Cities? Would it be required/permitted that any such "shortfall" be allocated to sources or causes bearing some actual responsibility for the lack of attainment? How would any shortfall be "allocated" between the Cities?

Would proposed Rule 4001 take into account the statutory limits on the jurisdiction and authority of the Cities (i.e, the Boards of Harbor Commissioners) to impose restrictions on most mobile sources of emissions?

The NOP/IS mentions a possible "option" that would "allow" the Cities to reduce emissions from "non-port-related sources." This vague reference requires clarification before it may be evaluated in connection with the Project. Direct and indirect effects would need to be considered that may occur beyond the geographic boundaries of the Harbor Districts. Therefore, it is premature for the District to conclude that any changes based on the working group or public scoping comments will be within the scope of the analysis in the NOP/IS.

What is meant by an "Emissions Shortfall"?

What environmental baseline and other parameters would be required by proposed Rule 4001 in order for the Cities to determine the extent of any "emissions shortfall" that may need to

be addressed in the Cities' plans in the event they were to undertake to submit plans under the Rule?

The term "shortfall" first appears in the Proposed Rule in (d)(1)(A), where it appears to call for a Plan to report on progress in "meeting the shortfall" but that seems logically inconsistent with the structure of the Proposed Rule, i.e., the District can't require the Ports to submit an emissions reduction plan unless and until the annually-reported emissions reductions "show that the percent reduction in PM2.5 from the baseline emissions is less than the reduction target of 75%" (Para (e)(1)B).) So there would not be any "shortfall" identified until that time; and therefore it would seem premature and illogical to require the Ports to submit a Plan that "reports the progress in meeting the shortfall" that was just identified.?

To the limited extent the PR 4001 describes the shortfall that might trigger the need to prepare a Plan, the provisions for annual estimating or reporting of the emissions appear imprecise and vague. Para (f) appears to contemplate that once a 'shortfall' had been determined in one year, then the District could demand a Revised Plan in following years if targets are still not met; but what happens if the shortfall is "corrected" in subsequent years and targets are again being met?

Does an Emissions Reduction Plan, once required by the District, ever go away?

<u>On What Authority Would the District Purport to "Revise the Reduction Target"?</u>

The new Initial Study reports (p. 1-8) that PR 4001 (e)(2) purports to require the District's Executive Officer to review the reduction target before July 2017, and to "develop a proposed amendment to Rule 4001..." that would "revise the reduction target as necessary to conform to the 2016 AQMP reduction target."

By what authority would these targets be "revised" in the future? Under what objective standards? What public process would the Executive Officer need to follow in order to "develop" a proposed "amendment" to PR 4001? How would such a "moving target" affect the Cities and what environmental impacts would be possible consequences of such "revisions"?

<u>Does PR 4001 Provide a Clear and Feasible Process for Cities to Develop a "Plan"?</u>

Para (f) (E) would require that "the Plan shall be approved by the Board of Harbor Commissioners" at each Port, and would require the Port to conduct at least one "public meeting" ... but is this an improper attempt by the District to control and dictate the exercise of discretion" conferred on the Board of Harbor Commissioners? The Board of Harbor Commissioners may in fact disagree that a plan is required or may exercise its own discretion, as required by law, that it cannot commit expenditures to a program desired by the District. Under what authority can the District's Executive Officer, acting alone without even District Governing

Board authority, disapprove a plan or compel a plan to be approved by the Cities' own governing authorities? What is the District's intended mystery penalty or consequence, which the proposed Project still has not revealed to the cities and the public in PR 4001? Furthermore, discretionary action by the Boards of Harbor Commissioners requires compliance with CEQA. What type of CEQA review would be triggered for the emission reduction plans if the Program Environmental Assessment being prepared by the District is only programmatic in nature and how is the timing for either a consistency review or project-specific analysis, if warranted, accounted for in PR 4001?

Would PR 4001 Create Violations of Due Process?

The draft of PR 4001 raises several questions regarding apparent violations of Due Process:

Para (f)(2)(B) -- the District's Executive Officer would be given nearly unfettered discretion to "disapprove" a Plan submitted by the Cities?

There must be some requirement at least that the Executive Officer must make "findings" of "non-compliance" with some provision of (f)(1) of the Rule, based on some objective standards.

What would be the procedure if the Cities submitted a Plan, and the District (either by its Executive Officer or its Hearing Board) "disapproved" the Plan (per Para (f)(2)(C))? The Port would apparently be required to submit a Revised Plan within 60 days of the disapproval. But what about the Harbor Commissioners holding a new "public meeting" for input on the Revised Plan? And would there be any time or procedure for the Harbor Commissioners to consider and approve a new Revised Plan and comply with CEQA within that arbitrary 60 day time frame?

At the end of Para (g)(2) is the threat again that if the District Board denies the Port's appeal from a "disapproval" of the Port's emissions reduction plan, then the "*Ports shall comply* with ... [or subparagraph (f)(2)(F)]" -- which means the Port shall be self-confessed as "in violation" of the Rule? This would appear to inflict a denial of Due Process on the Cities.

Variance: PR 4001 must provide more detail as to what is meant by Para (g) - petitioning for a "variance" ? What are the criteria? What would the process be? What would be the effect of the District granting a variance?

How Would the District Determine the "Consequences" for "Violation" of PR 4001?

By what authority would the District sit in judgment as to the sufficiency of the Cities' efforts to manage activities and uses of the Ports? What might the consequences be if a City were to be deemed to be "in violation" simply because the District may choose to "disapprove" a

Revised Plan, and by what legal authority would the District purport to sanction the Cities in the event of some perceived "violation"?

By what objective standards would the District judge the sufficiency of any plans or measures proposed by the Cities to achieve the emission reduction targets?

What is the consequence of disapproval of a City plan by the District? The rule should provide more detail at Para (f)(2)(F) (iii) -- what is meant by the obscure reference here that the Ports "shall be in violation of this Rule... "?

Does PR 4001 Provide for Judicial Review of District Actions?

Should the Rule make provision for judicial review of the actions of the District in enforcing or interpreting the Proposed Rule?

As drafted, PR 4001, at Para (h): "Severability" appears to contemplate that a "judicial order" could hold some provision of the Rule to be invalid? Otherwise the Rule is silent on Judicial Review.

Are the Cities Supposed to Regulate Off-Site "Sources"?

The Initial Study indicates (p. 1-4) that the District anticipates that the "control strategies" contemplated by this Project "may potentially include" measures for the Cities to adopt and implement policies or programs extending beyond their jurisdictions or to try to reduce emissions from sources *not entering* onto port properties. What does this mean? By what legal authority might the Cities try to regulate *off-site* sources that do not come within the jurisdiction of the respective Harbor Commissions? (Municipal police power authority may generally be exercised only within the territorial boundaries of their jurisdiction, and the Boards of Harbor Commissioners have special Tidelands limits on their authority.)

Would such (unidentified) measures be part of Rule 4001, or would proposed Rule 4001 require that the Cities formulate (unidentified) measures in the future to somehow regulate *off-site* "sources?"

How Does the District Contemplate Funding of Backstop Measures?

The draft of PR 4001 implies that "funding" would be necessary for many of the potential future emission reduction measures that may be compelled under proposed Rule 4001. Would such funding be provided by the District? What other "funding" sources are contemplated?

The conversion of the Cities' voluntary programs into PR 4001 as a district regulation and potentially state and federal law if adopted into an approved SIP, will impose constitutional

or common law "gift of public funds" restrictions on federal and state grant funding currently relied upon by the Cities for emission reduction activities under their CAAP.

To the extent the District expects the Cities to fund future programs, this demonstrates a lack of understanding of the Cities' own governmental authority and obligations. The Boards of Harbor Commissioners of the Cities are trustees for the Tidelands Trust funds they are entrusted to manage and have specific legal obligations to meet, including promotion of maritime commerce, navigation and fisheries and keeping their budgets in balance amidst a current global shipping economy with many dynamic and threatening competitive pressures to retain market share. By what authority may the Harbor Commissioners impose taxes, assessments, and charges on users of the Harbor Districts, given the restrictions of various state laws, including, among others, Proposition 26?

(d) Specific Comments and Questions re "Project Description" and Text

The following comments and questions refer to specific portions or pages of Chapter 1 of the new Initial Study:

Pp. 1-1 - 1-2 – Introduction

(i) *Erroneous Characterization of Existing Emission Reduction Requirements:* The Introduction states, in the first sentence of the third paragraph on page 1-1, that Control Measure IND-01 "...does not call for additional emission reductions beyond those realized with existing regulations and emission reductions programs implemented at the Ports to date." This is an untrue statement. The CAAP is only a planning document which specifically provides for discretionary future decisions to be made regarding implementation by each of the Cities' respective Board of Harbor Commissioners, and the resolution adopting the CAAP update states:

> The CAAP is a living document intended to establish a process to develop solutions, not a static document binding the Ports to particular future actions….The CAAP is a planning document that identifies goals and potential implementation strategies to guide further actions, and as such does not constrain the discretion of either Board of Harbor Commissioners with respect to any particular action.[2]

[2] Los Angeles Resolution No. 10-7041 adopted by the Board of Harbor Commissioners of the City of Los Angeles and Long Beach Resolution No. HD 2600 adopted by the Board of Harbor Commissioners of the City of Long Beach on November 22, 2010.

Not all individual Board actions that may be required in order to achieve the CAAP's goals and activities have been adopted; in fact, many of these goals were stretch targets with uncertainty as to whether they could be achieved. Control Measure IND-01 and Rule 4001 propose to *require* the Cities to potentially adopt future discretionary, quasi-legislative actions that create potentially-conflicting authorities between the District, as regulator, and the Cities, as independent governmental agencies regulated by the District, so as to force the Cities to exercise their discretionary police power authority in a particular way. The Constitution does not permit such usurpation of the Cities' authority.

(ii) *Misleading and Inaccurate References to "Port-Related" Sources of Emissions:* The new Initial Study and Recirculated NOP continue to describe PR 4001 in the misleading context of "port-related sources" of PM2.5 emissions, and as ensuring that emissions from "port-related sources" meet the targets included in the Final 2012 AQMP. The term "port-related sources", however, is not used in the federal Clean Air Act ("CAA") or Health &Safety Code. As described in the NOP, "port related sources" are mobile and vehicular sources ("ocean-going vessels, on-road trucks, locomotives, harbor craft, and cargo-handling equipment"). Those *actual* "sources" of emissions are distinct from the geographic area in which they operate and are generally and comprehensively regulated by other State and federal agencies, not regional air quality districts.

The District's continued references to "port-related sources" of emissions are misleading and are no more accurate or descriptive than would be similarly generic references to "coastal-related sources" or "County-related sources" or "Air District-related sources" of emissions.

(iii). *Misleading Failure of the Project to Limit the Cities' New Obligations to "Technically Feasible" Measures:* The previous Initial Study for PR 4001 at least made it clear that the District only intended to require the Cities to propose additional emission reduction methods for vessels, trucks, locomotives, etc., "to the extent cost-effective strategies are *technically feasible* and within the Ports' authority." (Similar limitations on the Cities' new obligations under the proposed 'backstop measure' are included in IND-01.) However, the new Initial Study no longer includes any limitation to "technically-feasible" measures that could be required of the Cities (p. 1-1.) This omission creates uncertainty about the District's intentions as to the scope of PR 4001, i.e. whether it might be construed to be a "technology-forcing" regulation or not.

(iv). *Inconsistent or Uncertain Emissions Reduction Targets.* The Introduction states, in the last paragraph beginning on Page 1-1, that the emission targets for "port-related sources" are those assumed in the 2012 AQMP emissions inventory. The draft text of PR 4001 now purports to define "emissions target" by reference to page IV-A-36 of Appendix IV to the Final 2012 AQMP. The Cities raised questions during the Measure IND-01 adoption process regarding the District's calculation of these targets, which are *different* from the emissions targets set under the

CAAP. Although the specific emission targets of the proposed Project do not appear at all in the NOP (which omission itself is a defect), the District has verbally advised the Cities and a working group on August 8, 2013, that the Rule will be such as to be triggered on set emission targets for 2014 and 2019. Those comments, however, left the Cities and working group participants with many questions about how the District set the emissions inventory, particularly for 2019, which was not in the CAAP. These examples are provided to illustrate that the Initial Study's description of the applicable emission reduction targets to be covered by PR 4001 are uncertain, or inconsistent.

P. 1-4 - Project Location

The new Initial Study provides no finite "project location." It again refers to the District's jurisdictional boundaries. It then states that "PR 4001 would apply to POLA and POLB, both of which are located within Los Angeles County." It is unclear if this was an attempt to state that the Project location would be Harbor Districts of the Cities. The lack of clarity regarding the Project location is further compounded by the Rule's reference to "sources not entering Port," and by a new but vague reference to the effect that the unidentified "strategies proposed by the Ports" under compulsion of PR 4001 could extend the "project location" beyond Los Angeles County.

Is it the intention that any portion of the Project may be implemented outside the geographic areas of the two Ports? It remains unclear from this description whether the Project may have impacts or foreseeably result in actions being taken outside the geographic areas of the two ports. This may have jurisdictional implications which cannot be evaluated without additional information.

Also, the Initial Study fails to disclose or analyze the possibility that if the option for the Cities to reduce emissions from sources not entering Port properties is included in proposed Rule 4001, even the vague "project location" and geographic scope of the proposed Rule in the Initial Study would not be accurate and would need to be modified in the NOP/IS.

P. 1-5 – Project Background

The new Initial Study appears to recognize that distinct "emission sources at the Ports" such as vehicles, engines, ships, trains, trucks and other cargo-moving equipment operated by distinct tenants, users, and visitors of the ports are the intended targets of the Project's emission reductions requirements. It also acknowledges that the Ports themselves adopted the San Pedro Bay Ports Clean Air Action Plan ("CAAP") in 2006, and further that emissions from these so-called "port-related sources" have been "substantially reduced since 2006" as a result of collaborative and voluntary programs and regulations developed by both Ports. (p. 1-6).

These acknowledgements raise again the question of the need or justification for the Project, or for the attempt by the District to foist the responsibilities for regulating emissions from such mobile or vehicular sources of emissions from state and federal agencies onto the Cities.

Also, on Page 1-6, the new Initial Study states that the intent of PR 4001 is to "provide a backstop to the Ports' actions" in case emission reductions "from port-related sources do not meet *or are not on track to maintain the emissions targets*..." This appears to be an unauthorized change in the Project description and is not consistent with IND-01. Also, notion that the District would be empowered by PR 4001 to enforce sanctions against the Cities if the District somehow deems that they are "not on track" to maintain targets is ambiguous, and without objective standards or legally-necessary procedural protections.

Pp. 1-11 -- Technology Overview/Implementation Strategies

The new Initial Study refers to some emission reduction strategies included in the CAAP, but the Initial Study does not explain how these may relate to proposed Rule 4001, or whether they should be considered as part of the Project.

The suggestion in the Initial Study of possible "tariff changes" or "impact fees" on the activities of users of the Harbor Districts raises other questions (e.g., legal authority, funding for studies and public review processes required before such measures could be considered or adopted, indemnification for costs of defense, etc.) requiring identification and study. Moreover, such measures may themselves be considered as "projects" subject to CEQA review and may have impacts on the activities of Harbor District users that themselves would require analysis or mitigation.

The Initial Study also includes reference to "Port funded incentives" as possible measures to reduce emissions, but also observes that there is not adequate funding for such strategies in the Cities' budgets or other grant programs. The source of funding any "Port-funded" measures contemplated by proposed Rule 4001 should be clearly identified and evaluated.

Any such contemplated implementation strategies should be included in the "Project description" and better identified in a more complete NOP/IS, so that they may be evaluated along with the rest of the Project.

Feasibility: The new Initial Study abjures any consideration of technical feasibility or other concepts of "feasibility" despite CEQA's recognition of feasibility as a critical limitation on environmental regulation. The scope of the EA should be expanded to address the legal, technological and economic feasibility of the seven bulleted items listed in this section.

2. Chapter 2 of the Initial Study – The "Environmental Checklist"

(a) General Comments on the Environmental Checklist

The Recirculated NOP/IS relies on a standard CEQA environmental checklist to identify those "impact areas" it recognizes to be potentially affected by the Project. In several respects, however, the Initial Study appears to merely assume the absence of potentially significant impacts, rather than factually demonstrating that significant impacts will not occur if the Project is adopted and implemented. This is insufficient under CEQA, and under the District's own rules. (SCAQMD Rule 110; *City of Redlands, supra*, 96 Cal.App.4th at 408-09; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296).

The new NOP includes many statements that the PEA will rely on "conservative assumptions" about the possible environmental impacts of the Proposed Rule. Reliance on any assumptions in CEQA analysis is unsound, and if assumptions are to be used, the District must explain why it would rely on "conservative" assumptions about the scope of impacts.

Furthermore, it is contrary to the District's response to comment #5-4 in the Final Program EIR, which indicates that "[t]he exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted."

We appreciate that the new Initial Study has expanded the number of environmental areas to be studied in the eventual EA from the six (6) topics identified in the previous Initial Study to thirteen areas now recognized as being subject to potentially significant impacts if the Project is approved. The new Initial Study now recognizes the following *additional areas* of potential environmental impact to be addressed in the EA: (1) Aesthetics, (2) Biological Resources, (3) Cultural Resources, (4) Land Use and Planning, (5) Noise, (6) Public Services, and (7) *broadened evaluation* of potential impacts and issues in the areas of Energy, Hazards and Hazardous Materials, Air Quality, and Transportation and Traffic.

However, the new Initial Study continues to provide only superficial and inadequate discussion of the areas of environmental impact, and thus fails to properly indicate the necessary scope for the eventual EA. Unless and until those areas are more fully addressed, the new NOP/IS still improperly limits the scope of the proposed EA, and still erroneously exclude areas requiring further assessment.

(b) Specific Comments on the Environmental Checklist

As detailed below, there are numerous areas of potential environmental impact in the checklist as to which the Initial Study either omits required evidence to support its conclusions of "no potential impact" or treats with insufficient detail.

Even as to those areas that are now identified in the new Initial Study as having potential impacts, the new Checklist still errs by limiting the scope of the potential impacts identified for further study based on unfounded assumptions as to the environmentally benign intent behind the Project. However, the law is clear that environmentally "benign" objectives for a project do not excuse non-compliance with CEQA and do not justify reliance on assumptions in lieu of evidence to demonstrate the absence of potential impacts. *See, e.g., California Farm Bureau v. California Wildlife Conservation Board* (2006) 143 Cal.App.4th 173, 196, emph. added [State environmental agency violated CEQA by exempting environmentally beneficial habitat project from review]:

"[I]t cannot be assumed that activities intended to protect or preserve the environment are immune from environmental review. [Citations.]" (*Davidon Homes, supra*, 54 Cal.App.4th 106, at p. 119; see, e.g., *Dunn-Edwards Corp. v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644 (disapproved on other grounds in *Western States Petroleum Assn. v. Superior Court, supra*, 9 Cal.4th 559, 570.) **There may be environmental costs to an environmentally beneficial project, which must be considered and assessed**.

P. 2-4 -- Preliminary Discussion of Checklist

First Paragraph: We reiterate the same comment as noted above, regarding Cities not being the "source" of emissions. It is "the operational activities by the Ports' tenants" [and other users of the area] that produce emissions (as the new Initial Study more accurately recognizes) and which should be the true District targets as the sources of emissions.

First Paragraph, Last Sentence: The Initial Study states that "some emission reductions [assumed by the District's 2012 AQMP] may be contingent upon the Ports taking and maintaining *actions which are not required by air quality regulations*." This suggests that one of the purposes for District proposal of proposed Rule 4001 may be to establish a new regulatory "authority" over the Cities (and the communities served by and dependent upon the Harbor Departments of the Cities) that is not in fact already provided by existing federal, state, or regional air quality regulations. The policy implications of such a Project may well include significant impacts on the environment, if regulatory authority over activities, facilities, and uses of the Harbor Districts is shifted or arrogated to the District. (See, e.g., *City of Redlands, supra,* 96 Cal. App. 4th 398 [proposed new County policy re exercise of County authority over annexations and sphere of influence was not supported by adequate CEQA review].)

Page 2-5: The new Initial Study makes reference to a "survey" of existing CEQA documents to try to identify projects "similar to the types of projects the Ports may choose to implement in an Emission Reduction Plan." It then suggests that "reasonably foreseeable projects" resulting from this survey will be evaluated in the EA. While we respect these goals, we submit that the new Initial Study is vague as to what may be deemed to be "reasonably

foreseeable projects" warranting analysis in the EA, and would request that more objective criteria be provided.

(1) **Aesthetic Impacts:**

The brief discussion of "potentially significant" Aesthetic impacts in the new IS does not address many of the Cities' prior comments on these impacts, and we reincorporate those comments.

(2) **Biological Resources:**

The new discussion of impacts on Biological Resources does not address the Cities' prior comments re possible impacts on migratory birds and least terns, and we reincorporate those comments.

(3) **Energy:**

The new Initial Study section VI (c) must be expanded to also consider and analyze 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 required in the event of a major disaster. Also some types of emission control measures, facilities, or technologies contemplated by the Project could increase or shift demand for different types of energy or fuel usage. Although "risk of upset" is not considered in the new Initial Study checklist. The scope of the proposed EA should be expanded to include this additional analysis.

(4) **Hazards and Hazardous Materials:**

In addition to our comments on the prior Initial Study, the new Initial Study section VIII(f) must be expanded to also consider and analyze the increase reliance on alternative fuels or electrical powered technologies that would require sufficient supply and emergency storage in the event of a major disaster. Although interference with emergency response plans was marginally addressed in this section, "risk of upset" is not considered in the new Initial Study Checklist. The scope of the proposed EA should be expanded to include this additional analysis.

(5) **Land Use & Planning Impacts:**

The new IS now identifies Land Use and Planning as an area involving potential significant impacts, to be studied in the EA. However, the new IS states that such impacts will be considered in the EA only "if the project conflicts with the land use and zoning designations established by local jurisdictions." This is insufficient.

We previously pointed out that the PR would cause conflicts with existing land use plans and policies, circulations plans, congestion management plans, etc. The prior IS itself admitted that the Project would cause potentially significant impacts or conflicts with existing land use plans (but was only going to address them in the Transportation section). This should be a definite area for evaluation in the EA, not a 'conditional' topic of study.

We also note that the new Initial Study is internally inconsistent. It makes the remarkable assertion (inexplicably placed in its discussion of impacts on Biological Resources, at p. 2-18) that "there are no provisions in the proposed project that would adversely affect land use plans, local policies, ordinances or regulations. LAND USE AND OTHER PLANNING CONSIDERATIONS ARE DETERMINED BY LOCAL GOVERNMENTS AND NO LAND USE OR PLANNING REQUIREMENTS WOULD BE ALTERED BY THE PROPOSED PROJECT." We strongly disagree, as pointed out in our prior comments, which are incorporated.

The measures contemplated in the Initial Study include the adoption of new "regulatory requirements," new "impact fees" on the movement of cargo or sources, and changing the tariffs for use of the Harbor Districts – all of which would cause at least potential "conflicts" with applicable plans and policies. (Cf., *Orinda Ass'n v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1169 [the CEQA requirements for initial study examination of non-conformity with existing land use plans are intended to allow lead agency to modify the Project to avoid inconsistencies with existing plans – not vice versa].)

The Initial Study itself acknowledges that the Project is anticipated to cause "potentially significant impacts" or conflicts with "an applicable plan ... for the performance of the circulation system" and conflicts with "an applicable congestion management plan." (Initial Study, p. 2-44.) Although the Initial Study proposes to address those admitted conflicts in the "transportation" section of the EA, these acknowledged conflicts confirm the necessity for including "land use and planning" impacts in the proposed EA as well.

Also, the proposed Project would seemingly create conflicts with the Cities' 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 are detailed in the previous port letters included in Attachment A to this letter. In addition, the proposed Project would create inconsistencies with the Clean Air Action Plan.

The proposed Rule is apparently structured in a way that would impermissibly usurp the (non-delegable) police power authority of the Cities and their respective Boards of Harbor Commissioners to plan, implement, and regulate land use policies and actions in their respective jurisdictions. (This comment has also been raised above, in Project Description comments.)

The numerous inconsistencies between the Project as proposed and the existing plans and policies require identification in the Initial Study and inclusion in the proposed EA. (Guidelines § 15125(d).) The scope of the proposed EA should be expanded to include environmental analysis of all of these potential impacts on land use and planning.

The EA should also include analysis of the impacts of the proposed/anticipated Project-related subsequent amendments to the Cities' plans, policies, and other land use regulations. (See, e.g., *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1197 [CEQA review failed to consider incidental results from adoption of revised policy; incidental impacts could not be disregarded in an initial study based upon "net" environmental impact of the change in policy being benign since CEQA requires each environmental impact of project be discretely evaluated].) "Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project." (Guidelines, § 15064, subd. (e); see §§ 21080, subd. (e)(2), 21082.2, subd. (c).)

The scope of the EIR should be expanded to include analysis of possible physical changes in port facilities and operations that might be caused by economic or social effects of the Project itself or by the anticipated amendments to land use and zoning policies by the Cities subsequent implementation of the Project.

(6) **Transportation and Traffic Impacts**

The new Initial Study fails to adequately describe and analyze potential impacts to rail and marine vessel traffic and ignores the significance criteria identified as "[w]ater borne, rail car or air traffic is substantially altered" on page 2-45. The new Initial Study erroneously considers vehicular traffic impacts to local roadways.

Socioeconomics Analysis

The proposed EA needs to include a broad-based analysis of the socioeconomic effects of Proposed Rule 4001, including the potential for job loss, business closures, and diversion of cargo to other ports due to the potential loss of regional competitiveness. The socioeconomic analysis needs to consider both the existence of the rule, even if not triggered, and the future enforcement of the rule. Because these conditions have the potential to physically change the environment in and around the ports, these impacts should be identified and assessed in the EA. (See CEQA Guidelines §§ 15064€ and 15131; *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3rd433,445 [EIR must consider possibility of economic blight from rezoning].) Moreover, this assessment should not be limited to businesses and operations within the ports, but should extend to those facilities, business and operations that while located outside of the Harbor Districts are dependent upon the flow of cargo for their continued operations.

This CEQA analysis of the socioeconomics effects of PR 4001 in the proposed PEA would be separate from, and in addition to, the assessment of socioeconomic impacts of the proposed Rule that the District is required to prepare in compliance with Health & Safety Code § 40728.5 and § 40440.8.

D. Conclusion:

The current version of the Recirculated NOP/IS still fails to comply with CEQA or with the District's own Rules for environmental review, and fails to properly provide an adequate "scope" for the eventual Environmental Assessment to be prepared for analysis of the Proposed Rule 4001. The Initial Study must therefore be revised, corrected, and re-circulated with all of the descriptions and other content required by CEQA.

While it is clear that an EA is called for in connection with this proposed Project, it is equally clear that the EA should be more complete than what is envisioned by the current NOP/IS. More fundamentally, its scope must be determined by a legally-adequate revised NOP/IS. The EA for the Project must, of course, be supported by credible and substantial evidence, including independent professional analysis.

Even this inadequate NOP/IS makes it clear that **the scope of the proposed EA has been unduly narrowed and fails to identify any potentially feasible alternatives to the Project.** Consequently any ensuing environmental review will be limited in a way that erroneously fails to provide the relevant decision-makers, affected public agencies, residents and the public generally with sufficient evidence and analysis of all potential impacts from the Project as a whole, or of all potentially feasible mitigation measures or appropriate Project alternatives as required by CEQA.

We respectfully request that these comments and questions be considered before the District embarks on preparation of the EA and all of the other required independent studies in connection with the CEQA review of the proposed Project. We therefore look forward to working with the District, and any study teams or working groups tasked with evaluation of the proposed Rule 4001.

The NOP requests that we provide you with a contact person for each responding agency. For the **COLB,** the contact persons are as follows:

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We appreciate your consideration. Thank you.

Sincerely,

Matthew Arms
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachments:

- August 21, 2013 Letter; Port of Long Beach and Port of Los Angeles to SCAQMD; *Comments on Notice of Preparation, Initial Study, and Scope of Proposed Environmental Assessment*

- October 2, 2013 Letter; Port of Long Beach and Port of Los Angeles to SCAQMD, *Initial Comments for Public Consultation on Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets are Met at Commercial Marine Ports"*

cc: Al Moro, Acting Executive Director, Port of Long Beach
Gary Lee Moore, Interim Executive Director, Port of Los Angeles
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Randall Pasek, Planning and Rules Manager, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Richard Corey, Executive Officer, CARB
Cynthia Marvin, Division Chief, Stationary Source Division, CARB
Doug Ito, Chief, Freight Transportation Branch, CARB
Jared Blumenfeld, Administrator, U.S. EPA, Region 9
Deborah Jordan, Director, Air Division, U.S. EPA, Region 9
Elizabeth Adams, Deputy Director, U.S. EPA, Region 9

ATTACHMENT 6.

October 2, 2013

VIA ELECTRONIC MAIL – rpasek@aqmd.gov
VIA FACSIMILE - (909) 396-3324

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Mobile Source Division
Science and Technology Advancement
South Coast Air Quality Management District
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Re: Initial Comments for Public Consultation on Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports"

Dear Mr. Pasek and Staff of the South Coast Air Quality Management District:

We appreciate this opportunity to submit comments during the public consultation period on the South Coast Air Quality Management District's (AQMD's) proposed "Rule 4001: Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports" on behalf of the City of Long Beach acting by and through its Harbor Department (referred to herein as "COLB") and the City of Los Angeles acting by and through its Harbor Department ("COLA," collectively with COLB, the "Cities" or the "Ports").

The Cities take their role as environmental leaders seriously and through the years have achieved tremendous success in obtaining substantial emissions reductions through the efforts guided by the joint San Pedro Bay Ports Clean Air Action Plan ("CAAP"). The Cities continue to support programs that will result in cleaner air for the local communities and the region and have worked aggressively with the port industry to reduce air quality impacts from the equipment they operate. As a result, the recently released emissions inventories have shown that between 2005 and 2012, emissions from sources at both the Port of Long Beach and Port of Los Angeles were reduced by 80% for diesel particulate matter and 55% for nitrogen oxides. However, the Cities continue to disagree with the AQMD's current proposal to inappropriately and unnecessarily regulate the Cities. The Cities have been consistent in our comments to the AQMD about the serious concerns and objections to the proposed rulemaking approach. A compilation of these comments was recently submitted to the AQMD in our comment letter on the Notice of Preparation and Initial Study for Proposed Rule 4001, dated August 21, 2013.

As for the comments the AQMD is currently seeking, we have concerns that the process recently initiated by the AQMD to solicit comments on Proposed Rule 4001 deviates from the rule-

making procedures called for by the Health & Safety Code and by the AQMD's own rules (Rule 110), in several respects. For example, it is essential that a copy of the Proposed Rule, or the text of the Proposed Rule, "be made available to the general public in connection with a request for comments" on a proposed rule in order to commence a legally-compliant rule-making process. (E,g., H & S Code §§ 40727.2, 40727(i).) The Cities have previously pointed out the inherent inconsistency of inviting public comment on Proposed Rule 4001 before the AQMD has publicly-disclosed the text of the Proposed Rule, as well as the resulting limitations on the ability of the Cities and other members of the public to provide specific input on the Proposed Rule. As a result of the failure to provide the text of the Proposed Rule, or necessary information regarding the Proposed Rule, a meaningful and legally valid rule-making procedure has not yet been commenced, and it is premature for the AQMD to demand the submission of comments on the anticipated but still undefined new "backstop" rule.

Further, it appears that the AQMD is attempting to limit comment by setting an agenda for the items on which they are seeking input, as shown on slide 8 "Soliciting Inputs/Comments" of the presentation provided during the CEQA Scoping Meeting on August 14, 2013. In addition, limiting the public process primarily to a small working group with seats set at a small table does not allow for significant input from the broader affected public, including the port tenants and operators. Input could be more meaningfully provided if the Proposed Rule was released with sufficient time for the Cities and the public to review and provide detailed comment.

The Cities are further concerned that not enough time is being included in the schedule for rule development. To date, a draft of the Proposed Rule has not been released, nor is it expected to be released for at least several weeks; however, a hearing date for the AQMD Board to consider approval of the Proposed Rule has already been identified for early December. Well in advance of any such hearing, the AQMD must provide the public with substantial information and analysis of the Proposed Rule as required by the Health & Safety Code and AQMD rules (e.g., H & S Code §§ 40727.2; Rule 110(b), (c), and (d).), as well as responses to the public comments. The AQMD also must provide the comprehensive assessment of socioeconomic impacts required by Section 40728.5.

This timeline for review and comment is unacceptably short for a rule of this magnitude. The failure to provide the draft rule language with adequate time for the public to review and submit comments to AQMD, and for those comments to be meaningfully considered by AQMD staff, is a denial of due process.

In this regard, we also have concerns about the demand that comments be submitted by September 6, 2013. There is no explanation, nor any apparent legal basis, for imposing such a deadline for public comments. It is unreasonable, particularly in light of the absence of text or details regarding the Proposed Rule, and fails to provide due process to the Cities or other members of the public who may be burdened or affected by the Proposed Rule, to demand comments by such an early cut-off. The imposition of such a premature deadline for submission

of comments appears arbitrary, and in conflict with Health & Safety Code § 40726, which states that the AQMD "shall provide for the submission of statements, arguments, or contentions, either oral or written or both," up until the time of the public hearing on the Proposed Rule. We therefore respectfully object to the imposition of a deadline for submission of comments on the Proposed Rule, and reserve all rights to comment on the Proposed Rule in the manner, and at the times, provided by state law and the AQMD rules, and to insist on compliance with the procedures and rights afforded by state law and AQMD rules.

The Cities are therefore providing these comments on a preliminary (and non-binding) basis, considering only the limited information on Proposed Rule 4001 thus far provided by the AQMD, based upon presentations by AQMD staff about the general concepts of the approach. The Cities reserve our rights, however, to make further comments after the September 6 deadline and to continue to provide input throughout the process, including submission of additional or different comments after the draft rule is made available.

First, there is an issue of need. As a rule that is contained in the proposed State Implementation Plan, Proposed Rule 4001 violates Section 39602 of the California Health and Safety Code, which states that the State Implementation Plan shall only include those provisions necessary to meet the requirements of the Clean Air Act. There is no need for Proposed Rule 4001 since the AQMP's emissions targets for port industry equipment in 2014 will be met by United States Environmental Protection Agency (EPA) and California Air Resources Board (CARB) regulations and existing Clean Ocean Vessel Voluntary Incentive Programs. Further, AQMD staff has suggested that Proposed Rule 4001 will require the Ports to develop a "Contingency Plan" immediately following rule adoption, prior to any indication that an emissions shortfall may occur. This approach is punitive, requiring the Ports to invest resources into a type of corrective action, when there is no identified need for that action, and therefore goes against the Act and is inconsistent with due process.

Second, there is an issue of legal authority and jurisdiction. The AQMD has failed to cite any legal authority for characterization of governmental entities as a stationary source, or imposing an indirect source rule on governmental entities that do not own, operate or control the sources of emissions, based merely upon the location of facilities operated by private parties within the government entities' geographic area. The Ports are not "indirect sources" and no authority has been cited to authorize the use of an indirect source rule against fellow governmental agencies that have their own jurisdiction and responsibilities by law and do not have regulatory authority to issue air regulations. The AQMD has failed to cite any legal authority for imposing an indirect source rule on Trustees for the Tidelands of California or how it could legally compel the Ports to make expenditure of Tidelands Trust revenues for the purpose of incentives or to adopt other emission reduction programs to be funded as contemplated in AQMD enforcement activity under Measure IND-01. The AQMD has failed to show any legal authority that would allow it to (1) regulate mobile sources by making another governmental entity, that is not an air regulator, its agent for enforcement of its desired mobile source emission reductions, or (2) "enforce" the

Proposed Rule, which under AQMD administrative rules would eventually mean fines and penalties, against such other governmental entity that does not control the emissions of indirect sources located within its jurisdictional boundaries. The AQMD has failed to show any constitutional or statutory basis for attempting to regulate mobile sources "indirectly" that it is preempted from regulating directly, or to purport to impose penalties or corrective action against another governmental entity for failure of private third party emissions sources to achieve emissions reductions that such other governmental entity is also preempted from regulating.

Third, while the Cities remain firm in our position that the rulemaking is unnecessary, counterproductive and beyond the AQMD's jurisdiction, if AQMD does continue to proceed, the following significant issues must be addressed.

AQMD staff appears to be proceeding with development of the proposed rule in a manner that is inconsistent with the provisions of AQMP Measure IND-01 and the discussion between the AQMD Board and the staff during the approval of AQMP Measure IND-01 at the Board Meeting of February 1, 2013. During that discussion, it was identified that the requirements under any proposed rule would only be triggered if the ports failed to meet their goals for the target year. The proposed rulemaking concepts that have been presented by AQMD staff more recently have indicated that the Ports may be required to develop corrective action plans in advance of any identified shortfall. Further, it appears AQMD staff is considering that the Ports will be required to submit emission inventories to AQMD for approval each year through 2020 and that compliance action may be triggered for any potential shortfalls that may occur during interim years, prior to the target years. These potential requirements are inappropriate and go beyond the direction from the AQMD Board.

Also, because the Cities are not regulatory agencies, have not been granted authority to regulate sources of air pollution, and have limitations on their ability to impose requirements on sources operating within their jurisdiction, AQMD must ensure that Proposed Rule 4001 does not mandate that the Cities implement strategies that are outside of their authority or ability to implement. AQMD must recognize that the Cities do not even have contractual relationships with many of the emissions sources that AQMD has attributed to the Cities' "responsibility" for emissions reductions under Proposed Rule 4001, and that even if Cities have leases with some of the operators, they are negotiated business agreements that constrain the Cities' ability to unilaterally impose new terms in response to whatever new conditions AQMD may desire.

In addition, the Boards of Harbor Commissioners of the Cities have the discretion for making business decisions related to the ports and their tenants, consistent with the Tidelands Trust and California Coastal Act. Neither AQMD staff nor its Board can override the discretion of the Harbor Commissions including decisions related to the management of the port or how port funds are spent. Therefore, AQMD cannot disapprove an Emission Reduction Plan simply because AQMD disagrees with the chosen strategies.

Moreover, approval or disapproval of any Emission Reduction Plan cannot be at the sole discretion of AQMD staff. Any plan development should be coordinated with the agencies involved in the development of the CAAP, specifically EPA, CARB and the AQMD. The partnerships established through the CAAP process, and the actions over the past seven years that have been taken by the regulatory agencies, in addition to the Ports, have been critical in the success that has been achieved. As CARB has stated[1], "[s]uccessful implementation of the CARB emission reduction plan will depend upon actions at all levels of government and partnership with the private sector. No single entity can solve this problem in isolation." Therefore, AQMD staff should not place themselves in a position to be the sole authority to approve or deny plans for emission reductions at the Ports. Any plans should be developed in partnership, with input by all agencies, and final approval on actions to be taken specifically by the Cities should be at the discretion of the Boards of Harbor Commissioners.

Slide 8 of the AQMD presentation at the August 14 Scoping Meeting identified that AQMD is seeking input on "[f]lexibility to garnish emission reductions/air quality benefits off port property". Under the Tidelands Trust, the Boards of Harbor Commissioners are limited in their ability to spend Tidelands funds outside of the Tidelands areas. The Cities cannot be mandated by an AQMD rule to mitigate emissions that are unrelated to port-operations outside of the Harbor Districts and the Tidelands areas.

AQMD has stated that the goal of the Proposed Rule is to ensure that the Cities meet their commitments outlined in the CAAP. The Cities have clearly demonstrated over the past seven years that they are committed to working with the industry and will do what they can to reduce, from port-related sources, the port sector's fair share of regional air emissions. If other non-port related sectors within the region do not achieve their share of emissions reductions, the Cities cannot be held responsible for making up for those shortfalls, regardless of whether or not those shortfalls are anticipated to result in a delay in regional attainment of the $PM_{2.5}$ Standard in 2014.

In addition, the Cities should not be held responsible for any potential emissions shortfalls from regulatory agencies not implementing emission reduction regulations as identified within the SIP, even if those regulations are related to equipment operating at the ports. If an agency makes a decision to delay a regulation schedule, or if a regulation is overturned due to a court decision that the requirements are not within their authority to implement, the Cities should not then be mandated to backfill the potential shortfall.

The last update to the CAAP took over two years to develop and cost over $1 million. The Cities should not be required by the Proposed Rule to prepare an Emission Reduction Plan when no need for such a plan has been identified (e.g. region is anticipated to reach attainment with the $PM_{2.5}$ Standard, emission reductions will be achieved by in-place regulations, no emission shortfall has been identified, etc.). Further, development of a plan should not be mandated if the

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[1] *Emission Reduction Plan for Ports and Goods Movement in California*, Executive Summary, ES-1, CARB, 2006.

reasons for any emissions shortfall are due to reasons outside of the Cities control or if no feasible strategies are available. Any plan that is required by AQMD should be streamlined and focused solely on actions that will be taken by the Ports and/or agencies to make up for any identified shortfall.

As identified in the 2012 Air Quality Management Plan, it was determined that the 2014 $PM_{2.5}$ Standard could be achieved by 2014 and no request for an extension would be needed[2]. Therefore, it is inappropriate for the AQMD to require an emission target year of 2019 in the Proposed Rule.

As stated above, these comments represent the Cities' initial concerns with the AQMD's proposed approach. Further comments will be provided as the process progresses and as more information is made available by AQMD.

We appreciate your consideration. Thank you.

Sincerely,

Heather Tomley
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

cc: Al Moro, Acting Executive Director Port of Long Beach
Geraldine Knatz, Executive Director Port of Los Angeles
Rick Cameron, Acting Managing Director of Environmental Affairs and Planning, POLB
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Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Cynthia Marvin, Division Chief, California Air Resources Board
Elizabeth Adams, Deputy Director, U.S. Environmental Protection Agency, Region 9

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[2] *2012 Air Quality Management Plan*, Executive Summary, ES-11, AQMD, 2013.

ATTACHMENT 7.

August 21, 2013

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Re: Notice of Preparation and Initial Study
Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports"

SCAQMD File No. 0722013BAR
SCH No. 2013071072

Comments on Notice of Preparation, Initial Study, and Scope of Proposed Environmental Assessment

Dear Ms. Radlein and Staff of the South Coast Air Quality Management District:

We appreciate this opportunity to submit comments on the Notice of Preparation ("NOP") and the accompanying Initial Study prepared in connection with the District's consideration of the proposed project entitled "Rule 4001: Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports" (the "Project") on behalf of the City of Long Beach acting by and through its Harbor Department (referred to herein as "COLB") and the City of Los Angeles acting by and through its Harbor Department ("COLA", collectively with COLB, the "Cities").

As environmental leaders nationwide, the Cities have achieved tremendous success in obtaining substantial emissions reductions from their joint San Pedro Bay Ports Clean Air Action Plan ("CAAP") and other air quality measures implemented under the Cities' initiatives. The Cities continue to be supportive of projects and programs that are intended to contribute to improvement of air quality and promote other environmental values. However, the Cities must fundamentally disagree with the District's current proposal to unnecessarily convert an effective voluntary plan, built on multi-agency and industry cooperation, into potentially punitive regulations imposed unlawfully on the Cities. The Cities have previously sought to make the District aware of the serious concerns and objections to this approach. The Cities incorporate by reference their previous comments on the 2012 Air Quality Management Plan ("AQMP")

The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

Measure IND-01 Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities ("Measure IND-01") as comments on the proposed Project. The Cities' comments on Measure IND-01 are Attachment "A" to this letter.

We are also mindful that the California Environmental Quality Act ("CEQA") calls for public review, critical evaluation, and comment on the scope of the environmental review to be conducted prior to approval of proposed projects. Such review and critique 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. Thorough identification of the proposed Project, and candid disclosure of all phases of the Project and their potential impacts, is essential to assure 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, mitigation measures, and alternatives. In addition, it will be important to consider the impacts of the proposed Project on the San Pedro Bay Ports' communities, missions, 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 NOP for this "Project" as well as questions, concerns and objections related to the omissions of critical information, unsupported assumptions, or analytical deficiencies in the Initial Study, and comments as to the scope of the proposed environmental assessment ("EA") as contemplated and invited by the District's NOP.

A. General Comments on the Initial Study

While we recognize the effort that has gone into preparation of the current Initial Study, it is apparent that the Initial Study does not provide the information, evidence, or analysis required under CEQA. The Initial Study thus fails to fulfill its critical role as mandated by CEQA in educating the public generally, other affected regulatory agencies and governments, such as the Cities, 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 initial study are described in the CEQA Guidelines (14 C.C.R. §15063, subd. (d)). An initial study must "contain in brief form:

(1) A description of the Project including the location of the Project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries . . . ;

(4) A discussion of ways to mitigate the significant effects identified, if any;

(5) An examination of whether the Project would be consistent with existing zoning, plans, and other applicable land use controls;

(6) The name of the person or persons who prepared or participated in the initial study."

An initial study that fails to provide all of the information, analysis, and evidence called for by CEQA may be deemed to be inadequate and not a valid basis for CEQA review or project approval. (See, e.g., *City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, at pp. 407–408, [invalidating the County's proposed general plan amendments because of a deficient initial study: "[T]he initial threshold study is inadequate because it fails to provide sufficient evidence or analysis of the potential environmental effects of the amendments."].)

It is therefore respectfully urged that the Initial Study (and the related NOP) be revised, corrected, and recirculated for public review and comment before the District proceeds with any further action or EA in connection with the proposed Project.

The CEQA Guidelines contemplate that an initial study is to be used in defining the scope of environmental review (Guidelines, Sections 15006(d), 15063(a), 15143). However, as a result of the omissions, open questions, and deficiencies in the Initial Study as noted below, it appears to have unduly narrowed the District's proposed scope of environmental assessment, and to have caused the NOP to erroneously exclude critical issues and topics from the proposed scope of the EA.

The comments on the current Initial Study included in this letter are organized in the same format used by the Initial Study, i.e., comments on "Chapter 1 – Project Description" followed by comments on "Chapter 2 – Environmental Checklist." The comments are limited to those matters that appear in the current version of the Initial Study, and we reserve the right to provide further comments in the event that additional or different information about the proposed Project becomes available, or the District provides a revised and CEQA-compliant Initial Study.

B. Request for Revision of NOP and Re-Circulation of Revised NOP/IS To Include a Legally-Adequate "Project" Description and Text of Proposed Rule 4001

It is essential that the NOP and the Initial Study be revised to include an adequate "project description" including the text of the proposed Rule that is the "project" before the public, or the Cities, can be expected to provide comments and input.

In their prior comment letter on the Draft 2012 AQMP Program EIR dated October 22, 2012, the Cities expressed the very same concern over the vague and deficient "project description" of backstop Measure IND-01. In the District's response to comment #5-4 in the

Final Program EIR, the District stated: "*The exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted*." The District also committed, in its response to the same comment #5-4 in the AQMP Final Program EIR, that "*further details regarding the future requirements* [a Rule implementing Control Measure IND-01] *will be determined more appropriately during the rule development process.*"

The District has already commenced the rule development process. However, it has not yet provided even a draft of the proposed Rule 4001. To the contrary, at a public meeting held on August 8, 2013, the District's staff announced that the Rule will be developed after various public meetings with a "Rule 4001 working group," with a goal of releasing a draft of the Rule on August 28, 2013. Such a deferred release date for the "draft" of the proposed Rule would be one week after the deadline for comments on this NOP. The details and text of the promised Rule must be developed and disclosed before the "particular methods" and "exact impacts" anticipated may be analyzed or the subject of comment. Accordingly, it is still not possible for the District to proceed with appropriate project-level CEQA review or to issue an accurate NOP/IS at this stage if the details of proposed Rule 4001 are under development.

It is necessary that the current NOP and Initial Study be revised to include a revised "Project" Description, to incorporate the text of the draft Rule 4001 in detail, and to recirculate the revised documents for public review. A new set of public meetings, including a new "scoping meeting" should be scheduled to provide the public with sufficient time and opportunity to comment on the scope and adequacy of the revised NOP/IS.

C. Comments on the Initial Study

1. Chapter 1 of the Initial Study -- Inadequate "Project" Description

(a) Deficient "Project" Description – In General

The failure of the Initial Study and NOP to provide an accurate, complete, and coherent description of the "Project" is a fundamental deficiency, which permeates the entire document. The absence of such a clear description of the proposed Project inherently prevents the Initial Study from facilitating meaningful review and analysis of the proposed Rule 4001, and violates the requirements of CEQA. (See, e.g., CEQA Guidelines, Section 15124; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376.)

The Initial Study does not include or even describe the text of the proposed Rule that is supposed to be the "Project." The section of the Initial Study that purports to "describe" the Project, "PR 4001," includes nothing more than summaries of "key concepts provided in the 2012 AQMP Control Measure IND- 01." Those summaries and "concepts" are insufficient to describe the Project itself, and prevent effective public review and comment. Moreover, since

the 2012 AQMP Control Measure IND- 01 has already been adopted, it is perplexing that the District would use that measure as a substitute for the Project description.

The Initial Study does not provide a description of how the proposed Rule would work. It fails to describe reasonably foreseeable activities or actions of other agencies in response to or associated with the proposed Rule. This Initial Study suggests, instead, that the intent of proposed Rule 4001 would be to delegate the District's responsibilities for regulating or reducing emissions of NOx, SOx, and PM2.5 air emissions to other agencies, specifically the public officials governing the ports of Long Beach and Los Angeles, 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 Rule 4001 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 evaluation project alternatives, etc.).

The importance of providing an accurate and informative project description in an Initial Study was re-emphasized in *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 267, emph. added:

> "**The initial study must include a description of the project.**" (*City of Redlands, supra,* 96 Cal.App.4th at pp. 405–406, fns. omitted.) "Where an agency fails to provide an accurate project description, or fails to gather information and undertake an adequate environmental analysis in its initial study, a negative declaration is inappropriate. [Citation.] An accurate and complete project description is necessary to fully evaluate the project's potential environmental effects. [Citations.]" (*El Dorado County, supra*, 122 Cal.App.4th at p. 1597.)
>
> "**The scope of the environmental review conducted for the initial study must include the entire project**." (*Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1222.) Thus, a correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA. (*Tuolumne County Citizens, supra*, at p. 1222.)

The Initial Study currently falls far short of these requirements in describing the proposed Project, and thus falls equally short of serving the "public awareness" purposes described above and mandated by CEQA:

> An accurate and complete project description is necessary for an intelligent evaluation of the potential 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, citing *Aberdeen & Rockfish RR. v. SCRAP* (1975) 422 U.S. 289, 322 [an accurate, complete and consistent project description is the sine qua non of informative, legally adequate CEQA review].) (*City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, 407–408.)

The Initial Study (p. 1-5) indicates that "the approaches and concepts considered in this NOP/IS may be subject to change" based on comments from the working group. In light of the District's initiative in forming a "working group" of interested participants to help formulate the proposed Rule, and thereby provide an actual "project description," it would be more appropriate to undertake CEQA analysis and compliance after the actual Rule is developed. Furthermore, it is premature for the District to assume or conclude that any changes received from the working group as well as comments received relative to this NOP/IS will all be within the scope of the analysis in the NOP/IS.

In brief, the NOP/IS erroneously limits the scope of the analysis and inherently calls for impermissible speculation or impossible prescience on the part of the Cities or other members of the concerned public to undertake effective analysis of the proposed Project, or to provide meaningful comments as to the scope of review of the Project, until and unless the District provides an adequate description of the "Project."

(b) Specific Comments and Questions re "Project Description" and Text

The following comments and questions refer to specific portions or pages of Chapter 1 of the Initial Study:

Pp. 1-1 - 1-2 – Introduction

The Introduction states, in the first sentence of the third paragraph on page 1-1, that Control Measure IND-01 "...does not call for additional emission reductions beyond those realized with existing regulations and emission reductions programs implemented at the Ports to date." This is an untrue statement. The CAAP is only a planning document which specifically provides for discretionary future decisions to be made regarding implementation by each of the Cities' respective Board of Harbor Commissioners, and resolution adopting the CAAP update states: "The CAAP is a living document intended to establish a process to develop solutions, not a static document binding the Ports to particular future actions….The CAAP is a planning document that identifies goals and potential implementation strategies to guide further actions, and as such does not constrain the discretion of either Board of Harbor Commissioners with

respect to any particular action."[1] Not all individual Board actions that may be required in order to achieve the CAAP's goals and activities have been adopted, many of which goals were stretch targets with uncertainty as to whether they could be achieved. Measure IND-01 and Rule 4001 propose to require the Cities to potentially adopt future actions that create potentially-conflicting authorities between the District, as regulator, and the Cities, as independent governmental agencies regulated by the District, so as to force the Cities to exercise their discretionary police power authority in a particular way. The Constitution does not permit such usurpation of the Cities' authority.

The Introduction states, in the last paragraph beginning on Page 1-1, that the emission targets for port-related sources are those assumed in the 2012 AQMP emissions inventory. The Cities raised questions during the Measure IND-01 adoption process regarding the District's calculation of these targets, which are different from the emissions targets set under the CAAP. Although the specific emission targets of the proposed Project do not appear at all in the NOP (which omission itself is a defect), the District has verbally advised the Cities and a working group on August 8, 2013, that the Rule will be such as to be triggered on set emission targets for 2014 and 2019. Those comments, however, left the Cities and working group participants with many questions about how the District set the emissions inventory, particularly for 2019, which was not in the CAAP. These examples are provided to illustrate that the NOP's description of the proposed Rule is not only flawed but missing altogether.

P. 1-3 - Project Location

The Initial Study provides no finite "project location." It describes the District's jurisdictional boundaries. It then states that "PR 4001 would apply to POLA and POLB, both of which are located within Los Angeles County." It is unclear if this was an attempt to state that the Project location would be Harbor Districts of the Cities. The lack of clarity regarding the Project location is further compounded by the Rule's reference to "sources not entering Port properties." During the August 14th Scoping Meeting, Mr. Hogo attempted to clarify this reference by referencing an undefined area outside of but near the two Harbor Districts. Unfortunately, Mr. Hogo's statement did not clarify the proposed Project's location.

Is it the intention that any portion of the Project may be implemented outside the geographic areas of the Harbor Districts of the Cities? It is unclear from this description whether the Project may have impacts or foreseeably result in actions being taken outside these Harbor Districts. This may have jurisdictional implications which cannot be evaluated without additional information.

[1] Los Angeles Resolution No. 10-7041 adopted by the Board of Harbor Commissioners of the City of Los Angeles and Long Beach Resolution No. HD 2600 adopted by the Board of Harbor Commissioners of the City of Long Beach on November 22, 2010.

Also, the Initial Study fails to disclose or analyze the possibility that if the option for the Cities to reduce emissions from sources not entering Port properties is included in proposed Rule 4001, even the vague "project location" and geographic scope of the proposed Rule in the Initial Study would not be accurate and would need to be modified in the NOP/IS.

P. 1-4 – Project Background

The Initial Study's description of the "Project Background" implies that the two Cities' ports themselves actually conduct cargo operations. For example, the text states that the COLA "serves approximately 80 shipping companies." This illustrates a fundamental lack of understanding by the District of how ports work. There are two types of business models of ports: some are "operating ports," that conduct cargo operations directly, such as the Port of Charleston, South Carolina and some are "landlord ports," such as the Ports of Los Angeles and Long Beach, that merely lease wharves and land to operators who conduct cargo operations.

The Ports of Los Angeles and Long Beach are not, "the single largest fixed source of air pollution in Southern California." The EA should clarify that the referenced sources of air emissions are the vehicles, engines, ships, trains, trucks and other cargo-moving equipment operated by distinct tenants, users, and visitors of the ports, not the Harbor Districts or the Cities.

P. 1-5 – Legal Authority for PR 4001

The Initial Study suggests that if the (unspecified) "backstop measure" that would be mandated under PR 4001 "becomes effective," then the new Rule would require the Cities to take (unspecified) action "to develop and implement plans to get back on track" regarding attainment of emissions targets. Under what legal authority does the District believe that its proposed Rule 4001 may purport to compel distinct governmental bodies (the Cities and the Boards of Harbor Commissioners) to legislate or to exercise their discretion in particular ways to achieve District objectives?

Measure IND-01 was prominently referred to as an "indirect source rule." The current general references to proposed Rule 4001 in the NOP/IS have lost all mention of an "indirect source rule." However, the references to proposed Rule 4001 do not cite to any authority the District is relying on for its processing of the proposed Rule. This should be corrected so that the public can comment on whatever legal authority may be invoked by the District.

Is it anticipated that the "plans" and strategies that would be required to be adopted by the legislative boards of the two Cities under the mandate of proposed Rule 4001 would be within SCAQMD's regulating authority and subject to the District's approval or disapproval? If so, why would SCAQMD not directly adopt such "backstop" strategies and plans itself? If not, is the Rule being proposed in order accomplish something indirectly that SCAQMD itself cannot do directly? (Cf., *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 [same].)

P. 1-5 – Call for Cities to Regulate Off-Site "Sources"

The Initial Study indicates that the District will be inviting and considering proposals, as part of this "Project," regarding potential measures for the Cities to adopt and implement to try to reduce emission from sources *not entering* onto port properties. What does this mean? What legal authority might the Cities have to try to regulate *off-site* sources that do not come within the jurisdiction of the respective Harbor Commissions? (Municipal police power authority may generally be exercised only within the territorial boundaries of their jurisdiction, and the Boards of Harbor Commissioners have special Tidelands limits on their authority.)

Would such (unidentified) measures be part of Rule 4001, or would proposed Rule 4001 require that the Cities formulate (unidentified) measures in the future to somehow regulate *off-site* "sources?"

Until such options are identified, shown to be legally authorized and technically feasible, how can the CEQA analysis for proposed Rule 4001 be undertaken?

P. 1-6 – First Bullet – Imposing "Requirements" on the Cities?

The Initial Study indicates that if proposed Rule 4001 becomes effective the Cities "would be required to submit an emissions reduction plan to address the emissions reduction shortfall."

As noted above, this raises questions as to the intent and legal authority behind the Rule. Has the District identified legal authority for a rule that would require other governmental agencies (the Boards of Harbor Commissioners for the respective Cities) to exercise their legislative discretion/authority in any particular manner? Does the District intend to reserve to itself some authority to approve or disapprove any such plans submitted by the Cities?

What is the consequence of disapproval by the District?

What environmental baseline and other parameters would be required by proposed Rule 4001 in order for the Cities to determine the extent of any "emissions shortfall" that may need to be addressed in the Cities' plans in the event they were to undertake to submit plans under the Rule?

P. 1-6 – Second Bullet -- Funding

This bullet point implies that "funding" would be necessary for many of the potential future emission reduction measures that may be compelled under proposed Rule 4001. Would such funding be provided by the District? What other "funding" sources are contemplated? Will

there be constitutional or common law "gift of public funds" restrictions on funding imposed on the Cities for activities under their CAAP if Rule 4001 makes CAAP compliance a potential state or even federal regulation?

Are the Cities expected to fund these programs from Tidelands Funds? By what authority may the Harbor Commissioners impose taxes, assessments, and charges on users of the Harbor Districts, given the restrictions of various state laws, including, among others, Proposition 26?

The vague disclaimer in the Initial Study to the effect that proposed Rule 4001 would not require any measure that lacks legal authority or feasibility raises more questions than it answers. Whatever types of "emissions reduction plans" may be anticipated by proposed Rule 4001 should identified by the District in the NOP/IS so that the feasibility and legality of such approaches can be evaluated as part of the environmental assessment for the Project.

Pp. 1-6 – 1-7 -- Technology Overview/Implementation Strategies

This refers to some emission reduction strategies included in the CAAP, but the Initial Study does not explain how these may relate to proposed Rule 4001, or whether they should be considered as part of the Project.

The suggestion in the Initial Study of possible "tariff change" or "impact fees" on the activities of users of the Harbor Districts raises other questions (e.g., legal authority, funding for studies and public review processes required before such measures could be considered or adopted, indemnification for costs of defense, etc.) requiring identification and study. Moreover, such measures may themselves be considered as "projects" subject to CEQA review and may have impacts on the activities of Harbor District users that themselves would require analysis or mitigation.

The Initial Study also includes reference to "Port funded incentives" as possible measures to reduce emissions, but also observes that there is not adequate funding for such strategies in the Cities' budgets or other grant program. The source of funding any "Port-funded" measures contemplated by proposed Rule 4001 should be clearly identified and evaluated.

Any such contemplated implementation strategies should be included in the "Project description" and better identified in a more complete NOP/IS, so that they may be evaluated along with the rest of the Project.

Pp. 1-10 – 1-11 -- Imposition of "Requirements" on the Cities

The NOP/IS states that none of the CAAP strategies would be "prescribed in PR 4001." Instead, the NOP states that if proposed Rule 4001 becomes effective, the Cities (presumably the Boards of Harbor Commissioners) -- "individually or jointly" -- would be required to identify sources that could undergo potential emission reduction to "make up for the shortfall."

Why would/should the obligation to make up for a possible shortfall in meeting emission reduction targets (which are primarily the responsibility of the District to attain) be shifted so as to fall upon two independent governmental entities? The Cities are governmental entities, and are not directly producing emissions or otherwise directly responsible for the targeted emissions or for the attainment of the emissions reduction targets. Moreover, if there were to be a "shortfall" in attaining the targets, it could well be due to factors not caused or controlled by the Cities, and not due to any actions or derelictions on the part of the Cities or their tenants or users.

Other issues: How would a "shortfall" be measured or determined? Would any such "shortfall" be allocated to sources or causes bearing some actual responsibility for the lack of attainment? How would it be "allocated" between the Cities? Would uncontrollable/unforeseeable factors resulting in all or part of a shortfall be excluded from whatever obligation may be imposed on the Cities?

Would proposed Rule 4001 take into account the statutory limits on the jurisdiction and authority of the Cities (i.e, the Boards of Harbor Commissioners) to impose restrictions on most mobile sources of emissions?

Footnote 6 (on page 1-11)

The NOP/IS mentions a possible "option" that would "allow" the Cities to reduce emissions from "non-port-related sources." This vague reference requires clarification before it may be evaluated in connection with the Project. Direct and indirect effects would need to be considered that may occur beyond the geographic boundaries of the Harbor Districts. Therefore, it is premature for the District to conclude that any changes based on the working group or public scoping comments will be within the scope of the analysis in the NOP/IS.

P. 1-11 -- Technologies

The EA should be expanded to address the legal, technological and economic feasibility of the seven bulleted items listed in this section.

P. 1-12 -- Alternatives

No alternatives have been identified for study in the NOP/IS. Instead, it merely commits the District to "discuss and compare alternatives" in the future, as part of the Draft EA.

It also suggests the District is looking to the public or other agencies to identify "alternatives" during the scoping process. As previously explained however, how can alternatives realistically be suggested when the Project itself has not been identified or described?

The No Project Alternative is not defined in the NOP/IS. In accordance with CEQA Guidelines Section 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. Therefore, the Draft EA should consider the impacts that would occur under the existing 2012 AQMP without Control Measure IND-01 or proposed Rule 4001. In particular, an analysis should be conducted of the grant funding that would be available under the No Project Alternative that would not be available if the proposed Project constitutes regulation, and the environmental impact if grant funding necessary to make certain actions economically feasible is no longer available under the proposed Project. If the District's position is that there is no loss of grant funding in order to comply with Rule 4001 as a regulation that the District purports to make enforceable under the State Implementation Plan and the Clean Air Act, the District must explain in the Rule its basis for this conclusion in the context of why grants made for compliance with a regulation is not a gift of public funds.

In light of the technical complexities of the issues and the ambiguities as to what the District is actually seeking to accomplish by way of proposed Rule 4001, it seems unreasonable to expect others to develop the project alternatives. One suggested alternative would be for the District to formulate its own "backstop" measures and strategies for addressing any shortfall in emission reduction targets, relying on the District legal authority, expertise and resources, rather than pursuing proposed Rule 4001, which appears to be an attempt to rely upon presumed authority of the Cities. Another suggested alternative would be, the memorandum of understanding approach that was suggested by the Cities and proposed by staff as an alternative to Measure IND-01.

(c) Other Comments on Chapter 1 - "Project Description"

Incomplete Description of Environmental Setting

The Initial Study also fails to provide an adequate description of "the environmental setting" of the proposed Project.

While the CEQA Guidelines do not specially define "environmental setting" with regard to an initial study, they do explain, in regard to EIR preparation, that the "environmental setting" must be informative: "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." (Guidelines, § 15125, subd. (a).) A description of the environmental setting must be sufficient to allow "an understanding of the significant effects of the proposed projects and its alternatives" but "no longer." (Guidelines, § 15125, subd. (a).) That description should place "[s]pecial emphasis" "on environmental resources that are rare or unique to that region and would be affected by the project" and "must permit the significant effects of the project to be considered in the full environmental context." (Guidelines, § 15125, subd. (c).)

Failure to Examine All Phases of the Entire Project as Proposed

"The Initial Study must include a description of the project, and 'the scope of the environmental review conducted for the initial study must include the *entire* project." (*Nelson v. County of Kern, supra*, 190 Cal.App.4th at 270, emph. in original.)

The Initial Study here improperly fails to describe "the entire Project" and fails to consider all phases of the proposed Project. The CEQA Guidelines (14 C.C.R §15063(a)(1)) make clear that an initial study must take a comprehensive view of the proposed project *as a whole*. "All phases of project planning, implementation, and operation must be considered in the initial study of the project."

The NOP/IS indicates that proposed Rule 4001 is intended to require actions by the Cities, to adopt and implement plans and strategies to address any "shortfall" in emissions reductions. The Initial Study improperly fails to address or to provide information and analysis relating to the environmental impacts of the anticipated "subsequent approvals," "discretionary permits" and amendments to the Cities' plans and regulations that appear to be proposed as parts of the Project, or the physical environmental effects of social or economic impacts that may result from those anticipated and apparently necessary changes in land use regulations." (Guidelines § 15063.) Such anticipated and intended actions by other governmental agencies thus appear to be part of this Project, and must be identified and evaluated in the Project EA, along with their potential impacts. As such, we reiterate our prior comment on the Draft 2012 AQMP Program EIR dated October 22, 2012 where it is stated that the District has failed to fully disclose the details of Measure IND-01 and as a result is segmenting or piecemealing its CEQA analysis.

Failure to Describe Existing Land Use Regulations

The Initial Study does not include an examination of whether the Project would be consistent with existing zoning, plans and other applicable land use controls, as required by CEQA Guideline Section 15063. Although the Initial Study includes some background discussion of the CAAP, it provides little or no description of the existing planning and zoning designations applicable to the "Project" location, and relies on (unsupported) assertions that the Project would be in furtherance of the CAAP. It provides no information or analysis of other existing plans or policies applicable in the Harbor Districts, which may be affected or impacted by the Project.

Uncertain and Inadequate Identification of "Baseline" Used for Review

It is critical under CEQA that any level of environmental review make it clear as to the "baseline" being used as the basis for analysis of the significance of potential Project impacts. (CEQA Guidelines Section 15125(a).) Normally, the "baseline" will be the existing environmental conditions in the vicinity of the Project. (Guideline Section 15125(a); see also,

Communities for a Better Environment v. South Coast Air Quality Management District (2010) 48 Cal.4th 310, 315 [the baseline for an agency's primary environmental analysis under CEQA must ordinarily be the *actually* existing physical conditions rather than *hypothetical* conditions that could have existed under applicable permits or regulations].) The Supreme Court has explained that the requirement for identification and use of the appropriate "baseline" applies in the context of an Initial Study as well as in an EIR. (*Communities for a Better Environment, supra*, 48 Cal.4th at 512, and n. 5.)

The Initial Study here, however, fails to make it clear as to what "baseline" is being used. In many places the Initial Study compares the anticipated "impacts" of adopting proposed Rule 4001 to the permitted emissions levels anticipated (in the future) under the 2012 AQMP, or alternatively to the (future) emission reduction targets of the CAAP -- rather than to the existing environmental conditions. While the recent Supreme Court decision in *Neighbors for Smart Rail v. Exposition Metroline Constr. Authority* (8/5/2013, No. S202828) ___ Cal.4th ___, indicates that the baseline need not always be the existing physical conditions, and that "projected future conditions" may be used in rare situations as a baseline "if their use in place of measure existing conditions ... is justified by unusual aspects of the project or the surrounding conditions" (Slip Opinion, p. 11), it does not detract from the rule that the Initial Study must accurately and consistently describe the baseline being used. Nor does it permit the use of "future conditions" in the absence of a showing of unusual circumstances. The Initial Study in this case does neither.

For each of these fundamental reasons, the NOP/IS should be rescinded in order that it may be revised, completed and corrected to meet CEQA requirements.

2. Chapter 2 of the Initial Study – The "Environmental Checklist"

(a) General Comments and Questions on the Environmental Checklist

The NOP/IS apparently relied on a standard CEQA environmental checklist to identify those "impact areas" it recognizes to be potentially affected by the Project. In several respects, however, the Initial Study appears to merely assume 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, supra*, 96 Cal.App.4th at 408-09; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296). Furthermore, it is contrary to the District's response to comment #5-4 in the Final Program EIR, which indicates that "[t]he exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted."

The NOP/IS currently indicates that the scope of the proposed EA for this "Project" will be limited to the six topics listed at p. 2-2. Compliance with CEQA, however, would require not only a new and corrected Initial Study, providing an adequate "Project description" but also a more comprehensive EA that addressed additional areas of potentially significant impact, including (without limitation): (1) Aesthetics, (2) Biological Resources, (3) Cultural Resources, (4) Land Use and Planning, (5) Noise, (6) Public Services, and (7) *broadened evaluation* of potential impacts and issues in the areas of Energy, Hazards and Hazardous Materials, Air Quality, and Transportation and Traffic.

Unless and until those areas are more fully addressed, the NOP/IS appears to improperly limit the scope of the proposed EA, and to erroneously exclude areas requiring further assessment.

(b) Specific Comments and Questions on the Environmental Checklist

As detailed below, there are numerous areas of potential environmental impact in the checklist as to which the Initial Study either omits required evidence to support its conclusions of "no potential impact" or treats with insufficient detail.

More specific questions and comments follow:

P. 2-4 -- Preliminary Discussion of Checklist

First Paragraph: We reiterate the same comment as noted on page 1-4 regarding Cities being the source of emissions. The geographic location itself does not produce emissions. It is the users of the area that produce impacts. The users of the two ports are the owners and operators of the ships, trains, trucks and equipment which the District targets as the sources of emissions.

First Paragraph, Last Sentence: The Initial Study states that "some emission reductions [assumed by the District's 2012 AQMP] may be contingent upon the Ports taking and maintaining *actions which are not required by air quality regulations*." This suggests that one of the purposes for District proposal of proposed Rule 4001 may be to establish a new regulatory "authority" over the Cities (and the communities served by and dependent upon the Harbor Departments of the Cities) that is not in fact already provided by existing federal, state, or regional air quality regulations. The policy implications of such a Project may well include significant impacts on the environment, if regulatory authority over activities, facilities, and uses of the Harbor Districts is shifted or arrogated to the District. (See, e.g., *City of Redlands, supra,* 96 Cal. App. 4th 398 [proposed new County policy re exercise of County authority over annexations and sphere of influence was not supported by adequate CEQA review].)

Second Paragraph, Last Sentence: Same comment as page 1-5.

Third Paragraph. The NOP/IS states that the checklist responses focus on "the above mentioned actions." This is extremely vague. Is the reference intended to be the items referenced in the paragraph immediately above, or in the earlier pages?

Identification of precisely what measures are being assumed or proposed in proposed Rule 4001 is essential to being able to review the Initial Study.

Aesthetics -- P. 2-5

Discussion of I a), b) and c). The Initial Study suggests that "because PR 4001 would implement IND-01" the District may simply assume that this Project would not be expected to generate significant adverse aesthetics impacts. However, given that the measures that would be used to implement IND-01 are not identified, the Initial Study does not provide evidence to demonstrate that proposed Rule 4001 has no potential for impact. To the contrary, the Initial Study admits that "PR 4001 will primarily affect operations at two ports" and but then simply assumes from the industrial and commercial zoning of the Harbor Districts that there could not be a potential for impacts on "scenic vistas" nor any potential degradation of the visual character of the areas around the Harbor Districts.

The Initial Study fails to describe the environmental setting and include any evidence or analysis to support its assumption that whatever is done to implement proposed Rule 4001 would "likely easily blend in" with the surrounding activities, especially since what would be done to implement the Rule is not yet known. Specifically, the Initial Study 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. 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 Harbor Districts and if modified, through obstruction, alteration, or demolition could have a negative aesthetic impact. Without a clearly defined project, project location, or description of the environmental setting, it is not possible to conclude that any port modifications will have little or no noticeable effect on adjacent areas and would blend in with the visual setting.

The Initial Study indicates that "Control devices may include hoods or bonnets on ship exhaust stacks to capture emissions and are expected to be as high as 80 feet (POLB, 2006)" and concludes that "these control devices would be similar to other structures used within the heavily industrialized portions of the Ports…" First, the "POLB" citation is missing in the list of references. Second, it is speculative and erroneous to assume that control devices as high as 80 feet would have "no visual impact" without knowing the location, dimensions, color scheme or critical viewpoints. No such analysis has been considered here and the impact is dismissed with no evidence to support the conclusion.

The last sentence of the first paragraph (on p. 2-6; I. d) suggests there are no residential areas "next to" the Harbor Districts, and thus the Initial Study may dispense with analysis of light and glare impacts. It is evident however that was an inaccurate assumption given the residential communities of San Pedro, Wilmington and Long Beach located adjacent to the Harbor Districts. This is also contradictory to the description of surrounding land uses and setting on page 2-1 which indicates "potentially residential."

The Initial Study further errs by dispensing with environmental analysis or evidence, simply because of the (assumed) beneficial air quality goals of proposed Rule 4001. The law is clear that environmentally "benign" objectives for a project do not excuse non-compliance with CEQA and do not justify reliance on assumptions in lieu of evidence to demonstrate the absence of potential impacts. *See, e.g., California Farm Bureau v. California Wildlife Conservation Board* (2006) 143 Cal.App.4th 173, 196, emph. added [State environmental agency violated CEQA by exempting environmentally beneficial habitat project from review]:

> "[I]t cannot be assumed that activities intended to protect or preserve the environment are immune from environmental review. [Citations.]" (*Davidon Homes, supra*, 54 Cal.App.4th 106, at p. 119; see, e.g., *Dunn-Edwards Corp. v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644 (disapproved on other grounds in *Western States Petroleum Assn. v. Superior Court, supra*, 9 Cal.4th 559, 570.) **There may be environmental costs to an environmentally beneficial project, which must be considered and assessed**.

This topic should not be dismissed. Given the nature of proposed Rule 4001, it cannot be determined that its implementation would have no impact on aesthetics. The EA therefore should include "Aesthetics" as a potentially impacted area of study.

Air Quality -- P. 2-11, Discussion

In the first paragraph (p. 2-11), last sentence, the stated assumption is speculative given there is no information about what physical changes to the environment proposed Rule 4001 will entail. There is no evidence to support the assumption in the Initial Study that proposed Rule 4001 would be identical to Measure IND -01 or have identical (previously-studied) impacts on air quality.

P. 2-11, III.a

The first paragraph, last sentence, again raises the question of why it should become the obligation of the Cities to take actions on their own to fulfill the obligations of the District for reaching emissions reductions targets? What is the legal authority for this shifting (or delegation) of the District's air quality responsibility?

In the second paragraph, the Initial Study relies on an assumption that "the Port" would be installing control equipment. Again, this erroneously confuses the Harbor Departments of the Cities with the operators of vessels, vehicles, and equipment. The Harbor Boards serve as trustees of tideland assets.

The conclusion in this section assumes that the undefined strategies and approaches suggested in conceptual description of proposed Rule 4001 will be successful. That is dependent on the feasibility of the approaches, which must be identified and assessed. Therefore, this topic should be analyzed in the EA.

P. 2-12, III.b, c, and g

Given the total lack of information regarding what proposed Rule 4001 would entail and whether it's implementation is feasible, it is premature to assess impacts in this category. These details must be provided and these topics should also be identified and assessed in the EA.

P. 2-13, III.e

There is no factual basis in the Initial Study upon which to conclude that implementation of proposed Rule 4001 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 Initial Study analysis only applies to construction odors and ignores any potential odors that may occur during long-term operations.

The NOP should be amended to make clear that at least these additional areas of potential impacts on air quality should also be identified and assessed in the EA.

Biological Resources – P. 2-14

The Initial Study fails to adequately describe, and improperly minimizes, possible impacts to biological resources, including least terns and migratory birds.

The scope of the proposed EA should be expanded to include environmental analysis of the Project's potential impacts on biological resources.

Cultural Resources – P. 2-16

The Initial Study fails to adequately describe, and improperly minimizes, possible impacts to cultural resources. Not all areas within the Harbor Districts are devoid of cultural resources or have cultural resources that have been previously disturbed, as concluded in the Initial Study on page 2-18 in section V(b), (c), and (d). There are known recorded historic and prehistoric sites throughout the Harbor Districts. For example, see COLA's website at http://www.portoflosangeles.org/idx_history.asp. Without knowing the location and extent of ground disturbance from possible construction activities associated with proposed Rule 4001, it

is speculative to assume that no significant adverse cultural resources impacts are expected from implementing proposed Rule 4001. The conclusion in the Initial Study is unsupported and lacks evidence or facts to support the findings.

The scope of the proposed EA should be expanded to include environmental analysis of the Project's potential impacts on cultural resources.

Energy – P. 2-18

The Initial Study section VI(c) must be expanded to also consider and analyze 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 required in the event of a major disaster. Also, some types of emissions control measures, facilities, or technologies contemplated by the Project could increase or shift demand for different types of energy or fuel usage. Although "risk of upset" is not considered in the Initial Study checklist, it should be cross referenced here and addressed in the Hazards section of the Initial Study.

The scope of the proposed EA should be expanded to include this additional analysis.

Hazards and Hazardous Materials – P. 2-24

The Initial Study section VIII(f) must be expanded to also consider and analyze the increased reliance on alternative fuels or electrical powered technologies that would require sufficient supply and emergency storage in the event of a major disaster. Although interference with emergency response plans was marginally addressed in this section, "risk of upset" is not considered in the Initial Study checklist.

The scope of the proposed EA should be expanded to include this additional analysis.

Land Use and Planning – P. 2-34

The Initial Study fails to adequately describe, and improperly minimizes, possible inconsistencies between the proposed Project and the existing and applicable land use plans and policies.

The Initial Study erroneously claims that "there are no provisions in PR 4001 that would affect land use plans, policies, or regulations." (P. 2-34.) The Initial Study does not support that conclusion with any substantial evidence.

First, the NOP/IS fails to identify any of "the provisions of PR 4001" so the statement cannot be supported or evaluated.

Second, and more importantly, however, the Initial Study repeatedly references "implementation strategies," "plans" and other new measures that it anticipates the Cities will be required to enact if proposed Rule 4001 becomes effective. Presumably this is because of inconsistencies between the existing plans and policies and the requirements of the new Rule. (See, e.g., pages 1-6 through 1-11.) The measures contemplated in the Initial Study include the adoption of new "regulatory requirements," new "impact fees" on the movement of cargo or sources, and changing the tariffs for use of the Harbor Districts – all of which would cause at least potential "conflicts" with applicable plans and policies. (Cf., *Orinda Ass'n v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1169 [the CEQA requirements for initial study examination of non-conformity with existing land use plans are intended to allow lead agency to modify the Project to avoid inconsistencies with existing plans – not vice versa].)

Third, the Initial Study itself acknowledges that the Project is anticipated to cause "potentially significant impacts" or conflicts with "an applicable plan ... for the performance of the circulation system" and conflicts with "an applicable congestion management plan." (Initial Study, p. 2-44.) Although the Initial Study proposes to address those admitted conflicts in the "transportation" section of the EA, these acknowledged conflicts confirm the necessity for including "land use and planning" impacts in the proposed EA as well.

Fourth, the proposed Project would seemingly create conflicts with the Cities' 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 are detailed in the previous port letters included in Attachment A to this letter. In addition, the proposed Project would create inconsistencies with the Clean Air Action Plan.

Fifth, the proposed Rule is apparently structured in a way that would impermissibly usurp the (non-delegable) police power authority of the Cities and their respective Boards of Harbor Commissioners to plan, implement, and regulate land use policies and actions in their respective jurisdictions. (This comment has also been raised above, in Project Description comments.)

The numerous inconsistencies between the Project as proposed and the existing plans and policies require identification in the Initial Study and inclusion in the proposed EA. (Guidelines § 15125(d).)

The scope of the proposed EA should be expanded to include environmental analysis of the Project's potential impacts on land use and planning.

The EA should also include analysis of the impacts of the proposed/anticipated Project-related subsequent amendments to the Cities' plans, policies, and other land use regulations. (See, e.g., *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1197 [CEQA review failed to consider incidental results from adoption of revised policy; incidental impacts could not be disregarded in an initial study based upon "net" environmental impact of the change in policy being benign since CEQA requires each environmental impact of

project be discretely evaluated].) "Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project." (Guidelines, § 15064, subd. (e); see §§ 21080, subd. (e)(2), 21082.2, subd. (c).)

The scope of the EIR should be expanded to include analysis of possible physical changes in port facilities and operations that might be caused by economic or social effects of the Project itself or by the anticipated amendments to land use and zoning policies by the Cities subsequent implementation of the Project.

Noise – P. 2-36

The NOP/IS acknowledges that approval of the Project and "triggering" of the PR 4001 could result in the construction or installation of new control equipment. The Initial Study improperly dismisses the potential noise impacts from such work as "not expected to be in excess of current operations." There is no substantial evidence in the Initial Study to justify such assumptions.

Similarly, there is no evidence cited in the Initial Study to support its further assumption that additional permanent noise impacts anticipated from the operations of new control equipment would not "substantially increase ambient operational noise levels in the area."

This section of the Initial Study is littered with mere "expectations" unsupported by any evidence regarding the magnitude of new noise impacts, even though such new impacts are anticipated by the Initial Study. Nor is there any analysis of the potential for significant adverse impacts from new noise generators related to the Project.

The NOP/IS must be revised, and the scope of the proposed EA expanded to include a detailed analysis, supported by evidence, regarding these anticipated new noise impacts, alternatives, and possible mitigation measures.

Public Services – P. 2-39

The Initial Study assumes that the Project would not generate any increased need for public services. However, the Initial Study does not provide any substantial evidence to support its assumptions regarding the "absence of impact" on additional public services or facilities.

The Initial Study should be expanded to address potential impacts that may arise from the increased "diversion" of existing "dirty" vehicles and vessels into solid waste sites if proposed Rule 4001 is triggered.

Transportation and Traffic – P. 2-44

The Initial Study fails to adequately describe and analyze potential impacts to rail and marine vessel traffic and ignores the significance criteria identified as "[w]ater borne, rail car or air traffic is substantially altered" on page 2-45. The Initial Study erroneously considers only vehicular traffic impacts to local roadways.

The NOP/IS must be revised, and the scope of the proposed EA expanded to include a detailed analysis, supported by evidence, regarding potential impacts to rail and marine vessel traffic.

Socioeconomics Analysis

The EA needs to include a broad-based analysis of the socioeconomic effects of the proposed Rule 4001, including the potential for job loss, business closures, and diversion of cargo to other ports due to the potential loss of regional competitiveness. The socioeconomic analysis needs to consider both the existence of the rule, even if not triggered, and the future enforcement of the rule. Because these conditions have the potential to physically change the environment in and around the ports, these impacts should be identified and assessed in the EA. (See CEQA Guidelines §§ 15064(e) and 15131; *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3rd 433, 445 [EIR must consider possibility of economic blight from rezoning].) Moreover, this assessment should not be limited to businesses and operations within the ports, but should extend to those facilities, businesses and operations that while located outside of the Harbor Districts are dependent upon the flow of cargo for their continued operations.

Too-Narrowly "Focused" Environmental Review

We note in closing that the Initial Study appears to reflect a preliminary decision to conduct less-than-full disclosure or environmental review of the proposed Project. Although the Initial Study concludes that "the proposed Project may have a significant effect on the environment and an Environmental Assessment will be required," it nevertheless appears that environmental review in the admittedly-required EA is proposed to be curtailed and "focused" on just the six topics listed in the current the NOP. One obvious indication of this is the miniscule list of references that were relied upon to support the Initial Study analysis; the list is limited to three sources.

It is respectfully submitted that such an approach would be too narrow and not in conformance with the requirements of CEQA, or with the District's own policies and rules for environmental analysis. While the CEQA Guidelines call for emphasis and "focus" on the significant environmental impacts of the Project, the authority to use such focus is misapplied in the Initial Study. For example, CEQA Guideline § 15143 explains that such focus may be used to limit the analysis in an EIR [or, in this case, EA] 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 NOP/IS here, by contrast, appears to exclude from consideration in the EA numerous effects that it has not shown to be "clearly insignificant and unlikely to occur."

D. Conclusion

The current version of the NOP/IS fails to adequately describe the "Project" thereby thwarting effective public review and comment on proposed Rule 4001. The Initial Study must therefore be revised, corrected, and re-circulated with all of the descriptions and other content required by CEQA.

Even this inadequate NOP/IS makes it clear that **the scope of the proposed EA has been unduly narrowed**, and that environmental review will be limited in a way that erroneously fails to provide the relevant decision-makers, affected public agencies, residents and the public generally with sufficient evidence and analysis of all anticipated and potential impacts from the Project as a whole, or of all potentially feasible mitigation measures or appropriate Project alternatives as required by CEQA.

While it is clear that an EA is called for in connection with this proposed Project, it is equally clear that the EA should be more complete than what is envisioned by the current NOP/IS. More fundamentally, its scope must be determined by a legally-adequate revised NOP/IS. The EA for the Project must, of course, be supported by credible and substantial evidence, including independent professional analysis.

We respectfully request that these comments and questions be considered before the District embarks on preparation of the EA and all of the other required independent studies in connection with the CEQA review of the proposed Project. We therefore look forward to working with the District, and any study teams or working groups tasked with evaluation of the proposed Rule 4001.

The NOP requests that we provide you with a contact person for each responding agency. For the COLB, the contact persons are as follows:

Heather Tomley
Acting Director of Environmental Planning
Port of Long Beach
925 Harbor Plaza
Long Beach, CA 90802
(562) 283-7100
e-mail: heather.tomley@polb.com

With copies to:

Dominic Holzhaus, Principal Deputy City Attorney
Long Beach City Hall
333 West Ocean Boulevard
Long Beach, California 90802
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For COLA, the contact persons are as follows:

Christopher Cannon
Director of Environmental Management
Port of Los Angeles
425 South Palos Verdes Street
San Pedro, CA 90731
(310) 732-3763
e-mail: ccannon@portla.org

With a copy to:

Joy Crose, Assistant General Counsel
City of Los Angeles, Harbor Division
425 South Palos Verdes Street
San Pedro, CA 90731
(310) 732-3750
e-mail: jcrose@portla.org

We appreciate your consideration. Thank you.

Sincerely,

Heather Tomley
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachment A:

Letters dated July 10, 2012; July 27, 2012; August 30, 2012 (which includes letter dated May 4, 2010); October 22, 2012; October 31, 2012; November 8, 2012; November 19, 2012; and November 27, 2012 from Port of Los Angeles and Port of Long Beach to SCAQMD

cc: Al Moro, Acting Executive Director Port of Long Beach
Geraldine Knatz, Executive Director Port of Los Angeles
Dominic Holzhaus, Principal Deputy City Attorney City of Long Beach
Joy Crose, Assistant General Counsel City of Los Angeles, Harbor Division
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Randall Pasek, Planning and Rules Manager, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Cynthia Marvin, Division Chief, California Air Resources Board
Elizabeth Adams, Deputy Director, U.S. Environmental Protection Agency, Region 9

ATTACHMENT 8.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

November 27, 2012

Ms. Susan Nakamura
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Ports' Comments on South Coast Air Quality Management District (AQMD) Revisions to Measure IND-01 in Draft 2012 Air Quality Management Plan

Dear Ms. Nakamura:

Thank you for the AQMD's proposed revisions to Measure IND-01, "Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities" (IND-01) in the Draft 2012 Air Quality Management Plan (AQMP). We appreciate that efforts were made by AQMD staff to address the concerns that the ports of Long Beach and Los Angeles (Ports) have raised in our various comments letters on the AQMP and in our meeting on November 15, 2012 among the Ports' staff, AQMD staff and AQMD Boardmember Judy Mitchell.

However, the ports are disappointed that the fundamental structure of Measure IND-01, to treat the ports as "stationary sources" and "indirect sources," and convert the ports' voluntary Clean Air Action Plan into enforceable regulation by AQMD, was not altered in any respect. The ports do not own or operate any of the targeted equipment, and the ports are not regulatory agencies. The ports can't accept any regulatory action by the AQMD that will result in AQMD oversight and approvals of port actions, or enforcement actions by AQMD on the ports for failure of the port industry to meet the ports' emission reduction goals. Therefore the Ports continue to object to Measure IND-01's inclusion and request that it be removed from the AQMP. Measure IND-01 contains the fatal flaw of defining the ports as stationary and indirect sources responsible for the emissions from equipment they do not regulate, own, or control. We also believe that this measure is beyond AQMD's authority.

We reiterate our prior requests that AQMD reconsider its approach and allow the continuation of the successful collaborative work by the ports, regulatory agencies and other stakeholders under the voluntary Clean Air Action Plan and San Pedro Bay Standards. Moving forward with Measure IND-01 in this current draft form will actually reduce rather than improve the future success of programs, since conversion of voluntary plans into regulation will reduce voluntary

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

cooperation by the industry with port programs, and will eliminate the ability of the ports, agencies and industry emissions sources to obtain grants to accelerate emission reductions from port industry equipment.

Thank you for your continued attention to this matter and we hope that we can continue with the successful, cooperative partnership that we have built over the past seven years.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

HAT:s

cc: AQMD Boardmember Judy Mitchell
Barry Wallerstein, South Coast Air Quality Management District
Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Chris Lytle, Port of Long Beach
Robert Kanter, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Geraldine Knatz, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 9.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

November 19, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Ports' Proposed Revision and Resolution Language for the Draft 2012 Air Quality Management Plan

Dear Dr. Wallerstein:

On November 15, 2012, staff from the ports of Long Beach and Los Angeles met with AQMD Boardmember Judy Mitchell and AQMD staff to discuss concerns and comments that have been raised by the ports in previous comment letters on the Draft 2012 Air Quality Management Plan (AQMP). At the conclusion of the meeting, it was determined that staff would continue to work together to attempt to resolve the concerns that have been raised.

In that spirit, the ports of Long Beach and Los Angeles propose the following revisions to the 2012 AQMP, consistent with our past comment letters to AQMD:

1. Measure IND-01 must be removed from the 2012 Air Quality Management Plan if it continues to apply or recommend any form of AQMD oversight and approvals of the ports' actions, or enforcement (in terms of fines, penalties, administrative actions) against the Ports for failures of the Port industry to achieve designated emissions reductions. This includes the intent to develop such enforcement actions in later IND-01 rulemaking after adoption of the AQMP, even if such details regarding enforcement activity are absent from the draft AQMP.

2. With the removal of the Measure IND-01, the following language could be added to the adopting resolution for the 2012 Air Quality Management Plan:

   BE IT FURTHER RESOLVED, the District commits to continue working with the Port of Long Beach and the Port of Los Angeles on the implementation of the San Pedro Bay Ports Clean Air Action Plan (CAAP) in order to meet the emission reduction goals identified in the San Pedro Bay Standards, and as a part of the annual report to the Board, District staff will continue to provide information on the progress of the ports in implementing the CAAP.

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BE IT FURTHER RESOLVED, if the ports do not demonstrate sufficient progress for achieving the San Pedro Bay Standards, the District will work with the ports, the other air quality regulatory agencies, and port industry emission sources that are stakeholders under the CAAP, to identify additional feasible strategies for implementation within the ports' jurisdiction.

We look forward to discussing these recommendations with you.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

HAT:s

cc: AQMD Boardmember Judy Mitchell
Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Susan Nakamura, South Coast Air Quality Management District
Robert Kanter, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 10.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

November 8, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Dear Dr. Wallerstein:

SUBJECT: COMMENTS ON THE DRAFT SOCIOECONOMIC REPORT FOR THE DRAFT 2012 AIR QUALITY MANAGEMENT PLAN

The ports of Los Angeles and Long Beach (Ports) appreciate the opportunity to comment on the South Coast Air Quality Management District's (AQMD) Draft Socioeconomic Report for the Draft 2012 Air Quality Management Plan (AQMP).

The Draft Socioeconomic Report states that "District staff performs a socioeconomic analysis of the Draft Plan in order to further inform public discussions and the decision making process of the Draft Plan." However, the Draft Socioeconomic Report shows that no cost data have been developed for Measure IND-01 – Backstop Measures for Indirect Sources of Emissions from the Ports and Port-Related Sources, despite the fact that there are real and significant costs to the Port industry to implement the emission controls that could result from the proposed Backstop Measure. Presentation of this measure to AQMD's Board, as well as the public, is incomplete without an associated socioeconomic analysis. Potential regulation of the Port could have a very significant economic effect on the region that AQMD does not address, and therefore the Ports believe that it is inappropriate to move forward with inclusion of this measure in the Draft AQMP without a full socioeconomic analysis.

By not including a socioeconomic analysis of Measure IND-01, the AQMD is completely ignoring the economic importance of the Ports. The Ports are a major economic engine for the region and nation, and port-related industry generates $5.1 billion and $21.5 billion in state and federal tax revenue, respectively. The Ports account for over 1.1 million jobs in California and 3.3 million jobs in the United States. Additionally, for every one job created by a Port customer, nearly 1.7 additional jobs are created elsewhere in the region.

Even just the potential of additional regulation of the Ports brings with it a significant uncertainty for the Port industry that may result in the diversion of goods to other ports outside of this region. There are more environmental requirements on the Port industry operating in this region than anywhere else in the world. The threat of additional regulatory requirements, especially when no details have been provided as to what those requirements would be, results in significant concerns for these operators and a significant potential for loss of regional economic benefits due to diversion. The Draft Socioeconomic Report fails to analyze this potential impact.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

Additionally, AQMD has indicated that Measure IND-01 does not have a socioeconomic analysis associated with it because there are no emission reductions associated/committed with this measure. As noted in our comment letter on the Draft AQMP dated August 30, 2012, Section 39602 of the California Health and Safety Code states that, the State Implementation Plan (SIP) shall only include those provisions necessary to meet the requirements of the Clean Air Act. Hence, there is no identified need or legal basis for implementing Measure IND-01. AQMD's proposed measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

Finally, as stated in our letter dated October 31, 2012, Measure IND-01 should not move forward because the AQMP makes a commitment to implement it before AQMD has developed or released details of its intended compliance actions against the Ports, or the socioeconomic and other analyses for such actions. Failing to disclose the AQMD's intended actions against the Ports violates due process, depriving the public and the Ports of the opportunity to adequately review and comment on this measure prior to finalizing the AQMP.

For the reasons listed above and those presented in our previous letters, the Ports reiterate our consistent position that Measure IND-01 should be eliminated from the AQMP. Further, we continue to believe that the successful, collaborative approach established by the Ports and the regulatory agencies remains the best mechanism for identifying and implementing strategies to reduce emissions from Port-related sources.

Sincerely,

CHRISTOPHER CANNON
Director of Environmental Management
Port of Los Angeles

RICHARD D. CAMERON
Director of Environmental Planning
Port of Long Beach

CC:CLP:KM:LW:myd
ADP No.: 061024-605

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Robert Kanter, Port of Long Beach
Mike Christensen, City of Los Angeles Harbor Department, Deputy Executive Director
Dominic Holzhaus, City of Long Beach, Deputy City Attorney
Joy Crose, City of Los Angeles Harbor Department, General Counsel

ATTACHMENT 11.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

October 31, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Supplemental Comments on the Revised Draft 2012 Air Quality Management Plan

Dear Dr. Wallerstein:

The Port of Long Beach and Port of Los Angeles (ports) are submitting this comment letter to add to comments previously submitted on August 30, 2012.

As members of the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) Advisory Committee, the ports have worked with AQMD staff to provide comments on the draft plan, including the emissions data being used. Included in this effort, ports' staff provided the 2008 base year emissions inventories for the port sources based on the most recent methodologies agreed upon by the Technical Working Group (TWG) in the ports' 2011 air emissions inventories.

As noted in the Draft AQMP, *"An effective AQMP relies on an adequate emission inventory."* Discrepancies exist between the emissions inventories prepared by the ports and the inventory prepared by the AQMD. The emissions shown in the Draft 2012 AQMP are different from those prepared by the ports in cooperation with the AQMD, California Air Resources Board, and Environmental Protection Agency, during development of the San Pedro Bay Standards. If the AQMD's emissions projections for achieving attainment are incorrect, the concerns expressed in our August 30 comments are greatly increased. The emissions projections drive both the Measure IND-01 analysis and the PM2.5 analysis. The basis for the Draft 2012 AQMP emissions projections is impossible to determine, because the assumptions and methodologies (including control factors and growth factors) are not disclosed.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

Additionally, it concerns the ports that the AQMP has made a commitment to Measure IND-01 before AQMD has released details of its intended implementation actions against the ports, or the socioeconomic and other analyses for such actions. Elaine Chang admitted at the AQMD's October 24, 2012, meeting that it is unknown what a port compliance plan would include and that AQMD would develop it during a future rulemaking process. This violates due process, to commit to implement an AQMP measure without disclosing what AQMD's actions against the ports will be under the backstop measure, as it deprives the public and the ports of the opportunity to review and comment to influence the decision, prior to committing to it in the AQMP.

This further demonstrates that the collaborative process established by the ports and the air quality regulatory agencies remains the most appropriate forum to identify and implement strategies to reduce emissions from port-related sources.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

AT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Randall Pasek, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Robert Kanter, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 12.

October 22, 2012

Jeff Inabinet
c/o Office of Planning, Rule Development, and Area Sources/CEQA Facilities
South Coast Air Quality Management District Development and Planning Branch
21865 Copley Drive
Diamond Bar, CA 91765-4182

Subject: Draft 2012 AQMP Program Environmental Impact Report

Dear Mr. Inabinet:

The Port of Long Beach (POLB) and Port of Los Angeles (POLA) appreciate the opportunity to comment on the Draft Program Environmental Impact Report (Draft EIR) developed for the 2012 Air Quality Management Program (AQMP). The ports appreciate that AQMD staff took steps to address the scoping comments provided by the ports, specifically the inclusion of a transportation and traffic impact analysis as part of the Draft EIR.

However, the ports must reiterate their concerns relating to AQMP Control Measure IND-01 (Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources). As the AQMD knows from prior comment letters submitted by the ports (please see AQMP comment letters dated August 30, 2012; July 10, 2012; and May 4, 2010), the ports believe that Measure IND-01 exceeds the AQMD's authority and should not be included in the AQMP for the reasons set forth in the referenced letters.

Measure IND-01 also contains various flaws which contribute to the inadequacy of the Draft EIR and failure to comply with the California Environmental Quality Act (CEQA). First, Measure IND-01, as described in the project description of the Draft EIR and in the AQMP itself, is unconstitutionally vague and lacks sufficient description of exactly what it proposes to impose on the ports or substantial evidence in support. The Draft EIR's failure to describe the project fully makes it impossible for AQMD, the ports, or the public to assess its 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. Because of the importance and consequences of the AQMP to the State of California's State Implementation Plan (SIP) if adopted by California Air Resources Board (ARB), and to the Federal Clean Air Act enforcement if approved by the U.S. Environmental Protection Agency (EPA), the AQMD is required to fully disclose the details of Measure IND-01 before adoption, and CEQA requires a full disclosure and discussion, which AQMD has failed to do.

Second, to the extent the AQMD intends to approve the Draft EIR and AQMP containing the vague current version of Measure IND-01, and later, as a part of future rulemaking, provide details regarding its proposed actions against the ports including an environmental assessment, that would be segmentation or piecemealing of its CEQA analysis.

Third, Measure IND-01 has serious problems of infeasibility which the Draft EIR has failed to analyze at all. Measure IND-01 in effect attempts to convert the ports' various aspirational goals, set forth in their voluntary Clean Air Action Plan (CAAP), into enforceable regulation against the ports. However, the CAAP goals depend upon future technology advancement which has not yet occurred, all of which are beyond the control of the ports. Therefore, there are technology feasibility issues with the AQMD making the ports' goals into required emissions limits. Further, as the ports are not air regulators and they do not themselves own, operate, or control the emissions equipment operated by the port industry, there are legal feasibility questions over the ports' ability to exercise authority to carry out the actions of Measure IND-01. There are also serious legal feasibility questions including federal preemption asserted by railroads in connection with locomotive specifications and rail operations, and international preemption asserted over ocean vessels. The Draft EIR is flawed in its failure to discuss these infeasibility issues, and had it done so, it would lead to the conclusion that Measure IND-01 should be removed from the AQMP.

Fourth, the AQMD has concluded in the air quality analysis that specific measures associated with Measure IND-01 "are unknown, and therefore the impacts are speculative," (see page 4.2-7 of Draft EIR). This is yet another reason why the Draft EIR is flawed. CEQA Guidelines Section 15145 specifies that if, after thorough investigation, a Lead Agency finds that a particular impact is too speculative for evaluation the agency should note its conclusion and terminate discussion of the impact. Instead, the AQMD proceeded to analyze secondary impacts to air quality that are based on speculative assumptions regarding construction emissions, energy demand, and operations.

Lastly, to the extent that Measure IND-01 proposes to impose upon the ports a form of enforcement for port industry's failure to meet the CAAP's target emissions reduction goals, when the ports do not own, operate, or control the emissions sources, it violates constitutional limitations requiring that exactions imposed on a party must be proportional to the party's contribution, when it fails to include all parties involved in the CAAP, including the actual emissions sources.

Given these deficiencies and speculation under CEQA and with the AQMP rulemaking, Measure IND-01 should be removed from the final EIR and the AQMP, and the analysis should be revised accordingly. With this change, the ports can support the revised AQMP and can continue to work with AQMD, other agencies, and the port industry in the collaborative manner that has made the ports' voluntary CAAP a success.

Thank you for considering the above comments. If you have any questions, please contact Dylan Porter, Port of Long Beach, at (562) 283-7100 or Lisa Wunder, Port of Los Angeles, at (310) 732-7688.

Sincerely,

Richard D. Cameron
Director of Environmental Planning, Port of Long Beach

Christopher Cannon
Director of Environmental Management, Port of Los Angeles

DP:s

cc: Elaine Chang, South Coast Air Quality Management District
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 13.

August 30, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Comments on the Draft 2012 Air Quality Management Plan

Dear Dr. Wallerstein:

The Port of Long Beach and Port of Los Angeles (Ports) appreciate the opportunity to serve on the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) Advisory Committee. We support the AQMD's clean air goals and have a proven leadership record of developing and implementing appropriate and effective strategies that have resulted in the port-related goods movement industry's achievement of real and dramatic emissions reductions. Although the Ports do not own or control the emission sources, the Ports have worked cooperatively with business operators in the port area and the air quality regulatory agencies (i.e. Environmental Protection Agency, California Air Resources Board, and AQMD) to help the port industry reduce its fair share of air quality impacts to the region from port-related operations, as outlined in the San Pedro Bay Ports Clean Air Action Plan (CAAP) and the associated San Pedro Bay Standards. As a result, between 2005 and 2011 emissions from port-related sources were reduced by 73 percent for diesel particulate matter (DPM) and by 50 percent for nitrogen oxides (NOx). The Ports' San Pedro Bay Standards for 2014 established goals to reduce port-related DPM by 72 percent and NOx by 22 percent. Therefore, as a result of implementation of aggressive actions by the port industry, port-related emission reductions have exceeded our goals several years ahead of schedule.

While we remain a committed partner in the effort to improve air quality in the region, we have significant concerns with several proposed control measures in the Draft 2012 AQMP that improperly misclassify the Ports as "stationary sources" or "indirect sources" under AQMP Stationary Source measures, or as "implementing agencies" of specific AQMP mobile source measures. In particular, the proposed Stationary Source Measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources" contains many legal flaws, as explained in greater detail below, and inappropriately proposes to impose enforcement actions on the Ports for emissions generated by emissions sources that the Ports do not own,

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

operate, or control, which is counterproductive to the cooperative relationship that our agencies have established since we began working together on the voluntary CAAP in 2006.

This letter provides the Ports' specific comments on the control measures in the Draft 2012 AQMP that we believe must be addressed prior to finalization and adoption by your agency.

Proposed Stationary Source Measure IND-01

There are three fundamental problems with Proposed Measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources." First, the proposed backstop rule would transform the Ports' voluntary CAAP into the AQMD's mandatory regulation of the Ports. This would jeopardize the Ports and the Port-related emissions sources' grant funding for equipment replacement and modernization if it is now necessary to comply with regulation, while offering nothing to assist the Ports with compliance in terms of additional technologies, facilitating regulations, tools, or funding. Second, although the CAAP was a voluntary cooperative effort of the Ports and the air agencies designed to encourage the industry operators of regulated equipment to go beyond regulation, the proposed backstop rule would improperly subject the Ports to the AQMD's enforcement action for industry's missed emissions reductions by equipment not operated or controlled by the Ports, or even potential loss of federal funding under federal conformity principles if the AQMP is adopted into the State Implementation Plan (SIP) and approved by the U.S. EPA as federal law. Third, the proposed backstop rule exceeds the AQMD's authority and if implemented may violate the State Tidelands Trust. If Measure IND-01 (as well as the Offroad Mobile Source Measures discussed below) are in reality the AQMD's regulation of Port-related mobile emissions sources such as locomotives, ships, rail, and trucks, then this is beyond AQMD's legal authority and AQMD should obtain a waiver under the Clean Air Act from the U.S. EPA. The Ports provide further detailed comments on Proposed Measure IND-01 below, and object to it being included in the 2012 AQMP.

Based upon the AQMD's modeling results, existing control measures are expected to result in attainment of the Federal 24-hour PM2.5 standard by the 2014 deadline without Measure IND-01. Section 39602 of the California Health and Safety Code states that the State Implementation Plan (SIP) shall only include those provisions necessary to meet the requirements of the Clean Air Act. Hence, there is no identified need or legal basis for implementing Measure IND-01. The AQMD's proposed measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

The Ports are neither "direct emissions sources" nor "stationary sources" subject to AQMD permitting, and the AQMD has not complied with requirements for regulation under Health and Safety Code. The Ports are also not "indirect sources" subject to an AQMD indirect source review program within the meaning of the Clean Air Act, and the AQMD has not complied with requirements of the Clean Air Act, 42 U.S.C. §7410 and various other requirements for indirect source classification. The Ports are also not air agency regulators. The Ports do not own, operate, regulate, or control any of the goods movement equipment serving the Ports that are

targeted emissions sources under Measure IND-01. Additionally, the equipment are mobile sources regulated by state, federal, and/or international regulation, sometimes under jurisdiction preempting Port or AQMD action. It is inappropriate for the AQMD to regulate the Ports without the Ports' ownership, operation, or jurisdiction to regulate the various industry businesses actually causing the emissions within our boundaries.

The proposed backstop measure continues to state that if there is a South Coast Air Basin-wide shortfall in emission reductions, then the AQMD will mandate additional emission reductions from the Ports, even if the port-related sources have already met their commitments. This moving target standard is unconstitutionally vague and therefore illegal. The Ports are unfairly targeted, as there are no backstop measures proposed for other entities or source categories should other modeling assumptions not come to pass, such as anticipated natural fleet turnover, or other non-regulated initiatives failing to meet their goals, such as those expected by the Carl Moyer Program. If the AQMD's emissions projections for achieving attainment are incorrect, including control factors and growth rates, this measure appears to imply that the Ports will be specifically tasked with rectifying the shortfall. If the Basin fails to achieve the federal air quality standard, the proper channel to address this is through the established SIP process, not to establish a contingency rule to unfairly burden one specific industry out of the entire Basin.

AQMD staff has indicated that Measure IND-01 is proposed to account for measures that are not backed by enforceable requirements. However, significant programs such as the CAAP's Clean Truck Program, Ocean-going Vessel Low Sulfur Fuel Program, Cargo-handling Equipment requirements, and the Shore-side Power/Alternative Maritime Power programs are currently backstopped by CARB and International Maritime Organization (IMO) regulations. The Ports also require higher rates of vessel or equipment compliance than regulation through terminal leases, when such commercial opportunities are able to be negotiated with tenants. Therefore, Proposed Measure IND-01 is unnecessary.

Measure IND-01 is vague and incomplete. It is unclear whether the AQMD has taken credit for actual/current emission reductions in the baseline only, or if assumptions have been made for future year reductions. We take issue with a measure moving forward where emissions projections are "on-going." Further, no detail is provided on the level of emission reductions that are needing to be maintained. This is further complicated by the differences that exist between the emissions inventories produced by the Ports and the inventory used for the AQMP. It is unclear if a specific emission reduction shortfall will trigger implementation of the measure, or if it is simply left to the discretion of the AQMD. Additionally, the control costs have not yet been developed or justified in a cost-benefit analysis.

The CAAP is a planning document that provides a guideline of strategies and targets that are often "stretch goals," which ultimately are implemented through individual actions adopted by the Long Beach and Los Angeles Boards of Harbor Commissioners (Boards). The Ports are sovereign Tidelands granted to the cities of Los Angeles and Long Beach by the state under the oversight of the State Lands Commission. Each city has been appointed as a trustee and has established their respective Board of Harbor Commissioners with exclusive control and management of the Tidelands and revenues and expenditures from the Tidelands. However,

such discretion must be exercised in accordance with their obligations to prudently manage Tidelands assets and revenues within a nexus and proportionality to the Tidelands Trust interests, as well as in accordance with applicable laws such as the California Environmental Quality Act (CEQA) and principles of federal preemption.[1] The AQMD cannot mandate action by each Port's Board of Harbor Commissioners, nor can the AQMD direct how the Ports obligate state Tidelands money; only the appointed trustee can make discretionary actions to obligate state Tidelands funds. Specifically, the CAAP measures listed in the Draft 2012 AQMP each require the Boards to authorize the expenditure of incentive monies and program costs, or to approve conditions of infrastructure project development in their discretion as CEQA lead agency and as Tidelands trustees.

We strongly believe that the voluntary and cooperative CAAP process established by the Ports remains the most appropriate forum for the Ports and the air regulatory agencies to discuss technical and policy issues related to reducing emissions from port-related sources. As stated above, we remain committed to achieving the clean air goals identified in the CAAP and working with port industry and the air regulatory agencies on implementation of appropriate strategies.

For your reference, attached is our comment letter dated July 10, 2012, expressing our preliminary concerns related to the proposed Measure IND-01 and a comment letter dated May 4, 2010, in which the Ports initially expressed concerns regarding backstop rules.

Proposed Off-Road Mobile Source and Advanced Control Technology Measures

The Draft 2012 AQMP also identifies the San Pedro Bay Ports as "Implementing Agencies" for several of the proposed Off-Road measures (OFFRD-02, OFFRD-04, and OFFRD-05) and Advanced Control Technology measures (ADV-01, ADV-02, ADV-03, ADV-04, and ADV-05). The Ports should not be listed as Implementing Agencies, which the AQMP Appendix IV-A defines as "the agency(ies) responsible for implementing the control measure." While the Ports have been moving forward with voluntary efforts in these areas, as mentioned above, the Ports are not air agency regulators. We also do not own or operate the equipment identified in the proposed measures, and therefore we do not have direct control over any of the sources listed. During the Advisory Committee meetings, AQMD staff has provided clarification that the Ports are listed as Implementing Agencies because of our voluntary commitments to work on these

[1] The Ports' experience with the first phase of the 2006-2010 CAAP showed that in actual implementation, many CAAP measures were carried out in a different manner than originally conceptualized, or not carried out at all, based on limitations on the Boards' opportunities and their exercise of their discretion to manage Tidelands assets and funds under real-world circumstances. Some of the CAAP measures can only be implemented if businesses apply to the Ports for permits to build or expand their lease premises and CEQA mitigation required by law or lease conditions that can be negotiated with a Port tenant. Other CAAP measures involve emissions sources (rail or ocean vessels) that may assert federal preemption against efforts to compel use of specific technology, so the CAAP goals involve the Ports offering economic incentives in voluntary compliance programs, such as the Ocean Vessel incentive programs. However, only the Boards have the legal authority to fund such incentives or impose CEQA mitigation or lease conditions to project approval, which decisions also fall within the Boards' sole discretion regarding their respective Port's properties and their individual Harbor Revenue Fund budgets, which may be affected by the global economy.

efforts, and that being listed as an implementation agency does not obligate the Ports to any specific requirement, however, this is contrary to the language of the AQMP that implementing agencies are "responsible for implementing the control measure." We believe that listing the Ports, and not including all of the other public and private partners that are also working on these efforts, gives the impression that the Ports do have an assigned obligation, or that the Ports must bear a larger burden in the effort to implement these programs. We also repeat our comment stated above that the AQMD cannot mandate in the AQMP that the Ports must expend monies in these voluntary efforts, since most of these Off-Road and Advanced Control Technology measures require incentive monies to fund demonstration projects or accelerated use of new technology.

We believe that the appropriate Implementing Agencies for these measures are the United States Environmental Protection Agency and the California Air Resources Board.

The Ports urge AQMD to make all of the above-requested changes to the draft 2012 AQMP, in particular, to eliminate Measure IND-01 Port Backstop Rule as a legally unnecessary measure exceeding AQMD's authority and violating the State Tidelands Trust. We believe it is much more effective to advance our mutual clean air goals for our agencies to continue working cooperatively together, but if the AQMD takes the above 2012 AQMP measures forward, the Ports will have no choice but to vigorously oppose such action through the administrative and legal process.

Sincerely,

Chris Lytle
Executive Director
Port of Long Beach

Geraldine Knatz
Executive Director
Port of Los Angeles

HAT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Susan Nakamura, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Port of Long Beach Harbor Commission
Port of Los Angeles Harbor Commission
Robert Kanter, Port of Long Beach
Rick Cameron, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Chris Cannon, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles
David Reich, Los Angeles City Mayor's Office

ATTACHMENT 14.

July 10, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Initial Comments on the Proposed 2012 Air Quality Management Plan, Control Measure IND-01

Dear Dr. Wallerstein:

The Port of Long Beach and Port of Los Angeles (Ports) appreciate the opportunity to participate in the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) Advisory Committee. We support the AQMD's clean air goals and have worked aggressively with the port industry to reduce our fair share of air quality impacts to the region from port-related operations, as outlined in the San Pedro Bay Ports Clean Air Action Plan (CAAP) and the associated San Pedro Bay Standards. As a result, between 2005 and 2010, emissions from port-related sources were reduced by 70 percent for diesel particulate matter and by 49 percent for nitrogen oxides. Emissions inventory work currently underway indicates additional, continued emission reductions in 2011.

While we continue to remain a committed partner in the effort to improve air quality in the region, we disagree with AQMD's proposed control strategy for port-related sources in the Draft 2012 AQMP. The inclusion of proposed measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources," is unnecessary and counter-productive.

The two Ports have a proven track record of developing and implementing appropriate and effective emission reduction strategies. These efforts have been entered into voluntarily, working cooperatively with operators in the port area and the air quality regulatory agencies (i.e. Environmental Protection Agency, California Air Resources Board and AQMD). Since the Ports initially implemented the CAAP, many of the port-related control strategies have been or will be superseded by state or international requirements, such as the rules for replacing drayage trucks, switching to cleaner marine fuels, and using shore power while at berth. The Ports' emissions inventories in 2010 show reductions that are meeting or are in excess of the emission reductions that the Ports committed to in the San Pedro Bay Standards. However, it is important to note that in order to remain on track to meet the Standards, a collaborative and concerted effort with our agency partners is essential, with the understanding that while the Ports can achieve significant emission

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

reductions, no single entity can accomplish this task. The previous State Implementation Plan identified several regulatory strategies that have not yet materialized into regulations for various reasons. Moving forward, the Ports will need agency assistance, particularly on the development and deployment of zero-emission technologies and at-berth controls for non-regulated vessels, as well as on the preferential deployment of cleaner vessels to the basin.

The Ports are sustaining and growing long-standing successful CAAP programs, such as the Vessel Speed Reduction Incentive Program and, on July 1, 2012, the Ports implemented new, groundbreaking incentive programs to encourage cleaner ocean-going vessels to call at the Ports. With programs such as these, along with the above-referenced regulatory rules becoming effective and ensuring significant additional emission reductions by 2014, there is no identified need for implementing a backstop measure. The AQMD's proposed backstop measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

It is inappropriate for the AQMD to attempt to regulate the Ports, which are the Harbor Departments of the cities of Long Beach and Los Angeles, in an attempt to control emissions from equipment within our boundaries, but which we do not own or operate. Further, the proposed backstop measure identifies that the "…requirements will be triggered if the reported emissions for 2014 for port-related sources exceed the 2014 target milestone, *or the Basin fails to meet the 24-hour PM2.5 standard as demonstrated in the 2012 AQMP and basin-wide reductions are needed, in which case a new reduction target for each pollutant will be established*." (emphasis added). While clarification has been provided by AQMD staff that any effort to make up for a basin-wide shortfall will be the responsibility of all sectors, not just the Ports, this statement still implies that if the port industry meets their targeted emission reductions, but other sectors fail to meet their fair share obligations, then the AQMD will mandate additional reductions from the Ports. This is counter to the cooperative relationship that our agencies have established since we began working together on the CAAP in 2006, and ignores the tremendous air quality benefits that have been gained from voluntary actions.

Lastly, based on the preliminary calculations by AQMD, the majority of the region is expected to be in attainment for PM2.5 by the target year of 2014, with the remainder anticipated to be in attainment by the expected extension date of 2019. The inclusion of IND-01 is therefore unnecessary for the region to reach attainment. If these emission reductions are needed in the baseline emissions calculation, there is precedent for mechanisms other than control measures to be used for this purpose, and we would like to discuss those options with your staff.

We strongly believe that the voluntary and cooperative CAAP process established by the Ports remains the most appropriate forum for the Ports and the air regulatory agencies to discuss technical and policy issues related to reducing emissions from port-related sources. As stated above, we remain committed to achieving our fair share of clean air goals identified in the CAAP and working with port industry and the air regulatory agencies on implementation of appropriate strategies.

For your reference, attached is a comment letter dated May 4, 2010, in which the Ports initially expressed concerns regarding backstop rules. The letter was submitted as a public comment on the proposed Rules 4010 and 4020, which were proposed backstop rules for health risk and criteria pollutant emissions.

We look forward to working with AQMD on resolving our concerns related to the proposed backstop measure in the Draft 2012 AQMP.

Sincerely,

CHRIS LYTLE
Executive Director
Port of Long Beach

MICHAEL R. CHRISTENSEN
Deputy Executive Director, Development
Port of Los Angeles

HAT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Susan Nakamura, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Robert Kanter, Port of Long Beach
Rick Cameron, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Chris Cannon, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 15.

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

San Pedro Bay Ports Clean Air Action Plan

May 4, 2010

Susan Nakamura
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Subject: AQMD Proposed Rules 4010 and 4020

Dear Ms. Nakamura:

This letter is on behalf of the Ports of Long Beach and Los Angeles (Ports) as a preliminary response to the "backstop" Rules 4010 and 4020 (Proposed Rules) proposed by the South Coast Air Quality Management District (AQMD). As will be explained below, based upon the limited amount of information released by the AQMD about the Proposed Rules thus far, the Ports have a number of preliminary questions and concerns at this stage of the first public consultation meeting and will be providing more detailed comments on the Proposed Rules at a later stage.

The Ports have had tremendous success with implementing the San Pedro Bay Port Clean Air Action Plan (CAAP). The development of the original CAAP and the update to the CAAP has been conducted through a cooperative effort with staff from the AQMD, the United States Environmental Protection Agency (EPA), and the California Air Resources Board (CARB). The Ports strongly believe that this partnership of over four years, and the collaboration that has occurred throughout that time, have aided in the success of the CAAP and the emissions reductions that have been achieved.

Since the CAAP was adopted in late 2006, the Ports have exceeded our interim emissions reductions milestones and are well on our way to meeting the original forecasted emissions reductions of at least 45% by 2011, compared to uncontrolled conditions. This has been accomplished through the steadfast implementation of CAAP measures, highlighted as follows:

- Development, approval, and implementation of the Clean Trucks Program in which two major milestones have been achieved resulting in truck pollution reductions of nearly 80% (January 2010), almost two years ahead of schedule (HDV1).
  - October 2008: ban pre-1989 trucks.
  - January 2010: ban pre-1993 trucks; 1994-2003 trucks require Level 3 plus NO_x retrofit.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

- Facilitated construction of an LNG on-road truck fueling station in the port area. Fueling operations have been underway since early 2009. In addition the Ports have contributed to funding the construction of two additional LNG on-road truck fueling stations in the Port area, due to open later in 2010 (HDV2).
- Over $6.5 million in incentives for vessels participating in the voluntary Vessel Speed Reduction Program and Vessel Fuel Incentive Program (OGV1, OGV4).
- Design, construction, and operation of shore power infrastructure completed at 5 berths and underway for over 40 additional berths (OGV2).
- Replaced entire fleet of port switching locomotives with new, cleaner locomotives in 2008, and a subsequent fleet turnover to cleaner locomotives anticipated by end of 2011 (RL1).
- Provided funding of $5.4 million toward projects through our Technology Advancement Program, conducted with input from an Advisory Committee consisting of AQMD, EPA, and CARB.
- The Ports' 2008 Emissions Inventories show combined emission reductions of 20% diesel particulate matter (DPM), 10% nitrogen oxides (NOx) and 24% sulfur oxides (SOx) compared to the 2005 baseline. The 2009 Emissions Inventories, which are expected to be finalized and published in June, will show an even greater level of emission reductions as additional CAAP efforts have come into effect.

In addition to the implementation efforts listed above, the Ports have also worked in coordination with CARB and EPA on development of rules and regulations affecting port sources. These regulatory requirements have helped to ensure that emissions reductions from specific equipment types operating at the Ports will continue into the future. The Ports look forward to continuing these cooperative efforts on regulatory development with CARB and EPA, with the support of AQMD, to ensure that the early action measures being taken by the Ports are supported and implemented more broadly.

Further, as you are aware, the Ports recently released our draft CAAP Update, where we revisited and updated each of the control measures and proposed aggressive, long-term goals for emissions reductions and health risk reductions, titled the San Pedro Bay Standards. Once the CAAP Update is adopted, the Ports will quantitatively measure our progress against these long-term goals and will make adjustments to our implementation efforts over time as necessary to ensure that we remain on track for achieving these goals.

With these demonstrated results carried out voluntarily, and further efforts underway, the Ports regard the AQMD's proposed Rules 4010 and 4020 as unnecessary, and raise several questions regarding the Proposed Rules and the rulemaking process. Below is a list of preliminary questions to help us gain a better understanding of the AQMD's proposed approach:

Emissions and Health Risk Reduction Targets

Proposed Rule 4020 Sections (d) (1) and (2) will include targets for criteria pollutant and health risk reductions to be met by the Ports to avoid triggering the backstop provisions. The Ports have the following concerns and questions regarding the targets:

1. How were the targets developed? In June 2007, the Ports provided AQMD with detailed comments and concerns regarding the methodology and the specific port-related emission reduction targets contained in the 2007 Air Quality Management Plan (AQMP). CARB declined to adopt the port targets into the 2007 State Implementation Plan (SIP). In the AQMD Governing Board's resolution adopting the 2007 AQMP, it committed that AQMD staff would work with the Ports and, based on its technical review, would recommend any appropriate adjustments to the AQMP criteria pollutant targets attributable to the Ports. Although initial coordination efforts have occurred, the AQMD has not completed detailed analyses necessary for the Ports to understand how the AQMP targets and the targets contained in the Proposed Rules have been developed, or to understand how these targets differ from the Emission Reduction Standards contained in the Draft 2010 CAAP Update. We request that the AQMD present the methodology and resulting targets to a Stakeholder Working Group, including the Ports, before progressing further with the rulemaking process. Further, to the extent that the targets in proposed Rule 4020 go beyond the 2007 SIP/AQMP targets to address future regulations that have not yet been adopted, the Ports have even greater concerns.

2. The Emission Reduction Standards contained in the Draft 2010 CAAP Update were developed by the Ports in coordination with the EPA, CARB, and AQMD. Achievement of these Standards will require aggressive implementation of strategies by the Ports and the port operators. Further, the Standards are predicated on a conservative 2007 cargo forecast developed before the recent economic crisis and assume that the Ports reach capacity in 2023. Instead, there has been a significant downturn in cargo volumes from 2008 to present, such that the Ports do not anticipate returning to 2007 cargo throughput levels until 2014-2015, and reaching capacity until approximately 2035. This has reduced the Ports' emissions footprint, as well as potentially reduced the Ports' proportion of basin-wide pollution. Nonetheless, to be conservative and to voluntarily strive to ensure a "fair share" contribution of port-related sources to regional attainment goals, the Ports retained the higher growth forecast in the CAAP. It is important to note that, even with these higher than anticipated rates of future emissions growth, the Ports project DPM reductions greater than 70%, SOx reductions greater than 90%, and NOx reductions of nearly 60% by 2023.

3. The 2007 SIP identified several regulatory and technology strategies to be undertaken by EPA and CARB to contribute to the reduction in port-related emissions. This is consistent with the philosophy that achieving emission reductions from port-related sources must be a cooperative partnership effort, because no one entity can meet the need by itself. Since the 2007 SIP was developed, for various reasons including technical feasibility, technology availability, and cost-effectiveness, several key federal and state regulatory and technology strategies have failed to occur. These include, but are not limited to: commercial availability of Tier 4 line haul and switcher locomotive engines in 2012, implementation of a statewide regulation requiring use of shoreside power for all vessel types while at berth, and implementation of a statewide regulation requiring retrofitting of existing ocean-going vessels and the preferential deployment of progressively cleaner new build vessels to California ports. The Ports are concerned that the emission reductions associated with these proposed EPA and CARB strategies are now being fully assigned to the Ports through the proposed targets in order to make the

SIP "whole," even though the strategies may not be technically feasible and/or cost-effective. Further, as you know, the Ports do not own or operate the emissions sources targeted by this regulation and the Ports may not have implementation mechanisms available within their jurisdiction to implement the controls even if they were deemed feasible and cost-effective.

DISTRICT RULEMAKING PROCESS

The Ports have a number of initial questions geared towards gaining a better understanding of AQMD's intended rulemaking process for the Proposed Rules.

4. As suggested above, will the AQMD form a Stakeholder Working Group, including the Ports, to discuss the AQMD's Proposed Rules and analysis?

5. What is the AQMD's authority for regulating the Ports under the Proposed Rules?

6. The Ports would like to understand what level of CEQA analysis the AQMD is proposing for this rulemaking. Will there be a scoping meeting?

7. When will the AQMD release a Preliminary Draft Staff Report (PDSR)? Given the unprecedented nature and broad technical, practical, regulatory, and legal implications of these Proposed Rules, we believe that the PDSR must be very detailed or the Ports, air agencies, and other stakeholders will not have the information necessary to participate fully in the rule development process. We request that the PDSR include:
    a. Technical analysis of the Proposed Rules, targets, etc.
    b. An analysis of potential Draft Findings required under Health and Safety Code (e.g., Necessity, Authority, Clarity, Consistency, Non-Duplication, and References)
    c. Detailed information on control technologies and programs that the AQMD believes the Ports and affected sources would need to implement to meet the proposed rule reduction requirements.
    d. As part of cost-effectiveness analysis, detailed information on the feasibility, control effectiveness, and costs of these technologies and programs, including who would bear those costs. The AQMD should work with the Ports, their tenants, and others in the goods movement industry to estimate these costs.
    e. A preliminary Socioeconomic Impact Report (SIR) based on input from the Ports, their tenants, and other affected industries. Given the broad implications to the region's economy, the Ports recommend a detailed preliminary SIR be prepared and released with the PDSR.
    f. AQMD's proposal for how it will specifically apply the scheme of fines, penalties, or other enforcement provisions of the Health and Safety Code to the Ports to enforce the Proposed Rules, including providing an understanding of how the enforcement action would be assessed, given that the Ports are two separate and distinct departments of their respective cities.

The Ports look forward to receiving AQMD's responses to these preliminary questions. We will follow up with additional questions and comments later, as more information is provided by AQMD on the proposed rules.

The Ports are committed to achieving aggressive and feasible emissions reductions and health risk reductions from port-related sources, and have already proven that such reductions can be achieved while allowing the Ports to continue to move forward as a strong economic engine for the region. The Ports remain committed to implementing the CAAP and working in cooperation with the agencies and the industry to achieve our goals. We believe the Proposed Rules are unnecessary and that the AQMD should consider alternative mechanisms to achieve the AQMD's goals. We bring to your attention that the Bay Area AQMD initiated a backstop measure but ultimately determined to pursue a Memorandum of Agreement approach for similar work with the Bay Area ports.

If you have any questions regarding this correspondence, please contact Heather Tomley, Assistant Director of Environmental Planning, Port of Long Beach, at (562) 590-4160; or Christopher Patton, Environmental Affairs Officer, Port of Los Angeles, at (310) 732-3677.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Director of Environmental Management
Port of Los Angeles

cc: Dick Steinke, Executive Director, POLB
Geraldine Knatz, Executive Director, POLA
Mike Christensen, Deputy Executive Director, POLA
Robert Kanter, Managing Director, POLB
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

ATTACHMENT 16.

FINAL 2012 AIR QUALITY MANAGEMENT PLAN

DECEMBER 2012

TABLE 4-2

List of District's Adoption/Implementation Dates and Estimated Emission Reductions from Short-Term PM2.5 Control Measures

NUMBER	TITLE	ADOPTION	IMPLEMENTATION PERIOD	REDUCTION (TPD)
CMB-01	Further NOx Reductions from RECLAIM [NOx] –*Phase I (Contingency)*	2013	2014	2-3 [a]
BCM-01	Further Reductions from Residential Wood Burning Devices [PM2.5]	2013	2013-2014	7.1 [b]
BCM-02	Further Reductions from Open Burning [PM2.5]	2013	2013-2014	4.6 [c]
BCM-03 (*formerly BCM-05*)	Emission Reductions from Under-Fired Charbroilers [PM2.5]	Phase I – 2013 (*Tech Assessment*) Phase II - TBD	TBD	1 [d]
BCM-04	Further Ammonia Reductions from Livestock Waste [NH3]	Phase I – 2013-2014 (*Tech Assessment*) Phase II - TBD	TBD	TBD [e]
~~IND-01 (*formerly MOB-03*)~~	~~Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources [NOx, SOx, PM2.5]~~	~~2013~~	~~12 months after trigger~~	~~N/A~~ [f]
EDU-01 (*formerly MCS-02, MCS-03*)	Further Criteria Pollutant Reductions from Education, Outreach and Incentives [All Pollutants]	Ongoing	Ongoing	N/A [f]
MCS-01 (*formerly MCS-07*)	Application of All Feasible Measures Assessment [All Pollutants]	Ongoing	Ongoing	TBD [e]

a. Emission reductions are included in the SIP as a contingency measure.
b. Winter average day reductions based on episodic conditions and 75 percent compliance rate.
c. Reductions based on episodic day conditions.
d. Will submit into SIP once technically feasible and cost effective options are confirmed.
e. TBD are reductions to be determined once the technical assessment is complete, and inventory and control approach are identified.
f. N/A are reductions that cannot be quantified due to the nature of the measure (e.g., outreach, incentive programs) or if the measure is designed to ensure reductions that have been assumed to occur will in fact occur.

requirements regarding manure removal, handling, and composting; however, the rule does not focus on fresh manure, which is one of the largest dairy sources of ammonia emissions. An assessment will be conducted to evaluate the use of sodium bisulfate (SBS) at local dairies to evaluate the technical and economic feasibility of its application, as well as potential impacts to ground water, and the health and safety of both workers and dairy stock. Reducing pH level in manure through the application of acidulant additives (acidifier), such as SBS, is one of the potential mitigations for ammonia. SBS is currently being considered for use in animal housing areas where high concentrations of fresh manure are located. Research indicates that best results occur when SBS is used on "hot spots". SBS can also be applied to manure stock piles and at fencelines, and upon scraping manure to reduce ammonia spiking from the leftover remnants of manure and urine. SBS application may be required seasonally or episodically during times when high ambient PM2.5 levels are forecast.

Multiple Component Sources

There is one short-term control measure for all feasible measures.

MCS-01: APPLICATION OF ALL FEASIBLE MEASURES ASSESSMENT: This control measure is to address the state law requirement for all feasible measures for ozone. Existing rules and regulations for pollutants such as VOC, NOx, SOx and PM reflect current best available retrofit control technology (BARCT). However, BARCT continually evolves as new technology becomes available that is feasible and cost-effective. Through this proposed control measure, the District would commit to the adoption and implementation of the new retrofit control technology standards. Finally, staff will review actions taken by other air districts for applicability in our region.

Indirect Sources

This category includes a proposed control measure carried over from the 2007 AQMP (formerly MOB-03) that establishes a backstop measure for indirect sources of emissions at ports.

~~**IND-01 BACKSTOP MEASURE FOR INDIRECT SOURCES OF EMISSIONS FROM PORTS AND PORT-RELATED SOURCES:** The goal of this measure is to ensure that NOx, SOx and PM2.5 emissions reductions from port-related sources are sufficient to attain the 24-hr federal PM2.5 ambient air quality~~

~~standard. If emission levels projected to result from the current regulatory requirements and voluntary reduction strategies specified by the Ports are not realized, the 24-hr federal PM2.5 ambient air quality standard may not be achieved. This control measure is designed to ensure that the necessary emission reductions from port-related sources projected in the 2012 AQMP milestone years are achieved or if it is later determined through a SIP amendment that additional region-wide reductions are needed due to the change in Basin-wide carrying capacity for PM2.5 attainment. In this case, the ports will be required to further reduce their emissions on a "fair-share" basis.~~

Educational Programs

There is one proposed educational program within this category.

EDU-01: FURTHER CRITERIA POLLUTANT REDUCTIONS FROM EDUCATION, OUTREACH AND INCENTIVES: This proposed control measure seeks to provide educational outreach and incentives for consumers to contribute to clean air efforts. Examples include the usage of energy efficient products, new lighting technology, "super compliant" coatings, tree planting, and the use of lighter colored roofing and paving materials which reduce energy usage by lowering the ambient temperature. In addition, this proposed measure intends to increase the effectiveness of energy conservation programs through public education and awareness as to the environmental and economic benefits of conservation. Educational and incentive tools to be used include social comparison applications (comparing your personal environmental impacts with other individuals), social media, and public/private partnerships.

PROPOSED PM2.5 CONTINGENCY MEASURES

Pursuant to CAA section 172(c)(9), contingency measures are emission reduction measures that are to be automatically triggered and implemented if an area fails to attain the national ambient air quality standard by the applicable attainment date, or fails to make reasonable further progress (RFP) toward attainment. Further detailed descriptions of contingency requirements can be found in Chapter 6 – Clean Air Act Requirements. As discussed in Chapter 6 and consistent with U.S. EPA guidance, the District is proposing to use excess air quality improvement from the proposed control strategy, as well as potential NOx reductions from CMB-01 listed above, to demonstrate compliance with this federal requirement.

The Final 2012 AQMP relies on a set of five years of particulate data centered on 2008, the base year selected for the emissions inventory development and the anchor year for the future year PM2.5 projections. In July, 2010, U.S. EPA proposed revisions to the 24-hour PM2.5 modeling attainment demonstration guidance. The new guidance suggests using five years of data, but instead of directly using quarterly calculated design values, the procedure requires the top 8 daily PM2.5 concentrations days in each quarter to reconstruct the annual 98th percentile. The logic in the analysis is twofold: by selecting the top 8 values in each quarter the 98th percentile concentration is guaranteed to be included in the calculation. Second, the analysis projects future year concentrations for each of the 32 days in a year (160 days over five years) to test the response of future year 24-hour PM2.5 to the proposed control strategy. Since the 32 days in each year include different meteorological conditions and particulate species profiles it is expected those individual days will respond independently to the projected future year emissions profile and that a new distribution of PM2.5 concentrations will result. Overall, the process is more robust in that the analysis is examining the impact of the control strategy implementation for a total of 160 days, covering a wide variety of potential meteorology and emissions combinations.

Table 5-1 provides the weighted 2008 annual and 24-hour average PM2.5 design values for the Basin.

TABLE 5-1

2008 Weighted 24-Hour PM2.5 Design Values ($\mu g/m^3$)

MONITORING SITE	24-HOURS
Anaheim	35.0
Los Angeles	40.1
Fontana	45.6
North Long Beach	34.4
South Long Beach	33.4
Mira Loma	47.9
Rubidoux	44.1

Relative Response Factors and Future Year Design Values

To bridge the gap between air quality model output evaluation and applicability to the health-based air quality standards, U.S. EPA guidance has proposed the use of relative response factors (RRF). The RRF concept was first used in the 2007 AQMP modeling attainment demonstrations. The RRF is simply a ratio of future year predicted air quality

with the control strategy fully implemented to the simulated air quality in the base year. The mechanics of the attainment demonstration are pollutant and averaging period specific. For 24-hour PM2.5, the top 10 percentile of modeled concentrations in each quarter of the simulation year are used to determine the quarterly RRFs. For the annual average PM2.5, the quarterly average RRFs are used for the future year projections. For the 8-hour average ozone simulations, the aggregated response of multiple episode days to the implementation of the control strategy is used to develop an averaged RRF for projecting a future year design value. Simply stated, the future year design value is estimated by multiplying the non-dimensional RRF by the base year design value. Thus, the simulated improvement in air quality, based on multiple meteorological episodes, is translated as a metric that directly determines compliance in the form of the standard.

The modeling analyses described in this chapter use the RRF and design value approach to demonstrate future year attainment of the standards.

PM2.5 Modeling

Within the Basin, PM2.5 particles are either directly emitted into the atmosphere (primary particles), or are formed through atmospheric chemical reactions from precursor gases (secondary particles). Primary PM2.5 includes road dust, diesel soot, combustion products, and other sources of fine particles. Secondary products, such as sulfates, nitrates, and complex carbon compounds are formed from reactions with oxides of sulfur, oxides of nitrogen, VOCs, and ammonia.

The Final 2012 AQMP employs the CMAQ air quality modeling platform with SAPRC99 chemistry and WRF meteorology as the primary tool used to demonstrate future year attainment of the 24-hour average PM2.5 standard. A detailed discussion of the features of the CMAQ approach is presented in Appendix V. The analysis was also conducted using the CAMx modeling platform using the "one atmosphere" approach comprised of the SAPRC99 gas phased chemistry and a static two-mode particle size aerosol module as the particulate modeling platform. Parallel testing was conducted to evaluate the CMAQ performance against CAMx and the results indicated that the two model/chemistry packages had similar performance. The CAMx results are provided in Appendix V as a component of the weight of evidence discussion.

The Final 2012 modeling attainment demonstrations using the CMAQ (and CAMx) platform were conducted in a vastly expanded modeling domain compared with the analysis conducted for the 2007 AQMP modeling attainment demonstration. In this analysis, the PM2.5 and ozone base and future simulations were modeled simultaneously. The simulations were conducted using a Lambert Conformal grid

projection where the western boundary of the domain was extended to 084 UTM, over 100 miles west of the ports of Los Angeles and Long Beach. The eastern boundary extended beyond the Colorado river while the northern and southern boundaries of the domain extend to the San Joaquin Valley and the Northern portions of Mexico (3543 UTM). The grid size has been reduced from 5 kilometers squared to 4 kilometers squared and the vertical resolution has been increased from 11 to 18 layers.

The final WRF meteorological fields were generated for the identical domain, layer structure and grid size. The WRF simulations were initialized from National Centers for Environmental Prediction (NCEP) analyses and run for 3-day increments with the option for four dimensional data assimilation (FDDA). Horizontal and vertical boundary conditions were designated using a "U.S. EPA clean boundary profile."

PM2.5 data measured as individual species at six-sites in the AQMD air monitoring network during 2008 provided the characterization for evaluation and validation of the CMAQ annual and episodic modeling. The six sites include the historical PM2.5 maximum location (Riverside- Rubidoux), the stations experiencing many of the highest county concentrations (among the 4-county jurisdiction including Fontana, North Long Beach and Anaheim) and source oriented key monitoring sites addressing goods movement (South Long Beach) and mobile source impacts (Central Los Angeles). It is important to note that the close proximity of Mira Loma to Rubidoux and the common in-Basin air flow and transport patterns enable the use of the Rubidoux speciated data as representative of the particulate speciation at Mira Loma. Both sites are directly downwind of the dairy production areas in Chino and the warehouse distribution centers located in the northwestern corner of Riverside County. Speciated data monitored at the selected sites for 2006-2007 and 2009-2010 were analyzed to corroborate the applicability of using the 2008 profiles.

Day-specific point source emissions were extracted from the District stationary source and RECLAIM inventories. Mobile source emissions included weekday, Saturday and Sunday profiles based on CARB's EMFAC2011 emissions model, CALTRANS weigh-in-motion profiles, and vehicle population data and transportation analysis zone (TAZ) data provided by SCAG. The mobile source data and selected area source data were subjected to daily temperature corrections to account for enhanced evaporative emissions on warmer days. Gridded daily biogenic VOC emissions were provided by CARB using BEIGIS biogenic emissions model. The simulations benefited from enhancements made to the emissions inventory including an updated ammonia inventory, improved emissions characterization that split organic compounds into coarse, fine and primary

particulate categories, and updated spatial allocation of primary paved road dust emissions.

Model performance was evaluated against speciated particulate PM2.5 air quality data for ammonium, nitrates, sulfates, secondary organic matter, elemental carbon, primary and total particulate mass for the six monitoring sites (Rubidoux, Central Los Angeles, Anaheim, South Long Beach, Long Beach, and Fontana).

The following section summarizes the PM2.5 modeling approach conducted in preparation for this Plan. Details of the PM2.5 modeling are presented in Appendix V.

24-Hour PM2.5 Modeling Approach

CMAQ simulations were conducted for each day in 2008. The simulations included 8784 consecutive hours from which daily 24-hour average PM2.5 concentrations (0000-2300 hours) were calculated. A set of RRFs were generated for each future year simulation. RRFs were generated for the ammonium ion (NH_4), nitrate ion (NO_3), sulfate ion (SO_4), organic carbon (OC), elemental carbon (EC) and a combined grouping of crustal, sea salts and metals (Others). A total of 24 RRFs were generated for each future year simulation (4 seasons and 6 monitoring sites).

Future year concentrations of the six component species were calculated by applying the model generated quarterly RRFs to the speciated 24-hour PM2.5 (FRM) data, sorted by quarter, for each of the five years used in the design value calculation. The 32 days in each year were then re-ranked to establish a new 98^{th} percentile concentration. The resulting future year 98^{th} percentile concentrations for the five years were subjected to weighted averaging for the attainment demonstration.

In this chapter, future year PM2.5 24-hour average design values are presented for 2014, and 2019 to (1) demonstrate the future baseline concentrations if no further controls are implemented; (2) identify the amount of air quality improvement needed to advance the attainment date to 2014; and (3) confirm the attainment demonstration given the proposed PM2.5 control strategy. In addition, Appendix V will include a discussion and demonstration that attainment will be satisfied for the entire modeling domain.

Weight of Evidence

PM2.5 modeling guidance strongly recommends the use of corroborating evidence to support the future year attainment demonstration. The weight of evidence demonstration for the Final 2012 AQMP includes brief discussions of the observed 24-hour PM2.5,

emissions trends, and future year PM2.5 predictions. Detailed discussions of all model results and the weight of evidence demonstration are provided in Appendix V.

FUTURE AIR QUALITY

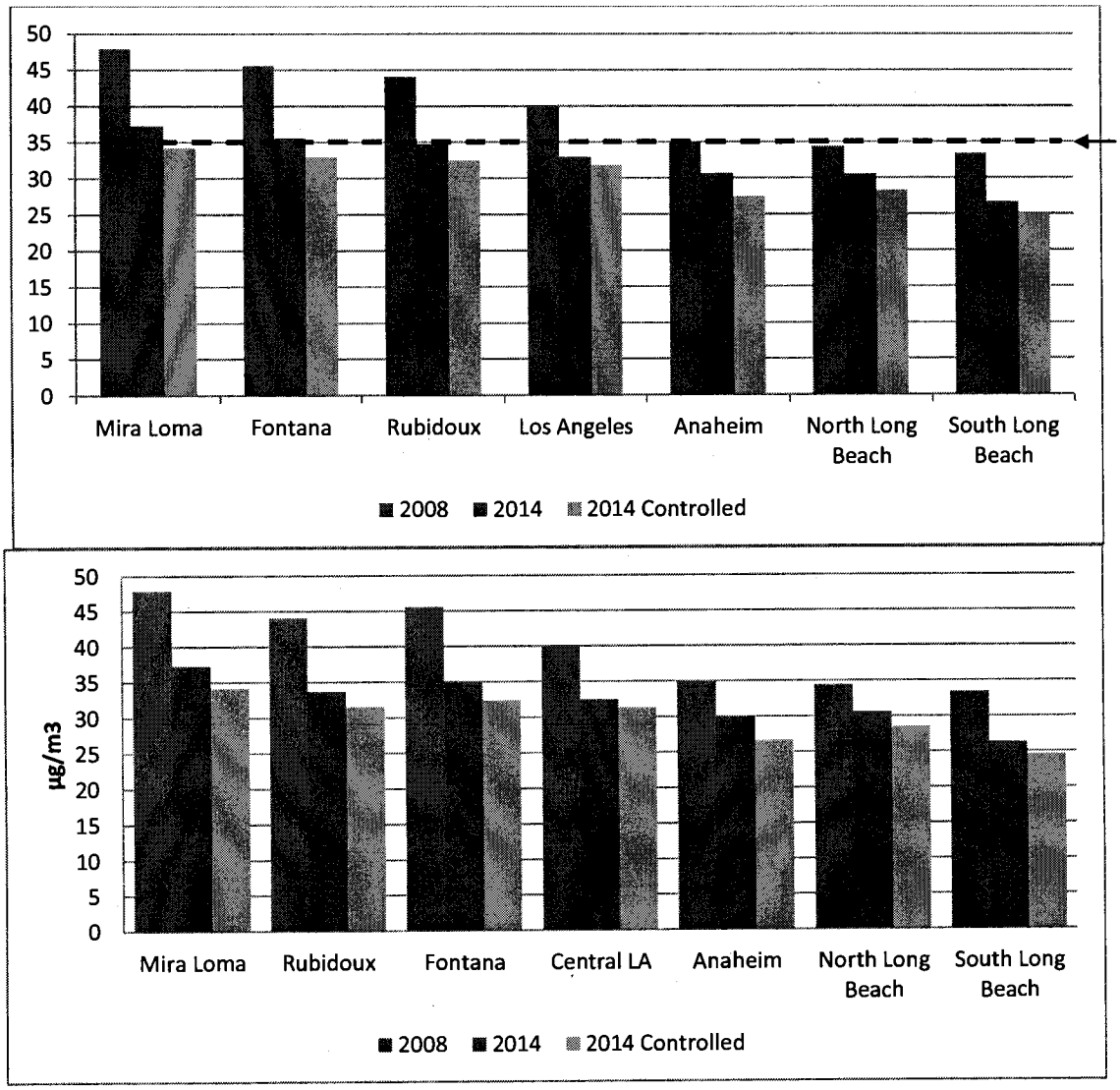
Under the federal Clean Air Act, the Basin must comply with the federal PM2.5 air quality standards by December, 2014 [Section 172(a)(2)(A)]. An extension of up-to five years (until 2019) could be granted if attainment cannot be demonstrated any earlier with all feasible control measures incorporated.

24-Hour PM2.5

A simulation of 2014 baseline emissions was conducted to substantiate the severity of the 24-hour PM2.5 problem in the Basin. The simulation used the projected emissions for 2014 which included all adopted control measures that will be implemented prior to and during 2014, including mobile source incentive projects under contract (Proposition 1B and Carl Moyer Programs). The resulting 2014 future-year Basin design value ($37.3\mu g/m^3$) failed to meet the federal standard. As a consequence additional controls are needed.

Simulation of the 2019 baseline emissions indicates that the Basin PM2.5 will attain the federal 24-hour PM2.5 standard in 2019 without additional controls. With the control program in place, the 24-hour PM2.5 simulations project that the 2014 design value will be 34.3 $\mu g/m^3$ and that the attainment date will advance from 2019 to 2014.

Figure 5-3 depicts future 24-hour PM2.5 air quality projections at the Basin design site (Mira Loma) and six PM2.5 monitoring sites having comprehensive particulate species characterization. Shown in the figure, are the base year design values for 2008 along with projections for 2014 with and without control measures in place. All of the sites with the exception of Mira Loma will meet the 24-hour PM2.5 standard by 2014 without additional controls. With implementation of the control measures, all sites in the Basin demonstrate attainment.



**No such state standard.*

FIGURE 5-3

Maximum 24-Hour Average PM2.5 Design Concentrations:
2008 Baseline, 2014 and 2014 Controlled

Spatial Projections of PM2.5 Design Values

Figure 5-4 provides a perspective of the Basin-wide spatial extent of 24-hour PM2.5 impacts in the base year 2008, with all adopted rules and measures implemented. Figures 5-5 and 5-6 provide a Basin-wide perspective of the spatial extent of 24-hour PM2.5 future impacts for baseline 2014 emissions and 2014 with the proposed control program in place. With no additional controls, several areas around the northwestern portion of Riverside and southwestern portion of San Bernardino Counties depict grid

cells with weighted PM2.5 24-hour design values exceeding 35 $\mu g/m^3$. By 2014, the number of grid cells with concentrations exceeding the federal standard is restricted to a small region surrounding the Mira Loma monitoring station in northwestern Riverside County. With the control program fully implemented in 2014, the Basin does not exhibit any grid cells exceeding the federal standard.

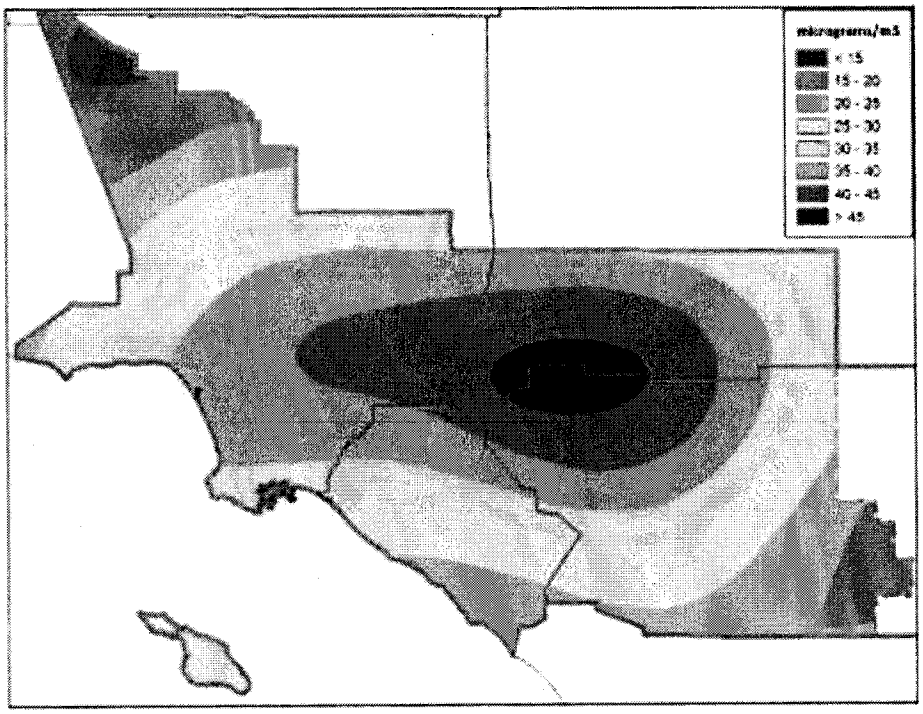


FIGURE 5-4

2008 Baseline 24-Hour PM2.5 Design Concentrations ($\mu g/m^3$)

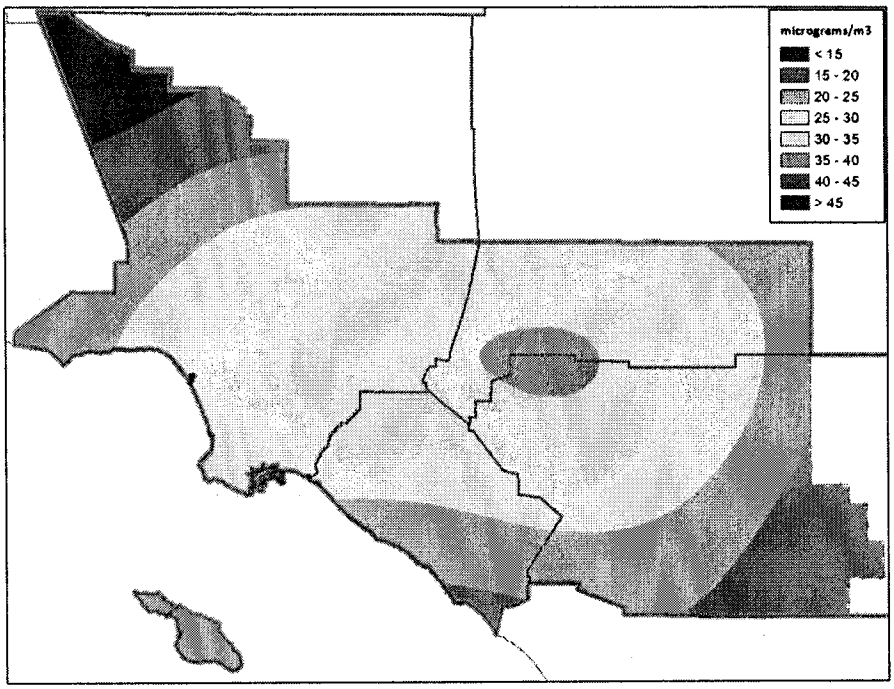


FIGURE 5-5

2014 Baseline 24-Hour PM2.5 Design Concentrations ($\mu g/m^3$)

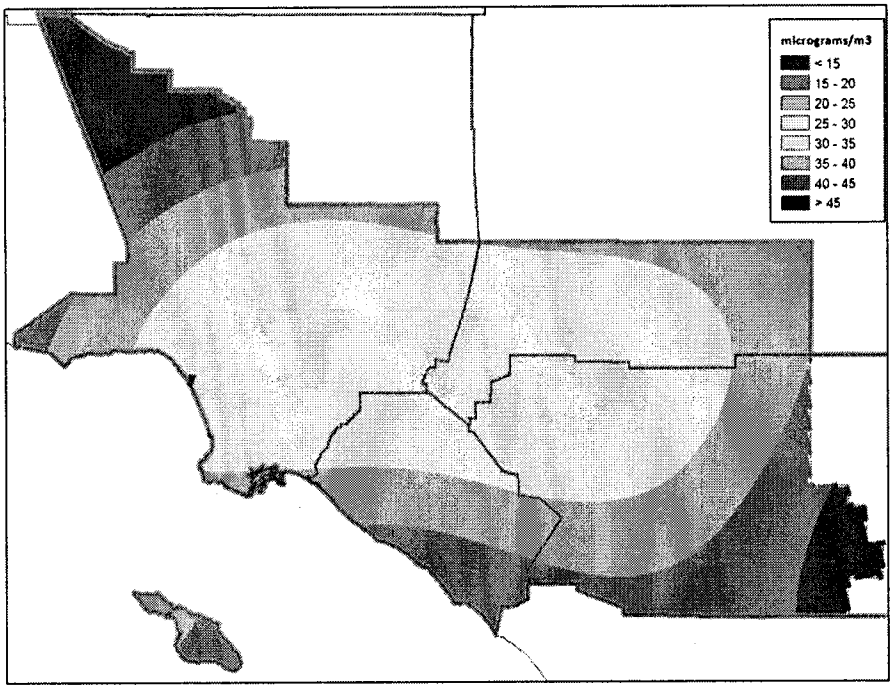


FIGURE 5-6

2014 Controlled 24-Hour PM2.5 Design Concentrations ($\mu g/m^3$)

Weight of Evidence Discussion

The weight of evidence discussion focuses on the trends of 24-hour PM2.5 and key precursor emissions to provide justification and confidence that the Basin will meet the federal standard by 2014.

Figure 5-7 depicts the long term trend of observed Basin 24-hour average PM2.5 design values with the CMAQ projected design value for 2014. Also superimposed on the graph is the linear best-fit trend line for the observed 24-hour average PM2.5 design values. The observed trend depicts a steady 49 percent decrease in observed design value concentrations between 2001 and 2011. The rate of improvement is just under 4 $\mu g/m^3$ per year. If the trend is extended beyond 2011, the projection suggests attainment of the PM2.5 24-hour standard in 2013, one year earlier than determined by the attainment demonstration. While the straight-line future year approximation is aggressive in its projection, it offers insight to the effectiveness of the ongoing control program and is consistent with the attainment demonstration.

Figures 5-8 depicts the long term trend of Basin NOx emissions for the same period. Figure 5-9 provides the corresponding emissions trend for directly emitted PM2.5. Base year NOx inventories between 2002 (from the 2007 AQMP) and 2008 experienced a 31 percent reduction while directly emitted PM2.5 experienced a 19 percent reduction over the 6-year period. The Basin 24-hour average PM2.5 design value experienced a concurrent 27 percent reduction between 2002 and 2008. The projected trend of NOx emissions indicates that the PM2.5 precursor associated with the formation of nitrate will continue to be reduced though 2019 by an additional 48 percent. Similarly, the projected trend of directly emitted PM2.5 projects a more moderate reduction of 13 percent through 2019. However, as discussed in the 2007 AQMP and in a later section of this chapter, directly emitted PM2.5 is a more effective contributor to the formation of ambient PM2.5 compared to NOx. While the projected NOx and direct PM2.5 emissions trends decrease at a reduced rate between 2012 and 2019, it is clearly evident that the overall significant reductions will continue to result in lower nitrate, elemental carbon and direct particulate contributions to 24-hour PM2.5 design values.

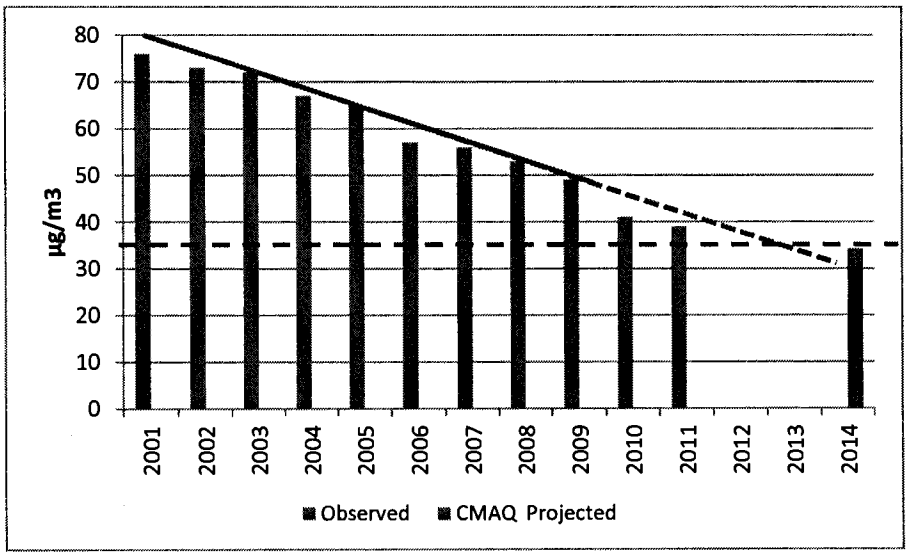


FIGURE 5-7

Basin Observed and CMAQ Projected
Future Year PM2.5 Design Concentrations ($\mu g/m^3$)

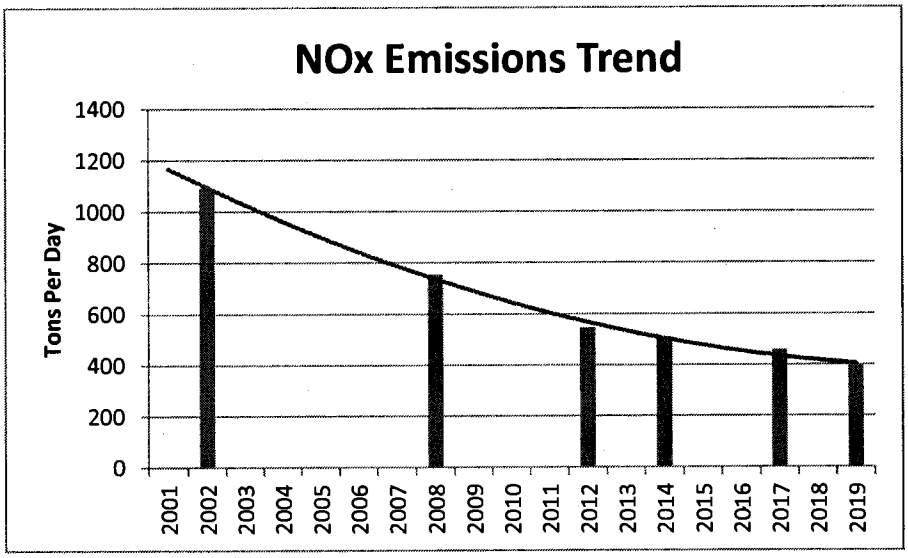


FIGURE 5-8

Trend of Basin NOx Emissions (Controlled)

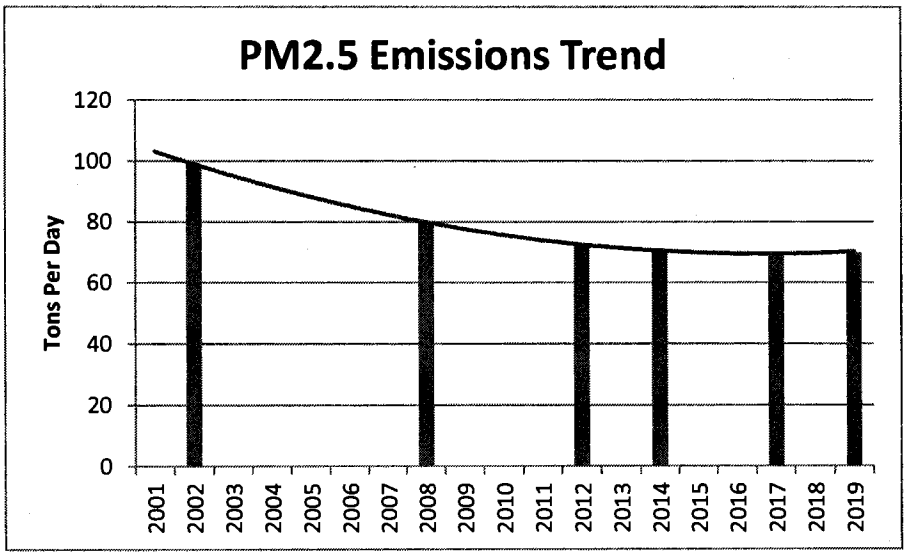


FIGURE 5-9

Trend of Basin PM2.5 Emissions (Controlled)

Control Strategy Choices

PM2.5 has five major precursors that contribute to the development of the ambient aerosol including ammonia, NOx, SOx, VOC, and directly emitted PM2.5. Various combinations of reductions in these pollutants could all provide a path to clean air. The 24-hour PM2.5 attainment strategy presented in this Final 2012 AQMP relies on a dual approach to first demonstrate attainment of the federal standard by 2019 and then focuses on controls that will be most effective in reducing PM2.5 to accelerate attainment to the earliest extent. The 2007 AQMP control measures since implemented will result in substantial reductions of SOx, direct PM2.5, VOC and NOx emissions. Newly proposed short-term measures, discussed in Chapter 4, will provide additional regional emissions reductions targeting directly emitted PM2.5 and NOx.

It is useful to weigh the value of the precursor emissions reductions (on a per ton basis) to microgram per cubic meter improvements in ambient PM2.5 levels. As presented in the weight of evidence discussion, trends of PM2.5 and NOx emissions suggest a direct response between lower emissions and improving air quality. The Final 2007 AQMP established a set of factors to relate regional per ton precursor emissions reductions to PM2.5 air quality improvements based on the annual average concentration. The Final 2012 AQMP CMAQ simulations provided a similar set of factors, but this time directed at 24-hour PM2.5. The analysis determined that VOC emissions reductions have the lowest return in terms of micrograms reduced per ton reduction, one third of the benefit of NOx reductions. SOx emissions were about eight times more effective than NOx

reductions. However, directly emitted PM2.5 reductions were approximately 15 times more effective than NOx reductions. It is important to note that the contribution of ammonia emissions is embedded as a component of the SOx and NOx factors since ammonium nitrate and ammonium sulfate are the resultant particulates formed in the ambient chemical process. Table 5-2 summarizes the relative importance of precursor emissions reductions to 24-hour PM2.5 air quality improvements based on the analysis. . (A comprehensive discussion of the emission reduction factors is presented in Attachment 8 of Appendix V of this document). Emission reductions due to existing programs and implementation of the 2012 AQMP control measures will result in projected 24-hour PM2.5 concentrations throughout the Basin that meet the standard by 2014 at all locations. Basin-wide curtailment of wood burning and open burning when the PM2.5 air quality is projected to exceed 30 $\mu g/m^3$ in Mira Loma will effectively accelerate attainment at Mira Loma from 2019 to 2014. Table 5-3 lists the mix of the four primary precursor's emissions reductions targeted for the staged control measure implementation approach.

TABLE 5-2

Relative Contributions of Precursor Emissions Reductions to Simulated Controlled Future-Year 24-hour PM2.5 Concentrations

PRECURSOR	PM2.5 COMPONENT ($\mu g/m^3$)	STANDARDIZED CONTRIBUTION TO AMBIENT PM2.5 MASS
VOC	Organic Carbon	Factor of 0.3
NOx	Nitrate	Factor of 1
SOx	Sulfate	Factor of 7.8
PM2.5	Elemental Carbon & Others	Factor of 14.8

TABLE 5-3

Final 2012 AQMP
24-hour PM2.5 Attainment Strategy
Allowable Emissions (TPD)

YEAR	SCENARIO	VOC	NOx	SOx	PM2.5
2014	Baseline	451	506	18	70
2014	Controlled	451	490	18	58*

*Winter episodic day emissions

ADDITIONAL MODELING ANALYSES

As a component of the Final 2012 AQMP, concurrent simulations were also conducted to update and assess the impacts to annual average PM2.5 and 8-hour ozone given the new modeling platform and emissions inventory. This update provides a confirmation that the control strategy will continue to move air quality expeditiously towards attainment of the relevant standards.

Annual PM2.5

Annual PM2.5 Modeling Approach

The Final 2012 AQMP annual PM2.5 modeling employs the same approach to estimating the future year annual PM2.5 as was described in the 2007 AQMP attainment demonstrations. Future year PM2.5 annual average air quality is determined using site

and species specific quarterly averaged RRFs applied to the weighted quarterly average 2008 PM2.5 design values per U.S. EPA guidance documents.

In this application, CMAQ and WRF were used to simulate 2008 meteorological and air quality to determine Basin annual average PM2.5 concentrations. The future year attainment demonstration was analyzed for 2015, the target set by the federal CAA. The 2014 simulation relies on implementation of all adopted rules and measures through 2014. This enables a full year-long demonstration based on a control strategy that would be fully implemented by January 1, 2015. It is important to note that the use of the quarterly design values for a 5-year period centered around 2008 (listed in Table 5-4) continue to be used in the projection of the future year annual average PM2.5 concentrations. The future year design reflects the weighted quarterly average concentration calculated from the projections over five years (20 quarters).

TABLE 5-4

2008 Weighted Annual PM2.5 Design Values* ($\mu g/m^3$)

MONITORING SITE	ANNUAL*
Anaheim	13.1
Los Angeles	15.4
Fontana	15.7
North Long Beach	13.6
South Long Beach	13.2
Mira Loma	18.6
Rubidoux	16.7

* Calculated based on quarterly observed data between 2006 – 2010

Future Annual PM2.5 Air Quality

The projections for the annual state and federal standards are shown in Figure 5-10. All areas will be in attainment of the federal annual standard (15.0 $\mu g/m^3$) by 2014. The 2014 design value is projected to be 9 percent below the federal standard. However, as shown in Figure 5-10, the Final 2012 AQMP does not achieve the California standard of 12 $\mu g/m^3$ by 2014. Additional controls would be needed to meet the California annual PM2.5 standard.

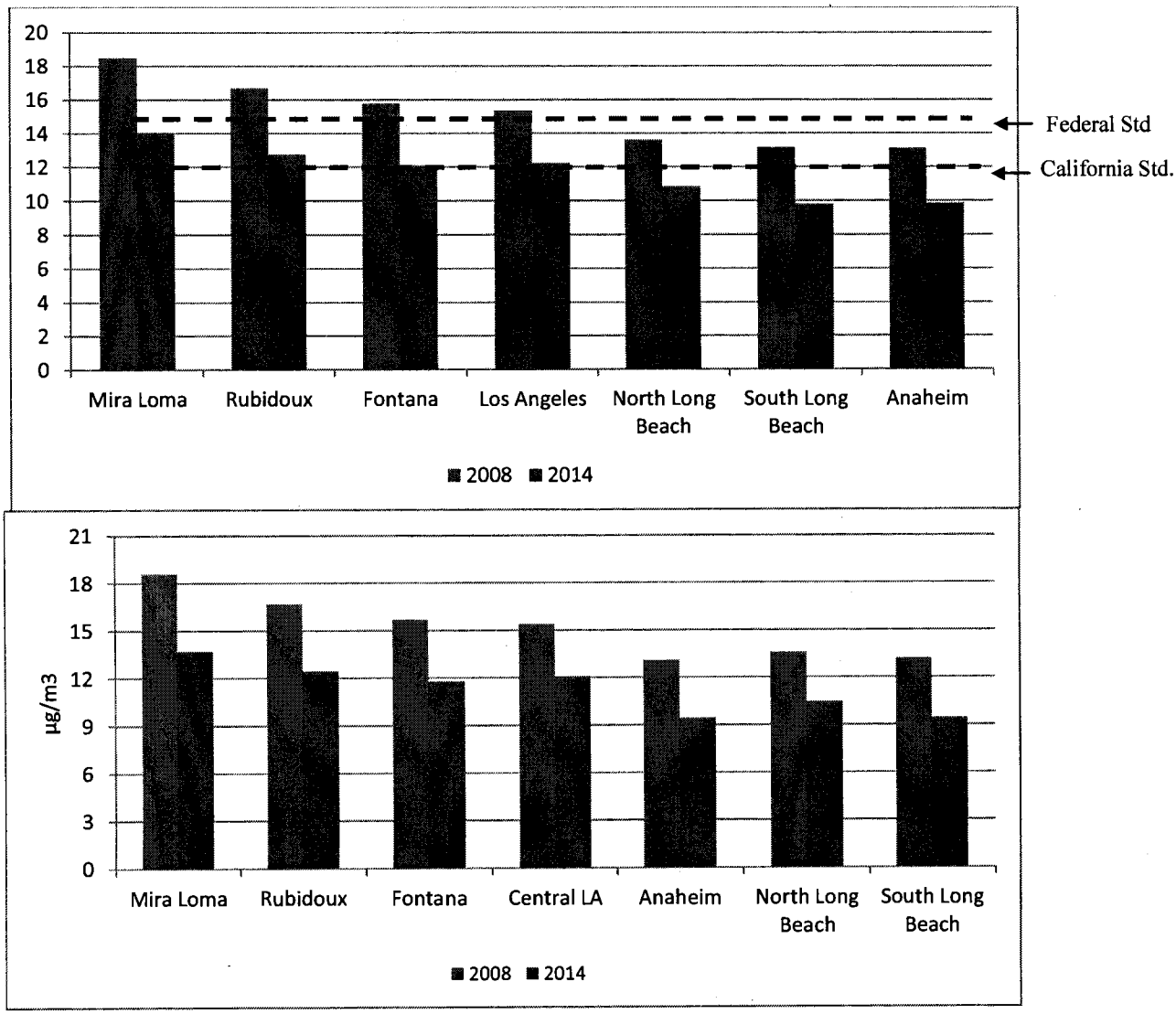


FIGURE 5-10

Annual Average PM2.5 Design Concentrations:
2008 and 2014 Controlled

Ozone Modeling

The 2007 AQMP provided a comprehensive 8-hour ozone analysis that demonstrated future year attainment of the 1997 federal ozone standard (80 ppb) by 2023 with implementation of short-term measures and CAA Section 182(e)(5) long term emissions reductions. The analysis concluded that NOx emissions needed to be reduced approximately 76 percent and VOC 22 percent from the 2023 baseline in order to demonstrate attainment. The 2023 base year VOC and NOx summer planning emissions inventories included 536 and 506 TPD, respectively.

INTRODUCTION

The purpose of the 2012 revision to the AQMP for the South Coast Air Basin is to set forth a comprehensive program that will assist in leading the Basin and those portions of the Salton Sea Air Basin under the District's jurisdiction into compliance with all federal and state air quality planning requirements. Specifically, the Final 2012 AQMP is designed to satisfy the SIP submittal requirements of the federal CAA to demonstrate attainment of the 24-hour PM2.5 ambient air quality standards, the California CAA triennial update requirements, and the District's commitment to update transportation emission budgets based on the latest approved motor vehicle emissions model and planning assumptions. Specific information related to the air quality and planning requirements for portions of the Salton Sea Air Basin under the District's jurisdiction are included in the Final 2012 AQMP and can be found in Chapter 7 – Current and Future Air Quality – Desert Nonattainment Area. The 2012 AQMP will be submitted to U.S. EPA as SIP revisions once approved by the District's Governing Board and CARB.

SPECIFIC 24-HOUR PM2.5 PLANNING REQUIREMENTS

In November 1990, Congress enacted a series of amendments to the CAA intended to intensify air pollution control efforts across the nation. One of the primary goals of the 1990 CAA Amendments was to overhaul the planning provisions for those areas not currently meeting the NAAQS. The CAA identifies specific emission reduction goals, requires both a demonstration of reasonable further progress and an attainment demonstration, and incorporates more stringent sanctions for failure to attain or to meet interim milestones. There are several sets of general planning requirements, both for nonattainment areas [Section 172(c)] and for implementation plans in general [Section 110(a)(2)]. These requirements are listed and briefly described in Chapter 1 (Tables 1-4 and 1-5). The general provisions apply to all applicable criteria pollutants unless superseded by pollutant-specific requirements. The following sections discuss the federal CAA requirements for the 24-hour PM2.5 standards.

FEDERAL AIR QUALITY STANDARDS FOR FINE PARTICULATES

The U.S. EPA promulgated the National Ambient Air Quality Standards for Fine Particles (PM2.5) in July 1997. Following legal actions, the statements were eventually upheld in March 2002. The annual standard was set at a level of 15 micrograms per cubic meter ($\mu g/m^3$), based on the 3-year average of annual mean PM2.5 concentrations. The 24-hour standard was set at a level of 65 $\mu g/m^3$ based on the 3-year average of the

98th percentile of 24-hour concentrations. U.S. EPA issued designations in December 2004, which became effective on April 5, 2005.

In January 2006, U.S. EPA proposed to lower the 24-hour PM2.5 standard. On September 21, 2006, U.S. EPA signed the "Final Revisions to the NAAQS for Particulate Matter." In promulgating the new standards, U.S. EPA followed an elaborate review process which led to the conclusion that existing standards for particulates were not adequate to protect public health. The studies indicated that for PM2.5, short-term exposures at levels below the 24-hour standard of 65 $\mu g/m^3$ were found to cause acute health effects, including asthma attacks and breathing and respiratory problems. As a result, the U.S. EPA established a new, lower 24-hour average standard for PM2.5 at 35 $\mu g/m^3$. No changes were made to the existing annual PM2.5 standard which remained at 15 $\mu g/m^3$ as discussed in Chapter 2. On June 14, 2012, U.S. EPA proposed revisions to this annual standard. The annual component of the standard was set to provide protection against typical day-to-day exposures as well as longer-term exposures, while the daily standard protects against more extreme short-term events. For the 2006 24-hour PM2.5 standard, the form of the standard continues to be based on the 98th percentile of 24-hour PM2.5 concentrations measured in a year (averaged over three years) at the monitoring site with the highest measured values in an area. This form of the standard was set to be health protective while providing a more stable metric to facilitate effective control programs. Table 6-1 summarizes the U.S. EPA's PM2.5 standards.

TABLE 6-1

U.S. EPA's PM2.5 Standards

	1997 STANDARDS		2006 STANDARDS	
	Annual	**24-Hour**	**Annual**	**24-Hour**
PM2.5	15 $\mu g/m^3$ Annual arithmetic mean, averaged over 3 years	65 $\mu g/m^3$ 24-hour average, 98th percentile, averaged over 3 years	15 $\mu g/m^3$ Annual arithmetic mean, averaged over 3 years	35 $\mu g/m^3$ 24-hour average, 98th percentile, averaged over 3 years

On December 14, 2009, the U.S. EPA designated the Basin as nonattainment for the 2006 24-hour PM2.5 NAAQS. A SIP revision is due to U.S. EPA no later than three years from the effective date of designation, December 14, 2012, demonstrating attainment with the standard by 2014. Under Section 172 of the CAA, U.S. EPA may grant an area an extension of the initial attainment date for a period of up to five years.

With implementation of all feasible measures as outlined in this Plan, the Basin will demonstrate attainment with the 24-hour PM2.5 standard by 2014, so no extension is being requested.

FEDERAL CLEAN AIR ACT REQUIREMENTS

For areas such as the Basin that are classified nonattainment for the 2006 24-hour PM2.5 NAAQS, Section 172 of subpart 1 of the CAA applies. Section 172(c) requires states with nonattainment areas to submit an attainment demonstration. Section 172(c)(2) requires that nonattainment areas demonstrate Reasonable Further Progress (RFP). Under subpart I of the CAA, all nonattainment area SIPs must include contingency measures. Section 172(c)(1) of the CAA requires nonattainment areas to provide for implementation of all reasonably available control measures (RACM) as expeditiously as possible, including the adoption of reasonably available control technology (RACT). Section 172 of the CAA requires the implementation of a new source review program including the use of "lowest achievable emission rate" for major sources referred to under state law as "Best Available Control Technology" (BACT) for major sources of PM2.5 and precursor emissions (i.e., precursors of secondary particulates).

This section describes how the Final 2012 AQMP meets the 2006 24-hour PM2.5 planning requirements for the Basin. The requirements specifically addressed for the Basin are:

1. Attainment demonstration and modeling [Section 172(a)(2)(A)];
2. Reasonable further progress [Section 172(c)(2)];
3. Reasonably available control technology (RACT) and Reasonably available control measures (RACM) [Section 172(c)(1)] ;
4. New source review (NSR) [Sections 172(c)(4) and (5)];
5. Contingency measures [Section 172(c)(9)]; and
6. Transportation control measures (as RACM).

Attainment Demonstration and Modeling

Under the CAA Section 172(a)(2)(A), each attainment plan should demonstrate that the area will attain the NAAQS "as expeditiously as practicable," but no later than five years from the effective date of the designation of the area. If attainment within five years is considered impracticable due to the severity of an area's air quality problem and the lack

of available control measures, the state may propose an attainment date of more than five years but not more than ten years from designation.

This attainment demonstration consists of: (1) technical analyses that locate, identify, and quantify sources of emissions that contribute to violations of the PM2.5 standard; (2) analysis of future year emission reductions and air quality improvement resulting from adopted and proposed control measures; (3) proposed emission reduction measures with schedules for implementation; and (4) analysis supporting the region's proposed attainment date by performing a detailed modeling analysis. Chapter 3 and Appendix III of the Final 2012 AQMP present base year and future year emissions inventories in the Basin, while Chapter 4 and Appendix IV provide descriptions of the proposed control measures, the resulting emissions reductions, and schedules for implementation of each measure. The detailed modeling analysis and attainment demonstration are summarized in Chapter 5 and documented in Appendix V.

Reasonable Further Progress (RFP)

The CAA requires SIPs for most nonattainment areas to demonstrate reasonable further progress (RFP) towards attainment through emission reductions phased in from the time of the SIP submission until the attainment date time frame. The RFP requirements in the CAA are intended to ensure that there are sufficient PM2.5 and precursor emission reductions in each nonattainment area to attain the 2006 24-hour PM2.5 NAAQS by December 14, 2014.

Per CAA Section 171(1), RFP is defined as "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." As stated in subsequent federal regulation, the goal of the RFP requirements is for areas to achieve generally linear progress toward attainment. To determine RFP for the 2006 24-hour PM2.5 attainment date, the plan should rely only on emission reductions achieved from sources within the nonattainment area.

Section 172(c)(2) of the CAA requires that nonattainment area plans show ongoing annual incremental emissions reductions toward attainment, which is commonly expressed in terms of benchmark emissions levels or air quality targets to be achieved by certain interim milestone years. The U.S. EPA recommends that the RFP inventories include direct PM2.5, and also PM precursors (such as SOx, NOx, and VOCs) that have been determined to be significant.

40 CFR 51.1009 requires any area that submits an approvable demonstration for an attainment date of more than five years from the effective date of designation to also submit an RFP plan. The Final 2012 AQMP demonstrates attainment with the 24-hour PM2.5 standard in 2014, which is five years from the 2009 designation date. Therefore, no separate RFP plan is required.

Reasonably Available Control Measures (RACM) and Reasonably Available Control Technology (RACT) Requirements

Section 172(c)(1) of the CAA requires nonattainment areas to

> *Provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.*

The District staff has completed its RACM analysis as presented in Appendix VI of the Final 2012 AQMP.

The U.S. EPA provided further guidance on the RACM in the preamble and the final "Clean Air Fine Particle Implementation Rule" to implement the 1997 PM2.5 NAAQS which were published in the Federal Register on November 1, 2005 and April 25, 2007, respectively.[1, 2] The U.S. EPA's long-standing interpretation of the RACM provision stated in the 1997 PM2.5 Implementation Rule is that the non-attainment air districts should consider all candidate measures that are available and technologically and economically feasible to implement within the non-attainment areas, including any measures that have been suggested; however, the districts are not obligated to adopt all measures, but should demonstrate that there are no additional reasonable measures available that would advance the attainment date by at least one year or contribute to reasonable further progress (RFP) for the area.

With regard to the identification of emission reduction programs, the U.S. EPA recommends that non-attainment air districts first identify the emission reduction programs that have already been implemented at the federal level and by other states and local air districts. Next, the U.S. EPA recommends that the air districts examine additional RACM/RACTs adopted for other non-attainment areas to attain the ambient air quality standards as expeditiously as practicable. The U.S. EPA also recommends the

[1] See 70FR 65984 (November 1, 2005)
[2] See 72FR 20586 (April 25, 2007)

air districts evaluate potential measures for sources of direct PM2.5, SOx and NOx first. VOC and ammonia are only considered if the area determines that they significantly contribute to the PM2.5 concentration in the non-attainment area (otherwise they are pressured not to significantly contribute). The PM2.5 Implementation Rule also requires that the air districts establish RACM/RACT emission standards that take into consideration the condensable fraction of direct PM2.5 emissions after January 1, 2011. In addition, the U.S. EPA recognizes that each non-attainment area has its own profile of emitting sources, and thus neither requires specific RACM/RACT to be implemented in every non-attainment area, nor includes a specific source size threshold for the RACM/RACT analysis.

A RACM/RACT demonstration must be provided within the SIP. For areas projected to attain within five years of designation, a limited RACM/RACT analysis including the review of available reasonable measures, the estimation of potential emission reductions, and the evaluation of the time needed to implement these measures is sufficient. The areas that cannot reach attainment within five years must conduct a thorough RACM/RACT analysis to demonstrate that sufficient control measures could not be adopted and implemented cumulatively in a practical manner in order to reach attainment at least one year earlier.

In regard to economic feasibility, the U.S. EPA did not propose a fixed dollar per ton cost threshold and recommended that air districts to include health benefits in the cost analysis. As indicated in the preamble of the 1997 PM2.5 Implementation Rule:

> *In regard to economic feasibility, U.S. EPA is not proposing a fixed dollar per ton cost threshold for RACM, just as it is not doing so for RACT...Where the severity of the non-attainment problem makes reductions more imperative or where essential reductions are more difficult to achieve, the acceptable cost of achieving those reductions could increase. In addition, we believe that in determining what are economically feasible emission reduction levels, the States should also consider the collective health benefits that can be realized in the area due to projected improvements.*

Subsequently, on March 2, 2012, the U.S. EPA issued a memorandum to confirm that the overall framework and policy approach stated in the PM2.5 Implementation Rule for the 1997 PM2.5 standards continues to be relevant and appropriate for addressing the 2006 24-hour PM2.5 standards.

As described in Appendix VI, the District has concluded that all District rules fulfilled RACT for the 2006 24-hour PM2.5 standard. In addition, pursuant to California Health

and Safety Code Section 39614 (SB 656), the District evaluated a statewide list of feasible and cost-effective control measures to reduce directly emitted PM2.5 and its potential precursor emissions (e.g., NOx, SOx, VOCs, and ammonia). The District has concluded that for the majority of stationary and area source categories, the District was identified as having the most stringent rules in California (see Appendix VI). Under the RACM guidelines, transportation control measures must be included in the analysis. Consequently, SCAG has completed a RACM determination for transportation control measures in the Final 2012 AQMP, included in Appendix IV-C.

New Source Review

New source review (NSR) for major and in some cases minor sources of PM2.5 and its precursors are presently addressed through the District's NSR and RECLAIM programs (Regulations XIII and XX). In particular, Rule 1325 has been adopted to satisfy NSR requirements for major sources of directly-emitted PM2.5.

Contingency Measures

Contingency Measure Requirements

Section 172(c)(9) of the CAA requires that SIPs include contingency measures.

> *Such plan shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or the Administrator.*

In subsequent NAAQS implementation regulations and SIP approvals/disapprovals published in the Federal Register, U.S. EPA has repeatedly reaffirmed that SIP contingency measures:

1. Must be fully adopted rules or control measures that are ready to be implemented, without significant additional action (or only minimal action) by the State, as expeditiously as practicable upon a determination by U.S. EPA that the area has failed to achieve, or maintain reasonable further progress, or attain the NAAQS by the applicable statutory attainment date (40 CFR § 51.1012, 73 FR 29184)

2. Must be measures not relied on in the plan to demonstrate RFP or attainment for the time period in which they serve as contingency measures and should provide SIP-creditable emissions reductions equivalent to one year of RFP, based on "generally

linear" progress towards achieving the overall level of reductions needed to demonstrate attainment (76 FR 69947, 73 FR 29184)

3. Should contain trigger mechanisms and specify a schedule for their implementation (72 FR 20642)

Furthermore, U.S. EPA has issued guidance that the contingency measure requirement could be satisfied with already adopted control measures, provided that the controls are above and beyond what is needed to demonstrate attainment with the NAAQS (76 FR 57891).

> *U.S. EPA guidance provides that contingency measures may be implemented early, i.e., prior to the milestone or attainment date. Consistent with this policy, States are allowed to use excess reductions from already adopted measures to meet the CAA sections 172(c)(9) and 182(c)(9)contingency measures requirement. This is because the purpose of contingency measures is to provide extra reductions that are not relied on for RFP or attainment, and that will provide a cushion while the plan is being revised to fully address the failure to meet the required milestone. Nothing in the CAA precludes a State from implementing such measures before they are triggered.*

Thus, an already adopted control measure with an implementation date prior to the milestone year or attainment year would obviate the need for an automatic trigger mechanism.

Air Quality Improvement Scenario

The U.S. EPA Guidance Memo issued March 2, 2012, "Implementation Guidance for the 2006 24-Hour Fine Particle (PM2.5) National Ambient Air Quality Standard (NAAQS)", provides the following discussion of contingency measures:

> *The preamble of the 2007 PM2.5 Implementation Rule (see 79 FR 20642-20645) notes that contingency measures "should provide for emission reductions equivalent to about one year of reductions needed for reasonable further progress (RFP)." The term "one year of reductions needed for RFP" requires clarification. This phrase may be confusing because all areas technically are not required to develop a separate RFP plan under the 2007 PM2.5 Implementation Rule. The basic concept is that an area's set of contingency measures should provide for an amount of emission reductions that would achieve "one year's worth" of air quality improvement proportional to the overall amount of air quality improvement to be achieved by the area's attainment plan; or alternatively, an amount of emission reductions (for all pollutants subject to control measures in the attainment plan) that would achieve one year's worth of emission reductions proportional to the overall amount of emission*

reductions needed to show attainment. Contingency measures can include measures that achieve emission reductions from outside the nonattainment area as well as from within the nonattainment area, provided that the measures produce the appropriate air quality impact within the nonattainment area.

The U.S. EPA believes a similar interpretation of the contingency measures requirements under section 172(c)(9) would be appropriate for the 2006 24-hour PM2.5 NAAQS.

The March 2, 2012 memo then provides an example describing two methods for determining the required magnitude of emissions reductions to be potentially achieved by implementation of contingency measures:

Assume that the state analysis uses a 2008 base year emissions inventory and a future year projection inventory for 2014. To demonstrate attainment, the area needs to reduce its air quality concentration from 41ug/m^3 in 2008 to 35 ug/m^3 in 2014, equal to a rate of change of 1 μg/m^3 per year. The attainment plan demonstrates that this level of air quality improvement would be achieved by reducing emissions between 2008 and 2014 by the following amounts: 1,200 tons of PM2.5; 6,000 tons of NOx; and 6,000 tons of SO2.

Thus, the target level for contingency measures for the area could be identified in two ways:

1) *The area would need to provide an air quality improvement of 1 ug/m^3 in the area, based on an adequate technical demonstration provided in the state plan. The emission reductions to be achieved by the contingency measures can be from any one or a combination of all pollutants addressed in the attainment plan, provided that the state plan shows that the cumulative effect of the adopted contingency measures would result in a 1 ug/m^3 improvement in the fine particle concentration in the nonattainment area; and*

2) *The contingency measures for the area would be one-sixth (or approximately 17%) of the overall emission reductions needed between 2008 and 2014 to show attainment. In this example, these amounts would be the following: 200 tons of PM2.5; 1,000 tons of NOx; and 1,000 tons of SO2.*

The two approaches are explicitly mentioned in regulatory form at 40 CFR § 51.1009:

(g) The RFP plan due three years after designation must demonstrate that emissions for the milestone year are either:

(1) At levels that are roughly equivalent to the benchmark emission levels for direct PM2.5 emissions and each PM2.5 attainment plan precursor to be addressed in the plan; or

(2) At levels included in an alternative scenario that is projected to result in a generally equivalent improvement in air quality by the milestone year as would be achieved under the benchmark RFP plan.

(h) The equivalence of an alternative scenario to the corresponding benchmark plan must be determined by comparing the expected air quality changes of the two scenarios at the design value monitor location. This comparison must use the information developed for the attainment plan to assess the relationship between emissions reductions of the direct PM2.5 emissions and each PM2.5 attainment plan precursor addressed in the attainment strategy and the ambient air quality improvement for the associated ambient species.

The first method in the example and the alternative scenario in the regulation, 40 CFR § 51.1009 (g)(2), base the required amount of contingency measure emission reductions on one year's worth of air quality improvements. The most accurate way of demonstrating that the emissions reductions will lead to air quality improvements is through air quality modeling such as that used in the attainment demonstration (40 CFR § 51.1009 (h) above). If the model results show the required air quality improvements, then the emissions reductions included in the model input are therefore shown to be sufficient to achieve those air quality improvements. The second method in the example, and (g)(1) in the regulation, is based solely on emission reductions, without a direct demonstration that there will be a corresponding improvement in air quality.

Logically, the method based on air quality is more robust than the method based solely on emissions reductions in that it demonstrates that emissions reductions will in fact lead to corresponding air quality improvements, which is the ultimate goal of the CAA and the SIP. The second method relying on overall emissions reductions alone does not account for the spatial and temporal variation of emissions, nor does it account for where and when the reductions will occur. As the relationship between emissions reductions and resulting air quality improvements is complex and not always linear, relying solely on prescribed emission reductions may not ensure that the desired air quality improvements will result when and where they are needed. Therefore, determining the magnitude of reductions required for contingency measures based on air quality improvements, derived from a modeling demonstration, is more effective in achieving the objective of this CAA requirement.

Magnitude of Contingency Measure Air Quality Improvements

The example for determining the required magnitude of air quality improvement to be achieved by contingency measures provided in the March 2, 2012 guidance memo uses the attainment demonstration base year as the base year in the calculation (2008). This is based on the memo's statement that *"contingency measures should provide for an amount of emission reductions that would achieve 'one year's worth' of air quality improvement proportional to the overall amount of air quality improvement to be achieved by the area's attainment plan.* The original preamble (79 FR 20642-20645) states that contingency measures *"should provide for emission reductions equivalent to about one year of reductions needed for reasonable further progress (RFP)."* The term "reasonable further progress" is defined in Section 171(1) of the CAA as *"such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date."*

40 CFR 51.1009 is explicit on how emissions reductions for RFP are to be calculated. In essence, the calculation is a linear interpolation between base-year emissions and attainment-year (full implementation) emissions. The Plan must then show that emissions or air quality in the milestone year (or attainment year) are "roughly equivalent" or "generally equivalent" to the RFP benchmark. As stated earlier in this chapter, given the 2014 attainment year, there are no interim milestone RFP requirements. The contingency measure requirements, therefore, only apply to the 2014 attainment year. In 2014, contingency measures must provide for about one year's worth of reductions or air quality improvement, proportional to the overall amount of air quality improvement to be achieved by the area's attainment plan.

The 2008 base year design value in the 24-hour PM2.5 attainment demonstration is 47.9 $\mu g/m^3$, and the 2014 attainment year design value must be less than 35.5 $\mu g/m^3$ (see Chapter 5). Linear progress towards attainment over the six year period yields one year's worth of air quality improvements equal to approximately 2 $\mu g/m^3$. Thus, contingency measures should provide for approximately 2 $\mu g/m^3$ of air quality improvements to be automatically implemented in 2015 if the Basin fails to attain the 24-hour PM2.5 standard in 2014.

Satisfying the Contingency Measure Requirements

As stated above, the contingency measure requirement can be satisfied by already adopted measures resulting in air quality improvements above and beyond those needed

for attainment. Since the attainment demonstration need only show an attainment year concentration below 35.5 $\mu g/m^3$, any measures leading to improvement in air quality beyond this level can serve as contingency measures. As shown in Chapter 5, the attainment demonstration yields a 2014 design value of 34.28 $\mu g/m^3$. The excess air quality improvement is therefore approximately 1.2 $\mu g/m^3$.

In addition to these air quality improvements beyond those needed for attainment, an additional contingency measure is proposed that will result in emissions reductions beyond those needed for attainment in 2014. Control Measure CMB-01 Phase I seeks to achieve an additional two tons per day of NOx emissions reductions from the RECLAIM market if the Basin fails to achieve the standard by the 2014 attainment date. CMB-01 Phase I is scheduled for near-term adoption and includes the appropriate automatic trigger mechanism and implementation schedule consistent with CAA contingency measure requirements. Taken together with the 1.2 $\mu g/m^3$ of excess air quality improvement described above, this represents a sufficient margin of "about one year's of progress" and "generally linear" progress to satisfy the contingency measure requirements. Note that based on the most recent air quality data at the design value site, Mira Loma, the actual measured air quality is already better (by over 4 $\mu g/m^3$ in 2011) than that projected by modeling based on linear interpolation between base year and attainment year.

To address U.S. EPA's comments regarding contingency measures, the excess air quality improvements beyond those needed to demonstrate attainment should also be expressed in terms of emissions reductions. This will facilitate their enforceability and any future needs to substitute emissions reductions from alternate measures to satisfy contingency measure requirements. For this purpose, Table 6-2 explicitly identifies the portions of emissions reductions from proposed measures that are designated as contingency measures. Table 6-2 also includes the total equivalent basin-wide NOx emissions reductions based on the PM2.5 formation potential ratios described in Chapter 5.

TABLE 6-2

Emissions Reductions for Contingency Measures (2014)

MEASURE	ASSOCIATED EMISSIONS REDUCTIONS FROM CONTINGENCY MEASURES (TONS/DAY)
BCM-01 – Residential Wood Burning[1,2]	2.84(PM2.5)
BCM-02 – Open Burning [1,2]	1.84(PM2.5)
CMB-01 – NOx reductions from RECLAIM	2 (NOx)
Total	71 ($NOx_{(e)}$)[3]

[1]40% of the reductions from these measures, as shown in Table 4-2, are designated for contingency purposes.

[2] Episodic emissions reductions occurring on burning curtailment days.

[3] NOx equivalent emissions based on PM2.5 formation potentials described in Chapter 5 (Table 5-2). The PM2.5:NOx ratio is 14.83:1.

Transportation Control Measures

As part of the requirement to demonstrate that RACM has been implemented, transportation control measures meeting the CAA requirements must be included in the plan. Updated transportation control measures included in this plan attainment of the federal 2006 24-hour PM2.5 standard are described in Appendix IV-C – Regional Transportation Strategy & Control Measures.

Section 182(d)(1)(A) of the CAA requires the District to include transportation control strategies (TCS) and transportation control measures (TCM) in its plans for ozone that offset any growth in emissions from growth in vehicle trips and vehicle miles traveled. Such control measures must be developed in accordance with the guidelines listed in Section 108(f) of the CAA. The programs listed in Section 108(f) of the CAA include, but are not limited to, public transit improvement projects, traffic flow improvement projects, the construction of high occupancy vehicle (HOV) facilities and other mobile source emission reduction programs. While this is not an ozone plan, TCMs may be

ATTACHMENT 17.

FINAL 2012 AQMP
APPENDIX IV-A

DISTRICT'S STATIONARY SOURCE CONTROL MEASURES

DECEMBER 2012

Table of Contents

SECTION 1 - STATIONARY SOURCE CONTROL MEASURES

SECTION 2 - SHORT-TERM PM2.5 CONTROL MEASURES

TABLE IV-A-1 (concluded)

Short-Term PM2.5 Control Measures

NUMBER	TITLE	ADOPTION	IMPLEMENTATION PERIOD	REDUCTION (TPD)
~~IND-01 (formerly MOB-03)~~	~~Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources [NOx, SOx, PM2.5]~~	~~2013~~	~~12 months after trigger~~	~~N/A~~ [f]
EDU-01 *(formerly MCS-02, MCS-03)*	Further Criteria Pollutant Reductions from Education, Outreach and Incentives [All Pollutants]	Ongoing	Ongoing	N/A [f]
MCS-01 *(formerly MCS-07)*	Application of All Feasible Measures Assessment [All Pollutants]	Ongoing	Ongoing	TBD [e]

a. Emission reductions are included in the SIP as a contingency measure.
b. Winter average day reductions based on episodic conditions and 75 percent compliance rate.
c. Reduction based on episodic day conditions.
d. Will submit into SIP once technically feasible and cost effective options are confirmed.
e. TBD are reductions to be determined once the technical assessment is complete, and inventory and control approach are identified.
f. N/A are reductions that cannot be quantified due to the nature of the measure (e.g., outreach, incentive programs) or if the measure is designed to ensure reductions that have been assumed to occur will in fact occur.

It should be noted that the emission reduction targets for the proposed control measures (those with quantified reductions) are established based on available or anticipated control methods or technologies. However, emission reductions associated with implementation of these and other control measures or rules in excess of the AQMP's projected reductions can be credited toward the overall emission reduction targets for the proposed control measures in this appendix.

Emission reductions associated with the District's SIP commitment to adopt and implement emission reductions from sources under the District's jurisdiction are being proposed. Once the SIP commitment is accepted, should there be emission reduction shortfalls in any given year, the District would identify and adopt other measures to make up the shortfall. Similarly, if excess emission reductions are achieved in a year, they can be used in that year or carried over to subsequent years if necessary to meet reduction goals. More detailed discussion on the District's SIP commitment is included in Chapter 4 of the Final 2012 AQMP.

The following sections provide a brief overview of the specific source category types targeted by short-term PM2.5 control measures.

Combustion Sources

This category includes one control measure that seeks further NOx emission reductions from RECLAIM sources.

IND-01: BACKSTOP MEASURE FOR INDIRECT SOURCES OF EMISSIONS FROM PORTS AND PORT-RELATED FACILITIES [NO_x, SO_x, PM2.5]

CONTROL MEASURE SUMMARY

SOURCE CATEGORY:	IF THE BACKSTOP MEASURE BECOMES EFFECTIVE (I.E. IF EMISSIONS FROM PORT-RELATED SOURCES EXCEED TARGETS FOR NOX, SOX, AND PM2.5), AFFECTED SOURCES WOULD BE PROPOSED BY THE PORTS AND COULD INCLUDE SOME OR ALL PORT-RELATED SOURCES (TRUCKS, CARGO HANDLING EQUIPMENT, HARBOR CRAFT, MARINE VESSELS, LOCOMOTIVES, AND STATIONARY EQUIPMENT), TO THE EXTENT COST EFFECTIVE STRATEGIES ARE AVAILABLE
CONTROL METHODS:	IF THE BACKSTOP MEASURE BECOMES EFFECTIVE, EMISSION REDUCTION METHODS WOULD BE PROPOSED BY THE PORTS AND POTENTIALLY COULD INCLUDE CLEAN TECHNOLOGY FUNDING PROGRAMS, LEASE PROVISIONS, PORT TARIFFS, OR INCENTIVES/DISINCENTIVES TO IMPLEMENT MEASURES, TO THE EXTENT COST EFFECTIVE AND FEASIBLE STRATEGIES ARE AVAILABLE

EMISSIONS (TONS/DAY):

ANNUAL AVERAGE	2008	2014	2019	2023
NOx INVENTORY*	78.6	51.2	47.2	39.2
NOx REDUCTION*		N/A	N/A	N/A
NOx REMAINING*		51.2	47.2	39.2
SOx INVENTORY*	25.5	1.8	2.3	2.7
SOx REDUCTION*		N/A	N/A	N/A
SOx REMAINING*		1.8	2.3	2.7
PM2.5 INVENTORY*	3.7	1.0	1.0	1.1
PM2.5 REDUCTION*		N/A	N/A	N/A
PM2.5 REMAINING*		1.0	1.0	1.1

CONTROL COST:	TBD
IMPLEMENTING AGENCY:	SCAQMD

** The purpose of this control measure is to ensure the emissions from port-related sources are at or below the AQMP baseline inventories for PM2.5 attainment demonstration. The emissions presented herein were used for attainment demonstration of the 24-hr PM 2.5 standard by 2014.*

DESCRIPTION OF SOURCE CATEGORY

This control measure is carried over from the 2007 AQMP/SIP. If the backstop measure goes into effect, affected sources would be proposed by the ports and could include some or all port-related sources (trucks, cargo handling equipment, harbor craft, marine vessels, locomotives, and stationary equipment), to the extent cost effective and feasible strategies are available.

Other sources – i.e. sources that are unrelated to the ports – would not in any way be subject to emission reductions under this measure (including through funding of emission reduction measures, or purchase of emission credits, by the ports or port tenants).

Background

Emissions and Progress. The ports of Los Angeles and Long Beach are the largest in the nation in terms of container throughput, and collectively are the single largest fixed source of air pollution in Southern California. Emissions from port-related sources have been reduced significantly since 2006 through efforts by the ports and a wide range of stakeholders. In large part, these emission reductions have resulted from programs developed and implemented by the ports in collaboration with port tenants, marine carriers, trucking interests and railroads. Regulatory agencies, including EPA, CARB and SCAQMD, have participated in these collaborative efforts from the outset, and some measures adopted by the ports have led the way for adoption of analogous regulatory requirements that are now applicable statewide. These port measures include the Clean Truck Program and actions to deploy shore power and low emission cargo handling equipment. The Ports of Los Angeles and Long Beach have also established incentive programs which have not subsequently been adopted as regulations. These include incentives for routing of vessels meeting IMO Tier 2 and 3 NOx standards, and vessel speed reduction. In addition, the ports are, in collaboration with the regulatory agencies, implementing an ambitious Technology Advancement Program to develop and deploy clean technologies of the future.

Port sources such as marine vessels, locomotives, trucks, harbor craft and cargo handling equipment, continue to be among the largest sources of $PM_{2.5}$ and $PM_{2.5}$ precursors in the region. Given the large magnitude of emissions from port-related sources, the substantial efforts described above play a critical part in the ability of the South Coast Air Basin to attain the national $PM_{2.5}$ ambient air standard by federal deadlines. This measure provides assurance that emissions from the Basin's largest fixed emission source will continue to support attainment of the federal 24-hour PM2.5 standard. . Reductions in PM2.5 emissions will also reduce cancer risks from diesel particulate matter.

Clean Air Action Plan. The emission control efforts described above largely began in 2006 when the Ports of Los Angeles and Long Beach, with the participation and cooperation of the staff of the SCAQMD, CARB, and U.S. EPA, adopted the San Pedro Bay Ports Clean Air Action Plan (CAAP). The CAAP was further amended in 2010, updating many of the goals and implementation strategies to reduce air emissions and health risks associated with port

operations while allowing port development to continue. In addition to addressing health risks from port-related sources, the CAAP sought the reduction of criteria pollutant emissions to the levels that assure port-related sources decrease their "fair share" of regional emissions to enable the Basin to attain state and federal ambient air quality standards.

The CAAP focuses primarily on reducing diesel particulate matter (DPM), along with NOx and SOx. The CAAP includes proposed strategies on port-related sources that are implemented through new leases or Port-wide tariffs, Memoranda of Understanding (MOU), voluntary action, grants or incentive programs.

The goals set forth in the CAAP include:

- Health Risk Reduction Standard: 85% reduction in population-weighted cancer risk by 2020
- Emission Reduction Standards:
  - By 2014, reduce emissions by 72% for DPM, 22% for NOx, and 93% for SOx
  - By 2023, reduce emissions by 77% for DPM, 59% for NOx, and 93% for SOx

In addition to the CAAP, the Ports have completed annual inventories of port-related sources since 2005. These inventories have been completed in conjunction with a technical working group composed of the SCAQMD, CARB, and U.S. EPA. Based on the latest inventories, it is estimated that the emissions from port-related sources will meet the 2012 AQMP emission targets necessary for meeting the 24-hr PM2.5 ambient air quality standard. The projected emissions from port related sources are included in the "baseline" emissions assumed in this plan to attain the PM2.5 standards.

While many of the emission reduction targets in the CAAP result from implementation of federal and state regulations (either adopted prior to or after the CAAP), some are contingent upon the Ports taking and maintaining actions which are not required by air quality regulations. These actions include the Expanded Vessel Speed Reduction Incentive Program, lower emission switching locomotives,and incentives for lower emission marine vessels. This AQMP control measure is designed to provide a "backstop" to the Ports' actions to provide assurance that, if emissions do not continue to meet projections, the ports will develop and implement plans to get back on track, to the extent that cost effective and feasible strategies are available. .

Regulatory History

The CAAP sets out the emission control programs and plans that will help mitigate air quality impacts from port-related sources. The CAAP relies on a combination of regulatory requirements and voluntary control strategies which go beyond U.S. EPA or CARB requirements, or are implemented faster than regulatory rules. The regulations which the CAAP relies on include international, federal and state requirements controlling port-related sources such as marine vessels, harbor craft, cargo handling equipment, locomotives, and trucks.

The International Maritime Organization (IMO) MARPOL Annex VI, which came into force in May 2005, set new international NO_x emission limits on Category 3 (>30 liters per cylinder displacement) marine engines installed on new vessels retroactive to the year 2000. In October

~~2008, the IMO adopted an amendment which places a global limit on marine fuel sulfur content of 0.1 percent by 2015 for specific areas known as Emission Control Areas (ECA). The South Coast District waters of the California coast are included in an ECA and ships calling at the Port of Los Angeles and Long Beach have to meet this new fuel standard. In addition, the 2008 IMO amendment required new ships built after January 1, 2016 which will be used in an Emission Control Area (ECA) to meet a Tier III NOx emission standard which is 80 percent lower than the original emission standard.~~

~~To reduce emissions from switch and line-haul locomotives, the U.S. EPA in 2008 established a series of increasingly strict emission standards for new or remanufactured locomotive engines. The emission standards are implemented by "Tier" with Tier 0 as the least stringent and Tier 4 being the most stringent. U.S. EPA also established remanufacture standards for both line haul and switch engines. For Tiers 0, 1, and 2, the remanufacture standards are more stringent than the new manufacture standards for those engines for some pollutants.~~

~~To reduce emissions from on-road, heavy-duty diesel trucks, U.S. EPA established a series of cleaner emission standards for new engines, starting in 1988. The U.S. EPA promulgated the final and cleanest standards with the 2007 Heavy Duty Highway Rule. Starting with model year 2010, all new heavy-duty trucks have to meet the final emission standards specified in the rule.~~

~~On December 8, 2005, CARB approved the Regulation for Mobile Cargo Handling Equipment (CHE) at Ports and Intermodal Rail Yards (Title 13, CCR, Section 2479), which is designed to use best available control technology (BACT) to reduce diesel PM and NO_x emissions from mobile cargo handling equipment at ports and intermodal rail yards. The regulation became effective December 31, 2006. Since January 1, 2007, the regulation imposes emission performance standards on new and in-use terminal equipment that vary by equipment type.~~

~~In 1998, the railroads and CARB entered into an MOU to accelerate the introduction of Tier 2 locomotives into the SCAB. The MOU includes provisions for a fleet average in the SCAB, equivalent to U.S. EPA's Tier 2 locomotive standard by 2010. The MOU addressed NOx emissions from locomotives. Under the MOU, NOx levels from locomotives are reduced by 67 percent.~~

~~On June 30, 2005, Union Pacific Railroad (UP) and Burlington Northern Santa Fe Railroad (BNSF) entered into a Statewide Rail Yard Agreement to Reduce Diesel PM at California Rail Yards with the CARB. The railroads committed to implementing certain actions from rail operations throughout the state. In addition, the railroads prepared equipment inventories and conducted dispersion modeling for Diesel PM.~~

~~In December 2007, CARB adopted a regulation which applies to heavy-duty diesel trucks operating at California ports and intermodal rail yards. This regulation eventually will require all drayage trucks to meet 2007 on-road emission standards by 2014.~~

~~Areas where the CAAP went beyond existing regulatory requirements or accelerated the implementation of current IMO, U.S. EPA, or CARB rules include emissions reductions from ocean-going vessels through lowering vessel speeds, accelerating the introduction of 2007/2010 on-road heavy-duty drayage trucks, maximizing the use of shore-side power for ocean-going~~

vessels while at berth, early use of low-sulfur fuel in ocean-going vessels, and the restriction of high-emitting locomotives on port property. Each of these strategies is highlighted below.

HDV1 – Performance Standards for On-Road Heavy Duty Vehicles (Clean Truck Program) – This control measure requires that all on-road trucks entering the ports comply with the Clean Truck Program. Several milestones occurred early in the program implementation, but the current requirement bans all trucks not meeting the 2007 on-road heavy-duty truck emission standards from port property. This program has the effect of accelerating the introduction of clean trucks sooner than would have occurred under the state-wide drayage truck regulation framework.

OGV1 – Vessel Speed Reduction Program (VSRP): Under this voluntary program, the Port requested that ships coming into the Ports reduce their speed to 12 knots or less within 20nm of the Point Fermin Lighthouse. The program started in May 2001. The Ports expanded the program out to 40 nm from the Point Fermin Lighthouse in 2010.

OGV3/OGV4 – Low Sulfur Fuel for Auxiliary and Main Engines and Auxiliary Boilers: OGV3 reduces emissions for auxiliary engines and auxiliary boilers of OGVs during their approach and departure from the ports, including hoteling, by switching to MGO or MDO with a fuel sulfur content of 0.2 percent or less within 40 nm from Point Fermin. OGV4 Control measure reduces emissions from main engines during their approach and departure from the ports. OGV3 and OVV4 are implemented as terminal leases are renewed.

RL-3 – New and Redeveloped Near-Dock Rail Yards: The Ports have committed to support the goal of accelerating the natural turnover of line-haul locomotive fleet to at least 95 percent Tier 4 by 2020. In addition, this control measure establishes the minimum standard goal that the Class 1 (UP and BNSF) locomotive fleet associated with new and redeveloped near-dock rail yards use 15-minute idle restrictors and ULSD or alternative fuels, and as part of the environmental review process for upcoming rail projects, 40% of line-haul locomotives accessing port property will meet a Tier 3 emission standard and 50% will meet Tier 4.

PROPOSED METHOD OF CONTROL

The goal of this measure is to ensure that NOx, SOx and PM2.5 emissions reductions from port-related sources are sufficient to attain the 24-hr federal PM2.5 ambient air quality standard. This measure would establish targets for NOx, SOx, and PM2.5 for 2014 that are based on emission reductions resulting from adopted rules and other measures such as railroad MOUs and vessel speed reduction that have been adopted and are being implemented. These emissions from port related sources are included in the "baseline" emissions assumed in this plan to attain the 24-hour $PM_{2.5}$ standard. Based on current and future emission inventory projections these rules and measures will be sufficient to achieve attainment of the 24-hr federal PM2.5 ambient air quality standard. Requirements adopted pursuant to this measure will become effective only if emission levels exceed the above targets. Once triggered, the ports will be required to develop and implement a plan to reduce emissions from port related sources to meet the emission targets over a time period. The time period to achieve and maintain emission targets will be established pursuant to procedures and criteria developed during rulemaking and specified in the rule.

~~This control measure will be implemented through a District rule. Through the rule development process the AQMD staff will establish a working group, hold a series of working group meetings, and hold public workshops. The purpose of the rule development process is to allow the AQMD staff to work with a variety of stakeholders such as the Ports, potentially affected industries, other agencies, and environmental and community groups. The rule development process will discuss the terms of the proposed backstop rule and, through an iterative public process, develop proposed rule language. In addition, the emissions inventory and targets will be reviewed and may be refined if necessary. This control measure applies to the Port of Los Angeles and the Port of Long Beach, acting through their respective Boards of Harbor Commissioners. The ports may have the option to comply separately or jointly with provisions of the backstop rule.~~

~~Elements of Backstop Rule~~

~~*Summary*: This control measure will establish enforceable nonattainment pollutant emission reduction targets for the ports in order to ensure implementation of the 24-hr PM2.5 attainment strategy in the 2012 AQMP. The "backstop" rule will go into effect if aggregate emissions from port related sources exceed specified emissions targets. If emissions do not exceed such targets, the ports will have no control obligations under this control measure.~~

~~*Emissions Targets:* The emissions inventories projected for the port related sources in the 2012 AQMP are an integral part of the 24-hr PM2.5 attainment demonstration for 2014 and its maintenance of attainment in subsequent years. These emissions serve as emission targets for meeting the 24-hr PM2.5 standard.~~

~~*Scope of Emissions Included:* Emissions from all sources associated with each port, including equipment on port property, marine vessels traveling to and from the port while in California Coastal Waters, locomotives and trucks traveling to and from port-owned property while within the South Coast Air Basin. This measure will make use of the Port's annual emission inventory, either jointly or individually, as the basis for the emission targets. The inventory methodology to estimate these emissions is consistent with the CAAP methodology. Other sources – i.e. sources that are unrelated to the ports – would not in any way be subject to emission reductions under this measure (including through funding of emission reduction measures, or purchase of emission credits, by the ports or port tenants).~~

~~*Circumstances Causing Backstop Rule Regulatory Requirements to Come Into Effect:* The "backstop" requirements will be triggered if the reported aggregate emissions for 2014 for all port related sources exceed the 2014 emissions targets. The rule may also provide that it will come into effect if the target is met in 2014 but exceeded in a subsequent year. If the target is not exceeded, the ports would have no obligations under this measure.~~

~~*Requirements if Backstop Rule Goes Into Effect:* If the "backstop" rule goes into effect, the Ports would submit an Emission Control Plan to the District. The plan would include measures sufficient to bring the Ports back into compliance with the 2014 emission targets. The Ports may choose which sources would be subject to additional emission controls, and may choose any number of implementation tools that can achieve the necessary reduction. These may include clean technology funding programs, lease provisions, port tariffs, or incentives/disincentives to~~

implement measures. As described below, the ports would have no obligation under this measure to implement measures which are not cost-effective and feasible, or where the ports lack the authority to adopt an implementation mechanism. The District would approve the plan if it met the requirements of the rule.

RULE COMPLIANCE AND TEST METHODS

Compliance with this control measure will depend on the type of control strategy implemented. Compliance will be verified through compliance plans, and enforced through submittal and review of records, reports, and emission inventories. Enforcement provisions will be discussed as part of the rule development process.

COST EFFECTIVENESS AND FEASIBILITY

The cost effectiveness of this measure will be based on the control option selected. A maximum cost-effectiveness threshold will be established for each pollutant during rule development. The rule will not require any additional control strategy to be implemented which exceeds the threshold, or which is not feasible. In addition, the rule would not require any strategy to be implemented if the ports lack authority to implement such strategy. If sufficient cost-effective and feasible measures with implementation authority are not available to achieve the emissions targets by the applicable date, the District will issue an extension of time to achieve the target. It is the District's intent that during such extension, the ports and regulatory agencies would work collaboratively to develop technologies and implementation mechanisms to achieve the target at the earliest date feasible.

IMPLEMENTING AGENCY

The District has authority to adopt regulations to reduce or mitigate emissions from indirect sources, i.e. facilities such as ports that attract on- and off-road mobile sources, and has certain authorities to control emissions from off-road mobile sources themselves. These authorities include the following:

Indirect Source Controls. State law provides the District authority to adopt rules to control emissions from "indirect sources." The Clean Air Act defines an indirect source as a "facility, building, structure, installation, real property, road or highway which attracts, or may attract, mobile sources of pollution." 42 U.S.C. § 7410(a)(5)(C); CAA § 110(a)(5)(C). Districts are authorized to adopt rules to "reduce or mitigate emissions from indirect sources" of pollution. (Health & Safety Code § 40716(a)(1)). The South Coast District is also required to adopt indirect source rules for areas where there are "high-level, localized concentrations of pollutants or with respect to any new source that will have a significant impact on air quality in the South Coast Air Basin." (Health & Safety Code § 40440(b)(3)). The federal Court of Appeals has held that an indirect source rule is not a preempted "emission standard." *National Association of Home Builders v. San Joaquin Valley Unified Air Pollution Control District*, 627 F.3d. 730 (9th Cir. 2010)

Nonvehicular (Off-Road) Source Emissions Standards. Under California law "local and regional authorities," including the ports and the District, have primary responsibility for the control of air pollution from all sources other than motor vehicles. (Health & Safety Code § 40000). Such "nonvehicular" sources include marine vessels, locomotives and other non-road equipment. CARB has concurrent authority under state law to regulate these sources. The federal Clean Air Act preempts states and local governments from adopting emission standards and other requirements for new locomotives (Clean Air Act § 209(e); 42 U.S.C.§ 7543(e)), but California may establish and enforce standards for other non-road sources upon receiving authorization from EPA (*Id.*). No such federal authorization is required for state or local fuel, operational, or mass emission limits for marine vessels, locomotives or other non-road equipment. (40 CFR Pt. 89, Subpt. A, App.A; *Engine Manufacturers Assn. v. Environmental Protection Agency*, 88 F.3d. 1075 (DC Cir. 1996)).

Fuel Sulfur Limits. With respect to non-road engines, including marine vessels and locomotives, the District and CARB have concurrent authority to establish fuel limits, such as those on sulfur content. As was noted above, fuel regulations for non-road equipment are not preempted by the Clean Air Act and do not require EPA authorization.

Operational Limits. The District has authority under state law to establish operational limits for nonvehicular sources such as marine vessels, locomotives, and cargo handling equipment (to the extent cargo handling equipment is "nonvehicular"). As was discussed above, operational limits for non-road equipment are not preempted by the Clean Air Act. In addition, the District may adopt operational limits for motor vehicles such as indirect source controls and transportation controls without receiving an authorization or waiver from U.S. EPA.

REFERENCES

San Pedro Bay Ports Clean Air Action Plan, 2010 Update, October 2010

Southern California International Gateway Project Draft Environmental Impact Report, Port of Los Angeles, September 2011

SCAQMD, 2007 Air Quality Management Plan, Appendix IV-A, June 2007

ATTACHMENT 18.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Final Supplement to the 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin

February 2015

Executive Officer
Barry R. Wallerstein, D. Env.

Deputy Executive Officer
Planning, Rule Development and Area Sources
Elaine Chang, DrPH

Assistant Deputy Executive Officer
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Philip Fine, Ph.D.

Author:	Joseph Cassmassi	Planning and Rules Manager
	Sang-Mi Lee, Ph.D.	Program Supervisor
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	Michael Krause	Program Supervisor
Reviewed By:	Barbara Baird	Chief Deputy Counsel
	Megan Lorenz	Senior Deputy District Counsel

TABLE F-1

Updated 2012 SIP Emission Reduction Commitments to Attain 24-hour PM2.5 NAAQS *(35 μg/m³)*

Control Measure #	CONTROL MEASURE TITLE	2012 AQMP			PROPOSED in SUPPLEMENT		
		Adoption Date	COMMITMENT	ACHIEVED	Adoption Date	COMMITMENT	ACHIEVED
			2014	2014		2015	2015
PM2.5 EMISSIONS							
IND-01	Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Facilities [R4001]	2013	N/A[1]	N/A[1]	**2015**	N/A[1]	N/A[1]
BCM-01	Further Reductions from Residential Wood Burning Devices [R445]	2013	7.1	7.1	2013	7.1	7.1
BCM-02	Further Reductions from Open Burning [R444]	2013	4.6	4.6	2013	4.6	4.6
MCS-01	Application of All Feasible Measures Assessment	Ongoing	TBD[2]	TBD	Ongoing	TBD[2]	TBD
BCM-03	Emission Reductions from Under-Fired Charbroilers [R1138]	2015	TBD[3]	TBD	**2017**	TBD[3]	TBD
EDU-01	Further Criteria Pollutant Reductions from Education, Outreach and Incentives	Ongoing	N/A[4]	N/A	Ongoing	N/A[4]	N/A
	TOTAL PM2.5 EMISSION REDUCTIONS (TPD)		**11.7**	**11.7**	**--**	**11.7**	**11.7**
NOx EMISSIONS							
CMB-01	Further NOx Reductions from RECLAIM [Reg XX]	2013	2.0[5]	--	**2015**	2.0[5]	--
IND-01	Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Facilities [R4001]	2013	N/A[1]	N/A[1]	**2015**	N/A[1]	N/A[1]
	TOTAL NOx EMISSION REDUCTIONS (TPD)		**2.0**	--	--	**2.0**	--
SOx EMISSIONS							
IND-01	Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Facilities [R4001]	2013	N/A[1]	N/A[1]	**2015**	N/A[1]	N/A[1]
	TOTAL SOx EMISSION REDUCTIONS (TPD)		--	**N/A[1]**	--	--	**N/A[1]**
NH3 EMISSIONS							
BCM-04	Further Ammonia Reductions from Livestock Waste [R1127] - Phase I (*Tech Assessment*)	2013-2014	TBD[2]	TBD	**2015 - 2016**	TBD[2]	TBD
	-Phase II (*Rule Amendment*)	TBD	TBD[2]	TBD	TBD	TBD[2]	TBD
	TOTAL NH3 EMISSION REDUCTIONS (TPD)		TBD	TBD	--	--	--

[1] Measure is designed to ensure reductions assumed to occur will in fact occur
[2] Reductions to be determined once the technical assessment is complete, and inventory and control approach are identified
[3] Will submit into SIP once technically feasible and cost effective options are identified
[4] Reductions cannot be quantified due to the nature of the measure (e.g., outreach, incentive programs)
[5] Emission reductions are included in the SIP as a contingency measure, if triggered

ATTACHMENT 19.

BOARD MEETING DATE: February 6, 2015 AGENDA NO. 22

PROPOSAL: Supplement to 24-hour PM2.5 State Implementation Plan for South Coast Air Basin

SYNOPSIS: The purpose of this Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin is to demonstrate attainment of the 2006 24-hour PM2.5 National Ambient Air Quality Standard by 2015 under Clean Air Act, Title 1, Part D, Subpart 4, along with updates to the transportation conformity budgets, analysis of Reasonably Available Control Measures/Reasonably Available Control Technology, control measure commitments submitted in the 2012 AQMP, and other Subpart 4 requirements.

COMMITTEE: Mobile Source Committee, January 23, 2015, Reviewed

RECOMMENDED ACTIONS:
Adopt the attached resolution:

1. Determining that the Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin is exempt from the requirements of CEQA; and
2. Approving the attached Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin for Submittal into the SIP.

Barry R. Wallerstein, D.Env.
Executive Officer

BB EC:PF:MK

Background

The 2012 AQMP was approved by the SCAQMD Board in December 2012, with additional amendments approved in February 2013, and was subsequently submitted to CARB and the U.S. EPA for inclusion into the SIP. That plan demonstrated projected attainment of the 2006 24-hour PM2.5 National Ambient Air Quality Standards (NAAQS) (35 $\mu g/m^3$) by 2014. However, a recent court decision (*Natural Res. Def. Council v. EPA*, 706 F.3d 428 (D.C. Cir. 2013)) compels U.S. EPA to evaluate the 24-

ATTACHMENT B

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Draft Supplement to the 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin

January 2015

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	Michael Krause	Program Supervisor
Reviewed By:	Barbara Baird	Chief Deputy Counsel
	Megan Lorenz	Senior Deputy District Counsel

ATTACHMENT F

UPDATED LIST OF CONTROL STRATEGY COMMITMENTS

UPDATE OF COMMITMENTS

The short-term PM2.5 control measures in the 2012 AQMP included stationary source control measures, technology assessments, an indirect source measure and one education and outreach measure. The development of the control measures considered the emissions reductions and the adoption and implementation dates that would result in attainment of the 2006 24-hour PM2.5 standard of 35 $\mu g/m^3$. In some cases, only a range of possible emissions reductions could be determined, and for some others, the magnitude of potential reductions could not be determined at that time. The short-term PM2.5 control measures were presented in Table 4-2 (Chapter 4) of the 2012 AQMP, and the following table, Table F-1 updates that information, thus replacing Table 4-2 in the 2012 AQMP for inclusion in the 24-hour PM2.5 SIP. Note that these changes do not affect the magnitude or timing of emission reductions commitments supporting the attainment demonstration in the 2012 AQMP and this Supplement. The emission reduction commitment for CMB-01 (Further NOx Reductions from RECLAIM) was as a contingency measure only for PM2.5, and thus does not affect the attainment demonstrations.

The measures target a variety of source categories: Combustion Sources (CMB), PM Sources (BCM), Indirect Sources (IND), Educational Programs (EDU) and Multiple Component Sources (MCS).

Two PM2.5 control measures, BCM-01 (Further Reductions from Residential Wood Burning Devices) and BCM-02 (Further Reductions from Open Burning), were adopted in 2013 in the form of amendments to Rules 445 (Wood Burning Devices) and 444 (Open Burning), respectively. Together, these amendments generated a total of 11.7 tons of PM2.5 per day reductions on an episodic basis. Control measure CMB-01 (Further NOx Reductions from RECLAIM), which was submitted as a contingency measure, is anticipated to be considered by the SCAQMD Governing Board in the first half of 2015. The rulemaking process for control measure IND-01 (Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities) is underway, with anticipated SCAQMD Governing Board consideration in 2015 and the technology assessment for control measure BCM-04 (Further Ammonia Reductions from Livestock Waste) will now be adopted in the 2015 to 2016 timeframe with rulemaking to follow, if technically feasible and cost-effective. The BCM-03 (Emission Reductions from Under-Fired Charbroilers) technology assessment is ongoing and is expected to be completed by 2015 with rule development to follow by 2017.

Pursuant to CAA Section 172(c)(9), SIPs are required to include contingency measures to be undertaken if the area fails to make reasonable further progress or attain the NAAQS by the attainment date. The contingency measures "should provide for emission reductions equivalent to about one year of reductions needed for reasonable further progress (RFP)" (79 FR 20642-20645) The 2012 AQMP relied on excess air quality improvement from the control strategy as well as potential NOx reductions from control measure CMB-01 (Further NOx Reductions from

ATTACHMENT 20.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Final Supplement to the 24-Hour PM2.5 State Implementation Plan for the South Coast Air Basin

February 2015

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	Megan Lorenz	Senior Deputy District Counsel

TABLE F-1

Updated 2012 SIP Emission Reduction Commitments to Attain 24-hour PM2.5 NAAQS *(35 μg/m³)*

Control Measure #	CONTROL MEASURE TITLE	2012 AQMP			PROPOSED in SUPPLEMENT		
		Adoption Date	COMMITMENT	ACHIEVED	Adoption Date	COMMITMENT	ACHIEVED
			2014	2014		2015	2015
PM2.5 EMISSIONS							
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BCM-01	Further Reductions from Residential Wood Burning Devices [R445]	2013	7.1	7.1	2013	7.1	7.1
BCM-02	Further Reductions from Open Burning [R444]	2013	4.6	4.6	2013	4.6	4.6
MCS-01	Application of All Feasible Measures Assessment	Ongoing	TBD[2]	TBD	Ongoing	TBD[2]	TBD
BCM-03	Emission Reductions from Under-Fired Charbroilers [R1138]	2015	TBD[3]	TBD	**2017**	TBD[3]	TBD
EDU-01	Further Criteria Pollutant Reductions from Education, Outreach and Incentives	Ongoing	N/A[4]	N/A	Ongoing	N/A[4]	N/A
	TOTAL PM2.5 EMISSION REDUCTIONS (TPD)		**11.7**	**11.7**	--	**11.7**	**11.7**
NOx EMISSIONS							
CMB-01	Further NOx Reductions from RECLAIM [Reg XX]	2013	2.0[5]	--	**2015**	2.0[5]	--
IND-01	Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Facilities [R4001]	2013	N/A[1]	N/A[1]	**2015**	N/A[1]	N/A[1]
	TOTAL NOx EMISSION REDUCTIONS (TPD)		**2.0**	--	--	**2.0**	--
SOx EMISSIONS							
IND-01	Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Facilities [R4001]	2013	N/A[1]	N/A[1]	**2015**	N/A[1]	N/A[1]
	TOTAL SOx EMISSION REDUCTIONS (TPD)		--	**N/A[1]**	--	--	**N/A[1]**
NH3 EMISSIONS							
BCM-04	Further Ammonia Reductions from Livestock Waste [R1127] - Phase I (*Tech Assessment*)	2013-2014	TBD[2]	TBD	**2015 - 2016**	TBD[2]	TBD
	-Phase II (*Rule Amendment*)	TBD	TBD[2]	TBD	TBD	TBD[2]	TBD
	TOTAL NH3 EMISSION REDUCTIONS (TPD)		TBD	TBD	--	--	--

[1] Measure is designed to ensure reductions assumed to occur will in fact occur
[2] Reductions to be determined once the technical assessment is complete, and inventory and control approach are identified
[3] Will submit into SIP once technically feasible and cost effective options are identified
[4] Reductions cannot be quantified due to the nature of the measure (e.g., outreach, incentive programs)
[5] Emission reductions are included in the SIP as a contingency measure, if triggered

BOARD MEETING DATE: February 6, 2015 AGENDA NO. 22

PROPOSAL: Supplement to 24-hour PM2.5 State Implementation Plan for South Coast Air Basin

SYNOPSIS: The purpose of this Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin is to demonstrate attainment of the 2006 24-hour PM2.5 National Ambient Air Quality Standard by 2015 under Clean Air Act, Title 1, Part D, Subpart 4, along with updates to the transportation conformity budgets, analysis of Reasonably Available Control Measures/Reasonably Available Control Technology, control measure commitments submitted in the 2012 AQMP, and other Subpart 4 requirements.

COMMITTEE: Mobile Source Committee, January 23, 2015, Reviewed

RECOMMENDED ACTIONS:
Adopt the attached resolution:
1. Determining that the Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin is exempt from the requirements of CEQA; and
2. Approving the attached Supplement to the 24-hour PM2.5 SIP for the South Coast Air Basin for Submittal into the SIP.

Barry R. Wallerstein, D.Env.
Executive Officer

BB EC:PF:MK

Background

The 2012 AQMP was approved by the SCAQMD Board in December 2012, with additional amendments approved in February 2013, and was subsequently submitted to CARB and the U.S. EPA for inclusion into the SIP. That plan demonstrated projected attainment of the 2006 24-hour PM2.5 National Ambient Air Quality Standards (NAAQS) (35 $\mu g/m^3$) by 2014. However, a recent court decision (*Natural Res. Def. Council v. EPA*, 706 F.3d 428 (D.C. Cir. 2013)) compels U.S. EPA to evaluate the 24-

ATTACHMENT E

~~DEMONSTRATION OF COMPLIANCE WITH~~
CLEAN AIR ACT, SUBPART 4, SECTION 189(E)
AND OTHER PRECURSOR REQUIREMENTS

BACKGROUND

PM2.5 has four major precursors, other than direct PM2.5 emissions, that may contribute to the development of the ambient PM2.5: ammonia, NOx, SOx, and VOC. The 2012 AQMP modeling analysis resulted in a set of ratios that reflect the relative amounts of ambient PM2.5 improvements expected from reductions of PM2.5 precursors emissions. For instance, Table 5-2 in Chapter 5 of the 2012 AQMP demonstrates that one ton of VOC emission reductions is only 30 percent as effective as one ton of NOx for lowering 24-hour PM2.5 concentrations. VOC reductions are only four percent and two percent as effective as SOx and direct PM2.5 reductions, respectively, on a per ton basis. Thus, VOC controls have a much less significant impact on ambient 24-hour PM2.5 levels relative to other PM2.5 precursors.

EMISSIONS CONTRIBUTION

While similar relative contributions to PM2.5 have not been developed for ammonia, the mass contributions of ammonium sulfate and ammonium nitrate are accounted for in the SOx and NOx contributions. This essentially assumes that PM2.5 formation in the basin is not ammonia limited with sufficient ammonia in the atmosphere to combine with available nitrates and sulfates. Under these conditions, ammonia controls are much less effective at reducing ambient PM2.5 levels than other precursors.

While the 2012 AQMP ammonia emissions inventory was close to 100 ton per day (TPD), the inventory was highly variable in terms of source contributions and spatial distribution throughout the Basin. As presented in Table E-1, major sources accounted for 1.7 TPD or less than 2 percent of the Basin inventory. Furthermore, only four major source emitters were noted in the inventory with the single highest major source accounting for less than 0.50 TPD direct emissions. All four major sources are located in the western Basin.

TABLE E-1

VOC and Ammonia Emissions Contributions

POLLUTANT	ALL SOURCES *(Tons Per Day)*	MAJOR SOURCES *(Tons Per Day)*	RELATIVE CONTRIBUTION
VOC	451[1]	8.0[2]	1.8%
Ammonia	99[3]	1.7[2]	1.7%

[1] 2012 AQMP - Appendix III: Base and Future Year Emission Inventory; 2014 Annual Average Emissions by Source Category in South Coast Air Basin

[2] 2013 SCAQMD Annual Emission Reporting

[3] ARB Almanac 2013 – Appendix B: County Level Emissions and Air Quality by Air Basin; County Emission Trends

Prior to the 2003 AQMP, significant effort was undertaken to develop inter-pollutant trading ratios to meet NSR emissions reduction goals. The primary mechanism was to reduce SOx to offset PM emissions. Aerosol chemical mechanisms embedded in box and regional modeling platforms where used to estimate the formation rates of ammonium sulfate from local sulfur emissions to establish a SOx emissions to PM formation ratio. The analyses determined that the influence of ammonia emissions was spatially varying where coastal-metro zone (west Basin) trading ratios of SOX to PM valued more than 5:1 per unit SOx emissions to PM. Conversely, eastern Basin ratios valued 1:1 since ammonia emissions were abundant and all SOx emissions were likely to rapidly transform to particulate ammonium sulfate. The inter-pollutant trades made during this time were reviewed by U.S. EPA and were included by reference to the EPA sponsored Inter-Pollutant Trading Working Group[4].

As part of the controls strategy evaluation for future PM2.5 attainment, additional set of analyses were conducted to test the potential impact of the use of SCR as a NOx control mechanism for mobile sources in the Basin. The analyses assumed that light as well as heavy duty diesels would use the control equipment potentially resulting in a 78-85 percent increase in ammonia from those source categories. The results of the analysis, presented at the September 24, 2010 SCAQMD Mobile Source Committee Meeting[5], indicated that a 10 TPD increase in ammonia would result in a net 0.22 $\mu g/m^3$ increase in regional PM2.5 concentrations. The emissions mostly followed heavy traffic corridors including freeways and major arterials. Regardless, the minimal PM2.5 simulated increase from a 10 percent increase in the Basin inventory reflected the degree of saturation of ammonia in the Basin and minimal sensitivity of changes in ammonia emissions to PM2.5 production.

During the development of the 2012 AQMP, a sensitivity analysis was conducted to test the potential impact of using a feed supplement applied to dairy cows on a forecasted basis that would reduce bovine ammonia emissions by 50 percent. The analysis focused on the Mira Loma area where more than 70 percent of the Basin's dairy emissions originate. In the sensitivity analysis a total of 2.9 TPD emissions were reduced from 103 dairy sources, or an average of 0.028 TPD per source (roughly one tenth of major source threshold)[6]. Since the Mira Loma monitoring station was embedded among the dairy sources, the reduction of the ground level emissions resulted in an approximate 0.16 $\mu g/m^3$ reduction in PM2.5. As in the aforementioned analyses, the reduction in regional ammonia emissions resulted in a minimal PM2.5 impact per ton emissions reduced.

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and Forecasts 2012 Emissions. NOTE: 2012 AQMP – Appendix III provides 2014 Annual Average of 102 tpd of NH3; the relative contribution would not change (1.7/102 = 1.7%)

[4] "Preliminary Assessment of Methods for Determining Interpollutant Offsets", Correspondence with Scott Bohning U.S. EPA Region IX, May 6, 2002.

[5] "Impact of Higher On- and Off-road Ammonia Emissions on Regional PM2.5," Item 3, SCAQMD, Mobile Source Committee, September 24, 2010.

[6] "2008 24-hour PM2.5 Model Performance/Preliminary Attainment Demonstration," Item #2, Scientific Technical Modeling Peer Group Advisory Committee, June 14, 2012.

Thus, ammonia controls also have a much less significant impact on 24-hour PM2.5 exceedances than other precursors. Note however, that the effect on annual PM2.5 levels will be further evaluated in the 2016 AQMP.

SECTION 189(E)

Clean Air Act (CAA), Title I, Part D, Subpart 4, Section 189(e) states that control requirements applicable to plans in effect for major stationary PM sources shall also apply to major stationary sources of PM precursors, except where such sources does not contribute significantly to PM levels which exceed the standard in the area. According to the U.S. EPA, a major source in a nonattainment area is a source with emission of any one air pollutant greater than or equal to the major source thresholds in a nonattainment area. This threshold is generally 100 tons per year (tpy) or lower depending on the nonattainment severity for all sources. Emissions are based on "potential to emit" and include the effect of add-on emission control technology, if enforceable (*must be able to show continual compliance with the limitation or requirement*).

Major stationary sources of NOx and SOx are already subject to emission offsets (e.g., Regulation XX (RECLAIM) and Regulation XII (New Source Review)). Thus, to demonstrate compliance with CAA Subpart 4, Section 189(e), an analysis was conducted of the emissions of VOC and ammonia from major stationary sources during rule development of amended Rule 1325 (*Federal PM2.5 New Source Review Program*) approved by the SCAQMD Governing Board on December 5, 2014 (http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2014/2014-dec5-038.pdf?sfvrsn=2). That analysis concluded that VOC and ammonia from major sources (emitting 100 tpy or greater) contribute less than 2% of the overall Basin-wide VOC and ammonia emissions (Table E-1), and by extension, do not contribute significantly to PM levels. Furthermore, both VOC and ammonia are subject to requirements for Best Available Control Technology (BACT) under existing New Source Review (NSR) at a zero threshold, so those emission will still be minimized. This analysis was also included in the final approved staff report for PAR 1325.

~~Thus, the SCAQMD believes the requirements of CAA Subpart 4, Section 189(e) are satisfied and thus request that the Administrator of U.S. EPA makes this determination pursuant to this Section.~~

NEW SOURCE REVIEW

Because ammonia from major stationary sources does not significantly contribute to PM levels (see Table E-1), ammonia emission sources have not historically been subject to NSR offset requirements. However, for permitted ammonia sources, SCAQMD Rule 1303 (*NSR Requirements)* requires denial of "the Permit to Construct for any relocation, or for any new or

modified source which results in an emission increase of any nonattainment air contaminant, any ozone depleting compound, or ammonia, unless BACT is employed for the new or relocated source or for the actual modification to an existing source." No new major stationary source of ammonia is expected to be introduced to the region given that these new sources would be subject to BACT requirements (under SCAQMD Rule 1303 (*NSR Requirements*), BACT shall be at least as stringent as Lowest Achievable Emissions Rate (LAER) as defined in the federal Clean Air Act Section 171(3) [42 U.S.C. Section 7501(3)]). As mentioned above, there are currently only four major sources of ammonia (emitting more than 100 tons per year) in the South Coast Air Basin. If these sources were new to the region, they would be subject to BACT as stringent as LAER and not expected to reach 100 tons per year so as to be classified as a major source, thus not subject to NSR offset requirements.

However unlikely, even if new or modified major sources of ammonia increase ammonia emissions in the Basin, the ammonia contribution from major sources in the South Coast Air Basin will still not be a significant contributor to PM2.5 levels given that all current major sources of ammonia account for less than two percent of the overall ammonia emissions inventory. For instance, in the extremely unlikely event that ammonia emissions from major sources double, they would still contribute less than five percent of the overall ammonia inventory.

ATTACHMENT 21.

ATTACHMENT A
RESOLUTION NO. 12-19

A Resolution of the South Coast Air Quality Management District (AQMD or District) Governing Board Certifying the Final Program Environmental Impact Report for the 2012 Air Quality Management Plan (AQMP), adopting the Draft Final 2012 AQMP, to be referred to after adoption as the Final 2012 AQMP, and to be submitted into the California State Implementation Plan.

WHEREAS, the U.S. Environmental Protection Agency (U.S. EPA) promulgated a 24-hour fine particulate matter (PM2.5) national ambient air quality standard (NAAQS or standard) in 2006, and 8-hour ozone NAAQS in 1997, followed up by implementation rules which set forth the classification and planning requirements for State Implementation Plans (SIP); and

WHEREAS, the South Coast Air Basin was classified as nonattainment for the 2006 24-hour PM2.5 standard on December 14, 2009, with an attainment date by December 14, 2014; and

WHEREAS, the U.S. EPA revoked the 1-hour ozone standard effective June 15, 2005, but on September 19, 2012 issued a proposed call for a California SIP revision for the South Coast to demonstrate attainment of the 1-hour ozone standard; and

WHEREAS, the 1997 8-hour ozone standard became effective on June 15, 2004, with an attainment date for the South Coast of **June 15**, 2024; and amended 12-7-12 sm

WHEREAS, the South Coast Air Basin was classified as "extreme" nonattainment for 8-hour ozone for the 1997 standard with attainment dates by 2024; and

WHEREAS, EPA approved the South Coast SIP for 8-hour ozone on March 1, 2012; and

WHEREAS, the federal Clean Air Act requires SIPs for regions not in attainment with the NAAQS be submitted no later than three years after the nonattainment area was designated, whereby, a SIP for the South Coast Air Basin must be submitted for 24-hour PM2.5 by December 14, 2012; and

WHEREAS, the South Coast Air Quality Management District has jurisdiction over the South Coast Air Basin and the desert portion of Riverside County known as the Coachella Valley; and

WHEREAS, 40 Code of Federal Regulations (CFR) Part 93 requires that transportation emission budgets for certain criteria pollutants be specified in the SIP, and

WHEREAS, 40 CFR Part 93.118(e)(4)(iv) requires a demonstration that transportation emission budgets submitted to U.S. EPA are "consistent with applicable requirements for reasonable further progress, attainment, or" maintenance (whichever is relevant to the given implementation plan submission); and

WHEREAS, the South Coast Air Quality Management District is committed to comply with the requirements of the federal Clean Air Act; and

WHEREAS, the Lewis-Presley Air Quality Management Act requires the District's Governing Board adopt an AQMP to achieve and maintain all state and federal air quality standards; to contain deadlines for compliance with federal primary ambient air quality standards; and to achieve the state standards and federal secondary air quality standards by the application of all reasonably available control measures, by the earliest date achievable (Health and Safety Code Section 40462) and the California Clean Air Act requires the District to endeavor to achieve and maintain state ambient air quality standards for ozone, carbon monoxide, sulfur dioxide, and nitrogen dioxide by the earliest practicable date (Health and Safety Code Section 40910); and

WHEREAS, the California Clean Air Act requires a nonattainment area to evaluate and, if necessary, update its AQMP under Health & Safety Code §40910 triennially to incorporate the most recent available technical information; and

WHEREAS, the South Coast Air Quality Management District Governing Board is committed to comply with the requirements of the California Clean Air Act; and

WHEREAS, the South Coast Air Quality Management District is unable to specify an attainment date for state ambient air quality standards for 8-hour ozone, PM2.5, and PM10, however, the 2012 AQMP, in conjunction with earlier AQMPs contains every feasible control strategy and measure to ensure progress toward attainment and the AQMP will be reviewed and revised to ensure that progress toward all standards is maintained; and

WHEREAS, the 2012 AQMP must meet all applicable requirements of state law and the federal Clean Air Act; and

WHEREAS, the South Coast Air Quality Management District Governing Board is committed to achieving healthful air in the South Coast Air Basin and all other parts of the District at the earliest possible date; and

WHEREAS, the 2012 AQMP is the result of 17 months of staff work, public review and debate, and has been revised in response to public comments; and

WHEREAS, the 2012 AQMP incorporates updated emissions inventories, ambient measurements, new meteorological episodes, improved air quality modeling analyses, and updated control strategies by the District, and the Southern California Association of Governments (SCAG) and will be forwarded to the California Air Resources Board (CARB) for any necessary additions and submission to EPA; and

WHEREAS, as part of the preparation of an AQMP, in conjunction or coordination with public health agencies such as CARB and the Office of Environmental Health Hazard Assessment (OEHHA), a report has been prepared and peer-reviewed by the Advisory Council on the health impacts of particulate matter air pollution in the South Coast Air Basin pursuant to California Health and Safety Code § 40471, which has been included as part of Appendix I (Health Effects) of the 2012 AQMP together with any required appendices; and

WHEREAS, the 2012 AQMP establishes transportation conformity budgets for the 24-hour PM2.5 standard based on the latest planning assumptions; and

WHEREAS, the AQMP satisfies all the attainment deadlines for federal ambient air quality standards for 24-hour PM2.5 and 1-hour ozone NAAQS; and

WHEREAS, the 2012 AQMP satisfies the planning requirements set forth in the federal and California Clean Air Acts; and

WHEREAS, the 2012 AQMP includes the 24-hour PM2.5 attainment demonstration plan, reasonably available control measure (RACM) and reasonably available control technology (RACT) determinations, and transportation conformity budgets for the South Coast Air Basin; and

WHEREAS, the 2012 AQMP updates the U.S. EPA approved 8-hour ozone control plan with new measures designed to reduce reliance on the federal Clean Air Act (CAA) Section 182(e)(5) long-term measures for NOx and VOC reductions; and

WHEREAS, in order to reduce reliance on the CAA Section 182(e)(5) long-term measures, the SCAQMD will need emission reductions from sources outside of its primary regulatory authority and from sources that may lack, in some cases, the financial wherewithal to implement technology with reduced air pollutant emissions; and

WHEREAS, a majority of the measures identified to reduce reliance on the CAA Section 182(e)(5) long-term measures rely on continued and sustained funding to incentivize the deployment of the cleanest on-road vehicles and off-road equipment; and

WHEREAS, the 2012 AQMP includes a new demonstration of 1-hour ozone attainment (Appendix VII) and vehicle miles travelled (VMT) emissions offsets (Appendix VIII), as per recent proposed U.S. EPA requirements; and

WHEREAS, the South Coast Air Quality Management District Governing Board finds and determines with certainty that the 2012 AQMP is considered a "project" pursuant to CEQA; and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA) a Notice of Preparation (NOP) of a Draft Program Environmental Impact Report (PEIR) and Initial Study for the 2012 AQMP was prepared and released for a 30-day public comment period, preliminarily setting forth the potential adverse environmental impacts of adopting and implementing the 2012 AQMP; and

WHEREAS, pursuant to CEQA a Draft PEIR on the 2012 AQMP (State Clearinghouse Number 2012061093), including the NOP and Initial Study and responses to comments on the NOP and Initial Study, was prepared and released for a 45-day public comment period, setting forth the potential adverse environmental impacts of adopting and implementing the 2012 AQMP; and

WHEREAS, the Draft PEIR on the 2012 AQMP included an evaluation of project-specific and cumulative direct and indirect impacts from the proposed project and four project alternatives; and

WHEREAS, the AQMD staff reviewed the 2012 AQMP and determined that it may have the potential to generate significant adverse environmental impacts; and

WHEREAS, the Draft PEIR on the 2012 AQMP has been revised based on comments received and modifications to the draft 2012 AQMP and all comments received were responded to, such that it is now a Final PEIR on the 2012 AQMP; and

WHEREAS, the Governing Board finds and determines, taking into consideration the factors in §(d)(4)(D) of the Governing Board Procedures, that the modifications that have been made to 2012 AQMP, since the Draft PEIR on the 2012 AQMP was made available for public review would not constitute significant new information within the meaning of the CEQA Guidelines; and

WHEREAS, none of the modifications to the 2012 AQMP alter any of the conclusions reached in the Draft PEIR on the 2012 AQMP, nor provide new information of substantial importance that would require recirculation of the Draft PEIR on the 2012 AQMP pursuant to CEQA Guidelines §15088.5; and

WHEREAS, it is necessary that the adequacy of the Final PEIR on the 2012 AQMP be determined by the AQMD Governing Board prior to its certification; and

WHEREAS, it is necessary that the adequacy of responses to all comments received on the Draft PEIR on the 2012 AQMP be determined prior to its certification; and

WHEREAS, it is necessary that the AQMD prepare Findings and a Statement of Overriding Considerations pursuant to CEQA Guidelines §§15091 and 15093, respectively, regarding adverse environmental impacts that cannot be mitigated to insignificance; and,

WHEREAS, Findings and a Statement of Overriding Considerations have been prepared and are included in Attachment 2 to this Resolution, which is attached and incorporated herein by reference; and

WHEREAS, the provisions of Public Resources Code §21081.6 – Mitigation Monitoring and Reporting - require the preparation and adoption of implementation plans for monitoring and reporting measures to mitigate adverse environmental impacts identified in environmental documents; and

WHEREAS, staff has prepared such a plan which sets forth the adverse environmental impacts, mitigation measures, methods, and procedures for monitoring and reporting mitigation measures, and agencies responsible for monitoring mitigation measure, which is included as Attachment 2 to the Resolution and incorporated herein by reference; and

WHEREAS, the South Coast Air Quality Management District Governing Board voting on this Resolution has reviewed and considered the Final Program Environmental Impact Report on the 2012 AQMP, including responses to comments on the Draft Program Environmental Impact Report on the 2012 AQMP, the Statement of Findings, Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting Plan; and

WHEREAS, the Draft Socioeconomic Report on the 2012 AQMP was prepared and released for public review and comment; and

WHEREAS, the Draft Socioeconomic Report for the 2012 AQMP is revised based on comments received and modifications to the Draft 2012 AQMP such that it is now a Draft Final Socioeconomic Report for the 2012 AQMP; and

WHEREAS, the 2012 AQMP includes every feasible measure and an expeditious adoption schedule; and

WHEREAS, the CARB and the U.S. EPA have the responsibility to control emissions from motor vehicles, motor vehicle fuels, and non-road engines and consumer products which are primarily under their jurisdiction representing over 80 percent of ozone precursor emissions in 2023; and

WHEREAS, significant emission reductions must be achieved from sources under state and federal jurisdiction for the South Coast Air Basin to attain the federal air quality standards; and

WHEREAS, the formal deadline for submission of the 24-hour PM2.5 attainment plan is December 14, 2012, and the formal deadline for submission of the 1-hour ozone SIP revision is expected to be late 2013 or early 2014, but since the emissions inventory and control strategy for ozone has already been developed for the 2012 AQMP, and attaining the 1-hour ozone standard can rely on the same strategy for the 8-hour ozone standard, an attainment demonstration for the 1-hour ozone standard is included as an Appendix to the 2012 AQMP; and

WHEREAS, the 1-hour ozone attainment demonstration (Appendix VII) uses the same base year (2008) and future year inventories as presented in Appendix III of the 2012 AQMP and satisfies the pre-base year offset requirement by including pre-base year emissions in the growth projections, consistent with 40 CFR § 51.165(a)(3)(i)(C)(1), as described on page III-2-54 of Appendix III of the 2012 AQMP.

WHEREAS the South Coast Air Quality Management District Governing Board hereby requests that CARB commit to submitting contingency measures as required by Section 182(e)(5) as necessary to meet the requirements for demonstrating attainment of the 1-hr ozone standard; and

WHEREAS, the South Coast Air Quality Management District Governing Board directs staff to move expeditiously to adopt and implement feasible new control measures to achieve long-term reductions while meeting all applicable public notice and other regulatory development requirements; and

WHEREAS, the South Coast Air Quality Management District has held six public workshops on the Draft 2012 AQMP, one public workshop on the Draft Socioeconomic Report, four public hearings throughout the four-county region in September on the Revised Draft 2012 AQMP, 14 AQMP Advisory Group meetings, 11 Scientific, Technical, and Modeling, Peer Review Advisory Group meetings, four public hearings in November throughout the four-county region on the Draft Final 2012 AQMP, and one adoption hearing pursuant to section 40466 of the Health and Safety Code; and

WHEREAS, pursuant to section 40471(b) of the Health and Safety Code, as part of the six public workshops on the Draft 2012 AQMP, four public hearings on the Revised Draft 2012 AQMP, the four public hearings on the Draft Final 2012 AQMP, and adoption hearing, public testimony and input were taken on Appendix I (Health Effects); and

WHEREAS, the record of the public hearing proceedings is located at South Coast Air Quality Management District, 21865 Copley Drive, Diamond Bar, California 91765, and the custodian of the record is the Clerk of the Board; and

WHEREAS, an extensive outreach program took place that included over 75 meetings with local stakeholders, key government agencies, focus groups, topical workshops, and over 65 presentations on the 2012 AQMP provided; and

WHEREAS, the record of the CEQA proceedings is located at South Coast Air Quality Management District, 21865 Copley Drive, Diamond Bar, California 91765, and the custodian of the record is the Assistant Deputy Executive Officer, Planning, Rule Development, and Area Sources.

NOW, THEREFORE BE IT RESOLVED, that the South Coast Air Quality Management District Governing Board does hereby certify that the Final PEIR for the 2012 AQMP including the responses to comments has been completed in compliance with the requirements of CEQA and finds that the Final PEIR on the 2012 AQMP, including responses to comments, was presented to the AQMD Governing Board, whose members reviewed, considered and approved the information therein prior to acting on the 2012 AQMP; and finds that the Final PEIR for the 2012 AQMP reflects the AQMD's independent judgment and analysis; and

BE IT FURTHER RESOLVED, that the District will develop, adopt, submit, and implement the short-term PM2.5 control measures as identified in Table 4-2 and the 8-hour ozone measures in Table 4-4 of Chapter 4 in the 2012 AQMP (Main Document) as expeditiously as possible in order to meet or exceed

the commitments identified in Tables 4-10 and 4-11 of the 2012 AQMP (Main Document), and to substitute any other measures as necessary to make up any emission reduction shortfall.

BE IT FURTHER RESOLVED, the District commits to update AQMP emissions inventories, baseline assumptions and control measures as needed to ensure that the best available data is utilized and attainment needs are met.

BE IT FURTHER RESOLVED, the District commits to conduct a review of its socioeconomic analysis methods during 2013, convene a panel of experts, and update assessment methods and approaches, as appropriate.

BE IT FURTHER RESOLVED, the District commits to continue working with the ports on the implementation of control measure IND-01 (Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Sources).

BE IT FURTHER RESOLVED, that the Executive Officer is hereby directed to enhance outreach and education efforts related to the "Check before you Burn" residential wood burning curtailment program, and to expand the current incentive programs for gas log buydown and to include potentially wood stove replacements working closely with U.S. EPA and other stakeholders.

amended 12-7-12 BA

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board does hereby direct staff to work in conjunction with CARB to provide annual reports to U.S. EPA describing progress towards meeting Section 182(e)(5) emission reduction commitments.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, pursuant to the requirements of Title 14 California Code of Regulations, does hereby adopt the Statement of Findings pursuant to §15091, and adopts the Statement of Overriding Considerations pursuant to §15093, included in Attachment 2 and incorporated by reference; and

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, does hereby adopt the Mitigation Monitoring and Reporting Plan, as required by Public Resources Code, Section 21081.6, attached hereto and incorporated by reference; and

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board finds that the mobile source control measures contained in Appendix IV-B are technically feasible and cost-effective and requests that CARB consider them in any future incentives programs or rulemaking.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board does hereby direct staff to work with state agencies and state legislators, federal agencies and U.S. Congressional and Senate members to identify funding sources and secure funding for the expedited replacement of older existing vehicles and off-road equipment to help reduce the reliance on the CAA Section 182(e)(5) long-term measures.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board finds that transportation emission budgets are "consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to the given implementation plan submission)" pursuant to 40 CFR 93.118(e)(4)(iv).

BE IT FURTHER RESOLVED, that the Executive Officer is hereby directed to finalize the 2012 AQMP including the main document, appendices, and related documents as adopted at the December 7, 2012 public hearing.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, whose members reviewed, considered and approved the information contained in the documents listed herein, adopts the 2012 AQMP dated December 7, 2012 consisting of the document entitled 2012 AQMP as amended by the final changes set forth by the AQMD Governing Board and the associated documents listed in Attachment 1 to this Resolution, the Draft Final Socioeconomic Report for the 2012 AQMP; the Final Program EIR for the 2012 AQMP, and the Statements of Findings and Overriding Considerations and Mitigation Monitoring Plan (Attachment 2 to this Resolution).

BE IT FURTHER RESOLVED, the Executive Officer is hereby directed to work with CARB and the U.S. EPA to ensure expeditious approval of this 2012 AQMP for PM2.5 and 1-hour ozone attainment.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, requests that the 2012 AQMP serve as the SIP revision submittal for the 24-hour PM2.5 attainment demonstration plan including the RACM/RACT determinations for the PM2.5 standard for the South Coast Air Basin, and the PM2.5 Transportation Conformity Budgets for the South Coast Air Basin.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, requests that the 2012 AQMP (Appendix VII) serve as the SIP revision submittal for the 1-hour ozone NAAQS attainment demonstration.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, requests that the 2012 AQMP (Appendix VIII) serve as the SIP revision submittal for a revised VMT emissions offset demonstration as required under Section 182(d)(1)(A) for both the 1-hour ozone and 8-hour ozone SIPs for the South Coast Air Basin.

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board, requests that the 2012 AQMP serve as an update to the approved 2007 8-hour ozone SIP for the South Coast Air Basin with specific control measures designed to further implement the 8-hour ozone SIP and reduce reliance on Section 182(e)(5) long term measures.

BE IT FURTHER RESOLVED, that the 2012 AQMP does not serve as a revision to the previously approved 8-hour ozone SIP with respect to emissions inventories, attainment demonstration, RFP, and transportation emissions budgets or any other required SIP elements.

BE IT FURTHER RESOLVED, that the Executive Officer is hereby directed to forward a copy of this Resolution, the 2012 AQMP and its appendices as amended by the final changes, to CARB, and to request that these documents be forwarded to the U.S. EPA for approval as part of the California State Implementation Plan. In addition, the Executive Officer is directed to forward a copy of this Resolution, comments on the 2012 AQMP and responses to comments, public notices, and any other information requested by the U.S. EPA for informational purposes.

Attachments

AYES: Benoit, Burke, Cacciotti, Gonzales, Loveridge, Lyou, Mitchell, Nelson, Parker, Pulido, and Yates.

NOES: None.

ABSTAIN: None.

ABSENT: Antonovich and Perry.

Dated: 12-7-2012

Saundra McDaniel
Clerk of the District Board

ATTACHMENT 1

The Final 2012 Air Quality Management Plan submitted for the South Coast Air Quality Management District Governing Board's consideration consists of the documents entitled:

- Draft Final 2012 AQMP (Attachment B) including the following appendices:
  - Appendix I - Health Effects
  - Appendix II - Current Air Quality
  - Appendix III - Base and Future Year Emission Inventory
  - Appendix IV (A) - District's Stationary Source Control Measures
  - Appendix IV (B) - Proposed 8-Hour Ozone Measures
  - Appendix IV (C) - Regional Transportation Strategies & Control Measures
  - Appendix V - Modeling & Attainment Demonstrations
  - Appendix VI - Reasonably Available Control Measures (RACM) Demonstration
  - Appendix VII - 1-Hour Ozone Attainment Demonstration
  - Appendix VIII - VMT Offset Requirement Demonstration
- Comments on the 2012 Air Quality Management Plan, and Responses to Comments (November 2012) – (Attachment C)
- Final Program Environmental Impact Report for the 2012 Air Quality Management Plan (Attachment D)
  - Findings, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Plan (Attachment 2 to the Resolution)
- Draft Final Socioeconomic Report for the 2012 Air Quality Management Plan (Attachment E)
- Changes to Control Measures IND-01, CMB-01, CTS-01 and CTS-04 (Attachment F)

ATTACHMENT 22.

State of California
AIR RESOURCES BOARD

SOUTH COAST AIR BASIN 2012 PM2.5 AND OZONE STATE IMPLEMENTATION PLANS

Resolution 13-3

January 25, 2013

Agenda Item No.: 13-2-2

WHEREAS, the Legislature in Health and Safety Code section 39602 has designated the State Air Resources Board (ARB or Board) as the air pollution control agency for all purposes set forth in federal law;

WHEREAS, the ARB is responsible for preparing the State Implementation Plan (SIP) for attaining and maintaining the National Ambient Air Quality Standards (standards) as required by the federal Clean Air Act (Act) (42 U.S.C. section 7401 et seq.), and to this end is directed by Health and Safety Code section 39602 to coordinate the activities of all local and regional air pollution control and air quality management districts (districts) as necessary to comply with the Act;

WHEREAS, section 41650 of the Health and Safety Code requires the ARB to approve the nonattainment area plan adopted by a district as part of the SIP unless the Board finds, after a public hearing, that the plan does not meet the requirements of the Act;

WHEREAS, the ARB has responsibility for ensuring that the districts meet their responsibilities under the Act pursuant to sections 39002, 39500, 39602, and 41650 of the Health and Safety Code;

WHEREAS, the ARB is authorized by section 39600 of the Health and Safety Code to do such acts as may be necessary for the proper execution of its powers and duties;

WHEREAS, sections 39515 and 39516 of the Health and Safety Code provide that any duty may be delegated to the Board's Executive Officer as the Board deems appropriate;

WHEREAS, the districts have primary responsibility for controlling air pollution from non-vehicular sources and for adopting control measures, rules, and regulations to attain the standards within their boundaries pursuant to sections 39002, 40000, 40001, 40701, 40702, and 41650 of the Health and Safety Code;

WHEREAS, the South Coast Air Basin (SCAB or Basin) includes Orange County, the southwestern two-thirds of Los Angeles County, southwestern San Bernardino County, and western Riverside County;

WHEREAS, the South Coast Air Quality Management District (District) is the local air district with jurisdiction over the SCAB, pursuant to sections 40410 and 40413 of the Health and Safety Code;

WHEREAS, the Southern California Association of Governments (SCAG) is the regional transportation agency for the SCAB and Coachella Valley and has responsibility for preparing and implementing transportation control measures to reduce vehicle trips, vehicle use, vehicle miles traveled, vehicle idling and traffic congestion for the purpose of reducing motor vehicle emissions pursuant to sections 40460(b) and 40465 of the Health and Safety Code;

WHEREAS, section 40463(b) of the Health and Safety Code specifies that the District board must establish a carrying capacity - the maximum level of emissions which would enable the attainment and maintenance of an ambient air quality standard for a pollutant - for the South Coast Air Basin with the active participation of SCAG;

WHEREAS, the South Coast 2012 Air Quality Management Plan (AQMP) includes State Implementation Plan (SIP) amendments for fine particulate matter (PM2.5) and ozone;

WHEREAS, in July 1997, the United States Environmental Protection Agency (U.S. EPA) promulgated 24-hour and annual standards for PM2.5 of 65 micrograms per cubic meter (ug/m^3) and 15 ug/m^3, respectively;

WHEREAS, in December 2004, U.S. EPA designated the South Coast Air Basin as nonattainment for the PM2.5 standards;

WHEREAS, in March 2007, U.S. EPA finalized the PM2.5 implementation rule (Rule) which established the framework and requirements that states must meet to develop annual average PM2.5 SIPs, set an initial attainment date of April 5, 2010, and allowed for an attainment date extension of up to five years;

WHEREAS, the Rule requires that PM2.5 SIPs include air quality and emissions data, a control strategy, a modeled attainment demonstration, transportation conformity emission budgets, reasonably available control measure/reasonably available technology (RACM/RACT) demonstration, and contingency measures;

WHEREAS, in July 1997, the U.S. EPA promulgated an 8-hour standard for ozone of 0.08 parts per million (ppm);

WHEREAS, on April 15, 2004, U.S. EPA designated the South Coast as nonattainment for the 0.08 ppm 8-hour ozone standard;

WHEREAS, in 2007, the District and ARB adopted SIP amendments demonstrating attainment of the annual PM2.5 standard by April 5, 2015, and of the 8-hour ozone standard by December 31, 2023, and submitted the SIP amendments to U.S. EPA;

WHEREAS, in 2009 and 2011, at U.S. EPA's request, ARB provided clarifying amendments to the annual PM2.5 and 8-hour ozone South Coast SIPs submitted in 2007;

WHEREAS, in 2011, U.S. EPA approved the control strategy, emission reduction commitment and attainment demonstration for the annual PM2.5 standard with an attainment date of April 5, 2015;

WHEREAS, in 2012, U.S. EPA approved the control strategy, emission reduction commitment and attainment demonstration for the 8-hour ozone standard with an attainment date of June 15, 2024;

WHEREAS, in December 2006, U.S. EPA lowered the 24-hour PM2.5 standard from 65 ug/m^3 to 35 ug/m^3;

WHEREAS, effective December 14, 2009, U.S. EPA designated the South Coast Air Basin as nonattainment for the 35 ug/m^3 PM2.5 standard;

WHEREAS, on March 12, 2012, U.S. EPA issued a memorandum that provided further guidance on the development of SIPs specific to the 35 ug/m^3 PM2.5 standard and set an initial attainment date of December 14, 2014, with a provision for an attainment date extension of up to five years;

WHEREAS, the 2012 AQMP Plan identifies directly-emitted PM2.5, nitrogen oxides (NOx), sulfur oxides (SOx) and volatile organic compounds (VOC) as PM2.5 attainment plan precursors consistent with the Rule;

WHEREAS, the emission reductions contained in the 2012 AQMP for PM2.5 attainment rely on adopted regulations and on new or revised District control measures;

WHEREAS, the 2012 AQMP's new PM2.5 measures include further strengthening of the District's wood burning curtailment program, outreach, and incentive programs;

WHEREAS, in accordance with section 172(b)(2) of the Act, the 2012 AQMP identifies 2014 as the most expeditious attainment date for the 24-hour PM2.5 standard;

WHEREAS, the attainment analysis in the 2012 AQMP demonstrates that the 24-hour PM2.5 standard will be met throughout the Basin by the proposed 2014 attainment date;

WHEREAS, consistent with section 172(c)(3) of the Act, the 2012 AQMP includes a comprehensive, accurate, current inventory of emissions data for directly emitted PM2.5 and PM2.5 precursors: oxides of nitrogen (NOx), reactive organic gases (ROG), sulfur oxides (SOx), and ammonia (NH3);

WHEREAS, consistent with section 172(c) of the Act, the 2012 AQMP demonstrates the implementation of RACM/RACT for direct PM2.5 and the area's relevant PM2.5 precursors;

WHEREAS, consistent with section 172(c)(9) of the Act, the 2012 AQMP includes contingency measures that provide extra emissions reductions that go into effect without further regulatory action if the area fails to make attainment of the 24-hour PM2.5 standard on time;

WHEREAS, consistent with section 176 of the Act, the 2012 AQMP establishes transportation conformity emission budgets, developed in consultation between the District, ARB staff, transportation agencies, and U.S. EPA, that conform to the attainment emission levels;

WHEREAS, the approved commitment for emission reductions is for total aggregate reductions that may be achieved through the measures identified in the SIP, alternative measures or incentive programs, and actual emission decreases that occur;

WHEREAS, the approved commitment for emission reductions allows for the substitution of reductions of one precursor for another using relative PM2.5 reductions values identified by the District;

WHEREAS, section 182(e)(5) of the Act provides that SIPs for extreme ozone nonattainment areas may rely in part upon the development of new technologies or the improvement of existing technologies;

WHEREAS, the approved SIP includes commitments to achieve additional reductions from advanced technology as provided for in section 182(e)(5) of the Act;

WHEREAS, in the Federal Register (Volume 77 Fed.Reg. 12674 at 12686 (March 1, 2012)) entry approving the ozone elements of the South Coast 8-hour ozone SIP, U.S. EPA stated that measures approved under section 182(e)(5) may include those that anticipate future technological developments as well as those that require complex analyses, decision making and coordination among a number of government agencies;

WHEREAS, the 2011 revision to the 8-hour ozone SIP included State commitments to develop, adopt, and submit contingency measures by 2020 if advanced technology measures do not achieve planned reductions;

WHEREAS, the 2012 AQMP includes actions to develop and put into use advanced transformational technologies to fulfill in part the approved SIP commitment for the Act section 182(e)(5) reductions;

WHEREAS, these actions described in the 2012 AQMP as seventeen mobile measures (five on-road measures, five off-road measures, and seven advanced technology measures), are consistent with U.S. EPA's interpretation of 182(e)(5) used in the approval of the South Coast 8-hour ozone SIP (77 Fed.Reg. 12674 at 12686 (March 1, 2012));

WHEREAS, on November 6, 1991, U.S. EPA designated the South Coast Air Basin an extreme nonattainment area for the 1-hour ozone standard with an attainment date of no later than November 15, 2010;

WHEREAS, in 2000 ARB submitted the 1999 Amendment to the South Coast 1997 AQMP, collectively called the 1997/1999 SIP revision, which included long-term measures pursuant to section 185(e)(5);

WHEREAS, in 2000 U.S. EPA approved the 1997/1999 revision to the South Coast 1-hour ozone SIP;

WHEREAS, in 2003 ARB submitted a revision to the South Coast 1-hour ozone SIP;

WHEREAS, in 2009 U.S. EPA disapproved the attainment demonstration in the 2003 revision;

WHEREAS, on February 2, 2011, the Ninth Circuit Court of Appeals remanded U.S. EPA's 2009 final action on the 2003 South Coast 1-hour ozone SIP and directed U.S. EPA to take further action to ensure that the State develop a plan demonstrating attainment of the 1-hour ozone standard, consistent with Clean Air Act requirements;

WHEREAS, on January 7, 2013, U.S. EPA issued a SIP call for the State to submit, within 12 months of the effective date of the SIP call, a SIP revision demonstrating attainment of the 1-hour ozone standard in the Basin;

WHEREAS, the 2012 AQMP's 1-hour ozone attainment demonstration relies on adopted state and local regulations, along with new local regulations including continued implementation of the approved 8-hour ozone SIP to reduce emissions by 2022;

WHEREAS, the 1-hour ozone attainment demonstration also relies upon section 182(e)(5) provisions for future reductions from developing new technologies or improving existing technologies;

WHEREAS, the actions to implement advanced technology measures for the approved 8-hour ozone SIP also describe actions to implement advanced technology measures for the 1-hour ozone attainment demonstration;

WHEREAS, section 182(e)(5) of the Act requires contingency measures be submitted no later than three years prior to the attainment year in the event that the anticipated long-term measures approved pursuant to section 182(e)(5) do not achieve planned reductions needed for attaining the 1-hour ozone standard;

WHEREAS, section 182(e)(5) contingency measures in the approved SIP meet the requirements for attainment contingency measures because section 182(e)(5) is not relied on for emission reductions prior to November 15, 2000;

WHEREAS, the 2012 AQMP demonstrates the Basin will attain the 1-hour ozone standard by 2022;

WHEREAS, consistent with section 172(c)(3) of the Act, the 2012 AQMP includes a comprehensive, accurate, current inventory of emissions data for precursors of ozone: oxides of nitrogen (NOx) and reactive organic gases (ROG);

WHEREAS, consistent with section 172(c) of the Act, the 2012 AQMP demonstrates the implementation of RACM/RACT for NOx and ROG;

WHEREAS, section 182(d)(1)(a) of the Act requires ozone nonattainment areas classified as severe and extreme to submit a vehicle miles traveled (VMT) offset demonstration showing no increase in motor vehicle emissions between the base year in the Act 1990 Amendments and the area's attainment year;

WHEREAS, in February 2011, the Ninth Circuit Court of Appeals held that section 182(d)(1)(a) of the Act requires additional transportation control strategies and transportation control measures to offset vehicle emissions whenever they are projected to be higher than if base year VMT had not increased;

WHEREAS, the Ninth Circuit Court of Appeals remanded the approval of the 2007 8-hour ozone SIP VMT emissions offsets demonstration to U.S. EPA;

WHEREAS, in September 2012, U.S. EPA proposed to withdraw its final approvals, and then disapprove, SIP revisions submitted to meet the section 182(d)(1)(a) VMT emissions offset requirements for the U.S. EPA approved South Coast Air Basin 1-hour and 8-hour ozone plans;

WHEREAS, in August 2012, U.S. EPA issued guidance entitled "Implementing Clean Air Act Section 182(d)(1)(A): Transportation Control Measures and Transportation Control Strategies to Offset growth in Emissions Due to Growth in Vehicle Miles Traveled";

WHEREAS, consistent with the requirements of section 182(d)(1)(A) as specified by the Ninth Circuit Court of Appeals ruling in 2011 and with U.S. EPA guidance in 2012, and in response to U.S. EPA's September 2012 proposal, the 2012 AQMP includes a VMT offset demonstration for both 1-hour and 8-hour ozone plans;

WHEREAS, the 2012 AQMP also includes a second VMT emissions offset demonstration for 8-hour ozone that meets an alternative VMT offset methodology proposed by U.S. EPA;

WHEREAS, the California Environmental Quality Act (CEQA) requires that no project which may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, pursuant to California Environmental Quality Act (CEQA), the District prepared a Program Environmental Impact Report (EIR) for the 2012 AQMP that was released for a 45-day public review and comment period from September 7, 2012 to October 23, 2012, and in the Final Program EIR the District responded to the 13 comment letters received;

WHEREAS, the District's Final Program EIR identified potentially significant and unavoidable project-specific adverse environmental impacts to air quality (CO and PM10 impacts from construction activities), energy demand, hazards (associated with accidental release of liquefied natural gas during transport), water demand, noise (from construction activities) and traffic (construction activities and operations), as well as potentially significant cumulative adverse impacts to air quality (construction), energy demand, hazards and hazardous materials, hydrology and water quality, noise, and transportation and traffic;

WHEREAS, the District Governing Board adopted a Statement of Findings and a Statement of Overriding Considerations finding the project's benefits outweigh the unavoidable adverse impacts, as well as a Mitigation Monitoring Plan;

WHEREAS, federal law set forth in section 110(l) of the Act and Title 40, Code of Federal Regulations (CFR), section 51.102, requires that one or more public hearings, preceded by at least 30 days notice and opportunity for public review, must be conducted prior to adopting and submitting any SIP revision to U.S. EPA;

WHEREAS, as required by federal law, the District made the 2012 AQMP available for public review at least 30 days before the District hearing;

WHEREAS, following a public hearing on December 7, 2012, the AQMD Governing Board voted to approve the 2012 AQMP including the 24-hour PM2.5 plan, the 8-hour ozone advanced technology actions and the 1-hour ozone plan;

WHEREAS, on December 20, 2012, the District transmitted the 2012 AQMP to ARB as a SIP revision, along with proof of public notice publication, and environmental documents in accordance with State and federal law; and

WHEREAS, the Board finds that:

1. The 2012 AQMP meets the applicable planning requirements established by the Act and the Rule for 24-hour PM2.5 SIPs, and includes the required air quality and emissions data, modeled attainment demonstrations, RACM/RACT demonstrations, new source review, transportation conformity emission budgets, and contingency measures;

2. The existing 2007 PM2.5 SIP, including benefits of ARB's adopted mobile source control measures, combined with the new District control measures identified in the adopted 2012 AQMP will provide the emission reductions needed for meeting the 24-hour PM2.5 standard by the December 14, 2014, attainment date;

3. The 2012 AQMP identifies contingency measures that will achieve additional emission reductions, beyond those relied on in the attainment demonstration, in the event that the South Coast Air Basin does not attain the 24-hour PM2.5 standard by 2014;

4. The 2012 AQMP meets applicable planning requirements established by the Act for 1-hour ozone SIPs, and includes the required air quality and emissions data, modeled attainment demonstrations, new source review and RACM/RACT demonstrations;

5. The 2012 AQMP VMT offset demonstrations meets the section 182(d)(1)(a) VMT offset requirements for both the 1-hour ozone and the 8-hour ozone plans; and

6. ARB has reviewed and considered the Final EIR prepared by the District and comments presented by interested parties, and find there are no additional feasible mitigation measures or alternatives within ARB's powers that would substantially lessen or avoid the project-specific impacts identified.

NOW, THEREFORE, BE IT RESOLVED the Board hereby approves the South Coast 2012 AQMP as an amendment to the SIP, excluding those portions not required to be submitted to U.S. EPA under federal law, and directs the Executive Officer to forward the 2012 AQMP as approved to U.S. EPA for inclusion in the SIP to be effective, for purposes of federal law, upon approval by U.S. EPA.

BE IT FURTHER RESOLVED that the Board commits to develop, adopt, and submit contingency measures by 2019 if advanced technology measures do not achieve planned reductions as required by section 182(e)(5)(B).

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to work with the District and U.S. EPA and take appropriate action to resolve any completeness or approvability issues that may arise regarding the SIP submission.

BE IT FURTHER RESOLVED that the Board authorizes the Executive Officer to include in the SIP submittal any technical corrections, clarifications, or additions that may be necessary to secure U.S. EPA approval.

BE IT FURTHER RESOLVED that the Board hereby certifies pursuant to 40 CFR section 51.102 that the District's 2012 AQMP was adopted after notice and public hearing as required by 40 CFR section 51.102.

I hereby certify that the above is a true and correct copy of Resolution 13-3, as adopted by the Air Resources Board.

Tracy Jensen, Clerk of the Board

May 23, 2014

The Honorable William Burke, Ed.D.
Board President, South Coast Air Quality
Management District
21865 Copley Drive
Diamond Bar, CA 91765

SUBJECT: PROPOSED RULE 4001: "BACKSTOP TO ENSURE AQMP EMISSION TARGETS ARE MET AT COMMERCIAL MARINE PORTS"

Dear Board President Burke:

As you are aware, the Cities of Long Beach and Los Angeles are very concerned with Proposed Rule 4001, currently in development by South Coast Air Quality Management (SCAQMD) staff. The two Cities do not own, operate or control the mobile emissions sources operated by others at their ports, but nevertheless we are widely recognized as leaders on environmental improvements for the maritime goods movement industry. The strategies we have implemented through our voluntary joint San Pedro Bay Ports Clean Air Action Plan (CAAP) have been tremendously successful. Continuing the successful approach of the CAAP will assure future projects and programs that will contribute to improvement of air quality and promote other environmental values.

Collaboration Remains the Right Approach. The successes we have achieved to date are due to the cooperative approach taken between SCAQMD, the two ports, the United States Environmental Protection Agency (EPA) and California Air Resources Board (CARB); the rulemaking currently proposed by SCAQMD staff is in direct conflict with that approach. Furthermore, the Cities are neither stationary sources nor indirect sources under the law, and we fundamentally disagree with SCAQMD's current proposal to regulate the Cities in a manner that conflicts with the Cities' own jurisdiction.

Viable Alternatives to Regulation Must Be Pursued. Viable alternatives to rulemaking are available, required to be analyzed under SCAQMD rulemaking requirements and the California Environmental Quality Act, and should be pursued. First, CARB is currently embarking on the Sustainable Freight Strategy, which will take a long-term, robust view of the freight industry and determine the strategies that must be implemented to meet the air quality needs throughout the state. The two ports and SCAQMD are all active participants in this process, which will flesh out state-wide emission reduction strategies for all of the maritime goods movement mobile sources, under the leadership of CARB, which has mobile source emission regulatory powers, unlike either the SCAQMD or the ports. Second, we believe that a multi-agency agreement, between the two ports, the District, CARB and EPA can be designed to achieve the same goals as a rule. The agreement could include a Voluntary Mobile Source Emission Reduction Program

The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

(VMEP), a regulatory program developed by EPA specifically for the purpose of taking credit for voluntary programs in the State Implementation Plan (SIP). Third, the SCAQMD, should consider a more comprehensive basin-wide approach for obtaining SIP credit for incentive programs along the lines of Rule 9610 recently adopted by the San Joaquin Air Pollution Control District, which EPA is proposing to approve. See 79 Fed. Reg. 28650 (May 19, 2014). Proposed Rule 4001 is being developed for the purpose of ensuring that the SIP's 2014 $PM_{2.5}$ emission reductions are achieved. However, there is no demonstrated need for the proposed rule. Implementation of the CAAP at the two ports has resulted in particulate matter reductions above and beyond the goals initially established in the CAAP, and the 2014 reductions goals have already been achieved earlier than originally planned. Further, District staff has stated that the 2014 $PM_{2.5}$ reductions for the air basin will be achieved. We therefore strongly recommend you consider an alternative to the proposed rulemaking and continue to work cooperatively with the ports as we move forward to address our shared future goals and challenges. We refer you to the Cities' January 31, 2014, letter to the SCAQMD for a full discussion of the lack of necessity for Proposed Rule 4001 and extensive other concerns of the Cities.

We appreciate your consideration. Thank you.

Sincerely,

Heather Tomley
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

cc: Al Moro, Acting Executive Director Port of Long Beach
Gary Lee Moore, City of Los Angeles Harbor Department, Interim Executive Director
Rick Cameron, Managing Director of Environmental Affairs and Planning, POLB
Mike Christensen, City of Los Angeles Harbor Department, Deputy Executive Director
Dominic Holzhaus, Principal Deputy City Attorney City of Long Beach
Janna Sidley, City of Los Angeles Harbor Department, General Counsel
Joy Crose, City of Los Angeles Harbor Department, Assistant General Counsel
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Randall Pasek, Planning and Rules Manager, SCAQMD
Kurt Wiese, General Counsel, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Cynthia Marvin, Division Chief, California Air Resources Board
Elizabeth Adams, Deputy Director, U.S. Environmental Protection Agency, Region 9

February 9, 2017

The Honorable Dennis Yates
Mayor, City of Chino
11930 Lester Avenue
Chino, CA 91710

SUBJECT: PROPOSED RULE 4001: "BACKSTOP TO ENSURE AQMP EMISSION TARGETS ARE MET AT COMMERCIAL MARINE PORTS"

Dear Mayor Yates:

As you are aware, the Cities of Long Beach and Los Angeles are very concerned with Proposed Rule 4001, currently in development by South Coast Air Quality Management (SCAQMD) staff. The two Cities do not own, operate or control the mobile emissions sources operated by others at their ports, but nevertheless we are widely recognized as leaders on environmental improvements for the maritime goods movement industry. The strategies we have implemented through our voluntary joint San Pedro Bay Ports Clean Air Action Plan (CAAP) have been tremendously successful. Continuing the successful approach of the CAAP will assure future projects and programs that will contribute to improvement of air quality and promote other environmental values.

Collaboration Remains the Right Approach. The successes we have achieved to date are due to the cooperative approach taken between SCAQMD, the two ports, the United States Environmental Protection Agency (EPA) and California Air Resources Board (CARB); the rulemaking currently proposed by SCAQMD staff is in direct conflict with that approach. Furthermore, the Cities are neither stationary sources nor indirect sources under the law, and we fundamentally disagree with SCAQMD's current proposal to regulate the Cities in a manner that conflicts with the Cities' own jurisdiction.

Viable Alternatives to Regulation Must Be Pursued. Viable alternatives to rulemaking are available, required to be analyzed under SCAQMD rulemaking requirements and the California Environmental Quality Act, and should be pursued. First, CARB is currently embarking on the Sustainable Freight Strategy, which will take a long-term, robust view of the freight industry and determine the strategies that must be implemented to meet the air quality needs throughout the state. The two ports and SCAQMD are all active participants in this process, which will flesh out state-wide emission reduction strategies for all of the maritime goods movement mobile sources, under the leadership of CARB, which has mobile source emission regulatory powers, unlike either the SCAQMD or the ports. Second, we believe that a multi-agency agreement, between the two ports, the District, CARB and EPA can be designed to achieve the same goals as a rule. The agreement could include a Voluntary Mobile Source Emission Reduction Program (VMEP), a regulatory program developed by EPA specifically for the purpose of taking credit

The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

for voluntary programs in the State Implementation Plan (SIP). Third, the SCAQMD, should consider a more comprehensive basin-wide approach for obtaining SIP credit for incentive programs along the lines of Rule 9610 recently adopted by the San Joaquin Air Pollution Control District, which EPA is proposing to approve. See 79 Fed. Reg. 28650 (May 19, 2014). Proposed Rule 4001 is being developed for the purpose of ensuring that the SIP's 2014 $PM_{2.5}$ emission reductions are achieved. However, there is no demonstrated need for the proposed rule. Implementation of the CAAP at the two ports has resulted in particulate matter reductions above and beyond the goals initially established in the CAAP, and the 2014 reductions goals have already been achieved earlier than originally planned. Further, District staff has stated that the 2014 $PM_{2.5}$ reductions for the air basin will be achieved. We therefore strongly recommend you consider an alternative to the proposed rulemaking and continue to work cooperatively with the ports as we move forward to address our shared future goals and challenges. We refer you to the Cities' January 31, 2014, letter to the SCAQMD for a full discussion of the lack of necessity for Proposed Rule 4001 and extensive other concerns of the Cities.

We appreciate your consideration. Thank you.

Sincerely,

Heather Tomley
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

cc: Al Moro, Acting Executive Director Port of Long Beach
Gary Lee Moore, City of Los Angeles Harbor Department, Interim Executive Director
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Joy Crose, City of Los Angeles Harbor Department, Assistant General Counsel
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Randall Pasek, Planning and Rules Manager, SCAQMD
Kurt Wiese, General Counsel, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Cynthia Marvin, Division Chief, California Air Resources Board
Elizabeth Adams, Deputy Director, U.S. Environmental Protection Agency, Region 9

February 9, 2017

The Honorable Michael Antonovich
Supervisor, Fifth District
869 Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

SUBJECT: PROPOSED RULE 4001: "BACKSTOP TO ENSURE AQMP EMISSION TARGETS ARE MET AT COMMERCIAL MARINE PORTS"

Dear Board Member Antonovich:

As you are aware, the Cities of Long Beach and Los Angeles are very concerned with Proposed Rule 4001, currently in development by South Coast Air Quality Management (SCAQMD) staff. The two Cities do not own, operate or control the mobile emissions sources operated by others at their ports, but nevertheless we are widely recognized as leaders on environmental improvements for the maritime goods movement industry. The strategies we have implemented through our voluntary joint San Pedro Bay Ports Clean Air Action Plan (CAAP) have been tremendously successful. Continuing the successful approach of the CAAP will assure future projects and programs that will contribute to improvement of air quality and promote other environmental values.

Collaboration Remains the Right Approach. The successes we have achieved to date are due to the cooperative approach taken between SCAQMD, the two ports, the United States Environmental Protection Agency (EPA) and California Air Resources Board (CARB); the rulemaking currently proposed by SCAQMD staff is in direct conflict with that approach. Furthermore, the Cities are neither stationary sources nor indirect sources under the law, and we fundamentally disagree with SCAQMD's current proposal to regulate the Cities in a manner that conflicts with the Cities' own jurisdiction.

Viable Alternatives to Regulation Must Be Pursued. Viable alternatives to rulemaking are available, required to be analyzed under SCAQMD rulemaking requirements and the California Environmental Quality Act, and should be pursued. First, CARB is currently embarking on the Sustainable Freight Strategy, which will take a long-term, robust view of the freight industry and determine the strategies that must be implemented to meet the air quality needs throughout the state. The two ports and SCAQMD are all active participants in this process, which will flesh out state-wide emission reduction strategies for all of the maritime goods movement mobile sources, under the leadership of CARB, which has mobile source emission regulatory powers, unlike either the SCAQMD or the ports. Second, we believe that a multi-agency agreement, between the two ports, the District, CARB and EPA can be designed to achieve the same goals as a rule. The agreement could include a Voluntary Mobile Source Emission Reduction Program

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We appreciate your consideration. Thank you.

Sincerely,

Heather Tomley
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

cc: Al Moro, Acting Executive Director Port of Long Beach
Gary Lee Moore, City of Los Angeles Harbor Department, Interim Executive Director
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Cynthia Marvin, Division Chief, California Air Resources Board
Elizabeth Adams, Deputy Director, U.S. Environmental Protection Agency, Region 9

February 9, 2017

The Honorable Ben Benoit
Mayor Pro Tem, City of Wildomar
23873 Clinton Keith Road, Suite 201
Wildomar, CA 92595

SUBJECT: PROPOSED RULE 4001: "BACKSTOP TO ENSURE AQMP EMISSION TARGETS ARE MET AT COMMERCIAL MARINE PORTS"

Dear Board Member Benoit:

As you are aware, the Cities of Long Beach and Los Angeles are very concerned with Proposed Rule 4001, currently in development by South Coast Air Quality Management (SCAQMD) staff. The two Cities do not own, operate or control the mobile emissions sources operated by others at their ports, but nevertheless we are widely recognized as leaders on environmental improvements for the maritime goods movement industry. The strategies we have implemented through our voluntary joint San Pedro Bay Ports Clean Air Action Plan (CAAP) have been tremendously successful. Continuing the successful approach of the CAAP will assure future projects and programs that will contribute to improvement of air quality and promote other environmental values.

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Port of Long Beach • Environmental Planning
925 Harbor Plaza • Long Beach • CA 90802 • 562-590-4160

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Elizabeth Adams, Deputy Director, U.S. Environmental Protection Agency, Region 9

February 9, 2017

The Honorable John Benoit
Supervisor, Fourth District
73-710 Fred Waring Drive, Suite 222
Palm Desert, CA 92260

SUBJECT: PROPOSED RULE 4001: "BACKSTOP TO ENSURE AQMP EMISSION TARGETS ARE MET AT COMMERCIAL MARINE PORTS"

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Elizabeth Adams, Deputy Director, U.S. Environmental Protection Agency, Region 9

February 9, 2017

The Honorable Joe Buscaino
Councilmember, 15th District
200 N. Spring Street, Room 410
Los Angeles, CA 90012

SUBJECT: PROPOSED RULE 4001: "BACKSTOP TO ENSURE AQMP EMISSION TARGETS ARE MET AT COMMERCIAL MARINE PORTS"

Dear Board Member Buscaino:

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Elizabeth Adams, Deputy Director, U.S. Environmental Protection Agency, Region 9

February 9, 2017

The Honorable Michael Cacciotti
Councilmember, City of South Pasadena
1414 Mission Street
South Pasadena, CA 91030

SUBJECT: PROPOSED RULE 4001: "BACKSTOP TO ENSURE AQMP EMISSION TARGETS ARE MET AT COMMERCIAL MARINE PORTS"

Dear Board Member Cacciotti:

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February 9, 2017

The Honorable Josie Gonzales
Supervisor, Fifth District
385 North Arrowhead Avenue, 5th Floor
San Bernardino, CA 92415

SUBJECT: PROPOSED RULE 4001: "BACKSTOP TO ENSURE AQMP EMISSION TARGETS ARE MET AT COMMERCIAL MARINE PORTS"

Dear Board Member Gonzales:

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Elizabeth Adams, Deputy Director, U.S. Environmental Protection Agency, Region 9

February 9, 2017

Joseph Lyou, Ph.D.
President
Coalition for Clean Air
800 Wilshire Blvd, Suite 1010
Los Angeles, CA 90017

SUBJECT: PROPOSED RULE 4001: "BACKSTOP TO ENSURE AQMP EMISSION TARGETS ARE MET AT COMMERCIAL MARINE PORTS"

Dear Board Member Lyou:

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Elizabeth Adams, Deputy Director, U.S. Environmental Protection Agency, Region 9

February 9, 2017

The Honorable Judith Mitchell
Mayor, City of Rolling Hills Estates
4045 Palos Verdes Drive, North
Rolling Hills Estates, CA 90274

SUBJECT: PROPOSED RULE 4001: "BACKSTOP TO ENSURE AQMP EMISSION TARGETS ARE MET AT COMMERCIAL MARINE PORTS"

Dear Board Member Mitchell:

As you are aware, the Cities of Long Beach and Los Angeles are very concerned with Proposed Rule 4001, currently in development by South Coast Air Quality Management (SCAQMD) staff. The two Cities do not own, operate or control the mobile emissions sources operated by others at their ports, but nevertheless we are widely recognized as leaders on environmental improvements for the maritime goods movement industry. The strategies we have implemented through our voluntary joint San Pedro Bay Ports Clean Air Action Plan (CAAP) have been tremendously successful. Continuing the successful approach of the CAAP will assure future projects and programs that will contribute to improvement of air quality and promote other environmental values.

Collaboration Remains the Right Approach. The successes we have achieved to date are due to the cooperative approach taken between SCAQMD, the two ports, the United States Environmental Protection Agency (EPA) and California Air Resources Board (CARB); the rulemaking currently proposed by SCAQMD staff is in direct conflict with that approach. Furthermore, the Cities are neither stationary sources nor indirect sources under the law, and we fundamentally disagree with SCAQMD's current proposal to regulate the Cities in a manner that conflicts with the Cities' own jurisdiction.

Viable Alternatives to Regulation Must Be Pursued. Viable alternatives to rulemaking are available, required to be analyzed under SCAQMD rulemaking requirements and the California Environmental Quality Act, and should be pursued. First, CARB is currently embarking on the Sustainable Freight Strategy, which will take a long-term, robust view of the freight industry and determine the strategies that must be implemented to meet the air quality needs throughout the state. The two ports and SCAQMD are all active participants in this process, which will flesh out state-wide emission reduction strategies for all of the maritime goods movement mobile sources, under the leadership of CARB, which has mobile source emission regulatory powers, unlike either the SCAQMD or the ports. Second, we believe that a multi-agency agreement, between the two ports, the District, CARB and EPA can be designed to achieve the same goals as a rule. The agreement could include a Voluntary Mobile Source Emission Reduction Program (VMEP), a regulatory program developed by EPA specifically for the purpose of taking credit

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for voluntary programs in the State Implementation Plan (SIP). Third, the SCAQMD, should consider a more comprehensive basin-wide approach for obtaining SIP credit for incentive programs along the lines of Rule 9610 recently adopted by the San Joaquin Air Pollution Control District, which EPA is proposing to approve. See 79 Fed. Reg. 28650 (May 19, 2014). Proposed Rule 4001 is being developed for the purpose of ensuring that the SIP's 2014 $PM_{2.5}$ emission reductions are achieved. However, there is no demonstrated need for the proposed rule. Implementation of the CAAP at the two ports has resulted in particulate matter reductions above and beyond the goals initially established in the CAAP, and the 2014 reductions goals have already been achieved earlier than originally planned. Further, District staff has stated that the 2014 $PM_{2.5}$ reductions for the air basin will be achieved. We therefore strongly recommend you consider an alternative to the proposed rulemaking and continue to work cooperatively with the ports as we move forward to address our shared future goals and challenges. We refer you to the Cities' January 31, 2014, letter to the SCAQMD for a full discussion of the lack of necessity for Proposed Rule 4001 and extensive other concerns of the Cities.

We appreciate your consideration. Thank you.

Sincerely,

Heather Tomley
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

cc: Al Moro, Acting Executive Director Port of Long Beach
Gary Lee Moore, City of Los Angeles Harbor Department, Interim Executive Director
Rick Cameron, Managing Director of Environmental Affairs and Planning, POLB
Mike Christensen, City of Los Angeles Harbor Department, Deputy Executive Director
Dominic Holzhaus, Principal Deputy City Attorney City of Long Beach
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Randall Pasek, Planning and Rules Manager, SCAQMD
Kurt Wiese, General Counsel, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Cynthia Marvin, Division Chief, California Air Resources Board
Elizabeth Adams, Deputy Director, U.S. Environmental Protection Agency, Region 9

February 9, 2017

The Honorable Shawn Nelson
Supervisor, Fourth District
333 West Santa Ana Boulevard, 5th Floor
Santa Ana, CA 92701

SUBJECT: PROPOSED RULE 4001: "BACKSTOP TO ENSURE AQMP EMISSION TARGETS ARE MET AT COMMERCIAL MARINE PORTS"

Dear Board Member Nelson:

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Elizabeth Adams, Deputy Director, U.S. Environmental Protection Agency, Region 9

February 9, 2017

Dr. Clark Parker, Sr.
4508 Crenshaw Blvd
Los Angeles, CA 90043

SUBJECT: PROPOSED RULE 4001: "BACKSTOP TO ENSURE AQMP EMISSION TARGETS ARE MET AT COMMERCIAL MARINE PORTS"

Dear Board Member Parker:

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Cynthia Marvin, Division Chief, California Air Resources Board
Elizabeth Adams, Deputy Director, U.S. Environmental Protection Agency, Region 9

February 9, 2017

The Honorable Miguel Pulido
Mayor, City of Santa Ana
20 Civic Center Plaza, 8th Floor
Santa Ana, CA 92701

SUBJECT: PROPOSED RULE 4001: "BACKSTOP TO ENSURE AQMP EMISSION TARGETS ARE MET AT COMMERCIAL MARINE PORTS"

Dear Board Member Pulido:

As you are aware, the Cities of Long Beach and Los Angeles are very concerned with Proposed Rule 4001, currently in development by South Coast Air Quality Management (SCAQMD) staff. The two Cities do not own, operate or control the mobile emissions sources operated by others at their ports, but nevertheless we are widely recognized as leaders on environmental improvements for the maritime goods movement industry. The strategies we have implemented through our voluntary joint San Pedro Bay Ports Clean Air Action Plan (CAAP) have been tremendously successful. Continuing the successful approach of the CAAP will assure future projects and programs that will contribute to improvement of air quality and promote other environmental values.

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THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

March 26, 2014

Richard Corey
Executive Officer
California Air Resources Board
1001 "I" Street
Sacramento, California 95814

Re: California State Implementation Plan (SIP) for $PM_{2.5}$ for South Coast Air Basin – South Coast 2012 Air Quality Management Plan (AQMP) Control Measure IND-01 *Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities*

Dear Mr. Corey:

The Ports of Long Beach and Los Angeles (Ports) would like to express our concern regarding the California Air Resources Board (ARB) procedure for inclusion of Control Measure IND-01 *Backstop Measure for Indirect Sources of Emissions from Ports and Port-related Facilities* (Measure IND-01) in the California State Implementation Plan (SIP) for particulate matter 2.5 microns or less ($PM_{2.5}$) for the South Coast Air Basin, which is currently pending United States Environmental Protection Agency (EPA) approval.

The Ports believe that ARB failed to follow the process for SIP revision submissions required by Clean Air Act Section 110(1) and California Health and Safety Code Section 41650. Under Clean Air Act Section 110(l), SIP revisions must be adopted by the State, and the State must provide for reasonable public notice and hearing prior to adoption. Pursuant to 40 CFR 52.102(a)(1), the State must hold a public hearing, not only for initial SIP approval, but also for any SIP revision, and must provide notice of the date, place, and time of a public hearing and opportunity to submit written comments. Under 40 CFR 51.102(d), reasonable public notice in this context refers to at least 30 days. Similarly, Health and Safety Code Section 41650 provides for a public hearing that would allow public comment as to whether the SIP meets the requirements of the Clean Air Act. By resolution dated January 25, 2013, the ARB approved the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) and directed the executive officer of the ARB to submit the AQMP to EPA for inclusion in the SIP. However, at the time of the January 25, 2013 ARB action, Measure IND-01 was not part of the AQMP. Because the AQMD Governing Board adopted the AQMP without Measure IND-01 on December 7, 2012 and did not adopt Measure IND-01 until February 1, 2013, the January 25 ARB action did not constitute approval of Measure IND-01 which had not yet been submitted to ARB for consideration. The

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documents attached to the ARB's February 13, 2013 SIP submittal to the EPA include the December 7, 2012 resolution by the AQMD Governing Board and the December 20, 2012 AQMD letter to ARB transmitting the approved SIP, which pre-dated the AQMD Governing Board's approval of Measure IND-01. However, without the required public notice or public hearing and adoption by the ARB Governing Board, the submitted SIP includes the addition of Measure IND-01 by Executive Order S-13-004, dated April 9, 2014.

Furthermore, the Ports were made aware of this Executive Order, which occurred without public hearing or Governing Board approval through a letter from EPA to the Ports dated February 24, 2014. This letter stated that ARB had approved the revised SIP containing Measure IND-01and had forwarded it to EPA under cover of a letter dated April 9, 2013. After a search of the ARB website, however, we were unable to find a copy of the April 9, 2013, submission to the EPA, and the only ARB action posted on the ARB website was the February 13, 2013, SIP submission without Measure IND-01 and the ARB Board's resolution dated January 23, 2013, also without Measure IND-01. We made inquiry to ARB staff and for the first time, on March 18, 2014, received a copy of the April 9, 2013 submission and ARB Executive Order S-13-004, neither of which are available on the ARB website even as of this date.

Perhaps more important than the procedural issue described above, we respectfully request that ARB consider the Ports' many legal, jurisdictional, operational, and technical concerns regarding the substance of Measure IND-01 and its implementing Rule 4001 as set forth in the attached letter to AQMD, dated January 31, 2014, which we hereby incorporate by reference as comments to the ARB on Measure IND-01, since ARB has never formally noticed a public comment period, in violation of the Clean Air Act and Health and Safety Code Section 41650.

The Ports value our partnership with ARB, working together to improve air quality, and we look forward to continuing our collaboration on projects such as ARB's new Sustainable Freight Strategy effort. Rather than introduce counterproductive regulation such as Measure IND-01 or Proposed Rule 4001, the Ports strongly urge ARB to recognize that a multi-agency agreement, using a collaborative process for development of potential programs, is the most effective way to ensure that emission reduction goals continue to be incentivized, and are actually realized. We respectfully request that ARB rescind Executive Order S-13-004, withdraw Measure IND-01 from the SIP, and meet with the Ports to work on a collaborative path forward.

Sincerely,

Heather Tomley
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

LW

Attachment: Port of Long Beach and Port of Los Angeles January 31, 2014 Letter to Mr. Randall Pasek, AQMD, *Re: Comments on South Coast Air Quality Management District Proposed Rule 4001 — Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports*

cc: Al Moro, Acting Executive Director, Port of Long Beach
Gary Lee Moore, Interim Executive Director, Port of Los Angeles
Richard D. Cameron, Managing Director, Port of Long Beach
Michael Christensen, Deputy Executive Director, Port of Los Angeles
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
Mary Nichols, Chairman, ARB
Members of the California Air Resources Board (*c/o Clerk of the Board, Attachment on CD*)
Cynthia Marvin, Division Chief, Stationary Source Division, ARB

January 31, 2014

VIA E-MAIL – rpasek@aqmd.gov

Mr. Randall Pasek, Ph.D.
Planning Manager, Off-Road Section
Mobile Source Division
Science and Technology Advancement
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91756-4178

Re: Comments on South Coast Air Quality Management District Proposed Rule 4001 — *Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports*

Dear Mr. Pasek and Staff of the South Coast Air Quality Management District:

On behalf of the City of Long Beach (referred to herein as "COLB") and the City of Los Angeles acting by and through their respective Harbor Departments ("COLA"), and collectively with COLB referred to herein as the "Cities"), we appreciate this opportunity to submit comments on the South Coast Air Quality Management District's ("District") recently published draft "Proposed Rule 4001 – *Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports*" ("PR 4001"), which attempts to implement "Stationary Source Measure IND-01—*Backstop Measures for Indirect Sources of Emissions from Ports and Port-related Facilities*" ("Measure IND-01") in the 2012 Air Quality Management Plan for the South Coast Air Basin ("AQMP").

As the District is well aware, the Cities have been dedicated, innovative, and effective leaders in the efforts of public agencies to improve air quality despite the fact that we have no air quality regulatory authority or control over emissions sources. The potential of additional regulation by the District in the form of PR 4001 on the ports of Long Beach and Los Angeles ("Ports") brings significant uncertainty that will have broad negative effects on the goods movement industry and the economy as a whole, and destroys the voluntary, collaborative partnership among the Cities, industry and all of the air agencies that has led to unparalleled emission reductions. PR 4001 raises questions of fairness and unacceptable delegation of responsibility from federal, state and local air regulators to individual cities.

The Cities have previously commented on, and objected to PR 4001 and Measure IND-01, and have expressed our grave concerns about the District's rulemaking approach, attempting to craft an ostensible "backstop rule" that would regulate the Cities and their respective Ports in an unprecedented manner. This letter provides the Cities' comments on PR 4001 and the District's Preliminary Draft Staff Report ("PDSR") for PR 4001 and concludes that:

I. The substance of Measure IND-01 and PR 4001 is deeply flawed from technical, jurisdictional, legal, and public policy perspectives, in ways that cannot be cured;

II. District is acting beyond its authority to adopt PR 4001;

III. The procedural process for development, public participation and adoption of Measure IND-01 and PR4001 is similarly flawed under both state and federal law; and

IV. Measure IND-01 and PR 4001 fail the requirements for inclusion in a State Implementation Plan (SIP) under the federal Clean Air Act and applicable state law and their existence within the SIP threatens the its success.

Each of these four conclusions is explained in detail below.

I. SUBSTANTIVE FLAWS IN PR 4001

A. There Is No Demonstrated Need for PR 4001

The District has failed to and cannot provide any demonstration of "need" or justification for either Measure IND-01 or PR 4001. The District's persistent demand for the Cities – and the Cities alone – to be subjected to a redundant rule to "backstop" existing and effective emission regulations, reduction plans and policies is arbitrary, discriminatory, and remains unjustified by evidence or legal authority.

We respectfully point out that the District previously proposed a "port backstop rule" as a "Mobile Source Measure MOB-03" ("Measure MOB-03") as part of the District's 2007 Air Quality Management Plan, although Measure MOB-03 included as regulated parties, the port-related emission sources. However, following the Cities' objections to that similarly-unjustified proposal, the California Air Resources Board ("CARB") excluded the Port-related emission reduction targets and the proposed MOB-03 "backstop" measure from the 2007 SIP. Despite that rejection, and despite its repeated and manifest failure to demonstrate any legitimate need the District introduced an even more unjustified form of backstop that targets the Cities alone, in the form of PR 4001.

Implementation of PR 4001 would transform the Cities' voluntary San Pedro Bay Ports Clean Air Action Plan ("CAAP") into the District's mandatory regulation of the Cities. The CAAP was a voluntary cooperative effort of Cities and all of the air regulatory agencies (including the District, CARB and the United States Environmental Protection Agency ("USEPA") designed to encourage the industry operators of emission sources to go beyond regulation. PR 4001 would improperly and illogically subject the Cities to the District's regulation for industry's failure to achieve anticipated emissions reductions from equipment not operated, owned or controlled by the Cities, or even to the potential loss of federal and state funding for emission reduction measures if the PR 4001 is adopted and included in the SIP and approved by the USEPA.

As the Cities have previously shown, there is no demonstrated need for the rule, nor is this rule necessary for regional attainment of the 2014 $PM_{2.5}$ standard. PR 4001 is unnecessarily duplicative of regulations already in place for port-related sources.[1] This violates the federal Clean Air Act and State of California Health & Safety regulations that require SIP provisions to be "necessary." The Ports' 2012 air emissions inventories show that diesel particulate emissions (DPM) have been reduced by 80% over the seven year period between 2005 and 2012, exceeding the commitments we made for 2014 and 2023 in the CAAP. Further, the Cities estimate that by 2014**, 98%** of the $PM_{2.5}$ equivalent emission reduction that PR 4001 seeks to backstop will occur as the result of regulations adopted by CARB and the International Maritime Organization (IMO).[2] The remaining **2%** of $PM_{2.5}$ equivalent emission reductions is primarily attributed to the Cities' successful voluntary vessel speed reduction incentive program which is part of the Cities' CAAP.

B. A VMEP Should Be Used To Achieve Reductions Rather than Rulemaking

To the extent the District may be seeking to ensure the emission benefits of the Cities' voluntary vessel speed reduction incentive program, there is a more appropriate and focused method in the form of the USEPA's policy and guidance for the Voluntary Mobile Source

[1] The term "port-related sources" may occasionally be used in this letter, merely for convenience and consistency with usage of that colloquial term by the District, as shorthand for the range of discrete sources of air emissions, mostly mobile, which happen to operate at or near the geographic boundaries of the respective Ports. The Ports themselves, however, are "non-operating ports" and therefore not "sources" of emissions, and there is no statutory reference to anything called "port-related sources" for purposes of air quality regulation. The Cities are governmental entities having jurisdiction over defined geographic areas, like the District, and are no more the "sources" of emissions than is the District.

[2] CARB Port Drayage Truck Rule, CARB Truck and Bus Rule, CARB Ocean-Going Vessel (OGV) Shore Power Rule, OGV Low-Sulfur Fuel Rule, CARB Cargo-Handling Equipment at Ports Rule, CARB Commercial Harbor Craft Rule, IMO North American Emission Control Area

Emission Reduction Program (VMEP). This USEPA policy provides an established process to grant SIP credit for emission reductions resulting from voluntary mobile source measures that go beyond existing regulations. The VMEP approach was intended for exactly the type of successful voluntary program such as the Cities' landmark CAAP, and should be used to account for the 2% of port-related emissions not currently backstopped by regulation. Use of the VMEP would allow the continuation of a successful voluntary approach that has industry support eliminating the risk of cargo diversion that would be caused by the uncertainty inherent in the ill-conceived regulatory structure of PR 4001.

The USEPA's established VMEP process that was conceptualized for programs such as the Cities' vessel speed reduction incentive program and other CAAP measures is a feasible and preferable alternative to PR 4001 as it will accomplish the objectives sought by Measure IND-01 and PR 4001 and ensure that the emissions reductions achieved by the program are credited in the SIP. Further, a VMEP, which can be implemented by a memorandum of understanding, will achieve the same emissions reductions while allowing grant funds to continue to remain available for actions going beyond regulations and will do so in a collaborative manner. It will also encourage other port partners, as well as cities and regions throughout the nation, to develop and pursue innovative voluntary programs and solutions that best fit their needs to improve air quality and public health. The Cities are open to discussing mechanisms, contractual or otherwise, by which the Cities and the District can formalize a VMEP to ensure the voluntary emission reductions are maintained in future years.

C. PR 4001 Emissions Reduction Target Methodology is Flawed

Table 5 of the District's Preliminary Draft Staff Report shows the overall combined 2014 target emission reduction of 75% resulting from the application of the Cities' CAAP 2014 emissions reduction goals for NOx, SOx, and DPM compared to the CAAP 2005 baseline, but fails to specify a mechanism to harmonize the AQMP inventory values with the Cities' reported air emissions inventories. Furthermore, the use of a fortuitous similarity in 'percent reduction' cannot be the basis of any type of backstop rule.

Since the 2012 Final AQMP emissions inventory uses a baseline year of 2008 that includes the Cities' 2008 emissions inventories, the 2005 baseline emissions should be replaced with the more appropriate 2008 emissions estimates to determine the overall $PM_{2.5}$ equivalent emissions reduction target. Based on the Cities' calculation, using the District staff's methodology, by applying the CAAP reduction factors to the 2008 baseline inventory, the overall combined target $PM_{2.5}$ equivalent emission reduction is 68%, as shown in the following table:

Emissions Inventory	NOx	SOx	$PM_{2.5}$	$PM_{2.5}$Eq
	(tons per day)			
CAAP 2005 Baseline[1, 3]	87.45	33.39	4.73	28.54
Ports Combined 2008 Total Port-Related Emissions[2, 3]	78.6	25.5	3.7	22.7
CAAP 2014 Reduction[4]	22%	93%	72%*	-----
2014 Estimated Inventory[3]	68.21	2.34	1.32	7.34
Overall $PM_{2.5}$ Equivalent Reduction Between 2008 and 2014				68%

[1] From Table 2 of Preliminary Draft Staff Report for PR 4001
[2] From Table 3 of Preliminary Draft Staff Report for PR 4001
[3] 2005 and 2008 emissions are based on the Ports' 2011 emission estimation methodologies.
[4] CAAP 2014 Bay-Wide Standards emission reduction goals for NOx, SOx and DPM
*Please note that that the CAAP 2014 emission reduction goal of 72% is for DPM, not for PM.

In determining the 2014 emission reduction targets for PR 4001, District staff applied the Basin-wide percent reductions from 2008 to 2014 and 2019 to the Cities' 2008 inventory to arrive at the forecasted net emissions reduction percentages of 75% for 2014 and 2019 (page 11 of Preliminary Draft Staff Report). This approach is not appropriate because the Basin-wide percent reductions are based on an inventory of emissions from overall sources (including non-port-related) in the South Coast Air Basin (SCAB). Therefore, the approach taken in PR 4001, is not directly applicable to what the Rule describes as "port-related emissions." Since the SCAB estimates include emissions from what the District erroneously describes as the "port-related source" categories, as well as sources operating elsewhere in the SCAB, the 75% emission reduction target specific to the ports of Long Beach and Los Angeles is questionable. As an example, SCAB-specific emissions from heavy-duty vehicles includes emissions from all heavy-duty trucks operating in the basin, including those associated with construction activities, public fleets, utility, intrastate, interstate, and drayage trucks, while the ports-specific heavy-duty truck emissions inventory only includes activity and emissions associated with port-related drayage trucks.

It is also important to note that the District's December 2013 Preliminary Draft Staff Report for PR 4001 erroneously assumes that $PM_{2.5}$ emissions are equivalent to diesel particulate matter (DPM) emissions. The Cities' 2014 CAAP emission reduction goal of 72% is specific to DPM, not $PM_{2.5}$ as assumed in the calculation of the $PM_{2.5}$ equivalent emissions reduction goal of 75%. Each of the Port's annual air emissions inventories separately estimate DPM and $PM_{2.5}$. As shown in their annual reports, the resulting emissions of DPM and $PM_{2.5}$ **are not equivalent**.

Please refer to Table 8.4 of the Port of Long Beach 2012 Air Emissions Inventory Report[3] and Table 9.4 of the Port of Los Angeles 2012 Inventory of Air Emissions Report[4].

A comparison of the $PM_{2.5}$ equivalent factors used in the 2007 AQMP , 2012 AQMP, and PR 4001 shows that there is inconsistency in how the $PM_{2.5}$ equivalent factors were derived and applied, as shown in the table below:

$PM_{2.5}$ Equivalent Factors

	VOC	NOx	$PM_{2.5}$	SOx
2007 AQMP	0.04	0.10	1.00	1.52
2012 AQMP	0.02	0.07	1.00	0.53
PR 4001	NA	0.07	1.00	0.53

In the 2007 AQMP, emissions reductions were simulated between 2005 and 2014, whereas for the 2012 AQMP, emissions reductions were simulated between 2008 and 2014. In the 2007 AQMP, the effect of each pollutant precursor's reduction on the 2014 $PM_{2.5}$concentration was considered on an annual basis, while the 2012 AQMP considers 24-hour $PM_{2.5}$concentrations. Also, the 2007 AQMP used the annual $PM_{2.5}$ concentration which was based on the average concentrations from all air monitoring stations in the South Coast Air Basin, while the 2012 AQMP only uses the average from six regional locations—Riverside-Rubidoux, Downtown Los Angeles, Fontana, Long Beach, South Long Beach, and Anaheim. The Basin-averaged conversion factors resulting from the 2007 analysis were submitted as part of the 2007 SIP (Appendix C, of the CARB staff report, "$PM_{2.5}$ Reasonable Further Progress Calculations") and were approved by the USEPA.

In addition, PR 4001(c)(6) defines "$PM_{2.5}$ Equivalent" as "the aggregate of the NOx, SOx, and $PM_{2.5}$ emissions (in tons per day) as defined by the following formula provided in the Final 2012 AQMP:

$$PM_{2.5}\text{ Equivalent} = 0.07 * NOx + 0.53 * SOx + 1.0 * PM2.5$$

The formula provided in PR 4001 does not reflect the $PM_{2.5}$ equivalent formula provided in the Final 2012 AQMP, which includes emissions of VOCs in the calculation. In PR 4001, without explanation, the District has erroneously "dropped" the contribution of VOC from the $PM_{2.5}$ equivalent formula, although the District's emissions modeling simulation shows VOCs as a contributing factor.

[3] Port of Long Beach 2012 Air Emissions Inventory. www.polb.com/emissions
[4] Port of Los Angeles 2012 Inventory of Air Emissions. www.portoflosangeles.org/environment/studies_reports.asp

Given that there have been several revisions to the $PM_{2.5}$ equivalent calculations, the text and formulae used in PR 4001 for those calculations do not appear consistent with previous approaches to such determinations. Prior to proceeding any further with PR 4001, the Cities request a scientific technical evaluation and obtain confirmation from the USEPA that the revised $PM_{2.5}$ equivalent factors and formula to calculate $PM_{2.5}$ equivalent emissoins used in the 2012 AQMP and in PR 4001 are appropriate.

D. PR 4001 Fails to Provide an Accurate and Appropriate Definition of Emissions "Shortfall"

PR 4001 would require the Cities to develop and submit an emissions reduction plan ("Plan") identifying control strategies to eliminate some potential future "shortfall" in attainment of reduction targets. The proposed rule, however, fails to identify the environmental baseline or other parameters that would be required in order for the Cities or the District to determine the extent of any emissions "shortfall" to be addressed in the potential Plan. Under PR 4001, the existence of a "shortfall" would appear to be the necessary prerequisite to trigger some responsive action on the part of the Cities, but the draft text of PR 4001 fails to provide for a timely and objective process to ascertain when and whether such a "shortfall" may have arisen.

The term "shortfall" first appears in the proposed rule in paragraph (d)(1)(A), where it appears to call for a Plan to report on progress in "meeting the shortfall." However, that would appear to be inconsistent with the structure of the proposed rule, i.e., under PR 4001, the District cannot require the Cities to submit an emissions reduction plan unless and until the annually-reported emissions reductions "show that the percent reduction in $PM_{2.5}$ from the baseline emissions is less than the reduction target" of 75% (Paragraph (e)(1)B)). There would not be any "shortfall" identified until that time; therefore, it would be premature and illogical to require the Cities to submit a Plan that "reports the progress in meeting the shortfall."

To the limited extent that the draft text of PR 4001 describes the shortfall that might trigger the need to prepare a Plan, the provisions for annual estimating or reporting of the emissions appear imprecise and vague. Also, paragraph (f) appears to contemplate that once a "shortfall" is determined to exist in one year, then the District could demand a revised Plan in following years if targets still are not met. What happens if the shortfall is "corrected" in subsequent years and targets are again being met?

PR 4001 fails to provide for any process for review or appeal of a possible District "determination" that a "shortfall" has occurred. PR 4001 fails to provide adequate time for the Cities to prepare a Plan, if required, or adequate time or procedures for the Cities to study the proposed Plan, to conduct environmental review of the Plan, or to conduct public hearings and gather input on any Plan that may be deemed to be appropriate if PR 4001 is properly triggered.

Development of a Plan should not be mandated if any eventual determination of an emissions "shortfall" is due to reasons outside of the Cities' control. As previously stated, by 2014, the emissions sources ostensibly targeted by PR 4001 are already controlled by state, federal, and international regulations. Should there be a shortfall in attaining the emissions targets, it will likely be due to factors not caused or controlled by the Cities, and not due to any action or derelictions on the part of the Cities or their tenants or users. The obligation to go through a burdensome process to prepare and approve a new Plan or to take active measures to make up for a shortfall in meeting emission reduction targets should not fall on the two Cities. The Cities are independent governmental entities who are not directly producing emissions or otherwise directly responsible for the targeted emissions or for the attainment of emission targets. The Cities are certainly not air agencies created by federal or state law with specific regulatory authority to control emissions.

E. <u>PR 4001 Improperly Provides for Moving Emissions Reduction Targets</u>

PR 4001 paragraph (c)(4) defines the "Emissions Target" as the "emissions forecast that is based on the Ports' 2008 baseline emissions **forecasted** for a specific year as provided in Appendix IV-A page IV-A-36 of the Final 2012 AQMP." This definition is confusing, as it is assumed that this reference is contained in the Final 2012 AQMP. In the description of this measure in Appendix IV, page IV-A-36, only projected levels of NOx, $PM_{2.5}$, and SOx are shown for calendar years 2014 and 2019. However, PR 4001 and the District's Preliminary Draft Staff Report discuss a 75% reduction in $PM_{2.5}$ equivalent emissions in 2014 compared to 2008 baseline levels. Again, there is a clear inconsistency between PR 4001 and the text of Measure IND-01 as actually approved by the District's Governing Board.

PR 4001 paragraph (e)(2) requires the District's Executive Officer to review the reduction target based on the latest information available including future year emission estimates in the 2016 AQMP and purports to allow the Executive Officer, by July 1, 2017 to "update," if necessary, the emission reduction target. This provision is unauthorized by IND-01 or any other rule, regulation, plan or statute, and would unlawfully vest apparently unfettered power on the Executive Officer to **change the previously-approved reduction targets**. By what authority would these targets be "revised" in the future? Under what objective standards? What public process would the District's Executive Officer need to follow in order to "develop" a proposed amendment to PR 4001 changing the targets? What environmental review/public outreach processes would be required before the Executive Officer could change the reduction targets and how would the environmental/socioeconomic impacts of such changes be addressed? How would such a moving target affect the Cities, the port communities, tenants, users, and the existing plans and policies which have proven effective in attaining the agreed and approved reduction targets?

F. The Processes For Development, Approval and Disapproval of Emission Reduction Plans Are Flawed

In the event the emissions reduction targets are not met, PR 4001 requires the Cities to submit an Emissions Reduction Plan "to address the emission reduction 'shortfall'." In addition, PR 4001 dictates the public processes of other government agencies: "…the Ports shall conduct at least one duly noticed public meeting before the Plan is presented to each respective Board of Harbor Commissioners for approval." This is an improper attempt by the District to control and dictate the exercise of "discretion" conferred on the Boards of Harbor Commissioners regarding their own notice, agenda setting, public hearing procedures and substantive decision making processes under their own applicable governing laws and rules. Neither the District's staff nor its Governing Board can require approval of the District's desired measures or override the discretion of the Board of Harbor Commissioners including decisions related to the management of the port or how port resources are allocated.

Moreover, if the Board of Harbor Commissioners disagrees that a Plan is required or specific terms of a Plan requested by the District, what process is provided for resolution of such disagreements? Under what authority would PR 4001 purport to allow the District's Executive Officer, acting alone, without even District Governing Board authority, to "disapprove" a Plan or compel a Plan to be approved by the Cities' own governing authorities? Although the Cities dispute that the District can compel or disapprove a Plan at all due to conflicting governmental authority, certainly such approval or disapproval of any Emission Reduction Plan cannot be at the sole discretion of a single District staff member.

G. PR 4001 Would Violate Constitutional Requirements of Due Process

PR 4001 also raises several questions regarding violations of Due Process. As noted above, PR 4001 would unlawfully purport to vest the District's Executive Officer with unilateral authority to "approve" or "disapprove" a Plan submitted by the Cities, without any process for public hearing, review by the District Board, or other guarantees of procedural due process for those concerned about such actions. PR 4001 also improperly fails to provide any requirement that the Executive Officer must make "findings" of "non-compliance" with some provision of paragraph (f)(1) of PR 4001, or that the Executive Officer's decisions must be based on some reasonable and objective standards.

PR 4001 fails to provide for the District giving the Cities any particular notice or justification for disapproval of a Plan, or any process for the Cities to seek review or appeal of the District's disapproval.

What would be the procedure if the PR 4001 triggered the obligation of the Cities to prepare a Plan, and the Cities duly submitted a Plan, but the District (either by its Executive

Officer or its Hearing Board) "disapproved" the Plan (per paragraph (f)(2)(C))? The Cities would apparently be required to submit a revised Plan within 60 days of the disapproval; however, that time would not be sufficient for the Boards of Harbor Commissioners and their staffs to prepare a new revised Plan, to hold new "public meetings" and gather public input, or otherwise take meaningful action on the revised Plan. PR 4001 fails to provide adequate time or process for the Boards of Harbor Commissioners to prepare, conduct CEQA review and public outreach, or to consider and approve a new revised Plan within the arbitrary 60 day time frame set by the rule.

H. PR 4001 Improperly Changes the Definition of "Feasibility" In Control Strategies and Alternatives

PR 4001 proposes to change the definition of "feasible control strategy" so that it is not consistent with the obligations that could potentially be imposed on the Cities under Measure IND-01 as adopted by the District Governing Board. Instead, PR 4001 (at paragraph (c)(1)) has changed the limitations on the proposed obligations of the Cities to achieve additional emissions reductions under PR 4001. Previously, the proposed rule was described as requiring the Cities to "propose additional emission reduction methods …[but only] *to the extent cost-effective strategies are technically feasible* and within the Ports' authority." PR 4001 has inexplicably omitted (at several points) the prior limitation on the Cities' potential obligations to measures that are "*technically feasible.*" Again, this is not consistent with the text of Measure IND-01 or any other legal or regulatory authority identified by the District.

The Cities assert that feasibility must be defined as technically, operationally, commercially, financially, and legally feasible, and within the legal and jurisdictional authority of the Cities. Further, the District must acknowledge that feasibility is also subject to the Cities' and their Boards of Harbor Commissioners' own legal and trustee obligations as governmental agencies under their City Charters and applicable laws.

The District also fails to show how it expects the Cities as governmental agencies to legally overcome the same doctrines of international and federal preemption that prevent the District from regulating mobile sources such as ocean-going vessels, rail locomotives and trucks. If the District intends that the Cities shall be compelled to pay incentives for District programs if they are unable to legally regulate mobile sources, then again this raises the jurisdictional conflict with the Cities' Boards' independent governmental discretion and legal obligations to manage their properties and revenues to serve Tidelands purposes for the benefit of the State. In this era of ever diminishing resources and increased competition the District is seemingly ignoring the lawful obligations of the Cities' Boards and insisting they place District priorities (which they themselves cannot legally accomplish) before the established responsibilities of the respective City Boards.

I. The PR 4001 Enforcement Scheme is Unconstitutionally Vague and Impermissible

PR 4001 does not describe how the District would determine the "consequences" for violation of PR 4001, nor does it identify how it would determine the sufficiency of the Cities' efforts to manage activities within the Ports. If the Cities were deemed to be in violation simply because the District may choose to "disapprove" a Plan or revised Plan, under what legal authority would the District purport to sanction the Cities in the event of some perceived "violation"?

PR 4001 fails to provide objective standards appropriate for the District to judge the sufficiency of any plans or measures proposed by the Cities to achieve the emission reduction targets. The proposed rule fails to provide sufficient detail at paragraph (f)(2)(F)(iii) as to what the consequence would be if the District were to disapprove a City's revised Plan. Also, the reference here that the Cities "shall be in violation of this Rule…" must be clarified.

Similarly, the terse discussion of the Variance and Appeal Process outlined in paragraph (g)(1) and (2) of PR 4001 is vague and fails to identify criteria or the process for the Cities to petition the District Hearing Board for a variance. PR 4001 also fails to explain the outcome should the District grant a variance.

Both Measure IND-01 and PR 4001 are unconstitutionally vague in their failure to explain exactly what fines, penalties or other administrative enforcement would be imposed on the Cities in the event that targets are missed or the District's Executive Officer disapproves a plan. The District also fails to explain how it purports to impose penalties or corrective action against another governmental entity for failure of private third party emissions sources to achieve emissions reductions that such other governmental entity is also preempted from regulating.

The District has failed to show any constitutional or statutory basis for requiring a governmental entity to devote public resources, pay exactions, administrative fines or suffer penalties for pollution caused by private entities. Similarly, the District has not shown any authority for PR 4001's attempt to shift onto the Cities liability for emission shortfalls by other parties assigned AQMP emissions reduction responsibility. The District has failed to show how PR 4001 would not violate constitutional limitations requiring exactions or penalties imposed on a party to be reasonably related to and proportional to the party's deleterious public impacts. This is especially true when PR 4001 only applies to the Cities, which are non-operating ports, while failing to include all parties involved in the CAAP including the other air agencies that jointly sponsored the CAAP, or actual owners and operators of emission sources. The District also fails to define how it would allocate liability to COLB versus COLA, when they are two separate legal entities with independent Boards as decision makers that may approve different Plans or no Plan at all. In any event, neither City is in direct control of the actual emissions sources and rudimentary principals of justice require that they should not be burdened with

sanctions, penalties, or Plan-writing responsibilities to cure the "shortfalls" of others or to act as a delegated air regulator that has no such authority.

J. PR 4001 Fails to Consider Legal Limits on Grant Funding

In the Cities' actual operating experience, demonstration that proposed activities go beyond, rather than merely comply with, enforceable regulations, is a basic requirement in both state and federal grant funding applications. The District has claimed that its adoption of PR 4001 as an enforceable rule or regulation would not prevent the Cities from continuing to be eligible for the types of grant funding that the Cities have used successfully to fund emission reduction programs. However, the District has failed to provide legal citation in support of how the governmental agencies typically funding such programs might continue to legally fund activities for the purpose of complying with existing mandates, without violating constitutional limits prohibiting payment to comply with the law as "gifts of public funds."

K. Reporting Requirements under PR 4001 are Excessive

PR 4001 paragraph (f) requires annual revisions to the Emission Reduction Plan. This is new and excessive regulation, well beyond backstopping achievement of 2014 targets, and is duplicative, unnecessarily burdensome, and has not been sanctioned or in any way approved by the District's Governing Board. Even CARB in its state oversight over the District's plans, only requires three-year updates to the AQMP. Furthermore, PR 4001 is placing greater air quality regulatory burden on the Cities (and their Ports) than the federal government places on AQMD or other air agencies.

L. Annual Emission Inventory Requirements under PR 4001 are Inappropriate and Vague

PR 4001 paragraph (d) outlines requirements for annual emissions reporting. An initial inventory for 2014 would be required by November 2014 "from all port-related sources for the 2014 calendar year based on actual activity information available prior to November 1st of the calendar year and projected activity information for the remainder of the year." Although Distract staff indicated that specific requirements for this November 2014 submittal would be provided, neither the rule nor the accompanying Staff Report list any specifics. The Cities will incur additional costs based on this requirement to prepare a 2014 inventory based on incomplete data in November 2014.

The majority of the sources tracked in the Cities' current emission inventories of port-related sources are not owned, operated or controlled by the Cities. Therefore, emissions inventories that will be used to evaluate compliance with PR 4001 should only include those port-related sources over which the Cities have direct control.

II. LACK OF AUTHORITY

A. PR 4001 is NOT Consistent with the District's Governing Board Approved Control Measure IND-01

Control Measure IND-01 provided a description of the Cities' successful CAAP and its various emissions reduction goals: "This AQMP Control Measure is designed to provide a "backstop" to the Ports' actions to provide assurance that, if emissions do not continue to meet projections, the Ports will develop and implement plans to get back on track, to the extent that cost effective and feasible strategies are available." (Final 2012 AQMP Appendix IV-A, page 3). PR 4001, by contrast, describes its purpose differently: "The purpose of this rule is to establish actions to be taken in the event that emissions from port-related sources do not meet the emission targets assumed in the Final 2012 Air Quality Management Plan for the purpose of meeting the federal 24-hour $PM_{2.5}$ standard in 2014 and maintenance of attainment in subsequent years" (PR 4001 paragraph (a)). District Staff has apparently drafted PR 4001 so as to eliminate the references in Measure IND-01 as adopted by the District's Governing Board to backstopping the Cities CAAP targets to the extent cost effective and feasible strategies are available and has replaced that "backstop control measure" with a traditional regulation by the District to meet District-set targets.

In addition, the District Staff (apparently without Board approval) has **changed** the concern from assuring "the attainment demonstration" for 2014 $PM_{2.5}$ emission targets (as described in the 2012 AQMP) to add "maintenance of the air quality standard in subsequent years." (PR 4001 paragraph (a)). This change adds a new undefined and open-ended element into PR 4001 that is not consistent with Control Measure IND-01 as publicly adopted by the District's Board in February 2013. Most importantly, to the extent the provisions of PR 4001 vary in purpose and scope from Measure IND-01, they are not authorized by the District Governing Board.

B. The District Fails to Show Any Basis to "Indirectly" Regulate Mobile Sources or Delegate Authority Without Clean Air Act Waivers from the USEPA

The District has failed to show any constitutional or statutory basis for attempting to regulate mobile sources "indirectly" that it is preempted from regulating directly. The District's use of the term "port related sources" appears to be a euphemism for "mobile sources" that may be located at or operate at the areas governed by the Cities. "Mobile sources" of emissions are, of course, generally beyond the limited regulatory authority conferred by the Legislature on local or regional districts. (e.g., Health & Safety Code § 40001(a); also see, 76 Ops. Cal. Atty. Gen. 11 (1993); 75 Ops. Cal. Atty. Gen. 256 (1992); 74 Ops. Cal. Atty. Gen. 196 (1991); 73 Ops. Cal. Atty. Gen. 229, 234-35 (1990).)

The District has failed to show any authority for attempting to regulate mobile sources by making another governmental entity that lacks any air regulatory authority its agent for enforcement of its desired mobile source emission reductions. (See, e.g., *Association of American Railroads et al. v. South Coast Air Quality Management District et al.*, 622 F.3d 1094, 1096 (9th Cir. 2010), invalidating several train-idling emissions rules enacted by the District, on the basis of federal preemption under the Interstate Commerce Termination Act of 1995 (ICCTA).) Moreover, the District does not have mobile source regulatory authority itself to delegate, as it does not have a waiver under the Clean Air Act from the USEPA. The District should instead work on stronger regulations from USEPA or CARB, which does have certain USEPA waivers to regulate mobile sources.

PR 4001 impermissibly requires the Cities to become air pollution control agencies, responsible for "achieving" reductions of emissions that are actually from other private parties that operate or control equipment largely used in goods movement within the geographic boundaries of the Cities. There is no statutory or other legal basis for imposing such a requirement on another governmental agency. For example, does this mean that a city that has a significant number of factories or refineries within its borders becomes a stationary source and indirect source for those emissions? Evidently the District does not distinguish between "operating ports" such as the Port of Charleston, S.C., which actually operates the terminals within the port, and "non-operating ports" such as the Cities, which are landlords that do not operate the marine terminals and other facilities within the harbor districts.

The emission reduction plan required by PR 4001 strongly resembles the State Implementation Plan requirements of the Clean Air Act (42USC§7410). Specifically PR 4001(f)(1)(A)(i) states, "…Ports shall engage [CARB, USEPA and the District] to discuss legal jurisdiction and authority to implement potential strategies to address the shortfall…" Based on the Clean Air Act, the enforcing agency should be the state of California through CARB and the District; however, PR 4001 places the burden of enforcement of emission reductions on the Cities. Based on this, if the port-related sources don't meet the emission reduction target specified by PR 4001, it should be the District and/or CARB that are responsible for preparing and enforcing the emission reduction plan against the emissions sources. If the District insists that the Cities prepare an emission reduction plan, then the plan must be subject to the limits on authority, preemption and feasibility issues described above. Further, USEPA, CARB and the District should provide funding to the Cities to support programs for incentives, since the Cities will no longer have available grant funding for voluntary programs.

C. PR 4001 Violates Cities' Charter Authorities and Tidelands Obligations

Control Measure IND-01 and PR 4001 are illegal, abusing the District's limited statutory power in an unprecedented manner that exceeds its authority. There is no legal precedent or

authority for the District's attempted regulation of the Port Authorities of the Cities, or the District's imposition of an arbitrary, unnecessary and discriminatory rule on the Cities, and thereby dictate the Cities' governing Boards of Harbor Commissioners' ("Boards") decisions regarding the exercise of their police power authority, the management of their respective properties and expenditures of the Cities in order to satisfy the District-defined targets for a single district within the State.

PR 4001 acknowledges that funding will be necessary to implement a plan to satisfy District targets, but fails to provide District funds or specify the source of such funds. The District cannot legally compel the Cities' Boards to make expenditure of Tidelands Trust revenues for the purpose of incentives or funding emission reduction programs as contemplated in District enforcement activity under PR 4001. Such proposed unfettered District authority would unlawfully supplant the trustee judgment and legal obligations of the Cities to operate the port properties and their revenues solely for the benefit of the entire State of California under the Tidelands Trust doctrine (promoting maritime commerce, navigation and fisheries) rather than for limited municipal or a single District's purposes.

Worse yet, PR 4001 proposes that a single District Executive Officer acting alone (rather than the District's full Governing Board) would wield the sole discretion to approve or disapprove the independent jurisdictional decisions of the Boards regarding conditions they impose on their properties or expenditures of their Harbor Revenue Funds, violating the Tidelands Trust and the Cities' charters.

D. <u>There is No Statutory Authority for District to Impose PR 4001 On Cities</u>

The District has failed to cite any statutory authority for regulating the Cities—governmental entities—as purported "sources" of emissions. As the Cities have repeatedly explained, neither the Cities nor the Ports are "sources" of emissions—direct, indirect, or otherwise. The District has not provided any authority that would support the District's attempted characterization of the Cities, or the Ports, as "indirect sources" of emission, solely based on the confluence of distinct privately-owned activities, vessels, vehicles, equipment, and uses within the geographic area and jurisdiction of the respective Ports.

"An air pollution control district, as a special district, 'has only such powers as are given to it by the statute and is an entity, the powers and functions of which are derived entirely from the Legislature.'" (74 Ops. Cal. Atty. Gen. 196 (1991)[citations omitted].) "No matter how altruistic its motives, an administrative agency has no discretion to promulgate a regulation that is inconsistent with the governing statutes." (*Terhune v. Superior Court* (1998) 65 Cal.App.4th 864, 874.) The District has failed to cite any statute or grant of authority from the Legislature for the proposed PR 4001.

Under the District's 2007 Air Quality Management Plan, a proposed "Port Backstop Rule" was proposed as a "Mobile Source Measure MOB-03" that defined the operators of marine terminals and rail yards, as well as the Cities, as indirect sources, Measure IND-01 and PR 4001 inexplicably exclude the operators of the mobile sources that had been in MOB-03 and instead propose to regulate and punish solely the Cities, effectively insulating from responsibility, the private sector entities that do own, operate and control the equipment producing the emissions.

The District Staff has previously referred to a clearly erroneous, overbroad interpretation of Health & Safety Code §§40716 (a)(1); 40440 (b)(3), as potential authority for attempting to justify Measure IND-01 and PR 4001 as forms of indirect source review, as applied to the Cities. However, such lax interpretations apparently ignore the Legislature's explicit limitations on any such "indirect source" regulatory authority—precluding application of PR 4001 against the Cities (e.g., Health & Safety Code § 40716(b): "Nothing in this section constitutes an infringement on the existing authority of counties and cities to plan or control land use, and nothing in this section provides or transfers new authority over such land use to a district.")

Similarly, any District reliance on Health & Safety Code § 40440 is clearly misplaced. The introductory clause of § 40440(b)(3), for example, states that indirect source controls must be "[c]onsistent with Section 40414." Importantly, Health & Safety Code §40414 [specifically governing the District] states: "No provision of this chapter shall constitute an infringement on the existing authority of counties and cities to plan or control land use, and no provision of this chapter shall be interpreted as providing or transferring new authority over such land use to either the south coast district, the Southern California Association of Governments, or the state board." Not only does this provision apply generally to Chapter 5.5 [governing the District] but it is also specifically referenced in § 40440(b)(3), leaving little doubt that any District rule related to indirect source controls may not overreach or infringe on the Cities' police power to control land use in their jurisdictions or Tidelands Trustee duties for benefit of the State.

Finally, the District Staff's reference to two cases involving the very distinct "indirect source review" adopted by the San Joaquin Valley APCD is misplaced. Those cases, *California Building Industry Association v. San Joaquin Valley Air Pollution Control District*, 178 Cal. App. 4th 120 (2009) and *Nat'l Ass'n of Home Builders v. San Joaquin Valley Air Pollution Control District*, 627 F. 3d 730 (9th Cir. 2010), involved quite different circumstances and a distinct and specific statute permitting an indirect source review program and in-lieu fees to be imposed on new construction sites. The holdings of those cases were narrow, and based on the nature of the emission sources being regulated. "Because the court's approval of the rule depended on the nature of the source being regulated, mobile non-road construction equipment, indirect sources are not categorically permissible after NAHB." (39 ECOLOGY LAW QUARTERLY 667 (2012).) Those cases are thus irrelevant, and do not support District Staff's assertion of some authority for the District to impose rules on the Cities under the guise of Measure IND-01 or PR 4001.

III. PROCEDURAL FLAWS

A. General Comments

The PR 4001 developmental and procedural process is on an accelerated timeline that is unusually short for a rule of this unprecedented nature that has generated such controversy and so many unanswered questions from other public agencies and stakeholders. The District should provide a comprehensive rule development schedule, including key milestones of staff report revisions, staff report analyses, workshops, workgroup meetings, etc. and provide the stakeholders, and the public adequate time for review and comment after release of actual substantive information necessary to evaluate the proposed rule.

Instead, the District was late with release of the actual text of PR 4001, not releasing it until November 26, 2013. The text of the PR 4001 is severely lacking explanation of many material elements, leaving continued unanswered questions that had been posed literally for years, even under the development of Measure IND-01 and early working group consultation meetings. The Preliminary Draft Staff Report for PR 4001 offers little help, as the Staff Report does not contain technical data and analyses necessary for a complete review. The PR 4001 Preliminary Staff Report lacks substance and does not meet important specificity requirements (see specific comments below related to the Preliminary Staff Report).

Lastly, the District's environmental assessment of the PR 4001 has also been extremely flawed and we incorporate by reference the comment letters previously submitted by the Cities on the Notice of Preparation and Recirculated Notice of Preparation under the California Environmental Quality Act, which are attached hereto.

B. The District's Preliminary Draft Staff Report on PR 4001 Fails to Comply With Statutory Requirements for Rule Adoption

The District's December 2013 Preliminary Draft Staff Report fails to comply with statutory requirements for rule adoption as discussed below.

1. Non-compliance with Health & Safety Code § 40440.5 – Notice of Proposed Action:

The District must give public notice of the Board hearing to consider PR 4001 not less than 30 days prior to the hearing date, and must include specified information in that Notice:

(a) A "summary description of the effect of the proposal" as required by Section 40725(b);
(b) Description of the air quality objective of the rule, and reasons for the rule;
(c) A list of supporting information and documents relevant to the PR 4001, and any environmental assessment; and
(d) A statement that a staff report on the proposed rule "has been prepared" and the contact information to obtain that staff report.[5]
(e) The statutes further specify the required contents of the Staff Report that must be prepared and made available at least 30 days prior to the hearing date:

Whenever the proposed rule or regulation will significantly affect air quality or emissions limitations, the staff report shall include the full text of the proposed rule or regulations, an analysis of alternative control measures, a list of reference materials used in developing the proposed rule regulation, an environmental assessment, exhibits, and draft findings for consideration by the District Governing Board pursuant to Health & Safety Code §40727. Further, if an environmental assessment is prepared, the staff report shall also include social, economic, and public health analyses.

2. Non-compliance with Health & Safety Code § 40727 – Required Findings:

Before the District's Board could approve the PR 4001, it would need to make the findings required by Section 40727 (and to provide the public with sufficient information/substantial evidence in the record to support those mandatory findings). The District's Preliminary Draft Staff Report (December 2013) fails to satisfy these requirements. The findings must address:

(a) "necessity" – Since PR 4001 is by definition a "backstop" measure intended to address emissions issues that are not currently a problem (and which are not shown to be likely to occur), it is inherently difficult for the District to make such a finding of "necessity" for the rule (also see the detailed discussion demonstrating the District's failure to demonstrate "necessity" for PR 4001 set forth above). Moreover, the District Governing Board found Measure IND-01 necessary in the 2012 AQMP, but not PR 4001, as stated in the Staff Report.

[5] This wording indicates that the Staff Report must already be prepared before the Notice of the Board meeting goes out. If the District intends to rely upon the "Preliminary Draft Staff Report" issued in December 2013, it would be deficient because that PDSR fails to include all of the information required by statute.

(b) "authority" – As pointed out above, the District has failed to demonstrate its legal authority for PR 4001, if any. By what authority can the District "delegate" (or "foist") its own responsibilities for regulating air quality emissions onto the Cities? The District cites no authority for imposing a rule on independent governmental agencies to take specific land use, environmental, or fiscal actions (fees, tariffs, etc.) Also, the District fails to address the statutory limitations on its authority in Health & Safety Code § 40414: the District may not infringe on the existing authority of Cities to plan or control land use.

(c) "clarity" – The lack of clarity in the draft text of PR 4001 is addressed throughout this comment letter. In addition, the lack of clarity in PR 4001 is exemplified in the circular argument of PR 4001(d)(2)(A) and PR 4001(f)(1)(D). PR 4001(d)(2)(A) specifies that that, in the case of triggering an Emission Reduction Plan, the Port shall report the progress in meeting the shortfall "based on the process developed pursuant to subparagraph (f)(1)(D)." However PR 4001(f)(1)(D) specifies the Emission Reduction Plan "shall provide a process for submittal of progress reports toward eliminating the emission reduction shortfall pursuant to subparagraph (d)(2)(A)."

(d) "consistency" –PR 4001 is inconsistent with Measure IND-01; it is also inconsistent with the CAAP and the Cities' general plans, harbor area plans, transportation management plans, etc, as well as state Tidelands Trust policies. In addition, PR 4001 is inconsistent with, and preempted by federal laws (e.g., ICCTA; FAAAA) and regulations of IMO (MARPOL / APPS) as well as federal regulations of trucks, locomotives, etc.. Also, PR 4001 is inconsistent with the California Clean Air Act and the statutory limitations on the regulatory authority of the District, and further is inconsistent with CARB polices.

(e) "nonduplication" – PR 4001 would unnecessarily – by definition – duplicate and "backstop" existing plans and policies such as CAAP and the aforementioned regulations;

(f) "reference" – The District has failed to demonstrate what law or court decision is purportedly being implemented by PR 4001.

3. <u>Non-compliance with Health & Safety Code § 40727.2 – Written Analysis of Rule</u>:

Does the District contend that its Preliminary Draft Staff Report satisfies this requirement that it produce a written analysis of PR 4001? If so, it fails to comply with § 40727.2(e). The Preliminary Draft Staff Report only indicates that the technical impact

assessment is underway. Without the Impact Assessment section, the staff report is incomplete. The Impact Assessment section must include the District's explanation of differences between PR 4001 and existing guidelines, such as in CAAP or AQMP, as well as address regulation cost effectiveness, including costs beyond mere control equipment costs.

4. Non-compliance with Health & Safety Code § 40440.8 – Assessment of Socioeconomic Impacts of PR 4001:

This requirement is also imposed by Section 40428.5, and the need for such a socioeconomic analysis was addressed, at least in brief, in the NOP comment letter. The Preliminary Draft Staff Report (page 18) erroneously describes the likely socioeconomic impacts of PR 4001 as being limited to the Cities' costs incurred for emissions forecasting and reporting. This grossly understates the likely impacts, including impacts of additional control measures that could be required under PR 4001 impacting the entire use and economic viability of the Ports. The staff report must include a socioeconomic assessment and must certainly address the threat of diversion resulting from potential undefined, regulatory-mandated, emission control measures. The Preliminary Draft Staff Report erroneously suggests that "a detailed assessment cannot be made at this time" and should be deferred, which is in violation of the statutory requirement. The Staff Report also indicates that a socioeconomic assessment will be made available 30 days prior to the public hearing. The significant potential impact and novel nature of this rule warrants a 60 day review period of the socioeconomic assessment.

5. Non –compliance with Health & Safety Code § 40440.8(b)(4) – Alternatives to PR 4001:

The socioeconomic assessment must address "the availability and cost-effectiveness of alternatives to the rule." (§ 40440.8(b)(4)) However, the Preliminary Draft Staff Report fails to even mention any "alternatives" to the Rule, much less to evaluate the availability and cost-effectiveness of alternatives, such as VMEP.

6. Non-compliance with Health & Safety Code § 40440(c): "Cost-effectiveness"

The District failed to demonstrate that the adoption of PR 4001 would comply with the requirement of Section 40440(c) that all of the District's rules "are efficient and cost-effective..." Also, Section 40703 requires the District to make available to the public, and requires the Board to make findings, as to the cost effectiveness of control measures, and similarly Section 40922 requires the District to consider "the relative cost effectiveness of the [control] measure..." The District has not done so.

C. Additional Analysis is Required Before Rule Development Can Proceed

The Cities have put into place a voluntary program with documented air quality improvements in the face of economic growth. It is AQMD's responsibility to perform a regulatory impact assessment documenting that PR 4001 will not reverse voluntary gains made by the Cities and endanger future programs. This includes the analysis of lost grant funding that would have otherwise been available to fund equipment replacement and other emissions reductions, due to conversion of voluntary program to regulation.

D. The District Must Acknowledge and Respond to All Comments Submitted on Measure IND-01 and PR 4001

The draft findings in the next staff report must acknowledge and respond to all comments submitted on Measure IND-01 and PR 4001, including all comments on the environmental assessment such as the Notice of Preparation and Initial Study for PR 4001.

IV. FAILED REQUIREMENTS FOR SIP INCLUSION

The District has claimed that adoption of PR 4001 is necessary to ensure SIP credit for the Cities' voluntary emission reduction programs. However, neither this Proposed Rule nor its precursor, "Control Measure IND-01" can be justified on this pretext, and neither PR 4001 nor Measure IND-01 meet the criteria for SIP inclusion. The Cities have raised significant technical, jurisdictional, constitutional and other legal concerns with Measure IND-01 and PR 4001, as set forth in public comment letters sent to the District during the 2012 AQMP adoption process and PR 4001 development process, which are provided as attachments.

A. Measure IND-01 and PR 4001 Violate Health & Safety Code § 39602

Measure IND-01 and PR 4001 violate California Health & Safety Code § 39602, which provides that the SIP shall only include those provisions **necessary** to meet the requirements of the Clean Air Act. The Cities have shown that there is no demonstrated need for the rule, nor is this rule necessary for regional attainment of the 2014 $PM_{2.5}$ standard. PR 4001 is duplicative of regulations already in place and effectively reducing emissions from port-related sources. As noted above, the Cities estimate that in 2014, 98% of the $PM_{2.5}$ equivalent emission reductions that PR 4001 seeks to "backstop" will occur as the result of regulations adopted by CARB and

the IMO.[6] The remaining 2% of $PM_{2.5}$ equivalent emission reductions is primarily attributed to the Cities' successful voluntary vessel speed reduction incentive program which is part of the Cities' Clean Air Action Plan.

More importantly, there are significant legal questions regarding the District's attempt to invoke " indirect source review" as authority to impose a new rule on governmental agencies. PR 4001 clearly infringes upon, and potentially usurps the Cities' authority to plan and control land use and exercise police power, in contravention of Health & Safety Code §§ 40716(b) and 40414, and compels compliance and punishes them for non-achievement of emissions targets for equipment the Cities do not own, control or operate, and are preempted from regulating.

B. <u>The District Failed to Timely Submit Proposed "Control Measure IND-01" to CARB for Public Consideration and Approval As Part of the SIP Submitted to USEPA on January 25, 2013</u>

Under CAA section 110(l), SIP revisions must be adopted by the State, and the State must provide for reasonable public notice and hearing prior to adoption. EPA cannot approve Measure IND-01 as part of the SIP because the District did not approve and forward IND-01 in time for CARB to follow the process for public consideration and State adoption required by CAA Section 110(1) and California Health and Safety Code Section 41650 for SIP submissions, and CARB failed to do so.

Under 40 CFR 51.102(d), reasonable public notice in this context refers to at least 30 days. Similarly, Health and Safety Code Section 41650 provides for a public hearing that would allow public comment as to whether the SIP meets the requirements of the CAA. By resolution dated January 25, 2013, CARB approved the District's 2012 AQMP and directed the executive officer of CARB to submit the AQMP to the USEPA for inclusion in the SIP. However, at the time of the January 25, 2013 CARB action**, Measure IND-01 was not part of the AQMP**. Because the District Governing Board adopted the AQMP without Measure IND-01 on December 7, 2012, and in fact, did not adopt Measure IND-01 until February 1, 2013, the January 25 CARB action did not constitute approval of Measure IND-01 which had not yet been submitted to CARB for consideration.

The documents attached to CARB's February 13, 2013 SIP submittal to the USEPA include the December 7, 2012 resolution by the District Governing Board and the December 20, 2012 District letter to CARB transmitting the approved SIP, which pre-dated the District

[6] CARB Port Drayage Truck Rule, CARB Truck and Bus Rule, CARB Ocean-Going Vessel (OGV) Shore Power Rule, OGV Low-Sulfur Fuel Rule, CARB Cargo-Handling Equipment at Ports Rule, CARB Commercial Harbor Craft Rule, IMO North American Emission Control Area

Governing Board's approval of Measure IND-01. Inexplicably, without the required public notice or public hearing and adoption by the CARB Governing Board, the submitted SIP includes the addition of Measure IND-01. Until this procedural error is corrected, and the Cities and the public are given the opportunity to comment at a public hearing, and CARB is able to properly consider proposed Measure IND-01 at such a properly-noticed public hearing, Measure IND-01 is not properly before the USEPA and cannot be approved as part of the SIP.

C. The Many Flaws of Measure IND-01 and PR 4001 Harm Rather Than Help the SIP

As a result of the above-mentioned extensive technical, jurisdictional, constitutional, statutory and other legal problems, inclusion of IND-01 in the SIP and attempted implementation through PR 4001 creates unnecessary risks of disputes and legal challenges to the AQMP and SIP. The unprecedented nature and legal and jurisdictional conflicts of PR 4001 and Measure IND-01 require significant explanation of the legal underpinnings of the Measure. Instead a single paragraph of generalities ignoring the jurisdictional conflict and lack of legal authority for classification of Cities as stationary sources or indirect sources was produced to justify PR 4001.

Conclusion

The ports of Long Beach and Los Angeles are a major economic engine for the region and nation. PR 4001 and the uncertainty it creates will have a substantial negative impact on the goods movement industry and the local economy, resulting in cargo diversion, job losses and business closures. Moreover, rather than improving air quality, PR 4001 eliminates all incentive for voluntary participation in emission reduction efforts at the Ports that have been so successful.

The Cities have a proven track record of developing and implementing appropriate and effective emission reduction strategies, working with the port industry and the air quality regulatory agencies. Since the CAAP was adopted in 2006, essentially all of the Cities' early actions have been overtaken by regulations from state, federal, and international agencies. The majority of emission reductions are already being achieved by regulations. Therefore, there is clearly no need for additional regulation.

The Cities share the air emission reduction goals of the District, CARB, and USEPA, and strongly believe that the voluntary cooperative CAAP process established by the Cities remains the most appropriate forum to discuss technical and policy issues related to implementing appropriate strategies for reducing emissions from port-related sources. There are feasible alternatives that would effectively ensure emission reduction goals are met, including the USEPA's VMEP that would allow for the small percentage of emissions reductions needed beyond regulations to be credited in the SIP. The Cities hope you will work with us to discuss various mechanisms, contractual or otherwise, by which the VMEP can be implemented in San

Pedro Bay, and move forward as a possible resolution to the issues currently under discussion regarding PR 4001.

We appreciate your consideration. Thank you.

Sincerely,

Matthew Arms
Acting Director of
Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachments:

- January 15, 2014 Letter; Port of Long Beach and Port of Los Angeles to South Coast Air Quality Management District (SCAQMD)*; Comments on Notice of Preparation, Initial Study and Scope of Proposed Program Environmental Assessment*
- August 21, 2013 Letter; Port of Long Beach and Port of Los Angeles to SCAQMD; *Comments on Notice of Preparation, Initial Study, and Scope of Proposed Environmental Assessment*
- October 2, 2013 Letter; Port of Long Beach and Port of Los Angeles to SCAQMD, *Initial Comments for Public Consultation on Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets are Met at Commercial Marine Ports"*

cc: Al Moro, Acting Executive Director, Port of Long Beach
Richard Cameron, Managing Director, Port of Long Beach
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Gary Lee Moore, Interim Executive Director, Port of Los Angeles
Michael Christensen, Deputy Executive Director, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
Barry Wallerstein, Executive Officer, SCAQMD

Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Randall Pasek, Planning and Rules Manager, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Governing Board Members, SCAQMD
Richard Corey, Executive Officer, CARB
Cynthia Marvin, Division Chief, Stationary Source Division, CARB
Doug Ito, Chief, Freight Transportation Branch, CARB
Jared Blumenfeld, Administrator, USEPA, Region 9
Deborah Jordan, Director, Air Division, USEPA, Region 9
Elizabeth Adams, Deputy Director, USEPA, Region 9

ATTACHMENTS

January 15, 2014

VIA E-MAIL – bradlein@aqmd.gov
VIA FACSIMILE – (909) 396-3324

Ms. Barbara Radlein
c/o CEQA
SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT
21865 Copley Drive
Diamond Bar, California 91756-4178

Re: Recirculated Notice of Preparation and Initial Study
Proposed Rule 4001— Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports
November 2013

SCAQMD File No. 0722013BAR
SCH No.: 2013071072

Comments on Recirculated Notice of Preparation, Initial Study, and Scope of Proposed Program Environmental Assessment and Alternatives Analysis

Dear Ms. Radlein and Staff of the South Coast Air Quality Management District:

On behalf of the City of Long Beach (referred to herein as "COLB)" and the City of Los Angeles acting by and through their respective Harbor Department ("COLA", and collectively with COLB referred to herein as the "Cities"), we appreciate this opportunity to submit responses and comments on the District's recent "Recirculated Notice of Preparation of a Draft Program Environmental Assessment" ("Recirculated NOP") and the accompanying Initial Study ("IS") prepared in connection with the District's consideration of the proposed project entitled "Rule 4001: Maintenance of AQMP Emission Reduction Targets At Commercial Marine Ports" (the "Project" or "PR 4001"). We appreciate that the District has extended the public comment period to January 16, 2014, in light of the serious and substantial issues raised by this Project and the original comment period scheduled over the holidays limiting stakeholder time for review.

This letter is organized in the following manner:

A. Introductory Comments
B. General Comments on the Recirculated NOP and Initial Study
C. Specific Comments on the Recirculated Initial Study
    1. Comments on Chapter 1
    2. Comments on Chapter 2 (Environmental Checklist)
D. Conclusion

Additionally, the Cities' previous comment letter on the original NOP dated August 21, 2013 has been attached for reference.

A. Introductory Comments:

We have previously commented on, and objected to, Air Quality Management Plan (AQMP) Control Measure IND-01 (Measure IND-01) and have expressed our grave concerns about the District's rulemaking approach to craft a ostensible "backstop rule" that would be applicable only to the Cities and their respective San Pedro Bay Ports ("Ports") such as that embodied in the new draft PR 4001. As the District is well aware, the Cities have been dedicated, innovative, and effective leaders in the efforts of public agencies to improve air quality despite the fact that we have no regulatory authority or control over the emissions sources. Working collaboratively and voluntarily with the District, our efforts have been successful in helping the maritime goods movement industry achieve very substantial reductions in emissions from the wide range of industrial and mobile sources they operate at or near the Ports, and we look forward to continuing to work with the District, other air regulatory agencies, and industry in building on these successes.

While we appreciate that the District staff has finally released the draft text of PR 4001, together with the recirculation of a new NOP and Initial Study, we find that many of the questions and issues raised in our previous comments remain unanswered or contain the same deficiencies in the new description of the "Project" and the Recirculated NOP, and still fail to identify or address feasible alternatives to PR 4001. Therefore, we respectfully reiterate and incorporate by reference all of our previous comments and objections (including, but not limited to, our letter dated August 21, 2013, and comments on the District's 2012 Air Quality Management Plan ("AQMP") and Control Measure IND-01), in addition to our new comments on the Recirculated NOP and IS.

Our responses are submitted in light of the California Environmental Quality Act ("CEQA") which calls for public review, critical evaluation, and comment on the scope of the environmental review proposed to be conducted in response to a Notice of Preparation, including the significant environmental issues, alternatives, and mitigation measures that should be analyzed in the proposed draft EIR (or Environmental Assessment, "EA") (14 CCR

15082(b)(1).) (See, CEQA Guidelines, at Title 14 Cal. Code of Regulations, §§ 15000, *et seq*..) Since it is anticipated that the proposed Project will have substantial impacts on the Cities and other communities served by the Ports, it is particularly important that the scope of this proposed review take into account jurisdictional and legal limitations, established state and local plans and policies, and other potentially feasible and less-impactful alternatives to the Project. In addition, it will be important to consider the impacts of the proposed Project on the important missions, facilities, and operations of the San Pedro Bay Ports.

In that context, we respectfully submit the following comments regarding the Recirculated NOP as well as questions, concerns and objections related to the omissions of critical information, unsupported assumptions, or analytical deficiencies in the Initial Study, and comments as to the scope of the proposed environmental assessment ("EA") as contemplated and invited by the District's Recirculated NOP.

B. General Comments on the Recirculated NOP and Initial Study.

1. **Changed Project Title**: What is the authority of the District to change the proposed Project from a "*Backstop Measure for Indirect Sources of Emissions from Ports and Port-related Facilities*" authorized by the District's Governing Board, to a new Project title of "*Maintenance of AQMP Emission Reduction Targets At Commercial Marine Ports*"? The District inexplicably no longer describes this as "a backstop measure" – although such a "contingency measure" concept has been the basis for District consideration of this type of proposed rule going back to Control Measure IND – 01 and a similar mobile source port backstop rule in the 2007 AQMP/SIP. What is the significance of this change and has the District now moved from a backstop of the voluntary Clean Air Action Plan goals of the Cities, which it sold to its board, to full District regulation setting District targets for the Cities' ports beyond backstopping voluntary programs? Does this change require the approval of the District's board? In any event, the Cities repeat their strong protest of both Project concepts and further comment on this issue below.

2. **Changed Project Description:** The Recirculated NOP/IS cover letter (11/22/2013) acknowledges that "changes were made to the project description *and* the environmental analysis subsequent to release of the original NOP/IS on July 23, 2013." However, the new NOP/IS fails to describe the "changes" in "the Project" and fails to describe or evaluate the significance of those Project changes. We note at least a few changes between the previous Initial Study and this new Recirculated NOP/IS:

(a) The Project Description now includes *the draft text of the Proposed Rule*. The new Initial Study states (p. 1-3) that the prior NOP/IS had tried to use the text of Control Measure IND-01 as a surrogate for the Project, because the rule language for PR 4001 had not been developed. However, **the draft text of PR 4001 is not the same as Control Measure**

IND-01. The distinct jurisdictional, legal, administrative, due process and procedural issues posed by the draft text of PR 4001 (as well as its semantic ambiguities) add new levels of complexity to the evaluation of the environmental impacts of the Project, which are not adequately explained or evaluated in the new Initial Study.

As detailed below, the draft text now creates uncertainty as to how and when the requirements of the new PR 4001 that the Cities "take actions" would be triggered, as well as the scope of their obligations to act under the new Rule. Indeed, the draft text of PR 4001 raises questions as to whether the Project as now described is even consistent with the Final 2012 AQMP, the EIR for that AQMP, or with subsequently-adopted Control Measure IND-01, or other state and regional plans. Most importantly, to the extent the provisions of PR 4001 vary in purpose and scope from Measure IND-01, they are not authorized by the AQMD Governing Board.

(b) The initial Project description (and Control Measure IND-01) would have required "actions to be taken" [by the Cities] only "in the event that emissions from port-related sources *do not meet* the emission targets assumed in the final 2012 AQMP. Similarly, Control Measure IND-01 represented that the "backstop" requirements will be triggered "if the reported aggregate emissions *for 2014* for all port-related sources exceed the 2014 emissions targets." (Final 2012 AQMP, Appendix IV-A-41.) By contrast, however, the new Project description would apparently require the Cities to "take actions" in the event that "port-related sources do not meet *or are not on track to maintain* the emission targets ... *for the purpose of meeting and maintaining the federal 24-hrs PM2.5 standard*." The new version of the Project description appears to have expanded the "triggering" events, and extended the trigger period, beyond those events and time periods contemplated in the 2012 Final AQMP. Accordingly, the new version of PR 4001 may no longer be consistent with the AQMP or with the environmental review of that document.

(c) The new NOP and Initial Study changed the type of CEQA document from an Environmental Assessment to a Program Environmental Assessment for the Project that will be programmatic in nature (as described in 14 CCR 15168) rather than a project-specific environmental review, and suggests that the District may thereby intend to *defer* more detailed CEQA analysis to some undefined future stage of "the Project" (p. 1-2). The District has already prepared and certified a Final Program Environmental Impact Report (Program EIR) for the 2012 AQMP which was considered to be the appropriate document pursuant to CEQA Guidelines Section 15168(a)(3) and included a programmatic analysis of Control Measure IND-01. However, the District has now presented the adoption of PR 4001 as "the Project" but is still preparing yet another Program Environmental Assessment with the same reasoning as it did in the prior CEQA analysis. It is not clear how the District believes two program-level environmental documents can be prepared for the same rule and when, if at all, the District may intend to provide such more specific "project-level" analysis as required under CEQA.

Moreover, this part of the new Initial Study implies a commitment that the "program CEQA document" would include "consideration of broad policy alternatives and program-wide mitigation measures." (*id*.). However, *the new Initial Study fails to identify or discuss any such "policy alternatives" or "program-wide mitigation measures"* and gives no indication that *the scope* of the eventual EA will in fact include any such policy alternatives or mitigation measures.

In their prior comment letter on the Draft 2012 AQMP Program EIR dated October 22, 2012, the Cities expressed very similar concerns over the vague and deficient "project description" of backstop Measure IND-01. In the District's response to comment #5-4 in the Final Program EIR, the District represented that: "*The exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted.*" The District also committed, in its response to the same comment #504 in the AQMP Final Program EIR, that "*further details regarding the future requirements* [a Rule implementing Control Measure IND-01] *will be determined more appropriately* ***during the rule development process***."

The new Initial Study indicates that the District may be reneging on these commitments to provide the necessary analysis of "the exact impacts" of PR 4001 "during the rule-development process, in violation of CEQA and in violation of the District's own Rule 110.

(d) The District also appears to have made other subtle changes to the Project Description, without announcement, which are **not consistent with Control Measure IND-01**, and which may have potentially significant – but unaddressed -- impacts. For example:

i. The new Initial Study has changed the description of the Project from adoption of a "backstop measure" to the adoption of "backstop *requirement*" and has made other changes to the Project which are not consistent with Control Measure IND-01 as adopted (p. 1-1.) Control Measure IND-01 provides a description of the Cities' successful Clean Air Action Plan (CAAP) and its various emissions reductions goals. "This AQMP Control Measure is designed to provide a "backstop" to the Ports' actions to provide assurance that, if emissions do not continue to meet projections, the Ports will develop and implement plans to get back on track, to the extent that cost effective and feasible strategies are available." (Final 2012 AQMP Appendix IV-A, page 3) The Proposed Project describes its purpose as: "The purpose of the rule is to establish actions to be taken in the event that emissions from port-related sources do not meet the emission targets assumed in the Final 2012 Air Quality Management Plan for the purpose of meeting the federal 24-hour $PM_{2.5}$ standard in 2014 and maintenance of attainment in subsequent years." (PR 4001, Section (a)) The proposed

Project has eliminated the references in its Board-adopted IND-01 to backstopping the Ports Clean Air Action Plan targets to the extent cost effective and feasible strategies are available and replaced with a traditional regulation by the District to meet District-set targets.

ii. The new Initial Study has apparently changed the District's concern from assuring "the attainment demonstration" for 2014 PM2.5 emission targets (as embodied in the 2012 AQMP) to add "*maintenance of the air quality standard in subsequent years*." (p. 1-1.) This change in the Project appears to add a new undefined and open-ended element into the Project, not consistent with the District's adopted Control Measure IND-01.

(e) **Changed Definition of "Feasible Control Strategy:"** The draft text for the new PR 4001 proposes to change the definition of "feasible control strategy" so that it is *not consistent with* the obligations that could potentially be imposed on the Cities under *Control Measure IND -01* as adopted by the District Board. Instead, the draft of PR 4001 (at Paragraph (c)(1)) and the new Initial Study have *changed the limitations* on the proposed obligations of the Cities to achieve additional emission reductions under PR 4001. Previously, the Project was described as requiring the Cities to "propose additional emission reduction methods ... [but only] *to the extent cost-effective strategies are technically feasible* and within the Ports' authority." However, new PR 4001, and the new Initial Study (p. 1-1) have inexplicably omitted (at several points*)* the prior limitation on the Cities' potential obligations to measures that are "*technically feasible*." Again, these subtle changes in the Project description are not consistent with the text of IND-01 or any other legal or regulatory authority identified by the District in the new Initial Study. The Initial Study should address (i) whether these changes have been authorized by the District's Board, and (2) what potential environmental impacts (as well as socio-economic impacts) may arise from the changes in the concept of "feasible control strategies."

(f) The District should clearly identify all other "changes" in the Project.

Other comments on the flawed "project description" are set out in Section C(1), below.

3. **Changed Environmental Analysis:** We appreciate that the Recirculated NOP/IS has expanded the range of environmental subjects which it now acknowledges may be subject to the proposed Project's significant adverse environmental impacts, perhaps partly in response to our previous comments. However, the scope of the proposed environmental analysis still does not take into account all of our concerns and still fails to comply with CEQA, e.g., by failing to identify potential significant environmental impacts, failing to propose a range of feasible

alternatives, and failing to evaluate reasonable mitigation measures. We therefore reiterate our prior comments on the scope of the proposed EA.

4. **Reiteration and Incorporation of Prior Comments:** The new NOP/IS states that it "replaces the July 23, 2013 NOP/IS" and that there will be no District responses to previously-submitted comments. We recognize that the Recirculated NOP purports to reflect changes made, in part, to previously submitted comments on the July 2013 NOP/IS. However, the new NOP/IS does not take into account all of our previous comments nor do the changes made in the new NOP/IS necessarily reflect or satisfy the requests made in our previous comments. Accordingly, we incorporate and include our previous comments as detailed in our letter dated August 21, 2013.

5. **Failure to Adequately Identify and Include Feasible Alternatives:** The Recirculated NOP/IS still fails to comply with CEQA's requirements for identification and consideration of all feasible project alternatives. Like the original IS, the new IS fails to identify a single "alternative" to the District Board's adoption of PR 4001. The superficial mention of "alternatives" on page 1-15 of the IS merely recites the legal obligations of the District to "discuss and compare" a range of "reasonable alternatives" to the proposed Project. This fails to fulfill the "scoping" purpose of an Initial Study. The District should analyze, among a range of alternatives, a collaborative Memorandum of Agreement between all of the stakeholders, as previously suggested by the Cities and recommended by the District to its Board (which speaks well to its feasibility as an alternative). The District should also evaluate the use of the EPA's policy and guidance for the Voluntary Mobile Source Emission Reduction Program (VMEP), which was developed for voluntary emission reduction programs of the sort outlined in the CAAP.

"The scoping process is the screening process by which a local agency makes its initial determination as to which alternatives are feasible and merit in-depth consideration, and which do not." (*Goleta II, supra*, 52 Cal.3d at p. 569; see Guidelines §15083.) It involves "consult[ation] directly with any person or organization [the lead agency] believes will be concerned with the environmental effects of the project" in hopes of "solv[ing] many potential problems that would arise in more serious forms later in the review process." (Guidelines, § 15083.)" "The determination of whether to include an alternative during the scoping process is whether the alternative is potentially feasible (*Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 489 (*Mira Mar*)), and the EIR "is required to make an in-depth discussion of those alternatives identified as at least potentially feasible." (*Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1505, fn. 5].)" (*South County Citizens for Smart Growth v. County of Nevada* (3d Dist. 2013) 221 Cal.App.4th 316, 327 (*South County*.)

"A lead agency must give reasons for rejecting an alternative as 'infeasible' during the scoping process (Guidelines, § 15126.6, subd. (c)), the scoping process takes place prior to

completion of the draft EIR. (*Gilroy Citizens for Responsible Planning v. City of Gilroy*, *supra*, 140 Cal.App.4th at p. 917, fn. 5; Guidelines, § 15083.)" (*South County*, p. 328.)[1]

The Initial Study also uses the wrong legal standard in its passing acknowledgement of the District's duty to consider alternatives: the Initial Study must identify "potentially feasible" alternatives ("feasibility" is a defined, and critical, term under CEQA), rather than "reasonable" alternatives (as mis-stated in the IS on page 1-15.)

6. **Deficient Initial Study:** The CEQA Guidelines contemplate that an Initial Study is to be used in defining the scope of environmental review (14 CCR §§ 15006(d), 15063(a), 15143.) However, as a result of the omissions, inconsistencies, and deficiencies in the Initial Study, the District's proposed scope of environmental assessment for this Project will be unduly narrowed and limited, and is likely to erroneously exclude issues, feasible alternatives, and mitigation measures from the proposed Environmental Assessment. (More detailed comments on the deficient Initial Study are set out in Section D, below.)

As detailed below in Section C, the new Initial Study does not provide the information, potentially feasible alternatives, evidence, or analysis required by the CEQA Guidelines (14 C.C.R. §15063, subd. (d)):

(1) A description of the Project including the location of the Project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries . . .

(4) A discussion of ways to mitigate the significant effects identified, if any;

(5) An examination of whether the Project would be consistent with existing zoning, plans, and other applicable land use controls;

(6) The name of the person or persons who prepared or participated in the initial study."

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[1] "Differing factors come into play when the final decision on project approval is made; at that juncture the decisionmaking body evaluates whether the alternatives are actually feasible. (Guidelines, § 15091, subd. (a)(3).) "[T]he decision makers may reject as infeasible alternatives that were identified in the EIR as potentially feasible." (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 981.)" (*South County*, p. 327.)

An Initial Study that fails to provide all of the information, analysis, and evidence called for by CEQA may be deemed to be inadequate and not a valid basis for CEQA review or Project approval (See, e.g., *City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, at pp. 407–408, invalidating the County's proposed general plan amendments because of a deficient initial study: "[T]he initial threshold study is inadequate because it fails to provide sufficient evidence or analysis of the potential environmental effects of the amendments.")

7. **Request for Correction and Recirculation of Corrected NOP and IS:**

For the multiple reasons summarized above, and detailed below, it is essential that the Recirculated NOP and Initial Study be withdrawn and further revised and corrected in order to properly fulfill their role in seeking meaningful public input on the appropriate "scope" of the proposed environmental assessment for the Project. A more accurate, complete, and CEQA-compliant Initial Study that addresses specific project-level impacts should be prepared and released for public review, along with a new set of public meetings, to provide the public with sufficient time and opportunity to comment on the scope and adequacy of the revised NOP/IS.

The District has already commenced its Rule- development process. It appears from the District's records that District staff has already committed to the District Board that the Proposed Rule will be adopted in April of 2014. District documents also indicate that District staff has further committed to shortly thereafter embarking on revisiting and changing the emissions targets that are the subject of this Proposed Rule, likely placing even more burdensome requirements on the Cities It is imperative, not only for Due Process reasons but also for reasons of sound public policy, meaningful community input, and well-informed decision-making, that the District provide adequate, complete, and accurate information – and time -- to allow the Project to be fully vetted before it is rushed to the District's Board for consideration.

It is therefore respectfully urged that the Recirculated Initial Study (and the related NOP) be recalled, corrected, and again be recirculated for public review and comment as corrected before the District proceeds with any further action in connection with the proposed Project.

The comments on the Recirculated Initial Study included in this letter are organized in the same format used by the Initial Study, i.e., comments on "*Chapter 1 – Project Description*" in Section C, below, followed by comments on "*Chapter 2 – Environmental Checklist*" in Section D. The comments are limited to those matters which appear in the Recirculated Initial Study, but we reserve the right to provide further comments in the event that additional or different information about the proposed Project becomes available.

C. Specific Comments on the Recirculated Initial Study:

1. Chapter 1 of the Initial Study -- Inadequate "Project" Description.

(a). Deficient "Project Description" – In General

"A correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA." (*Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 267).

> **The initial study must include a description of the project.**" (*City of Redlands, supra,* 96 Cal.App.4th at pp. 405–406, fns. omitted.) **An accurate and complete project description is necessary** to fully evaluate the project's potential environmental effects. [Citations.]" (*El Dorado County, supra,* 122 Cal.App.4th at p. 1597.) (*Id*.)

As noted above (Section B(2)), the District's cover letter for the Recirculated NOP states that "the Project" has been changed, and that the Project description has been "changed." However, the Recirculated NOP and Initial Study do not explain the "changes" in the Project, and they still fail to provide an accurate and complete description of the Project as mandated by CEQA. The failure of the Initial Study and NOP to provide an accurate, complete, and coherent description of the "Project" is a fundamental deficiency, which permeates the entire document.

The Initial Study fails to describe additional planned or reasonably foreseeable activities or actions by the District (e.g., changes to emissions targets) or by other agencies in response to or associated with the proposed Rule, or to address cumulative impacts of this proposed Project in light of other related actions and plans.

The Initial Study suggests, instead, that the intent of PR 4001 would be to delegate the District's responsibilities for regulating or reducing emissions of NOx, SOx, and PM2.5 air emissions to other agencies, specifically the officials governing the ports of Long Beach and Los Angeles. The Initial Study further 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 Rule 4001 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 entire project*, improper project "segmentation," *improper deferral* of impact analysis and mitigation, failure to identify and evaluate *potentially feasible project alternatives*, etc.)

The absence of such a clear description of the proposed Project inherently prevents the IS from facilitating meaningful review and analysis of the proposed "Project," and violates the requirements of CEQA. (See, e.g., CEQA Guidelines, 14 CCR § 15124; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376.)

The Initial Study falls far short of these requirements in describing the proposed Project, and thus falls short of serving the "public awareness" purposes mandated by CEQA:

> An accurate and complete project description is necessary for an intelligent evaluation of the potential 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, citing *Aberdeen & Rockfish RR. v. SCRAP* (1975) 422 U.S. 289, 322 [an accurate, complete and consistent project description is the sine qua non of informative, legally adequate CEQA review].) (*City of Redlands v. County of San Bernardino, supra,* 96 Cal. App. 4th at pp. 407–408.)

In sum, the Recirculated NOP/IS still erroneously limits the scope of the required environmental analysis and calls for impermissible speculation or impossible prescience on the part of the Cities or other members of the concerned public to undertake effective analysis of the proposed Project, or to provide meaningful comments as to the scope of review of the Project, until and unless the District provides an adequate and complete description of the "Project."

Incomplete Description of Environmental Setting

The Initial Study also fails to provide an adequate description of "the environmental setting" of the proposed Project.

While the CEQA Guidelines do not specifically define "environmental setting" with regard to an initial study, they do explain, in regard to EIR preparation, that the "environmental setting" must be informative: "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." (Guidelines, § 15125, subd. (a).) A description of the environmental setting must be sufficient to allow "an understanding of the significant effects of the proposed projects and its alternatives" but "no longer." (Guidelines, § 15125, subd. (a).) That description should place "[s]pecial emphasis" "on environmental resources that are rare or unique to that region and would be affected by the project" and "must permit the significant effects of the project to be considered in the full environmental context." (Guidelines, § 15125, subd. (c).)

Failure to Examine All Phases of the Entire Project as Proposed

"The Initial Study must include a description of the project, and the scope of the environmental review conducted for the initial study must include the *entire* project." (*Nelson v. County of Kern, supra*, 190 Cal.App.4th at 270, emph. in original.)

The Initial Study here improperly fails to describe "the entire Project" and fails to consider all phases of the proposed Project. The CEQA Guidelines (14 C.C.R §15063(a)(1)) make clear that an initial study must take a comprehensive view of the proposed project *as a whole*. "All phases of project planning, implementation, and operation must be considered in the initial study of the project."

Since the Project also contemplates the possibility of future discretionary actions and measures on the part of the Cities, if compelled under PR 4001, which may in themselves have additional, not-yet-identified environmental impacts, the Initial Study should call for the scope of the EA to be expanded to include such issues.

The scope of the environmental review conducted for the initial study must include the entire project. (*Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1222.) Thus, a correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA. (*Nelson v. County of Kern, supra*, 190 Cal.App.4th at 267.)

The NOP/IS indicates that proposed Rule 4001 is intended to require actions by the Cities, to adopt and implement plans and strategies to address any "shortfall" in emissions reductions. The Initial Study improperly fails, however, to address or to provide information and analysis relating to the environmental impacts of the anticipated "subsequent approvals," "discretionary permits" and amendments to the Cities' plans and regulations that appear to be proposed as parts of the Project, or the physical environmental effects of social or economic impacts that may result from those anticipated changes in land use regulations. (Guidelines § 15063.) Such anticipated and intended actions by other governmental agencies thus appear to be part of this Project, and must be identified and evaluated in the Project EA, along with their potential impacts. As such, we reiterate our prior comment on the Draft 2012 AQMP Program EIR dated October 22, 2012 where it is stated that the District has failed to fully disclose the details of Measure IND-01 and as a result is segmenting or piecemealing its CEQA analysis.

Failure to Describe Existing Land Use Regulations

The Initial Study does not include an examination of whether the Project would be consistent with existing zoning, plans and other applicable land use controls, as required by CEQA Guideline Section 15063. Although the Initial Study includes some background discussion of the CAAP, it provides little or no description of the existing planning and zoning designations applicable to the "Project" location, and relies on (unsupported) assertions that the Project would be in furtherance of the CAAP. It provides no information or analysis of other existing plans or policies applicable in the Harbor Districts, which may be affected or impacted by the Project. Additionally, the Initial Study contemplates impacts beyond the Harbor Districts but does not specifically define these areas nor the applicable land-use regulations.

Uncertain and Inadequate Identification of "Baseline" Used for Review

It is critical under CEQA that any level of environmental review make it clear as to the "baseline" being used as the basis for analysis of the significance of potential Project impacts. (CEQA Guidelines Section 15125(a).) Normally, the "baseline" will be the existing environmental conditions in the vicinity of the Project. (Guideline Section 15125(a); see also, 48 Cal.4th 310, 315 [the baseline for an agency's primary environmental analysis under CEQA must ordinarily be the *actually* existing physical conditions rather than *hypothetical* conditions that could have existed under applicable permits or regulations].) The Supreme Court has explained that the requirement for identification and use of the appropriate "baseline" applies in the context of an Initial Study as well as in an EIR. (*Communities for a Better Environment, supra*, 48 Cal.4th at 512, and n. 5.)

The Initial Study here, however, fails to make it clear as to what "baseline" is being used. In many places the Initial Study compares the anticipated "impacts" of adopting proposed Rule 4001 to the permitted emissions levels anticipated (in the future) under the 2012 AQMP, or alternatively to the (future) emission reduction targets of the CAAP -- rather than to the existing environmental conditions. While the recent Supreme Court decision in *Neighbors for Smart Rail v. Exposition Metroline Constr. Authority* (2013) 57 Cal.4th 439, 451-52 indicates that the baseline need not always be the existing physical conditions, and that "projected future conditions" may be used in rare situations as a baseline "if their use in place of measure existing conditions ... is justified by unusual aspects of the project or the surrounding conditions", it does not detract from the rule that the Initial Study must accurately and consistently describe the baseline being used. Nor does it permit the use of "future conditions" in the absence of a showing of unusual circumstances. The Initial Study in this case does neither.

For each of these fundamental reasons, the Recirculated NOP/IS should be rescinded in order that it may be revised, completed and corrected to meet CEQA requirements.

(b) The Initial Study Improperly Fails to Identify or Address Alternatives to the Proposed Project:

As noted above, CEQA requires that an Initial Study identify a range of "potentially feasible alternatives" to the proposed project which are to be more carefully analyzed in the draft environmental study. (14 CCR § 15083; "The determination of whether to include an alternative during the scoping process is whether the alternative is potentially feasible (*Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 489.)

However, the new Initial Study totally fails to identify any alternatives for study in the eventual EA. Instead, it merely "commits" the District to "discuss and compare alternatives" in the future, as part of the Draft EA. This is insufficient. The Initial Study also suggests the District is looking to the public or other agencies to identify "alternatives" during the scoping process. The Cities previously (January 2013) submitted such a potential alternative to PR 4001, in the form of a proposed Memorandum of Agreement. The District Board directed District staff to follow up and confer with the Cities on that approach. Nevertheless, it is not even mentioned in the Initial Study. Additionally, the EPA's long-established VMEP program is not considered as an alternative although it was developed for this very purpose.

If the District is authorized to prepare a PEA, rather than an EIR, the PEA must at least comply with Guideline Section 15252. Section 15252(a) requires that a substitute document, like a PEA, must include at least – a description of the proposed activity, and "**alternatives** to the activity and **mitigation measures** to avoid or reduce and significant or potentially significant effects that the project may have on the environment."

The No Project Alternative is not defined in the NOP/IS. In accordance with CEQA Guidelines Section 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. Therefore, the Draft EA should consider the impacts that would occur under the existing 2012 AQMP without Control Measure IND-01 or proposed Rule 4001.

As an example, an analysis should be conducted of the grant funding that would be available under the No Project Alternative that would not be available if the proposed Project constitutes regulation, and the environmental impact if grant funding necessary to make certain actions economically feasible is no longer available under the proposed Project. If the District's position is that there is no loss of grant funding in order to comply with Rule 4001 as a regulation that the District purports to make enforceable under the State Implementation Plan and the Clean Air Act, the District must explain in the Rule its basis for this conclusion in the context of why grants made for compliance with a regulation is not a gift of public funds.

Due to the District's failure to satisfy this CEQA requirement of alternatives development, the Cities direct the District to review the feasible alternative to the Project set forth in their January 16, 2014 letter to the United States Environmental Protection Agency Region 9, copied to the District. The Cities have noted the problems with including Measure IND-01 in the California State Implementation Plan (SIP) and recommended to the US EPA to instead apply as an alternative, the Voluntary Mobile Source Emission Reduction Program (VMEP) to grant SIP credit for the small percentage of emission reductions that are not already achieved by other regulations. The VMEP can work with or similarly to the memorandum of agreement approach that was suggested by the Cities to the District as an alternative to Measure IND-01 last year. One additional alternative would be for the District to formulate its own "backstop" measures and strategies for addressing any shortfall in emission reduction targets, relying on the District or CARB regulatory authority, expertise and resources, rather than pursuing proposed Rule 4001, which appears to be an attempt to solely rely upon the Cities, which lack regulatory authority or control over the actual sources, or use of the EPA's VMEP.

(c) Comments on the District's new Proposed Rule 4001:

The "project description" in the Recirculated Initial Study includes the *draft text* of PR 4001, at Appendix B. Notwithstanding the inclusion of a draft of the text of the proposed Rule, the "project description" remains incomplete and deficient. The Initial Study does <u>not</u> provide an adequate description of how the proposed Rule would work in practice (as distinct from the superficial summary of the text at pages 1-7 through 1-10) or how it would be likely to impact the Cities, the tenants and users of the Ports, and the surrounding communities and environments. The Cities anticipate the submission of additional, more detailed, comments on inconsistencies and problems raised by the draft text of PR 4001 itself and additional questions and concerns about the District's "rule-making" process.

Other deficiencies and questions about the draft text of PR 4001 include the following:

<u>What Is the District'scLegal Authority for PR 4001?</u>

The new Initial Study asserts that if the "backstop requirement" of PR 4001 "becomes effective," then the new Rule would require the Cities to submit an Emissions Reduction Plan "to address the emission reduction "shortfall."" Under what legal authority does the District believe that its proposed Rule 4001 may purport to compel distinct governmental bodies (the Cities and the Boards of Harbor Commissioners) to legislate or to exercise their discretion in particular ways to achieve District objectives?

The new NOP continues to dodge the questions (previously raised) about the District's legal authority – if any – to adopt PR 4001 or to compel the Ports to participate in the new backstop planning process contemplated by the rule. The NOP includes only the perfunctory

assertion that PR 4001 would "implement Control Measure IND-01" – as though that were an independent and sufficient source of authority. However, even the District's Final 2012 AQMP document acknowledges that it confers no new authority on the District, and CEQA similarly cautions that it confers no new or additional legal authority on agencies independent of the powers granted to the agency by other laws. (Guidelines, sec. 15040(b).)

Moreover, as noted previously, to the extent that the draft of PR 4001 is not consistent with the Control Measure IND -01 as approved by the District's Board, it is unauthorized.

The source of the District's purported legal authority for processing this PR 4001 is important for determining whether or not the District may claim to be acting within the scope of the District's "Certified Regulatory Program" – and thus outside of CEQA. The CEQA Guidelines limit that "certified regulatory program" exemption to "that portion of the regulatory program of the SCAQMD which involves the adoption, amendment, and repeal of regulations *pursuant to the Health & Safety Code*." (Guideline, sec. 15251(l).)

If the NOP/IS seeks to justify the District preparing an environmental assessment under its "certified regulatory program" rather than an EIR under CEQA, then the District should clearly demonstrate that the PR 4001 would be enacted pursuant to some specific statutory authority in the Health & Safety Code.

The District previously sought to characterize Control Measure IND-01 as an "indirect source rule." The current references to proposed Rule 4001 in the NOP/IS have omitted all mention of an "indirect source rule." However, the new Initial Study does not cite any authority the District is relying on for its processing of the proposed Rule. This should be corrected so that the public can perceive and comment on whatever "legal authority" may be invoked by the District.

Is it anticipated that the "plans" and strategies that would be required to be adopted by the legislative boards of the two Cities under the mandate of proposed Rule 4001 would be within SCAQMD's regulating authority and subject to the District's approval or disapproval? If so, why would SCAQMD not directly adopt such "backstop" strategies and plans itself? If not, is the Rule being proposed in order accomplish something indirectly that SCAQMD itself cannot do directly? (Cf., *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 [same].)

The vague disclaimer in the Initial Study to the effect that proposed Rule 4001 would not require any measure that *lacks legal authority* raises more questions than it answers. (Note also the new Initial Study, and PR 4001, no longer disclaim any intent to require the Cities to adopt measures that are not "*technically feasible*.") Whatever types of "emissions reduction plans"

may be anticipated by PR 4001 should be identified by the District in the NOP/IS so that the feasibility and legality of such approaches can be evaluated as part of the environmental assessment for the Project. (The new Initial Study omitted the examples of 'control strategies' that had been in the previous Initial Study.)

On What Basis Would PR 4001 Impose "Requirements" on the Cities

The NOP/IS states that none of the CAAP strategies would be "prescribed in PR 4001." Instead, the NOP states that if proposed Rule 4001 becomes effective, the Cities (presumably the Boards of Harbor Commissioners) -- "individually or jointly" -- would be required to identify sources that could undergo potential emission reduction to "make up for the shortfall."

Why would/should the obligation to make up for a possible shortfall in meeting emission reduction targets (which are primarily the responsibility of the District to attain) be shifted so as to fall upon two independent governmental entities? The Cities are governmental entities, and are not directly producing emissions or otherwise directly responsible for the targeted emissions or for the attainment of the emissions reduction targets.

Moreover, if there were to be a "shortfall" in attaining the targets, it could well be due to factors not caused or controlled by the Cities, and not due to any actions or derelictions on the part of the Cities or their tenants or users. Would uncontrollable/unforeseeable factors resulting in all or part of a shortfall be excluded from whatever obligation may be imposed on the Cities? Would it be required/permitted that any such "shortfall" be allocated to sources or causes bearing some actual responsibility for the lack of attainment? How would any shortfall be "allocated" between the Cities?

Would proposed Rule 4001 take into account the statutory limits on the jurisdiction and authority of the Cities (i.e, the Boards of Harbor Commissioners) to impose restrictions on most mobile sources of emissions?

The NOP/IS mentions a possible "option" that would "allow" the Cities to reduce emissions from "non-port-related sources." This vague reference requires clarification before it may be evaluated in connection with the Project. Direct and indirect effects would need to be considered that may occur beyond the geographic boundaries of the Harbor Districts. Therefore, it is premature for the District to conclude that any changes based on the working group or public scoping comments will be within the scope of the analysis in the NOP/IS.

What is meant by an "Emissions Shortfall"?

What environmental baseline and other parameters would be required by proposed Rule 4001 in order for the Cities to determine the extent of any "emissions shortfall" that may need to

be addressed in the Cities' plans in the event they were to undertake to submit plans under the Rule?

The term "shortfall" first appears in the Proposed Rule in (d)(1)(A), where it appears to call for a Plan to report on progress in "meeting the shortfall" but that seems logically inconsistent with the structure of the Proposed Rule, i.e., the District can't require the Ports to submit an emissions reduction plan unless and until the annually-reported emissions reductions "show that the percent reduction in PM2.5 from the baseline emissions is less than the reduction target of 75%" (Para (e)(1)B).) So there would not be any "shortfall" identified until that time; and therefore it would seem premature and illogical to require the Ports to submit a Plan that "reports the progress in meeting the shortfall" that was just identified.?

To the limited extent the PR 4001 describes the shortfall that might trigger the need to prepare a Plan, the provisions for annual estimating or reporting of the emissions appear imprecise and vague. Para (f) appears to contemplate that once a 'shortfall' had been determined in one year, then the District could demand a Revised Plan in following years if targets are still not met; but what happens if the shortfall is "corrected" in subsequent years and targets are again being met?

Does an Emissions Reduction Plan, once required by the District, ever go away?

<u>On What Authority Would the District Purport to "Revise the Reduction Target"?</u>

The new Initial Study reports (p. 1-8) that PR 4001 (e)(2) purports to require the District's Executive Officer to review the reduction target before July 2017, and to "develop a proposed amendment to Rule 4001..." that would "revise the reduction target as necessary to conform to the 2016 AQMP reduction target."

By what authority would these targets be "revised" in the future? Under what objective standards? What public process would the Executive Officer need to follow in order to "develop" a proposed "amendment" to PR 4001? How would such a "moving target" affect the Cities and what environmental impacts would be possible consequences of such "revisions"?

<u>Does PR 4001 Provide a Clear and Feasible Process for Cities to Develop a "Plan"?</u>

Para (f) (E) would require that "the Plan shall be approved by the Board of Harbor Commissioners" at each Port, and would require the Port to conduct at least one "public meeting" ... but is this an improper attempt by the District to control and dictate the exercise of discretion" conferred on the Board of Harbor Commissioners? The Board of Harbor Commissioners may in fact disagree that a plan is required or may exercise its own discretion, as required by law, that it cannot commit expenditures to a program desired by the District. Under what authority can the District's Executive Officer, acting alone without even District Governing

Board authority, disapprove a plan or compel a plan to be approved by the Cities' own governing authorities? What is the District's intended mystery penalty or consequence, which the proposed Project still has not revealed to the cities and the public in PR 4001? Furthermore, discretionary action by the Boards of Harbor Commissioners requires compliance with CEQA. What type of CEQA review would be triggered for the emission reduction plans if the Program Environmental Assessment being prepared by the District is only programmatic in nature and how is the timing for either a consistency review or project-specific analysis, if warranted, accounted for in PR 4001?

Would PR 4001 Create Violations of Due Process?

The draft of PR 4001 raises several questions regarding apparent violations of Due Process:

Para (f)(2)(B) -- the District's Executive Officer would be given nearly unfettered discretion to "disapprove" a Plan submitted by the Cities?

There must be some requirement at least that the Executive Officer must make "findings" of "non-compliance" with some provision of (f)(1) of the Rule, based on some objective standards.

What would be the procedure if the Cities submitted a Plan, and the District (either by its Executive Officer or its Hearing Board) "disapproved" the Plan (per Para (f)(2)(C))? The Port would apparently be required to submit a Revised Plan within 60 days of the disapproval. But what about the Harbor Commissioners holding a new "public meeting" for input on the Revised Plan? And would there be any time or procedure for the Harbor Commissioners to consider and approve a new Revised Plan and comply with CEQA within that arbitrary 60 day time frame?

At the end of Para (g)(2) is the threat again that if the District Board denies the Port's appeal from a "disapproval" of the Port's emissions reduction plan, then the "*Ports shall comply* with ... [or subparagraph (f)(2)(F)]" -- which means the Port shall be self-confessed as "in violation" of the Rule? This would appear to inflict a denial of Due Process on the Cities.

Variance: PR 4001 must provide more detail as to what is meant by Para (g) - petitioning for a "variance" ? What are the criteria? What would the process be? What would be the effect of the District granting a variance?

How Would the District Determine the "Consequences" for "Violation" of PR 4001?

By what authority would the District sit in judgment as to the sufficiency of the Cities' efforts to manage activities and uses of the Ports? What might the consequences be if a City were to be deemed to be "in violation" simply because the District may choose to "disapprove" a

Revised Plan, and by what legal authority would the District purport to sanction the Cities in the event of some perceived "violation"?

By what objective standards would the District judge the sufficiency of any plans or measures proposed by the Cities to achieve the emission reduction targets?

What is the consequence of disapproval of a City plan by the District? The rule should provide more detail at Para (f)(2)(F) (iii) -- what is meant by the obscure reference here that the Ports "shall be in violation of this Rule... "?

Does PR 4001 Provide for Judicial Review of District Actions?

Should the Rule make provision for judicial review of the actions of the District in enforcing or interpreting the Proposed Rule?

As drafted, PR 4001, at Para (h): "Severability" appears to contemplate that a "judicial order" could hold some provision of the Rule to be invalid? Otherwise the Rule is silent on Judicial Review.

Are the Cities Supposed to Regulate Off-Site "Sources"?

The Initial Study indicates (p. 1-4) that the District anticipates that the "control strategies" contemplated by this Project "may potentially include" measures for the Cities to adopt and implement policies or programs extending beyond their jurisdictions or to try to reduce emissions from sources *not entering* onto port properties. What does this mean? By what legal authority might the Cities try to regulate *off-site* sources that do not come within the jurisdiction of the respective Harbor Commissions? (Municipal police power authority may generally be exercised only within the territorial boundaries of their jurisdiction, and the Boards of Harbor Commissioners have special Tidelands limits on their authority.)

Would such (unidentified) measures be part of Rule 4001, or would proposed Rule 4001 require that the Cities formulate (unidentified) measures in the future to somehow regulate *off-site* "sources?"

How Does the District Contemplate Funding of Backstop Measures?

The draft of PR 4001 implies that "funding" would be necessary for many of the potential future emission reduction measures that may be compelled under proposed Rule 4001. Would such funding be provided by the District? What other "funding" sources are contemplated?

The conversion of the Cities' voluntary programs into PR 4001 as a district regulation and potentially state and federal law if adopted into an approved SIP, will impose constitutional

or common law "gift of public funds" restrictions on federal and state grant funding currently relied upon by the Cities for emission reduction activities under their CAAP.

To the extent the District expects the Cities to fund future programs, this demonstrates a lack of understanding of the Cities' own governmental authority and obligations. The Boards of Harbor Commissioners of the Cities are trustees for the Tidelands Trust funds they are entrusted to manage and have specific legal obligations to meet, including promotion of maritime commerce, navigation and fisheries and keeping their budgets in balance amidst a current global shipping economy with many dynamic and threatening competitive pressures to retain market share. By what authority may the Harbor Commissioners impose taxes, assessments, and charges on users of the Harbor Districts, given the restrictions of various state laws, including, among others, Proposition 26?

(d) Specific Comments and Questions re "Project Description" and Text

The following comments and questions refer to specific portions or pages of Chapter 1 of the new Initial Study:

Pp. 1-1 - 1-2 – Introduction

(i) *Erroneous Characterization of Existing Emission Reduction Requirements:* The Introduction states, in the first sentence of the third paragraph on page 1-1, that Control Measure IND-01 "...does not call for additional emission reductions beyond those realized with existing regulations and emission reductions programs implemented at the Ports to date." This is an untrue statement. The CAAP is only a planning document which specifically provides for discretionary future decisions to be made regarding implementation by each of the Cities' respective Board of Harbor Commissioners, and the resolution adopting the CAAP update states:

> The CAAP is a living document intended to establish a process to develop solutions, not a static document binding the Ports to particular future actions….The CAAP is a planning document that identifies goals and potential implementation strategies to guide further actions, and as such does not constrain the discretion of either Board of Harbor Commissioners with respect to any particular action.[2]

[2] Los Angeles Resolution No. 10-7041 adopted by the Board of Harbor Commissioners of the City of Los Angeles and Long Beach Resolution No. HD 2600 adopted by the Board of Harbor Commissioners of the City of Long Beach on November 22, 2010.

Not all individual Board actions that may be required in order to achieve the CAAP's goals and activities have been adopted; in fact, many of these goals were stretch targets with uncertainty as to whether they could be achieved. Control Measure IND-01 and Rule 4001 propose to *require* the Cities to potentially adopt future discretionary, quasi-legislative actions that create potentially-conflicting authorities between the District, as regulator, and the Cities, as independent governmental agencies regulated by the District, so as to force the Cities to exercise their discretionary police power authority in a particular way. The Constitution does not permit such usurpation of the Cities' authority.

(ii) *Misleading and Inaccurate References to "Port-Related" Sources of Emissions:* The new Initial Study and Recirculated NOP continue to describe PR 4001 in the misleading context of "port-related sources" of PM2.5 emissions, and as ensuring that emissions from "port-related sources" meet the targets included in the Final 2012 AQMP. The term "port-related sources", however, is not used in the federal Clean Air Act ("CAA") or Health &Safety Code. As described in the NOP, "port related sources" are mobile and vehicular sources ("ocean-going vessels, on-road trucks, locomotives, harbor craft, and cargo-handling equipment"). Those *actual* "sources" of emissions are distinct from the geographic area in which they operate and are generally and comprehensively regulated by other State and federal agencies, not regional air quality districts.

The District's continued references to "port-related sources" of emissions are misleading and are no more accurate or descriptive than would be similarly generic references to "coastal-related sources" or "County-related sources" or "Air District-related sources" of emissions.

(iii). *Misleading Failure of the Project to Limit the Cities' New Obligations to "Technically Feasible" Measures:* The previous Initial Study for PR 4001 at least made it clear that the District only intended to require the Cities to propose additional emission reduction methods for vessels, trucks, locomotives, etc., "to the extent cost-effective strategies are *technically feasible* and within the Ports' authority." (Similar limitations on the Cities' new obligations under the proposed 'backstop measure' are included in IND-01.) However, the new Initial Study no longer includes any limitation to "technically-feasible" measures that could be required of the Cities (p. 1-1.) This omission creates uncertainty about the District's intentions as to the scope of PR 4001, i.e. whether it might be construed to be a "technology-forcing" regulation or not.

(iv). *Inconsistent or Uncertain Emissions Reduction Targets.* The Introduction states, in the last paragraph beginning on Page 1-1, that the emission targets for "port-related sources" are those assumed in the 2012 AQMP emissions inventory. The draft text of PR 4001 now purports to define "emissions target" by reference to page IV-A-36 of Appendix IV to the Final 2012 AQMP. The Cities raised questions during the Measure IND-01 adoption process regarding the District's calculation of these targets, which are *different* from the emissions targets set under the

CAAP. Although the specific emission targets of the proposed Project do not appear at all in the NOP (which omission itself is a defect), the District has verbally advised the Cities and a working group on August 8, 2013, that the Rule will be such as to be triggered on set emission targets for 2014 and 2019. Those comments, however, left the Cities and working group participants with many questions about how the District set the emissions inventory, particularly for 2019, which was not in the CAAP. These examples are provided to illustrate that the Initial Study's description of the applicable emission reduction targets to be covered by PR 4001 are uncertain, or inconsistent.

P. 1-4 - Project Location

The new Initial Study provides no finite "project location." It again refers to the District's jurisdictional boundaries. It then states that "PR 4001 would apply to POLA and POLB, both of which are located within Los Angeles County." It is unclear if this was an attempt to state that the Project location would be Harbor Districts of the Cities. The lack of clarity regarding the Project location is further compounded by the Rule's reference to "sources not entering Port," and by a new but vague reference to the effect that the unidentified "strategies proposed by the Ports" under compulsion of PR 4001 could extend the "project location" beyond Los Angeles County.

Is it the intention that any portion of the Project may be implemented outside the geographic areas of the two Ports? It remains unclear from this description whether the Project may have impacts or foreseeably result in actions being taken outside the geographic areas of the two ports. This may have jurisdictional implications which cannot be evaluated without additional information.

Also, the Initial Study fails to disclose or analyze the possibility that if the option for the Cities to reduce emissions from sources not entering Port properties is included in proposed Rule 4001, even the vague "project location" and geographic scope of the proposed Rule in the Initial Study would not be accurate and would need to be modified in the NOP/IS.

P. 1-5 – Project Background

The new Initial Study appears to recognize that distinct "emission sources at the Ports" such as vehicles, engines, ships, trains, trucks and other cargo-moving equipment operated by distinct tenants, users, and visitors of the ports are the intended targets of the Project's emission reductions requirements. It also acknowledges that the Ports themselves adopted the San Pedro Bay Ports Clean Air Action Plan ("CAAP") in 2006, and further that emissions from these so-called "port-related sources" have been "substantially reduced since 2006" as a result of collaborative and voluntary programs and regulations developed by both Ports. (p. 1-6).

These acknowledgements raise again the question of the need or justification for the Project, or for the attempt by the District to foist the responsibilities for regulating emissions from such mobile or vehicular sources of emissions from state and federal agencies onto the Cities.

Also, on Page 1-6, the new Initial Study states that the intent of PR 4001 is to "provide a backstop to the Ports' actions" in case emission reductions "from port-related sources do not meet *or are not on track to maintain the emissions targets*..." This appears to be an unauthorized change in the Project description and is not consistent with IND-01. Also, notion that the District would be empowered by PR 4001 to enforce sanctions against the Cities if the District somehow deems that they are "not on track" to maintain targets is ambiguous, and without objective standards or legally-necessary procedural protections.

Pp. 1-11 -- Technology Overview/Implementation Strategies

The new Initial Study refers to some emission reduction strategies included in the CAAP, but the Initial Study does not explain how these may relate to proposed Rule 4001, or whether they should be considered as part of the Project.

The suggestion in the Initial Study of possible "tariff changes" or "impact fees" on the activities of users of the Harbor Districts raises other questions (e.g., legal authority, funding for studies and public review processes required before such measures could be considered or adopted, indemnification for costs of defense, etc.) requiring identification and study. Moreover, such measures may themselves be considered as "projects" subject to CEQA review and may have impacts on the activities of Harbor District users that themselves would require analysis or mitigation.

The Initial Study also includes reference to "Port funded incentives" as possible measures to reduce emissions, but also observes that there is not adequate funding for such strategies in the Cities' budgets or other grant programs. The source of funding any "Port-funded" measures contemplated by proposed Rule 4001 should be clearly identified and evaluated.

Any such contemplated implementation strategies should be included in the "Project description" and better identified in a more complete NOP/IS, so that they may be evaluated along with the rest of the Project.

Feasibility: The new Initial Study abjures any consideration of technical feasibility or other concepts of "feasibility" despite CEQA's recognition of feasibility as a critical limitation on environmental regulation. The scope of the EA should be expanded to address the legal, technological and economic feasibility of the seven bulleted items listed in this section.

2. Chapter 2 of the Initial Study – The "Environmental Checklist"

(a) General Comments on the Environmental Checklist

The Recirculated NOP/IS relies on a standard CEQA environmental checklist to identify those "impact areas" it recognizes to be potentially affected by the Project. In several respects, however, the Initial Study appears to merely assume the absence of potentially significant impacts, rather than factually demonstrating that significant impacts will not occur if the Project is adopted and implemented. This is insufficient under CEQA, and under the District's own rules. (SCAQMD Rule 110; *City of Redlands, supra*, 96 Cal.App.4th at 408-09; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296).

The new NOP includes many statements that the PEA will rely on "conservative assumptions" about the possible environmental impacts of the Proposed Rule. Reliance on any assumptions in CEQA analysis is unsound, and if assumptions are to be used, the District must explain why it would rely on "conservative" assumptions about the scope of impacts.

Furthermore, it is contrary to the District's response to comment #5-4 in the Final Program EIR, which indicates that "[t]he exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted."

We appreciate that the new Initial Study has expanded the number of environmental areas to be studied in the eventual EA from the six (6) topics identified in the previous Initial Study to thirteen areas now recognized as being subject to potentially significant impacts if the Project is approved. The new Initial Study now recognizes the following *additional areas* of potential environmental impact to be addressed in the EA: (1) Aesthetics, (2) Biological Resources, (3) Cultural Resources, (4) Land Use and Planning, (5) Noise, (6) Public Services, and (7) *broadened evaluation* of potential impacts and issues in the areas of Energy, Hazards and Hazardous Materials, Air Quality, and Transportation and Traffic.

However, the new Initial Study continues to provide only superficial and inadequate discussion of the areas of environmental impact, and thus fails to properly indicate the necessary scope for the eventual EA. Unless and until those areas are more fully addressed, the new NOP/IS still improperly limits the scope of the proposed EA, and still erroneously exclude areas requiring further assessment.

(b) Specific Comments on the Environmental Checklist

As detailed below, there are numerous areas of potential environmental impact in the checklist as to which the Initial Study either omits required evidence to support its conclusions of "no potential impact" or treats with insufficient detail.

Even as to those areas that are now identified in the new Initial Study as having potential impacts, the new Checklist still errs by limiting the scope of the potential impacts identified for further study based on unfounded assumptions as to the environmentally benign intent behind the Project. However, the law is clear that environmentally "benign" objectives for a project do not excuse non-compliance with CEQA and do not justify reliance on assumptions in lieu of evidence to demonstrate the absence of potential impacts. *See, e.g., California Farm Bureau v. California Wildlife Conservation Board* (2006) 143 Cal.App.4th 173, 196, emph. added [State environmental agency violated CEQA by exempting environmentally beneficial habitat project from review]:

"[I]t cannot be assumed that activities intended to protect or preserve the environment are immune from environmental review. [Citations.]" (*Davidon Homes, supra*, 54 Cal.App.4th 106, at p. 119; see, e.g., *Dunn-Edwards Corp. v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644 (disapproved on other grounds in *Western States Petroleum Assn. v. Superior Court, supra*, 9 Cal.4th 559, 570.) **There may be environmental costs to an environmentally beneficial project, which must be considered and assessed**.

P. 2-4 -- Preliminary Discussion of Checklist

First Paragraph: We reiterate the same comment as noted above, regarding Cities not being the "source" of emissions. It is "the operational activities by the Ports' tenants" [and other users of the area] that produce emissions (as the new Initial Study more accurately recognizes) and which should be the true District targets as the sources of emissions.

First Paragraph, Last Sentence: The Initial Study states that "some emission reductions [assumed by the District's 2012 AQMP] may be contingent upon the Ports taking and maintaining *actions which are not required by air quality regulations*." This suggests that one of the purposes for District proposal of proposed Rule 4001 may be to establish a new regulatory "authority" over the Cities (and the communities served by and dependent upon the Harbor Departments of the Cities) that is not in fact already provided by existing federal, state, or regional air quality regulations. The policy implications of such a Project may well include significant impacts on the environment, if regulatory authority over activities, facilities, and uses of the Harbor Districts is shifted or arrogated to the District. (See, e.g., *City of Redlands, supra,* 96 Cal. App. 4th 398 [proposed new County policy re exercise of County authority over annexations and sphere of influence was not supported by adequate CEQA review].)

Page 2-5: The new Initial Study makes reference to a "survey" of existing CEQA documents to try to identify projects "similar to the types of projects the Ports may choose to implement in an Emission Reduction Plan." It then suggests that "reasonably foreseeable projects" resulting from this survey will be evaluated in the EA. While we respect these goals, we submit that the new Initial Study is vague as to what may be deemed to be "reasonably

foreseeable projects" warranting analysis in the EA, and would request that more objective criteria be provided.

(1) **Aesthetic Impacts:**

The brief discussion of "potentially significant" Aesthetic impacts in the new IS does not address many of the Cities' prior comments on these impacts, and we reincorporate those comments.

(2) **Biological Resources:**

The new discussion of impacts on Biological Resources does not address the Cities' prior comments re possible impacts on migratory birds and least terns, and we reincorporate those comments.

(3) **Energy:**

The new Initial Study section VI (c) must be expanded to also consider and analyze 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 required in the event of a major disaster. Also some types of emission control measures, facilities, or technologies contemplated by the Project could increase or shift demand for different types of energy or fuel usage. Although "risk of upset" is not considered in the new Initial Study checklist. The scope of the proposed EA should be expanded to include this additional analysis.

(4) **Hazards and Hazardous Materials:**

In addition to our comments on the prior Initial Study, the new Initial Study section VIII(f) must be expanded to also consider and analyze the increase reliance on alternative fuels or electrical powered technologies that would require sufficient supply and emergency storage in the event of a major disaster. Although interference with emergency response plans was marginally addressed in this section, "risk of upset" is not considered in the new Initial Study Checklist. The scope of the proposed EA should be expanded to include this additional analysis.

(5) **Land Use & Planning Impacts:**

The new IS now identifies Land Use and Planning as an area involving potential significant impacts, to be studied in the EA. However, the new IS states that such impacts will be considered in the EA only "if the project conflicts with the land use and zoning designations established by local jurisdictions." This is insufficient.

We previously pointed out that the PR would cause conflicts with existing land use plans and policies, circulations plans, congestion management plans, etc. The prior IS itself admitted that the Project would cause potentially significant impacts or conflicts with existing land use plans (but was only going to address them in the Transportation section). This should be a definite area for evaluation in the EA, not a 'conditional' topic of study.

We also note that the new Initial Study is internally inconsistent. It makes the remarkable assertion (inexplicably placed in its discussion of impacts on Biological Resources, at p. 2-18) that "there are no provisions in the proposed project that would adversely affect land use plans, local policies, ordinances or regulations. LAND USE AND OTHER PLANNING CONSIDERATIONS ARE DETERMINED BY LOCAL GOVERNMENTS AND NO LAND USE OR PLANNING REQUIREMENTS WOULD BE ALTERED BY THE PROPOSED PROJECT." We strongly disagree, as pointed out in our prior comments, which are incorporated.

The measures contemplated in the Initial Study include the adoption of new "regulatory requirements," new "impact fees" on the movement of cargo or sources, and changing the tariffs for use of the Harbor Districts – all of which would cause at least potential "conflicts" with applicable plans and policies. (Cf., *Orinda Ass'n v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1169 [the CEQA requirements for initial study examination of non-conformity with existing land use plans are intended to allow lead agency to modify the Project to avoid inconsistencies with existing plans – not vice versa].)

The Initial Study itself acknowledges that the Project is anticipated to cause "potentially significant impacts" or conflicts with "an applicable plan ... for the performance of the circulation system" and conflicts with "an applicable congestion management plan." (Initial Study, p. 2-44.) Although the Initial Study proposes to address those admitted conflicts in the "transportation" section of the EA, these acknowledged conflicts confirm the necessity for including "land use and planning" impacts in the proposed EA as well.

Also, the proposed Project would seemingly create conflicts with the Cities' 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 are detailed in the previous port letters included in Attachment A to this letter. In addition, the proposed Project would create inconsistencies with the Clean Air Action Plan.

The proposed Rule is apparently structured in a way that would impermissibly usurp the (non-delegable) police power authority of the Cities and their respective Boards of Harbor Commissioners to plan, implement, and regulate land use policies and actions in their respective jurisdictions. (This comment has also been raised above, in Project Description comments.)

The numerous inconsistencies between the Project as proposed and the existing plans and policies require identification in the Initial Study and inclusion in the proposed EA. (Guidelines § 15125(d).) The scope of the proposed EA should be expanded to include environmental analysis of all of these potential impacts on land use and planning.

The EA should also include analysis of the impacts of the proposed/anticipated Project-related subsequent amendments to the Cities' plans, policies, and other land use regulations. (See, e.g., *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1197 [CEQA review failed to consider incidental results from adoption of revised policy; incidental impacts could not be disregarded in an initial study based upon "net" environmental impact of the change in policy being benign since CEQA requires each environmental impact of project be discretely evaluated].) "Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project." (Guidelines, § 15064, subd. (e); see §§ 21080, subd. (e)(2), 21082.2, subd. (c).)

The scope of the EIR should be expanded to include analysis of possible physical changes in port facilities and operations that might be caused by economic or social effects of the Project itself or by the anticipated amendments to land use and zoning policies by the Cities subsequent implementation of the Project.

(6) **Transportation and Traffic Impacts**

The new Initial Study fails to adequately describe and analyze potential impacts to rail and marine vessel traffic and ignores the significance criteria identified as "[w]ater borne, rail car or air traffic is substantially altered" on page 2-45. The new Initial Study erroneously considers vehicular traffic impacts to local roadways.

Socioeconomics Analysis

The proposed EA needs to include a broad-based analysis of the socioeconomic effects of Proposed Rule 4001, including the potential for job loss, business closures, and diversion of cargo to other ports due to the potential loss of regional competitiveness. The socioeconomic analysis needs to consider both the existence of the rule, even if not triggered, and the future enforcement of the rule. Because these conditions have the potential to physically change the environment in and around the ports, these impacts should be identified and assessed in the EA. (See CEQA Guidelines §§ 15064€ and 15131; *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3rd433,445 [EIR must consider possibility of economic blight from rezoning].) Moreover, this assessment should not be limited to businesses and operations within the ports, but should extend to those facilities, business and operations that while located outside of the Harbor Districts are dependent upon the flow of cargo for their continued operations.

This CEQA analysis of the socioeconomics effects of PR 4001 in the proposed PEA would be separate from, and in addition to, the assessment of socioeconomic impacts of the proposed Rule that the District is required to prepare in compliance with Health & Safety Code § 40728.5 and § 40440.8.

D. Conclusion:

The current version of the Recirculated NOP/IS still fails to comply with CEQA or with the District's own Rules for environmental review, and fails to properly provide an adequate "scope" for the eventual Environmental Assessment to be prepared for analysis of the Proposed Rule 4001. The Initial Study must therefore be revised, corrected, and re-circulated with all of the descriptions and other content required by CEQA.

While it is clear that an EA is called for in connection with this proposed Project, it is equally clear that the EA should be more complete than what is envisioned by the current NOP/IS. More fundamentally, its scope must be determined by a legally-adequate revised NOP/IS. The EA for the Project must, of course, be supported by credible and substantial evidence, including independent professional analysis.

Even this inadequate NOP/IS makes it clear that **the scope of the proposed EA has been unduly narrowed and fails to identify any potentially feasible alternatives to the Project.** Consequently any ensuing environmental review will be limited in a way that erroneously fails to provide the relevant decision-makers, affected public agencies, residents and the public generally with sufficient evidence and analysis of all potential impacts from the Project as a whole, or of all potentially feasible mitigation measures or appropriate Project alternatives as required by CEQA.

We respectfully request that these comments and questions be considered before the District embarks on preparation of the EA and all of the other required independent studies in connection with the CEQA review of the proposed Project. We therefore look forward to working with the District, and any study teams or working groups tasked with evaluation of the proposed Rule 4001.

The NOP requests that we provide you with a contact person for each responding agency. For the **COLB,** the contact persons are as follows:

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We appreciate your consideration. Thank you.

Sincerely,

Matthew Arms
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachments:

- August 21, 2013 Letter; Port of Long Beach and Port of Los Angeles to SCAQMD; *Comments on Notice of Preparation, Initial Study, and Scope of Proposed Environmental Assessment*

- October 2, 2013 Letter; Port of Long Beach and Port of Los Angeles to SCAQMD, *Initial Comments for Public Consultation on Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets are Met at Commercial Marine Ports"*

cc: Al Moro, Acting Executive Director, Port of Long Beach
Gary Lee Moore, Interim Executive Director, Port of Los Angeles
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
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October 2, 2013

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Re: Initial Comments for Public Consultation on Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports"

Dear Mr. Pasek and Staff of the South Coast Air Quality Management District:

We appreciate this opportunity to submit comments during the public consultation period on the South Coast Air Quality Management District's (AQMD's) proposed "Rule 4001: Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports" on behalf of the City of Long Beach acting by and through its Harbor Department (referred to herein as "COLB") and the City of Los Angeles acting by and through its Harbor Department ("COLA," collectively with COLB, the "Cities" or the "Ports").

The Cities take their role as environmental leaders seriously and through the years have achieved tremendous success in obtaining substantial emissions reductions through the efforts guided by the joint San Pedro Bay Ports Clean Air Action Plan ("CAAP"). The Cities continue to support programs that will result in cleaner air for the local communities and the region and have worked aggressively with the port industry to reduce air quality impacts from the equipment they operate. As a result, the recently released emissions inventories have shown that between 2005 and 2012, emissions from sources at both the Port of Long Beach and Port of Los Angeles were reduced by 80% for diesel particulate matter and 55% for nitrogen oxides. However, the Cities continue to disagree with the AQMD's current proposal to inappropriately and unnecessarily regulate the Cities. The Cities have been consistent in our comments to the AQMD about the serious concerns and objections to the proposed rulemaking approach. A compilation of these comments was recently submitted to the AQMD in our comment letter on the Notice of Preparation and Initial Study for Proposed Rule 4001, dated August 21, 2013.

As for the comments the AQMD is currently seeking, we have concerns that the process recently initiated by the AQMD to solicit comments on Proposed Rule 4001 deviates from the rule-

The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

making procedures called for by the Health & Safety Code and by the AQMD's own rules (Rule 110), in several respects. For example, it is essential that a copy of the Proposed Rule, or the text of the Proposed Rule, "be made available to the general public in connection with a request for comments" on a proposed rule in order to commence a legally-compliant rule-making process. (E,g., H & S Code §§ 40727.2, 40727(i).) The Cities have previously pointed out the inherent inconsistency of inviting public comment on Proposed Rule 4001 before the AQMD has publicly-disclosed the text of the Proposed Rule, as well as the resulting limitations on the ability of the Cities and other members of the public to provide specific input on the Proposed Rule. As a result of the failure to provide the text of the Proposed Rule, or necessary information regarding the Proposed Rule, a meaningful and legally valid rule-making procedure has not yet been commenced, and it is premature for the AQMD to demand the submission of comments on the anticipated but still undefined new "backstop" rule.

Further, it appears that the AQMD is attempting to limit comment by setting an agenda for the items on which they are seeking input, as shown on slide 8 "Soliciting Inputs/Comments" of the presentation provided during the CEQA Scoping Meeting on August 14, 2013. In addition, limiting the public process primarily to a small working group with seats set at a small table does not allow for significant input from the broader affected public, including the port tenants and operators. Input could be more meaningfully provided if the Proposed Rule was released with sufficient time for the Cities and the public to review and provide detailed comment.

The Cities are further concerned that not enough time is being included in the schedule for rule development. To date, a draft of the Proposed Rule has not been released, nor is it expected to be released for at least several weeks; however, a hearing date for the AQMD Board to consider approval of the Proposed Rule has already been identified for early December. Well in advance of any such hearing, the AQMD must provide the public with substantial information and analysis of the Proposed Rule as required by the Health & Safety Code and AQMD rules (e.g., H & S Code §§ 40727.2; Rule 110(b), (c), and (d).), as well as responses to the public comments. The AQMD also must provide the comprehensive assessment of socioeconomic impacts required by Section 40728.5.

This timeline for review and comment is unacceptably short for a rule of this magnitude. The failure to provide the draft rule language with adequate time for the public to review and submit comments to AQMD, and for those comments to be meaningfully considered by AQMD staff, is a denial of due process.

In this regard, we also have concerns about the demand that comments be submitted by September 6, 2013. There is no explanation, nor any apparent legal basis, for imposing such a deadline for public comments. It is unreasonable, particularly in light of the absence of text or details regarding the Proposed Rule, and fails to provide due process to the Cities or other members of the public who may be burdened or affected by the Proposed Rule, to demand comments by such an early cut-off. The imposition of such a premature deadline for submission

of comments appears arbitrary, and in conflict with Health & Safety Code § 40726, which states that the AQMD "shall provide for the submission of statements, arguments, or contentions, either oral or written or both," up until the time of the public hearing on the Proposed Rule. We therefore respectfully object to the imposition of a deadline for submission of comments on the Proposed Rule, and reserve all rights to comment on the Proposed Rule in the manner, and at the times, provided by state law and the AQMD rules, and to insist on compliance with the procedures and rights afforded by state law and AQMD rules.

The Cities are therefore providing these comments on a preliminary (and non-binding) basis, considering only the limited information on Proposed Rule 4001 thus far provided by the AQMD, based upon presentations by AQMD staff about the general concepts of the approach. The Cities reserve our rights, however, to make further comments after the September 6 deadline and to continue to provide input throughout the process, including submission of additional or different comments after the draft rule is made available.

First, there is an issue of need. As a rule that is contained in the proposed State Implementation Plan, Proposed Rule 4001 violates Section 39602 of the California Health and Safety Code, which states that the State Implementation Plan shall only include those provisions necessary to meet the requirements of the Clean Air Act. There is no need for Proposed Rule 4001 since the AQMP's emissions targets for port industry equipment in 2014 will be met by United States Environmental Protection Agency (EPA) and California Air Resources Board (CARB) regulations and existing Clean Ocean Vessel Voluntary Incentive Programs. Further, AQMD staff has suggested that Proposed Rule 4001 will require the Ports to develop a "Contingency Plan" immediately following rule adoption, prior to any indication that an emissions shortfall may occur. This approach is punitive, requiring the Ports to invest resources into a type of corrective action, when there is no identified need for that action, and therefore goes against the Act and is inconsistent with due process.

Second, there is an issue of legal authority and jurisdiction. The AQMD has failed to cite any legal authority for characterization of governmental entities as a stationary source, or imposing an indirect source rule on governmental entities that do not own, operate or control the sources of emissions, based merely upon the location of facilities operated by private parties within the government entities' geographic area. The Ports are not "indirect sources" and no authority has been cited to authorize the use of an indirect source rule against fellow governmental agencies that have their own jurisdiction and responsibilities by law and do not have regulatory authority to issue air regulations. The AQMD has failed to cite any legal authority for imposing an indirect source rule on Trustees for the Tidelands of California or how it could legally compel the Ports to make expenditure of Tidelands Trust revenues for the purpose of incentives or to adopt other emission reduction programs to be funded as contemplated in AQMD enforcement activity under Measure IND-01. The AQMD has failed to show any legal authority that would allow it to (1) regulate mobile sources by making another governmental entity, that is not an air regulator, its agent for enforcement of its desired mobile source emission reductions, or (2) "enforce" the

Proposed Rule, which under AQMD administrative rules would eventually mean fines and penalties, against such other governmental entity that does not control the emissions of indirect sources located within its jurisdictional boundaries. The AQMD has failed to show any constitutional or statutory basis for attempting to regulate mobile sources "indirectly" that it is preempted from regulating directly, or to purport to impose penalties or corrective action against another governmental entity for failure of private third party emissions sources to achieve emissions reductions that such other governmental entity is also preempted from regulating.

Third, while the Cities remain firm in our position that the rulemaking is unnecessary, counterproductive and beyond the AQMD's jurisdiction, if AQMD does continue to proceed, the following significant issues must be addressed.

AQMD staff appears to be proceeding with development of the proposed rule in a manner that is inconsistent with the provisions of AQMP Measure IND-01 and the discussion between the AQMD Board and the staff during the approval of AQMP Measure IND-01 at the Board Meeting of February 1, 2013. During that discussion, it was identified that the requirements under any proposed rule would only be triggered if the ports failed to meet their goals for the target year. The proposed rulemaking concepts that have been presented by AQMD staff more recently have indicated that the Ports may be required to develop corrective action plans in advance of any identified shortfall. Further, it appears AQMD staff is considering that the Ports will be required to submit emission inventories to AQMD for approval each year through 2020 and that compliance action may be triggered for any potential shortfalls that may occur during interim years, prior to the target years. These potential requirements are inappropriate and go beyond the direction from the AQMD Board.

Also, because the Cities are not regulatory agencies, have not been granted authority to regulate sources of air pollution, and have limitations on their ability to impose requirements on sources operating within their jurisdiction, AQMD must ensure that Proposed Rule 4001 does not mandate that the Cities implement strategies that are outside of their authority or ability to implement. AQMD must recognize that the Cities do not even have contractual relationships with many of the emissions sources that AQMD has attributed to the Cities' "responsibility" for emissions reductions under Proposed Rule 4001, and that even if Cities have leases with some of the operators, they are negotiated business agreements that constrain the Cities' ability to unilaterally impose new terms in response to whatever new conditions AQMD may desire.

In addition, the Boards of Harbor Commissioners of the Cities have the discretion for making business decisions related to the ports and their tenants, consistent with the Tidelands Trust and California Coastal Act. Neither AQMD staff nor its Board can override the discretion of the Harbor Commissions including decisions related to the management of the port or how port funds are spent. Therefore, AQMD cannot disapprove an Emission Reduction Plan simply because AQMD disagrees with the chosen strategies.

Moreover, approval or disapproval of any Emission Reduction Plan cannot be at the sole discretion of AQMD staff. Any plan development should be coordinated with the agencies involved in the development of the CAAP, specifically EPA, CARB and the AQMD. The partnerships established through the CAAP process, and the actions over the past seven years that have been taken by the regulatory agencies, in addition to the Ports, have been critical in the success that has been achieved. As CARB has stated[1], "[s]uccessful implementation of the CARB emission reduction plan will depend upon actions at all levels of government and partnership with the private sector. No single entity can solve this problem in isolation." Therefore, AQMD staff should not place themselves in a position to be the sole authority to approve or deny plans for emission reductions at the Ports. Any plans should be developed in partnership, with input by all agencies, and final approval on actions to be taken specifically by the Cities should be at the discretion of the Boards of Harbor Commissioners.

Slide 8 of the AQMD presentation at the August 14 Scoping Meeting identified that AQMD is seeking input on "[f]lexibility to garnish emission reductions/air quality benefits off port property". Under the Tidelands Trust, the Boards of Harbor Commissioners are limited in their ability to spend Tidelands funds outside of the Tidelands areas. The Cities cannot be mandated by an AQMD rule to mitigate emissions that are unrelated to port-operations outside of the Harbor Districts and the Tidelands areas.

AQMD has stated that the goal of the Proposed Rule is to ensure that the Cities meet their commitments outlined in the CAAP. The Cities have clearly demonstrated over the past seven years that they are committed to working with the industry and will do what they can to reduce, from port-related sources, the port sector's fair share of regional air emissions. If other non-port related sectors within the region do not achieve their share of emissions reductions, the Cities cannot be held responsible for making up for those shortfalls, regardless of whether or not those shortfalls are anticipated to result in a delay in regional attainment of the $PM_{2.5}$ Standard in 2014.

In addition, the Cities should not be held responsible for any potential emissions shortfalls from regulatory agencies not implementing emission reduction regulations as identified within the SIP, even if those regulations are related to equipment operating at the ports. If an agency makes a decision to delay a regulation schedule, or if a regulation is overturned due to a court decision that the requirements are not within their authority to implement, the Cities should not then be mandated to backfill the potential shortfall.

The last update to the CAAP took over two years to develop and cost over $1 million. The Cities should not be required by the Proposed Rule to prepare an Emission Reduction Plan when no need for such a plan has been identified (e.g. region is anticipated to reach attainment with the $PM_{2.5}$ Standard, emission reductions will be achieved by in-place regulations, no emission shortfall has been identified, etc.). Further, development of a plan should not be mandated if the

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[1] *Emission Reduction Plan for Ports and Goods Movement in California*, Executive Summary, ES-1, CARB, 2006.

reasons for any emissions shortfall are due to reasons outside of the Cities control or if no feasible strategies are available. Any plan that is required by AQMD should be streamlined and focused solely on actions that will be taken by the Ports and/or agencies to make up for any identified shortfall.

As identified in the 2012 Air Quality Management Plan, it was determined that the 2014 $PM_{2.5}$ Standard could be achieved by 2014 and no request for an extension would be needed[2]. Therefore, it is inappropriate for the AQMD to require an emission target year of 2019 in the Proposed Rule.

As stated above, these comments represent the Cities' initial concerns with the AQMD's proposed approach. Further comments will be provided as the process progresses and as more information is made available by AQMD.

We appreciate your consideration. Thank you.

Sincerely,

Heather Tomley
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

cc: Al Moro, Acting Executive Director Port of Long Beach
Geraldine Knatz, Executive Director Port of Los Angeles
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Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Cynthia Marvin, Division Chief, California Air Resources Board
Elizabeth Adams, Deputy Director, U.S. Environmental Protection Agency, Region 9

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[2] *2012 Air Quality Management Plan*, Executive Summary, ES-11, AQMD, 2013.

August 21, 2013

VIA ELECTRONIC MAIL - bradlein@aqmd.gov
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Ms. Barbara Radlein
c/o CEQA
SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT
21865 Copley Drive
Diamond Bar, CA 91765-4178

Re: Notice of Preparation and Initial Study
Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports"

SCAQMD File No. 0722013BAR
SCH No. 2013071072

Comments on Notice of Preparation, Initial Study, and Scope of Proposed Environmental Assessment

Dear Ms. Radlein and Staff of the South Coast Air Quality Management District:

We appreciate this opportunity to submit comments on the Notice of Preparation ("NOP") and the accompanying Initial Study prepared in connection with the District's consideration of the proposed project entitled "Rule 4001: Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports" (the "Project") on behalf of the City of Long Beach acting by and through its Harbor Department (referred to herein as "COLB") and the City of Los Angeles acting by and through its Harbor Department ("COLA", collectively with COLB, the "Cities").

As environmental leaders nationwide, the Cities have achieved tremendous success in obtaining substantial emissions reductions from their joint San Pedro Bay Ports Clean Air Action Plan ("CAAP") and other air quality measures implemented under the Cities' initiatives. The Cities continue to be supportive of projects and programs that are intended to contribute to improvement of air quality and promote other environmental values. However, the Cities must fundamentally disagree with the District's current proposal to unnecessarily convert an effective voluntary plan, built on multi-agency and industry cooperation, into potentially punitive regulations imposed unlawfully on the Cities. The Cities have previously sought to make the District aware of the serious concerns and objections to this approach. The Cities incorporate by reference their previous comments on the 2012 Air Quality Management Plan ("AQMP")

Measure IND-01 Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities ("Measure IND-01") as comments on the proposed Project. The Cities' comments on Measure IND-01 are Attachment "A" to this letter.

We are also mindful that the California Environmental Quality Act ("CEQA") calls for public review, critical evaluation, and comment on the scope of the environmental review to be conducted prior to approval of proposed projects. Such review and critique 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. Thorough identification of the proposed Project, and candid disclosure of all phases of the Project and their potential impacts, is essential to assure 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, mitigation measures, and alternatives. In addition, it will be important to consider the impacts of the proposed Project on the San Pedro Bay Ports' communities, missions, 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 NOP for this "Project" as well as questions, concerns and objections related to the omissions of critical information, unsupported assumptions, or analytical deficiencies in the Initial Study, and comments as to the scope of the proposed environmental assessment ("EA") as contemplated and invited by the District's NOP.

A. General Comments on the Initial Study

While we recognize the effort that has gone into preparation of the current Initial Study, it is apparent that the Initial Study does not provide the information, evidence, or analysis required under CEQA. The Initial Study thus fails to fulfill its critical role as mandated by CEQA in educating the public generally, other affected regulatory agencies and governments, such as the Cities, 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 initial study are described in the CEQA Guidelines (14 C.C.R. §15063, subd. (d)). An initial study must "contain in brief form:

(1) A description of the Project including the location of the Project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries . . . ;

(4) A discussion of ways to mitigate the significant effects identified, if any;

(5) An examination of whether the Project would be consistent with existing zoning, plans, and other applicable land use controls;

(6) The name of the person or persons who prepared or participated in the initial study."

An initial study that fails to provide all of the information, analysis, and evidence called for by CEQA may be deemed to be inadequate and not a valid basis for CEQA review or project approval. (See, e.g., *City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, at pp. 407–408, [invalidating the County's proposed general plan amendments because of a deficient initial study: "[T]he initial threshold study is inadequate because it fails to provide sufficient evidence or analysis of the potential environmental effects of the amendments."].)

It is therefore respectfully urged that the Initial Study (and the related NOP) be revised, corrected, and recirculated for public review and comment before the District proceeds with any further action or EA in connection with the proposed Project.

The CEQA Guidelines contemplate that an initial study is to be used in defining the scope of environmental review (Guidelines, Sections 15006(d), 15063(a), 15143). However, as a result of the omissions, open questions, and deficiencies in the Initial Study as noted below, it appears to have unduly narrowed the District's proposed scope of environmental assessment, and to have caused the NOP to erroneously exclude critical issues and topics from the proposed scope of the EA.

The comments on the current Initial Study included in this letter are organized in the same format used by the Initial Study, i.e., comments on "Chapter 1 – Project Description" followed by comments on "Chapter 2 – Environmental Checklist." The comments are limited to those matters that appear in the current version of the Initial Study, and we reserve the right to provide further comments in the event that additional or different information about the proposed Project becomes available, or the District provides a revised and CEQA-compliant Initial Study.

B. Request for Revision of NOP and Re-Circulation of Revised NOP/IS To Include a Legally-Adequate "Project" Description and Text of Proposed Rule 4001

It is essential that the NOP and the Initial Study be revised to include an adequate "project description" including the text of the proposed Rule that is the "project" before the public, or the Cities, can be expected to provide comments and input.

In their prior comment letter on the Draft 2012 AQMP Program EIR dated October 22, 2012, the Cities expressed the very same concern over the vague and deficient "project description" of backstop Measure IND-01. In the District's response to comment #5-4 in the

Final Program EIR, the District stated: "*The exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted*." The District also committed, in its response to the same comment #5-4 in the AQMP Final Program EIR, that "*further details regarding the future requirements* [a Rule implementing Control Measure IND-01] *will be determined more appropriately during the rule development process.*"

The District has already commenced the rule development process. However, it has not yet provided even a draft of the proposed Rule 4001. To the contrary, at a public meeting held on August 8, 2013, the District's staff announced that the Rule will be developed after various public meetings with a "Rule 4001 working group," with a goal of releasing a draft of the Rule on August 28, 2013. Such a deferred release date for the "draft" of the proposed Rule would be one week after the deadline for comments on this NOP. The details and text of the promised Rule must be developed and disclosed before the "particular methods" and "exact impacts" anticipated may be analyzed or the subject of comment. Accordingly, it is still not possible for the District to proceed with appropriate project-level CEQA review or to issue an accurate NOP/IS at this stage if the details of proposed Rule 4001 are under development.

It is necessary that the current NOP and Initial Study be revised to include a revised "Project" Description, to incorporate the text of the draft Rule 4001 in detail, and to recirculate the revised documents for public review. A new set of public meetings, including a new "scoping meeting" should be scheduled to provide the public with sufficient time and opportunity to comment on the scope and adequacy of the revised NOP/IS.

C. Comments on the Initial Study

1. Chapter 1 of the Initial Study -- Inadequate "Project" Description

(a) Deficient "Project" Description – In General

The failure of the Initial Study and NOP to provide an accurate, complete, and coherent description of the "Project" is a fundamental deficiency, which permeates the entire document. The absence of such a clear description of the proposed Project inherently prevents the Initial Study from facilitating meaningful review and analysis of the proposed Rule 4001, and violates the requirements of CEQA. (See, e.g., CEQA Guidelines, Section 15124; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376.)

The Initial Study does not include or even describe the text of the proposed Rule that is supposed to be the "Project." The section of the Initial Study that purports to "describe" the Project, "PR 4001," includes nothing more than summaries of "key concepts provided in the 2012 AQMP Control Measure IND- 01." Those summaries and "concepts" are insufficient to describe the Project itself, and prevent effective public review and comment. Moreover, since

the 2012 AQMP Control Measure IND- 01 has already been adopted, it is perplexing that the District would use that measure as a substitute for the Project description.

The Initial Study does not provide a description of how the proposed Rule would work. It fails to describe reasonably foreseeable activities or actions of other agencies in response to or associated with the proposed Rule. This Initial Study suggests, instead, that the intent of proposed Rule 4001 would be to delegate the District's responsibilities for regulating or reducing emissions of NOx, SOx, and PM2.5 air emissions to other agencies, specifically the public officials governing the ports of Long Beach and Los Angeles, 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 Rule 4001 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 evaluation project alternatives, etc.).

The importance of providing an accurate and informative project description in an Initial Study was re-emphasized in *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 267, emph. added:

> "**The initial study must include a description of the project.**" (*City of Redlands, supra,* 96 Cal.App.4th at pp. 405–406, fns. omitted.) "Where an agency fails to provide an accurate project description, or fails to gather information and undertake an adequate environmental analysis in its initial study, a negative declaration is inappropriate. [Citation.] An accurate and complete project description is necessary to fully evaluate the project's potential environmental effects. [Citations.]" (*El Dorado County, supra*, 122 Cal.App.4th at p. 1597.)
>
> "**The scope of the environmental review conducted for the initial study must include the entire project**." (*Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1222.) Thus, a correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA. (*Tuolumne County Citizens, supra*, at p. 1222.)

The Initial Study currently falls far short of these requirements in describing the proposed Project, and thus falls equally short of serving the "public awareness" purposes described above and mandated by CEQA:

> An accurate and complete project description is necessary for an intelligent evaluation of the potential 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, citing *Aberdeen & Rockfish RR. v. SCRAP* (1975) 422 U.S. 289, 322 [an accurate, complete and consistent project description is the sine qua non of informative, legally adequate CEQA review].) (*City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, 407–408.)

The Initial Study (p. 1-5) indicates that "the approaches and concepts considered in this NOP/IS may be subject to change" based on comments from the working group. In light of the District's initiative in forming a "working group" of interested participants to help formulate the proposed Rule, and thereby provide an actual "project description," it would be more appropriate to undertake CEQA analysis and compliance after the actual Rule is developed. Furthermore, it is premature for the District to assume or conclude that any changes received from the working group as well as comments received relative to this NOP/IS will all be within the scope of the analysis in the NOP/IS.

In brief, the NOP/IS erroneously limits the scope of the analysis and inherently calls for impermissible speculation or impossible prescience on the part of the Cities or other members of the concerned public to undertake effective analysis of the proposed Project, or to provide meaningful comments as to the scope of review of the Project, until and unless the District provides an adequate description of the "Project."

(b) Specific Comments and Questions re "Project Description" and Text

The following comments and questions refer to specific portions or pages of Chapter 1 of the Initial Study:

Pp. 1-1 - 1-2 – Introduction

The Introduction states, in the first sentence of the third paragraph on page 1-1, that Control Measure IND-01 "...does not call for additional emission reductions beyond those realized with existing regulations and emission reductions programs implemented at the Ports to date." This is an untrue statement. The CAAP is only a planning document which specifically provides for discretionary future decisions to be made regarding implementation by each of the Cities' respective Board of Harbor Commissioners, and resolution adopting the CAAP update states: "The CAAP is a living document intended to establish a process to develop solutions, not a static document binding the Ports to particular future actions….The CAAP is a planning document that identifies goals and potential implementation strategies to guide further actions, and as such does not constrain the discretion of either Board of Harbor Commissioners with

respect to any particular action."[1] Not all individual Board actions that may be required in order to achieve the CAAP's goals and activities have been adopted, many of which goals were stretch targets with uncertainty as to whether they could be achieved. Measure IND-01 and Rule 4001 propose to require the Cities to potentially adopt future actions that create potentially-conflicting authorities between the District, as regulator, and the Cities, as independent governmental agencies regulated by the District, so as to force the Cities to exercise their discretionary police power authority in a particular way. The Constitution does not permit such usurpation of the Cities' authority.

The Introduction states, in the last paragraph beginning on Page 1-1, that the emission targets for port-related sources are those assumed in the 2012 AQMP emissions inventory. The Cities raised questions during the Measure IND-01 adoption process regarding the District's calculation of these targets, which are different from the emissions targets set under the CAAP. Although the specific emission targets of the proposed Project do not appear at all in the NOP (which omission itself is a defect), the District has verbally advised the Cities and a working group on August 8, 2013, that the Rule will be such as to be triggered on set emission targets for 2014 and 2019. Those comments, however, left the Cities and working group participants with many questions about how the District set the emissions inventory, particularly for 2019, which was not in the CAAP. These examples are provided to illustrate that the NOP's description of the proposed Rule is not only flawed but missing altogether.

P. 1-3 - Project Location

The Initial Study provides no finite "project location." It describes the District's jurisdictional boundaries. It then states that "PR 4001 would apply to POLA and POLB, both of which are located within Los Angeles County." It is unclear if this was an attempt to state that the Project location would be Harbor Districts of the Cities. The lack of clarity regarding the Project location is further compounded by the Rule's reference to "sources not entering Port properties." During the August 14th Scoping Meeting, Mr. Hogo attempted to clarify this reference by referencing an undefined area outside of but near the two Harbor Districts. Unfortunately, Mr. Hogo's statement did not clarify the proposed Project's location.

Is it the intention that any portion of the Project may be implemented outside the geographic areas of the Harbor Districts of the Cities? It is unclear from this description whether the Project may have impacts or foreseeably result in actions being taken outside these Harbor Districts. This may have jurisdictional implications which cannot be evaluated without additional information.

[1] Los Angeles Resolution No. 10-7041 adopted by the Board of Harbor Commissioners of the City of Los Angeles and Long Beach Resolution No. HD 2600 adopted by the Board of Harbor Commissioners of the City of Long Beach on November 22, 2010.

Also, the Initial Study fails to disclose or analyze the possibility that if the option for the Cities to reduce emissions from sources not entering Port properties is included in proposed Rule 4001, even the vague "project location" and geographic scope of the proposed Rule in the Initial Study would not be accurate and would need to be modified in the NOP/IS.

P. 1-4 – Project Background

The Initial Study's description of the "Project Background" implies that the two Cities' ports themselves actually conduct cargo operations. For example, the text states that the COLA "serves approximately 80 shipping companies." This illustrates a fundamental lack of understanding by the District of how ports work. There are two types of business models of ports: some are "operating ports," that conduct cargo operations directly, such as the Port of Charleston, South Carolina and some are "landlord ports," such as the Ports of Los Angeles and Long Beach, that merely lease wharves and land to operators who conduct cargo operations.

The Ports of Los Angeles and Long Beach are not, "the single largest fixed source of air pollution in Southern California." The EA should clarify that the referenced sources of air emissions are the vehicles, engines, ships, trains, trucks and other cargo-moving equipment operated by distinct tenants, users, and visitors of the ports, not the Harbor Districts or the Cities.

P. 1-5 – Legal Authority for PR 4001

The Initial Study suggests that if the (unspecified) "backstop measure" that would be mandated under PR 4001 "becomes effective," then the new Rule would require the Cities to take (unspecified) action "to develop and implement plans to get back on track" regarding attainment of emissions targets. Under what legal authority does the District believe that its proposed Rule 4001 may purport to compel distinct governmental bodies (the Cities and the Boards of Harbor Commissioners) to legislate or to exercise their discretion in particular ways to achieve District objectives?

Measure IND-01 was prominently referred to as an "indirect source rule." The current general references to proposed Rule 4001 in the NOP/IS have lost all mention of an "indirect source rule." However, the references to proposed Rule 4001 do not cite to any authority the District is relying on for its processing of the proposed Rule. This should be corrected so that the public can comment on whatever legal authority may be invoked by the District.

Is it anticipated that the "plans" and strategies that would be required to be adopted by the legislative boards of the two Cities under the mandate of proposed Rule 4001 would be within SCAQMD's regulating authority and subject to the District's approval or disapproval? If so, why would SCAQMD not directly adopt such "backstop" strategies and plans itself? If not, is the Rule being proposed in order accomplish something indirectly that SCAQMD itself cannot do directly? (Cf., *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 [same].)

P. 1-5 – Call for Cities to Regulate Off-Site "Sources"

The Initial Study indicates that the District will be inviting and considering proposals, as part of this "Project," regarding potential measures for the Cities to adopt and implement to try to reduce emission from sources *not entering* onto port properties. What does this mean? What legal authority might the Cities have to try to regulate *off-site* sources that do not come within the jurisdiction of the respective Harbor Commissions? (Municipal police power authority may generally be exercised only within the territorial boundaries of their jurisdiction, and the Boards of Harbor Commissioners have special Tidelands limits on their authority.)

Would such (unidentified) measures be part of Rule 4001, or would proposed Rule 4001 require that the Cities formulate (unidentified) measures in the future to somehow regulate *off-site* "sources?"

Until such options are identified, shown to be legally authorized and technically feasible, how can the CEQA analysis for proposed Rule 4001 be undertaken?

P. 1-6 – First Bullet – Imposing "Requirements" on the Cities?

The Initial Study indicates that if proposed Rule 4001 becomes effective the Cities "would be required to submit an emissions reduction plan to address the emissions reduction shortfall."

As noted above, this raises questions as to the intent and legal authority behind the Rule. Has the District identified legal authority for a rule that would require other governmental agencies (the Boards of Harbor Commissioners for the respective Cities) to exercise their legislative discretion/authority in any particular manner? Does the District intend to reserve to itself some authority to approve or disapprove any such plans submitted by the Cities?

What is the consequence of disapproval by the District?

What environmental baseline and other parameters would be required by proposed Rule 4001 in order for the Cities to determine the extent of any "emissions shortfall" that may need to be addressed in the Cities' plans in the event they were to undertake to submit plans under the Rule?

P. 1-6 – Second Bullet -- Funding

This bullet point implies that "funding" would be necessary for many of the potential future emission reduction measures that may be compelled under proposed Rule 4001. Would such funding be provided by the District? What other "funding" sources are contemplated? Will

there be constitutional or common law "gift of public funds" restrictions on funding imposed on the Cities for activities under their CAAP if Rule 4001 makes CAAP compliance a potential state or even federal regulation?

Are the Cities expected to fund these programs from Tidelands Funds? By what authority may the Harbor Commissioners impose taxes, assessments, and charges on users of the Harbor Districts, given the restrictions of various state laws, including, among others, Proposition 26?

The vague disclaimer in the Initial Study to the effect that proposed Rule 4001 would not require any measure that lacks legal authority or feasibility raises more questions than it answers. Whatever types of "emissions reduction plans" may be anticipated by proposed Rule 4001 should identified by the District in the NOP/IS so that the feasibility and legality of such approaches can be evaluated as part of the environmental assessment for the Project.

Pp. 1-6 – 1-7 -- Technology Overview/Implementation Strategies

This refers to some emission reduction strategies included in the CAAP, but the Initial Study does not explain how these may relate to proposed Rule 4001, or whether they should be considered as part of the Project.

The suggestion in the Initial Study of possible "tariff change" or "impact fees" on the activities of users of the Harbor Districts raises other questions (e.g., legal authority, funding for studies and public review processes required before such measures could be considered or adopted, indemnification for costs of defense, etc.) requiring identification and study. Moreover, such measures may themselves be considered as "projects" subject to CEQA review and may have impacts on the activities of Harbor District users that themselves would require analysis or mitigation.

The Initial Study also includes reference to "Port funded incentives" as possible measures to reduce emissions, but also observes that there is not adequate funding for such strategies in the Cities' budgets or other grant program. The source of funding any "Port-funded" measures contemplated by proposed Rule 4001 should be clearly identified and evaluated.

Any such contemplated implementation strategies should be included in the "Project description" and better identified in a more complete NOP/IS, so that they may be evaluated along with the rest of the Project.

Pp. 1-10 – 1-11 -- Imposition of "Requirements" on the Cities

The NOP/IS states that none of the CAAP strategies would be "prescribed in PR 4001." Instead, the NOP states that if proposed Rule 4001 becomes effective, the Cities (presumably the Boards of Harbor Commissioners) -- "individually or jointly" -- would be required to identify sources that could undergo potential emission reduction to "make up for the shortfall."

Why would/should the obligation to make up for a possible shortfall in meeting emission reduction targets (which are primarily the responsibility of the District to attain) be shifted so as to fall upon two independent governmental entities? The Cities are governmental entities, and are not directly producing emissions or otherwise directly responsible for the targeted emissions or for the attainment of the emissions reduction targets. Moreover, if there were to be a "shortfall" in attaining the targets, it could well be due to factors not caused or controlled by the Cities, and not due to any actions or derelictions on the part of the Cities or their tenants or users.

Other issues: How would a "shortfall" be measured or determined? Would any such "shortfall" be allocated to sources or causes bearing some actual responsibility for the lack of attainment? How would it be "allocated" between the Cities? Would uncontrollable/unforeseeable factors resulting in all or part of a shortfall be excluded from whatever obligation may be imposed on the Cities?

Would proposed Rule 4001 take into account the statutory limits on the jurisdiction and authority of the Cities (i.e, the Boards of Harbor Commissioners) to impose restrictions on most mobile sources of emissions?

Footnote 6 (on page 1-11)

The NOP/IS mentions a possible "option" that would "allow" the Cities to reduce emissions from "non-port-related sources." This vague reference requires clarification before it may be evaluated in connection with the Project. Direct and indirect effects would need to be considered that may occur beyond the geographic boundaries of the Harbor Districts. Therefore, it is premature for the District to conclude that any changes based on the working group or public scoping comments will be within the scope of the analysis in the NOP/IS.

P. 1-11 -- Technologies

The EA should be expanded to address the legal, technological and economic feasibility of the seven bulleted items listed in this section.

P. 1-12 -- Alternatives

No alternatives have been identified for study in the NOP/IS. Instead, it merely commits the District to "discuss and compare alternatives" in the future, as part of the Draft EA.

It also suggests the District is looking to the public or other agencies to identify "alternatives" during the scoping process. As previously explained however, how can alternatives realistically be suggested when the Project itself has not been identified or described?

The No Project Alternative is not defined in the NOP/IS. In accordance with CEQA Guidelines Section 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. Therefore, the Draft EA should consider the impacts that would occur under the existing 2012 AQMP without Control Measure IND-01 or proposed Rule 4001. In particular, an analysis should be conducted of the grant funding that would be available under the No Project Alternative that would not be available if the proposed Project constitutes regulation, and the environmental impact if grant funding necessary to make certain actions economically feasible is no longer available under the proposed Project. If the District's position is that there is no loss of grant funding in order to comply with Rule 4001 as a regulation that the District purports to make enforceable under the State Implementation Plan and the Clean Air Act, the District must explain in the Rule its basis for this conclusion in the context of why grants made for compliance with a regulation is not a gift of public funds.

In light of the technical complexities of the issues and the ambiguities as to what the District is actually seeking to accomplish by way of proposed Rule 4001, it seems unreasonable to expect others to develop the project alternatives. One suggested alternative would be for the District to formulate its own "backstop" measures and strategies for addressing any shortfall in emission reduction targets, relying on the District legal authority, expertise and resources, rather than pursuing proposed Rule 4001, which appears to be an attempt to rely upon presumed authority of the Cities. Another suggested alternative would be, the memorandum of understanding approach that was suggested by the Cities and proposed by staff as an alternative to Measure IND-01.

(c) Other Comments on Chapter 1 - "Project Description"

Incomplete Description of Environmental Setting

The Initial Study also fails to provide an adequate description of "the environmental setting" of the proposed Project.

While the CEQA Guidelines do not specially define "environmental setting" with regard to an initial study, they do explain, in regard to EIR preparation, that the "environmental setting" must be informative: "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." (Guidelines, § 15125, subd. (a).) A description of the environmental setting must be sufficient to allow "an understanding of the significant effects of the proposed projects and its alternatives" but "no longer." (Guidelines, § 15125, subd. (a).) That description should place "[s]pecial emphasis" "on environmental resources that are rare or unique to that region and would be affected by the project" and "must permit the significant effects of the project to be considered in the full environmental context." (Guidelines, § 15125, subd. (c).)

Failure to Examine All Phases of the Entire Project as Proposed

"The Initial Study must include a description of the project, and 'the scope of the environmental review conducted for the initial study must include the *entire* project." (*Nelson v. County of Kern, supra*, 190 Cal.App.4th at 270, emph. in original.)

The Initial Study here improperly fails to describe "the entire Project" and fails to consider all phases of the proposed Project. The CEQA Guidelines (14 C.C.R §15063(a)(1)) make clear that an initial study must take a comprehensive view of the proposed project *as a whole*. "All phases of project planning, implementation, and operation must be considered in the initial study of the project."

The NOP/IS indicates that proposed Rule 4001 is intended to require actions by the Cities, to adopt and implement plans and strategies to address any "shortfall" in emissions reductions. The Initial Study improperly fails to address or to provide information and analysis relating to the environmental impacts of the anticipated "subsequent approvals," "discretionary permits" and amendments to the Cities' plans and regulations that appear to be proposed as parts of the Project, or the physical environmental effects of social or economic impacts that may result from those anticipated and apparently necessary changes in land use regulations." (Guidelines § 15063.) Such anticipated and intended actions by other governmental agencies thus appear to be part of this Project, and must be identified and evaluated in the Project EA, along with their potential impacts. As such, we reiterate our prior comment on the Draft 2012 AQMP Program EIR dated October 22, 2012 where it is stated that the District has failed to fully disclose the details of Measure IND-01 and as a result is segmenting or piecemealing its CEQA analysis.

Failure to Describe Existing Land Use Regulations

The Initial Study does not include an examination of whether the Project would be consistent with existing zoning, plans and other applicable land use controls, as required by CEQA Guideline Section 15063. Although the Initial Study includes some background discussion of the CAAP, it provides little or no description of the existing planning and zoning designations applicable to the "Project" location, and relies on (unsupported) assertions that the Project would be in furtherance of the CAAP. It provides no information or analysis of other existing plans or policies applicable in the Harbor Districts, which may be affected or impacted by the Project.

Uncertain and Inadequate Identification of "Baseline" Used for Review

It is critical under CEQA that any level of environmental review make it clear as to the "baseline" being used as the basis for analysis of the significance of potential Project impacts. (CEQA Guidelines Section 15125(a).) Normally, the "baseline" will be the existing environmental conditions in the vicinity of the Project. (Guideline Section 15125(a); see also,

Communities for a Better Environment v. South Coast Air Quality Management District (2010) 48 Cal.4th 310, 315 [the baseline for an agency's primary environmental analysis under CEQA must ordinarily be the *actually* existing physical conditions rather than *hypothetical* conditions that could have existed under applicable permits or regulations].) The Supreme Court has explained that the requirement for identification and use of the appropriate "baseline" applies in the context of an Initial Study as well as in an EIR. (*Communities for a Better Environment, supra*, 48 Cal.4th at 512, and n. 5.)

The Initial Study here, however, fails to make it clear as to what "baseline" is being used. In many places the Initial Study compares the anticipated "impacts" of adopting proposed Rule 4001 to the permitted emissions levels anticipated (in the future) under the 2012 AQMP, or alternatively to the (future) emission reduction targets of the CAAP -- rather than to the existing environmental conditions. While the recent Supreme Court decision in *Neighbors for Smart Rail v. Exposition Metroline Constr. Authority* (8/5/2013, No. S202828) ___ Cal.4th ___, indicates that the baseline need not always be the existing physical conditions, and that "projected future conditions" may be used in rare situations as a baseline "if their use in place of measure existing conditions ... is justified by unusual aspects of the project or the surrounding conditions" (Slip Opinion, p. 11), it does not detract from the rule that the Initial Study must accurately and consistently describe the baseline being used. Nor does it permit the use of "future conditions" in the absence of a showing of unusual circumstances. The Initial Study in this case does neither.

For each of these fundamental reasons, the NOP/IS should be rescinded in order that it may be revised, completed and corrected to meet CEQA requirements.

2. Chapter 2 of the Initial Study – The "Environmental Checklist"

(a) General Comments and Questions on the Environmental Checklist

The NOP/IS apparently relied on a standard CEQA environmental checklist to identify those "impact areas" it recognizes to be potentially affected by the Project. In several respects, however, the Initial Study appears to merely assume 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, supra*, 96 Cal.App.4th at 408-09; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296). Furthermore, it is contrary to the District's response to comment #5-4 in the Final Program EIR, which indicates that "[t]he exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted."

The NOP/IS currently indicates that the scope of the proposed EA for this "Project" will be limited to the six topics listed at p. 2-2. Compliance with CEQA, however, would require not only a new and corrected Initial Study, providing an adequate "Project description" but also a more comprehensive EA that addressed additional areas of potentially significant impact, including (without limitation): (1) Aesthetics, (2) Biological Resources, (3) Cultural Resources, (4) Land Use and Planning, (5) Noise, (6) Public Services, and (7) *broadened evaluation* of potential impacts and issues in the areas of Energy, Hazards and Hazardous Materials, Air Quality, and Transportation and Traffic.

Unless and until those areas are more fully addressed, the NOP/IS appears to improperly limit the scope of the proposed EA, and to erroneously exclude areas requiring further assessment.

(b) Specific Comments and Questions on the Environmental Checklist

As detailed below, there are numerous areas of potential environmental impact in the checklist as to which the Initial Study either omits required evidence to support its conclusions of "no potential impact" or treats with insufficient detail.

More specific questions and comments follow:

P. 2-4 -- Preliminary Discussion of Checklist

First Paragraph: We reiterate the same comment as noted on page 1-4 regarding Cities being the source of emissions. The geographic location itself does not produce emissions. It is the users of the area that produce impacts. The users of the two ports are the owners and operators of the ships, trains, trucks and equipment which the District targets as the sources of emissions.

First Paragraph, Last Sentence: The Initial Study states that "some emission reductions [assumed by the District's 2012 AQMP] may be contingent upon the Ports taking and maintaining *actions which are not required by air quality regulations*." This suggests that one of the purposes for District proposal of proposed Rule 4001 may be to establish a new regulatory "authority" over the Cities (and the communities served by and dependent upon the Harbor Departments of the Cities) that is not in fact already provided by existing federal, state, or regional air quality regulations. The policy implications of such a Project may well include significant impacts on the environment, if regulatory authority over activities, facilities, and uses of the Harbor Districts is shifted or arrogated to the District. (See, e.g., *City of Redlands, supra,* 96 Cal. App. 4th 398 [proposed new County policy re exercise of County authority over annexations and sphere of influence was not supported by adequate CEQA review].)

Second Paragraph, Last Sentence: Same comment as page 1-5.

Third Paragraph. The NOP/IS states that the checklist responses focus on "the above mentioned actions." This is extremely vague. Is the reference intended to be the items referenced in the paragraph immediately above, or in the earlier pages?

Identification of precisely what measures are being assumed or proposed in proposed Rule 4001 is essential to being able to review the Initial Study.

Aesthetics -- P. 2-5

Discussion of I a), b) and c). The Initial Study suggests that "because PR 4001 would implement IND-01" the District may simply assume that this Project would not be expected to generate significant adverse aesthetics impacts. However, given that the measures that would be used to implement IND-01 are not identified, the Initial Study does not provide evidence to demonstrate that proposed Rule 4001 has no potential for impact. To the contrary, the Initial Study admits that "PR 4001 will primarily affect operations at two ports" and but then simply assumes from the industrial and commercial zoning of the Harbor Districts that there could not be a potential for impacts on "scenic vistas" nor any potential degradation of the visual character of the areas around the Harbor Districts.

The Initial Study fails to describe the environmental setting and include any evidence or analysis to support its assumption that whatever is done to implement proposed Rule 4001 would "likely easily blend in" with the surrounding activities, especially since what would be done to implement the Rule is not yet known. Specifically, the Initial Study 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. 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 Harbor Districts and if modified, through obstruction, alteration, or demolition could have a negative aesthetic impact. Without a clearly defined project, project location, or description of the environmental setting, it is not possible to conclude that any port modifications will have little or no noticeable effect on adjacent areas and would blend in with the visual setting.

The Initial Study indicates that "Control devices may include hoods or bonnets on ship exhaust stacks to capture emissions and are expected to be as high as 80 feet (POLB, 2006)" and concludes that "these control devices would be similar to other structures used within the heavily industrialized portions of the Ports…" First, the "POLB" citation is missing in the list of references. Second, it is speculative and erroneous to assume that control devices as high as 80 feet would have "no visual impact" without knowing the location, dimensions, color scheme or critical viewpoints. No such analysis has been considered here and the impact is dismissed with no evidence to support the conclusion.

The last sentence of the first paragraph (on p. 2-6; I. d) suggests there are no residential areas "next to" the Harbor Districts, and thus the Initial Study may dispense with analysis of light and glare impacts. It is evident however that was an inaccurate assumption given the residential communities of San Pedro, Wilmington and Long Beach located adjacent to the Harbor Districts. This is also contradictory to the description of surrounding land uses and setting on page 2-1 which indicates "potentially residential."

The Initial Study further errs by dispensing with environmental analysis or evidence, simply because of the (assumed) beneficial air quality goals of proposed Rule 4001. The law is clear that environmentally "benign" objectives for a project do not excuse non-compliance with CEQA and do not justify reliance on assumptions in lieu of evidence to demonstrate the absence of potential impacts. *See, e.g., California Farm Bureau v. California Wildlife Conservation Board* (2006) 143 Cal.App.4th 173, 196, emph. added [State environmental agency violated CEQA by exempting environmentally beneficial habitat project from review]:

> "[I]t cannot be assumed that activities intended to protect or preserve the environment are immune from environmental review. [Citations.]" (*Davidon Homes, supra*, 54 Cal.App.4th 106, at p. 119; see, e.g., *Dunn-Edwards Corp. v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644 (disapproved on other grounds in *Western States Petroleum Assn. v. Superior Court, supra*, 9 Cal.4th 559, 570.) **There may be environmental costs to an environmentally beneficial project, which must be considered and assessed**.

This topic should not be dismissed. Given the nature of proposed Rule 4001, it cannot be determined that its implementation would have no impact on aesthetics. The EA therefore should include "Aesthetics" as a potentially impacted area of study.

Air Quality -- P. 2-11, Discussion

In the first paragraph (p. 2-11), last sentence, the stated assumption is speculative given there is no information about what physical changes to the environment proposed Rule 4001 will entail. There is no evidence to support the assumption in the Initial Study that proposed Rule 4001 would be identical to Measure IND -01 or have identical (previously-studied) impacts on air quality.

P. 2-11, III.a

The first paragraph, last sentence, again raises the question of why it should become the obligation of the Cities to take actions on their own to fulfill the obligations of the District for reaching emissions reductions targets? What is the legal authority for this shifting (or delegation) of the District's air quality responsibility?

In the second paragraph, the Initial Study relies on an assumption that "the Port" would be installing control equipment. Again, this erroneously confuses the Harbor Departments of the Cities with the operators of vessels, vehicles, and equipment. The Harbor Boards serve as trustees of tideland assets.

The conclusion in this section assumes that the undefined strategies and approaches suggested in conceptual description of proposed Rule 4001 will be successful. That is dependent on the feasibility of the approaches, which must be identified and assessed. Therefore, this topic should be analyzed in the EA.

P. 2-12, III.b, c, and g

Given the total lack of information regarding what proposed Rule 4001 would entail and whether it's implementation is feasible, it is premature to assess impacts in this category. These details must be provided and these topics should also be identified and assessed in the EA.

P. 2-13, III.e

There is no factual basis in the Initial Study upon which to conclude that implementation of proposed Rule 4001 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 Initial Study analysis only applies to construction odors and ignores any potential odors that may occur during long-term operations.

The NOP should be amended to make clear that at least these additional areas of potential impacts on air quality should also be identified and assessed in the EA.

Biological Resources – P. 2-14

The Initial Study fails to adequately describe, and improperly minimizes, possible impacts to biological resources, including least terns and migratory birds.

The scope of the proposed EA should be expanded to include environmental analysis of the Project's potential impacts on biological resources.

Cultural Resources – P. 2-16

The Initial Study fails to adequately describe, and improperly minimizes, possible impacts to cultural resources. Not all areas within the Harbor Districts are devoid of cultural resources or have cultural resources that have been previously disturbed, as concluded in the Initial Study on page 2-18 in section V(b), (c), and (d). There are known recorded historic and prehistoric sites throughout the Harbor Districts. For example, see COLA's website at http://www.portoflosangeles.org/idx_history.asp. Without knowing the location and extent of ground disturbance from possible construction activities associated with proposed Rule 4001, it

is speculative to assume that no significant adverse cultural resources impacts are expected from implementing proposed Rule 4001. The conclusion in the Initial Study is unsupported and lacks evidence or facts to support the findings.

The scope of the proposed EA should be expanded to include environmental analysis of the Project's potential impacts on cultural resources.

Energy – P. 2-18

The Initial Study section VI(c) must be expanded to also consider and analyze 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 required in the event of a major disaster. Also, some types of emissions control measures, facilities, or technologies contemplated by the Project could increase or shift demand for different types of energy or fuel usage. Although "risk of upset" is not considered in the Initial Study checklist, it should be cross referenced here and addressed in the Hazards section of the Initial Study.

The scope of the proposed EA should be expanded to include this additional analysis.

Hazards and Hazardous Materials – P. 2-24

The Initial Study section VIII(f) must be expanded to also consider and analyze the increased reliance on alternative fuels or electrical powered technologies that would require sufficient supply and emergency storage in the event of a major disaster. Although interference with emergency response plans was marginally addressed in this section, "risk of upset" is not considered in the Initial Study checklist.

The scope of the proposed EA should be expanded to include this additional analysis.

Land Use and Planning – P. 2-34

The Initial Study fails to adequately describe, and improperly minimizes, possible inconsistencies between the proposed Project and the existing and applicable land use plans and policies.

The Initial Study erroneously claims that "there are no provisions in PR 4001 that would affect land use plans, policies, or regulations." (P. 2-34.) The Initial Study does not support that conclusion with any substantial evidence.

First, the NOP/IS fails to identify any of "the provisions of PR 4001" so the statement cannot be supported or evaluated.

Second, and more importantly, however, the Initial Study repeatedly references "implementation strategies," "plans" and other new measures that it anticipates the Cities will be required to enact if proposed Rule 4001 becomes effective. Presumably this is because of inconsistencies between the existing plans and policies and the requirements of the new Rule. (See, e.g., pages 1-6 through 1-11.) The measures contemplated in the Initial Study include the adoption of new "regulatory requirements," new "impact fees" on the movement of cargo or sources, and changing the tariffs for use of the Harbor Districts – all of which would cause at least potential "conflicts" with applicable plans and policies. (Cf., *Orinda Ass'n v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1169 [the CEQA requirements for initial study examination of non-conformity with existing land use plans are intended to allow lead agency to modify the Project to avoid inconsistencies with existing plans – not vice versa].)

Third, the Initial Study itself acknowledges that the Project is anticipated to cause "potentially significant impacts" or conflicts with "an applicable plan ... for the performance of the circulation system" and conflicts with "an applicable congestion management plan." (Initial Study, p. 2-44.) Although the Initial Study proposes to address those admitted conflicts in the "transportation" section of the EA, these acknowledged conflicts confirm the necessity for including "land use and planning" impacts in the proposed EA as well.

Fourth, the proposed Project would seemingly create conflicts with the Cities' 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 are detailed in the previous port letters included in Attachment A to this letter. In addition, the proposed Project would create inconsistencies with the Clean Air Action Plan.

Fifth, the proposed Rule is apparently structured in a way that would impermissibly usurp the (non-delegable) police power authority of the Cities and their respective Boards of Harbor Commissioners to plan, implement, and regulate land use policies and actions in their respective jurisdictions. (This comment has also been raised above, in Project Description comments.)

The numerous inconsistencies between the Project as proposed and the existing plans and policies require identification in the Initial Study and inclusion in the proposed EA. (Guidelines § 15125(d).)

The scope of the proposed EA should be expanded to include environmental analysis of the Project's potential impacts on land use and planning.

The EA should also include analysis of the impacts of the proposed/anticipated Project-related subsequent amendments to the Cities' plans, policies, and other land use regulations. (See, e.g., *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1197 [CEQA review failed to consider incidental results from adoption of revised policy; incidental impacts could not be disregarded in an initial study based upon "net" environmental impact of the change in policy being benign since CEQA requires each environmental impact of

project be discretely evaluated].) "Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project." (Guidelines, § 15064, subd. (e); see §§ 21080, subd. (e)(2), 21082.2, subd. (c).)

The scope of the EIR should be expanded to include analysis of possible physical changes in port facilities and operations that might be caused by economic or social effects of the Project itself or by the anticipated amendments to land use and zoning policies by the Cities subsequent implementation of the Project.

Noise – P. 2-36

The NOP/IS acknowledges that approval of the Project and "triggering" of the PR 4001 could result in the construction or installation of new control equipment. The Initial Study improperly dismisses the potential noise impacts from such work as "not expected to be in excess of current operations." There is no substantial evidence in the Initial Study to justify such assumptions.

Similarly, there is no evidence cited in the Initial Study to support its further assumption that additional permanent noise impacts anticipated from the operations of new control equipment would not "substantially increase ambient operational noise levels in the area."

This section of the Initial Study is littered with mere "expectations" unsupported by any evidence regarding the magnitude of new noise impacts, even though such new impacts are anticipated by the Initial Study. Nor is there any analysis of the potential for significant adverse impacts from new noise generators related to the Project.

The NOP/IS must be revised, and the scope of the proposed EA expanded to include a detailed analysis, supported by evidence, regarding these anticipated new noise impacts, alternatives, and possible mitigation measures.

Public Services – P. 2-39

The Initial Study assumes that the Project would not generate any increased need for public services. However, the Initial Study does not provide any substantial evidence to support its assumptions regarding the "absence of impact" on additional public services or facilities.

The Initial Study should be expanded to address potential impacts that may arise from the increased "diversion" of existing "dirty" vehicles and vessels into solid waste sites if proposed Rule 4001 is triggered.

Transportation and Traffic – P. 2-44

The Initial Study fails to adequately describe and analyze potential impacts to rail and marine vessel traffic and ignores the significance criteria identified as "[w]ater borne, rail car or air traffic is substantially altered" on page 2-45. The Initial Study erroneously considers only vehicular traffic impacts to local roadways.

The NOP/IS must be revised, and the scope of the proposed EA expanded to include a detailed analysis, supported by evidence, regarding potential impacts to rail and marine vessel traffic.

Socioeconomics Analysis

The EA needs to include a broad-based analysis of the socioeconomic effects of the proposed Rule 4001, including the potential for job loss, business closures, and diversion of cargo to other ports due to the potential loss of regional competitiveness. The socioeconomic analysis needs to consider both the existence of the rule, even if not triggered, and the future enforcement of the rule. Because these conditions have the potential to physically change the environment in and around the ports, these impacts should be identified and assessed in the EA. (See CEQA Guidelines §§ 15064(e) and 15131; *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3rd 433, 445 [EIR must consider possibility of economic blight from rezoning].) Moreover, this assessment should not be limited to businesses and operations within the ports, but should extend to those facilities, businesses and operations that while located outside of the Harbor Districts are dependent upon the flow of cargo for their continued operations.

Too-Narrowly "Focused" Environmental Review

We note in closing that the Initial Study appears to reflect a preliminary decision to conduct less-than-full disclosure or environmental review of the proposed Project. Although the Initial Study concludes that "the proposed Project may have a significant effect on the environment and an Environmental Assessment will be required," it nevertheless appears that environmental review in the admittedly-required EA is proposed to be curtailed and "focused" on just the six topics listed in the current the NOP. One obvious indication of this is the miniscule list of references that were relied upon to support the Initial Study analysis; the list is limited to three sources.

It is respectfully submitted that such an approach would be too narrow and not in conformance with the requirements of CEQA, or with the District's own policies and rules for environmental analysis. While the CEQA Guidelines call for emphasis and "focus" on the significant environmental impacts of the Project, the authority to use such focus is misapplied in the Initial Study. For example, CEQA Guideline § 15143 explains that such focus may be used to limit the analysis in an EIR [or, in this case, EA] 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 NOP/IS here, by contrast, appears to exclude from consideration in the EA numerous effects that it has not shown to be "clearly insignificant and unlikely to occur."

D. Conclusion

The current version of the NOP/IS fails to adequately describe the "Project" thereby thwarting effective public review and comment on proposed Rule 4001. The Initial Study must therefore be revised, corrected, and re-circulated with all of the descriptions and other content required by CEQA.

Even this inadequate NOP/IS makes it clear that **the scope of the proposed EA has been unduly narrowed**, and that environmental review will be limited in a way that erroneously fails to provide the relevant decision-makers, affected public agencies, residents and the public generally with sufficient evidence and analysis of all anticipated and potential impacts from the Project as a whole, or of all potentially feasible mitigation measures or appropriate Project alternatives as required by CEQA.

While it is clear that an EA is called for in connection with this proposed Project, it is equally clear that the EA should be more complete than what is envisioned by the current NOP/IS. More fundamentally, its scope must be determined by a legally-adequate revised NOP/IS. The EA for the Project must, of course, be supported by credible and substantial evidence, including independent professional analysis.

We respectfully request that these comments and questions be considered before the District embarks on preparation of the EA and all of the other required independent studies in connection with the CEQA review of the proposed Project. We therefore look forward to working with the District, and any study teams or working groups tasked with evaluation of the proposed Rule 4001.

The NOP requests that we provide you with a contact person for each responding agency. For the COLB, the contact persons are as follows:

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We appreciate your consideration. Thank you.

Sincerely,

Heather Tomley
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachment A:

Letters dated July 10, 2012; July 27, 2012; August 30, 2012 (which includes letter dated May 4, 2010); October 22, 2012; October 31, 2012; November 8, 2012; November 19, 2012; and November 27, 2012 from Port of Los Angeles and Port of Long Beach to SCAQMD

cc: Al Moro, Acting Executive Director Port of Long Beach
Geraldine Knatz, Executive Director Port of Los Angeles
Dominic Holzhaus, Principal Deputy City Attorney City of Long Beach
Joy Crose, Assistant General Counsel City of Los Angeles, Harbor Division
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Randall Pasek, Planning and Rules Manager, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Cynthia Marvin, Division Chief, California Air Resources Board
Elizabeth Adams, Deputy Director, U.S. Environmental Protection Agency, Region 9

ATTACHMENT A

July 10, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Initial Comments on the Proposed 2012 Air Quality Management Plan, Control Measure IND-01

Dear Dr. Wallerstein:

The Port of Long Beach and Port of Los Angeles (Ports) appreciate the opportunity to participate in the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) Advisory Committee. We support the AQMD's clean air goals and have worked aggressively with the port industry to reduce our fair share of air quality impacts to the region from port-related operations, as outlined in the San Pedro Bay Ports Clean Air Action Plan (CAAP) and the associated San Pedro Bay Standards. As a result, between 2005 and 2010, emissions from port-related sources were reduced by 70 percent for diesel particulate matter and by 49 percent for nitrogen oxides. Emissions inventory work currently underway indicates additional, continued emission reductions in 2011.

While we continue to remain a committed partner in the effort to improve air quality in the region, we disagree with AQMD's proposed control strategy for port-related sources in the Draft 2012 AQMP. The inclusion of proposed measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources," is unnecessary and counter-productive.

The two Ports have a proven track record of developing and implementing appropriate and effective emission reduction strategies. These efforts have been entered into voluntarily, working cooperatively with operators in the port area and the air quality regulatory agencies (i.e. Environmental Protection Agency, California Air Resources Board and AQMD). Since the Ports initially implemented the CAAP, many of the port-related control strategies have been or will be superseded by state or international requirements, such as the rules for replacing drayage trucks, switching to cleaner marine fuels, and using shore power while at berth. The Ports' emissions inventories in 2010 show reductions that are meeting or are in excess of the emission reductions that the Ports committed to in the San Pedro Bay Standards. However, it is important to note that in order to remain on track to meet the Standards, a collaborative and concerted effort with our agency partners is essential, with the understanding that while the Ports can achieve significant emission

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

reductions, no single entity can accomplish this task. The previous State Implementation Plan identified several regulatory strategies that have not yet materialized into regulations for various reasons. Moving forward, the Ports will need agency assistance, particularly on the development and deployment of zero-emission technologies and at-berth controls for non-regulated vessels, as well as on the preferential deployment of cleaner vessels to the basin.

The Ports are sustaining and growing long-standing successful CAAP programs, such as the Vessel Speed Reduction Incentive Program and, on July 1, 2012, the Ports implemented new, groundbreaking incentive programs to encourage cleaner ocean-going vessels to call at the Ports. With programs such as these, along with the above-referenced regulatory rules becoming effective and ensuring significant additional emission reductions by 2014, there is no identified need for implementing a backstop measure. The AQMD's proposed backstop measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

It is inappropriate for the AQMD to attempt to regulate the Ports, which are the Harbor Departments of the cities of Long Beach and Los Angeles, in an attempt to control emissions from equipment within our boundaries, but which we do not own or operate. Further, the proposed backstop measure identifies that the "…requirements will be triggered if the reported emissions for 2014 for port-related sources exceed the 2014 target milestone, *or the Basin fails to meet the 24-hour PM2.5 standard as demonstrated in the 2012 AQMP and basin-wide reductions are needed, in which case a new reduction target for each pollutant will be established*." (emphasis added). While clarification has been provided by AQMD staff that any effort to make up for a basin-wide shortfall will be the responsibility of all sectors, not just the Ports, this statement still implies that if the port industry meets their targeted emission reductions, but other sectors fail to meet their fair share obligations, then the AQMD will mandate additional reductions from the Ports. This is counter to the cooperative relationship that our agencies have established since we began working together on the CAAP in 2006, and ignores the tremendous air quality benefits that have been gained from voluntary actions.

Lastly, based on the preliminary calculations by AQMD, the majority of the region is expected to be in attainment for PM2.5 by the target year of 2014, with the remainder anticipated to be in attainment by the expected extension date of 2019. The inclusion of IND-01 is therefore unnecessary for the region to reach attainment. If these emission reductions are needed in the baseline emissions calculation, there is precedent for mechanisms other than control measures to be used for this purpose, and we would like to discuss those options with your staff.

We strongly believe that the voluntary and cooperative CAAP process established by the Ports remains the most appropriate forum for the Ports and the air regulatory agencies to discuss technical and policy issues related to reducing emissions from port-related sources. As stated above, we remain committed to achieving our fair share of clean air goals identified in the CAAP and working with port industry and the air regulatory agencies on implementation of appropriate strategies.

For your reference, attached is a comment letter dated May 4, 2010, in which the Ports initially expressed concerns regarding backstop rules. The letter was submitted as a public comment on the proposed Rules 4010 and 4020, which were proposed backstop rules for health risk and criteria pollutant emissions.

We look forward to working with AQMD on resolving our concerns related to the proposed backstop measure in the Draft 2012 AQMP.

Sincerely,

CHRIS LYTLE
Executive Director
Port of Long Beach

MICHAEL R. CHRISTENSEN
Deputy Executive Director, Development
Port of Los Angeles

HAT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Susan Nakamura, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Robert Kanter, Port of Long Beach
Rick Cameron, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Chris Cannon, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles

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The Port of
LONG BEACH
The Green Port

July 27, 2012

Steve Smith, Ph.D.
Program Supervisor, CEQA
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765
Sent via email to ceqa_admin@aqmd.gov

RE: Comments on the Notice of Preparation for the Proposed 2012 Air Quality Management Plan Program Environmental Impact Report

Dear Dr. Smith:

The Port of Long Beach has reviewed the Notice of Preparation of a Draft Program Environmental Impact Report (EIR) for the Proposed 2012 Air Quality Management Plan Program and appreciates the opportunity to comment. Regarding preparation of the Draft Program EIR, we offer the following scoping comments for use by your agency during its environmental review process under the California Environmental Quality Act (CEQA):

Schedule

The EIR schedule is very aggressive, with the scoping period ending on July 27, 2012, followed immediately by the release of the Draft EIR scheduled for August 2012, and final approval planned for October 5, 2012. There does not appear to be sufficient time allowed for meaningful input on the proposed scope and content of the Draft Program EIR by the public. Further, the Port is concerned that, given the quick turnaround between closure of the scoping period and the scheduled release of the Draft Program EIR, insufficient time will be allowed for thorough review of the scoping comments and inclusion of said comments in the Draft Program EIR.

Aesthetics

The Initial Study identifies potential significant impacts on aesthetics due to the implementation of control devices such as hoods or bonnets on ship exhaust stacks. The Port agrees with the SCAQMD that such control devises and equipment would be similar in structure and design to existing features within the Port environment and would not constitute a significant aesthetic impact. Further, control measure ADV-03, which may include the construction of electric gantry cranes within the Port, should not be considered aesthetically significant as gantry cranes are an existing feature within the Port environment.

Energy

The Draft Program EIR should analyze how the mobile source control measures related to the electrification of vehicles will impact regional energy demand. Additionally, the need for new electrical power or natural gas utilities should be analyzed, including analysis of times of peak energy demand.

Land Use

The Draft Program EIR should analyze whether the implementation of specific control measures could physically divide established communities. Control measure ONRD-05 states that this control could be "implemented with the development of zero-emission fixed-guideway systems" and that to the extent feasible this would be extended beyond "near-dock application." The construction and operation of such structures may impact established communities.

Noise

The Port requests that the Draft Program EIR evaluate potential noise impacts related to the construction and implementation control measures in support of the AQMP. Section XII fails to account for noise impacts resulting from the construction and operation of control measure ONRD-05, which may include fixed-guideway systems near sensitive receptors.

Transportation/Traffic

Section XVII of the Initial Study concludes that adoption of the proposed 2012 AQMP is not expected to generate any significant adverse project-specific impacts to transportation or traffic systems, and that no further evaluation will be conducted in the Draft Program EIR.

However, impacts on major freeways or other transportation corridors as a result of construction and operation of potential zero emission control measures related to on-road heavy-duty vehicles, such as the use of overhead catenary power lines, which will potentially affect lane choice by trucks and traffic flow patterns on major traffic corridors, has not been fully analyzed. The Port requests that these potential impacts be analyzed in the Draft Program EIR.

Socioeconomics

While not required under CEQA, the Draft 2012 AQMP should include a thorough socioeconomic impact analysis for each proposed control measure, most notably the proposed backstop measure and the measures related to zero emission technologies. This could be accomplished with an expanded discussion under the cost effectiveness section of each control measure summary in the Draft AQMP.

The Port of Long Beach appreciates the opportunity to comment on the NOP/IS for the Draft 2012 AQMP and reviewing both the Draft Program EIR and the Draft 2012 AQMP. We look forward to working with the SCAQMD throughout the environmental review process.

Sincerely,

Richard D. Cameron
Director of Environmental Planning

DP:hat

August 30, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Comments on the Draft 2012 Air Quality Management Plan

Dear Dr. Wallerstein:

The Port of Long Beach and Port of Los Angeles (Ports) appreciate the opportunity to serve on the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) Advisory Committee. We support the AQMD's clean air goals and have a proven leadership record of developing and implementing appropriate and effective strategies that have resulted in the port-related goods movement industry's achievement of real and dramatic emissions reductions. Although the Ports do not own or control the emission sources, the Ports have worked cooperatively with business operators in the port area and the air quality regulatory agencies (i.e. Environmental Protection Agency, California Air Resources Board, and AQMD) to help the port industry reduce its fair share of air quality impacts to the region from port-related operations, as outlined in the San Pedro Bay Ports Clean Air Action Plan (CAAP) and the associated San Pedro Bay Standards. As a result, between 2005 and 2011 emissions from port-related sources were reduced by 73 percent for diesel particulate matter (DPM) and by 50 percent for nitrogen oxides (NOx). The Ports' San Pedro Bay Standards for 2014 established goals to reduce port-related DPM by 72 percent and NOx by 22 percent. Therefore, as a result of implementation of aggressive actions by the port industry, port-related emission reductions have exceeded our goals several years ahead of schedule.

While we remain a committed partner in the effort to improve air quality in the region, we have significant concerns with several proposed control measures in the Draft 2012 AQMP that improperly misclassify the Ports as "stationary sources" or "indirect sources" under AQMP Stationary Source measures, or as "implementing agencies" of specific AQMP mobile source measures. In particular, the proposed Stationary Source Measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources" contains many legal flaws, as explained in greater detail below, and inappropriately proposes to impose enforcement actions on the Ports for emissions generated by emissions sources that the Ports do not own,

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operate, or control, which is counterproductive to the cooperative relationship that our agencies have established since we began working together on the voluntary CAAP in 2006.

This letter provides the Ports' specific comments on the control measures in the Draft 2012 AQMP that we believe must be addressed prior to finalization and adoption by your agency.

Proposed Stationary Source Measure IND-01

There are three fundamental problems with Proposed Measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources." First, the proposed backstop rule would transform the Ports' voluntary CAAP into the AQMD's mandatory regulation of the Ports. This would jeopardize the Ports and the Port-related emissions sources' grant funding for equipment replacement and modernization if it is now necessary to comply with regulation, while offering nothing to assist the Ports with compliance in terms of additional technologies, facilitating regulations, tools, or funding. Second, although the CAAP was a voluntary cooperative effort of the Ports and the air agencies designed to encourage the industry operators of regulated equipment to go beyond regulation, the proposed backstop rule would improperly subject the Ports to the AQMD's enforcement action for industry's missed emissions reductions by equipment not operated or controlled by the Ports, or even potential loss of federal funding under federal conformity principles if the AQMP is adopted into the State Implementation Plan (SIP) and approved by the U.S. EPA as federal law. Third, the proposed backstop rule exceeds the AQMD's authority and if implemented may violate the State Tidelands Trust. If Measure IND-01 (as well as the Offroad Mobile Source Measures discussed below) are in reality the AQMD's regulation of Port-related mobile emissions sources such as locomotives, ships, rail, and trucks, then this is beyond AQMD's legal authority and AQMD should obtain a waiver under the Clean Air Act from the U.S. EPA. The Ports provide further detailed comments on Proposed Measure IND-01 below, and object to it being included in the 2012 AQMP.

Based upon the AQMD's modeling results, existing control measures are expected to result in attainment of the Federal 24-hour PM2.5 standard by the 2014 deadline without Measure IND-01. Section 39602 of the California Health and Safety Code states that the State Implementation Plan (SIP) shall only include those provisions necessary to meet the requirements of the Clean Air Act. Hence, there is no identified need or legal basis for implementing Measure IND-01. The AQMD's proposed measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

The Ports are neither "direct emissions sources" nor "stationary sources" subject to AQMD permitting, and the AQMD has not complied with requirements for regulation under Health and Safety Code. The Ports are also not "indirect sources" subject to an AQMD indirect source review program within the meaning of the Clean Air Act, and the AQMD has not complied with requirements of the Clean Air Act, 42 U.S.C. §7410 and various other requirements for indirect source classification. The Ports are also not air agency regulators. The Ports do not own, operate, regulate, or control any of the goods movement equipment serving the Ports that are

targeted emissions sources under Measure IND-01. Additionally, the equipment are mobile sources regulated by state, federal, and/or international regulation, sometimes under jurisdiction preempting Port or AQMD action. It is inappropriate for the AQMD to regulate the Ports without the Ports' ownership, operation, or jurisdiction to regulate the various industry businesses actually causing the emissions within our boundaries.

The proposed backstop measure continues to state that if there is a South Coast Air Basin-wide shortfall in emission reductions, then the AQMD will mandate additional emission reductions from the Ports, even if the port-related sources have already met their commitments. This moving target standard is unconstitutionally vague and therefore illegal. The Ports are unfairly targeted, as there are no backstop measures proposed for other entities or source categories should other modeling assumptions not come to pass, such as anticipated natural fleet turnover, or other non-regulated initiatives failing to meet their goals, such as those expected by the Carl Moyer Program. If the AQMD's emissions projections for achieving attainment are incorrect, including control factors and growth rates, this measure appears to imply that the Ports will be specifically tasked with rectifying the shortfall. If the Basin fails to achieve the federal air quality standard, the proper channel to address this is through the established SIP process, not to establish a contingency rule to unfairly burden one specific industry out of the entire Basin.

AQMD staff has indicated that Measure IND-01 is proposed to account for measures that are not backed by enforceable requirements. However, significant programs such as the CAAP's Clean Truck Program, Ocean-going Vessel Low Sulfur Fuel Program, Cargo-handling Equipment requirements, and the Shore-side Power/Alternative Maritime Power programs are currently backstopped by CARB and International Maritime Organization (IMO) regulations. The Ports also require higher rates of vessel or equipment compliance than regulation through terminal leases, when such commercial opportunities are able to be negotiated with tenants. Therefore, Proposed Measure IND-01 is unnecessary.

Measure IND-01 is vague and incomplete. It is unclear whether the AQMD has taken credit for actual/current emission reductions in the baseline only, or if assumptions have been made for future year reductions. We take issue with a measure moving forward where emissions projections are "on-going." Further, no detail is provided on the level of emission reductions that are needing to be maintained. This is further complicated by the differences that exist between the emissions inventories produced by the Ports and the inventory used for the AQMP. It is unclear if a specific emission reduction shortfall will trigger implementation of the measure, or if it is simply left to the discretion of the AQMD. Additionally, the control costs have not yet been developed or justified in a cost-benefit analysis.

The CAAP is a planning document that provides a guideline of strategies and targets that are often "stretch goals," which ultimately are implemented through individual actions adopted by the Long Beach and Los Angeles Boards of Harbor Commissioners (Boards). The Ports are sovereign Tidelands granted to the cities of Los Angeles and Long Beach by the state under the oversight of the State Lands Commission. Each city has been appointed as a trustee and has established their respective Board of Harbor Commissioners with exclusive control and management of the Tidelands and revenues and expenditures from the Tidelands. However,

such discretion must be exercised in accordance with their obligations to prudently manage Tidelands assets and revenues within a nexus and proportionality to the Tidelands Trust interests, as well as in accordance with applicable laws such as the California Environmental Quality Act (CEQA) and principles of federal preemption.[1] The AQMD cannot mandate action by each Port's Board of Harbor Commissioners, nor can the AQMD direct how the Ports obligate state Tidelands money; only the appointed trustee can make discretionary actions to obligate state Tidelands funds. Specifically, the CAAP measures listed in the Draft 2012 AQMP each require the Boards to authorize the expenditure of incentive monies and program costs, or to approve conditions of infrastructure project development in their discretion as CEQA lead agency and as Tidelands trustees.

We strongly believe that the voluntary and cooperative CAAP process established by the Ports remains the most appropriate forum for the Ports and the air regulatory agencies to discuss technical and policy issues related to reducing emissions from port-related sources. As stated above, we remain committed to achieving the clean air goals identified in the CAAP and working with port industry and the air regulatory agencies on implementation of appropriate strategies.

For your reference, attached is our comment letter dated July 10, 2012, expressing our preliminary concerns related to the proposed Measure IND-01 and a comment letter dated May 4, 2010, in which the Ports initially expressed concerns regarding backstop rules.

Proposed Off-Road Mobile Source and Advanced Control Technology Measures

The Draft 2012 AQMP also identifies the San Pedro Bay Ports as "Implementing Agencies" for several of the proposed Off-Road measures (OFFRD-02, OFFRD-04, and OFFRD-05) and Advanced Control Technology measures (ADV-01, ADV-02, ADV-03, ADV-04, and ADV-05). The Ports should not be listed as Implementing Agencies, which the AQMP Appendix IV-A defines as "the agency(ies) responsible for implementing the control measure." While the Ports have been moving forward with voluntary efforts in these areas, as mentioned above, the Ports are not air agency regulators. We also do not own or operate the equipment identified in the proposed measures, and therefore we do not have direct control over any of the sources listed. During the Advisory Committee meetings, AQMD staff has provided clarification that the Ports are listed as Implementing Agencies because of our voluntary commitments to work on these

[1] The Ports' experience with the first phase of the 2006-2010 CAAP showed that in actual implementation, many CAAP measures were carried out in a different manner than originally conceptualized, or not carried out at all, based on limitations on the Boards' opportunities and their exercise of their discretion to manage Tidelands assets and funds under real-world circumstances. Some of the CAAP measures can only be implemented if businesses apply to the Ports for permits to build or expand their lease premises and CEQA mitigation required by law or lease conditions that can be negotiated with a Port tenant. Other CAAP measures involve emissions sources (rail or ocean vessels) that may assert federal preemption against efforts to compel use of specific technology, so the CAAP goals involve the Ports offering economic incentives in voluntary compliance programs, such as the Ocean Vessel incentive programs. However, only the Boards have the legal authority to fund such incentives or impose CEQA mitigation or lease conditions to project approval, which decisions also fall within the Boards' sole discretion regarding their respective Port's properties and their individual Harbor Revenue Fund budgets, which may be affected by the global economy.

efforts, and that being listed as an implementation agency does not obligate the Ports to any specific requirement, however, this is contrary to the language of the AQMP that implementing agencies are "responsible for implementing the control measure." We believe that listing the Ports, and not including all of the other public and private partners that are also working on these efforts, gives the impression that the Ports do have an assigned obligation, or that the Ports must bear a larger burden in the effort to implement these programs. We also repeat our comment stated above that the AQMD cannot mandate in the AQMP that the Ports must expend monies in these voluntary efforts, since most of these Off-Road and Advanced Control Technology measures require incentive monies to fund demonstration projects or accelerated use of new technology.

We believe that the appropriate Implementing Agencies for these measures are the United States Environmental Protection Agency and the California Air Resources Board.

The Ports urge AQMD to make all of the above-requested changes to the draft 2012 AQMP, in particular, to eliminate Measure IND-01 Port Backstop Rule as a legally unnecessary measure exceeding AQMD's authority and violating the State Tidelands Trust. We believe it is much more effective to advance our mutual clean air goals for our agencies to continue working cooperatively together, but if the AQMD takes the above 2012 AQMP measures forward, the Ports will have no choice but to vigorously oppose such action through the administrative and legal process.

Sincerely,

Chris Lytle
Executive Director
Port of Long Beach

Geraldine Knatz
Executive Director
Port of Los Angeles

HAT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
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Rick Cameron, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Chris Cannon, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles
David Reich, Los Angeles City Mayor's Office

Attachment 1

July 10, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

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The two Ports have a proven track record of developing and implementing appropriate and effective emission reduction strategies. These efforts have been entered into voluntarily, working cooperatively with operators in the port area and the air quality regulatory agencies (i.e. Environmental Protection Agency, California Air Resources Board and AQMD). Since the Ports initially implemented the CAAP, many of the port-related control strategies have been or will be superseded by state or international requirements, such as the rules for replacing drayage trucks, switching to cleaner marine fuels, and using shore power while at berth. The Ports' emissions inventories in 2010 show reductions that are meeting or are in excess of the emission reductions that the Ports committed to in the San Pedro Bay Standards. However, it is important to note that in order to remain on track to meet the Standards, a collaborative and concerted effort with our agency partners is essential, with the understanding that while the Ports can achieve significant emission

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The Ports are sustaining and growing long-standing successful CAAP programs, such as the Vessel Speed Reduction Incentive Program and, on July 1, 2012, the Ports implemented new, groundbreaking incentive programs to encourage cleaner ocean-going vessels to call at the Ports. With programs such as these, along with the above-referenced regulatory rules becoming effective and ensuring significant additional emission reductions by 2014, there is no identified need for implementing a backstop measure. The AQMD's proposed backstop measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

It is inappropriate for the AQMD to attempt to regulate the Ports, which are the Harbor Departments of the cities of Long Beach and Los Angeles, in an attempt to control emissions from equipment within our boundaries, but which we do not own or operate. Further, the proposed backstop measure identifies that the "…requirements will be triggered if the reported emissions for 2014 for port-related sources exceed the 2014 target milestone, *or the Basin fails to meet the 24-hour PM2.5 standard as demonstrated in the 2012 AQMP and basin-wide reductions are needed, in which case a new reduction target for each pollutant will be established*." (emphasis added). While clarification has been provided by AQMD staff that any effort to make up for a basin-wide shortfall will be the responsibility of all sectors, not just the Ports, this statement still implies that if the port industry meets their targeted emission reductions, but other sectors fail to meet their fair share obligations, then the AQMD will mandate additional reductions from the Ports. This is counter to the cooperative relationship that our agencies have established since we began working together on the CAAP in 2006, and ignores the tremendous air quality benefits that have been gained from voluntary actions.

Lastly, based on the preliminary calculations by AQMD, the majority of the region is expected to be in attainment for PM2.5 by the target year of 2014, with the remainder anticipated to be in attainment by the expected extension date of 2019. The inclusion of IND-01 is therefore unnecessary for the region to reach attainment. If these emission reductions are needed in the baseline emissions calculation, there is precedent for mechanisms other than control measures to be used for this purpose, and we would like to discuss those options with your staff.

We strongly believe that the voluntary and cooperative CAAP process established by the Ports remains the most appropriate forum for the Ports and the air regulatory agencies to discuss technical and policy issues related to reducing emissions from port-related sources. As stated above, we remain committed to achieving our fair share of clean air goals identified in the CAAP and working with port industry and the air regulatory agencies on implementation of appropriate strategies.

For your reference, attached is a comment letter dated May 4, 2010, in which the Ports initially expressed concerns regarding backstop rules. The letter was submitted as a public comment on the proposed Rules 4010 and 4020, which were proposed backstop rules for health risk and criteria pollutant emissions.

We look forward to working with AQMD on resolving our concerns related to the proposed backstop measure in the Draft 2012 AQMP.

Sincerely,

CHRIS LYTLE
Executive Director
Port of Long Beach

MICHAEL R. CHRISTENSEN
Deputy Executive Director, Development
Port of Los Angeles

HAT:s

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Robert Kanter, Port of Long Beach
Rick Cameron, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Chris Cannon, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles

Attachment 2

San Pedro Bay Ports Clean Air Action Plan

May 4, 2010

Susan Nakamura
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Subject: AQMD Proposed Rules 4010 and 4020

Dear Ms. Nakamura:

This letter is on behalf of the Ports of Long Beach and Los Angeles (Ports) as a preliminary response to the "backstop" Rules 4010 and 4020 (Proposed Rules) proposed by the South Coast Air Quality Management District (AQMD). As will be explained below, based upon the limited amount of information released by the AQMD about the Proposed Rules thus far, the Ports have a number of preliminary questions and concerns at this stage of the first public consultation meeting and will be providing more detailed comments on the Proposed Rules at a later stage.

The Ports have had tremendous success with implementing the San Pedro Bay Port Clean Air Action Plan (CAAP). The development of the original CAAP and the update to the CAAP has been conducted through a cooperative effort with staff from the AQMD, the United States Environmental Protection Agency (EPA), and the California Air Resources Board (CARB). The Ports strongly believe that this partnership of over four years, and the collaboration that has occurred throughout that time, have aided in the success of the CAAP and the emissions reductions that have been achieved.

Since the CAAP was adopted in late 2006, the Ports have exceeded our interim emissions reductions milestones and are well on our way to meeting the original forecasted emissions reductions of at least 45% by 2011, compared to uncontrolled conditions. This has been accomplished through the steadfast implementation of CAAP measures, highlighted as follows:

- Development, approval, and implementation of the Clean Trucks Program in which two major milestones have been achieved resulting in truck pollution reductions of nearly 80% (January 2010), almost two years ahead of schedule (HDV1).
  - October 2008: ban pre-1989 trucks.
  - January 2010: ban pre-1993 trucks; 1994-2003 trucks require Level 3 plus NO_x retrofit.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

- Facilitated construction of an LNG on-road truck fueling station in the port area. Fueling operations have been underway since early 2009. In addition the Ports have contributed to funding the construction of two additional LNG on-road truck fueling stations in the Port area, due to open later in 2010 (HDV2).
- Over $6.5 million in incentives for vessels participating in the voluntary Vessel Speed Reduction Program and Vessel Fuel Incentive Program (OGV1, OGV4).
- Design, construction, and operation of shore power infrastructure completed at 5 berths and underway for over 40 additional berths (OGV2).
- Replaced entire fleet of port switching locomotives with new, cleaner locomotives in 2008, and a subsequent fleet turnover to cleaner locomotives anticipated by end of 2011 (RL1).
- Provided funding of $5.4 million toward projects through our Technology Advancement Program, conducted with input from an Advisory Committee consisting of AQMD, EPA, and CARB.
- The Ports' 2008 Emissions Inventories show combined emission reductions of 20% diesel particulate matter (DPM), 10% nitrogen oxides (NOx) and 24% sulfur oxides (SOx) compared to the 2005 baseline. The 2009 Emissions Inventories, which are expected to be finalized and published in June, will show an even greater level of emission reductions as additional CAAP efforts have come into effect.

In addition to the implementation efforts listed above, the Ports have also worked in coordination with CARB and EPA on development of rules and regulations affecting port sources. These regulatory requirements have helped to ensure that emissions reductions from specific equipment types operating at the Ports will continue into the future. The Ports look forward to continuing these cooperative efforts on regulatory development with CARB and EPA, with the support of AQMD, to ensure that the early action measures being taken by the Ports are supported and implemented more broadly.

Further, as you are aware, the Ports recently released our draft CAAP Update, where we revisited and updated each of the control measures and proposed aggressive, long-term goals for emissions reductions and health risk reductions, titled the San Pedro Bay Standards. Once the CAAP Update is adopted, the Ports will quantitatively measure our progress against these long-term goals and will make adjustments to our implementation efforts over time as necessary to ensure that we remain on track for achieving these goals.

With these demonstrated results carried out voluntarily, and further efforts underway, the Ports regard the AQMD's proposed Rules 4010 and 4020 as unnecessary, and raise several questions regarding the Proposed Rules and the rulemaking process. Below is a list of preliminary questions to help us gain a better understanding of the AQMD's proposed approach:

Emissions and Health Risk Reduction Targets

Proposed Rule 4020 Sections (d) (1) and (2) will include targets for criteria pollutant and health risk reductions to be met by the Ports to avoid triggering the backstop provisions. The Ports have the following concerns and questions regarding the targets:

1. How were the targets developed? In June 2007, the Ports provided AQMD with detailed comments and concerns regarding the methodology and the specific port-related emission reduction targets contained in the 2007 Air Quality Management Plan (AQMP). CARB declined to adopt the port targets into the 2007 State Implementation Plan (SIP). In the AQMD Governing Board's resolution adopting the 2007 AQMP, it committed that AQMD staff would work with the Ports and, based on its technical review, would recommend any appropriate adjustments to the AQMP criteria pollutant targets attributable to the Ports. Although initial coordination efforts have occurred, the AQMD has not completed detailed analyses necessary for the Ports to understand how the AQMP targets and the targets contained in the Proposed Rules have been developed, or to understand how these targets differ from the Emission Reduction Standards contained in the Draft 2010 CAAP Update. We request that the AQMD present the methodology and resulting targets to a Stakeholder Working Group, including the Ports, before progressing further with the rulemaking process. Further, to the extent that the targets in proposed Rule 4020 go beyond the 2007 SIP/AQMP targets to address future regulations that have not yet been adopted, the Ports have even greater concerns.

2. The Emission Reduction Standards contained in the Draft 2010 CAAP Update were developed by the Ports in coordination with the EPA, CARB, and AQMD. Achievement of these Standards will require aggressive implementation of strategies by the Ports and the port operators. Further, the Standards are predicated on a conservative 2007 cargo forecast developed before the recent economic crisis and assume that the Ports reach capacity in 2023. Instead, there has been a significant downturn in cargo volumes from 2008 to present, such that the Ports do not anticipate returning to 2007 cargo throughput levels until 2014-2015, and reaching capacity until approximately 2035. This has reduced the Ports' emissions footprint, as well as potentially reduced the Ports' proportion of basin-wide pollution. Nonetheless, to be conservative and to voluntarily strive to ensure a "fair share" contribution of port-related sources to regional attainment goals, the Ports retained the higher growth forecast in the CAAP. It is important to note that, even with these higher than anticipated rates of future emissions growth, the Ports project DPM reductions greater than 70%, SOx reductions greater than 90%, and NOx reductions of nearly 60% by 2023.

3. The 2007 SIP identified several regulatory and technology strategies to be undertaken by EPA and CARB to contribute to the reduction in port-related emissions. This is consistent with the philosophy that achieving emission reductions from port-related sources must be a cooperative partnership effort, because no one entity can meet the need by itself. Since the 2007 SIP was developed, for various reasons including technical feasibility, technology availability, and cost-effectiveness, several key federal and state regulatory and technology strategies have failed to occur. These include, but are not limited to: commercial availability of Tier 4 line haul and switcher locomotive engines in 2012, implementation of a statewide regulation requiring use of shoreside power for all vessel types while at berth, and implementation of a statewide regulation requiring retrofitting of existing ocean-going vessels and the preferential deployment of progressively cleaner new build vessels to California ports. The Ports are concerned that the emission reductions associated with these proposed EPA and CARB strategies are now being fully assigned to the Ports through the proposed targets in order to make the

SIP "whole," even though the strategies may not be technically feasible and/or cost-effective. Further, as you know, the Ports do not own or operate the emissions sources targeted by this regulation and the Ports may not have implementation mechanisms available within their jurisdiction to implement the controls even if they were deemed feasible and cost-effective.

DISTRICT RULEMAKING PROCESS

The Ports have a number of initial questions geared towards gaining a better understanding of AQMD's intended rulemaking process for the Proposed Rules.

4. As suggested above, will the AQMD form a Stakeholder Working Group, including the Ports, to discuss the AQMD's Proposed Rules and analysis?

5. What is the AQMD's authority for regulating the Ports under the Proposed Rules?

6. The Ports would like to understand what level of CEQA analysis the AQMD is proposing for this rulemaking. Will there be a scoping meeting?

7. When will the AQMD release a Preliminary Draft Staff Report (PDSR)? Given the unprecedented nature and broad technical, practical, regulatory, and legal implications of these Proposed Rules, we believe that the PDSR must be very detailed or the Ports, air agencies, and other stakeholders will not have the information necessary to participate fully in the rule development process. We request that the PDSR include:
    a. Technical analysis of the Proposed Rules, targets, etc.
    b. An analysis of potential Draft Findings required under Health and Safety Code (e.g., Necessity, Authority, Clarity, Consistency, Non-Duplication, and References)
    c. Detailed information on control technologies and programs that the AQMD believes the Ports and affected sources would need to implement to meet the proposed rule reduction requirements.
    d. As part of cost-effectiveness analysis, detailed information on the feasibility, control effectiveness, and costs of these technologies and programs, including who would bear those costs. The AQMD should work with the Ports, their tenants, and others in the goods movement industry to estimate these costs.
    e. A preliminary Socioeconomic Impact Report (SIR) based on input from the Ports, their tenants, and other affected industries. Given the broad implications to the region's economy, the Ports recommend a detailed preliminary SIR be prepared and released with the PDSR.
    f. AQMD's proposal for how it will specifically apply the scheme of fines, penalties, or other enforcement provisions of the Health and Safety Code to the Ports to enforce the Proposed Rules, including providing an understanding of how the enforcement action would be assessed, given that the Ports are two separate and distinct departments of their respective cities.

The Ports look forward to receiving AQMD's responses to these preliminary questions. We will follow up with additional questions and comments later, as more information is provided by AQMD on the proposed rules.

The Ports are committed to achieving aggressive and feasible emissions reductions and health risk reductions from port-related sources, and have already proven that such reductions can be achieved while allowing the Ports to continue to move forward as a strong economic engine for the region. The Ports remain committed to implementing the CAAP and working in cooperation with the agencies and the industry to achieve our goals. We believe the Proposed Rules are unnecessary and that the AQMD should consider alternative mechanisms to achieve the AQMD's goals. We bring to your attention that the Bay Area AQMD initiated a backstop measure but ultimately determined to pursue a Memorandum of Agreement approach for similar work with the Bay Area ports.

If you have any questions regarding this correspondence, please contact Heather Tomley, Assistant Director of Environmental Planning, Port of Long Beach, at (562) 590-4160; or Christopher Patton, Environmental Affairs Officer, Port of Los Angeles, at (310) 732-3677.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Director of Environmental Management
Port of Los Angeles

cc: Dick Steinke, Executive Director, POLB
Geraldine Knatz, Executive Director, POLA
Mike Christensen, Deputy Executive Director, POLA
Robert Kanter, Managing Director, POLB
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

October 22, 2012

Jeff Inabinet
c/o Office of Planning, Rule Development, and Area Sources/CEQA Facilities
South Coast Air Quality Management District Development and Planning Branch
21865 Copley Drive
Diamond Bar, CA 91765-4182

Subject: Draft 2012 AQMP Program Environmental Impact Report

Dear Mr. Inabinet:

The Port of Long Beach (POLB) and Port of Los Angeles (POLA) appreciate the opportunity to comment on the Draft Program Environmental Impact Report (Draft EIR) developed for the 2012 Air Quality Management Program (AQMP). The ports appreciate that AQMD staff took steps to address the scoping comments provided by the ports, specifically the inclusion of a transportation and traffic impact analysis as part of the Draft EIR.

However, the ports must reiterate their concerns relating to AQMP Control Measure IND-01 (Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources). As the AQMD knows from prior comment letters submitted by the ports (please see AQMP comment letters dated August 30, 2012; July 10, 2012; and May 4, 2010), the ports believe that Measure IND-01 exceeds the AQMD's authority and should not be included in the AQMP for the reasons set forth in the referenced letters.

Measure IND-01 also contains various flaws which contribute to the inadequacy of the Draft EIR and failure to comply with the California Environmental Quality Act (CEQA). First, Measure IND-01, as described in the project description of the Draft EIR and in the AQMP itself, is unconstitutionally vague and lacks sufficient description of exactly what it proposes to impose on the ports or substantial evidence in support. The Draft EIR's failure to describe the project fully makes it impossible for AQMD, the ports, or the public to assess its 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. Because of the importance and consequences of the AQMP to the State of California's State Implementation Plan (SIP) if adopted by California Air Resources Board (ARB), and to the Federal Clean Air Act enforcement if approved by the U.S. Environmental Protection Agency (EPA), the AQMD is required to fully disclose the details of Measure IND-01 before adoption, and CEQA requires a full disclosure and discussion, which AQMD has failed to do.

Second, to the extent the AQMD intends to approve the Draft EIR and AQMP containing the vague current version of Measure IND-01, and later, as a part of future rulemaking, provide details regarding its proposed actions against the ports including an environmental assessment, that would be segmentation or piecemealing of its CEQA analysis.

Third, Measure IND-01 has serious problems of infeasibility which the Draft EIR has failed to analyze at all. Measure IND-01 in effect attempts to convert the ports' various aspirational goals, set forth in their voluntary Clean Air Action Plan (CAAP), into enforceable regulation against the ports. However, the CAAP goals depend upon future technology advancement which has not yet occurred, all of which are beyond the control of the ports. Therefore, there are technology feasibility issues with the AQMD making the ports' goals into required emissions limits. Further, as the ports are not air regulators and they do not themselves own, operate, or control the emissions equipment operated by the port industry, there are legal feasibility questions over the ports' ability to exercise authority to carry out the actions of Measure IND-01. There are also serious legal feasibility questions including federal preemption asserted by railroads in connection with locomotive specifications and rail operations, and international preemption asserted over ocean vessels. The Draft EIR is flawed in its failure to discuss these infeasibility issues, and had it done so, it would lead to the conclusion that Measure IND-01 should be removed from the AQMP.

Fourth, the AQMD has concluded in the air quality analysis that specific measures associated with Measure IND-01 "are unknown, and therefore the impacts are speculative," (see page 4.2-7 of Draft EIR). This is yet another reason why the Draft EIR is flawed. CEQA Guidelines Section 15145 specifies that if, after thorough investigation, a Lead Agency finds that a particular impact is too speculative for evaluation the agency should note its conclusion and terminate discussion of the impact. Instead, the AQMD proceeded to analyze secondary impacts to air quality that are based on speculative assumptions regarding construction emissions, energy demand, and operations.

Lastly, to the extent that Measure IND-01 proposes to impose upon the ports a form of enforcement for port industry's failure to meet the CAAP's target emissions reduction goals, when the ports do not own, operate, or control the emissions sources, it violates constitutional limitations requiring that exactions imposed on a party must be proportional to the party's contribution, when it fails to include all parties involved in the CAAP, including the actual emissions sources.

Given these deficiencies and speculation under CEQA and with the AQMP rulemaking, Measure IND-01 should be removed from the final EIR and the AQMP, and the analysis should be revised accordingly. With this change, the ports can support the revised AQMP and can continue to work with AQMD, other agencies, and the port industry in the collaborative manner that has made the ports' voluntary CAAP a success.

Thank you for considering the above comments. If you have any questions, please contact Dylan Porter, Port of Long Beach, at (562) 283-7100 or Lisa Wunder, Port of Los Angeles, at (310) 732-7688.

Sincerely,

Richard D. Cameron
Director of Environmental Planning, Port of Long Beach

Christopher Cannon
Director of Environmental Management, Port of Los Angeles

DP:s

cc: Elaine Chang, South Coast Air Quality Management District
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

October 31, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Supplemental Comments on the Revised Draft 2012 Air Quality Management Plan

Dear Dr. Wallerstein:

The Port of Long Beach and Port of Los Angeles (ports) are submitting this comment letter to add to comments previously submitted on August 30, 2012.

As members of the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) Advisory Committee, the ports have worked with AQMD staff to provide comments on the draft plan, including the emissions data being used. Included in this effort, ports' staff provided the 2008 base year emissions inventories for the port sources based on the most recent methodologies agreed upon by the Technical Working Group (TWG) in the ports' 2011 air emissions inventories.

As noted in the Draft AQMP, *"An effective AQMP relies on an adequate emission inventory."* Discrepancies exist between the emissions inventories prepared by the ports and the inventory prepared by the AQMD. The emissions shown in the Draft 2012 AQMP are different from those prepared by the ports in cooperation with the AQMD, California Air Resources Board, and Environmental Protection Agency, during development of the San Pedro Bay Standards. If the AQMD's emissions projections for achieving attainment are incorrect, the concerns expressed in our August 30 comments are greatly increased. The emissions projections drive both the Measure IND-01 analysis and the PM2.5 analysis. The basis for the Draft 2012 AQMP emissions projections is impossible to determine, because the assumptions and methodologies (including control factors and growth factors) are not disclosed.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

Additionally, it concerns the ports that the AQMP has made a commitment to Measure IND-01 before AQMD has released details of its intended implementation actions against the ports, or the socioeconomic and other analyses for such actions. Elaine Chang admitted at the AQMD's October 24, 2012, meeting that it is unknown what a port compliance plan would include and that AQMD would develop it during a future rulemaking process. This violates due process, to commit to implement an AQMP measure without disclosing what AQMD's actions against the ports will be under the backstop measure, as it deprives the public and the ports of the opportunity to review and comment to influence the decision, prior to committing to it in the AQMP.

This further demonstrates that the collaborative process established by the ports and the air quality regulatory agencies remains the most appropriate forum to identify and implement strategies to reduce emissions from port-related sources.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

AT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Randall Pasek, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Robert Kanter, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

November 8, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Dear Dr. Wallerstein:

SUBJECT: COMMENTS ON THE DRAFT SOCIOECONOMIC REPORT FOR THE DRAFT 2012 AIR QUALITY MANAGEMENT PLAN

The ports of Los Angeles and Long Beach (Ports) appreciate the opportunity to comment on the South Coast Air Quality Management District's (AQMD) Draft Socioeconomic Report for the Draft 2012 Air Quality Management Plan (AQMP).

The Draft Socioeconomic Report states that "District staff performs a socioeconomic analysis of the Draft Plan in order to further inform public discussions and the decision making process of the Draft Plan." However, the Draft Socioeconomic Report shows that no cost data have been developed for Measure IND-01 – Backstop Measures for Indirect Sources of Emissions from the Ports and Port-Related Sources, despite the fact that there are real and significant costs to the Port industry to implement the emission controls that could result from the proposed Backstop Measure. Presentation of this measure to AQMD's Board, as well as the public, is incomplete without an associated socioeconomic analysis. Potential regulation of the Port could have a very significant economic effect on the region that AQMD does not address, and therefore the Ports believe that it is inappropriate to move forward with inclusion of this measure in the Draft AQMP without a full socioeconomic analysis.

By not including a socioeconomic analysis of Measure IND-01, the AQMD is completely ignoring the economic importance of the Ports. The Ports are a major economic engine for the region and nation, and port-related industry generates $5.1 billion and $21.5 billion in state and federal tax revenue, respectively. The Ports account for over 1.1 million jobs in California and 3.3 million jobs in the United States. Additionally, for every one job created by a Port customer, nearly 1.7 additional jobs are created elsewhere in the region.

Even just the potential of additional regulation of the Ports brings with it a significant uncertainty for the Port industry that may result in the diversion of goods to other ports outside of this region. There are more environmental requirements on the Port industry operating in this region than anywhere else in the world. The threat of additional regulatory requirements, especially when no details have been provided as to what those requirements would be, results in significant concerns for these operators and a significant potential for loss of regional economic benefits due to diversion. The Draft Socioeconomic Report fails to analyze this potential impact.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

Additionally, AQMD has indicated that Measure IND-01 does not have a socioeconomic analysis associated with it because there are no emission reductions associated/committed with this measure. As noted in our comment letter on the Draft AQMP dated August 30, 2012, Section 39602 of the California Health and Safety Code states that, the State Implementation Plan (SIP) shall only include those provisions necessary to meet the requirements of the Clean Air Act. Hence, there is no identified need or legal basis for implementing Measure IND-01. AQMD's proposed measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

Finally, as stated in our letter dated October 31, 2012, Measure IND-01 should not move forward because the AQMP makes a commitment to implement it before AQMD has developed or released details of its intended compliance actions against the Ports, or the socioeconomic and other analyses for such actions. Failing to disclose the AQMD's intended actions against the Ports violates due process, depriving the public and the Ports of the opportunity to adequately review and comment on this measure prior to finalizing the AQMP.

For the reasons listed above and those presented in our previous letters, the Ports reiterate our consistent position that Measure IND-01 should be eliminated from the AQMP. Further, we continue to believe that the successful, collaborative approach established by the Ports and the regulatory agencies remains the best mechanism for identifying and implementing strategies to reduce emissions from Port-related sources.

Sincerely,

CHRISTOPHER CANNON
Director of Environmental Management
Port of Los Angeles

RICHARD D. CAMERON
Director of Environmental Planning
Port of Long Beach

CC:CLP:KM:LW:myd
ADP No.: 061024-605

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Robert Kanter, Port of Long Beach
Mike Christensen, City of Los Angeles Harbor Department, Deputy Executive Director
Dominic Holzhaus, City of Long Beach, Deputy City Attorney
Joy Crose, City of Los Angeles Harbor Department, General Counsel

November 19, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Ports' Proposed Revision and Resolution Language for the Draft 2012 Air Quality Management Plan

Dear Dr. Wallerstein:

On November 15, 2012, staff from the ports of Long Beach and Los Angeles met with AQMD Boardmember Judy Mitchell and AQMD staff to discuss concerns and comments that have been raised by the ports in previous comment letters on the Draft 2012 Air Quality Management Plan (AQMP). At the conclusion of the meeting, it was determined that staff would continue to work together to attempt to resolve the concerns that have been raised.

In that spirit, the ports of Long Beach and Los Angeles propose the following revisions to the 2012 AQMP, consistent with our past comment letters to AQMD:

1. Measure IND-01 must be removed from the 2012 Air Quality Management Plan if it continues to apply or recommend any form of AQMD oversight and approvals of the ports' actions, or enforcement (in terms of fines, penalties, administrative actions) against the Ports for failures of the Port industry to achieve designated emissions reductions. This includes the intent to develop such enforcement actions in later IND-01 rulemaking after adoption of the AQMP, even if such details regarding enforcement activity are absent from the draft AQMP.

2. With the removal of the Measure IND-01, the following language could be added to the adopting resolution for the 2012 Air Quality Management Plan:

   BE IT FURTHER RESOLVED, the District commits to continue working with the Port of Long Beach and the Port of Los Angeles on the implementation of the San Pedro Bay Ports Clean Air Action Plan (CAAP) in order to meet the emission reduction goals identified in the San Pedro Bay Standards, and as a part of the annual report to the Board, District staff will continue to provide information on the progress of the ports in implementing the CAAP.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

BE IT FURTHER RESOLVED, if the ports do not demonstrate sufficient progress for achieving the San Pedro Bay Standards, the District will work with the ports, the other air quality regulatory agencies, and port industry emission sources that are stakeholders under the CAAP, to identify additional feasible strategies for implementation within the ports' jurisdiction.

We look forward to discussing these recommendations with you.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

HAT:s

cc: AQMD Boardmember Judy Mitchell
Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Susan Nakamura, South Coast Air Quality Management District
Robert Kanter, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

November 27, 2012

Ms. Susan Nakamura
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Ports' Comments on South Coast Air Quality Management District (AQMD) Revisions to Measure IND-01 in Draft 2012 Air Quality Management Plan

Dear Ms. Nakamura:

Thank you for the AQMD's proposed revisions to Measure IND-01, "Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities" (IND-01) in the Draft 2012 Air Quality Management Plan (AQMP). We appreciate that efforts were made by AQMD staff to address the concerns that the ports of Long Beach and Los Angeles (Ports) have raised in our various comments letters on the AQMP and in our meeting on November 15, 2012 among the Ports' staff, AQMD staff and AQMD Boardmember Judy Mitchell.

However, the ports are disappointed that the fundamental structure of Measure IND-01, to treat the ports as "stationary sources" and "indirect sources," and convert the ports' voluntary Clean Air Action Plan into enforceable regulation by AQMD, was not altered in any respect. The ports do not own or operate any of the targeted equipment, and the ports are not regulatory agencies. The ports can't accept any regulatory action by the AQMD that will result in AQMD oversight and approvals of port actions, or enforcement actions by AQMD on the ports for failure of the port industry to meet the ports' emission reduction goals. Therefore the Ports continue to object to Measure IND-01's inclusion and request that it be removed from the AQMP. Measure IND-01 contains the fatal flaw of defining the ports as stationary and indirect sources responsible for the emissions from equipment they do not regulate, own, or control. We also believe that this measure is beyond AQMD's authority.

We reiterate our prior requests that AQMD reconsider its approach and allow the continuation of the successful collaborative work by the ports, regulatory agencies and other stakeholders under the voluntary Clean Air Action Plan and San Pedro Bay Standards. Moving forward with Measure IND-01 in this current draft form will actually reduce rather than improve the future success of programs, since conversion of voluntary plans into regulation will reduce voluntary

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

cooperation by the industry with port programs, and will eliminate the ability of the ports, agencies and industry emissions sources to obtain grants to accelerate emission reductions from port industry equipment.

Thank you for your continued attention to this matter and we hope that we can continue with the successful, cooperative partnership that we have built over the past seven years.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

HAT:s

cc: AQMD Boardmember Judy Mitchell
Barry Wallerstein, South Coast Air Quality Management District
Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Chris Lytle, Port of Long Beach
Robert Kanter, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Geraldine Knatz, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles

January 31, 2014

VIA E-MAIL – rpasek@aqmd.gov

Mr. Randall Pasek, Ph.D.
Planning Manager, Off-Road Section
Mobile Source Division
Science and Technology Advancement
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91756-4178

Re: Comments on South Coast Air Quality Management District Proposed Rule 4001 — *Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports*

Dear Mr. Pasek and Staff of the South Coast Air Quality Management District:

On behalf of the City of Long Beach (referred to herein as "COLB") and the City of Los Angeles acting by and through their respective Harbor Departments ("COLA"), and collectively with COLB referred to herein as the "Cities"), we appreciate this opportunity to submit comments on the South Coast Air Quality Management District's ("District") recently published draft "Proposed Rule 4001 – *Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports*" ("PR 4001"), which attempts to implement "Stationary Source Measure IND-01—*Backstop Measures for Indirect Sources of Emissions from Ports and Port-related Facilities*" ("Measure IND-01") in the 2012 Air Quality Management Plan for the South Coast Air Basin ("AQMP").

As the District is well aware, the Cities have been dedicated, innovative, and effective leaders in the efforts of public agencies to improve air quality despite the fact that we have no air quality regulatory authority or control over emissions sources. The potential of additional regulation by the District in the form of PR 4001 on the ports of Long Beach and Los Angeles ("Ports") brings significant uncertainty that will have broad negative effects on the goods movement industry and the economy as a whole, and destroys the voluntary, collaborative partnership among the Cities, industry and all of the air agencies that has led to unparalleled emission reductions. PR 4001 raises questions of fairness and unacceptable delegation of responsibility from federal, state and local air regulators to individual cities.

The Cities have previously commented on, and objected to PR 4001 and Measure IND-01, and have expressed our grave concerns about the District's rulemaking approach, attempting to craft an ostensible "backstop rule" that would regulate the Cities and their respective Ports in an unprecedented manner. This letter provides the Cities' comments on PR 4001 and the District's Preliminary Draft Staff Report ("PDSR") for PR 4001 and concludes that:

I. The substance of Measure IND-01 and PR 4001 is deeply flawed from technical, jurisdictional, legal, and public policy perspectives, in ways that cannot be cured;

II. District is acting beyond its authority to adopt PR 4001;

III. The procedural process for development, public participation and adoption of Measure IND-01 and PR4001 is similarly flawed under both state and federal law; and

IV. Measure IND-01 and PR 4001 fail the requirements for inclusion in a State Implementation Plan (SIP) under the federal Clean Air Act and applicable state law and their existence within the SIP threatens the its success.

Each of these four conclusions is explained in detail below.

I. SUBSTANTIVE FLAWS IN PR 4001

A. There Is No Demonstrated Need for PR 4001

The District has failed to and cannot provide any demonstration of "need" or justification for either Measure IND-01 or PR 4001. The District's persistent demand for the Cities – and the Cities alone – to be subjected to a redundant rule to "backstop" existing and effective emission regulations, reduction plans and policies is arbitrary, discriminatory, and remains unjustified by evidence or legal authority.

We respectfully point out that the District previously proposed a "port backstop rule" as a "Mobile Source Measure MOB-03" ("Measure MOB-03") as part of the District's 2007 Air Quality Management Plan, although Measure MOB-03 included as regulated parties, the port-related emission sources. However, following the Cities' objections to that similarly-unjustified proposal, the California Air Resources Board ("CARB") excluded the Port-related emission reduction targets and the proposed MOB-03 "backstop" measure from the 2007 SIP. Despite that rejection, and despite its repeated and manifest failure to demonstrate any legitimate need the District introduced an even more unjustified form of backstop that targets the Cities alone, in the form of PR 4001.

Implementation of PR 4001 would transform the Cities' voluntary San Pedro Bay Ports Clean Air Action Plan ("CAAP") into the District's mandatory regulation of the Cities. The CAAP was a voluntary cooperative effort of Cities and all of the air regulatory agencies (including the District, CARB and the United States Environmental Protection Agency ("USEPA") designed to encourage the industry operators of emission sources to go beyond regulation. PR 4001 would improperly and illogically subject the Cities to the District's regulation for industry's failure to achieve anticipated emissions reductions from equipment not operated, owned or controlled by the Cities, or even to the potential loss of federal and state funding for emission reduction measures if the PR 4001 is adopted and included in the SIP and approved by the USEPA.

As the Cities have previously shown, there is no demonstrated need for the rule, nor is this rule necessary for regional attainment of the 2014 $PM_{2.5}$ standard. PR 4001 is unnecessarily duplicative of regulations already in place for port-related sources.[1] This violates the federal Clean Air Act and State of California Health & Safety regulations that require SIP provisions to be "necessary." The Ports' 2012 air emissions inventories show that diesel particulate emissions (DPM) have been reduced by 80% over the seven year period between 2005 and 2012, exceeding the commitments we made for 2014 and 2023 in the CAAP. Further, the Cities estimate that by 2014**, 98%** of the $PM_{2.5}$ equivalent emission reduction that PR 4001 seeks to backstop will occur as the result of regulations adopted by CARB and the International Maritime Organization (IMO).[2] The remaining **2%** of $PM_{2.5}$ equivalent emission reductions is primarily attributed to the Cities' successful voluntary vessel speed reduction incentive program which is part of the Cities' CAAP.

B. A VMEP Should Be Used To Achieve Reductions Rather than Rulemaking

To the extent the District may be seeking to ensure the emission benefits of the Cities' voluntary vessel speed reduction incentive program, there is a more appropriate and focused method in the form of the USEPA's policy and guidance for the Voluntary Mobile Source

[1] The term "port-related sources" may occasionally be used in this letter, merely for convenience and consistency with usage of that colloquial term by the District, as shorthand for the range of discrete sources of air emissions, mostly mobile, which happen to operate at or near the geographic boundaries of the respective Ports. The Ports themselves, however, are "non-operating ports" and therefore not "sources" of emissions, and there is no statutory reference to anything called "port-related sources" for purposes of air quality regulation. The Cities are governmental entities having jurisdiction over defined geographic areas, like the District, and are no more the "sources" of emissions than is the District.

[2] CARB Port Drayage Truck Rule, CARB Truck and Bus Rule, CARB Ocean-Going Vessel (OGV) Shore Power Rule, OGV Low-Sulfur Fuel Rule, CARB Cargo-Handling Equipment at Ports Rule, CARB Commercial Harbor Craft Rule, IMO North American Emission Control Area

Emission Reduction Program (VMEP). This USEPA policy provides an established process to grant SIP credit for emission reductions resulting from voluntary mobile source measures that go beyond existing regulations. The VMEP approach was intended for exactly the type of successful voluntary program such as the Cities' landmark CAAP, and should be used to account for the 2% of port-related emissions not currently backstopped by regulation. Use of the VMEP would allow the continuation of a successful voluntary approach that has industry support eliminating the risk of cargo diversion that would be caused by the uncertainty inherent in the ill-conceived regulatory structure of PR 4001.

The USEPA's established VMEP process that was conceptualized for programs such as the Cities' vessel speed reduction incentive program and other CAAP measures is a feasible and preferable alternative to PR 4001 as it will accomplish the objectives sought by Measure IND-01 and PR 4001 and ensure that the emissions reductions achieved by the program are credited in the SIP. Further, a VMEP, which can be implemented by a memorandum of understanding, will achieve the same emissions reductions while allowing grant funds to continue to remain available for actions going beyond regulations and will do so in a collaborative manner. It will also encourage other port partners, as well as cities and regions throughout the nation, to develop and pursue innovative voluntary programs and solutions that best fit their needs to improve air quality and public health. The Cities are open to discussing mechanisms, contractual or otherwise, by which the Cities and the District can formalize a VMEP to ensure the voluntary emission reductions are maintained in future years.

C. PR 4001 Emissions Reduction Target Methodology is Flawed

Table 5 of the District's Preliminary Draft Staff Report shows the overall combined 2014 target emission reduction of 75% resulting from the application of the Cities' CAAP 2014 emissions reduction goals for NOx, SOx, and DPM compared to the CAAP 2005 baseline, but fails to specify a mechanism to harmonize the AQMP inventory values with the Cities' reported air emissions inventories. Furthermore, the use of a fortuitous similarity in 'percent reduction' cannot be the basis of any type of backstop rule.

Since the 2012 Final AQMP emissions inventory uses a baseline year of 2008 that includes the Cities' 2008 emissions inventories, the 2005 baseline emissions should be replaced with the more appropriate 2008 emissions estimates to determine the overall $PM_{2.5}$ equivalent emissions reduction target. Based on the Cities' calculation, using the District staff's methodology, by applying the CAAP reduction factors to the 2008 baseline inventory, the overall combined target $PM_{2.5}$ equivalent emission reduction is 68%, as shown in the following table:

Emissions Inventory	NOx	SOx	$PM_{2.5}$	$PM_{2.5}$Eq
	(tons per day)			
CAAP 2005 Baseline[1, 3]	87.45	33.39	4.73	28.54
Ports Combined 2008 Total Port-Related Emissions[2, 3]	78.6	25.5	3.7	22.7
CAAP 2014 Reduction[4]	22%	93%	72%*	-----
2014 Estimated Inventory[3]	68.21	2.34	1.32	7.34
Overall $PM_{2.5}$ Equivalent Reduction Between 2008 and 2014				68%

[1] From Table 2 of Preliminary Draft Staff Report for PR 4001
[2] From Table 3 of Preliminary Draft Staff Report for PR 4001
[3] 2005 and 2008 emissions are based on the Ports' 2011 emission estimation methodologies.
[4] CAAP 2014 Bay-Wide Standards emission reduction goals for NOx, SOx and DPM
*Please note that that the CAAP 2014 emission reduction goal of 72% is for DPM, not for PM.

In determining the 2014 emission reduction targets for PR 4001, District staff applied the Basin-wide percent reductions from 2008 to 2014 and 2019 to the Cities' 2008 inventory to arrive at the forecasted net emissions reduction percentages of 75% for 2014 and 2019 (page 11 of Preliminary Draft Staff Report). This approach is not appropriate because the Basin-wide percent reductions are based on an inventory of emissions from overall sources (including non-port-related) in the South Coast Air Basin (SCAB). Therefore, the approach taken in PR 4001, is not directly applicable to what the Rule describes as "port-related emissions." Since the SCAB estimates include emissions from what the District erroneously describes as the "port-related source" categories, as well as sources operating elsewhere in the SCAB, the 75% emission reduction target specific to the ports of Long Beach and Los Angeles is questionable. As an example, SCAB-specific emissions from heavy-duty vehicles includes emissions from all heavy-duty trucks operating in the basin, including those associated with construction activities, public fleets, utility, intrastate, interstate, and drayage trucks, while the ports-specific heavy-duty truck emissions inventory only includes activity and emissions associated with port-related drayage trucks.

It is also important to note that the District's December 2013 Preliminary Draft Staff Report for PR 4001 erroneously assumes that $PM_{2.5}$ emissions are equivalent to diesel particulate matter (DPM) emissions. The Cities' 2014 CAAP emission reduction goal of 72% is specific to DPM, not $PM_{2.5}$ as assumed in the calculation of the $PM_{2.5}$ equivalent emissions reduction goal of 75%. Each of the Port's annual air emissions inventories separately estimate DPM and $PM_{2.5}$. As shown in their annual reports, the resulting emissions of DPM and $PM_{2.5}$ **are not equivalent**.

Please refer to Table 8.4 of the Port of Long Beach 2012 Air Emissions Inventory Report[3] and Table 9.4 of the Port of Los Angeles 2012 Inventory of Air Emissions Report[4].

A comparison of the $PM_{2.5}$ equivalent factors used in the 2007 AQMP , 2012 AQMP, and PR 4001 shows that there is inconsistency in how the $PM_{2.5}$ equivalent factors were derived and applied, as shown in the table below:

$PM_{2.5}$ Equivalent Factors

	VOC	NOx	$PM_{2.5}$	SOx
2007 AQMP	0.04	0.10	1.00	1.52
2012 AQMP	0.02	0.07	1.00	0.53
PR 4001	NA	0.07	1.00	0.53

In the 2007 AQMP, emissions reductions were simulated between 2005 and 2014, whereas for the 2012 AQMP, emissions reductions were simulated between 2008 and 2014. In the 2007 AQMP, the effect of each pollutant precursor's reduction on the 2014 $PM_{2.5}$concentration was considered on an annual basis, while the 2012 AQMP considers 24-hour $PM_{2.5}$concentrations. Also, the 2007 AQMP used the annual $PM_{2.5}$ concentration which was based on the average concentrations from all air monitoring stations in the South Coast Air Basin, while the 2012 AQMP only uses the average from six regional locations—Riverside-Rubidoux, Downtown Los Angeles, Fontana, Long Beach, South Long Beach, and Anaheim. The Basin-averaged conversion factors resulting from the 2007 analysis were submitted as part of the 2007 SIP (Appendix C, of the CARB staff report, "$PM_{2.5}$ Reasonable Further Progress Calculations") and were approved by the USEPA.

In addition, PR 4001(c)(6) defines "$PM_{2.5}$ Equivalent" as "the aggregate of the NOx, SOx, and $PM_{2.5}$ emissions (in tons per day) as defined by the following formula provided in the Final 2012 AQMP:

$$PM_{2.5}\text{ Equivalent} = 0.07 * NOx + 0.53 * SOx + 1.0 * PM2.5$$

The formula provided in PR 4001 does not reflect the $PM_{2.5}$ equivalent formula provided in the Final 2012 AQMP, which includes emissions of VOCs in the calculation. In PR 4001, without explanation, the District has erroneously "dropped" the contribution of VOC from the $PM_{2.5}$ equivalent formula, although the District's emissions modeling simulation shows VOCs as a contributing factor.

[3] Port of Long Beach 2012 Air Emissions Inventory. www.polb.com/emissions
[4] Port of Los Angeles 2012 Inventory of Air Emissions. www.portoflosangeles.org/environment/studies_reports.asp

Given that there have been several revisions to the $PM_{2.5}$ equivalent calculations, the text and formulae used in PR 4001 for those calculations do not appear consistent with previous approaches to such determinations. Prior to proceeding any further with PR 4001, the Cities request a scientific technical evaluation and obtain confirmation from the USEPA that the revised $PM_{2.5}$ equivalent factors and formula to calculate $PM_{2.5}$ equivalent emissoins used in the 2012 AQMP and in PR 4001 are appropriate.

D. PR 4001 Fails to Provide an Accurate and Appropriate Definition of Emissions "Shortfall"

PR 4001 would require the Cities to develop and submit an emissions reduction plan ("Plan") identifying control strategies to eliminate some potential future "shortfall" in attainment of reduction targets. The proposed rule, however, fails to identify the environmental baseline or other parameters that would be required in order for the Cities or the District to determine the extent of any emissions "shortfall" to be addressed in the potential Plan. Under PR 4001, the existence of a "shortfall" would appear to be the necessary prerequisite to trigger some responsive action on the part of the Cities, but the draft text of PR 4001 fails to provide for a timely and objective process to ascertain when and whether such a "shortfall" may have arisen.

The term "shortfall" first appears in the proposed rule in paragraph (d)(1)(A), where it appears to call for a Plan to report on progress in "meeting the shortfall." However, that would appear to be inconsistent with the structure of the proposed rule, i.e., under PR 4001, the District cannot require the Cities to submit an emissions reduction plan unless and until the annually-reported emissions reductions "show that the percent reduction in $PM_{2.5}$ from the baseline emissions is less than the reduction target" of 75% (Paragraph (e)(1)B)). There would not be any "shortfall" identified until that time; therefore, it would be premature and illogical to require the Cities to submit a Plan that "reports the progress in meeting the shortfall."

To the limited extent that the draft text of PR 4001 describes the shortfall that might trigger the need to prepare a Plan, the provisions for annual estimating or reporting of the emissions appear imprecise and vague. Also, paragraph (f) appears to contemplate that once a "shortfall" is determined to exist in one year, then the District could demand a revised Plan in following years if targets still are not met. What happens if the shortfall is "corrected" in subsequent years and targets are again being met?

PR 4001 fails to provide for any process for review or appeal of a possible District "determination" that a "shortfall" has occurred. PR 4001 fails to provide adequate time for the Cities to prepare a Plan, if required, or adequate time or procedures for the Cities to study the proposed Plan, to conduct environmental review of the Plan, or to conduct public hearings and gather input on any Plan that may be deemed to be appropriate if PR 4001 is properly triggered.

Development of a Plan should not be mandated if any eventual determination of an emissions "shortfall" is due to reasons outside of the Cities' control. As previously stated, by 2014, the emissions sources ostensibly targeted by PR 4001 are already controlled by state, federal, and international regulations. Should there be a shortfall in attaining the emissions targets, it will likely be due to factors not caused or controlled by the Cities, and not due to any action or derelictions on the part of the Cities or their tenants or users. The obligation to go through a burdensome process to prepare and approve a new Plan or to take active measures to make up for a shortfall in meeting emission reduction targets should not fall on the two Cities. The Cities are independent governmental entities who are not directly producing emissions or otherwise directly responsible for the targeted emissions or for the attainment of emission targets. The Cities are certainly not air agencies created by federal or state law with specific regulatory authority to control emissions.

E. <u>PR 4001 Improperly Provides for Moving Emissions Reduction Targets</u>

PR 4001 paragraph (c)(4) defines the "Emissions Target" as the "emissions forecast that is based on the Ports' 2008 baseline emissions **forecasted** for a specific year as provided in Appendix IV-A page IV-A-36 of the Final 2012 AQMP." This definition is confusing, as it is assumed that this reference is contained in the Final 2012 AQMP. In the description of this measure in Appendix IV, page IV-A-36, only projected levels of NOx, $PM_{2.5}$, and SOx are shown for calendar years 2014 and 2019. However, PR 4001 and the District's Preliminary Draft Staff Report discuss a 75% reduction in $PM_{2.5}$ equivalent emissions in 2014 compared to 2008 baseline levels. Again, there is a clear inconsistency between PR 4001 and the text of Measure IND-01 as actually approved by the District's Governing Board.

PR 4001 paragraph (e)(2) requires the District's Executive Officer to review the reduction target based on the latest information available including future year emission estimates in the 2016 AQMP and purports to allow the Executive Officer, by July 1, 2017 to "update," if necessary, the emission reduction target. This provision is unauthorized by IND-01 or any other rule, regulation, plan or statute, and would unlawfully vest apparently unfettered power on the Executive Officer to **change the previously-approved reduction targets**. By what authority would these targets be "revised" in the future? Under what objective standards? What public process would the District's Executive Officer need to follow in order to "develop" a proposed amendment to PR 4001 changing the targets? What environmental review/public outreach processes would be required before the Executive Officer could change the reduction targets and how would the environmental/socioeconomic impacts of such changes be addressed? How would such a moving target affect the Cities, the port communities, tenants, users, and the existing plans and policies which have proven effective in attaining the agreed and approved reduction targets?

F. The Processes For Development, Approval and Disapproval of Emission Reduction Plans Are Flawed

In the event the emissions reduction targets are not met, PR 4001 requires the Cities to submit an Emissions Reduction Plan "to address the emission reduction 'shortfall'." In addition, PR 4001 dictates the public processes of other government agencies: "…the Ports shall conduct at least one duly noticed public meeting before the Plan is presented to each respective Board of Harbor Commissioners for approval." This is an improper attempt by the District to control and dictate the exercise of "discretion" conferred on the Boards of Harbor Commissioners regarding their own notice, agenda setting, public hearing procedures and substantive decision making processes under their own applicable governing laws and rules. Neither the District's staff nor its Governing Board can require approval of the District's desired measures or override the discretion of the Board of Harbor Commissioners including decisions related to the management of the port or how port resources are allocated.

Moreover, if the Board of Harbor Commissioners disagrees that a Plan is required or specific terms of a Plan requested by the District, what process is provided for resolution of such disagreements? Under what authority would PR 4001 purport to allow the District's Executive Officer, acting alone, without even District Governing Board authority, to "disapprove" a Plan or compel a Plan to be approved by the Cities' own governing authorities? Although the Cities dispute that the District can compel or disapprove a Plan at all due to conflicting governmental authority, certainly such approval or disapproval of any Emission Reduction Plan cannot be at the sole discretion of a single District staff member.

G. PR 4001 Would Violate Constitutional Requirements of Due Process

PR 4001 also raises several questions regarding violations of Due Process. As noted above, PR 4001 would unlawfully purport to vest the District's Executive Officer with unilateral authority to "approve" or "disapprove" a Plan submitted by the Cities, without any process for public hearing, review by the District Board, or other guarantees of procedural due process for those concerned about such actions. PR 4001 also improperly fails to provide any requirement that the Executive Officer must make "findings" of "non-compliance" with some provision of paragraph (f)(1) of PR 4001, or that the Executive Officer's decisions must be based on some reasonable and objective standards.

PR 4001 fails to provide for the District giving the Cities any particular notice or justification for disapproval of a Plan, or any process for the Cities to seek review or appeal of the District's disapproval.

What would be the procedure if the PR 4001 triggered the obligation of the Cities to prepare a Plan, and the Cities duly submitted a Plan, but the District (either by its Executive

Officer or its Hearing Board) "disapproved" the Plan (per paragraph (f)(2)(C))? The Cities would apparently be required to submit a revised Plan within 60 days of the disapproval; however, that time would not be sufficient for the Boards of Harbor Commissioners and their staffs to prepare a new revised Plan, to hold new "public meetings" and gather public input, or otherwise take meaningful action on the revised Plan. PR 4001 fails to provide adequate time or process for the Boards of Harbor Commissioners to prepare, conduct CEQA review and public outreach, or to consider and approve a new revised Plan within the arbitrary 60 day time frame set by the rule.

H. PR 4001 Improperly Changes the Definition of "Feasibility" In Control Strategies and Alternatives

PR 4001 proposes to change the definition of "feasible control strategy" so that it is not consistent with the obligations that could potentially be imposed on the Cities under Measure IND-01 as adopted by the District Governing Board. Instead, PR 4001 (at paragraph (c)(1)) has changed the limitations on the proposed obligations of the Cities to achieve additional emissions reductions under PR 4001. Previously, the proposed rule was described as requiring the Cities to "propose additional emission reduction methods …[but only] *to the extent cost-effective strategies are technically feasible* and within the Ports' authority." PR 4001 has inexplicably omitted (at several points) the prior limitation on the Cities' potential obligations to measures that are "*technically feasible.*" Again, this is not consistent with the text of Measure IND-01 or any other legal or regulatory authority identified by the District.

The Cities assert that feasibility must be defined as technically, operationally, commercially, financially, and legally feasible, and within the legal and jurisdictional authority of the Cities. Further, the District must acknowledge that feasibility is also subject to the Cities' and their Boards of Harbor Commissioners' own legal and trustee obligations as governmental agencies under their City Charters and applicable laws.

The District also fails to show how it expects the Cities as governmental agencies to legally overcome the same doctrines of international and federal preemption that prevent the District from regulating mobile sources such as ocean-going vessels, rail locomotives and trucks. If the District intends that the Cities shall be compelled to pay incentives for District programs if they are unable to legally regulate mobile sources, then again this raises the jurisdictional conflict with the Cities' Boards' independent governmental discretion and legal obligations to manage their properties and revenues to serve Tidelands purposes for the benefit of the State. In this era of ever diminishing resources and increased competition the District is seemingly ignoring the lawful obligations of the Cities' Boards and insisting they place District priorities (which they themselves cannot legally accomplish) before the established responsibilities of the respective City Boards.

I. The PR 4001 Enforcement Scheme is Unconstitutionally Vague and Impermissible

PR 4001 does not describe how the District would determine the "consequences" for violation of PR 4001, nor does it identify how it would determine the sufficiency of the Cities' efforts to manage activities within the Ports. If the Cities were deemed to be in violation simply because the District may choose to "disapprove" a Plan or revised Plan, under what legal authority would the District purport to sanction the Cities in the event of some perceived "violation"?

PR 4001 fails to provide objective standards appropriate for the District to judge the sufficiency of any plans or measures proposed by the Cities to achieve the emission reduction targets. The proposed rule fails to provide sufficient detail at paragraph (f)(2)(F)(iii) as to what the consequence would be if the District were to disapprove a City's revised Plan. Also, the reference here that the Cities "shall be in violation of this Rule…" must be clarified.

Similarly, the terse discussion of the Variance and Appeal Process outlined in paragraph (g)(1) and (2) of PR 4001 is vague and fails to identify criteria or the process for the Cities to petition the District Hearing Board for a variance. PR 4001 also fails to explain the outcome should the District grant a variance.

Both Measure IND-01 and PR 4001 are unconstitutionally vague in their failure to explain exactly what fines, penalties or other administrative enforcement would be imposed on the Cities in the event that targets are missed or the District's Executive Officer disapproves a plan. The District also fails to explain how it purports to impose penalties or corrective action against another governmental entity for failure of private third party emissions sources to achieve emissions reductions that such other governmental entity is also preempted from regulating.

The District has failed to show any constitutional or statutory basis for requiring a governmental entity to devote public resources, pay exactions, administrative fines or suffer penalties for pollution caused by private entities. Similarly, the District has not shown any authority for PR 4001's attempt to shift onto the Cities liability for emission shortfalls by other parties assigned AQMP emissions reduction responsibility. The District has failed to show how PR 4001 would not violate constitutional limitations requiring exactions or penalties imposed on a party to be reasonably related to and proportional to the party's deleterious public impacts. This is especially true when PR 4001 only applies to the Cities, which are non-operating ports, while failing to include all parties involved in the CAAP including the other air agencies that jointly sponsored the CAAP, or actual owners and operators of emission sources. The District also fails to define how it would allocate liability to COLB versus COLA, when they are two separate legal entities with independent Boards as decision makers that may approve different Plans or no Plan at all. In any event, neither City is in direct control of the actual emissions sources and rudimentary principals of justice require that they should not be burdened with

sanctions, penalties, or Plan-writing responsibilities to cure the "shortfalls" of others or to act as a delegated air regulator that has no such authority.

J. PR 4001 Fails to Consider Legal Limits on Grant Funding

In the Cities' actual operating experience, demonstration that proposed activities go beyond, rather than merely comply with, enforceable regulations, is a basic requirement in both state and federal grant funding applications. The District has claimed that its adoption of PR 4001 as an enforceable rule or regulation would not prevent the Cities from continuing to be eligible for the types of grant funding that the Cities have used successfully to fund emission reduction programs. However, the District has failed to provide legal citation in support of how the governmental agencies typically funding such programs might continue to legally fund activities for the purpose of complying with existing mandates, without violating constitutional limits prohibiting payment to comply with the law as "gifts of public funds."

K. Reporting Requirements under PR 4001 are Excessive

PR 4001 paragraph (f) requires annual revisions to the Emission Reduction Plan. This is new and excessive regulation, well beyond backstopping achievement of 2014 targets, and is duplicative, unnecessarily burdensome, and has not been sanctioned or in any way approved by the District's Governing Board. Even CARB in its state oversight over the District's plans, only requires three-year updates to the AQMP. Furthermore, PR 4001 is placing greater air quality regulatory burden on the Cities (and their Ports) than the federal government places on AQMD or other air agencies.

L. Annual Emission Inventory Requirements under PR 4001 are Inappropriate and Vague

PR 4001 paragraph (d) outlines requirements for annual emissions reporting. An initial inventory for 2014 would be required by November 2014 "from all port-related sources for the 2014 calendar year based on actual activity information available prior to November 1st of the calendar year and projected activity information for the remainder of the year." Although Distract staff indicated that specific requirements for this November 2014 submittal would be provided, neither the rule nor the accompanying Staff Report list any specifics. The Cities will incur additional costs based on this requirement to prepare a 2014 inventory based on incomplete data in November 2014.

The majority of the sources tracked in the Cities' current emission inventories of port-related sources are not owned, operated or controlled by the Cities. Therefore, emissions inventories that will be used to evaluate compliance with PR 4001 should only include those port-related sources over which the Cities have direct control.

II. LACK OF AUTHORITY

A. PR 4001 is NOT Consistent with the District's Governing Board Approved Control Measure IND-01

Control Measure IND-01 provided a description of the Cities' successful CAAP and its various emissions reduction goals: "This AQMP Control Measure is designed to provide a "backstop" to the Ports' actions to provide assurance that, if emissions do not continue to meet projections, the Ports will develop and implement plans to get back on track, to the extent that cost effective and feasible strategies are available." (Final 2012 AQMP Appendix IV-A, page 3). PR 4001, by contrast, describes its purpose differently: "The purpose of this rule is to establish actions to be taken in the event that emissions from port-related sources do not meet the emission targets assumed in the Final 2012 Air Quality Management Plan for the purpose of meeting the federal 24-hour $PM_{2.5}$ standard in 2014 and maintenance of attainment in subsequent years" (PR 4001 paragraph (a)). District Staff has apparently drafted PR 4001 so as to eliminate the references in Measure IND-01 as adopted by the District's Governing Board to backstopping the Cities CAAP targets to the extent cost effective and feasible strategies are available and has replaced that "backstop control measure" with a traditional regulation by the District to meet District-set targets.

In addition, the District Staff (apparently without Board approval) has **changed** the concern from assuring "the attainment demonstration" for 2014 $PM_{2.5}$ emission targets (as described in the 2012 AQMP) to add "maintenance of the air quality standard in subsequent years." (PR 4001 paragraph (a)). This change adds a new undefined and open-ended element into PR 4001 that is not consistent with Control Measure IND-01 as publicly adopted by the District's Board in February 2013. Most importantly, to the extent the provisions of PR 4001 vary in purpose and scope from Measure IND-01, they are not authorized by the District Governing Board.

B. The District Fails to Show Any Basis to "Indirectly" Regulate Mobile Sources or Delegate Authority Without Clean Air Act Waivers from the USEPA

The District has failed to show any constitutional or statutory basis for attempting to regulate mobile sources "indirectly" that it is preempted from regulating directly. The District's use of the term "port related sources" appears to be a euphemism for "mobile sources" that may be located at or operate at the areas governed by the Cities. "Mobile sources" of emissions are, of course, generally beyond the limited regulatory authority conferred by the Legislature on local or regional districts. (e.g., Health & Safety Code § 40001(a); also see, 76 Ops. Cal. Atty. Gen. 11 (1993); 75 Ops. Cal. Atty. Gen. 256 (1992); 74 Ops. Cal. Atty. Gen. 196 (1991); 73 Ops. Cal. Atty. Gen. 229, 234-35 (1990).)

The District has failed to show any authority for attempting to regulate mobile sources by making another governmental entity that lacks any air regulatory authority its agent for enforcement of its desired mobile source emission reductions. (See, e.g., *Association of American Railroads et al. v. South Coast Air Quality Management District et al.*, 622 F.3d 1094, 1096 (9th Cir. 2010), invalidating several train-idling emissions rules enacted by the District, on the basis of federal preemption under the Interstate Commerce Termination Act of 1995 (ICCTA).) Moreover, the District does not have mobile source regulatory authority itself to delegate, as it does not have a waiver under the Clean Air Act from the USEPA. The District should instead work on stronger regulations from USEPA or CARB, which does have certain USEPA waivers to regulate mobile sources.

PR 4001 impermissibly requires the Cities to become air pollution control agencies, responsible for "achieving" reductions of emissions that are actually from other private parties that operate or control equipment largely used in goods movement within the geographic boundaries of the Cities. There is no statutory or other legal basis for imposing such a requirement on another governmental agency. For example, does this mean that a city that has a significant number of factories or refineries within its borders becomes a stationary source and indirect source for those emissions? Evidently the District does not distinguish between "operating ports" such as the Port of Charleston, S.C., which actually operates the terminals within the port, and "non-operating ports" such as the Cities, which are landlords that do not operate the marine terminals and other facilities within the harbor districts.

The emission reduction plan required by PR 4001 strongly resembles the State Implementation Plan requirements of the Clean Air Act (42USC§7410). Specifically PR 4001(f)(1)(A)(i) states, "…Ports shall engage [CARB, USEPA and the District] to discuss legal jurisdiction and authority to implement potential strategies to address the shortfall…" Based on the Clean Air Act, the enforcing agency should be the state of California through CARB and the District; however, PR 4001 places the burden of enforcement of emission reductions on the Cities. Based on this, if the port-related sources don't meet the emission reduction target specified by PR 4001, it should be the District and/or CARB that are responsible for preparing and enforcing the emission reduction plan against the emissions sources. If the District insists that the Cities prepare an emission reduction plan, then the plan must be subject to the limits on authority, preemption and feasibility issues described above. Further, USEPA, CARB and the District should provide funding to the Cities to support programs for incentives, since the Cities will no longer have available grant funding for voluntary programs.

C. PR 4001 Violates Cities' Charter Authorities and Tidelands Obligations

Control Measure IND-01 and PR 4001 are illegal, abusing the District's limited statutory power in an unprecedented manner that exceeds its authority. There is no legal precedent or

authority for the District's attempted regulation of the Port Authorities of the Cities, or the District's imposition of an arbitrary, unnecessary and discriminatory rule on the Cities, and thereby dictate the Cities' governing Boards of Harbor Commissioners' ("Boards") decisions regarding the exercise of their police power authority, the management of their respective properties and expenditures of the Cities in order to satisfy the District-defined targets for a single district within the State.

PR 4001 acknowledges that funding will be necessary to implement a plan to satisfy District targets, but fails to provide District funds or specify the source of such funds. The District cannot legally compel the Cities' Boards to make expenditure of Tidelands Trust revenues for the purpose of incentives or funding emission reduction programs as contemplated in District enforcement activity under PR 4001. Such proposed unfettered District authority would unlawfully supplant the trustee judgment and legal obligations of the Cities to operate the port properties and their revenues solely for the benefit of the entire State of California under the Tidelands Trust doctrine (promoting maritime commerce, navigation and fisheries) rather than for limited municipal or a single District's purposes.

Worse yet, PR 4001 proposes that a single District Executive Officer acting alone (rather than the District's full Governing Board) would wield the sole discretion to approve or disapprove the independent jurisdictional decisions of the Boards regarding conditions they impose on their properties or expenditures of their Harbor Revenue Funds, violating the Tidelands Trust and the Cities' charters.

D. <u>There is No Statutory Authority for District to Impose PR 4001 On Cities</u>

The District has failed to cite any statutory authority for regulating the Cities—governmental entities—as purported "sources" of emissions. As the Cities have repeatedly explained, neither the Cities nor the Ports are "sources" of emissions—direct, indirect, or otherwise. The District has not provided any authority that would support the District's attempted characterization of the Cities, or the Ports, as "indirect sources" of emission, solely based on the confluence of distinct privately-owned activities, vessels, vehicles, equipment, and uses within the geographic area and jurisdiction of the respective Ports.

"An air pollution control district, as a special district, 'has only such powers as are given to it by the statute and is an entity, the powers and functions of which are derived entirely from the Legislature.'" (74 Ops. Cal. Atty. Gen. 196 (1991)[citations omitted].) "No matter how altruistic its motives, an administrative agency has no discretion to promulgate a regulation that is inconsistent with the governing statutes." (*Terhune v. Superior Court* (1998) 65 Cal.App.4th 864, 874.) The District has failed to cite any statute or grant of authority from the Legislature for the proposed PR 4001.

Under the District's 2007 Air Quality Management Plan, a proposed "Port Backstop Rule" was proposed as a "Mobile Source Measure MOB-03" that defined the operators of marine terminals and rail yards, as well as the Cities, as indirect sources, Measure IND-01 and PR 4001 inexplicably exclude the operators of the mobile sources that had been in MOB-03 and instead propose to regulate and punish solely the Cities, effectively insulating from responsibility, the private sector entities that do own, operate and control the equipment producing the emissions.

The District Staff has previously referred to a clearly erroneous, overbroad interpretation of Health & Safety Code §§40716 (a)(1); 40440 (b)(3), as potential authority for attempting to justify Measure IND-01 and PR 4001 as forms of indirect source review, as applied to the Cities. However, such lax interpretations apparently ignore the Legislature's explicit limitations on any such "indirect source" regulatory authority—precluding application of PR 4001 against the Cities (e.g., Health & Safety Code § 40716(b): "Nothing in this section constitutes an infringement on the existing authority of counties and cities to plan or control land use, and nothing in this section provides or transfers new authority over such land use to a district.")

Similarly, any District reliance on Health & Safety Code § 40440 is clearly misplaced. The introductory clause of § 40440(b)(3), for example, states that indirect source controls must be "[c]onsistent with Section 40414." Importantly, Health & Safety Code §40414 [specifically governing the District] states: "No provision of this chapter shall constitute an infringement on the existing authority of counties and cities to plan or control land use, and no provision of this chapter shall be interpreted as providing or transferring new authority over such land use to either the south coast district, the Southern California Association of Governments, or the state board." Not only does this provision apply generally to Chapter 5.5 [governing the District] but it is also specifically referenced in § 40440(b)(3), leaving little doubt that any District rule related to indirect source controls may not overreach or infringe on the Cities' police power to control land use in their jurisdictions or Tidelands Trustee duties for benefit of the State.

Finally, the District Staff's reference to two cases involving the very distinct "indirect source review" adopted by the San Joaquin Valley APCD is misplaced. Those cases, *California Building Industry Association v. San Joaquin Valley Air Pollution Control District*, 178 Cal. App. 4th 120 (2009) and *Nat'l Ass'n of Home Builders v. San Joaquin Valley Air Pollution Control District*, 627 F. 3d 730 (9th Cir. 2010), involved quite different circumstances and a distinct and specific statute permitting an indirect source review program and in-lieu fees to be imposed on new construction sites. The holdings of those cases were narrow, and based on the nature of the emission sources being regulated. "Because the court's approval of the rule depended on the nature of the source being regulated, mobile non-road construction equipment, indirect sources are not categorically permissible after NAHB." (39 ECOLOGY LAW QUARTERLY 667 (2012).) Those cases are thus irrelevant, and do not support District Staff's assertion of some authority for the District to impose rules on the Cities under the guise of Measure IND-01 or PR 4001.

III. PROCEDURAL FLAWS

A. General Comments

The PR 4001 developmental and procedural process is on an accelerated timeline that is unusually short for a rule of this unprecedented nature that has generated such controversy and so many unanswered questions from other public agencies and stakeholders. The District should provide a comprehensive rule development schedule, including key milestones of staff report revisions, staff report analyses, workshops, workgroup meetings, etc. and provide the stakeholders, and the public adequate time for review and comment after release of actual substantive information necessary to evaluate the proposed rule.

Instead, the District was late with release of the actual text of PR 4001, not releasing it until November 26, 2013. The text of the PR 4001 is severely lacking explanation of many material elements, leaving continued unanswered questions that had been posed literally for years, even under the development of Measure IND-01 and early working group consultation meetings. The Preliminary Draft Staff Report for PR 4001 offers little help, as the Staff Report does not contain technical data and analyses necessary for a complete review. The PR 4001 Preliminary Staff Report lacks substance and does not meet important specificity requirements (see specific comments below related to the Preliminary Staff Report).

Lastly, the District's environmental assessment of the PR 4001 has also been extremely flawed and we incorporate by reference the comment letters previously submitted by the Cities on the Notice of Preparation and Recirculated Notice of Preparation under the California Environmental Quality Act, which are attached hereto.

B. The District's Preliminary Draft Staff Report on PR 4001 Fails to Comply With Statutory Requirements for Rule Adoption

The District's December 2013 Preliminary Draft Staff Report fails to comply with statutory requirements for rule adoption as discussed below.

1. Non-compliance with Health & Safety Code § 40440.5 – Notice of Proposed Action:

The District must give public notice of the Board hearing to consider PR 4001 not less than 30 days prior to the hearing date, and must include specified information in that Notice:

(a) A "summary description of the effect of the proposal" as required by Section 40725(b);
(b) Description of the air quality objective of the rule, and reasons for the rule;
(c) A list of supporting information and documents relevant to the PR 4001, and any environmental assessment; and
(d) A statement that a staff report on the proposed rule "has been prepared" and the contact information to obtain that staff report.[5]
(e) The statutes further specify the required contents of the Staff Report that must be prepared and made available at least 30 days prior to the hearing date:

Whenever the proposed rule or regulation will significantly affect air quality or emissions limitations, the staff report shall include the full text of the proposed rule or regulations, an analysis of alternative control measures, a list of reference materials used in developing the proposed rule regulation, an environmental assessment, exhibits, and draft findings for consideration by the District Governing Board pursuant to Health & Safety Code §40727. Further, if an environmental assessment is prepared, the staff report shall also include social, economic, and public health analyses.

2. Non-compliance with Health & Safety Code § 40727 – Required Findings:

Before the District's Board could approve the PR 4001, it would need to make the findings required by Section 40727 (and to provide the public with sufficient information/substantial evidence in the record to support those mandatory findings). The District's Preliminary Draft Staff Report (December 2013) fails to satisfy these requirements. The findings must address:

(a) "necessity" – Since PR 4001 is by definition a "backstop" measure intended to address emissions issues that are not currently a problem (and which are not shown to be likely to occur), it is inherently difficult for the District to make such a finding of "necessity" for the rule (also see the detailed discussion demonstrating the District's failure to demonstrate "necessity" for PR 4001 set forth above). Moreover, the District Governing Board found Measure IND-01 necessary in the 2012 AQMP, but not PR 4001, as stated in the Staff Report.

[5] This wording indicates that the Staff Report must already be prepared before the Notice of the Board meeting goes out. If the District intends to rely upon the "Preliminary Draft Staff Report" issued in December 2013, it would be deficient because that PDSR fails to include all of the information required by statute.

(b) "authority" – As pointed out above, the District has failed to demonstrate its legal authority for PR 4001, if any. By what authority can the District "delegate" (or "foist") its own responsibilities for regulating air quality emissions onto the Cities? The District cites no authority for imposing a rule on independent governmental agencies to take specific land use, environmental, or fiscal actions (fees, tariffs, etc.) Also, the District fails to address the statutory limitations on its authority in Health & Safety Code § 40414: the District may not infringe on the existing authority of Cities to plan or control land use.

(c) "clarity" – The lack of clarity in the draft text of PR 4001 is addressed throughout this comment letter. In addition, the lack of clarity in PR 4001 is exemplified in the circular argument of PR 4001(d)(2)(A) and PR 4001(f)(1)(D). PR 4001(d)(2)(A) specifies that that, in the case of triggering an Emission Reduction Plan, the Port shall report the progress in meeting the shortfall "based on the process developed pursuant to subparagraph (f)(1)(D)." However PR 4001(f)(1)(D) specifies the Emission Reduction Plan "shall provide a process for submittal of progress reports toward eliminating the emission reduction shortfall pursuant to subparagraph (d)(2)(A)."

(d) "consistency" –PR 4001 is inconsistent with Measure IND-01; it is also inconsistent with the CAAP and the Cities' general plans, harbor area plans, transportation management plans, etc, as well as state Tidelands Trust policies. In addition, PR 4001 is inconsistent with, and preempted by federal laws (e.g., ICCTA; FAAAA) and regulations of IMO (MARPOL / APPS) as well as federal regulations of trucks, locomotives, etc.. Also, PR 4001 is inconsistent with the California Clean Air Act and the statutory limitations on the regulatory authority of the District, and further is inconsistent with CARB polices.

(e) "nonduplication" – PR 4001 would unnecessarily – by definition – duplicate and "backstop" existing plans and policies such as CAAP and the aforementioned regulations;

(f) "reference" – The District has failed to demonstrate what law or court decision is purportedly being implemented by PR 4001.

3. <u>Non-compliance with Health & Safety Code § 40727.2 – Written Analysis of Rule</u>:

Does the District contend that its Preliminary Draft Staff Report satisfies this requirement that it produce a written analysis of PR 4001? If so, it fails to comply with § 40727.2(e). The Preliminary Draft Staff Report only indicates that the technical impact

assessment is underway. Without the Impact Assessment section, the staff report is incomplete. The Impact Assessment section must include the District's explanation of differences between PR 4001 and existing guidelines, such as in CAAP or AQMP, as well as address regulation cost effectiveness, including costs beyond mere control equipment costs.

4. Non-compliance with Health & Safety Code § 40440.8 – Assessment of Socioeconomic Impacts of PR 4001:

This requirement is also imposed by Section 40428.5, and the need for such a socioeconomic analysis was addressed, at least in brief, in the NOP comment letter. The Preliminary Draft Staff Report (page 18) erroneously describes the likely socioeconomic impacts of PR 4001 as being limited to the Cities' costs incurred for emissions forecasting and reporting. This grossly understates the likely impacts, including impacts of additional control measures that could be required under PR 4001 impacting the entire use and economic viability of the Ports. The staff report must include a socioeconomic assessment and must certainly address the threat of diversion resulting from potential undefined, regulatory-mandated, emission control measures. The Preliminary Draft Staff Report erroneously suggests that "a detailed assessment cannot be made at this time" and should be deferred, which is in violation of the statutory requirement. The Staff Report also indicates that a socioeconomic assessment will be made available 30 days prior to the public hearing. The significant potential impact and novel nature of this rule warrants a 60 day review period of the socioeconomic assessment.

5. Non –compliance with Health & Safety Code § 40440.8(b)(4) – Alternatives to PR 4001:

The socioeconomic assessment must address "the availability and cost-effectiveness of alternatives to the rule." (§ 40440.8(b)(4)) However, the Preliminary Draft Staff Report fails to even mention any "alternatives" to the Rule, much less to evaluate the availability and cost-effectiveness of alternatives, such as VMEP.

6. Non-compliance with Health & Safety Code § 40440(c): "Cost-effectiveness"

The District failed to demonstrate that the adoption of PR 4001 would comply with the requirement of Section 40440(c) that all of the District's rules "are efficient and cost-effective..." Also, Section 40703 requires the District to make available to the public, and requires the Board to make findings, as to the cost effectiveness of control measures, and similarly Section 40922 requires the District to consider "the relative cost effectiveness of the [control] measure..." The District has not done so.

C. Additional Analysis is Required Before Rule Development Can Proceed

The Cities have put into place a voluntary program with documented air quality improvements in the face of economic growth. It is AQMD's responsibility to perform a regulatory impact assessment documenting that PR 4001 will not reverse voluntary gains made by the Cities and endanger future programs. This includes the analysis of lost grant funding that would have otherwise been available to fund equipment replacement and other emissions reductions, due to conversion of voluntary program to regulation.

D. The District Must Acknowledge and Respond to All Comments Submitted on Measure IND-01 and PR 4001

The draft findings in the next staff report must acknowledge and respond to all comments submitted on Measure IND-01 and PR 4001, including all comments on the environmental assessment such as the Notice of Preparation and Initial Study for PR 4001.

IV. FAILED REQUIREMENTS FOR SIP INCLUSION

The District has claimed that adoption of PR 4001 is necessary to ensure SIP credit for the Cities' voluntary emission reduction programs. However, neither this Proposed Rule nor its precursor, "Control Measure IND-01" can be justified on this pretext, and neither PR 4001 nor Measure IND-01 meet the criteria for SIP inclusion. The Cities have raised significant technical, jurisdictional, constitutional and other legal concerns with Measure IND-01 and PR 4001, as set forth in public comment letters sent to the District during the 2012 AQMP adoption process and PR 4001 development process, which are provided as attachments.

A. Measure IND-01 and PR 4001 Violate Health & Safety Code § 39602

Measure IND-01 and PR 4001 violate California Health & Safety Code § 39602, which provides that the SIP shall only include those provisions **necessary** to meet the requirements of the Clean Air Act. The Cities have shown that there is no demonstrated need for the rule, nor is this rule necessary for regional attainment of the 2014 $PM_{2.5}$ standard. PR 4001 is duplicative of regulations already in place and effectively reducing emissions from port-related sources. As noted above, the Cities estimate that in 2014, 98% of the $PM_{2.5}$ equivalent emission reductions that PR 4001 seeks to "backstop" will occur as the result of regulations adopted by CARB and

the IMO.[6] The remaining 2% of $PM_{2.5}$ equivalent emission reductions is primarily attributed to the Cities' successful voluntary vessel speed reduction incentive program which is part of the Cities' Clean Air Action Plan.

More importantly, there are significant legal questions regarding the District's attempt to invoke " indirect source review" as authority to impose a new rule on governmental agencies. PR 4001 clearly infringes upon, and potentially usurps the Cities' authority to plan and control land use and exercise police power, in contravention of Health & Safety Code §§ 40716(b) and 40414, and compels compliance and punishes them for non-achievement of emissions targets for equipment the Cities do not own, control or operate, and are preempted from regulating.

B. <u>The District Failed to Timely Submit Proposed "Control Measure IND-01" to CARB for Public Consideration and Approval As Part of the SIP Submitted to USEPA on January 25, 2013</u>

Under CAA section 110(l), SIP revisions must be adopted by the State, and the State must provide for reasonable public notice and hearing prior to adoption. EPA cannot approve Measure IND-01 as part of the SIP because the District did not approve and forward IND-01 in time for CARB to follow the process for public consideration and State adoption required by CAA Section 110(1) and California Health and Safety Code Section 41650 for SIP submissions, and CARB failed to do so.

Under 40 CFR 51.102(d), reasonable public notice in this context refers to at least 30 days. Similarly, Health and Safety Code Section 41650 provides for a public hearing that would allow public comment as to whether the SIP meets the requirements of the CAA. By resolution dated January 25, 2013, CARB approved the District's 2012 AQMP and directed the executive officer of CARB to submit the AQMP to the USEPA for inclusion in the SIP. However, at the time of the January 25, 2013 CARB action**, Measure IND-01 was not part of the AQMP**. Because the District Governing Board adopted the AQMP without Measure IND-01 on December 7, 2012, and in fact, did not adopt Measure IND-01 until February 1, 2013, the January 25 CARB action did not constitute approval of Measure IND-01 which had not yet been submitted to CARB for consideration.

The documents attached to CARB's February 13, 2013 SIP submittal to the USEPA include the December 7, 2012 resolution by the District Governing Board and the December 20, 2012 District letter to CARB transmitting the approved SIP, which pre-dated the District

[6] CARB Port Drayage Truck Rule, CARB Truck and Bus Rule, CARB Ocean-Going Vessel (OGV) Shore Power Rule, OGV Low-Sulfur Fuel Rule, CARB Cargo-Handling Equipment at Ports Rule, CARB Commercial Harbor Craft Rule, IMO North American Emission Control Area

Governing Board's approval of Measure IND-01. Inexplicably, without the required public notice or public hearing and adoption by the CARB Governing Board, the submitted SIP includes the addition of Measure IND-01. Until this procedural error is corrected, and the Cities and the public are given the opportunity to comment at a public hearing, and CARB is able to properly consider proposed Measure IND-01 at such a properly-noticed public hearing, Measure IND-01 is not properly before the USEPA and cannot be approved as part of the SIP.

C. The Many Flaws of Measure IND-01 and PR 4001 Harm Rather Than Help the SIP

As a result of the above-mentioned extensive technical, jurisdictional, constitutional, statutory and other legal problems, inclusion of IND-01 in the SIP and attempted implementation through PR 4001 creates unnecessary risks of disputes and legal challenges to the AQMP and SIP. The unprecedented nature and legal and jurisdictional conflicts of PR 4001 and Measure IND-01 require significant explanation of the legal underpinnings of the Measure. Instead a single paragraph of generalities ignoring the jurisdictional conflict and lack of legal authority for classification of Cities as stationary sources or indirect sources was produced to justify PR 4001.

Conclusion

The ports of Long Beach and Los Angeles are a major economic engine for the region and nation. PR 4001 and the uncertainty it creates will have a substantial negative impact on the goods movement industry and the local economy, resulting in cargo diversion, job losses and business closures. Moreover, rather than improving air quality, PR 4001 eliminates all incentive for voluntary participation in emission reduction efforts at the Ports that have been so successful.

The Cities have a proven track record of developing and implementing appropriate and effective emission reduction strategies, working with the port industry and the air quality regulatory agencies. Since the CAAP was adopted in 2006, essentially all of the Cities' early actions have been overtaken by regulations from state, federal, and international agencies. The majority of emission reductions are already being achieved by regulations. Therefore, there is clearly no need for additional regulation.

The Cities share the air emission reduction goals of the District, CARB, and USEPA, and strongly believe that the voluntary cooperative CAAP process established by the Cities remains the most appropriate forum to discuss technical and policy issues related to implementing appropriate strategies for reducing emissions from port-related sources. There are feasible alternatives that would effectively ensure emission reduction goals are met, including the USEPA's VMEP that would allow for the small percentage of emissions reductions needed beyond regulations to be credited in the SIP. The Cities hope you will work with us to discuss various mechanisms, contractual or otherwise, by which the VMEP can be implemented in San

Pedro Bay, and move forward as a possible resolution to the issues currently under discussion regarding PR 4001.

We appreciate your consideration. Thank you.

Sincerely,

Matthew Arms
Acting Director of
Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachments:

- January 15, 2014 Letter; Port of Long Beach and Port of Los Angeles to South Coast Air Quality Management District (SCAQMD)*; Comments on Notice of Preparation, Initial Study and Scope of Proposed Program Environmental Assessment*
- August 21, 2013 Letter; Port of Long Beach and Port of Los Angeles to SCAQMD; *Comments on Notice of Preparation, Initial Study, and Scope of Proposed Environmental Assessment*
- October 2, 2013 Letter; Port of Long Beach and Port of Los Angeles to SCAQMD, *Initial Comments for Public Consultation on Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets are Met at Commercial Marine Ports"*

cc: Al Moro, Acting Executive Director, Port of Long Beach
Richard Cameron, Managing Director, Port of Long Beach
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Gary Lee Moore, Interim Executive Director, Port of Los Angeles
Michael Christensen, Deputy Executive Director, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
Barry Wallerstein, Executive Officer, SCAQMD

Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Randall Pasek, Planning and Rules Manager, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Governing Board Members, SCAQMD
Richard Corey, Executive Officer, CARB
Cynthia Marvin, Division Chief, Stationary Source Division, CARB
Doug Ito, Chief, Freight Transportation Branch, CARB
Jared Blumenfeld, Administrator, USEPA, Region 9
Deborah Jordan, Director, Air Division, USEPA, Region 9
Elizabeth Adams, Deputy Director, USEPA, Region 9

ATTACHMENTS

January 15, 2014

VIA E-MAIL – bradlein@aqmd.gov
VIA FACSIMILE – (909) 396-3324

Ms. Barbara Radlein
c/o CEQA
SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT
21865 Copley Drive
Diamond Bar, California 91756-4178

Re: Recirculated Notice of Preparation and Initial Study
Proposed Rule 4001— Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports
November 2013

SCAQMD File No. 0722013BAR
SCH No.: 2013071072

Comments on Recirculated Notice of Preparation, Initial Study, and Scope of Proposed Program Environmental Assessment and Alternatives Analysis

Dear Ms. Radlein and Staff of the South Coast Air Quality Management District:

On behalf of the City of Long Beach (referred to herein as "COLB)" and the City of Los Angeles acting by and through their respective Harbor Department ("COLA", and collectively with COLB referred to herein as the "Cities"), we appreciate this opportunity to submit responses and comments on the District's recent "Recirculated Notice of Preparation of a Draft Program Environmental Assessment" ("Recirculated NOP") and the accompanying Initial Study ("IS") prepared in connection with the District's consideration of the proposed project entitled "Rule 4001: Maintenance of AQMP Emission Reduction Targets At Commercial Marine Ports" (the "Project" or "PR 4001"). We appreciate that the District has extended the public comment period to January 16, 2014, in light of the serious and substantial issues raised by this Project and the original comment period scheduled over the holidays limiting stakeholder time for review.

This letter is organized in the following manner:

A. Introductory Comments
B. General Comments on the Recirculated NOP and Initial Study
C. Specific Comments on the Recirculated Initial Study
    1. Comments on Chapter 1
    2. Comments on Chapter 2 (Environmental Checklist)
D. Conclusion

Additionally, the Cities' previous comment letter on the original NOP dated August 21, 2013 has been attached for reference.

A. Introductory Comments:

We have previously commented on, and objected to, Air Quality Management Plan (AQMP) Control Measure IND-01 (Measure IND-01) and have expressed our grave concerns about the District's rulemaking approach to craft a ostensible "backstop rule" that would be applicable only to the Cities and their respective San Pedro Bay Ports ("Ports") such as that embodied in the new draft PR 4001. As the District is well aware, the Cities have been dedicated, innovative, and effective leaders in the efforts of public agencies to improve air quality despite the fact that we have no regulatory authority or control over the emissions sources. Working collaboratively and voluntarily with the District, our efforts have been successful in helping the maritime goods movement industry achieve very substantial reductions in emissions from the wide range of industrial and mobile sources they operate at or near the Ports, and we look forward to continuing to work with the District, other air regulatory agencies, and industry in building on these successes.

While we appreciate that the District staff has finally released the draft text of PR 4001, together with the recirculation of a new NOP and Initial Study, we find that many of the questions and issues raised in our previous comments remain unanswered or contain the same deficiencies in the new description of the "Project" and the Recirculated NOP, and still fail to identify or address feasible alternatives to PR 4001. Therefore, we respectfully reiterate and incorporate by reference all of our previous comments and objections (including, but not limited to, our letter dated August 21, 2013, and comments on the District's 2012 Air Quality Management Plan ("AQMP") and Control Measure IND-01), in addition to our new comments on the Recirculated NOP and IS.

Our responses are submitted in light of the California Environmental Quality Act ("CEQA") which calls for public review, critical evaluation, and comment on the scope of the environmental review proposed to be conducted in response to a Notice of Preparation, including the significant environmental issues, alternatives, and mitigation measures that should be analyzed in the proposed draft EIR (or Environmental Assessment, "EA") (14 CCR

15082(b)(1).) (See, CEQA Guidelines, at Title 14 Cal. Code of Regulations, §§ 15000, *et seq*..) Since it is anticipated that the proposed Project will have substantial impacts on the Cities and other communities served by the Ports, it is particularly important that the scope of this proposed review take into account jurisdictional and legal limitations, established state and local plans and policies, and other potentially feasible and less-impactful alternatives to the Project. In addition, it will be important to consider the impacts of the proposed Project on the important missions, facilities, and operations of the San Pedro Bay Ports.

In that context, we respectfully submit the following comments regarding the Recirculated NOP as well as questions, concerns and objections related to the omissions of critical information, unsupported assumptions, or analytical deficiencies in the Initial Study, and comments as to the scope of the proposed environmental assessment ("EA") as contemplated and invited by the District's Recirculated NOP.

B. General Comments on the Recirculated NOP and Initial Study.

1. **Changed Project Title**: What is the authority of the District to change the proposed Project from a "*Backstop Measure for Indirect Sources of Emissions from Ports and Port-related Facilities*" authorized by the District's Governing Board, to a new Project title of "*Maintenance of AQMP Emission Reduction Targets At Commercial Marine Ports*"? The District inexplicably no longer describes this as "a backstop measure" – although such a "contingency measure" concept has been the basis for District consideration of this type of proposed rule going back to Control Measure IND – 01 and a similar mobile source port backstop rule in the 2007 AQMP/SIP. What is the significance of this change and has the District now moved from a backstop of the voluntary Clean Air Action Plan goals of the Cities, which it sold to its board, to full District regulation setting District targets for the Cities' ports beyond backstopping voluntary programs? Does this change require the approval of the District's board? In any event, the Cities repeat their strong protest of both Project concepts and further comment on this issue below.

2. **Changed Project Description:** The Recirculated NOP/IS cover letter (11/22/2013) acknowledges that "changes were made to the project description *and* the environmental analysis subsequent to release of the original NOP/IS on July 23, 2013." However, the new NOP/IS fails to describe the "changes" in "the Project" and fails to describe or evaluate the significance of those Project changes. We note at least a few changes between the previous Initial Study and this new Recirculated NOP/IS:

(a) The Project Description now includes *the draft text of the Proposed Rule*. The new Initial Study states (p. 1-3) that the prior NOP/IS had tried to use the text of Control Measure IND-01 as a surrogate for the Project, because the rule language for PR 4001 had not been developed. However, **the draft text of PR 4001 is not the same as Control Measure**

IND-01. The distinct jurisdictional, legal, administrative, due process and procedural issues posed by the draft text of PR 4001 (as well as its semantic ambiguities) add new levels of complexity to the evaluation of the environmental impacts of the Project, which are not adequately explained or evaluated in the new Initial Study.

As detailed below, the draft text now creates uncertainty as to how and when the requirements of the new PR 4001 that the Cities "take actions" would be triggered, as well as the scope of their obligations to act under the new Rule. Indeed, the draft text of PR 4001 raises questions as to whether the Project as now described is even consistent with the Final 2012 AQMP, the EIR for that AQMP, or with subsequently-adopted Control Measure IND-01, or other state and regional plans. Most importantly, to the extent the provisions of PR 4001 vary in purpose and scope from Measure IND-01, they are not authorized by the AQMD Governing Board.

(b) The initial Project description (and Control Measure IND-01) would have required "actions to be taken" [by the Cities] only "in the event that emissions from port-related sources *do not meet* the emission targets assumed in the final 2012 AQMP. Similarly, Control Measure IND-01 represented that the "backstop" requirements will be triggered "if the reported aggregate emissions *for 2014* for all port-related sources exceed the 2014 emissions targets." (Final 2012 AQMP, Appendix IV-A-41.) By contrast, however, the new Project description would apparently require the Cities to "take actions" in the event that "port-related sources do not meet *or are not on track to maintain* the emission targets ... *for the purpose of meeting and maintaining the federal 24-hrs PM2.5 standard*." The new version of the Project description appears to have expanded the "triggering" events, and extended the trigger period, beyond those events and time periods contemplated in the 2012 Final AQMP. Accordingly, the new version of PR 4001 may no longer be consistent with the AQMP or with the environmental review of that document.

(c) The new NOP and Initial Study changed the type of CEQA document from an Environmental Assessment to a Program Environmental Assessment for the Project that will be programmatic in nature (as described in 14 CCR 15168) rather than a project-specific environmental review, and suggests that the District may thereby intend to *defer* more detailed CEQA analysis to some undefined future stage of "the Project" (p. 1-2). The District has already prepared and certified a Final Program Environmental Impact Report (Program EIR) for the 2012 AQMP which was considered to be the appropriate document pursuant to CEQA Guidelines Section 15168(a)(3) and included a programmatic analysis of Control Measure IND-01. However, the District has now presented the adoption of PR 4001 as "the Project" but is still preparing yet another Program Environmental Assessment with the same reasoning as it did in the prior CEQA analysis. It is not clear how the District believes two program-level environmental documents can be prepared for the same rule and when, if at all, the District may intend to provide such more specific "project-level" analysis as required under CEQA.

Moreover, this part of the new Initial Study implies a commitment that the "program CEQA document" would include "consideration of broad policy alternatives and program-wide mitigation measures." (*id*.). However, *the new Initial Study fails to identify or discuss any such "policy alternatives" or "program-wide mitigation measures"* and gives no indication that *the scope* of the eventual EA will in fact include any such policy alternatives or mitigation measures.

In their prior comment letter on the Draft 2012 AQMP Program EIR dated October 22, 2012, the Cities expressed very similar concerns over the vague and deficient "project description" of backstop Measure IND-01. In the District's response to comment #5-4 in the Final Program EIR, the District represented that: "*The exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted.*" The District also committed, in its response to the same comment #504 in the AQMP Final Program EIR, that "*further details regarding the future requirements* [a Rule implementing Control Measure IND-01] *will be determined more appropriately* ***during the rule development process***."

The new Initial Study indicates that the District may be reneging on these commitments to provide the necessary analysis of "the exact impacts" of PR 4001 "during the rule-development process, in violation of CEQA and in violation of the District's own Rule 110.

(d) The District also appears to have made other subtle changes to the Project Description, without announcement, which are **not consistent with Control Measure IND-01**, and which may have potentially significant – but unaddressed -- impacts. For example:

i. The new Initial Study has changed the description of the Project from adoption of a "backstop measure" to the adoption of "backstop *requirement*" and has made other changes to the Project which are not consistent with Control Measure IND-01 as adopted (p. 1-1.) Control Measure IND-01 provides a description of the Cities' successful Clean Air Action Plan (CAAP) and its various emissions reductions goals. "This AQMP Control Measure is designed to provide a "backstop" to the Ports' actions to provide assurance that, if emissions do not continue to meet projections, the Ports will develop and implement plans to get back on track, to the extent that cost effective and feasible strategies are available." (Final 2012 AQMP Appendix IV-A, page 3) The Proposed Project describes its purpose as: "The purpose of the rule is to establish actions to be taken in the event that emissions from port-related sources do not meet the emission targets assumed in the Final 2012 Air Quality Management Plan for the purpose of meeting the federal 24-hour $PM_{2.5}$ standard in 2014 and maintenance of attainment in subsequent years." (PR 4001, Section (a)) The proposed

Project has eliminated the references in its Board-adopted IND-01 to backstopping the Ports Clean Air Action Plan targets to the extent cost effective and feasible strategies are available and replaced with a traditional regulation by the District to meet District-set targets.

ii. The new Initial Study has apparently changed the District's concern from assuring "the attainment demonstration" for 2014 PM2.5 emission targets (as embodied in the 2012 AQMP) to add "*maintenance of the air quality standard in subsequent years*." (p. 1-1.) This change in the Project appears to add a new undefined and open-ended element into the Project, not consistent with the District's adopted Control Measure IND-01.

(e) **Changed Definition of "Feasible Control Strategy:"** The draft text for the new PR 4001 proposes to change the definition of "feasible control strategy" so that it is *not consistent with* the obligations that could potentially be imposed on the Cities under *Control Measure IND -01* as adopted by the District Board. Instead, the draft of PR 4001 (at Paragraph (c)(1)) and the new Initial Study have *changed the limitations* on the proposed obligations of the Cities to achieve additional emission reductions under PR 4001. Previously, the Project was described as requiring the Cities to "propose additional emission reduction methods ... [but only] *to the extent cost-effective strategies are technically feasible* and within the Ports' authority." However, new PR 4001, and the new Initial Study (p. 1-1) have inexplicably omitted (at several points*)* the prior limitation on the Cities' potential obligations to measures that are "*technically feasible*." Again, these subtle changes in the Project description are not consistent with the text of IND-01 or any other legal or regulatory authority identified by the District in the new Initial Study. The Initial Study should address (i) whether these changes have been authorized by the District's Board, and (2) what potential environmental impacts (as well as socio-economic impacts) may arise from the changes in the concept of "feasible control strategies."

(f) The District should clearly identify all other "changes" in the Project.

Other comments on the flawed "project description" are set out in Section C(1), below.

3. **Changed Environmental Analysis:** We appreciate that the Recirculated NOP/IS has expanded the range of environmental subjects which it now acknowledges may be subject to the proposed Project's significant adverse environmental impacts, perhaps partly in response to our previous comments. However, the scope of the proposed environmental analysis still does not take into account all of our concerns and still fails to comply with CEQA, e.g., by failing to identify potential significant environmental impacts, failing to propose a range of feasible

alternatives, and failing to evaluate reasonable mitigation measures. We therefore reiterate our prior comments on the scope of the proposed EA.

4. **Reiteration and Incorporation of Prior Comments:** The new NOP/IS states that it "replaces the July 23, 2013 NOP/IS" and that there will be no District responses to previously-submitted comments. We recognize that the Recirculated NOP purports to reflect changes made, in part, to previously submitted comments on the July 2013 NOP/IS. However, the new NOP/IS does not take into account all of our previous comments nor do the changes made in the new NOP/IS necessarily reflect or satisfy the requests made in our previous comments. Accordingly, we incorporate and include our previous comments as detailed in our letter dated August 21, 2013.

5. **Failure to Adequately Identify and Include Feasible Alternatives:** The Recirculated NOP/IS still fails to comply with CEQA's requirements for identification and consideration of all feasible project alternatives. Like the original IS, the new IS fails to identify a single "alternative" to the District Board's adoption of PR 4001. The superficial mention of "alternatives" on page 1-15 of the IS merely recites the legal obligations of the District to "discuss and compare" a range of "reasonable alternatives" to the proposed Project. This fails to fulfill the "scoping" purpose of an Initial Study. The District should analyze, among a range of alternatives, a collaborative Memorandum of Agreement between all of the stakeholders, as previously suggested by the Cities and recommended by the District to its Board (which speaks well to its feasibility as an alternative). The District should also evaluate the use of the EPA's policy and guidance for the Voluntary Mobile Source Emission Reduction Program (VMEP), which was developed for voluntary emission reduction programs of the sort outlined in the CAAP.

"The scoping process is the screening process by which a local agency makes its initial determination as to which alternatives are feasible and merit in-depth consideration, and which do not." (*Goleta II, supra*, 52 Cal.3d at p. 569; see Guidelines §15083.) It involves "consult[ation] directly with any person or organization [the lead agency] believes will be concerned with the environmental effects of the project" in hopes of "solv[ing] many potential problems that would arise in more serious forms later in the review process." (Guidelines, § 15083.)" "The determination of whether to include an alternative during the scoping process is whether the alternative is potentially feasible (*Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 489 (*Mira Mar*)), and the EIR "is required to make an in-depth discussion of those alternatives identified as at least potentially feasible." (*Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1505, fn. 5].)" (*South County Citizens for Smart Growth v. County of Nevada* (3d Dist. 2013) 221 Cal.App.4th 316, 327 (*South County*.)

"A lead agency must give reasons for rejecting an alternative as 'infeasible' during the scoping process (Guidelines, § 15126.6, subd. (c)), the scoping process takes place prior to

completion of the draft EIR. (*Gilroy Citizens for Responsible Planning v. City of Gilroy*, *supra*, 140 Cal.App.4th at p. 917, fn. 5; Guidelines, § 15083.)" (*South County*, p. 328.)[1]

The Initial Study also uses the wrong legal standard in its passing acknowledgement of the District's duty to consider alternatives: the Initial Study must identify "potentially feasible" alternatives ("feasibility" is a defined, and critical, term under CEQA), rather than "reasonable" alternatives (as mis-stated in the IS on page 1-15.)

6. **Deficient Initial Study:** The CEQA Guidelines contemplate that an Initial Study is to be used in defining the scope of environmental review (14 CCR §§ 15006(d), 15063(a), 15143.) However, as a result of the omissions, inconsistencies, and deficiencies in the Initial Study, the District's proposed scope of environmental assessment for this Project will be unduly narrowed and limited, and is likely to erroneously exclude issues, feasible alternatives, and mitigation measures from the proposed Environmental Assessment. (More detailed comments on the deficient Initial Study are set out in Section D, below.)

As detailed below in Section C, the new Initial Study does not provide the information, potentially feasible alternatives, evidence, or analysis required by the CEQA Guidelines (14 C.C.R. §15063, subd. (d)):

(1) A description of the Project including the location of the Project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries . . .

(4) A discussion of ways to mitigate the significant effects identified, if any;

(5) An examination of whether the Project would be consistent with existing zoning, plans, and other applicable land use controls;

(6) The name of the person or persons who prepared or participated in the initial study."

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[1] "Differing factors come into play when the final decision on project approval is made; at that juncture the decisionmaking body evaluates whether the alternatives are actually feasible. (Guidelines, § 15091, subd. (a)(3).) "[T]he decision makers may reject as infeasible alternatives that were identified in the EIR as potentially feasible." (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 981.)" (*South County*, p. 327.)

An Initial Study that fails to provide all of the information, analysis, and evidence called for by CEQA may be deemed to be inadequate and not a valid basis for CEQA review or Project approval (See, e.g., *City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, at pp. 407–408, invalidating the County's proposed general plan amendments because of a deficient initial study: "[T]he initial threshold study is inadequate because it fails to provide sufficient evidence or analysis of the potential environmental effects of the amendments.")

7. **Request for Correction and Recirculation of Corrected NOP and IS:**

For the multiple reasons summarized above, and detailed below, it is essential that the Recirculated NOP and Initial Study be withdrawn and further revised and corrected in order to properly fulfill their role in seeking meaningful public input on the appropriate "scope" of the proposed environmental assessment for the Project. A more accurate, complete, and CEQA-compliant Initial Study that addresses specific project-level impacts should be prepared and released for public review, along with a new set of public meetings, to provide the public with sufficient time and opportunity to comment on the scope and adequacy of the revised NOP/IS.

The District has already commenced its Rule- development process. It appears from the District's records that District staff has already committed to the District Board that the Proposed Rule will be adopted in April of 2014. District documents also indicate that District staff has further committed to shortly thereafter embarking on revisiting and changing the emissions targets that are the subject of this Proposed Rule, likely placing even more burdensome requirements on the Cities It is imperative, not only for Due Process reasons but also for reasons of sound public policy, meaningful community input, and well-informed decision-making, that the District provide adequate, complete, and accurate information – and time -- to allow the Project to be fully vetted before it is rushed to the District's Board for consideration.

It is therefore respectfully urged that the Recirculated Initial Study (and the related NOP) be recalled, corrected, and again be recirculated for public review and comment as corrected before the District proceeds with any further action in connection with the proposed Project.

The comments on the Recirculated Initial Study included in this letter are organized in the same format used by the Initial Study, i.e., comments on "*Chapter 1 – Project Description*" in Section C, below, followed by comments on "*Chapter 2 – Environmental Checklist*" in Section D. The comments are limited to those matters which appear in the Recirculated Initial Study, but we reserve the right to provide further comments in the event that additional or different information about the proposed Project becomes available.

C. Specific Comments on the Recirculated Initial Study:

1. Chapter 1 of the Initial Study -- Inadequate "Project" Description.

(a). Deficient "Project Description" – In General

"A correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA." (*Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 267).

> **The initial study must include a description of the project.**" (*City of Redlands, supra,* 96 Cal.App.4th at pp. 405–406, fns. omitted.) **An accurate and complete project description is necessary** to fully evaluate the project's potential environmental effects. [Citations.]" (*El Dorado County, supra,* 122 Cal.App.4th at p. 1597.) (*Id*.)

As noted above (Section B(2)), the District's cover letter for the Recirculated NOP states that "the Project" has been changed, and that the Project description has been "changed." However, the Recirculated NOP and Initial Study do not explain the "changes" in the Project, and they still fail to provide an accurate and complete description of the Project as mandated by CEQA. The failure of the Initial Study and NOP to provide an accurate, complete, and coherent description of the "Project" is a fundamental deficiency, which permeates the entire document.

The Initial Study fails to describe additional planned or reasonably foreseeable activities or actions by the District (e.g., changes to emissions targets) or by other agencies in response to or associated with the proposed Rule, or to address cumulative impacts of this proposed Project in light of other related actions and plans.

The Initial Study suggests, instead, that the intent of PR 4001 would be to delegate the District's responsibilities for regulating or reducing emissions of NOx, SOx, and PM2.5 air emissions to other agencies, specifically the officials governing the ports of Long Beach and Los Angeles. The Initial Study further 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 Rule 4001 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 entire project*, improper project "segmentation," *improper deferral* of impact analysis and mitigation, failure to identify and evaluate *potentially feasible project alternatives*, etc.)

The absence of such a clear description of the proposed Project inherently prevents the IS from facilitating meaningful review and analysis of the proposed "Project," and violates the requirements of CEQA. (See, e.g., CEQA Guidelines, 14 CCR § 15124; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376.)

The Initial Study falls far short of these requirements in describing the proposed Project, and thus falls short of serving the "public awareness" purposes mandated by CEQA:

> An accurate and complete project description is necessary for an intelligent evaluation of the potential 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, citing *Aberdeen & Rockfish RR. v. SCRAP* (1975) 422 U.S. 289, 322 [an accurate, complete and consistent project description is the sine qua non of informative, legally adequate CEQA review].) (*City of Redlands v. County of San Bernardino, supra,* 96 Cal. App. 4th at pp. 407–408.)

In sum, the Recirculated NOP/IS still erroneously limits the scope of the required environmental analysis and calls for impermissible speculation or impossible prescience on the part of the Cities or other members of the concerned public to undertake effective analysis of the proposed Project, or to provide meaningful comments as to the scope of review of the Project, until and unless the District provides an adequate and complete description of the "Project."

Incomplete Description of Environmental Setting

The Initial Study also fails to provide an adequate description of "the environmental setting" of the proposed Project.

While the CEQA Guidelines do not specifically define "environmental setting" with regard to an initial study, they do explain, in regard to EIR preparation, that the "environmental setting" must be informative: "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." (Guidelines, § 15125, subd. (a).) A description of the environmental setting must be sufficient to allow "an understanding of the significant effects of the proposed projects and its alternatives" but "no longer." (Guidelines, § 15125, subd. (a).) That description should place "[s]pecial emphasis" "on environmental resources that are rare or unique to that region and would be affected by the project" and "must permit the significant effects of the project to be considered in the full environmental context." (Guidelines, § 15125, subd. (c).)

Failure to Examine All Phases of the Entire Project as Proposed

"The Initial Study must include a description of the project, and the scope of the environmental review conducted for the initial study must include the *entire* project." (*Nelson v. County of Kern, supra*, 190 Cal.App.4th at 270, emph. in original.)

The Initial Study here improperly fails to describe "the entire Project" and fails to consider all phases of the proposed Project. The CEQA Guidelines (14 C.C.R §15063(a)(1)) make clear that an initial study must take a comprehensive view of the proposed project *as a whole*. "All phases of project planning, implementation, and operation must be considered in the initial study of the project."

Since the Project also contemplates the possibility of future discretionary actions and measures on the part of the Cities, if compelled under PR 4001, which may in themselves have additional, not-yet-identified environmental impacts, the Initial Study should call for the scope of the EA to be expanded to include such issues.

The scope of the environmental review conducted for the initial study must include the entire project. (*Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1222.) Thus, a correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA. (*Nelson v. County of Kern, supra*, 190 Cal.App.4th at 267.)

The NOP/IS indicates that proposed Rule 4001 is intended to require actions by the Cities, to adopt and implement plans and strategies to address any "shortfall" in emissions reductions. The Initial Study improperly fails, however, to address or to provide information and analysis relating to the environmental impacts of the anticipated "subsequent approvals," "discretionary permits" and amendments to the Cities' plans and regulations that appear to be proposed as parts of the Project, or the physical environmental effects of social or economic impacts that may result from those anticipated changes in land use regulations. (Guidelines § 15063.) Such anticipated and intended actions by other governmental agencies thus appear to be part of this Project, and must be identified and evaluated in the Project EA, along with their potential impacts. As such, we reiterate our prior comment on the Draft 2012 AQMP Program EIR dated October 22, 2012 where it is stated that the District has failed to fully disclose the details of Measure IND-01 and as a result is segmenting or piecemealing its CEQA analysis.

Failure to Describe Existing Land Use Regulations

The Initial Study does not include an examination of whether the Project would be consistent with existing zoning, plans and other applicable land use controls, as required by CEQA Guideline Section 15063. Although the Initial Study includes some background discussion of the CAAP, it provides little or no description of the existing planning and zoning designations applicable to the "Project" location, and relies on (unsupported) assertions that the Project would be in furtherance of the CAAP. It provides no information or analysis of other existing plans or policies applicable in the Harbor Districts, which may be affected or impacted by the Project. Additionally, the Initial Study contemplates impacts beyond the Harbor Districts but does not specifically define these areas nor the applicable land-use regulations.

Uncertain and Inadequate Identification of "Baseline" Used for Review

It is critical under CEQA that any level of environmental review make it clear as to the "baseline" being used as the basis for analysis of the significance of potential Project impacts. (CEQA Guidelines Section 15125(a).) Normally, the "baseline" will be the existing environmental conditions in the vicinity of the Project. (Guideline Section 15125(a); see also, 48 Cal.4th 310, 315 [the baseline for an agency's primary environmental analysis under CEQA must ordinarily be the *actually* existing physical conditions rather than *hypothetical* conditions that could have existed under applicable permits or regulations].) The Supreme Court has explained that the requirement for identification and use of the appropriate "baseline" applies in the context of an Initial Study as well as in an EIR. (*Communities for a Better Environment, supra*, 48 Cal.4th at 512, and n. 5.)

The Initial Study here, however, fails to make it clear as to what "baseline" is being used. In many places the Initial Study compares the anticipated "impacts" of adopting proposed Rule 4001 to the permitted emissions levels anticipated (in the future) under the 2012 AQMP, or alternatively to the (future) emission reduction targets of the CAAP -- rather than to the existing environmental conditions. While the recent Supreme Court decision in *Neighbors for Smart Rail v. Exposition Metroline Constr. Authority* (2013) 57 Cal.4th 439, 451-52 indicates that the baseline need not always be the existing physical conditions, and that "projected future conditions" may be used in rare situations as a baseline "if their use in place of measure existing conditions ... is justified by unusual aspects of the project or the surrounding conditions", it does not detract from the rule that the Initial Study must accurately and consistently describe the baseline being used. Nor does it permit the use of "future conditions" in the absence of a showing of unusual circumstances. The Initial Study in this case does neither.

For each of these fundamental reasons, the Recirculated NOP/IS should be rescinded in order that it may be revised, completed and corrected to meet CEQA requirements.

(b) The Initial Study Improperly Fails to Identify or Address Alternatives to the Proposed Project:

As noted above, CEQA requires that an Initial Study identify a range of "potentially feasible alternatives" to the proposed project which are to be more carefully analyzed in the draft environmental study. (14 CCR § 15083; "The determination of whether to include an alternative during the scoping process is whether the alternative is potentially feasible (*Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 489.)

However, the new Initial Study totally fails to identify any alternatives for study in the eventual EA. Instead, it merely "commits" the District to "discuss and compare alternatives" in the future, as part of the Draft EA. This is insufficient. The Initial Study also suggests the District is looking to the public or other agencies to identify "alternatives" during the scoping process. The Cities previously (January 2013) submitted such a potential alternative to PR 4001, in the form of a proposed Memorandum of Agreement. The District Board directed District staff to follow up and confer with the Cities on that approach. Nevertheless, it is not even mentioned in the Initial Study. Additionally, the EPA's long-established VMEP program is not considered as an alternative although it was developed for this very purpose.

If the District is authorized to prepare a PEA, rather than an EIR, the PEA must at least comply with Guideline Section 15252. Section 15252(a) requires that a substitute document, like a PEA, must include at least – a description of the proposed activity, and "**alternatives** to the activity and **mitigation measures** to avoid or reduce and significant or potentially significant effects that the project may have on the environment."

The No Project Alternative is not defined in the NOP/IS. In accordance with CEQA Guidelines Section 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. Therefore, the Draft EA should consider the impacts that would occur under the existing 2012 AQMP without Control Measure IND-01 or proposed Rule 4001.

As an example, an analysis should be conducted of the grant funding that would be available under the No Project Alternative that would not be available if the proposed Project constitutes regulation, and the environmental impact if grant funding necessary to make certain actions economically feasible is no longer available under the proposed Project. If the District's position is that there is no loss of grant funding in order to comply with Rule 4001 as a regulation that the District purports to make enforceable under the State Implementation Plan and the Clean Air Act, the District must explain in the Rule its basis for this conclusion in the context of why grants made for compliance with a regulation is not a gift of public funds.

Due to the District's failure to satisfy this CEQA requirement of alternatives development, the Cities direct the District to review the feasible alternative to the Project set forth in their January 16, 2014 letter to the United States Environmental Protection Agency Region 9, copied to the District. The Cities have noted the problems with including Measure IND-01 in the California State Implementation Plan (SIP) and recommended to the US EPA to instead apply as an alternative, the Voluntary Mobile Source Emission Reduction Program (VMEP) to grant SIP credit for the small percentage of emission reductions that are not already achieved by other regulations. The VMEP can work with or similarly to the memorandum of agreement approach that was suggested by the Cities to the District as an alternative to Measure IND-01 last year. One additional alternative would be for the District to formulate its own "backstop" measures and strategies for addressing any shortfall in emission reduction targets, relying on the District or CARB regulatory authority, expertise and resources, rather than pursuing proposed Rule 4001, which appears to be an attempt to solely rely upon the Cities, which lack regulatory authority or control over the actual sources, or use of the EPA's VMEP.

(c) Comments on the District's new Proposed Rule 4001:

The "project description" in the Recirculated Initial Study includes the *draft text* of PR 4001, at Appendix B. Notwithstanding the inclusion of a draft of the text of the proposed Rule, the "project description" remains incomplete and deficient. The Initial Study does <u>not</u> provide an adequate description of how the proposed Rule would work in practice (as distinct from the superficial summary of the text at pages 1-7 through 1-10) or how it would be likely to impact the Cities, the tenants and users of the Ports, and the surrounding communities and environments. The Cities anticipate the submission of additional, more detailed, comments on inconsistencies and problems raised by the draft text of PR 4001 itself and additional questions and concerns about the District's "rule-making" process.

Other deficiencies and questions about the draft text of PR 4001 include the following:

<u>What Is the District'scLegal Authority for PR 4001?</u>

The new Initial Study asserts that if the "backstop requirement" of PR 4001 "becomes effective," then the new Rule would require the Cities to submit an Emissions Reduction Plan "to address the emission reduction "shortfall."" Under what legal authority does the District believe that its proposed Rule 4001 may purport to compel distinct governmental bodies (the Cities and the Boards of Harbor Commissioners) to legislate or to exercise their discretion in particular ways to achieve District objectives?

The new NOP continues to dodge the questions (previously raised) about the District's legal authority – if any – to adopt PR 4001 or to compel the Ports to participate in the new backstop planning process contemplated by the rule. The NOP includes only the perfunctory

assertion that PR 4001 would "implement Control Measure IND-01" – as though that were an independent and sufficient source of authority. However, even the District's Final 2012 AQMP document acknowledges that it confers no new authority on the District, and CEQA similarly cautions that it confers no new or additional legal authority on agencies independent of the powers granted to the agency by other laws. (Guidelines, sec. 15040(b).)

Moreover, as noted previously, to the extent that the draft of PR 4001 is not consistent with the Control Measure IND -01 as approved by the District's Board, it is unauthorized.

The source of the District's purported legal authority for processing this PR 4001 is important for determining whether or not the District may claim to be acting within the scope of the District's "Certified Regulatory Program" – and thus outside of CEQA. The CEQA Guidelines limit that "certified regulatory program" exemption to "that portion of the regulatory program of the SCAQMD which involves the adoption, amendment, and repeal of regulations *pursuant to the Health & Safety Code*." (Guideline, sec. 15251(l).)

If the NOP/IS seeks to justify the District preparing an environmental assessment under its "certified regulatory program" rather than an EIR under CEQA, then the District should clearly demonstrate that the PR 4001 would be enacted pursuant to some specific statutory authority in the Health & Safety Code.

The District previously sought to characterize Control Measure IND-01 as an "indirect source rule." The current references to proposed Rule 4001 in the NOP/IS have omitted all mention of an "indirect source rule." However, the new Initial Study does not cite any authority the District is relying on for its processing of the proposed Rule. This should be corrected so that the public can perceive and comment on whatever "legal authority" may be invoked by the District.

Is it anticipated that the "plans" and strategies that would be required to be adopted by the legislative boards of the two Cities under the mandate of proposed Rule 4001 would be within SCAQMD's regulating authority and subject to the District's approval or disapproval? If so, why would SCAQMD not directly adopt such "backstop" strategies and plans itself? If not, is the Rule being proposed in order accomplish something indirectly that SCAQMD itself cannot do directly? (Cf., *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 [same].)

The vague disclaimer in the Initial Study to the effect that proposed Rule 4001 would not require any measure that *lacks legal authority* raises more questions than it answers. (Note also the new Initial Study, and PR 4001, no longer disclaim any intent to require the Cities to adopt measures that are not "*technically feasible*.") Whatever types of "emissions reduction plans"

may be anticipated by PR 4001 should be identified by the District in the NOP/IS so that the feasibility and legality of such approaches can be evaluated as part of the environmental assessment for the Project. (The new Initial Study omitted the examples of 'control strategies' that had been in the previous Initial Study.)

On What Basis Would PR 4001 Impose "Requirements" on the Cities

The NOP/IS states that none of the CAAP strategies would be "prescribed in PR 4001." Instead, the NOP states that if proposed Rule 4001 becomes effective, the Cities (presumably the Boards of Harbor Commissioners) -- "individually or jointly" -- would be required to identify sources that could undergo potential emission reduction to "make up for the shortfall."

Why would/should the obligation to make up for a possible shortfall in meeting emission reduction targets (which are primarily the responsibility of the District to attain) be shifted so as to fall upon two independent governmental entities? The Cities are governmental entities, and are not directly producing emissions or otherwise directly responsible for the targeted emissions or for the attainment of the emissions reduction targets.

Moreover, if there were to be a "shortfall" in attaining the targets, it could well be due to factors not caused or controlled by the Cities, and not due to any actions or derelictions on the part of the Cities or their tenants or users. Would uncontrollable/unforeseeable factors resulting in all or part of a shortfall be excluded from whatever obligation may be imposed on the Cities? Would it be required/permitted that any such "shortfall" be allocated to sources or causes bearing some actual responsibility for the lack of attainment? How would any shortfall be "allocated" between the Cities?

Would proposed Rule 4001 take into account the statutory limits on the jurisdiction and authority of the Cities (i.e, the Boards of Harbor Commissioners) to impose restrictions on most mobile sources of emissions?

The NOP/IS mentions a possible "option" that would "allow" the Cities to reduce emissions from "non-port-related sources." This vague reference requires clarification before it may be evaluated in connection with the Project. Direct and indirect effects would need to be considered that may occur beyond the geographic boundaries of the Harbor Districts. Therefore, it is premature for the District to conclude that any changes based on the working group or public scoping comments will be within the scope of the analysis in the NOP/IS.

What is meant by an "Emissions Shortfall"?

What environmental baseline and other parameters would be required by proposed Rule 4001 in order for the Cities to determine the extent of any "emissions shortfall" that may need to

be addressed in the Cities' plans in the event they were to undertake to submit plans under the Rule?

The term "shortfall" first appears in the Proposed Rule in (d)(1)(A), where it appears to call for a Plan to report on progress in "meeting the shortfall" but that seems logically inconsistent with the structure of the Proposed Rule, i.e., the District can't require the Ports to submit an emissions reduction plan unless and until the annually-reported emissions reductions "show that the percent reduction in PM2.5 from the baseline emissions is less than the reduction target of 75%" (Para (e)(1)B).) So there would not be any "shortfall" identified until that time; and therefore it would seem premature and illogical to require the Ports to submit a Plan that "reports the progress in meeting the shortfall" that was just identified.?

To the limited extent the PR 4001 describes the shortfall that might trigger the need to prepare a Plan, the provisions for annual estimating or reporting of the emissions appear imprecise and vague. Para (f) appears to contemplate that once a 'shortfall' had been determined in one year, then the District could demand a Revised Plan in following years if targets are still not met; but what happens if the shortfall is "corrected" in subsequent years and targets are again being met?

Does an Emissions Reduction Plan, once required by the District, ever go away?

<u>On What Authority Would the District Purport to "Revise the Reduction Target"?</u>

The new Initial Study reports (p. 1-8) that PR 4001 (e)(2) purports to require the District's Executive Officer to review the reduction target before July 2017, and to "develop a proposed amendment to Rule 4001..." that would "revise the reduction target as necessary to conform to the 2016 AQMP reduction target."

By what authority would these targets be "revised" in the future? Under what objective standards? What public process would the Executive Officer need to follow in order to "develop" a proposed "amendment" to PR 4001? How would such a "moving target" affect the Cities and what environmental impacts would be possible consequences of such "revisions"?

<u>Does PR 4001 Provide a Clear and Feasible Process for Cities to Develop a "Plan"?</u>

Para (f) (E) would require that "the Plan shall be approved by the Board of Harbor Commissioners" at each Port, and would require the Port to conduct at least one "public meeting" ... but is this an improper attempt by the District to control and dictate the exercise of discretion" conferred on the Board of Harbor Commissioners? The Board of Harbor Commissioners may in fact disagree that a plan is required or may exercise its own discretion, as required by law, that it cannot commit expenditures to a program desired by the District. Under what authority can the District's Executive Officer, acting alone without even District Governing

Board authority, disapprove a plan or compel a plan to be approved by the Cities' own governing authorities? What is the District's intended mystery penalty or consequence, which the proposed Project still has not revealed to the cities and the public in PR 4001? Furthermore, discretionary action by the Boards of Harbor Commissioners requires compliance with CEQA. What type of CEQA review would be triggered for the emission reduction plans if the Program Environmental Assessment being prepared by the District is only programmatic in nature and how is the timing for either a consistency review or project-specific analysis, if warranted, accounted for in PR 4001?

Would PR 4001 Create Violations of Due Process?

The draft of PR 4001 raises several questions regarding apparent violations of Due Process:

Para (f)(2)(B) -- the District's Executive Officer would be given nearly unfettered discretion to "disapprove" a Plan submitted by the Cities?

There must be some requirement at least that the Executive Officer must make "findings" of "non-compliance" with some provision of (f)(1) of the Rule, based on some objective standards.

What would be the procedure if the Cities submitted a Plan, and the District (either by its Executive Officer or its Hearing Board) "disapproved" the Plan (per Para (f)(2)(C))? The Port would apparently be required to submit a Revised Plan within 60 days of the disapproval. But what about the Harbor Commissioners holding a new "public meeting" for input on the Revised Plan? And would there be any time or procedure for the Harbor Commissioners to consider and approve a new Revised Plan and comply with CEQA within that arbitrary 60 day time frame?

At the end of Para (g)(2) is the threat again that if the District Board denies the Port's appeal from a "disapproval" of the Port's emissions reduction plan, then the "*Ports shall comply* with ... [or subparagraph (f)(2)(F)]" -- which means the Port shall be self-confessed as "in violation" of the Rule? This would appear to inflict a denial of Due Process on the Cities.

Variance: PR 4001 must provide more detail as to what is meant by Para (g) - petitioning for a "variance" ? What are the criteria? What would the process be? What would be the effect of the District granting a variance?

How Would the District Determine the "Consequences" for "Violation" of PR 4001?

By what authority would the District sit in judgment as to the sufficiency of the Cities' efforts to manage activities and uses of the Ports? What might the consequences be if a City were to be deemed to be "in violation" simply because the District may choose to "disapprove" a

Revised Plan, and by what legal authority would the District purport to sanction the Cities in the event of some perceived "violation"?

By what objective standards would the District judge the sufficiency of any plans or measures proposed by the Cities to achieve the emission reduction targets?

What is the consequence of disapproval of a City plan by the District? The rule should provide more detail at Para (f)(2)(F) (iii) -- what is meant by the obscure reference here that the Ports "shall be in violation of this Rule... "?

Does PR 4001 Provide for Judicial Review of District Actions?

Should the Rule make provision for judicial review of the actions of the District in enforcing or interpreting the Proposed Rule?

As drafted, PR 4001, at Para (h): "Severability" appears to contemplate that a "judicial order" could hold some provision of the Rule to be invalid? Otherwise the Rule is silent on Judicial Review.

Are the Cities Supposed to Regulate Off-Site "Sources"?

The Initial Study indicates (p. 1-4) that the District anticipates that the "control strategies" contemplated by this Project "may potentially include" measures for the Cities to adopt and implement policies or programs extending beyond their jurisdictions or to try to reduce emissions from sources *not entering* onto port properties. What does this mean? By what legal authority might the Cities try to regulate *off-site* sources that do not come within the jurisdiction of the respective Harbor Commissions? (Municipal police power authority may generally be exercised only within the territorial boundaries of their jurisdiction, and the Boards of Harbor Commissioners have special Tidelands limits on their authority.)

Would such (unidentified) measures be part of Rule 4001, or would proposed Rule 4001 require that the Cities formulate (unidentified) measures in the future to somehow regulate *off-site* "sources?"

How Does the District Contemplate Funding of Backstop Measures?

The draft of PR 4001 implies that "funding" would be necessary for many of the potential future emission reduction measures that may be compelled under proposed Rule 4001. Would such funding be provided by the District? What other "funding" sources are contemplated?

The conversion of the Cities' voluntary programs into PR 4001 as a district regulation and potentially state and federal law if adopted into an approved SIP, will impose constitutional

or common law "gift of public funds" restrictions on federal and state grant funding currently relied upon by the Cities for emission reduction activities under their CAAP.

To the extent the District expects the Cities to fund future programs, this demonstrates a lack of understanding of the Cities' own governmental authority and obligations. The Boards of Harbor Commissioners of the Cities are trustees for the Tidelands Trust funds they are entrusted to manage and have specific legal obligations to meet, including promotion of maritime commerce, navigation and fisheries and keeping their budgets in balance amidst a current global shipping economy with many dynamic and threatening competitive pressures to retain market share. By what authority may the Harbor Commissioners impose taxes, assessments, and charges on users of the Harbor Districts, given the restrictions of various state laws, including, among others, Proposition 26?

(d) Specific Comments and Questions re "Project Description" and Text

The following comments and questions refer to specific portions or pages of Chapter 1 of the new Initial Study:

Pp. 1-1 - 1-2 – Introduction

(i) *Erroneous Characterization of Existing Emission Reduction Requirements:* The Introduction states, in the first sentence of the third paragraph on page 1-1, that Control Measure IND-01 "...does not call for additional emission reductions beyond those realized with existing regulations and emission reductions programs implemented at the Ports to date." This is an untrue statement. The CAAP is only a planning document which specifically provides for discretionary future decisions to be made regarding implementation by each of the Cities' respective Board of Harbor Commissioners, and the resolution adopting the CAAP update states:

> The CAAP is a living document intended to establish a process to develop solutions, not a static document binding the Ports to particular future actions….The CAAP is a planning document that identifies goals and potential implementation strategies to guide further actions, and as such does not constrain the discretion of either Board of Harbor Commissioners with respect to any particular action.[2]

[2] Los Angeles Resolution No. 10-7041 adopted by the Board of Harbor Commissioners of the City of Los Angeles and Long Beach Resolution No. HD 2600 adopted by the Board of Harbor Commissioners of the City of Long Beach on November 22, 2010.

Not all individual Board actions that may be required in order to achieve the CAAP's goals and activities have been adopted; in fact, many of these goals were stretch targets with uncertainty as to whether they could be achieved. Control Measure IND-01 and Rule 4001 propose to *require* the Cities to potentially adopt future discretionary, quasi-legislative actions that create potentially-conflicting authorities between the District, as regulator, and the Cities, as independent governmental agencies regulated by the District, so as to force the Cities to exercise their discretionary police power authority in a particular way. The Constitution does not permit such usurpation of the Cities' authority.

(ii) *Misleading and Inaccurate References to "Port-Related" Sources of Emissions:* The new Initial Study and Recirculated NOP continue to describe PR 4001 in the misleading context of "port-related sources" of PM2.5 emissions, and as ensuring that emissions from "port-related sources" meet the targets included in the Final 2012 AQMP. The term "port-related sources", however, is not used in the federal Clean Air Act ("CAA") or Health &Safety Code. As described in the NOP, "port related sources" are mobile and vehicular sources ("ocean-going vessels, on-road trucks, locomotives, harbor craft, and cargo-handling equipment"). Those *actual* "sources" of emissions are distinct from the geographic area in which they operate and are generally and comprehensively regulated by other State and federal agencies, not regional air quality districts.

The District's continued references to "port-related sources" of emissions are misleading and are no more accurate or descriptive than would be similarly generic references to "coastal-related sources" or "County-related sources" or "Air District-related sources" of emissions.

(iii). *Misleading Failure of the Project to Limit the Cities' New Obligations to "Technically Feasible" Measures:* The previous Initial Study for PR 4001 at least made it clear that the District only intended to require the Cities to propose additional emission reduction methods for vessels, trucks, locomotives, etc., "to the extent cost-effective strategies are *technically feasible* and within the Ports' authority." (Similar limitations on the Cities' new obligations under the proposed 'backstop measure' are included in IND-01.) However, the new Initial Study no longer includes any limitation to "technically-feasible" measures that could be required of the Cities (p. 1-1.) This omission creates uncertainty about the District's intentions as to the scope of PR 4001, i.e. whether it might be construed to be a "technology-forcing" regulation or not.

(iv). *Inconsistent or Uncertain Emissions Reduction Targets.* The Introduction states, in the last paragraph beginning on Page 1-1, that the emission targets for "port-related sources" are those assumed in the 2012 AQMP emissions inventory. The draft text of PR 4001 now purports to define "emissions target" by reference to page IV-A-36 of Appendix IV to the Final 2012 AQMP. The Cities raised questions during the Measure IND-01 adoption process regarding the District's calculation of these targets, which are *different* from the emissions targets set under the

CAAP. Although the specific emission targets of the proposed Project do not appear at all in the NOP (which omission itself is a defect), the District has verbally advised the Cities and a working group on August 8, 2013, that the Rule will be such as to be triggered on set emission targets for 2014 and 2019. Those comments, however, left the Cities and working group participants with many questions about how the District set the emissions inventory, particularly for 2019, which was not in the CAAP. These examples are provided to illustrate that the Initial Study's description of the applicable emission reduction targets to be covered by PR 4001 are uncertain, or inconsistent.

P. 1-4 - Project Location

The new Initial Study provides no finite "project location." It again refers to the District's jurisdictional boundaries. It then states that "PR 4001 would apply to POLA and POLB, both of which are located within Los Angeles County." It is unclear if this was an attempt to state that the Project location would be Harbor Districts of the Cities. The lack of clarity regarding the Project location is further compounded by the Rule's reference to "sources not entering Port," and by a new but vague reference to the effect that the unidentified "strategies proposed by the Ports" under compulsion of PR 4001 could extend the "project location" beyond Los Angeles County.

Is it the intention that any portion of the Project may be implemented outside the geographic areas of the two Ports? It remains unclear from this description whether the Project may have impacts or foreseeably result in actions being taken outside the geographic areas of the two ports. This may have jurisdictional implications which cannot be evaluated without additional information.

Also, the Initial Study fails to disclose or analyze the possibility that if the option for the Cities to reduce emissions from sources not entering Port properties is included in proposed Rule 4001, even the vague "project location" and geographic scope of the proposed Rule in the Initial Study would not be accurate and would need to be modified in the NOP/IS.

P. 1-5 – Project Background

The new Initial Study appears to recognize that distinct "emission sources at the Ports" such as vehicles, engines, ships, trains, trucks and other cargo-moving equipment operated by distinct tenants, users, and visitors of the ports are the intended targets of the Project's emission reductions requirements. It also acknowledges that the Ports themselves adopted the San Pedro Bay Ports Clean Air Action Plan ("CAAP") in 2006, and further that emissions from these so-called "port-related sources" have been "substantially reduced since 2006" as a result of collaborative and voluntary programs and regulations developed by both Ports. (p. 1-6).

These acknowledgements raise again the question of the need or justification for the Project, or for the attempt by the District to foist the responsibilities for regulating emissions from such mobile or vehicular sources of emissions from state and federal agencies onto the Cities.

Also, on Page 1-6, the new Initial Study states that the intent of PR 4001 is to "provide a backstop to the Ports' actions" in case emission reductions "from port-related sources do not meet *or are not on track to maintain the emissions targets*..." This appears to be an unauthorized change in the Project description and is not consistent with IND-01. Also, notion that the District would be empowered by PR 4001 to enforce sanctions against the Cities if the District somehow deems that they are "not on track" to maintain targets is ambiguous, and without objective standards or legally-necessary procedural protections.

Pp. 1-11 -- Technology Overview/Implementation Strategies

The new Initial Study refers to some emission reduction strategies included in the CAAP, but the Initial Study does not explain how these may relate to proposed Rule 4001, or whether they should be considered as part of the Project.

The suggestion in the Initial Study of possible "tariff changes" or "impact fees" on the activities of users of the Harbor Districts raises other questions (e.g., legal authority, funding for studies and public review processes required before such measures could be considered or adopted, indemnification for costs of defense, etc.) requiring identification and study. Moreover, such measures may themselves be considered as "projects" subject to CEQA review and may have impacts on the activities of Harbor District users that themselves would require analysis or mitigation.

The Initial Study also includes reference to "Port funded incentives" as possible measures to reduce emissions, but also observes that there is not adequate funding for such strategies in the Cities' budgets or other grant programs. The source of funding any "Port-funded" measures contemplated by proposed Rule 4001 should be clearly identified and evaluated.

Any such contemplated implementation strategies should be included in the "Project description" and better identified in a more complete NOP/IS, so that they may be evaluated along with the rest of the Project.

Feasibility: The new Initial Study abjures any consideration of technical feasibility or other concepts of "feasibility" despite CEQA's recognition of feasibility as a critical limitation on environmental regulation. The scope of the EA should be expanded to address the legal, technological and economic feasibility of the seven bulleted items listed in this section.

2. Chapter 2 of the Initial Study – The "Environmental Checklist"

(a) General Comments on the Environmental Checklist

The Recirculated NOP/IS relies on a standard CEQA environmental checklist to identify those "impact areas" it recognizes to be potentially affected by the Project. In several respects, however, the Initial Study appears to merely assume the absence of potentially significant impacts, rather than factually demonstrating that significant impacts will not occur if the Project is adopted and implemented. This is insufficient under CEQA, and under the District's own rules. (SCAQMD Rule 110; *City of Redlands, supra*, 96 Cal.App.4th at 408-09; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296).

The new NOP includes many statements that the PEA will rely on "conservative assumptions" about the possible environmental impacts of the Proposed Rule. Reliance on any assumptions in CEQA analysis is unsound, and if assumptions are to be used, the District must explain why it would rely on "conservative" assumptions about the scope of impacts.

Furthermore, it is contrary to the District's response to comment #5-4 in the Final Program EIR, which indicates that "[t]he exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted."

We appreciate that the new Initial Study has expanded the number of environmental areas to be studied in the eventual EA from the six (6) topics identified in the previous Initial Study to thirteen areas now recognized as being subject to potentially significant impacts if the Project is approved. The new Initial Study now recognizes the following *additional areas* of potential environmental impact to be addressed in the EA: (1) Aesthetics, (2) Biological Resources, (3) Cultural Resources, (4) Land Use and Planning, (5) Noise, (6) Public Services, and (7) *broadened evaluation* of potential impacts and issues in the areas of Energy, Hazards and Hazardous Materials, Air Quality, and Transportation and Traffic.

However, the new Initial Study continues to provide only superficial and inadequate discussion of the areas of environmental impact, and thus fails to properly indicate the necessary scope for the eventual EA. Unless and until those areas are more fully addressed, the new NOP/IS still improperly limits the scope of the proposed EA, and still erroneously exclude areas requiring further assessment.

(b) Specific Comments on the Environmental Checklist

As detailed below, there are numerous areas of potential environmental impact in the checklist as to which the Initial Study either omits required evidence to support its conclusions of "no potential impact" or treats with insufficient detail.

Even as to those areas that are now identified in the new Initial Study as having potential impacts, the new Checklist still errs by limiting the scope of the potential impacts identified for further study based on unfounded assumptions as to the environmentally benign intent behind the Project. However, the law is clear that environmentally "benign" objectives for a project do not excuse non-compliance with CEQA and do not justify reliance on assumptions in lieu of evidence to demonstrate the absence of potential impacts. *See, e.g., California Farm Bureau v. California Wildlife Conservation Board* (2006) 143 Cal.App.4th 173, 196, emph. added [State environmental agency violated CEQA by exempting environmentally beneficial habitat project from review]:

"[I]t cannot be assumed that activities intended to protect or preserve the environment are immune from environmental review. [Citations.]" (*Davidon Homes, supra*, 54 Cal.App.4th 106, at p. 119; see, e.g., *Dunn-Edwards Corp. v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644 (disapproved on other grounds in *Western States Petroleum Assn. v. Superior Court, supra*, 9 Cal.4th 559, 570.) **There may be environmental costs to an environmentally beneficial project, which must be considered and assessed**.

P. 2-4 -- Preliminary Discussion of Checklist

First Paragraph: We reiterate the same comment as noted above, regarding Cities not being the "source" of emissions. It is "the operational activities by the Ports' tenants" [and other users of the area] that produce emissions (as the new Initial Study more accurately recognizes) and which should be the true District targets as the sources of emissions.

First Paragraph, Last Sentence: The Initial Study states that "some emission reductions [assumed by the District's 2012 AQMP] may be contingent upon the Ports taking and maintaining *actions which are not required by air quality regulations*." This suggests that one of the purposes for District proposal of proposed Rule 4001 may be to establish a new regulatory "authority" over the Cities (and the communities served by and dependent upon the Harbor Departments of the Cities) that is not in fact already provided by existing federal, state, or regional air quality regulations. The policy implications of such a Project may well include significant impacts on the environment, if regulatory authority over activities, facilities, and uses of the Harbor Districts is shifted or arrogated to the District. (See, e.g., *City of Redlands, supra,* 96 Cal. App. 4th 398 [proposed new County policy re exercise of County authority over annexations and sphere of influence was not supported by adequate CEQA review].)

Page 2-5: The new Initial Study makes reference to a "survey" of existing CEQA documents to try to identify projects "similar to the types of projects the Ports may choose to implement in an Emission Reduction Plan." It then suggests that "reasonably foreseeable projects" resulting from this survey will be evaluated in the EA. While we respect these goals, we submit that the new Initial Study is vague as to what may be deemed to be "reasonably

foreseeable projects" warranting analysis in the EA, and would request that more objective criteria be provided.

(1) **Aesthetic Impacts:**

The brief discussion of "potentially significant" Aesthetic impacts in the new IS does not address many of the Cities' prior comments on these impacts, and we reincorporate those comments.

(2) **Biological Resources:**

The new discussion of impacts on Biological Resources does not address the Cities' prior comments re possible impacts on migratory birds and least terns, and we reincorporate those comments.

(3) **Energy:**

The new Initial Study section VI (c) must be expanded to also consider and analyze 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 required in the event of a major disaster. Also some types of emission control measures, facilities, or technologies contemplated by the Project could increase or shift demand for different types of energy or fuel usage. Although "risk of upset" is not considered in the new Initial Study checklist. The scope of the proposed EA should be expanded to include this additional analysis.

(4) **Hazards and Hazardous Materials:**

In addition to our comments on the prior Initial Study, the new Initial Study section VIII(f) must be expanded to also consider and analyze the increase reliance on alternative fuels or electrical powered technologies that would require sufficient supply and emergency storage in the event of a major disaster. Although interference with emergency response plans was marginally addressed in this section, "risk of upset" is not considered in the new Initial Study Checklist. The scope of the proposed EA should be expanded to include this additional analysis.

(5) **Land Use & Planning Impacts:**

The new IS now identifies Land Use and Planning as an area involving potential significant impacts, to be studied in the EA. However, the new IS states that such impacts will be considered in the EA only "if the project conflicts with the land use and zoning designations established by local jurisdictions." This is insufficient.

We previously pointed out that the PR would cause conflicts with existing land use plans and policies, circulations plans, congestion management plans, etc. The prior IS itself admitted that the Project would cause potentially significant impacts or conflicts with existing land use plans (but was only going to address them in the Transportation section). This should be a definite area for evaluation in the EA, not a 'conditional' topic of study.

We also note that the new Initial Study is internally inconsistent. It makes the remarkable assertion (inexplicably placed in its discussion of impacts on Biological Resources, at p. 2-18) that "there are no provisions in the proposed project that would adversely affect land use plans, local policies, ordinances or regulations. LAND USE AND OTHER PLANNING CONSIDERATIONS ARE DETERMINED BY LOCAL GOVERNMENTS AND NO LAND USE OR PLANNING REQUIREMENTS WOULD BE ALTERED BY THE PROPOSED PROJECT." We strongly disagree, as pointed out in our prior comments, which are incorporated.

The measures contemplated in the Initial Study include the adoption of new "regulatory requirements," new "impact fees" on the movement of cargo or sources, and changing the tariffs for use of the Harbor Districts – all of which would cause at least potential "conflicts" with applicable plans and policies. (Cf., *Orinda Ass'n v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1169 [the CEQA requirements for initial study examination of non-conformity with existing land use plans are intended to allow lead agency to modify the Project to avoid inconsistencies with existing plans – not vice versa].)

The Initial Study itself acknowledges that the Project is anticipated to cause "potentially significant impacts" or conflicts with "an applicable plan ... for the performance of the circulation system" and conflicts with "an applicable congestion management plan." (Initial Study, p. 2-44.) Although the Initial Study proposes to address those admitted conflicts in the "transportation" section of the EA, these acknowledged conflicts confirm the necessity for including "land use and planning" impacts in the proposed EA as well.

Also, the proposed Project would seemingly create conflicts with the Cities' 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 are detailed in the previous port letters included in Attachment A to this letter. In addition, the proposed Project would create inconsistencies with the Clean Air Action Plan.

The proposed Rule is apparently structured in a way that would impermissibly usurp the (non-delegable) police power authority of the Cities and their respective Boards of Harbor Commissioners to plan, implement, and regulate land use policies and actions in their respective jurisdictions. (This comment has also been raised above, in Project Description comments.)

The numerous inconsistencies between the Project as proposed and the existing plans and policies require identification in the Initial Study and inclusion in the proposed EA. (Guidelines § 15125(d).) The scope of the proposed EA should be expanded to include environmental analysis of all of these potential impacts on land use and planning.

The EA should also include analysis of the impacts of the proposed/anticipated Project-related subsequent amendments to the Cities' plans, policies, and other land use regulations. (See, e.g., *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1197 [CEQA review failed to consider incidental results from adoption of revised policy; incidental impacts could not be disregarded in an initial study based upon "net" environmental impact of the change in policy being benign since CEQA requires each environmental impact of project be discretely evaluated].) "Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project." (Guidelines, § 15064, subd. (e); see §§ 21080, subd. (e)(2), 21082.2, subd. (c).)

The scope of the EIR should be expanded to include analysis of possible physical changes in port facilities and operations that might be caused by economic or social effects of the Project itself or by the anticipated amendments to land use and zoning policies by the Cities subsequent implementation of the Project.

(6) **Transportation and Traffic Impacts**

The new Initial Study fails to adequately describe and analyze potential impacts to rail and marine vessel traffic and ignores the significance criteria identified as "[w]ater borne, rail car or air traffic is substantially altered" on page 2-45. The new Initial Study erroneously considers vehicular traffic impacts to local roadways.

Socioeconomics Analysis

The proposed EA needs to include a broad-based analysis of the socioeconomic effects of Proposed Rule 4001, including the potential for job loss, business closures, and diversion of cargo to other ports due to the potential loss of regional competitiveness. The socioeconomic analysis needs to consider both the existence of the rule, even if not triggered, and the future enforcement of the rule. Because these conditions have the potential to physically change the environment in and around the ports, these impacts should be identified and assessed in the EA. (See CEQA Guidelines §§ 15064€ and 15131; *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3rd433,445 [EIR must consider possibility of economic blight from rezoning].) Moreover, this assessment should not be limited to businesses and operations within the ports, but should extend to those facilities, business and operations that while located outside of the Harbor Districts are dependent upon the flow of cargo for their continued operations.

This CEQA analysis of the socioeconomics effects of PR 4001 in the proposed PEA would be separate from, and in addition to, the assessment of socioeconomic impacts of the proposed Rule that the District is required to prepare in compliance with Health & Safety Code § 40728.5 and § 40440.8.

D. Conclusion:

The current version of the Recirculated NOP/IS still fails to comply with CEQA or with the District's own Rules for environmental review, and fails to properly provide an adequate "scope" for the eventual Environmental Assessment to be prepared for analysis of the Proposed Rule 4001. The Initial Study must therefore be revised, corrected, and re-circulated with all of the descriptions and other content required by CEQA.

While it is clear that an EA is called for in connection with this proposed Project, it is equally clear that the EA should be more complete than what is envisioned by the current NOP/IS. More fundamentally, its scope must be determined by a legally-adequate revised NOP/IS. The EA for the Project must, of course, be supported by credible and substantial evidence, including independent professional analysis.

Even this inadequate NOP/IS makes it clear that **the scope of the proposed EA has been unduly narrowed and fails to identify any potentially feasible alternatives to the Project.** Consequently any ensuing environmental review will be limited in a way that erroneously fails to provide the relevant decision-makers, affected public agencies, residents and the public generally with sufficient evidence and analysis of all potential impacts from the Project as a whole, or of all potentially feasible mitigation measures or appropriate Project alternatives as required by CEQA.

We respectfully request that these comments and questions be considered before the District embarks on preparation of the EA and all of the other required independent studies in connection with the CEQA review of the proposed Project. We therefore look forward to working with the District, and any study teams or working groups tasked with evaluation of the proposed Rule 4001.

The NOP requests that we provide you with a contact person for each responding agency. For the **COLB,** the contact persons are as follows:

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We appreciate your consideration. Thank you.

Sincerely,

Matthew Arms
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachments:

- August 21, 2013 Letter; Port of Long Beach and Port of Los Angeles to SCAQMD; *Comments on Notice of Preparation, Initial Study, and Scope of Proposed Environmental Assessment*

- October 2, 2013 Letter; Port of Long Beach and Port of Los Angeles to SCAQMD, *Initial Comments for Public Consultation on Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets are Met at Commercial Marine Ports"*

cc: Al Moro, Acting Executive Director, Port of Long Beach
Gary Lee Moore, Interim Executive Director, Port of Los Angeles
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
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Cynthia Marvin, Division Chief, Stationary Source Division, CARB
Doug Ito, Chief, Freight Transportation Branch, CARB
Jared Blumenfeld, Administrator, U.S. EPA, Region 9
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October 2, 2013

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Re: Initial Comments for Public Consultation on Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports"

Dear Mr. Pasek and Staff of the South Coast Air Quality Management District:

We appreciate this opportunity to submit comments during the public consultation period on the South Coast Air Quality Management District's (AQMD's) proposed "Rule 4001: Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports" on behalf of the City of Long Beach acting by and through its Harbor Department (referred to herein as "COLB") and the City of Los Angeles acting by and through its Harbor Department ("COLA," collectively with COLB, the "Cities" or the "Ports").

The Cities take their role as environmental leaders seriously and through the years have achieved tremendous success in obtaining substantial emissions reductions through the efforts guided by the joint San Pedro Bay Ports Clean Air Action Plan ("CAAP"). The Cities continue to support programs that will result in cleaner air for the local communities and the region and have worked aggressively with the port industry to reduce air quality impacts from the equipment they operate. As a result, the recently released emissions inventories have shown that between 2005 and 2012, emissions from sources at both the Port of Long Beach and Port of Los Angeles were reduced by 80% for diesel particulate matter and 55% for nitrogen oxides. However, the Cities continue to disagree with the AQMD's current proposal to inappropriately and unnecessarily regulate the Cities. The Cities have been consistent in our comments to the AQMD about the serious concerns and objections to the proposed rulemaking approach. A compilation of these comments was recently submitted to the AQMD in our comment letter on the Notice of Preparation and Initial Study for Proposed Rule 4001, dated August 21, 2013.

As for the comments the AQMD is currently seeking, we have concerns that the process recently initiated by the AQMD to solicit comments on Proposed Rule 4001 deviates from the rule-

The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

making procedures called for by the Health & Safety Code and by the AQMD's own rules (Rule 110), in several respects. For example, it is essential that a copy of the Proposed Rule, or the text of the Proposed Rule, "be made available to the general public in connection with a request for comments" on a proposed rule in order to commence a legally-compliant rule-making process. (E,g., H & S Code §§ 40727.2, 40727(i).) The Cities have previously pointed out the inherent inconsistency of inviting public comment on Proposed Rule 4001 before the AQMD has publicly-disclosed the text of the Proposed Rule, as well as the resulting limitations on the ability of the Cities and other members of the public to provide specific input on the Proposed Rule. As a result of the failure to provide the text of the Proposed Rule, or necessary information regarding the Proposed Rule, a meaningful and legally valid rule-making procedure has not yet been commenced, and it is premature for the AQMD to demand the submission of comments on the anticipated but still undefined new "backstop" rule.

Further, it appears that the AQMD is attempting to limit comment by setting an agenda for the items on which they are seeking input, as shown on slide 8 "Soliciting Inputs/Comments" of the presentation provided during the CEQA Scoping Meeting on August 14, 2013. In addition, limiting the public process primarily to a small working group with seats set at a small table does not allow for significant input from the broader affected public, including the port tenants and operators. Input could be more meaningfully provided if the Proposed Rule was released with sufficient time for the Cities and the public to review and provide detailed comment.

The Cities are further concerned that not enough time is being included in the schedule for rule development. To date, a draft of the Proposed Rule has not been released, nor is it expected to be released for at least several weeks; however, a hearing date for the AQMD Board to consider approval of the Proposed Rule has already been identified for early December. Well in advance of any such hearing, the AQMD must provide the public with substantial information and analysis of the Proposed Rule as required by the Health & Safety Code and AQMD rules (e.g., H & S Code §§ 40727.2; Rule 110(b), (c), and (d).), as well as responses to the public comments. The AQMD also must provide the comprehensive assessment of socioeconomic impacts required by Section 40728.5.

This timeline for review and comment is unacceptably short for a rule of this magnitude. The failure to provide the draft rule language with adequate time for the public to review and submit comments to AQMD, and for those comments to be meaningfully considered by AQMD staff, is a denial of due process.

In this regard, we also have concerns about the demand that comments be submitted by September 6, 2013. There is no explanation, nor any apparent legal basis, for imposing such a deadline for public comments. It is unreasonable, particularly in light of the absence of text or details regarding the Proposed Rule, and fails to provide due process to the Cities or other members of the public who may be burdened or affected by the Proposed Rule, to demand comments by such an early cut-off. The imposition of such a premature deadline for submission

of comments appears arbitrary, and in conflict with Health & Safety Code § 40726, which states that the AQMD "shall provide for the submission of statements, arguments, or contentions, either oral or written or both," up until the time of the public hearing on the Proposed Rule. We therefore respectfully object to the imposition of a deadline for submission of comments on the Proposed Rule, and reserve all rights to comment on the Proposed Rule in the manner, and at the times, provided by state law and the AQMD rules, and to insist on compliance with the procedures and rights afforded by state law and AQMD rules.

The Cities are therefore providing these comments on a preliminary (and non-binding) basis, considering only the limited information on Proposed Rule 4001 thus far provided by the AQMD, based upon presentations by AQMD staff about the general concepts of the approach. The Cities reserve our rights, however, to make further comments after the September 6 deadline and to continue to provide input throughout the process, including submission of additional or different comments after the draft rule is made available.

First, there is an issue of need. As a rule that is contained in the proposed State Implementation Plan, Proposed Rule 4001 violates Section 39602 of the California Health and Safety Code, which states that the State Implementation Plan shall only include those provisions necessary to meet the requirements of the Clean Air Act. There is no need for Proposed Rule 4001 since the AQMP's emissions targets for port industry equipment in 2014 will be met by United States Environmental Protection Agency (EPA) and California Air Resources Board (CARB) regulations and existing Clean Ocean Vessel Voluntary Incentive Programs. Further, AQMD staff has suggested that Proposed Rule 4001 will require the Ports to develop a "Contingency Plan" immediately following rule adoption, prior to any indication that an emissions shortfall may occur. This approach is punitive, requiring the Ports to invest resources into a type of corrective action, when there is no identified need for that action, and therefore goes against the Act and is inconsistent with due process.

Second, there is an issue of legal authority and jurisdiction. The AQMD has failed to cite any legal authority for characterization of governmental entities as a stationary source, or imposing an indirect source rule on governmental entities that do not own, operate or control the sources of emissions, based merely upon the location of facilities operated by private parties within the government entities' geographic area. The Ports are not "indirect sources" and no authority has been cited to authorize the use of an indirect source rule against fellow governmental agencies that have their own jurisdiction and responsibilities by law and do not have regulatory authority to issue air regulations. The AQMD has failed to cite any legal authority for imposing an indirect source rule on Trustees for the Tidelands of California or how it could legally compel the Ports to make expenditure of Tidelands Trust revenues for the purpose of incentives or to adopt other emission reduction programs to be funded as contemplated in AQMD enforcement activity under Measure IND-01. The AQMD has failed to show any legal authority that would allow it to (1) regulate mobile sources by making another governmental entity, that is not an air regulator, its agent for enforcement of its desired mobile source emission reductions, or (2) "enforce" the

Proposed Rule, which under AQMD administrative rules would eventually mean fines and penalties, against such other governmental entity that does not control the emissions of indirect sources located within its jurisdictional boundaries. The AQMD has failed to show any constitutional or statutory basis for attempting to regulate mobile sources "indirectly" that it is preempted from regulating directly, or to purport to impose penalties or corrective action against another governmental entity for failure of private third party emissions sources to achieve emissions reductions that such other governmental entity is also preempted from regulating.

Third, while the Cities remain firm in our position that the rulemaking is unnecessary, counterproductive and beyond the AQMD's jurisdiction, if AQMD does continue to proceed, the following significant issues must be addressed.

AQMD staff appears to be proceeding with development of the proposed rule in a manner that is inconsistent with the provisions of AQMP Measure IND-01 and the discussion between the AQMD Board and the staff during the approval of AQMP Measure IND-01 at the Board Meeting of February 1, 2013. During that discussion, it was identified that the requirements under any proposed rule would only be triggered if the ports failed to meet their goals for the target year. The proposed rulemaking concepts that have been presented by AQMD staff more recently have indicated that the Ports may be required to develop corrective action plans in advance of any identified shortfall. Further, it appears AQMD staff is considering that the Ports will be required to submit emission inventories to AQMD for approval each year through 2020 and that compliance action may be triggered for any potential shortfalls that may occur during interim years, prior to the target years. These potential requirements are inappropriate and go beyond the direction from the AQMD Board.

Also, because the Cities are not regulatory agencies, have not been granted authority to regulate sources of air pollution, and have limitations on their ability to impose requirements on sources operating within their jurisdiction, AQMD must ensure that Proposed Rule 4001 does not mandate that the Cities implement strategies that are outside of their authority or ability to implement. AQMD must recognize that the Cities do not even have contractual relationships with many of the emissions sources that AQMD has attributed to the Cities' "responsibility" for emissions reductions under Proposed Rule 4001, and that even if Cities have leases with some of the operators, they are negotiated business agreements that constrain the Cities' ability to unilaterally impose new terms in response to whatever new conditions AQMD may desire.

In addition, the Boards of Harbor Commissioners of the Cities have the discretion for making business decisions related to the ports and their tenants, consistent with the Tidelands Trust and California Coastal Act. Neither AQMD staff nor its Board can override the discretion of the Harbor Commissions including decisions related to the management of the port or how port funds are spent. Therefore, AQMD cannot disapprove an Emission Reduction Plan simply because AQMD disagrees with the chosen strategies.

Moreover, approval or disapproval of any Emission Reduction Plan cannot be at the sole discretion of AQMD staff. Any plan development should be coordinated with the agencies involved in the development of the CAAP, specifically EPA, CARB and the AQMD. The partnerships established through the CAAP process, and the actions over the past seven years that have been taken by the regulatory agencies, in addition to the Ports, have been critical in the success that has been achieved. As CARB has stated[1], "[s]uccessful implementation of the CARB emission reduction plan will depend upon actions at all levels of government and partnership with the private sector. No single entity can solve this problem in isolation." Therefore, AQMD staff should not place themselves in a position to be the sole authority to approve or deny plans for emission reductions at the Ports. Any plans should be developed in partnership, with input by all agencies, and final approval on actions to be taken specifically by the Cities should be at the discretion of the Boards of Harbor Commissioners.

Slide 8 of the AQMD presentation at the August 14 Scoping Meeting identified that AQMD is seeking input on "[f]lexibility to garnish emission reductions/air quality benefits off port property". Under the Tidelands Trust, the Boards of Harbor Commissioners are limited in their ability to spend Tidelands funds outside of the Tidelands areas. The Cities cannot be mandated by an AQMD rule to mitigate emissions that are unrelated to port-operations outside of the Harbor Districts and the Tidelands areas.

AQMD has stated that the goal of the Proposed Rule is to ensure that the Cities meet their commitments outlined in the CAAP. The Cities have clearly demonstrated over the past seven years that they are committed to working with the industry and will do what they can to reduce, from port-related sources, the port sector's fair share of regional air emissions. If other non-port related sectors within the region do not achieve their share of emissions reductions, the Cities cannot be held responsible for making up for those shortfalls, regardless of whether or not those shortfalls are anticipated to result in a delay in regional attainment of the $PM_{2.5}$ Standard in 2014.

In addition, the Cities should not be held responsible for any potential emissions shortfalls from regulatory agencies not implementing emission reduction regulations as identified within the SIP, even if those regulations are related to equipment operating at the ports. If an agency makes a decision to delay a regulation schedule, or if a regulation is overturned due to a court decision that the requirements are not within their authority to implement, the Cities should not then be mandated to backfill the potential shortfall.

The last update to the CAAP took over two years to develop and cost over $1 million. The Cities should not be required by the Proposed Rule to prepare an Emission Reduction Plan when no need for such a plan has been identified (e.g. region is anticipated to reach attainment with the $PM_{2.5}$ Standard, emission reductions will be achieved by in-place regulations, no emission shortfall has been identified, etc.). Further, development of a plan should not be mandated if the

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[1] *Emission Reduction Plan for Ports and Goods Movement in California*, Executive Summary, ES-1, CARB, 2006.

reasons for any emissions shortfall are due to reasons outside of the Cities control or if no feasible strategies are available. Any plan that is required by AQMD should be streamlined and focused solely on actions that will be taken by the Ports and/or agencies to make up for any identified shortfall.

As identified in the 2012 Air Quality Management Plan, it was determined that the 2014 $PM_{2.5}$ Standard could be achieved by 2014 and no request for an extension would be needed[2]. Therefore, it is inappropriate for the AQMD to require an emission target year of 2019 in the Proposed Rule.

As stated above, these comments represent the Cities' initial concerns with the AQMD's proposed approach. Further comments will be provided as the process progresses and as more information is made available by AQMD.

We appreciate your consideration. Thank you.

Sincerely,

Heather Tomley
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

cc: Al Moro, Acting Executive Director Port of Long Beach
Geraldine Knatz, Executive Director Port of Los Angeles
Rick Cameron, Acting Managing Director of Environmental Affairs and Planning, POLB
Mike Christensen, Deputy Executive Director, POLA
Dominic Holzhaus, Principal Deputy City Attorney City of Long Beach
Joy Crose, Assistant General Counsel City of Los Angeles, Harbor Division
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Cynthia Marvin, Division Chief, California Air Resources Board
Elizabeth Adams, Deputy Director, U.S. Environmental Protection Agency, Region 9

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[2] *2012 Air Quality Management Plan*, Executive Summary, ES-11, AQMD, 2013.

August 21, 2013

VIA ELECTRONIC MAIL - bradlein@aqmd.gov
VIA FACSIMILE - (909) 396-3324

Ms. Barbara Radlein
c/o CEQA
SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT
21865 Copley Drive
Diamond Bar, CA 91765-4178

Re: Notice of Preparation and Initial Study
Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports"

SCAQMD File No. 0722013BAR
SCH No. 2013071072

Comments on Notice of Preparation, Initial Study, and Scope of Proposed Environmental Assessment

Dear Ms. Radlein and Staff of the South Coast Air Quality Management District:

We appreciate this opportunity to submit comments on the Notice of Preparation ("NOP") and the accompanying Initial Study prepared in connection with the District's consideration of the proposed project entitled "Rule 4001: Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports" (the "Project") on behalf of the City of Long Beach acting by and through its Harbor Department (referred to herein as "COLB") and the City of Los Angeles acting by and through its Harbor Department ("COLA", collectively with COLB, the "Cities").

As environmental leaders nationwide, the Cities have achieved tremendous success in obtaining substantial emissions reductions from their joint San Pedro Bay Ports Clean Air Action Plan ("CAAP") and other air quality measures implemented under the Cities' initiatives. The Cities continue to be supportive of projects and programs that are intended to contribute to improvement of air quality and promote other environmental values. However, the Cities must fundamentally disagree with the District's current proposal to unnecessarily convert an effective voluntary plan, built on multi-agency and industry cooperation, into potentially punitive regulations imposed unlawfully on the Cities. The Cities have previously sought to make the District aware of the serious concerns and objections to this approach. The Cities incorporate by reference their previous comments on the 2012 Air Quality Management Plan ("AQMP")

Measure IND-01 Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities ("Measure IND-01") as comments on the proposed Project. The Cities' comments on Measure IND-01 are Attachment "A" to this letter.

We are also mindful that the California Environmental Quality Act ("CEQA") calls for public review, critical evaluation, and comment on the scope of the environmental review to be conducted prior to approval of proposed projects. Such review and critique 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. Thorough identification of the proposed Project, and candid disclosure of all phases of the Project and their potential impacts, is essential to assure 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, mitigation measures, and alternatives. In addition, it will be important to consider the impacts of the proposed Project on the San Pedro Bay Ports' communities, missions, 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 NOP for this "Project" as well as questions, concerns and objections related to the omissions of critical information, unsupported assumptions, or analytical deficiencies in the Initial Study, and comments as to the scope of the proposed environmental assessment ("EA") as contemplated and invited by the District's NOP.

A. General Comments on the Initial Study

While we recognize the effort that has gone into preparation of the current Initial Study, it is apparent that the Initial Study does not provide the information, evidence, or analysis required under CEQA. The Initial Study thus fails to fulfill its critical role as mandated by CEQA in educating the public generally, other affected regulatory agencies and governments, such as the Cities, 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 initial study are described in the CEQA Guidelines (14 C.C.R. §15063, subd. (d)). An initial study must "contain in brief form:

(1) A description of the Project including the location of the Project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries . . . ;

(4) A discussion of ways to mitigate the significant effects identified, if any;

(5) An examination of whether the Project would be consistent with existing zoning, plans, and other applicable land use controls;

(6) The name of the person or persons who prepared or participated in the initial study."

An initial study that fails to provide all of the information, analysis, and evidence called for by CEQA may be deemed to be inadequate and not a valid basis for CEQA review or project approval. (See, e.g., *City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, at pp. 407–408, [invalidating the County's proposed general plan amendments because of a deficient initial study: "[T]he initial threshold study is inadequate because it fails to provide sufficient evidence or analysis of the potential environmental effects of the amendments."].)

It is therefore respectfully urged that the Initial Study (and the related NOP) be revised, corrected, and recirculated for public review and comment before the District proceeds with any further action or EA in connection with the proposed Project.

The CEQA Guidelines contemplate that an initial study is to be used in defining the scope of environmental review (Guidelines, Sections 15006(d), 15063(a), 15143). However, as a result of the omissions, open questions, and deficiencies in the Initial Study as noted below, it appears to have unduly narrowed the District's proposed scope of environmental assessment, and to have caused the NOP to erroneously exclude critical issues and topics from the proposed scope of the EA.

The comments on the current Initial Study included in this letter are organized in the same format used by the Initial Study, i.e., comments on "Chapter 1 – Project Description" followed by comments on "Chapter 2 – Environmental Checklist." The comments are limited to those matters that appear in the current version of the Initial Study, and we reserve the right to provide further comments in the event that additional or different information about the proposed Project becomes available, or the District provides a revised and CEQA-compliant Initial Study.

B. Request for Revision of NOP and Re-Circulation of Revised NOP/IS To Include a Legally-Adequate "Project" Description and Text of Proposed Rule 4001

It is essential that the NOP and the Initial Study be revised to include an adequate "project description" including the text of the proposed Rule that is the "project" before the public, or the Cities, can be expected to provide comments and input.

In their prior comment letter on the Draft 2012 AQMP Program EIR dated October 22, 2012, the Cities expressed the very same concern over the vague and deficient "project description" of backstop Measure IND-01. In the District's response to comment #5-4 in the

Final Program EIR, the District stated: "*The exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted*." The District also committed, in its response to the same comment #5-4 in the AQMP Final Program EIR, that "*further details regarding the future requirements* [a Rule implementing Control Measure IND-01] *will be determined more appropriately during the rule development process.*"

The District has already commenced the rule development process. However, it has not yet provided even a draft of the proposed Rule 4001. To the contrary, at a public meeting held on August 8, 2013, the District's staff announced that the Rule will be developed after various public meetings with a "Rule 4001 working group," with a goal of releasing a draft of the Rule on August 28, 2013. Such a deferred release date for the "draft" of the proposed Rule would be one week after the deadline for comments on this NOP. The details and text of the promised Rule must be developed and disclosed before the "particular methods" and "exact impacts" anticipated may be analyzed or the subject of comment. Accordingly, it is still not possible for the District to proceed with appropriate project-level CEQA review or to issue an accurate NOP/IS at this stage if the details of proposed Rule 4001 are under development.

It is necessary that the current NOP and Initial Study be revised to include a revised "Project" Description, to incorporate the text of the draft Rule 4001 in detail, and to recirculate the revised documents for public review. A new set of public meetings, including a new "scoping meeting" should be scheduled to provide the public with sufficient time and opportunity to comment on the scope and adequacy of the revised NOP/IS.

C. Comments on the Initial Study

1. Chapter 1 of the Initial Study -- Inadequate "Project" Description

(a) Deficient "Project" Description – In General

The failure of the Initial Study and NOP to provide an accurate, complete, and coherent description of the "Project" is a fundamental deficiency, which permeates the entire document. The absence of such a clear description of the proposed Project inherently prevents the Initial Study from facilitating meaningful review and analysis of the proposed Rule 4001, and violates the requirements of CEQA. (See, e.g., CEQA Guidelines, Section 15124; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376.)

The Initial Study does not include or even describe the text of the proposed Rule that is supposed to be the "Project." The section of the Initial Study that purports to "describe" the Project, "PR 4001," includes nothing more than summaries of "key concepts provided in the 2012 AQMP Control Measure IND- 01." Those summaries and "concepts" are insufficient to describe the Project itself, and prevent effective public review and comment. Moreover, since

the 2012 AQMP Control Measure IND- 01 has already been adopted, it is perplexing that the District would use that measure as a substitute for the Project description.

The Initial Study does not provide a description of how the proposed Rule would work. It fails to describe reasonably foreseeable activities or actions of other agencies in response to or associated with the proposed Rule. This Initial Study suggests, instead, that the intent of proposed Rule 4001 would be to delegate the District's responsibilities for regulating or reducing emissions of NOx, SOx, and PM2.5 air emissions to other agencies, specifically the public officials governing the ports of Long Beach and Los Angeles, 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 Rule 4001 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 evaluation project alternatives, etc.).

The importance of providing an accurate and informative project description in an Initial Study was re-emphasized in *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 267, emph. added:

> "**The initial study must include a description of the project.**" (*City of Redlands, supra,* 96 Cal.App.4th at pp. 405–406, fns. omitted.) "Where an agency fails to provide an accurate project description, or fails to gather information and undertake an adequate environmental analysis in its initial study, a negative declaration is inappropriate. [Citation.] An accurate and complete project description is necessary to fully evaluate the project's potential environmental effects. [Citations.]" (*El Dorado County, supra*, 122 Cal.App.4th at p. 1597.)
>
> "**The scope of the environmental review conducted for the initial study must include the entire project**." (*Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1222.) Thus, a correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA. (*Tuolumne County Citizens, supra*, at p. 1222.)

The Initial Study currently falls far short of these requirements in describing the proposed Project, and thus falls equally short of serving the "public awareness" purposes described above and mandated by CEQA:

> An accurate and complete project description is necessary for an intelligent evaluation of the potential 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, citing *Aberdeen & Rockfish RR. v. SCRAP* (1975) 422 U.S. 289, 322 [an accurate, complete and consistent project description is the sine qua non of informative, legally adequate CEQA review].) (*City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, 407–408.)

The Initial Study (p. 1-5) indicates that "the approaches and concepts considered in this NOP/IS may be subject to change" based on comments from the working group. In light of the District's initiative in forming a "working group" of interested participants to help formulate the proposed Rule, and thereby provide an actual "project description," it would be more appropriate to undertake CEQA analysis and compliance after the actual Rule is developed. Furthermore, it is premature for the District to assume or conclude that any changes received from the working group as well as comments received relative to this NOP/IS will all be within the scope of the analysis in the NOP/IS.

In brief, the NOP/IS erroneously limits the scope of the analysis and inherently calls for impermissible speculation or impossible prescience on the part of the Cities or other members of the concerned public to undertake effective analysis of the proposed Project, or to provide meaningful comments as to the scope of review of the Project, until and unless the District provides an adequate description of the "Project."

(b) Specific Comments and Questions re "Project Description" and Text

The following comments and questions refer to specific portions or pages of Chapter 1 of the Initial Study:

Pp. 1-1 - 1-2 – Introduction

The Introduction states, in the first sentence of the third paragraph on page 1-1, that Control Measure IND-01 "...does not call for additional emission reductions beyond those realized with existing regulations and emission reductions programs implemented at the Ports to date." This is an untrue statement. The CAAP is only a planning document which specifically provides for discretionary future decisions to be made regarding implementation by each of the Cities' respective Board of Harbor Commissioners, and resolution adopting the CAAP update states: "The CAAP is a living document intended to establish a process to develop solutions, not a static document binding the Ports to particular future actions….The CAAP is a planning document that identifies goals and potential implementation strategies to guide further actions, and as such does not constrain the discretion of either Board of Harbor Commissioners with

respect to any particular action."[1] Not all individual Board actions that may be required in order to achieve the CAAP's goals and activities have been adopted, many of which goals were stretch targets with uncertainty as to whether they could be achieved. Measure IND-01 and Rule 4001 propose to require the Cities to potentially adopt future actions that create potentially-conflicting authorities between the District, as regulator, and the Cities, as independent governmental agencies regulated by the District, so as to force the Cities to exercise their discretionary police power authority in a particular way. The Constitution does not permit such usurpation of the Cities' authority.

The Introduction states, in the last paragraph beginning on Page 1-1, that the emission targets for port-related sources are those assumed in the 2012 AQMP emissions inventory. The Cities raised questions during the Measure IND-01 adoption process regarding the District's calculation of these targets, which are different from the emissions targets set under the CAAP. Although the specific emission targets of the proposed Project do not appear at all in the NOP (which omission itself is a defect), the District has verbally advised the Cities and a working group on August 8, 2013, that the Rule will be such as to be triggered on set emission targets for 2014 and 2019. Those comments, however, left the Cities and working group participants with many questions about how the District set the emissions inventory, particularly for 2019, which was not in the CAAP. These examples are provided to illustrate that the NOP's description of the proposed Rule is not only flawed but missing altogether.

P. 1-3 - Project Location

The Initial Study provides no finite "project location." It describes the District's jurisdictional boundaries. It then states that "PR 4001 would apply to POLA and POLB, both of which are located within Los Angeles County." It is unclear if this was an attempt to state that the Project location would be Harbor Districts of the Cities. The lack of clarity regarding the Project location is further compounded by the Rule's reference to "sources not entering Port properties." During the August 14th Scoping Meeting, Mr. Hogo attempted to clarify this reference by referencing an undefined area outside of but near the two Harbor Districts. Unfortunately, Mr. Hogo's statement did not clarify the proposed Project's location.

Is it the intention that any portion of the Project may be implemented outside the geographic areas of the Harbor Districts of the Cities? It is unclear from this description whether the Project may have impacts or foreseeably result in actions being taken outside these Harbor Districts. This may have jurisdictional implications which cannot be evaluated without additional information.

[1] Los Angeles Resolution No. 10-7041 adopted by the Board of Harbor Commissioners of the City of Los Angeles and Long Beach Resolution No. HD 2600 adopted by the Board of Harbor Commissioners of the City of Long Beach on November 22, 2010.

Also, the Initial Study fails to disclose or analyze the possibility that if the option for the Cities to reduce emissions from sources not entering Port properties is included in proposed Rule 4001, even the vague "project location" and geographic scope of the proposed Rule in the Initial Study would not be accurate and would need to be modified in the NOP/IS.

P. 1-4 – Project Background

The Initial Study's description of the "Project Background" implies that the two Cities' ports themselves actually conduct cargo operations. For example, the text states that the COLA "serves approximately 80 shipping companies." This illustrates a fundamental lack of understanding by the District of how ports work. There are two types of business models of ports: some are "operating ports," that conduct cargo operations directly, such as the Port of Charleston, South Carolina and some are "landlord ports," such as the Ports of Los Angeles and Long Beach, that merely lease wharves and land to operators who conduct cargo operations.

The Ports of Los Angeles and Long Beach are not, "the single largest fixed source of air pollution in Southern California." The EA should clarify that the referenced sources of air emissions are the vehicles, engines, ships, trains, trucks and other cargo-moving equipment operated by distinct tenants, users, and visitors of the ports, not the Harbor Districts or the Cities.

P. 1-5 – Legal Authority for PR 4001

The Initial Study suggests that if the (unspecified) "backstop measure" that would be mandated under PR 4001 "becomes effective," then the new Rule would require the Cities to take (unspecified) action "to develop and implement plans to get back on track" regarding attainment of emissions targets. Under what legal authority does the District believe that its proposed Rule 4001 may purport to compel distinct governmental bodies (the Cities and the Boards of Harbor Commissioners) to legislate or to exercise their discretion in particular ways to achieve District objectives?

Measure IND-01 was prominently referred to as an "indirect source rule." The current general references to proposed Rule 4001 in the NOP/IS have lost all mention of an "indirect source rule." However, the references to proposed Rule 4001 do not cite to any authority the District is relying on for its processing of the proposed Rule. This should be corrected so that the public can comment on whatever legal authority may be invoked by the District.

Is it anticipated that the "plans" and strategies that would be required to be adopted by the legislative boards of the two Cities under the mandate of proposed Rule 4001 would be within SCAQMD's regulating authority and subject to the District's approval or disapproval? If so, why would SCAQMD not directly adopt such "backstop" strategies and plans itself? If not, is the Rule being proposed in order accomplish something indirectly that SCAQMD itself cannot do directly? (Cf., *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 [same].)

P. 1-5 – Call for Cities to Regulate Off-Site "Sources"

The Initial Study indicates that the District will be inviting and considering proposals, as part of this "Project," regarding potential measures for the Cities to adopt and implement to try to reduce emission from sources *not entering* onto port properties. What does this mean? What legal authority might the Cities have to try to regulate *off-site* sources that do not come within the jurisdiction of the respective Harbor Commissions? (Municipal police power authority may generally be exercised only within the territorial boundaries of their jurisdiction, and the Boards of Harbor Commissioners have special Tidelands limits on their authority.)

Would such (unidentified) measures be part of Rule 4001, or would proposed Rule 4001 require that the Cities formulate (unidentified) measures in the future to somehow regulate *off-site* "sources?"

Until such options are identified, shown to be legally authorized and technically feasible, how can the CEQA analysis for proposed Rule 4001 be undertaken?

P. 1-6 – First Bullet – Imposing "Requirements" on the Cities?

The Initial Study indicates that if proposed Rule 4001 becomes effective the Cities "would be required to submit an emissions reduction plan to address the emissions reduction shortfall."

As noted above, this raises questions as to the intent and legal authority behind the Rule. Has the District identified legal authority for a rule that would require other governmental agencies (the Boards of Harbor Commissioners for the respective Cities) to exercise their legislative discretion/authority in any particular manner? Does the District intend to reserve to itself some authority to approve or disapprove any such plans submitted by the Cities?

What is the consequence of disapproval by the District?

What environmental baseline and other parameters would be required by proposed Rule 4001 in order for the Cities to determine the extent of any "emissions shortfall" that may need to be addressed in the Cities' plans in the event they were to undertake to submit plans under the Rule?

P. 1-6 – Second Bullet -- Funding

This bullet point implies that "funding" would be necessary for many of the potential future emission reduction measures that may be compelled under proposed Rule 4001. Would such funding be provided by the District? What other "funding" sources are contemplated? Will

there be constitutional or common law "gift of public funds" restrictions on funding imposed on the Cities for activities under their CAAP if Rule 4001 makes CAAP compliance a potential state or even federal regulation?

Are the Cities expected to fund these programs from Tidelands Funds? By what authority may the Harbor Commissioners impose taxes, assessments, and charges on users of the Harbor Districts, given the restrictions of various state laws, including, among others, Proposition 26?

The vague disclaimer in the Initial Study to the effect that proposed Rule 4001 would not require any measure that lacks legal authority or feasibility raises more questions than it answers. Whatever types of "emissions reduction plans" may be anticipated by proposed Rule 4001 should identified by the District in the NOP/IS so that the feasibility and legality of such approaches can be evaluated as part of the environmental assessment for the Project.

Pp. 1-6 – 1-7 -- Technology Overview/Implementation Strategies

This refers to some emission reduction strategies included in the CAAP, but the Initial Study does not explain how these may relate to proposed Rule 4001, or whether they should be considered as part of the Project.

The suggestion in the Initial Study of possible "tariff change" or "impact fees" on the activities of users of the Harbor Districts raises other questions (e.g., legal authority, funding for studies and public review processes required before such measures could be considered or adopted, indemnification for costs of defense, etc.) requiring identification and study. Moreover, such measures may themselves be considered as "projects" subject to CEQA review and may have impacts on the activities of Harbor District users that themselves would require analysis or mitigation.

The Initial Study also includes reference to "Port funded incentives" as possible measures to reduce emissions, but also observes that there is not adequate funding for such strategies in the Cities' budgets or other grant program. The source of funding any "Port-funded" measures contemplated by proposed Rule 4001 should be clearly identified and evaluated.

Any such contemplated implementation strategies should be included in the "Project description" and better identified in a more complete NOP/IS, so that they may be evaluated along with the rest of the Project.

Pp. 1-10 – 1-11 -- Imposition of "Requirements" on the Cities

The NOP/IS states that none of the CAAP strategies would be "prescribed in PR 4001." Instead, the NOP states that if proposed Rule 4001 becomes effective, the Cities (presumably the Boards of Harbor Commissioners) -- "individually or jointly" -- would be required to identify sources that could undergo potential emission reduction to "make up for the shortfall."

Why would/should the obligation to make up for a possible shortfall in meeting emission reduction targets (which are primarily the responsibility of the District to attain) be shifted so as to fall upon two independent governmental entities? The Cities are governmental entities, and are not directly producing emissions or otherwise directly responsible for the targeted emissions or for the attainment of the emissions reduction targets. Moreover, if there were to be a "shortfall" in attaining the targets, it could well be due to factors not caused or controlled by the Cities, and not due to any actions or derelictions on the part of the Cities or their tenants or users.

Other issues: How would a "shortfall" be measured or determined? Would any such "shortfall" be allocated to sources or causes bearing some actual responsibility for the lack of attainment? How would it be "allocated" between the Cities? Would uncontrollable/unforeseeable factors resulting in all or part of a shortfall be excluded from whatever obligation may be imposed on the Cities?

Would proposed Rule 4001 take into account the statutory limits on the jurisdiction and authority of the Cities (i.e, the Boards of Harbor Commissioners) to impose restrictions on most mobile sources of emissions?

Footnote 6 (on page 1-11)

The NOP/IS mentions a possible "option" that would "allow" the Cities to reduce emissions from "non-port-related sources." This vague reference requires clarification before it may be evaluated in connection with the Project. Direct and indirect effects would need to be considered that may occur beyond the geographic boundaries of the Harbor Districts. Therefore, it is premature for the District to conclude that any changes based on the working group or public scoping comments will be within the scope of the analysis in the NOP/IS.

P. 1-11 -- Technologies

The EA should be expanded to address the legal, technological and economic feasibility of the seven bulleted items listed in this section.

P. 1-12 -- Alternatives

No alternatives have been identified for study in the NOP/IS. Instead, it merely commits the District to "discuss and compare alternatives" in the future, as part of the Draft EA.

It also suggests the District is looking to the public or other agencies to identify "alternatives" during the scoping process. As previously explained however, how can alternatives realistically be suggested when the Project itself has not been identified or described?

The No Project Alternative is not defined in the NOP/IS. In accordance with CEQA Guidelines Section 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. Therefore, the Draft EA should consider the impacts that would occur under the existing 2012 AQMP without Control Measure IND-01 or proposed Rule 4001. In particular, an analysis should be conducted of the grant funding that would be available under the No Project Alternative that would not be available if the proposed Project constitutes regulation, and the environmental impact if grant funding necessary to make certain actions economically feasible is no longer available under the proposed Project. If the District's position is that there is no loss of grant funding in order to comply with Rule 4001 as a regulation that the District purports to make enforceable under the State Implementation Plan and the Clean Air Act, the District must explain in the Rule its basis for this conclusion in the context of why grants made for compliance with a regulation is not a gift of public funds.

In light of the technical complexities of the issues and the ambiguities as to what the District is actually seeking to accomplish by way of proposed Rule 4001, it seems unreasonable to expect others to develop the project alternatives. One suggested alternative would be for the District to formulate its own "backstop" measures and strategies for addressing any shortfall in emission reduction targets, relying on the District legal authority, expertise and resources, rather than pursuing proposed Rule 4001, which appears to be an attempt to rely upon presumed authority of the Cities. Another suggested alternative would be, the memorandum of understanding approach that was suggested by the Cities and proposed by staff as an alternative to Measure IND-01.

(c) Other Comments on Chapter 1 - "Project Description"

Incomplete Description of Environmental Setting

The Initial Study also fails to provide an adequate description of "the environmental setting" of the proposed Project.

While the CEQA Guidelines do not specially define "environmental setting" with regard to an initial study, they do explain, in regard to EIR preparation, that the "environmental setting" must be informative: "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." (Guidelines, § 15125, subd. (a).) A description of the environmental setting must be sufficient to allow "an understanding of the significant effects of the proposed projects and its alternatives" but "no longer." (Guidelines, § 15125, subd. (a).) That description should place "[s]pecial emphasis" "on environmental resources that are rare or unique to that region and would be affected by the project" and "must permit the significant effects of the project to be considered in the full environmental context." (Guidelines, § 15125, subd. (c).)

Failure to Examine All Phases of the Entire Project as Proposed

"The Initial Study must include a description of the project, and 'the scope of the environmental review conducted for the initial study must include the *entire* project." (*Nelson v. County of Kern, supra*, 190 Cal.App.4th at 270, emph. in original.)

The Initial Study here improperly fails to describe "the entire Project" and fails to consider all phases of the proposed Project. The CEQA Guidelines (14 C.C.R §15063(a)(1)) make clear that an initial study must take a comprehensive view of the proposed project *as a whole*. "All phases of project planning, implementation, and operation must be considered in the initial study of the project."

The NOP/IS indicates that proposed Rule 4001 is intended to require actions by the Cities, to adopt and implement plans and strategies to address any "shortfall" in emissions reductions. The Initial Study improperly fails to address or to provide information and analysis relating to the environmental impacts of the anticipated "subsequent approvals," "discretionary permits" and amendments to the Cities' plans and regulations that appear to be proposed as parts of the Project, or the physical environmental effects of social or economic impacts that may result from those anticipated and apparently necessary changes in land use regulations." (Guidelines § 15063.) Such anticipated and intended actions by other governmental agencies thus appear to be part of this Project, and must be identified and evaluated in the Project EA, along with their potential impacts. As such, we reiterate our prior comment on the Draft 2012 AQMP Program EIR dated October 22, 2012 where it is stated that the District has failed to fully disclose the details of Measure IND-01 and as a result is segmenting or piecemealing its CEQA analysis.

Failure to Describe Existing Land Use Regulations

The Initial Study does not include an examination of whether the Project would be consistent with existing zoning, plans and other applicable land use controls, as required by CEQA Guideline Section 15063. Although the Initial Study includes some background discussion of the CAAP, it provides little or no description of the existing planning and zoning designations applicable to the "Project" location, and relies on (unsupported) assertions that the Project would be in furtherance of the CAAP. It provides no information or analysis of other existing plans or policies applicable in the Harbor Districts, which may be affected or impacted by the Project.

Uncertain and Inadequate Identification of "Baseline" Used for Review

It is critical under CEQA that any level of environmental review make it clear as to the "baseline" being used as the basis for analysis of the significance of potential Project impacts. (CEQA Guidelines Section 15125(a).) Normally, the "baseline" will be the existing environmental conditions in the vicinity of the Project. (Guideline Section 15125(a); see also,

Communities for a Better Environment v. South Coast Air Quality Management District (2010) 48 Cal.4th 310, 315 [the baseline for an agency's primary environmental analysis under CEQA must ordinarily be the *actually* existing physical conditions rather than *hypothetical* conditions that could have existed under applicable permits or regulations].) The Supreme Court has explained that the requirement for identification and use of the appropriate "baseline" applies in the context of an Initial Study as well as in an EIR. (*Communities for a Better Environment, supra*, 48 Cal.4th at 512, and n. 5.)

The Initial Study here, however, fails to make it clear as to what "baseline" is being used. In many places the Initial Study compares the anticipated "impacts" of adopting proposed Rule 4001 to the permitted emissions levels anticipated (in the future) under the 2012 AQMP, or alternatively to the (future) emission reduction targets of the CAAP -- rather than to the existing environmental conditions. While the recent Supreme Court decision in *Neighbors for Smart Rail v. Exposition Metroline Constr. Authority* (8/5/2013, No. S202828) ___ Cal.4th ___, indicates that the baseline need not always be the existing physical conditions, and that "projected future conditions" may be used in rare situations as a baseline "if their use in place of measure existing conditions ... is justified by unusual aspects of the project or the surrounding conditions" (Slip Opinion, p. 11), it does not detract from the rule that the Initial Study must accurately and consistently describe the baseline being used. Nor does it permit the use of "future conditions" in the absence of a showing of unusual circumstances. The Initial Study in this case does neither.

For each of these fundamental reasons, the NOP/IS should be rescinded in order that it may be revised, completed and corrected to meet CEQA requirements.

2. Chapter 2 of the Initial Study – The "Environmental Checklist"

(a) General Comments and Questions on the Environmental Checklist

The NOP/IS apparently relied on a standard CEQA environmental checklist to identify those "impact areas" it recognizes to be potentially affected by the Project. In several respects, however, the Initial Study appears to merely assume 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, supra*, 96 Cal.App.4th at 408-09; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296). Furthermore, it is contrary to the District's response to comment #5-4 in the Final Program EIR, which indicates that "[t]he exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted."

The NOP/IS currently indicates that the scope of the proposed EA for this "Project" will be limited to the six topics listed at p. 2-2. Compliance with CEQA, however, would require not only a new and corrected Initial Study, providing an adequate "Project description" but also a more comprehensive EA that addressed additional areas of potentially significant impact, including (without limitation): (1) Aesthetics, (2) Biological Resources, (3) Cultural Resources, (4) Land Use and Planning, (5) Noise, (6) Public Services, and (7) *broadened evaluation* of potential impacts and issues in the areas of Energy, Hazards and Hazardous Materials, Air Quality, and Transportation and Traffic.

Unless and until those areas are more fully addressed, the NOP/IS appears to improperly limit the scope of the proposed EA, and to erroneously exclude areas requiring further assessment.

(b) Specific Comments and Questions on the Environmental Checklist

As detailed below, there are numerous areas of potential environmental impact in the checklist as to which the Initial Study either omits required evidence to support its conclusions of "no potential impact" or treats with insufficient detail.

More specific questions and comments follow:

P. 2-4 -- Preliminary Discussion of Checklist

First Paragraph: We reiterate the same comment as noted on page 1-4 regarding Cities being the source of emissions. The geographic location itself does not produce emissions. It is the users of the area that produce impacts. The users of the two ports are the owners and operators of the ships, trains, trucks and equipment which the District targets as the sources of emissions.

First Paragraph, Last Sentence: The Initial Study states that "some emission reductions [assumed by the District's 2012 AQMP] may be contingent upon the Ports taking and maintaining *actions which are not required by air quality regulations*." This suggests that one of the purposes for District proposal of proposed Rule 4001 may be to establish a new regulatory "authority" over the Cities (and the communities served by and dependent upon the Harbor Departments of the Cities) that is not in fact already provided by existing federal, state, or regional air quality regulations. The policy implications of such a Project may well include significant impacts on the environment, if regulatory authority over activities, facilities, and uses of the Harbor Districts is shifted or arrogated to the District. (See, e.g., *City of Redlands, supra,* 96 Cal. App. 4th 398 [proposed new County policy re exercise of County authority over annexations and sphere of influence was not supported by adequate CEQA review].)

Second Paragraph, Last Sentence: Same comment as page 1-5.

Third Paragraph. The NOP/IS states that the checklist responses focus on "the above mentioned actions." This is extremely vague. Is the reference intended to be the items referenced in the paragraph immediately above, or in the earlier pages?

Identification of precisely what measures are being assumed or proposed in proposed Rule 4001 is essential to being able to review the Initial Study.

Aesthetics -- P. 2-5

Discussion of I a), b) and c). The Initial Study suggests that "because PR 4001 would implement IND-01" the District may simply assume that this Project would not be expected to generate significant adverse aesthetics impacts. However, given that the measures that would be used to implement IND-01 are not identified, the Initial Study does not provide evidence to demonstrate that proposed Rule 4001 has no potential for impact. To the contrary, the Initial Study admits that "PR 4001 will primarily affect operations at two ports" and but then simply assumes from the industrial and commercial zoning of the Harbor Districts that there could not be a potential for impacts on "scenic vistas" nor any potential degradation of the visual character of the areas around the Harbor Districts.

The Initial Study fails to describe the environmental setting and include any evidence or analysis to support its assumption that whatever is done to implement proposed Rule 4001 would "likely easily blend in" with the surrounding activities, especially since what would be done to implement the Rule is not yet known. Specifically, the Initial Study 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. 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 Harbor Districts and if modified, through obstruction, alteration, or demolition could have a negative aesthetic impact. Without a clearly defined project, project location, or description of the environmental setting, it is not possible to conclude that any port modifications will have little or no noticeable effect on adjacent areas and would blend in with the visual setting.

The Initial Study indicates that "Control devices may include hoods or bonnets on ship exhaust stacks to capture emissions and are expected to be as high as 80 feet (POLB, 2006)" and concludes that "these control devices would be similar to other structures used within the heavily industrialized portions of the Ports…" First, the "POLB" citation is missing in the list of references. Second, it is speculative and erroneous to assume that control devices as high as 80 feet would have "no visual impact" without knowing the location, dimensions, color scheme or critical viewpoints. No such analysis has been considered here and the impact is dismissed with no evidence to support the conclusion.

The last sentence of the first paragraph (on p. 2-6; I. d) suggests there are no residential areas "next to" the Harbor Districts, and thus the Initial Study may dispense with analysis of light and glare impacts. It is evident however that was an inaccurate assumption given the residential communities of San Pedro, Wilmington and Long Beach located adjacent to the Harbor Districts. This is also contradictory to the description of surrounding land uses and setting on page 2-1 which indicates "potentially residential."

The Initial Study further errs by dispensing with environmental analysis or evidence, simply because of the (assumed) beneficial air quality goals of proposed Rule 4001. The law is clear that environmentally "benign" objectives for a project do not excuse non-compliance with CEQA and do not justify reliance on assumptions in lieu of evidence to demonstrate the absence of potential impacts. *See, e.g., California Farm Bureau v. California Wildlife Conservation Board* (2006) 143 Cal.App.4th 173, 196, emph. added [State environmental agency violated CEQA by exempting environmentally beneficial habitat project from review]:

> "[I]t cannot be assumed that activities intended to protect or preserve the environment are immune from environmental review. [Citations.]" (*Davidon Homes, supra*, 54 Cal.App.4th 106, at p. 119; see, e.g., *Dunn-Edwards Corp. v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644 (disapproved on other grounds in *Western States Petroleum Assn. v. Superior Court, supra*, 9 Cal.4th 559, 570.) **There may be environmental costs to an environmentally beneficial project, which must be considered and assessed**.

This topic should not be dismissed. Given the nature of proposed Rule 4001, it cannot be determined that its implementation would have no impact on aesthetics. The EA therefore should include "Aesthetics" as a potentially impacted area of study.

Air Quality -- P. 2-11, Discussion

In the first paragraph (p. 2-11), last sentence, the stated assumption is speculative given there is no information about what physical changes to the environment proposed Rule 4001 will entail. There is no evidence to support the assumption in the Initial Study that proposed Rule 4001 would be identical to Measure IND -01 or have identical (previously-studied) impacts on air quality.

P. 2-11, III.a

The first paragraph, last sentence, again raises the question of why it should become the obligation of the Cities to take actions on their own to fulfill the obligations of the District for reaching emissions reductions targets? What is the legal authority for this shifting (or delegation) of the District's air quality responsibility?

In the second paragraph, the Initial Study relies on an assumption that "the Port" would be installing control equipment. Again, this erroneously confuses the Harbor Departments of the Cities with the operators of vessels, vehicles, and equipment. The Harbor Boards serve as trustees of tideland assets.

The conclusion in this section assumes that the undefined strategies and approaches suggested in conceptual description of proposed Rule 4001 will be successful. That is dependent on the feasibility of the approaches, which must be identified and assessed. Therefore, this topic should be analyzed in the EA.

P. 2-12, III.b, c, and g

Given the total lack of information regarding what proposed Rule 4001 would entail and whether it's implementation is feasible, it is premature to assess impacts in this category. These details must be provided and these topics should also be identified and assessed in the EA.

P. 2-13, III.e

There is no factual basis in the Initial Study upon which to conclude that implementation of proposed Rule 4001 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 Initial Study analysis only applies to construction odors and ignores any potential odors that may occur during long-term operations.

The NOP should be amended to make clear that at least these additional areas of potential impacts on air quality should also be identified and assessed in the EA.

Biological Resources – P. 2-14

The Initial Study fails to adequately describe, and improperly minimizes, possible impacts to biological resources, including least terns and migratory birds.

The scope of the proposed EA should be expanded to include environmental analysis of the Project's potential impacts on biological resources.

Cultural Resources – P. 2-16

The Initial Study fails to adequately describe, and improperly minimizes, possible impacts to cultural resources. Not all areas within the Harbor Districts are devoid of cultural resources or have cultural resources that have been previously disturbed, as concluded in the Initial Study on page 2-18 in section V(b), (c), and (d). There are known recorded historic and prehistoric sites throughout the Harbor Districts. For example, see COLA's website at http://www.portoflosangeles.org/idx_history.asp. Without knowing the location and extent of ground disturbance from possible construction activities associated with proposed Rule 4001, it

is speculative to assume that no significant adverse cultural resources impacts are expected from implementing proposed Rule 4001. The conclusion in the Initial Study is unsupported and lacks evidence or facts to support the findings.

The scope of the proposed EA should be expanded to include environmental analysis of the Project's potential impacts on cultural resources.

Energy – P. 2-18

The Initial Study section VI(c) must be expanded to also consider and analyze 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 required in the event of a major disaster. Also, some types of emissions control measures, facilities, or technologies contemplated by the Project could increase or shift demand for different types of energy or fuel usage. Although "risk of upset" is not considered in the Initial Study checklist, it should be cross referenced here and addressed in the Hazards section of the Initial Study.

The scope of the proposed EA should be expanded to include this additional analysis.

Hazards and Hazardous Materials – P. 2-24

The Initial Study section VIII(f) must be expanded to also consider and analyze the increased reliance on alternative fuels or electrical powered technologies that would require sufficient supply and emergency storage in the event of a major disaster. Although interference with emergency response plans was marginally addressed in this section, "risk of upset" is not considered in the Initial Study checklist.

The scope of the proposed EA should be expanded to include this additional analysis.

Land Use and Planning – P. 2-34

The Initial Study fails to adequately describe, and improperly minimizes, possible inconsistencies between the proposed Project and the existing and applicable land use plans and policies.

The Initial Study erroneously claims that "there are no provisions in PR 4001 that would affect land use plans, policies, or regulations." (P. 2-34.) The Initial Study does not support that conclusion with any substantial evidence.

First, the NOP/IS fails to identify any of "the provisions of PR 4001" so the statement cannot be supported or evaluated.

Second, and more importantly, however, the Initial Study repeatedly references "implementation strategies," "plans" and other new measures that it anticipates the Cities will be required to enact if proposed Rule 4001 becomes effective. Presumably this is because of inconsistencies between the existing plans and policies and the requirements of the new Rule. (See, e.g., pages 1-6 through 1-11.) The measures contemplated in the Initial Study include the adoption of new "regulatory requirements," new "impact fees" on the movement of cargo or sources, and changing the tariffs for use of the Harbor Districts – all of which would cause at least potential "conflicts" with applicable plans and policies. (Cf., *Orinda Ass'n v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1169 [the CEQA requirements for initial study examination of non-conformity with existing land use plans are intended to allow lead agency to modify the Project to avoid inconsistencies with existing plans – not vice versa].)

Third, the Initial Study itself acknowledges that the Project is anticipated to cause "potentially significant impacts" or conflicts with "an applicable plan ... for the performance of the circulation system" and conflicts with "an applicable congestion management plan." (Initial Study, p. 2-44.) Although the Initial Study proposes to address those admitted conflicts in the "transportation" section of the EA, these acknowledged conflicts confirm the necessity for including "land use and planning" impacts in the proposed EA as well.

Fourth, the proposed Project would seemingly create conflicts with the Cities' 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 are detailed in the previous port letters included in Attachment A to this letter. In addition, the proposed Project would create inconsistencies with the Clean Air Action Plan.

Fifth, the proposed Rule is apparently structured in a way that would impermissibly usurp the (non-delegable) police power authority of the Cities and their respective Boards of Harbor Commissioners to plan, implement, and regulate land use policies and actions in their respective jurisdictions. (This comment has also been raised above, in Project Description comments.)

The numerous inconsistencies between the Project as proposed and the existing plans and policies require identification in the Initial Study and inclusion in the proposed EA. (Guidelines § 15125(d).)

The scope of the proposed EA should be expanded to include environmental analysis of the Project's potential impacts on land use and planning.

The EA should also include analysis of the impacts of the proposed/anticipated Project-related subsequent amendments to the Cities' plans, policies, and other land use regulations. (See, e.g., *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1197 [CEQA review failed to consider incidental results from adoption of revised policy; incidental impacts could not be disregarded in an initial study based upon "net" environmental impact of the change in policy being benign since CEQA requires each environmental impact of

project be discretely evaluated].) "Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project." (Guidelines, § 15064, subd. (e); see §§ 21080, subd. (e)(2), 21082.2, subd. (c).)

The scope of the EIR should be expanded to include analysis of possible physical changes in port facilities and operations that might be caused by economic or social effects of the Project itself or by the anticipated amendments to land use and zoning policies by the Cities subsequent implementation of the Project.

Noise – P. 2-36

The NOP/IS acknowledges that approval of the Project and "triggering" of the PR 4001 could result in the construction or installation of new control equipment. The Initial Study improperly dismisses the potential noise impacts from such work as "not expected to be in excess of current operations." There is no substantial evidence in the Initial Study to justify such assumptions.

Similarly, there is no evidence cited in the Initial Study to support its further assumption that additional permanent noise impacts anticipated from the operations of new control equipment would not "substantially increase ambient operational noise levels in the area."

This section of the Initial Study is littered with mere "expectations" unsupported by any evidence regarding the magnitude of new noise impacts, even though such new impacts are anticipated by the Initial Study. Nor is there any analysis of the potential for significant adverse impacts from new noise generators related to the Project.

The NOP/IS must be revised, and the scope of the proposed EA expanded to include a detailed analysis, supported by evidence, regarding these anticipated new noise impacts, alternatives, and possible mitigation measures.

Public Services – P. 2-39

The Initial Study assumes that the Project would not generate any increased need for public services. However, the Initial Study does not provide any substantial evidence to support its assumptions regarding the "absence of impact" on additional public services or facilities.

The Initial Study should be expanded to address potential impacts that may arise from the increased "diversion" of existing "dirty" vehicles and vessels into solid waste sites if proposed Rule 4001 is triggered.

Transportation and Traffic – P. 2-44

The Initial Study fails to adequately describe and analyze potential impacts to rail and marine vessel traffic and ignores the significance criteria identified as "[w]ater borne, rail car or air traffic is substantially altered" on page 2-45. The Initial Study erroneously considers only vehicular traffic impacts to local roadways.

The NOP/IS must be revised, and the scope of the proposed EA expanded to include a detailed analysis, supported by evidence, regarding potential impacts to rail and marine vessel traffic.

Socioeconomics Analysis

The EA needs to include a broad-based analysis of the socioeconomic effects of the proposed Rule 4001, including the potential for job loss, business closures, and diversion of cargo to other ports due to the potential loss of regional competitiveness. The socioeconomic analysis needs to consider both the existence of the rule, even if not triggered, and the future enforcement of the rule. Because these conditions have the potential to physically change the environment in and around the ports, these impacts should be identified and assessed in the EA. (See CEQA Guidelines §§ 15064(e) and 15131; *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3rd 433, 445 [EIR must consider possibility of economic blight from rezoning].) Moreover, this assessment should not be limited to businesses and operations within the ports, but should extend to those facilities, businesses and operations that while located outside of the Harbor Districts are dependent upon the flow of cargo for their continued operations.

Too-Narrowly "Focused" Environmental Review

We note in closing that the Initial Study appears to reflect a preliminary decision to conduct less-than-full disclosure or environmental review of the proposed Project. Although the Initial Study concludes that "the proposed Project may have a significant effect on the environment and an Environmental Assessment will be required," it nevertheless appears that environmental review in the admittedly-required EA is proposed to be curtailed and "focused" on just the six topics listed in the current the NOP. One obvious indication of this is the miniscule list of references that were relied upon to support the Initial Study analysis; the list is limited to three sources.

It is respectfully submitted that such an approach would be too narrow and not in conformance with the requirements of CEQA, or with the District's own policies and rules for environmental analysis. While the CEQA Guidelines call for emphasis and "focus" on the significant environmental impacts of the Project, the authority to use such focus is misapplied in the Initial Study. For example, CEQA Guideline § 15143 explains that such focus may be used to limit the analysis in an EIR [or, in this case, EA] 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 NOP/IS here, by contrast, appears to exclude from consideration in the EA numerous effects that it has not shown to be "clearly insignificant and unlikely to occur."

D. Conclusion

The current version of the NOP/IS fails to adequately describe the "Project" thereby thwarting effective public review and comment on proposed Rule 4001. The Initial Study must therefore be revised, corrected, and re-circulated with all of the descriptions and other content required by CEQA.

Even this inadequate NOP/IS makes it clear that **the scope of the proposed EA has been unduly narrowed**, and that environmental review will be limited in a way that erroneously fails to provide the relevant decision-makers, affected public agencies, residents and the public generally with sufficient evidence and analysis of all anticipated and potential impacts from the Project as a whole, or of all potentially feasible mitigation measures or appropriate Project alternatives as required by CEQA.

While it is clear that an EA is called for in connection with this proposed Project, it is equally clear that the EA should be more complete than what is envisioned by the current NOP/IS. More fundamentally, its scope must be determined by a legally-adequate revised NOP/IS. The EA for the Project must, of course, be supported by credible and substantial evidence, including independent professional analysis.

We respectfully request that these comments and questions be considered before the District embarks on preparation of the EA and all of the other required independent studies in connection with the CEQA review of the proposed Project. We therefore look forward to working with the District, and any study teams or working groups tasked with evaluation of the proposed Rule 4001.

The NOP requests that we provide you with a contact person for each responding agency. For the COLB, the contact persons are as follows:

Heather Tomley
Acting Director of Environmental Planning
Port of Long Beach
925 Harbor Plaza
Long Beach, CA 90802
(562) 283-7100
e-mail: heather.tomley@polb.com

With copies to:

Dominic Holzhaus, Principal Deputy City Attorney
Long Beach City Hall
333 West Ocean Boulevard
Long Beach, California 90802
(562) 570-2212
e-mail: dominic.holzhaus@longbeach.gov

M. Katherine Jenson
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For COLA, the contact persons are as follows:

Christopher Cannon
Director of Environmental Management
Port of Los Angeles
425 South Palos Verdes Street
San Pedro, CA 90731
(310) 732-3763
e-mail: ccannon@portla.org

With a copy to:

Joy Crose, Assistant General Counsel
City of Los Angeles, Harbor Division
425 South Palos Verdes Street
San Pedro, CA 90731
(310) 732-3750
e-mail: jcrose@portla.org

We appreciate your consideration. Thank you.

Sincerely,

Heather Tomley
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachment A:

Letters dated July 10, 2012; July 27, 2012; August 30, 2012 (which includes letter dated May 4, 2010); October 22, 2012; October 31, 2012; November 8, 2012; November 19, 2012; and November 27, 2012 from Port of Los Angeles and Port of Long Beach to SCAQMD

cc: Al Moro, Acting Executive Director Port of Long Beach
Geraldine Knatz, Executive Director Port of Los Angeles
Dominic Holzhaus, Principal Deputy City Attorney City of Long Beach
Joy Crose, Assistant General Counsel City of Los Angeles, Harbor Division
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Randall Pasek, Planning and Rules Manager, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Cynthia Marvin, Division Chief, California Air Resources Board
Elizabeth Adams, Deputy Director, U.S. Environmental Protection Agency, Region 9

ATTACHMENT A

July 10, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Initial Comments on the Proposed 2012 Air Quality Management Plan, Control Measure IND-01

Dear Dr. Wallerstein:

The Port of Long Beach and Port of Los Angeles (Ports) appreciate the opportunity to participate in the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) Advisory Committee. We support the AQMD's clean air goals and have worked aggressively with the port industry to reduce our fair share of air quality impacts to the region from port-related operations, as outlined in the San Pedro Bay Ports Clean Air Action Plan (CAAP) and the associated San Pedro Bay Standards. As a result, between 2005 and 2010, emissions from port-related sources were reduced by 70 percent for diesel particulate matter and by 49 percent for nitrogen oxides. Emissions inventory work currently underway indicates additional, continued emission reductions in 2011.

While we continue to remain a committed partner in the effort to improve air quality in the region, we disagree with AQMD's proposed control strategy for port-related sources in the Draft 2012 AQMP. The inclusion of proposed measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources," is unnecessary and counter-productive.

The two Ports have a proven track record of developing and implementing appropriate and effective emission reduction strategies. These efforts have been entered into voluntarily, working cooperatively with operators in the port area and the air quality regulatory agencies (i.e. Environmental Protection Agency, California Air Resources Board and AQMD). Since the Ports initially implemented the CAAP, many of the port-related control strategies have been or will be superseded by state or international requirements, such as the rules for replacing drayage trucks, switching to cleaner marine fuels, and using shore power while at berth. The Ports' emissions inventories in 2010 show reductions that are meeting or are in excess of the emission reductions that the Ports committed to in the San Pedro Bay Standards. However, it is important to note that in order to remain on track to meet the Standards, a collaborative and concerted effort with our agency partners is essential, with the understanding that while the Ports can achieve significant emission

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

reductions, no single entity can accomplish this task. The previous State Implementation Plan identified several regulatory strategies that have not yet materialized into regulations for various reasons. Moving forward, the Ports will need agency assistance, particularly on the development and deployment of zero-emission technologies and at-berth controls for non-regulated vessels, as well as on the preferential deployment of cleaner vessels to the basin.

The Ports are sustaining and growing long-standing successful CAAP programs, such as the Vessel Speed Reduction Incentive Program and, on July 1, 2012, the Ports implemented new, groundbreaking incentive programs to encourage cleaner ocean-going vessels to call at the Ports. With programs such as these, along with the above-referenced regulatory rules becoming effective and ensuring significant additional emission reductions by 2014, there is no identified need for implementing a backstop measure. The AQMD's proposed backstop measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

It is inappropriate for the AQMD to attempt to regulate the Ports, which are the Harbor Departments of the cities of Long Beach and Los Angeles, in an attempt to control emissions from equipment within our boundaries, but which we do not own or operate. Further, the proposed backstop measure identifies that the "…requirements will be triggered if the reported emissions for 2014 for port-related sources exceed the 2014 target milestone, *or the Basin fails to meet the 24-hour PM2.5 standard as demonstrated in the 2012 AQMP and basin-wide reductions are needed, in which case a new reduction target for each pollutant will be established*." (emphasis added). While clarification has been provided by AQMD staff that any effort to make up for a basin-wide shortfall will be the responsibility of all sectors, not just the Ports, this statement still implies that if the port industry meets their targeted emission reductions, but other sectors fail to meet their fair share obligations, then the AQMD will mandate additional reductions from the Ports. This is counter to the cooperative relationship that our agencies have established since we began working together on the CAAP in 2006, and ignores the tremendous air quality benefits that have been gained from voluntary actions.

Lastly, based on the preliminary calculations by AQMD, the majority of the region is expected to be in attainment for PM2.5 by the target year of 2014, with the remainder anticipated to be in attainment by the expected extension date of 2019. The inclusion of IND-01 is therefore unnecessary for the region to reach attainment. If these emission reductions are needed in the baseline emissions calculation, there is precedent for mechanisms other than control measures to be used for this purpose, and we would like to discuss those options with your staff.

We strongly believe that the voluntary and cooperative CAAP process established by the Ports remains the most appropriate forum for the Ports and the air regulatory agencies to discuss technical and policy issues related to reducing emissions from port-related sources. As stated above, we remain committed to achieving our fair share of clean air goals identified in the CAAP and working with port industry and the air regulatory agencies on implementation of appropriate strategies.

For your reference, attached is a comment letter dated May 4, 2010, in which the Ports initially expressed concerns regarding backstop rules. The letter was submitted as a public comment on the proposed Rules 4010 and 4020, which were proposed backstop rules for health risk and criteria pollutant emissions.

We look forward to working with AQMD on resolving our concerns related to the proposed backstop measure in the Draft 2012 AQMP.

Sincerely,

CHRIS LYTLE
Executive Director
Port of Long Beach

MICHAEL R. CHRISTENSEN
Deputy Executive Director, Development
Port of Los Angeles

HAT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Susan Nakamura, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Robert Kanter, Port of Long Beach
Rick Cameron, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Chris Cannon, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles

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The Port of
LONG BEACH
The Green Port

July 27, 2012

Steve Smith, Ph.D.
Program Supervisor, CEQA
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765
Sent via email to ceqa_admin@aqmd.gov

RE: Comments on the Notice of Preparation for the Proposed 2012 Air Quality Management Plan Program Environmental Impact Report

Dear Dr. Smith:

The Port of Long Beach has reviewed the Notice of Preparation of a Draft Program Environmental Impact Report (EIR) for the Proposed 2012 Air Quality Management Plan Program and appreciates the opportunity to comment. Regarding preparation of the Draft Program EIR, we offer the following scoping comments for use by your agency during its environmental review process under the California Environmental Quality Act (CEQA):

Schedule

The EIR schedule is very aggressive, with the scoping period ending on July 27, 2012, followed immediately by the release of the Draft EIR scheduled for August 2012, and final approval planned for October 5, 2012. There does not appear to be sufficient time allowed for meaningful input on the proposed scope and content of the Draft Program EIR by the public. Further, the Port is concerned that, given the quick turnaround between closure of the scoping period and the scheduled release of the Draft Program EIR, insufficient time will be allowed for thorough review of the scoping comments and inclusion of said comments in the Draft Program EIR.

Aesthetics

The Initial Study identifies potential significant impacts on aesthetics due to the implementation of control devices such as hoods or bonnets on ship exhaust stacks. The Port agrees with the SCAQMD that such control devises and equipment would be similar in structure and design to existing features within the Port environment and would not constitute a significant aesthetic impact. Further, control measure ADV-03, which may include the construction of electric gantry cranes within the Port, should not be considered aesthetically significant as gantry cranes are an existing feature within the Port environment.

Energy

The Draft Program EIR should analyze how the mobile source control measures related to the electrification of vehicles will impact regional energy demand. Additionally, the need for new electrical power or natural gas utilities should be analyzed, including analysis of times of peak energy demand.

Land Use

The Draft Program EIR should analyze whether the implementation of specific control measures could physically divide established communities. Control measure ONRD-05 states that this control could be "implemented with the development of zero-emission fixed-guideway systems" and that to the extent feasible this would be extended beyond "near-dock application." The construction and operation of such structures may impact established communities.

Noise

The Port requests that the Draft Program EIR evaluate potential noise impacts related to the construction and implementation control measures in support of the AQMP. Section XII fails to account for noise impacts resulting from the construction and operation of control measure ONRD-05, which may include fixed-guideway systems near sensitive receptors.

Transportation/Traffic

Section XVII of the Initial Study concludes that adoption of the proposed 2012 AQMP is not expected to generate any significant adverse project-specific impacts to transportation or traffic systems, and that no further evaluation will be conducted in the Draft Program EIR.

However, impacts on major freeways or other transportation corridors as a result of construction and operation of potential zero emission control measures related to on-road heavy-duty vehicles, such as the use of overhead catenary power lines, which will potentially affect lane choice by trucks and traffic flow patterns on major traffic corridors, has not been fully analyzed. The Port requests that these potential impacts be analyzed in the Draft Program EIR.

Socioeconomics

While not required under CEQA, the Draft 2012 AQMP should include a thorough socioeconomic impact analysis for each proposed control measure, most notably the proposed backstop measure and the measures related to zero emission technologies. This could be accomplished with an expanded discussion under the cost effectiveness section of each control measure summary in the Draft AQMP.

The Port of Long Beach appreciates the opportunity to comment on the NOP/IS for the Draft 2012 AQMP and reviewing both the Draft Program EIR and the Draft 2012 AQMP. We look forward to working with the SCAQMD throughout the environmental review process.

Sincerely,

Richard D. Cameron
Director of Environmental Planning

DP:hat

August 30, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Comments on the Draft 2012 Air Quality Management Plan

Dear Dr. Wallerstein:

The Port of Long Beach and Port of Los Angeles (Ports) appreciate the opportunity to serve on the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) Advisory Committee. We support the AQMD's clean air goals and have a proven leadership record of developing and implementing appropriate and effective strategies that have resulted in the port-related goods movement industry's achievement of real and dramatic emissions reductions. Although the Ports do not own or control the emission sources, the Ports have worked cooperatively with business operators in the port area and the air quality regulatory agencies (i.e. Environmental Protection Agency, California Air Resources Board, and AQMD) to help the port industry reduce its fair share of air quality impacts to the region from port-related operations, as outlined in the San Pedro Bay Ports Clean Air Action Plan (CAAP) and the associated San Pedro Bay Standards. As a result, between 2005 and 2011 emissions from port-related sources were reduced by 73 percent for diesel particulate matter (DPM) and by 50 percent for nitrogen oxides (NOx). The Ports' San Pedro Bay Standards for 2014 established goals to reduce port-related DPM by 72 percent and NOx by 22 percent. Therefore, as a result of implementation of aggressive actions by the port industry, port-related emission reductions have exceeded our goals several years ahead of schedule.

While we remain a committed partner in the effort to improve air quality in the region, we have significant concerns with several proposed control measures in the Draft 2012 AQMP that improperly misclassify the Ports as "stationary sources" or "indirect sources" under AQMP Stationary Source measures, or as "implementing agencies" of specific AQMP mobile source measures. In particular, the proposed Stationary Source Measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources" contains many legal flaws, as explained in greater detail below, and inappropriately proposes to impose enforcement actions on the Ports for emissions generated by emissions sources that the Ports do not own,

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

operate, or control, which is counterproductive to the cooperative relationship that our agencies have established since we began working together on the voluntary CAAP in 2006.

This letter provides the Ports' specific comments on the control measures in the Draft 2012 AQMP that we believe must be addressed prior to finalization and adoption by your agency.

Proposed Stationary Source Measure IND-01

There are three fundamental problems with Proposed Measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources." First, the proposed backstop rule would transform the Ports' voluntary CAAP into the AQMD's mandatory regulation of the Ports. This would jeopardize the Ports and the Port-related emissions sources' grant funding for equipment replacement and modernization if it is now necessary to comply with regulation, while offering nothing to assist the Ports with compliance in terms of additional technologies, facilitating regulations, tools, or funding. Second, although the CAAP was a voluntary cooperative effort of the Ports and the air agencies designed to encourage the industry operators of regulated equipment to go beyond regulation, the proposed backstop rule would improperly subject the Ports to the AQMD's enforcement action for industry's missed emissions reductions by equipment not operated or controlled by the Ports, or even potential loss of federal funding under federal conformity principles if the AQMP is adopted into the State Implementation Plan (SIP) and approved by the U.S. EPA as federal law. Third, the proposed backstop rule exceeds the AQMD's authority and if implemented may violate the State Tidelands Trust. If Measure IND-01 (as well as the Offroad Mobile Source Measures discussed below) are in reality the AQMD's regulation of Port-related mobile emissions sources such as locomotives, ships, rail, and trucks, then this is beyond AQMD's legal authority and AQMD should obtain a waiver under the Clean Air Act from the U.S. EPA. The Ports provide further detailed comments on Proposed Measure IND-01 below, and object to it being included in the 2012 AQMP.

Based upon the AQMD's modeling results, existing control measures are expected to result in attainment of the Federal 24-hour PM2.5 standard by the 2014 deadline without Measure IND-01. Section 39602 of the California Health and Safety Code states that the State Implementation Plan (SIP) shall only include those provisions necessary to meet the requirements of the Clean Air Act. Hence, there is no identified need or legal basis for implementing Measure IND-01. The AQMD's proposed measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

The Ports are neither "direct emissions sources" nor "stationary sources" subject to AQMD permitting, and the AQMD has not complied with requirements for regulation under Health and Safety Code. The Ports are also not "indirect sources" subject to an AQMD indirect source review program within the meaning of the Clean Air Act, and the AQMD has not complied with requirements of the Clean Air Act, 42 U.S.C. §7410 and various other requirements for indirect source classification. The Ports are also not air agency regulators. The Ports do not own, operate, regulate, or control any of the goods movement equipment serving the Ports that are

targeted emissions sources under Measure IND-01. Additionally, the equipment are mobile sources regulated by state, federal, and/or international regulation, sometimes under jurisdiction preempting Port or AQMD action. It is inappropriate for the AQMD to regulate the Ports without the Ports' ownership, operation, or jurisdiction to regulate the various industry businesses actually causing the emissions within our boundaries.

The proposed backstop measure continues to state that if there is a South Coast Air Basin-wide shortfall in emission reductions, then the AQMD will mandate additional emission reductions from the Ports, even if the port-related sources have already met their commitments. This moving target standard is unconstitutionally vague and therefore illegal. The Ports are unfairly targeted, as there are no backstop measures proposed for other entities or source categories should other modeling assumptions not come to pass, such as anticipated natural fleet turnover, or other non-regulated initiatives failing to meet their goals, such as those expected by the Carl Moyer Program. If the AQMD's emissions projections for achieving attainment are incorrect, including control factors and growth rates, this measure appears to imply that the Ports will be specifically tasked with rectifying the shortfall. If the Basin fails to achieve the federal air quality standard, the proper channel to address this is through the established SIP process, not to establish a contingency rule to unfairly burden one specific industry out of the entire Basin.

AQMD staff has indicated that Measure IND-01 is proposed to account for measures that are not backed by enforceable requirements. However, significant programs such as the CAAP's Clean Truck Program, Ocean-going Vessel Low Sulfur Fuel Program, Cargo-handling Equipment requirements, and the Shore-side Power/Alternative Maritime Power programs are currently backstopped by CARB and International Maritime Organization (IMO) regulations. The Ports also require higher rates of vessel or equipment compliance than regulation through terminal leases, when such commercial opportunities are able to be negotiated with tenants. Therefore, Proposed Measure IND-01 is unnecessary.

Measure IND-01 is vague and incomplete. It is unclear whether the AQMD has taken credit for actual/current emission reductions in the baseline only, or if assumptions have been made for future year reductions. We take issue with a measure moving forward where emissions projections are "on-going." Further, no detail is provided on the level of emission reductions that are needing to be maintained. This is further complicated by the differences that exist between the emissions inventories produced by the Ports and the inventory used for the AQMP. It is unclear if a specific emission reduction shortfall will trigger implementation of the measure, or if it is simply left to the discretion of the AQMD. Additionally, the control costs have not yet been developed or justified in a cost-benefit analysis.

The CAAP is a planning document that provides a guideline of strategies and targets that are often "stretch goals," which ultimately are implemented through individual actions adopted by the Long Beach and Los Angeles Boards of Harbor Commissioners (Boards). The Ports are sovereign Tidelands granted to the cities of Los Angeles and Long Beach by the state under the oversight of the State Lands Commission. Each city has been appointed as a trustee and has established their respective Board of Harbor Commissioners with exclusive control and management of the Tidelands and revenues and expenditures from the Tidelands. However,

such discretion must be exercised in accordance with their obligations to prudently manage Tidelands assets and revenues within a nexus and proportionality to the Tidelands Trust interests, as well as in accordance with applicable laws such as the California Environmental Quality Act (CEQA) and principles of federal preemption.[1] The AQMD cannot mandate action by each Port's Board of Harbor Commissioners, nor can the AQMD direct how the Ports obligate state Tidelands money; only the appointed trustee can make discretionary actions to obligate state Tidelands funds. Specifically, the CAAP measures listed in the Draft 2012 AQMP each require the Boards to authorize the expenditure of incentive monies and program costs, or to approve conditions of infrastructure project development in their discretion as CEQA lead agency and as Tidelands trustees.

We strongly believe that the voluntary and cooperative CAAP process established by the Ports remains the most appropriate forum for the Ports and the air regulatory agencies to discuss technical and policy issues related to reducing emissions from port-related sources. As stated above, we remain committed to achieving the clean air goals identified in the CAAP and working with port industry and the air regulatory agencies on implementation of appropriate strategies.

For your reference, attached is our comment letter dated July 10, 2012, expressing our preliminary concerns related to the proposed Measure IND-01 and a comment letter dated May 4, 2010, in which the Ports initially expressed concerns regarding backstop rules.

Proposed Off-Road Mobile Source and Advanced Control Technology Measures

The Draft 2012 AQMP also identifies the San Pedro Bay Ports as "Implementing Agencies" for several of the proposed Off-Road measures (OFFRD-02, OFFRD-04, and OFFRD-05) and Advanced Control Technology measures (ADV-01, ADV-02, ADV-03, ADV-04, and ADV-05). The Ports should not be listed as Implementing Agencies, which the AQMP Appendix IV-A defines as "the agency(ies) responsible for implementing the control measure." While the Ports have been moving forward with voluntary efforts in these areas, as mentioned above, the Ports are not air agency regulators. We also do not own or operate the equipment identified in the proposed measures, and therefore we do not have direct control over any of the sources listed. During the Advisory Committee meetings, AQMD staff has provided clarification that the Ports are listed as Implementing Agencies because of our voluntary commitments to work on these

[1] The Ports' experience with the first phase of the 2006-2010 CAAP showed that in actual implementation, many CAAP measures were carried out in a different manner than originally conceptualized, or not carried out at all, based on limitations on the Boards' opportunities and their exercise of their discretion to manage Tidelands assets and funds under real-world circumstances. Some of the CAAP measures can only be implemented if businesses apply to the Ports for permits to build or expand their lease premises and CEQA mitigation required by law or lease conditions that can be negotiated with a Port tenant. Other CAAP measures involve emissions sources (rail or ocean vessels) that may assert federal preemption against efforts to compel use of specific technology, so the CAAP goals involve the Ports offering economic incentives in voluntary compliance programs, such as the Ocean Vessel incentive programs. However, only the Boards have the legal authority to fund such incentives or impose CEQA mitigation or lease conditions to project approval, which decisions also fall within the Boards' sole discretion regarding their respective Port's properties and their individual Harbor Revenue Fund budgets, which may be affected by the global economy.

efforts, and that being listed as an implementation agency does not obligate the Ports to any specific requirement, however, this is contrary to the language of the AQMP that implementing agencies are "responsible for implementing the control measure." We believe that listing the Ports, and not including all of the other public and private partners that are also working on these efforts, gives the impression that the Ports do have an assigned obligation, or that the Ports must bear a larger burden in the effort to implement these programs. We also repeat our comment stated above that the AQMD cannot mandate in the AQMP that the Ports must expend monies in these voluntary efforts, since most of these Off-Road and Advanced Control Technology measures require incentive monies to fund demonstration projects or accelerated use of new technology.

We believe that the appropriate Implementing Agencies for these measures are the United States Environmental Protection Agency and the California Air Resources Board.

The Ports urge AQMD to make all of the above-requested changes to the draft 2012 AQMP, in particular, to eliminate Measure IND-01 Port Backstop Rule as a legally unnecessary measure exceeding AQMD's authority and violating the State Tidelands Trust. We believe it is much more effective to advance our mutual clean air goals for our agencies to continue working cooperatively together, but if the AQMD takes the above 2012 AQMP measures forward, the Ports will have no choice but to vigorously oppose such action through the administrative and legal process.

Sincerely,

Chris Lytle
Executive Director
Port of Long Beach

Geraldine Knatz
Executive Director
Port of Los Angeles

HAT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Susan Nakamura, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Port of Long Beach Harbor Commission
Port of Los Angeles Harbor Commission
Robert Kanter, Port of Long Beach
Rick Cameron, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Chris Cannon, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles
David Reich, Los Angeles City Mayor's Office

Attachment 1

July 10, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Initial Comments on the Proposed 2012 Air Quality Management Plan, Control Measure IND-01

Dear Dr. Wallerstein:

The Port of Long Beach and Port of Los Angeles (Ports) appreciate the opportunity to participate in the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) Advisory Committee. We support the AQMD's clean air goals and have worked aggressively with the port industry to reduce our fair share of air quality impacts to the region from port-related operations, as outlined in the San Pedro Bay Ports Clean Air Action Plan (CAAP) and the associated San Pedro Bay Standards. As a result, between 2005 and 2010, emissions from port-related sources were reduced by 70 percent for diesel particulate matter and by 49 percent for nitrogen oxides. Emissions inventory work currently underway indicates additional, continued emission reductions in 2011.

While we continue to remain a committed partner in the effort to improve air quality in the region, we disagree with AQMD's proposed control strategy for port-related sources in the Draft 2012 AQMP. The inclusion of proposed measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources," is unnecessary and counter-productive.

The two Ports have a proven track record of developing and implementing appropriate and effective emission reduction strategies. These efforts have been entered into voluntarily, working cooperatively with operators in the port area and the air quality regulatory agencies (i.e. Environmental Protection Agency, California Air Resources Board and AQMD). Since the Ports initially implemented the CAAP, many of the port-related control strategies have been or will be superseded by state or international requirements, such as the rules for replacing drayage trucks, switching to cleaner marine fuels, and using shore power while at berth. The Ports' emissions inventories in 2010 show reductions that are meeting or are in excess of the emission reductions that the Ports committed to in the San Pedro Bay Standards. However, it is important to note that in order to remain on track to meet the Standards, a collaborative and concerted effort with our agency partners is essential, with the understanding that while the Ports can achieve significant emission

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

reductions, no single entity can accomplish this task. The previous State Implementation Plan identified several regulatory strategies that have not yet materialized into regulations for various reasons. Moving forward, the Ports will need agency assistance, particularly on the development and deployment of zero-emission technologies and at-berth controls for non-regulated vessels, as well as on the preferential deployment of cleaner vessels to the basin.

The Ports are sustaining and growing long-standing successful CAAP programs, such as the Vessel Speed Reduction Incentive Program and, on July 1, 2012, the Ports implemented new, groundbreaking incentive programs to encourage cleaner ocean-going vessels to call at the Ports. With programs such as these, along with the above-referenced regulatory rules becoming effective and ensuring significant additional emission reductions by 2014, there is no identified need for implementing a backstop measure. The AQMD's proposed backstop measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

It is inappropriate for the AQMD to attempt to regulate the Ports, which are the Harbor Departments of the cities of Long Beach and Los Angeles, in an attempt to control emissions from equipment within our boundaries, but which we do not own or operate. Further, the proposed backstop measure identifies that the "…requirements will be triggered if the reported emissions for 2014 for port-related sources exceed the 2014 target milestone, *or the Basin fails to meet the 24-hour PM2.5 standard as demonstrated in the 2012 AQMP and basin-wide reductions are needed, in which case a new reduction target for each pollutant will be established*." (emphasis added). While clarification has been provided by AQMD staff that any effort to make up for a basin-wide shortfall will be the responsibility of all sectors, not just the Ports, this statement still implies that if the port industry meets their targeted emission reductions, but other sectors fail to meet their fair share obligations, then the AQMD will mandate additional reductions from the Ports. This is counter to the cooperative relationship that our agencies have established since we began working together on the CAAP in 2006, and ignores the tremendous air quality benefits that have been gained from voluntary actions.

Lastly, based on the preliminary calculations by AQMD, the majority of the region is expected to be in attainment for PM2.5 by the target year of 2014, with the remainder anticipated to be in attainment by the expected extension date of 2019. The inclusion of IND-01 is therefore unnecessary for the region to reach attainment. If these emission reductions are needed in the baseline emissions calculation, there is precedent for mechanisms other than control measures to be used for this purpose, and we would like to discuss those options with your staff.

We strongly believe that the voluntary and cooperative CAAP process established by the Ports remains the most appropriate forum for the Ports and the air regulatory agencies to discuss technical and policy issues related to reducing emissions from port-related sources. As stated above, we remain committed to achieving our fair share of clean air goals identified in the CAAP and working with port industry and the air regulatory agencies on implementation of appropriate strategies.

For your reference, attached is a comment letter dated May 4, 2010, in which the Ports initially expressed concerns regarding backstop rules. The letter was submitted as a public comment on the proposed Rules 4010 and 4020, which were proposed backstop rules for health risk and criteria pollutant emissions.

We look forward to working with AQMD on resolving our concerns related to the proposed backstop measure in the Draft 2012 AQMP.

Sincerely,

CHRIS LYTLE
Executive Director
Port of Long Beach

MICHAEL R. CHRISTENSEN
Deputy Executive Director, Development
Port of Los Angeles

HAT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Susan Nakamura, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Robert Kanter, Port of Long Beach
Rick Cameron, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Chris Cannon, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles

Attachment 2

San Pedro Bay Ports Clean Air Action Plan

May 4, 2010

Susan Nakamura
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Subject: AQMD Proposed Rules 4010 and 4020

Dear Ms. Nakamura:

This letter is on behalf of the Ports of Long Beach and Los Angeles (Ports) as a preliminary response to the "backstop" Rules 4010 and 4020 (Proposed Rules) proposed by the South Coast Air Quality Management District (AQMD). As will be explained below, based upon the limited amount of information released by the AQMD about the Proposed Rules thus far, the Ports have a number of preliminary questions and concerns at this stage of the first public consultation meeting and will be providing more detailed comments on the Proposed Rules at a later stage.

The Ports have had tremendous success with implementing the San Pedro Bay Port Clean Air Action Plan (CAAP). The development of the original CAAP and the update to the CAAP has been conducted through a cooperative effort with staff from the AQMD, the United States Environmental Protection Agency (EPA), and the California Air Resources Board (CARB). The Ports strongly believe that this partnership of over four years, and the collaboration that has occurred throughout that time, have aided in the success of the CAAP and the emissions reductions that have been achieved.

Since the CAAP was adopted in late 2006, the Ports have exceeded our interim emissions reductions milestones and are well on our way to meeting the original forecasted emissions reductions of at least 45% by 2011, compared to uncontrolled conditions. This has been accomplished through the steadfast implementation of CAAP measures, highlighted as follows:

- Development, approval, and implementation of the Clean Trucks Program in which two major milestones have been achieved resulting in truck pollution reductions of nearly 80% (January 2010), almost two years ahead of schedule (HDV1).
  - October 2008: ban pre-1989 trucks.
  - January 2010: ban pre-1993 trucks; 1994-2003 trucks require Level 3 plus NO_x retrofit.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

- Facilitated construction of an LNG on-road truck fueling station in the port area. Fueling operations have been underway since early 2009. In addition the Ports have contributed to funding the construction of two additional LNG on-road truck fueling stations in the Port area, due to open later in 2010 (HDV2).
- Over $6.5 million in incentives for vessels participating in the voluntary Vessel Speed Reduction Program and Vessel Fuel Incentive Program (OGV1, OGV4).
- Design, construction, and operation of shore power infrastructure completed at 5 berths and underway for over 40 additional berths (OGV2).
- Replaced entire fleet of port switching locomotives with new, cleaner locomotives in 2008, and a subsequent fleet turnover to cleaner locomotives anticipated by end of 2011 (RL1).
- Provided funding of $5.4 million toward projects through our Technology Advancement Program, conducted with input from an Advisory Committee consisting of AQMD, EPA, and CARB.
- The Ports' 2008 Emissions Inventories show combined emission reductions of 20% diesel particulate matter (DPM), 10% nitrogen oxides (NOx) and 24% sulfur oxides (SOx) compared to the 2005 baseline. The 2009 Emissions Inventories, which are expected to be finalized and published in June, will show an even greater level of emission reductions as additional CAAP efforts have come into effect.

In addition to the implementation efforts listed above, the Ports have also worked in coordination with CARB and EPA on development of rules and regulations affecting port sources. These regulatory requirements have helped to ensure that emissions reductions from specific equipment types operating at the Ports will continue into the future. The Ports look forward to continuing these cooperative efforts on regulatory development with CARB and EPA, with the support of AQMD, to ensure that the early action measures being taken by the Ports are supported and implemented more broadly.

Further, as you are aware, the Ports recently released our draft CAAP Update, where we revisited and updated each of the control measures and proposed aggressive, long-term goals for emissions reductions and health risk reductions, titled the San Pedro Bay Standards. Once the CAAP Update is adopted, the Ports will quantitatively measure our progress against these long-term goals and will make adjustments to our implementation efforts over time as necessary to ensure that we remain on track for achieving these goals.

With these demonstrated results carried out voluntarily, and further efforts underway, the Ports regard the AQMD's proposed Rules 4010 and 4020 as unnecessary, and raise several questions regarding the Proposed Rules and the rulemaking process. Below is a list of preliminary questions to help us gain a better understanding of the AQMD's proposed approach:

Emissions and Health Risk Reduction Targets

Proposed Rule 4020 Sections (d) (1) and (2) will include targets for criteria pollutant and health risk reductions to be met by the Ports to avoid triggering the backstop provisions. The Ports have the following concerns and questions regarding the targets:

1. How were the targets developed? In June 2007, the Ports provided AQMD with detailed comments and concerns regarding the methodology and the specific port-related emission reduction targets contained in the 2007 Air Quality Management Plan (AQMP). CARB declined to adopt the port targets into the 2007 State Implementation Plan (SIP). In the AQMD Governing Board's resolution adopting the 2007 AQMP, it committed that AQMD staff would work with the Ports and, based on its technical review, would recommend any appropriate adjustments to the AQMP criteria pollutant targets attributable to the Ports. Although initial coordination efforts have occurred, the AQMD has not completed detailed analyses necessary for the Ports to understand how the AQMP targets and the targets contained in the Proposed Rules have been developed, or to understand how these targets differ from the Emission Reduction Standards contained in the Draft 2010 CAAP Update. We request that the AQMD present the methodology and resulting targets to a Stakeholder Working Group, including the Ports, before progressing further with the rulemaking process. Further, to the extent that the targets in proposed Rule 4020 go beyond the 2007 SIP/AQMP targets to address future regulations that have not yet been adopted, the Ports have even greater concerns.

2. The Emission Reduction Standards contained in the Draft 2010 CAAP Update were developed by the Ports in coordination with the EPA, CARB, and AQMD. Achievement of these Standards will require aggressive implementation of strategies by the Ports and the port operators. Further, the Standards are predicated on a conservative 2007 cargo forecast developed before the recent economic crisis and assume that the Ports reach capacity in 2023. Instead, there has been a significant downturn in cargo volumes from 2008 to present, such that the Ports do not anticipate returning to 2007 cargo throughput levels until 2014-2015, and reaching capacity until approximately 2035. This has reduced the Ports' emissions footprint, as well as potentially reduced the Ports' proportion of basin-wide pollution. Nonetheless, to be conservative and to voluntarily strive to ensure a "fair share" contribution of port-related sources to regional attainment goals, the Ports retained the higher growth forecast in the CAAP. It is important to note that, even with these higher than anticipated rates of future emissions growth, the Ports project DPM reductions greater than 70%, SOx reductions greater than 90%, and NOx reductions of nearly 60% by 2023.

3. The 2007 SIP identified several regulatory and technology strategies to be undertaken by EPA and CARB to contribute to the reduction in port-related emissions. This is consistent with the philosophy that achieving emission reductions from port-related sources must be a cooperative partnership effort, because no one entity can meet the need by itself. Since the 2007 SIP was developed, for various reasons including technical feasibility, technology availability, and cost-effectiveness, several key federal and state regulatory and technology strategies have failed to occur. These include, but are not limited to: commercial availability of Tier 4 line haul and switcher locomotive engines in 2012, implementation of a statewide regulation requiring use of shoreside power for all vessel types while at berth, and implementation of a statewide regulation requiring retrofitting of existing ocean-going vessels and the preferential deployment of progressively cleaner new build vessels to California ports. The Ports are concerned that the emission reductions associated with these proposed EPA and CARB strategies are now being fully assigned to the Ports through the proposed targets in order to make the

SIP "whole," even though the strategies may not be technically feasible and/or cost-effective. Further, as you know, the Ports do not own or operate the emissions sources targeted by this regulation and the Ports may not have implementation mechanisms available within their jurisdiction to implement the controls even if they were deemed feasible and cost-effective.

DISTRICT RULEMAKING PROCESS

The Ports have a number of initial questions geared towards gaining a better understanding of AQMD's intended rulemaking process for the Proposed Rules.

4. As suggested above, will the AQMD form a Stakeholder Working Group, including the Ports, to discuss the AQMD's Proposed Rules and analysis?

5. What is the AQMD's authority for regulating the Ports under the Proposed Rules?

6. The Ports would like to understand what level of CEQA analysis the AQMD is proposing for this rulemaking. Will there be a scoping meeting?

7. When will the AQMD release a Preliminary Draft Staff Report (PDSR)? Given the unprecedented nature and broad technical, practical, regulatory, and legal implications of these Proposed Rules, we believe that the PDSR must be very detailed or the Ports, air agencies, and other stakeholders will not have the information necessary to participate fully in the rule development process. We request that the PDSR include:
    a. Technical analysis of the Proposed Rules, targets, etc.
    b. An analysis of potential Draft Findings required under Health and Safety Code (e.g., Necessity, Authority, Clarity, Consistency, Non-Duplication, and References)
    c. Detailed information on control technologies and programs that the AQMD believes the Ports and affected sources would need to implement to meet the proposed rule reduction requirements.
    d. As part of cost-effectiveness analysis, detailed information on the feasibility, control effectiveness, and costs of these technologies and programs, including who would bear those costs. The AQMD should work with the Ports, their tenants, and others in the goods movement industry to estimate these costs.
    e. A preliminary Socioeconomic Impact Report (SIR) based on input from the Ports, their tenants, and other affected industries. Given the broad implications to the region's economy, the Ports recommend a detailed preliminary SIR be prepared and released with the PDSR.
    f. AQMD's proposal for how it will specifically apply the scheme of fines, penalties, or other enforcement provisions of the Health and Safety Code to the Ports to enforce the Proposed Rules, including providing an understanding of how the enforcement action would be assessed, given that the Ports are two separate and distinct departments of their respective cities.

The Ports look forward to receiving AQMD's responses to these preliminary questions. We will follow up with additional questions and comments later, as more information is provided by AQMD on the proposed rules.

The Ports are committed to achieving aggressive and feasible emissions reductions and health risk reductions from port-related sources, and have already proven that such reductions can be achieved while allowing the Ports to continue to move forward as a strong economic engine for the region. The Ports remain committed to implementing the CAAP and working in cooperation with the agencies and the industry to achieve our goals. We believe the Proposed Rules are unnecessary and that the AQMD should consider alternative mechanisms to achieve the AQMD's goals. We bring to your attention that the Bay Area AQMD initiated a backstop measure but ultimately determined to pursue a Memorandum of Agreement approach for similar work with the Bay Area ports.

If you have any questions regarding this correspondence, please contact Heather Tomley, Assistant Director of Environmental Planning, Port of Long Beach, at (562) 590-4160; or Christopher Patton, Environmental Affairs Officer, Port of Los Angeles, at (310) 732-3677.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Director of Environmental Management
Port of Los Angeles

cc: Dick Steinke, Executive Director, POLB
Geraldine Knatz, Executive Director, POLA
Mike Christensen, Deputy Executive Director, POLA
Robert Kanter, Managing Director, POLB
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

October 22, 2012

Jeff Inabinet
c/o Office of Planning, Rule Development, and Area Sources/CEQA Facilities
South Coast Air Quality Management District Development and Planning Branch
21865 Copley Drive
Diamond Bar, CA 91765-4182

Subject: Draft 2012 AQMP Program Environmental Impact Report

Dear Mr. Inabinet:

The Port of Long Beach (POLB) and Port of Los Angeles (POLA) appreciate the opportunity to comment on the Draft Program Environmental Impact Report (Draft EIR) developed for the 2012 Air Quality Management Program (AQMP). The ports appreciate that AQMD staff took steps to address the scoping comments provided by the ports, specifically the inclusion of a transportation and traffic impact analysis as part of the Draft EIR.

However, the ports must reiterate their concerns relating to AQMP Control Measure IND-01 (Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources). As the AQMD knows from prior comment letters submitted by the ports (please see AQMP comment letters dated August 30, 2012; July 10, 2012; and May 4, 2010), the ports believe that Measure IND-01 exceeds the AQMD's authority and should not be included in the AQMP for the reasons set forth in the referenced letters.

Measure IND-01 also contains various flaws which contribute to the inadequacy of the Draft EIR and failure to comply with the California Environmental Quality Act (CEQA). First, Measure IND-01, as described in the project description of the Draft EIR and in the AQMP itself, is unconstitutionally vague and lacks sufficient description of exactly what it proposes to impose on the ports or substantial evidence in support. The Draft EIR's failure to describe the project fully makes it impossible for AQMD, the ports, or the public to assess its 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. Because of the importance and consequences of the AQMP to the State of California's State Implementation Plan (SIP) if adopted by California Air Resources Board (ARB), and to the Federal Clean Air Act enforcement if approved by the U.S. Environmental Protection Agency (EPA), the AQMD is required to fully disclose the details of Measure IND-01 before adoption, and CEQA requires a full disclosure and discussion, which AQMD has failed to do.

Second, to the extent the AQMD intends to approve the Draft EIR and AQMP containing the vague current version of Measure IND-01, and later, as a part of future rulemaking, provide details regarding its proposed actions against the ports including an environmental assessment, that would be segmentation or piecemealing of its CEQA analysis.

Third, Measure IND-01 has serious problems of infeasibility which the Draft EIR has failed to analyze at all. Measure IND-01 in effect attempts to convert the ports' various aspirational goals, set forth in their voluntary Clean Air Action Plan (CAAP), into enforceable regulation against the ports. However, the CAAP goals depend upon future technology advancement which has not yet occurred, all of which are beyond the control of the ports. Therefore, there are technology feasibility issues with the AQMD making the ports' goals into required emissions limits. Further, as the ports are not air regulators and they do not themselves own, operate, or control the emissions equipment operated by the port industry, there are legal feasibility questions over the ports' ability to exercise authority to carry out the actions of Measure IND-01. There are also serious legal feasibility questions including federal preemption asserted by railroads in connection with locomotive specifications and rail operations, and international preemption asserted over ocean vessels. The Draft EIR is flawed in its failure to discuss these infeasibility issues, and had it done so, it would lead to the conclusion that Measure IND-01 should be removed from the AQMP.

Fourth, the AQMD has concluded in the air quality analysis that specific measures associated with Measure IND-01 "are unknown, and therefore the impacts are speculative," (see page 4.2-7 of Draft EIR). This is yet another reason why the Draft EIR is flawed. CEQA Guidelines Section 15145 specifies that if, after thorough investigation, a Lead Agency finds that a particular impact is too speculative for evaluation the agency should note its conclusion and terminate discussion of the impact. Instead, the AQMD proceeded to analyze secondary impacts to air quality that are based on speculative assumptions regarding construction emissions, energy demand, and operations.

Lastly, to the extent that Measure IND-01 proposes to impose upon the ports a form of enforcement for port industry's failure to meet the CAAP's target emissions reduction goals, when the ports do not own, operate, or control the emissions sources, it violates constitutional limitations requiring that exactions imposed on a party must be proportional to the party's contribution, when it fails to include all parties involved in the CAAP, including the actual emissions sources.

Given these deficiencies and speculation under CEQA and with the AQMP rulemaking, Measure IND-01 should be removed from the final EIR and the AQMP, and the analysis should be revised accordingly. With this change, the ports can support the revised AQMP and can continue to work with AQMD, other agencies, and the port industry in the collaborative manner that has made the ports' voluntary CAAP a success.

Thank you for considering the above comments. If you have any questions, please contact Dylan Porter, Port of Long Beach, at (562) 283-7100 or Lisa Wunder, Port of Los Angeles, at (310) 732-7688.

Sincerely,

Richard D. Cameron
Director of Environmental Planning, Port of Long Beach

Christopher Cannon
Director of Environmental Management, Port of Los Angeles

DP:s

cc: Elaine Chang, South Coast Air Quality Management District
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

October 31, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Supplemental Comments on the Revised Draft 2012 Air Quality Management Plan

Dear Dr. Wallerstein:

The Port of Long Beach and Port of Los Angeles (ports) are submitting this comment letter to add to comments previously submitted on August 30, 2012.

As members of the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) Advisory Committee, the ports have worked with AQMD staff to provide comments on the draft plan, including the emissions data being used. Included in this effort, ports' staff provided the 2008 base year emissions inventories for the port sources based on the most recent methodologies agreed upon by the Technical Working Group (TWG) in the ports' 2011 air emissions inventories.

As noted in the Draft AQMP, *"An effective AQMP relies on an adequate emission inventory."* Discrepancies exist between the emissions inventories prepared by the ports and the inventory prepared by the AQMD. The emissions shown in the Draft 2012 AQMP are different from those prepared by the ports in cooperation with the AQMD, California Air Resources Board, and Environmental Protection Agency, during development of the San Pedro Bay Standards. If the AQMD's emissions projections for achieving attainment are incorrect, the concerns expressed in our August 30 comments are greatly increased. The emissions projections drive both the Measure IND-01 analysis and the PM2.5 analysis. The basis for the Draft 2012 AQMP emissions projections is impossible to determine, because the assumptions and methodologies (including control factors and growth factors) are not disclosed.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

Additionally, it concerns the ports that the AQMP has made a commitment to Measure IND-01 before AQMD has released details of its intended implementation actions against the ports, or the socioeconomic and other analyses for such actions. Elaine Chang admitted at the AQMD's October 24, 2012, meeting that it is unknown what a port compliance plan would include and that AQMD would develop it during a future rulemaking process. This violates due process, to commit to implement an AQMP measure without disclosing what AQMD's actions against the ports will be under the backstop measure, as it deprives the public and the ports of the opportunity to review and comment to influence the decision, prior to committing to it in the AQMP.

This further demonstrates that the collaborative process established by the ports and the air quality regulatory agencies remains the most appropriate forum to identify and implement strategies to reduce emissions from port-related sources.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

AT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Randall Pasek, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Robert Kanter, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

November 8, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Dear Dr. Wallerstein:

SUBJECT: COMMENTS ON THE DRAFT SOCIOECONOMIC REPORT FOR THE DRAFT 2012 AIR QUALITY MANAGEMENT PLAN

The ports of Los Angeles and Long Beach (Ports) appreciate the opportunity to comment on the South Coast Air Quality Management District's (AQMD) Draft Socioeconomic Report for the Draft 2012 Air Quality Management Plan (AQMP).

The Draft Socioeconomic Report states that "District staff performs a socioeconomic analysis of the Draft Plan in order to further inform public discussions and the decision making process of the Draft Plan." However, the Draft Socioeconomic Report shows that no cost data have been developed for Measure IND-01 – Backstop Measures for Indirect Sources of Emissions from the Ports and Port-Related Sources, despite the fact that there are real and significant costs to the Port industry to implement the emission controls that could result from the proposed Backstop Measure. Presentation of this measure to AQMD's Board, as well as the public, is incomplete without an associated socioeconomic analysis. Potential regulation of the Port could have a very significant economic effect on the region that AQMD does not address, and therefore the Ports believe that it is inappropriate to move forward with inclusion of this measure in the Draft AQMP without a full socioeconomic analysis.

By not including a socioeconomic analysis of Measure IND-01, the AQMD is completely ignoring the economic importance of the Ports. The Ports are a major economic engine for the region and nation, and port-related industry generates $5.1 billion and $21.5 billion in state and federal tax revenue, respectively. The Ports account for over 1.1 million jobs in California and 3.3 million jobs in the United States. Additionally, for every one job created by a Port customer, nearly 1.7 additional jobs are created elsewhere in the region.

Even just the potential of additional regulation of the Ports brings with it a significant uncertainty for the Port industry that may result in the diversion of goods to other ports outside of this region. There are more environmental requirements on the Port industry operating in this region than anywhere else in the world. The threat of additional regulatory requirements, especially when no details have been provided as to what those requirements would be, results in significant concerns for these operators and a significant potential for loss of regional economic benefits due to diversion. The Draft Socioeconomic Report fails to analyze this potential impact.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

Additionally, AQMD has indicated that Measure IND-01 does not have a socioeconomic analysis associated with it because there are no emission reductions associated/committed with this measure. As noted in our comment letter on the Draft AQMP dated August 30, 2012, Section 39602 of the California Health and Safety Code states that, the State Implementation Plan (SIP) shall only include those provisions necessary to meet the requirements of the Clean Air Act. Hence, there is no identified need or legal basis for implementing Measure IND-01. AQMD's proposed measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

Finally, as stated in our letter dated October 31, 2012, Measure IND-01 should not move forward because the AQMP makes a commitment to implement it before AQMD has developed or released details of its intended compliance actions against the Ports, or the socioeconomic and other analyses for such actions. Failing to disclose the AQMD's intended actions against the Ports violates due process, depriving the public and the Ports of the opportunity to adequately review and comment on this measure prior to finalizing the AQMP.

For the reasons listed above and those presented in our previous letters, the Ports reiterate our consistent position that Measure IND-01 should be eliminated from the AQMP. Further, we continue to believe that the successful, collaborative approach established by the Ports and the regulatory agencies remains the best mechanism for identifying and implementing strategies to reduce emissions from Port-related sources.

Sincerely,

CHRISTOPHER CANNON
Director of Environmental Management
Port of Los Angeles

RICHARD D. CAMERON
Director of Environmental Planning
Port of Long Beach

CC:CLP:KM:LW:myd
ADP No.: 061024-605

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Robert Kanter, Port of Long Beach
Mike Christensen, City of Los Angeles Harbor Department, Deputy Executive Director
Dominic Holzhaus, City of Long Beach, Deputy City Attorney
Joy Crose, City of Los Angeles Harbor Department, General Counsel

November 19, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Ports' Proposed Revision and Resolution Language for the Draft 2012 Air Quality Management Plan

Dear Dr. Wallerstein:

On November 15, 2012, staff from the ports of Long Beach and Los Angeles met with AQMD Boardmember Judy Mitchell and AQMD staff to discuss concerns and comments that have been raised by the ports in previous comment letters on the Draft 2012 Air Quality Management Plan (AQMP). At the conclusion of the meeting, it was determined that staff would continue to work together to attempt to resolve the concerns that have been raised.

In that spirit, the ports of Long Beach and Los Angeles propose the following revisions to the 2012 AQMP, consistent with our past comment letters to AQMD:

1. Measure IND-01 must be removed from the 2012 Air Quality Management Plan if it continues to apply or recommend any form of AQMD oversight and approvals of the ports' actions, or enforcement (in terms of fines, penalties, administrative actions) against the Ports for failures of the Port industry to achieve designated emissions reductions. This includes the intent to develop such enforcement actions in later IND-01 rulemaking after adoption of the AQMP, even if such details regarding enforcement activity are absent from the draft AQMP.

2. With the removal of the Measure IND-01, the following language could be added to the adopting resolution for the 2012 Air Quality Management Plan:

   BE IT FURTHER RESOLVED, the District commits to continue working with the Port of Long Beach and the Port of Los Angeles on the implementation of the San Pedro Bay Ports Clean Air Action Plan (CAAP) in order to meet the emission reduction goals identified in the San Pedro Bay Standards, and as a part of the annual report to the Board, District staff will continue to provide information on the progress of the ports in implementing the CAAP.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

BE IT FURTHER RESOLVED, if the ports do not demonstrate sufficient progress for achieving the San Pedro Bay Standards, the District will work with the ports, the other air quality regulatory agencies, and port industry emission sources that are stakeholders under the CAAP, to identify additional feasible strategies for implementation within the ports' jurisdiction.

We look forward to discussing these recommendations with you.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

HAT:s

cc: AQMD Boardmember Judy Mitchell
Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Susan Nakamura, South Coast Air Quality Management District
Robert Kanter, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

November 27, 2012

Ms. Susan Nakamura
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Ports' Comments on South Coast Air Quality Management District (AQMD) Revisions to Measure IND-01 in Draft 2012 Air Quality Management Plan

Dear Ms. Nakamura:

Thank you for the AQMD's proposed revisions to Measure IND-01, "Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities" (IND-01) in the Draft 2012 Air Quality Management Plan (AQMP). We appreciate that efforts were made by AQMD staff to address the concerns that the ports of Long Beach and Los Angeles (Ports) have raised in our various comments letters on the AQMP and in our meeting on November 15, 2012 among the Ports' staff, AQMD staff and AQMD Boardmember Judy Mitchell.

However, the ports are disappointed that the fundamental structure of Measure IND-01, to treat the ports as "stationary sources" and "indirect sources," and convert the ports' voluntary Clean Air Action Plan into enforceable regulation by AQMD, was not altered in any respect. The ports do not own or operate any of the targeted equipment, and the ports are not regulatory agencies. The ports can't accept any regulatory action by the AQMD that will result in AQMD oversight and approvals of port actions, or enforcement actions by AQMD on the ports for failure of the port industry to meet the ports' emission reduction goals. Therefore the Ports continue to object to Measure IND-01's inclusion and request that it be removed from the AQMP. Measure IND-01 contains the fatal flaw of defining the ports as stationary and indirect sources responsible for the emissions from equipment they do not regulate, own, or control. We also believe that this measure is beyond AQMD's authority.

We reiterate our prior requests that AQMD reconsider its approach and allow the continuation of the successful collaborative work by the ports, regulatory agencies and other stakeholders under the voluntary Clean Air Action Plan and San Pedro Bay Standards. Moving forward with Measure IND-01 in this current draft form will actually reduce rather than improve the future success of programs, since conversion of voluntary plans into regulation will reduce voluntary

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

cooperation by the industry with port programs, and will eliminate the ability of the ports, agencies and industry emissions sources to obtain grants to accelerate emission reductions from port industry equipment.

Thank you for your continued attention to this matter and we hope that we can continue with the successful, cooperative partnership that we have built over the past seven years.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

HAT:s

cc: AQMD Boardmember Judy Mitchell
Barry Wallerstein, South Coast Air Quality Management District
Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Chris Lytle, Port of Long Beach
Robert Kanter, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Geraldine Knatz, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles

January 15, 2014

Jared Blumenfeld
Regional Administrator
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

Re: California State Implementation Plan for PM2.5 for South Coast Air Basin (SIP) - South Coast 2012 Air Quality Management Plan (AQMP) Control Measure IND-01 *Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities* and EPA *Voluntary Mobile Source Emission Reduction Program* (VMEP)

Dear Mr. Blumenfeld:

On behalf of the City of Long Beach acting by its Harbor Department and the City of Los Angeles acting by its Harbor Department (collectively, the Cities), we raise serious concerns regarding Control Measure IND-01 *Backstop Measure for Indirect Sources of Emissions from Ports and Port-related Facilities* (Measure IND-01) in the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP). The Cities request that the United States Environmental Protection Agency (EPA) disapprove and exclude Measure IND-01 from the California State Implementation Plan (SIP) for particulate matter 2.5 microns or less (PM2.5) for the South Coast Air Basin, which is currently pending EPA approval. As set forth below, both the substance of Measure IND-01 and the California Air Resources Board (ARB) procedure for inclusion of Measure IND-01in the SIP violate all five prongs of the standard test used by EPA to evaluate a SIP's compliance with Clean Air Act (CAA) requirements.[1]

1. Did the State provide adequate public notice and comment periods?

EPA cannot approve Measure IND-01 as part of the SIP because the ARB failed to follow the process for SIP submissions required by CAA Section 110(1) and California Health and Safety Code Section 41650. Under CAA section 110(l), SIP revisions must be adopted by the State, and the State must provide for reasonable public notice and hearing prior to adoption. Under 40 CFR 51.102(d), reasonable public notice in this context refers to at least 30 days. Similarly, Health and Safety Code Section 41650 provides for a public hearing that would allow public comment as to whether the SIP meets the requirements of the CAA. By resolution dated January 25, 2013,

[1] See, e.g., CAA Sections 110(a)(2)(A), 110(a)(2)(E), 110(l).

the ARB approved the AQMD 2012 AQMP and directed the executive officer of the ARB to submit the AQMP to EPA for inclusion in the SIP. However, at the time of the January 25, 2013 ARB action, Measure IND-01 was not part of the AQMP. Because the AQMD Governing Board adopted the AQMP without Measure IND-01 on December 7, 2012 and did not adopt Measure IND-01 until February 1, 2013, the January 25 ARB action did not constitute approval of Measure IND-01 which had not yet been submitted to ARB for consideration. The documents attached to the ARB's February 13, 2013 SIP submittal to the EPA include the December 7, 2012 resolution by the AQMD Governing Board and the December 20, 2012 AQMD letter to ARB transmitting the approved SIP, which pre-dated the AQMD Governing Board's approval of Measure IND-01. Inexplicably, without the required public notice or public hearing and adoption by the ARB Governing Board, the submitted SIP includes the addition of Measure IND-01. Until this procedural error is corrected, and the Cities and the public are given the opportunity to comment at a public hearing, Measure IND-01 is not properly before EPA and cannot be approved as part of the SIP.

2. Does the State have adequate legal authority to implement the regulations?

As you may know, the AQMD is now pursuing adoption of Proposed Rule 4001—*Maintenance of AQMD Emission Reduction Targets at Commercial Marine Ports* (PR 4001) – ostensibly to implement Measure IND-01 and ensure SIP credit for voluntary emission reduction programs of the Cities. The Cities have raised significant technical, jurisdictional, constitutional and other legal concerns with Measure IND-01 and PR 4001, as set forth in public comment letters sent to AQMD during the AQMP adoption process. Measure IND-01 and PR 4001 violate California Health and Safety Code Section 39602, which provides that the State Implementation Plan shall only include those provisions necessary to meet the requirements of the Clean Air Act. The Cities have shown that there is no demonstrated need for the rule, nor is this rule necessary for regional attainment of the 2014 PM2.5 standard. The Cities estimate that by 2014, 99.5 percent of the PM2.5 equivalent emission reduction that PR 4001 seeks to backstop will occur as the result of regulations adopted by ARB and the International Maritime Organization (IMO).[2] The remaining 0.5 percent of PM2.5 equivalent emission reductions is primarily attributed to the Cities' successful voluntary vessel speed reduction incentive program which is part of the Cities' Clean Air Action Plan. More importantly, there are significant legal questions regarding AQMD's attempt to apply an indirect source rule to governmental agencies in a manner that potentially usurps the Cities authority and compels compliance and punishes them for non-achievement of emissions targets for equipment the Cities do not own, control or operate, and are preempted from regulating.

[2] CARB Port Drayage Truck Rule, CARB Truck and Bus Rule, CARB Ocean-Going Vessel (OGV) Shore Power Rule, OGV Low-Sulfur Fuel Rule, CARB Cargo-Handling Equipment at Ports Rule, CARB Commercial Harbor Craft Rule, IMO North American Emission Control Area

3. Are the regulations enforceable as required under CAA section 110(a)(2)?

Because the Cities are not regulatory agencies and, therefore, are limited in their authority to impose requirements on mobile sources operated by the goods movement industry that call at port facilities, IND-01 and PR 4001 are inappropriate and ineffective mechanisms for achieving emission reductions.

4. Will the State have adequate personnel and funding for the regulations?

Measure IND-01 does not specify the source of funding for its regulation of the Cities but implies that it will come from the Cities. However, AQMD and ARB have no authority to require Cities' expenditures which are subject to the Cities' own requirements as governmental agencies. Furthermore, because it converts a voluntary program into enforceable regulation, the financial effect of Measure IND-01 will be to remove previously available funding from Federal and State grants that are only given for voluntary programs that go beyond regulation, making it less likely that the Cities will have funds to assist the goods movement industry with meeting the AQMP targets.[3]

5. Do the regulations interfere with reasonable further progress and attainment or any other applicable requirement of the Act?

Measure IND-01 interferes with reasonable further progress of the Cities' voluntary programs by reduction of available funding as mentioned above, and providing disincentives to Cities and goods movement industry to pursue programs like the voluntary Clean Air Action Plan.

The Solution: Voluntary Mobile Source Emission Reduction Program (VMEP)

To the extent the ARB and AQMD seek to ensure the emission benefits of the Cities' voluntary vessel speed reduction program, there is a more appropriate method in the form of the EPA's policy and guidance for the Voluntary Mobile Source Emission Reduction Program (VMEP), which constitutes an established process to grant SIP credit for emission reductions resulting from voluntary mobile source measures that go beyond existing regulations. The VMEP approach was intended for exactly the type of successful voluntary program such as the Cities' landmark Clean Air Action Plan, and should be used to account for the 0.5 percent of port-related emissions not currently backstopped by regulation. The VMEP would also reduce the industry and jurisdictional uncertainty that could divert cargo away from the Ports and hurt our local economy.

[3] Many of the Cities programs for equipment replacement or emissions reductions projects have been funded by federal and state grants that require funded activities must go beyond regulations. See e.g., California Proposition 1B Goods Movement and federal Diesel Emission Reduction programs.

We urge the EPA to disapprove and exclude the AQMD's Measure IND-01 from the SIP, and insist that the AQMD use the EPA's established VMEP process that was developed for programs such as the Cities' vessel speed reduction program and other Clean Air Action Plan measures. Use of the established VMEP will accomplish the objective sought by Measure IND-01 and PR 4001 and ensure that the emissions reductions achieved by the program are credited in the SIP. Further, the implementation of a VMEP will achieve the same emissions reductions while ensuring that grant funds remain available for actions going beyond regulations and will do so in a collaborative manner. It will also encourage other cities and regions throughout the nation to develop and pursue innovative voluntary programs and solutions that best fit their needs to improve air quality and public health.

The Cities share the air emission reduction goals of the AQMD, ARB, and EPA, and strongly believe that the VMEP is the most effective way to ensure that emission reduction goals are met in a manner that will allow the SIP to move forward without unnecessary disputes or challenges. The Cities look forward to discussing the various mechanisms, contractual or otherwise, by which the VMEP can be implemented in San Pedro Bay.

Sincerely,

Matthew Arms
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

LW

cc: Al Moro, Acting Executive Director, Port of Long Beach
Gary Lee Moore, Interim Executive Director, Port of Los Angeles
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Elizabeth Adams, Deputy Director, U.S. EPA, Region 9

August 21, 2013

VIA ELECTRONIC MAIL - bradlein@aqmd.gov
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Ms. Barbara Radlein
c/o CEQA
SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT
21865 Copley Drive
Diamond Bar, CA 91765-4178

Re: Notice of Preparation and Initial Study
Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports"

SCAQMD File No. 0722013BAR
SCH No. 2013071072

Comments on Notice of Preparation, Initial Study, and Scope of Proposed Environmental Assessment

Dear Ms. Radlein and Staff of the South Coast Air Quality Management District:

We appreciate this opportunity to submit comments on the Notice of Preparation ("NOP") and the accompanying Initial Study prepared in connection with the District's consideration of the proposed project entitled "Rule 4001: Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports" (the "Project") on behalf of the City of Long Beach acting by and through its Harbor Department (referred to herein as "COLB") and the City of Los Angeles acting by and through its Harbor Department ("COLA", collectively with COLB, the "Cities").

As environmental leaders nationwide, the Cities have achieved tremendous success in obtaining substantial emissions reductions from their joint San Pedro Bay Ports Clean Air Action Plan ("CAAP") and other air quality measures implemented under the Cities' initiatives. The Cities continue to be supportive of projects and programs that are intended to contribute to improvement of air quality and promote other environmental values. However, the Cities must fundamentally disagree with the District's current proposal to unnecessarily convert an effective voluntary plan, built on multi-agency and industry cooperation, into potentially punitive regulations imposed unlawfully on the Cities. The Cities have previously sought to make the District aware of the serious concerns and objections to this approach. The Cities incorporate by reference their previous comments on the 2012 Air Quality Management Plan ("AQMP")

Measure IND-01 Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities ("Measure IND-01") as comments on the proposed Project. The Cities' comments on Measure IND-01 are Attachment "A" to this letter.

We are also mindful that the California Environmental Quality Act ("CEQA") calls for public review, critical evaluation, and comment on the scope of the environmental review to be conducted prior to approval of proposed projects. Such review and critique 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. Thorough identification of the proposed Project, and candid disclosure of all phases of the Project and their potential impacts, is essential to assure 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, mitigation measures, and alternatives. In addition, it will be important to consider the impacts of the proposed Project on the San Pedro Bay Ports' communities, missions, 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 NOP for this "Project" as well as questions, concerns and objections related to the omissions of critical information, unsupported assumptions, or analytical deficiencies in the Initial Study, and comments as to the scope of the proposed environmental assessment ("EA") as contemplated and invited by the District's NOP.

A. General Comments on the Initial Study

While we recognize the effort that has gone into preparation of the current Initial Study, it is apparent that the Initial Study does not provide the information, evidence, or analysis required under CEQA. The Initial Study thus fails to fulfill its critical role as mandated by CEQA in educating the public generally, other affected regulatory agencies and governments, such as the Cities, 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 initial study are described in the CEQA Guidelines (14 C.C.R. §15063, subd. (d)). An initial study must "contain in brief form:

(1) A description of the Project including the location of the Project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries . . . ;

(4) A discussion of ways to mitigate the significant effects identified, if any;

(5) An examination of whether the Project would be consistent with existing zoning, plans, and other applicable land use controls;

(6) The name of the person or persons who prepared or participated in the initial study."

An initial study that fails to provide all of the information, analysis, and evidence called for by CEQA may be deemed to be inadequate and not a valid basis for CEQA review or project approval. (See, e.g., *City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, at pp. 407–408, [invalidating the County's proposed general plan amendments because of a deficient initial study: "[T]he initial threshold study is inadequate because it fails to provide sufficient evidence or analysis of the potential environmental effects of the amendments."].)

It is therefore respectfully urged that the Initial Study (and the related NOP) be revised, corrected, and recirculated for public review and comment before the District proceeds with any further action or EA in connection with the proposed Project.

The CEQA Guidelines contemplate that an initial study is to be used in defining the scope of environmental review (Guidelines, Sections 15006(d), 15063(a), 15143). However, as a result of the omissions, open questions, and deficiencies in the Initial Study as noted below, it appears to have unduly narrowed the District's proposed scope of environmental assessment, and to have caused the NOP to erroneously exclude critical issues and topics from the proposed scope of the EA.

The comments on the current Initial Study included in this letter are organized in the same format used by the Initial Study, i.e., comments on "Chapter 1 – Project Description" followed by comments on "Chapter 2 – Environmental Checklist." The comments are limited to those matters that appear in the current version of the Initial Study, and we reserve the right to provide further comments in the event that additional or different information about the proposed Project becomes available, or the District provides a revised and CEQA-compliant Initial Study.

B. Request for Revision of NOP and Re-Circulation of Revised NOP/IS To Include a Legally-Adequate "Project" Description and Text of Proposed Rule 4001

It is essential that the NOP and the Initial Study be revised to include an adequate "project description" including the text of the proposed Rule that is the "project" before the public, or the Cities, can be expected to provide comments and input.

In their prior comment letter on the Draft 2012 AQMP Program EIR dated October 22, 2012, the Cities expressed the very same concern over the vague and deficient "project description" of backstop Measure IND-01. In the District's response to comment #5-4 in the

Final Program EIR, the District stated: "*The exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted*." The District also committed, in its response to the same comment #5-4 in the AQMP Final Program EIR, that "*further details regarding the future requirements* [a Rule implementing Control Measure IND-01] *will be determined more appropriately during the rule development process.*"

The District has already commenced the rule development process. However, it has not yet provided even a draft of the proposed Rule 4001. To the contrary, at a public meeting held on August 8, 2013, the District's staff announced that the Rule will be developed after various public meetings with a "Rule 4001 working group," with a goal of releasing a draft of the Rule on August 28, 2013. Such a deferred release date for the "draft" of the proposed Rule would be one week after the deadline for comments on this NOP. The details and text of the promised Rule must be developed and disclosed before the "particular methods" and "exact impacts" anticipated may be analyzed or the subject of comment. Accordingly, it is still not possible for the District to proceed with appropriate project-level CEQA review or to issue an accurate NOP/IS at this stage if the details of proposed Rule 4001 are under development.

It is necessary that the current NOP and Initial Study be revised to include a revised "Project" Description, to incorporate the text of the draft Rule 4001 in detail, and to recirculate the revised documents for public review. A new set of public meetings, including a new "scoping meeting" should be scheduled to provide the public with sufficient time and opportunity to comment on the scope and adequacy of the revised NOP/IS.

C. Comments on the Initial Study

1. Chapter 1 of the Initial Study -- Inadequate "Project" Description

(a) Deficient "Project" Description – In General

The failure of the Initial Study and NOP to provide an accurate, complete, and coherent description of the "Project" is a fundamental deficiency, which permeates the entire document. The absence of such a clear description of the proposed Project inherently prevents the Initial Study from facilitating meaningful review and analysis of the proposed Rule 4001, and violates the requirements of CEQA. (See, e.g., CEQA Guidelines, Section 15124; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376.)

The Initial Study does not include or even describe the text of the proposed Rule that is supposed to be the "Project." The section of the Initial Study that purports to "describe" the Project, "PR 4001," includes nothing more than summaries of "key concepts provided in the 2012 AQMP Control Measure IND- 01." Those summaries and "concepts" are insufficient to describe the Project itself, and prevent effective public review and comment. Moreover, since

the 2012 AQMP Control Measure IND- 01 has already been adopted, it is perplexing that the District would use that measure as a substitute for the Project description.

The Initial Study does not provide a description of how the proposed Rule would work. It fails to describe reasonably foreseeable activities or actions of other agencies in response to or associated with the proposed Rule. This Initial Study suggests, instead, that the intent of proposed Rule 4001 would be to delegate the District's responsibilities for regulating or reducing emissions of NOx, SOx, and PM2.5 air emissions to other agencies, specifically the public officials governing the ports of Long Beach and Los Angeles, 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 Rule 4001 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 evaluation project alternatives, etc.).

The importance of providing an accurate and informative project description in an Initial Study was re-emphasized in *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 267, emph. added:

> "**The initial study must include a description of the project.**" (*City of Redlands, supra,* 96 Cal.App.4th at pp. 405–406, fns. omitted.) "Where an agency fails to provide an accurate project description, or fails to gather information and undertake an adequate environmental analysis in its initial study, a negative declaration is inappropriate. [Citation.] An accurate and complete project description is necessary to fully evaluate the project's potential environmental effects. [Citations.]" (*El Dorado County, supra*, 122 Cal.App.4th at p. 1597.)
>
> "**The scope of the environmental review conducted for the initial study must include the entire project**." (*Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1222.) Thus, a correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA. (*Tuolumne County Citizens, supra*, at p. 1222.)

The Initial Study currently falls far short of these requirements in describing the proposed Project, and thus falls equally short of serving the "public awareness" purposes described above and mandated by CEQA:

> An accurate and complete project description is necessary for an intelligent evaluation of the potential 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, citing *Aberdeen & Rockfish RR. v. SCRAP* (1975) 422 U.S. 289, 322 [an accurate, complete and consistent project description is the sine qua non of informative, legally adequate CEQA review].) (*City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, 407–408.)

The Initial Study (p. 1-5) indicates that "the approaches and concepts considered in this NOP/IS may be subject to change" based on comments from the working group. In light of the District's initiative in forming a "working group" of interested participants to help formulate the proposed Rule, and thereby provide an actual "project description," it would be more appropriate to undertake CEQA analysis and compliance after the actual Rule is developed. Furthermore, it is premature for the District to assume or conclude that any changes received from the working group as well as comments received relative to this NOP/IS will all be within the scope of the analysis in the NOP/IS.

In brief, the NOP/IS erroneously limits the scope of the analysis and inherently calls for impermissible speculation or impossible prescience on the part of the Cities or other members of the concerned public to undertake effective analysis of the proposed Project, or to provide meaningful comments as to the scope of review of the Project, until and unless the District provides an adequate description of the "Project."

(b) Specific Comments and Questions re "Project Description" and Text

The following comments and questions refer to specific portions or pages of Chapter 1 of the Initial Study:

Pp. 1-1 - 1-2 – Introduction

The Introduction states, in the first sentence of the third paragraph on page 1-1, that Control Measure IND-01 "...does not call for additional emission reductions beyond those realized with existing regulations and emission reductions programs implemented at the Ports to date." This is an untrue statement. The CAAP is only a planning document which specifically provides for discretionary future decisions to be made regarding implementation by each of the Cities' respective Board of Harbor Commissioners, and resolution adopting the CAAP update states: "The CAAP is a living document intended to establish a process to develop solutions, not a static document binding the Ports to particular future actions….The CAAP is a planning document that identifies goals and potential implementation strategies to guide further actions, and as such does not constrain the discretion of either Board of Harbor Commissioners with

respect to any particular action."[1] Not all individual Board actions that may be required in order to achieve the CAAP's goals and activities have been adopted, many of which goals were stretch targets with uncertainty as to whether they could be achieved. Measure IND-01 and Rule 4001 propose to require the Cities to potentially adopt future actions that create potentially-conflicting authorities between the District, as regulator, and the Cities, as independent governmental agencies regulated by the District, so as to force the Cities to exercise their discretionary police power authority in a particular way. The Constitution does not permit such usurpation of the Cities' authority.

The Introduction states, in the last paragraph beginning on Page 1-1, that the emission targets for port-related sources are those assumed in the 2012 AQMP emissions inventory. The Cities raised questions during the Measure IND-01 adoption process regarding the District's calculation of these targets, which are different from the emissions targets set under the CAAP. Although the specific emission targets of the proposed Project do not appear at all in the NOP (which omission itself is a defect), the District has verbally advised the Cities and a working group on August 8, 2013, that the Rule will be such as to be triggered on set emission targets for 2014 and 2019. Those comments, however, left the Cities and working group participants with many questions about how the District set the emissions inventory, particularly for 2019, which was not in the CAAP. These examples are provided to illustrate that the NOP's description of the proposed Rule is not only flawed but missing altogether.

P. 1-3 - Project Location

The Initial Study provides no finite "project location." It describes the District's jurisdictional boundaries. It then states that "PR 4001 would apply to POLA and POLB, both of which are located within Los Angeles County." It is unclear if this was an attempt to state that the Project location would be Harbor Districts of the Cities. The lack of clarity regarding the Project location is further compounded by the Rule's reference to "sources not entering Port properties." During the August 14th Scoping Meeting, Mr. Hogo attempted to clarify this reference by referencing an undefined area outside of but near the two Harbor Districts. Unfortunately, Mr. Hogo's statement did not clarify the proposed Project's location.

Is it the intention that any portion of the Project may be implemented outside the geographic areas of the Harbor Districts of the Cities? It is unclear from this description whether the Project may have impacts or foreseeably result in actions being taken outside these Harbor Districts. This may have jurisdictional implications which cannot be evaluated without additional information.

[1] Los Angeles Resolution No. 10-7041 adopted by the Board of Harbor Commissioners of the City of Los Angeles and Long Beach Resolution No. HD 2600 adopted by the Board of Harbor Commissioners of the City of Long Beach on November 22, 2010.

Also, the Initial Study fails to disclose or analyze the possibility that if the option for the Cities to reduce emissions from sources not entering Port properties is included in proposed Rule 4001, even the vague "project location" and geographic scope of the proposed Rule in the Initial Study would not be accurate and would need to be modified in the NOP/IS.

P. 1-4 – Project Background

The Initial Study's description of the "Project Background" implies that the two Cities' ports themselves actually conduct cargo operations. For example, the text states that the COLA "serves approximately 80 shipping companies." This illustrates a fundamental lack of understanding by the District of how ports work. There are two types of business models of ports: some are "operating ports," that conduct cargo operations directly, such as the Port of Charleston, South Carolina and some are "landlord ports," such as the Ports of Los Angeles and Long Beach, that merely lease wharves and land to operators who conduct cargo operations.

The Ports of Los Angeles and Long Beach are not, "the single largest fixed source of air pollution in Southern California." The EA should clarify that the referenced sources of air emissions are the vehicles, engines, ships, trains, trucks and other cargo-moving equipment operated by distinct tenants, users, and visitors of the ports, not the Harbor Districts or the Cities.

P. 1-5 – Legal Authority for PR 4001

The Initial Study suggests that if the (unspecified) "backstop measure" that would be mandated under PR 4001 "becomes effective," then the new Rule would require the Cities to take (unspecified) action "to develop and implement plans to get back on track" regarding attainment of emissions targets. Under what legal authority does the District believe that its proposed Rule 4001 may purport to compel distinct governmental bodies (the Cities and the Boards of Harbor Commissioners) to legislate or to exercise their discretion in particular ways to achieve District objectives?

Measure IND-01 was prominently referred to as an "indirect source rule." The current general references to proposed Rule 4001 in the NOP/IS have lost all mention of an "indirect source rule." However, the references to proposed Rule 4001 do not cite to any authority the District is relying on for its processing of the proposed Rule. This should be corrected so that the public can comment on whatever legal authority may be invoked by the District.

Is it anticipated that the "plans" and strategies that would be required to be adopted by the legislative boards of the two Cities under the mandate of proposed Rule 4001 would be within SCAQMD's regulating authority and subject to the District's approval or disapproval? If so, why would SCAQMD not directly adopt such "backstop" strategies and plans itself? If not, is the Rule being proposed in order accomplish something indirectly that SCAQMD itself cannot do directly? (Cf., *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 [same].)

P. 1-5 – Call for Cities to Regulate Off-Site "Sources"

The Initial Study indicates that the District will be inviting and considering proposals, as part of this "Project," regarding potential measures for the Cities to adopt and implement to try to reduce emission from sources *not entering* onto port properties. What does this mean? What legal authority might the Cities have to try to regulate *off-site* sources that do not come within the jurisdiction of the respective Harbor Commissions? (Municipal police power authority may generally be exercised only within the territorial boundaries of their jurisdiction, and the Boards of Harbor Commissioners have special Tidelands limits on their authority.)

Would such (unidentified) measures be part of Rule 4001, or would proposed Rule 4001 require that the Cities formulate (unidentified) measures in the future to somehow regulate *off-site* "sources?"

Until such options are identified, shown to be legally authorized and technically feasible, how can the CEQA analysis for proposed Rule 4001 be undertaken?

P. 1-6 – First Bullet – Imposing "Requirements" on the Cities?

The Initial Study indicates that if proposed Rule 4001 becomes effective the Cities "would be required to submit an emissions reduction plan to address the emissions reduction shortfall."

As noted above, this raises questions as to the intent and legal authority behind the Rule. Has the District identified legal authority for a rule that would require other governmental agencies (the Boards of Harbor Commissioners for the respective Cities) to exercise their legislative discretion/authority in any particular manner? Does the District intend to reserve to itself some authority to approve or disapprove any such plans submitted by the Cities?

What is the consequence of disapproval by the District?

What environmental baseline and other parameters would be required by proposed Rule 4001 in order for the Cities to determine the extent of any "emissions shortfall" that may need to be addressed in the Cities' plans in the event they were to undertake to submit plans under the Rule?

P. 1-6 – Second Bullet -- Funding

This bullet point implies that "funding" would be necessary for many of the potential future emission reduction measures that may be compelled under proposed Rule 4001. Would such funding be provided by the District? What other "funding" sources are contemplated? Will

there be constitutional or common law "gift of public funds" restrictions on funding imposed on the Cities for activities under their CAAP if Rule 4001 makes CAAP compliance a potential state or even federal regulation?

Are the Cities expected to fund these programs from Tidelands Funds? By what authority may the Harbor Commissioners impose taxes, assessments, and charges on users of the Harbor Districts, given the restrictions of various state laws, including, among others, Proposition 26?

The vague disclaimer in the Initial Study to the effect that proposed Rule 4001 would not require any measure that lacks legal authority or feasibility raises more questions than it answers. Whatever types of "emissions reduction plans" may be anticipated by proposed Rule 4001 should identified by the District in the NOP/IS so that the feasibility and legality of such approaches can be evaluated as part of the environmental assessment for the Project.

Pp. 1-6 – 1-7 -- Technology Overview/Implementation Strategies

This refers to some emission reduction strategies included in the CAAP, but the Initial Study does not explain how these may relate to proposed Rule 4001, or whether they should be considered as part of the Project.

The suggestion in the Initial Study of possible "tariff change" or "impact fees" on the activities of users of the Harbor Districts raises other questions (e.g., legal authority, funding for studies and public review processes required before such measures could be considered or adopted, indemnification for costs of defense, etc.) requiring identification and study. Moreover, such measures may themselves be considered as "projects" subject to CEQA review and may have impacts on the activities of Harbor District users that themselves would require analysis or mitigation.

The Initial Study also includes reference to "Port funded incentives" as possible measures to reduce emissions, but also observes that there is not adequate funding for such strategies in the Cities' budgets or other grant program. The source of funding any "Port-funded" measures contemplated by proposed Rule 4001 should be clearly identified and evaluated.

Any such contemplated implementation strategies should be included in the "Project description" and better identified in a more complete NOP/IS, so that they may be evaluated along with the rest of the Project.

Pp. 1-10 – 1-11 -- Imposition of "Requirements" on the Cities

The NOP/IS states that none of the CAAP strategies would be "prescribed in PR 4001." Instead, the NOP states that if proposed Rule 4001 becomes effective, the Cities (presumably the Boards of Harbor Commissioners) -- "individually or jointly" -- would be required to identify sources that could undergo potential emission reduction to "make up for the shortfall."

Why would/should the obligation to make up for a possible shortfall in meeting emission reduction targets (which are primarily the responsibility of the District to attain) be shifted so as to fall upon two independent governmental entities? The Cities are governmental entities, and are not directly producing emissions or otherwise directly responsible for the targeted emissions or for the attainment of the emissions reduction targets. Moreover, if there were to be a "shortfall" in attaining the targets, it could well be due to factors not caused or controlled by the Cities, and not due to any actions or derelictions on the part of the Cities or their tenants or users.

Other issues: How would a "shortfall" be measured or determined? Would any such "shortfall" be allocated to sources or causes bearing some actual responsibility for the lack of attainment? How would it be "allocated" between the Cities? Would uncontrollable/unforeseeable factors resulting in all or part of a shortfall be excluded from whatever obligation may be imposed on the Cities?

Would proposed Rule 4001 take into account the statutory limits on the jurisdiction and authority of the Cities (i.e, the Boards of Harbor Commissioners) to impose restrictions on most mobile sources of emissions?

Footnote 6 (on page 1-11)

The NOP/IS mentions a possible "option" that would "allow" the Cities to reduce emissions from "non-port-related sources." This vague reference requires clarification before it may be evaluated in connection with the Project. Direct and indirect effects would need to be considered that may occur beyond the geographic boundaries of the Harbor Districts. Therefore, it is premature for the District to conclude that any changes based on the working group or public scoping comments will be within the scope of the analysis in the NOP/IS.

P. 1-11 -- Technologies

The EA should be expanded to address the legal, technological and economic feasibility of the seven bulleted items listed in this section.

P. 1-12 -- Alternatives

No alternatives have been identified for study in the NOP/IS. Instead, it merely commits the District to "discuss and compare alternatives" in the future, as part of the Draft EA.

It also suggests the District is looking to the public or other agencies to identify "alternatives" during the scoping process. As previously explained however, how can alternatives realistically be suggested when the Project itself has not been identified or described?

The No Project Alternative is not defined in the NOP/IS. In accordance with CEQA Guidelines Section 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. Therefore, the Draft EA should consider the impacts that would occur under the existing 2012 AQMP without Control Measure IND-01 or proposed Rule 4001. In particular, an analysis should be conducted of the grant funding that would be available under the No Project Alternative that would not be available if the proposed Project constitutes regulation, and the environmental impact if grant funding necessary to make certain actions economically feasible is no longer available under the proposed Project. If the District's position is that there is no loss of grant funding in order to comply with Rule 4001 as a regulation that the District purports to make enforceable under the State Implementation Plan and the Clean Air Act, the District must explain in the Rule its basis for this conclusion in the context of why grants made for compliance with a regulation is not a gift of public funds.

In light of the technical complexities of the issues and the ambiguities as to what the District is actually seeking to accomplish by way of proposed Rule 4001, it seems unreasonable to expect others to develop the project alternatives. One suggested alternative would be for the District to formulate its own "backstop" measures and strategies for addressing any shortfall in emission reduction targets, relying on the District legal authority, expertise and resources, rather than pursuing proposed Rule 4001, which appears to be an attempt to rely upon presumed authority of the Cities. Another suggested alternative would be, the memorandum of understanding approach that was suggested by the Cities and proposed by staff as an alternative to Measure IND-01.

(c) Other Comments on Chapter 1 - "Project Description"

Incomplete Description of Environmental Setting

The Initial Study also fails to provide an adequate description of "the environmental setting" of the proposed Project.

While the CEQA Guidelines do not specially define "environmental setting" with regard to an initial study, they do explain, in regard to EIR preparation, that the "environmental setting" must be informative: "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." (Guidelines, § 15125, subd. (a).) A description of the environmental setting must be sufficient to allow "an understanding of the significant effects of the proposed projects and its alternatives" but "no longer." (Guidelines, § 15125, subd. (a).) That description should place "[s]pecial emphasis" "on environmental resources that are rare or unique to that region and would be affected by the project" and "must permit the significant effects of the project to be considered in the full environmental context." (Guidelines, § 15125, subd. (c).)

Failure to Examine All Phases of the Entire Project as Proposed

"The Initial Study must include a description of the project, and 'the scope of the environmental review conducted for the initial study must include the *entire* project." (*Nelson v. County of Kern, supra*, 190 Cal.App.4th at 270, emph. in original.)

The Initial Study here improperly fails to describe "the entire Project" and fails to consider all phases of the proposed Project. The CEQA Guidelines (14 C.C.R §15063(a)(1)) make clear that an initial study must take a comprehensive view of the proposed project *as a whole*. "All phases of project planning, implementation, and operation must be considered in the initial study of the project."

The NOP/IS indicates that proposed Rule 4001 is intended to require actions by the Cities, to adopt and implement plans and strategies to address any "shortfall" in emissions reductions. The Initial Study improperly fails to address or to provide information and analysis relating to the environmental impacts of the anticipated "subsequent approvals," "discretionary permits" and amendments to the Cities' plans and regulations that appear to be proposed as parts of the Project, or the physical environmental effects of social or economic impacts that may result from those anticipated and apparently necessary changes in land use regulations." (Guidelines § 15063.) Such anticipated and intended actions by other governmental agencies thus appear to be part of this Project, and must be identified and evaluated in the Project EA, along with their potential impacts. As such, we reiterate our prior comment on the Draft 2012 AQMP Program EIR dated October 22, 2012 where it is stated that the District has failed to fully disclose the details of Measure IND-01 and as a result is segmenting or piecemealing its CEQA analysis.

Failure to Describe Existing Land Use Regulations

The Initial Study does not include an examination of whether the Project would be consistent with existing zoning, plans and other applicable land use controls, as required by CEQA Guideline Section 15063. Although the Initial Study includes some background discussion of the CAAP, it provides little or no description of the existing planning and zoning designations applicable to the "Project" location, and relies on (unsupported) assertions that the Project would be in furtherance of the CAAP. It provides no information or analysis of other existing plans or policies applicable in the Harbor Districts, which may be affected or impacted by the Project.

Uncertain and Inadequate Identification of "Baseline" Used for Review

It is critical under CEQA that any level of environmental review make it clear as to the "baseline" being used as the basis for analysis of the significance of potential Project impacts. (CEQA Guidelines Section 15125(a).) Normally, the "baseline" will be the existing environmental conditions in the vicinity of the Project. (Guideline Section 15125(a); see also,

Communities for a Better Environment v. South Coast Air Quality Management District (2010) 48 Cal.4th 310, 315 [the baseline for an agency's primary environmental analysis under CEQA must ordinarily be the *actually* existing physical conditions rather than *hypothetical* conditions that could have existed under applicable permits or regulations].) The Supreme Court has explained that the requirement for identification and use of the appropriate "baseline" applies in the context of an Initial Study as well as in an EIR. (*Communities for a Better Environment, supra*, 48 Cal.4th at 512, and n. 5.)

The Initial Study here, however, fails to make it clear as to what "baseline" is being used. In many places the Initial Study compares the anticipated "impacts" of adopting proposed Rule 4001 to the permitted emissions levels anticipated (in the future) under the 2012 AQMP, or alternatively to the (future) emission reduction targets of the CAAP -- rather than to the existing environmental conditions. While the recent Supreme Court decision in *Neighbors for Smart Rail v. Exposition Metroline Constr. Authority* (8/5/2013, No. S202828) ___ Cal.4th ___, indicates that the baseline need not always be the existing physical conditions, and that "projected future conditions" may be used in rare situations as a baseline "if their use in place of measure existing conditions ... is justified by unusual aspects of the project or the surrounding conditions" (Slip Opinion, p. 11), it does not detract from the rule that the Initial Study must accurately and consistently describe the baseline being used. Nor does it permit the use of "future conditions" in the absence of a showing of unusual circumstances. The Initial Study in this case does neither.

For each of these fundamental reasons, the NOP/IS should be rescinded in order that it may be revised, completed and corrected to meet CEQA requirements.

2. Chapter 2 of the Initial Study – The "Environmental Checklist"

(a) General Comments and Questions on the Environmental Checklist

The NOP/IS apparently relied on a standard CEQA environmental checklist to identify those "impact areas" it recognizes to be potentially affected by the Project. In several respects, however, the Initial Study appears to merely assume 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, supra*, 96 Cal.App.4th at 408-09; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296). Furthermore, it is contrary to the District's response to comment #5-4 in the Final Program EIR, which indicates that "[t]he exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted."

The NOP/IS currently indicates that the scope of the proposed EA for this "Project" will be limited to the six topics listed at p. 2-2. Compliance with CEQA, however, would require not only a new and corrected Initial Study, providing an adequate "Project description" but also a more comprehensive EA that addressed additional areas of potentially significant impact, including (without limitation): (1) Aesthetics, (2) Biological Resources, (3) Cultural Resources, (4) Land Use and Planning, (5) Noise, (6) Public Services, and (7) *broadened evaluation* of potential impacts and issues in the areas of Energy, Hazards and Hazardous Materials, Air Quality, and Transportation and Traffic.

Unless and until those areas are more fully addressed, the NOP/IS appears to improperly limit the scope of the proposed EA, and to erroneously exclude areas requiring further assessment.

(b) Specific Comments and Questions on the Environmental Checklist

As detailed below, there are numerous areas of potential environmental impact in the checklist as to which the Initial Study either omits required evidence to support its conclusions of "no potential impact" or treats with insufficient detail.

More specific questions and comments follow:

P. 2-4 -- Preliminary Discussion of Checklist

First Paragraph: We reiterate the same comment as noted on page 1-4 regarding Cities being the source of emissions. The geographic location itself does not produce emissions. It is the users of the area that produce impacts. The users of the two ports are the owners and operators of the ships, trains, trucks and equipment which the District targets as the sources of emissions.

First Paragraph, Last Sentence: The Initial Study states that "some emission reductions [assumed by the District's 2012 AQMP] may be contingent upon the Ports taking and maintaining *actions which are not required by air quality regulations*." This suggests that one of the purposes for District proposal of proposed Rule 4001 may be to establish a new regulatory "authority" over the Cities (and the communities served by and dependent upon the Harbor Departments of the Cities) that is not in fact already provided by existing federal, state, or regional air quality regulations. The policy implications of such a Project may well include significant impacts on the environment, if regulatory authority over activities, facilities, and uses of the Harbor Districts is shifted or arrogated to the District. (See, e.g., *City of Redlands, supra,* 96 Cal. App. 4th 398 [proposed new County policy re exercise of County authority over annexations and sphere of influence was not supported by adequate CEQA review].)

Second Paragraph, Last Sentence: Same comment as page 1-5.

Third Paragraph. The NOP/IS states that the checklist responses focus on "the above mentioned actions." This is extremely vague. Is the reference intended to be the items referenced in the paragraph immediately above, or in the earlier pages?

Identification of precisely what measures are being assumed or proposed in proposed Rule 4001 is essential to being able to review the Initial Study.

Aesthetics -- P. 2-5

Discussion of I a), b) and c). The Initial Study suggests that "because PR 4001 would implement IND-01" the District may simply assume that this Project would not be expected to generate significant adverse aesthetics impacts. However, given that the measures that would be used to implement IND-01 are not identified, the Initial Study does not provide evidence to demonstrate that proposed Rule 4001 has no potential for impact. To the contrary, the Initial Study admits that "PR 4001 will primarily affect operations at two ports" and but then simply assumes from the industrial and commercial zoning of the Harbor Districts that there could not be a potential for impacts on "scenic vistas" nor any potential degradation of the visual character of the areas around the Harbor Districts.

The Initial Study fails to describe the environmental setting and include any evidence or analysis to support its assumption that whatever is done to implement proposed Rule 4001 would "likely easily blend in" with the surrounding activities, especially since what would be done to implement the Rule is not yet known. Specifically, the Initial Study 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. 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 Harbor Districts and if modified, through obstruction, alteration, or demolition could have a negative aesthetic impact. Without a clearly defined project, project location, or description of the environmental setting, it is not possible to conclude that any port modifications will have little or no noticeable effect on adjacent areas and would blend in with the visual setting.

The Initial Study indicates that "Control devices may include hoods or bonnets on ship exhaust stacks to capture emissions and are expected to be as high as 80 feet (POLB, 2006)" and concludes that "these control devices would be similar to other structures used within the heavily industrialized portions of the Ports…" First, the "POLB" citation is missing in the list of references. Second, it is speculative and erroneous to assume that control devices as high as 80 feet would have "no visual impact" without knowing the location, dimensions, color scheme or critical viewpoints. No such analysis has been considered here and the impact is dismissed with no evidence to support the conclusion.

The last sentence of the first paragraph (on p. 2-6; I. d) suggests there are no residential areas "next to" the Harbor Districts, and thus the Initial Study may dispense with analysis of light and glare impacts. It is evident however that was an inaccurate assumption given the residential communities of San Pedro, Wilmington and Long Beach located adjacent to the Harbor Districts. This is also contradictory to the description of surrounding land uses and setting on page 2-1 which indicates "potentially residential."

The Initial Study further errs by dispensing with environmental analysis or evidence, simply because of the (assumed) beneficial air quality goals of proposed Rule 4001. The law is clear that environmentally "benign" objectives for a project do not excuse non-compliance with CEQA and do not justify reliance on assumptions in lieu of evidence to demonstrate the absence of potential impacts. *See, e.g., California Farm Bureau v. California Wildlife Conservation Board* (2006) 143 Cal.App.4th 173, 196, emph. added [State environmental agency violated CEQA by exempting environmentally beneficial habitat project from review]:

> "[I]t cannot be assumed that activities intended to protect or preserve the environment are immune from environmental review. [Citations.]" (*Davidon Homes, supra*, 54 Cal.App.4th 106, at p. 119; see, e.g., *Dunn-Edwards Corp. v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644 (disapproved on other grounds in *Western States Petroleum Assn. v. Superior Court, supra*, 9 Cal.4th 559, 570.) **There may be environmental costs to an environmentally beneficial project, which must be considered and assessed**.

This topic should not be dismissed. Given the nature of proposed Rule 4001, it cannot be determined that its implementation would have no impact on aesthetics. The EA therefore should include "Aesthetics" as a potentially impacted area of study.

Air Quality -- P. 2-11, Discussion

In the first paragraph (p. 2-11), last sentence, the stated assumption is speculative given there is no information about what physical changes to the environment proposed Rule 4001 will entail. There is no evidence to support the assumption in the Initial Study that proposed Rule 4001 would be identical to Measure IND -01 or have identical (previously-studied) impacts on air quality.

P. 2-11, III.a

The first paragraph, last sentence, again raises the question of why it should become the obligation of the Cities to take actions on their own to fulfill the obligations of the District for reaching emissions reductions targets? What is the legal authority for this shifting (or delegation) of the District's air quality responsibility?

In the second paragraph, the Initial Study relies on an assumption that "the Port" would be installing control equipment. Again, this erroneously confuses the Harbor Departments of the Cities with the operators of vessels, vehicles, and equipment. The Harbor Boards serve as trustees of tideland assets.

The conclusion in this section assumes that the undefined strategies and approaches suggested in conceptual description of proposed Rule 4001 will be successful. That is dependent on the feasibility of the approaches, which must be identified and assessed. Therefore, this topic should be analyzed in the EA.

P. 2-12, III.b, c, and g

Given the total lack of information regarding what proposed Rule 4001 would entail and whether it's implementation is feasible, it is premature to assess impacts in this category. These details must be provided and these topics should also be identified and assessed in the EA.

P. 2-13, III.e

There is no factual basis in the Initial Study upon which to conclude that implementation of proposed Rule 4001 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 Initial Study analysis only applies to construction odors and ignores any potential odors that may occur during long-term operations.

The NOP should be amended to make clear that at least these additional areas of potential impacts on air quality should also be identified and assessed in the EA.

Biological Resources – P. 2-14

The Initial Study fails to adequately describe, and improperly minimizes, possible impacts to biological resources, including least terns and migratory birds.

The scope of the proposed EA should be expanded to include environmental analysis of the Project's potential impacts on biological resources.

Cultural Resources – P. 2-16

The Initial Study fails to adequately describe, and improperly minimizes, possible impacts to cultural resources. Not all areas within the Harbor Districts are devoid of cultural resources or have cultural resources that have been previously disturbed, as concluded in the Initial Study on page 2-18 in section V(b), (c), and (d). There are known recorded historic and prehistoric sites throughout the Harbor Districts. For example, see COLA's website at http://www.portoflosangeles.org/idx_history.asp. Without knowing the location and extent of ground disturbance from possible construction activities associated with proposed Rule 4001, it

is speculative to assume that no significant adverse cultural resources impacts are expected from implementing proposed Rule 4001. The conclusion in the Initial Study is unsupported and lacks evidence or facts to support the findings.

The scope of the proposed EA should be expanded to include environmental analysis of the Project's potential impacts on cultural resources.

Energy – P. 2-18

The Initial Study section VI(c) must be expanded to also consider and analyze 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 required in the event of a major disaster. Also, some types of emissions control measures, facilities, or technologies contemplated by the Project could increase or shift demand for different types of energy or fuel usage. Although "risk of upset" is not considered in the Initial Study checklist, it should be cross referenced here and addressed in the Hazards section of the Initial Study.

The scope of the proposed EA should be expanded to include this additional analysis.

Hazards and Hazardous Materials – P. 2-24

The Initial Study section VIII(f) must be expanded to also consider and analyze the increased reliance on alternative fuels or electrical powered technologies that would require sufficient supply and emergency storage in the event of a major disaster. Although interference with emergency response plans was marginally addressed in this section, "risk of upset" is not considered in the Initial Study checklist.

The scope of the proposed EA should be expanded to include this additional analysis.

Land Use and Planning – P. 2-34

The Initial Study fails to adequately describe, and improperly minimizes, possible inconsistencies between the proposed Project and the existing and applicable land use plans and policies.

The Initial Study erroneously claims that "there are no provisions in PR 4001 that would affect land use plans, policies, or regulations." (P. 2-34.) The Initial Study does not support that conclusion with any substantial evidence.

First, the NOP/IS fails to identify any of "the provisions of PR 4001" so the statement cannot be supported or evaluated.

Second, and more importantly, however, the Initial Study repeatedly references "implementation strategies," "plans" and other new measures that it anticipates the Cities will be required to enact if proposed Rule 4001 becomes effective. Presumably this is because of inconsistencies between the existing plans and policies and the requirements of the new Rule. (See, e.g., pages 1-6 through 1-11.) The measures contemplated in the Initial Study include the adoption of new "regulatory requirements," new "impact fees" on the movement of cargo or sources, and changing the tariffs for use of the Harbor Districts – all of which would cause at least potential "conflicts" with applicable plans and policies. (Cf., *Orinda Ass'n v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1169 [the CEQA requirements for initial study examination of non-conformity with existing land use plans are intended to allow lead agency to modify the Project to avoid inconsistencies with existing plans – not vice versa].)

Third, the Initial Study itself acknowledges that the Project is anticipated to cause "potentially significant impacts" or conflicts with "an applicable plan ... for the performance of the circulation system" and conflicts with "an applicable congestion management plan." (Initial Study, p. 2-44.) Although the Initial Study proposes to address those admitted conflicts in the "transportation" section of the EA, these acknowledged conflicts confirm the necessity for including "land use and planning" impacts in the proposed EA as well.

Fourth, the proposed Project would seemingly create conflicts with the Cities' 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 are detailed in the previous port letters included in Attachment A to this letter. In addition, the proposed Project would create inconsistencies with the Clean Air Action Plan.

Fifth, the proposed Rule is apparently structured in a way that would impermissibly usurp the (non-delegable) police power authority of the Cities and their respective Boards of Harbor Commissioners to plan, implement, and regulate land use policies and actions in their respective jurisdictions. (This comment has also been raised above, in Project Description comments.)

The numerous inconsistencies between the Project as proposed and the existing plans and policies require identification in the Initial Study and inclusion in the proposed EA. (Guidelines § 15125(d).)

The scope of the proposed EA should be expanded to include environmental analysis of the Project's potential impacts on land use and planning.

The EA should also include analysis of the impacts of the proposed/anticipated Project-related subsequent amendments to the Cities' plans, policies, and other land use regulations. (See, e.g., *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1197 [CEQA review failed to consider incidental results from adoption of revised policy; incidental impacts could not be disregarded in an initial study based upon "net" environmental impact of the change in policy being benign since CEQA requires each environmental impact of

project be discretely evaluated].) "Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project." (Guidelines, § 15064, subd. (e); see §§ 21080, subd. (e)(2), 21082.2, subd. (c).)

The scope of the EIR should be expanded to include analysis of possible physical changes in port facilities and operations that might be caused by economic or social effects of the Project itself or by the anticipated amendments to land use and zoning policies by the Cities subsequent implementation of the Project.

Noise – P. 2-36

The NOP/IS acknowledges that approval of the Project and "triggering" of the PR 4001 could result in the construction or installation of new control equipment. The Initial Study improperly dismisses the potential noise impacts from such work as "not expected to be in excess of current operations." There is no substantial evidence in the Initial Study to justify such assumptions.

Similarly, there is no evidence cited in the Initial Study to support its further assumption that additional permanent noise impacts anticipated from the operations of new control equipment would not "substantially increase ambient operational noise levels in the area."

This section of the Initial Study is littered with mere "expectations" unsupported by any evidence regarding the magnitude of new noise impacts, even though such new impacts are anticipated by the Initial Study. Nor is there any analysis of the potential for significant adverse impacts from new noise generators related to the Project.

The NOP/IS must be revised, and the scope of the proposed EA expanded to include a detailed analysis, supported by evidence, regarding these anticipated new noise impacts, alternatives, and possible mitigation measures.

Public Services – P. 2-39

The Initial Study assumes that the Project would not generate any increased need for public services. However, the Initial Study does not provide any substantial evidence to support its assumptions regarding the "absence of impact" on additional public services or facilities.

The Initial Study should be expanded to address potential impacts that may arise from the increased "diversion" of existing "dirty" vehicles and vessels into solid waste sites if proposed Rule 4001 is triggered.

Transportation and Traffic – P. 2-44

The Initial Study fails to adequately describe and analyze potential impacts to rail and marine vessel traffic and ignores the significance criteria identified as "[w]ater borne, rail car or air traffic is substantially altered" on page 2-45. The Initial Study erroneously considers only vehicular traffic impacts to local roadways.

The NOP/IS must be revised, and the scope of the proposed EA expanded to include a detailed analysis, supported by evidence, regarding potential impacts to rail and marine vessel traffic.

Socioeconomics Analysis

The EA needs to include a broad-based analysis of the socioeconomic effects of the proposed Rule 4001, including the potential for job loss, business closures, and diversion of cargo to other ports due to the potential loss of regional competitiveness. The socioeconomic analysis needs to consider both the existence of the rule, even if not triggered, and the future enforcement of the rule. Because these conditions have the potential to physically change the environment in and around the ports, these impacts should be identified and assessed in the EA. (See CEQA Guidelines §§ 15064(e) and 15131; *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3rd 433, 445 [EIR must consider possibility of economic blight from rezoning].) Moreover, this assessment should not be limited to businesses and operations within the ports, but should extend to those facilities, businesses and operations that while located outside of the Harbor Districts are dependent upon the flow of cargo for their continued operations.

Too-Narrowly "Focused" Environmental Review

We note in closing that the Initial Study appears to reflect a preliminary decision to conduct less-than-full disclosure or environmental review of the proposed Project. Although the Initial Study concludes that "the proposed Project may have a significant effect on the environment and an Environmental Assessment will be required," it nevertheless appears that environmental review in the admittedly-required EA is proposed to be curtailed and "focused" on just the six topics listed in the current the NOP. One obvious indication of this is the miniscule list of references that were relied upon to support the Initial Study analysis; the list is limited to three sources.

It is respectfully submitted that such an approach would be too narrow and not in conformance with the requirements of CEQA, or with the District's own policies and rules for environmental analysis. While the CEQA Guidelines call for emphasis and "focus" on the significant environmental impacts of the Project, the authority to use such focus is misapplied in the Initial Study. For example, CEQA Guideline § 15143 explains that such focus may be used to limit the analysis in an EIR [or, in this case, EA] 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 NOP/IS here, by contrast, appears to exclude from consideration in the EA numerous effects that it has not shown to be "clearly insignificant and unlikely to occur."

D. Conclusion

The current version of the NOP/IS fails to adequately describe the "Project" thereby thwarting effective public review and comment on proposed Rule 4001. The Initial Study must therefore be revised, corrected, and re-circulated with all of the descriptions and other content required by CEQA.

Even this inadequate NOP/IS makes it clear that **the scope of the proposed EA has been unduly narrowed**, and that environmental review will be limited in a way that erroneously fails to provide the relevant decision-makers, affected public agencies, residents and the public generally with sufficient evidence and analysis of all anticipated and potential impacts from the Project as a whole, or of all potentially feasible mitigation measures or appropriate Project alternatives as required by CEQA.

While it is clear that an EA is called for in connection with this proposed Project, it is equally clear that the EA should be more complete than what is envisioned by the current NOP/IS. More fundamentally, its scope must be determined by a legally-adequate revised NOP/IS. The EA for the Project must, of course, be supported by credible and substantial evidence, including independent professional analysis.

We respectfully request that these comments and questions be considered before the District embarks on preparation of the EA and all of the other required independent studies in connection with the CEQA review of the proposed Project. We therefore look forward to working with the District, and any study teams or working groups tasked with evaluation of the proposed Rule 4001.

The NOP requests that we provide you with a contact person for each responding agency. For the COLB, the contact persons are as follows:

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With copies to:

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For COLA, the contact persons are as follows:

Christopher Cannon
Director of Environmental Management
Port of Los Angeles
425 South Palos Verdes Street
San Pedro, CA 90731
(310) 732-3763
e-mail: ccannon@portla.org

With a copy to:

Joy Crose, Assistant General Counsel
City of Los Angeles, Harbor Division
425 South Palos Verdes Street
San Pedro, CA 90731
(310) 732-3750
e-mail: jcrose@portla.org

We appreciate your consideration. Thank you.

Sincerely,

Heather Tomley
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachment A:

Letters dated July 10, 2012; July 27, 2012; August 30, 2012 (which includes letter dated May 4, 2010); October 22, 2012; October 31, 2012; November 8, 2012; November 19, 2012; and November 27, 2012 from Port of Los Angeles and Port of Long Beach to SCAQMD

cc: Al Moro, Acting Executive Director Port of Long Beach
Geraldine Knatz, Executive Director Port of Los Angeles
Dominic Holzhaus, Principal Deputy City Attorney City of Long Beach
Joy Crose, Assistant General Counsel City of Los Angeles, Harbor Division
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Randall Pasek, Planning and Rules Manager, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Cynthia Marvin, Division Chief, California Air Resources Board
Elizabeth Adams, Deputy Director, U.S. Environmental Protection Agency, Region 9

ATTACHMENT A

July 10, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Initial Comments on the Proposed 2012 Air Quality Management Plan, Control Measure IND-01

Dear Dr. Wallerstein:

The Port of Long Beach and Port of Los Angeles (Ports) appreciate the opportunity to participate in the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) Advisory Committee. We support the AQMD's clean air goals and have worked aggressively with the port industry to reduce our fair share of air quality impacts to the region from port-related operations, as outlined in the San Pedro Bay Ports Clean Air Action Plan (CAAP) and the associated San Pedro Bay Standards. As a result, between 2005 and 2010, emissions from port-related sources were reduced by 70 percent for diesel particulate matter and by 49 percent for nitrogen oxides. Emissions inventory work currently underway indicates additional, continued emission reductions in 2011.

While we continue to remain a committed partner in the effort to improve air quality in the region, we disagree with AQMD's proposed control strategy for port-related sources in the Draft 2012 AQMP. The inclusion of proposed measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources," is unnecessary and counter-productive.

The two Ports have a proven track record of developing and implementing appropriate and effective emission reduction strategies. These efforts have been entered into voluntarily, working cooperatively with operators in the port area and the air quality regulatory agencies (i.e. Environmental Protection Agency, California Air Resources Board and AQMD). Since the Ports initially implemented the CAAP, many of the port-related control strategies have been or will be superseded by state or international requirements, such as the rules for replacing drayage trucks, switching to cleaner marine fuels, and using shore power while at berth. The Ports' emissions inventories in 2010 show reductions that are meeting or are in excess of the emission reductions that the Ports committed to in the San Pedro Bay Standards. However, it is important to note that in order to remain on track to meet the Standards, a collaborative and concerted effort with our agency partners is essential, with the understanding that while the Ports can achieve significant emission

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

reductions, no single entity can accomplish this task. The previous State Implementation Plan identified several regulatory strategies that have not yet materialized into regulations for various reasons. Moving forward, the Ports will need agency assistance, particularly on the development and deployment of zero-emission technologies and at-berth controls for non-regulated vessels, as well as on the preferential deployment of cleaner vessels to the basin.

The Ports are sustaining and growing long-standing successful CAAP programs, such as the Vessel Speed Reduction Incentive Program and, on July 1, 2012, the Ports implemented new, groundbreaking incentive programs to encourage cleaner ocean-going vessels to call at the Ports. With programs such as these, along with the above-referenced regulatory rules becoming effective and ensuring significant additional emission reductions by 2014, there is no identified need for implementing a backstop measure. The AQMD's proposed backstop measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

It is inappropriate for the AQMD to attempt to regulate the Ports, which are the Harbor Departments of the cities of Long Beach and Los Angeles, in an attempt to control emissions from equipment within our boundaries, but which we do not own or operate. Further, the proposed backstop measure identifies that the "…requirements will be triggered if the reported emissions for 2014 for port-related sources exceed the 2014 target milestone, *or the Basin fails to meet the 24-hour PM2.5 standard as demonstrated in the 2012 AQMP and basin-wide reductions are needed, in which case a new reduction target for each pollutant will be established*." (emphasis added). While clarification has been provided by AQMD staff that any effort to make up for a basin-wide shortfall will be the responsibility of all sectors, not just the Ports, this statement still implies that if the port industry meets their targeted emission reductions, but other sectors fail to meet their fair share obligations, then the AQMD will mandate additional reductions from the Ports. This is counter to the cooperative relationship that our agencies have established since we began working together on the CAAP in 2006, and ignores the tremendous air quality benefits that have been gained from voluntary actions.

Lastly, based on the preliminary calculations by AQMD, the majority of the region is expected to be in attainment for PM2.5 by the target year of 2014, with the remainder anticipated to be in attainment by the expected extension date of 2019. The inclusion of IND-01 is therefore unnecessary for the region to reach attainment. If these emission reductions are needed in the baseline emissions calculation, there is precedent for mechanisms other than control measures to be used for this purpose, and we would like to discuss those options with your staff.

We strongly believe that the voluntary and cooperative CAAP process established by the Ports remains the most appropriate forum for the Ports and the air regulatory agencies to discuss technical and policy issues related to reducing emissions from port-related sources. As stated above, we remain committed to achieving our fair share of clean air goals identified in the CAAP and working with port industry and the air regulatory agencies on implementation of appropriate strategies.

For your reference, attached is a comment letter dated May 4, 2010, in which the Ports initially expressed concerns regarding backstop rules. The letter was submitted as a public comment on the proposed Rules 4010 and 4020, which were proposed backstop rules for health risk and criteria pollutant emissions.

We look forward to working with AQMD on resolving our concerns related to the proposed backstop measure in the Draft 2012 AQMP.

Sincerely,

CHRIS LYTLE
Executive Director
Port of Long Beach

MICHAEL R. CHRISTENSEN
Deputy Executive Director, Development
Port of Los Angeles

HAT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Susan Nakamura, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Robert Kanter, Port of Long Beach
Rick Cameron, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Chris Cannon, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles

925 Harbor Plaza, Long Beach, CA 90802 Tel 562.437.0041 Fax 562.901.1725

The Port of
LONG BEACH
The Green Port

July 27, 2012

Steve Smith, Ph.D.
Program Supervisor, CEQA
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765
Sent via email to ceqa_admin@aqmd.gov

RE: Comments on the Notice of Preparation for the Proposed 2012 Air Quality Management Plan Program Environmental Impact Report

Dear Dr. Smith:

The Port of Long Beach has reviewed the Notice of Preparation of a Draft Program Environmental Impact Report (EIR) for the Proposed 2012 Air Quality Management Plan Program and appreciates the opportunity to comment. Regarding preparation of the Draft Program EIR, we offer the following scoping comments for use by your agency during its environmental review process under the California Environmental Quality Act (CEQA):

Schedule

The EIR schedule is very aggressive, with the scoping period ending on July 27, 2012, followed immediately by the release of the Draft EIR scheduled for August 2012, and final approval planned for October 5, 2012. There does not appear to be sufficient time allowed for meaningful input on the proposed scope and content of the Draft Program EIR by the public. Further, the Port is concerned that, given the quick turnaround between closure of the scoping period and the scheduled release of the Draft Program EIR, insufficient time will be allowed for thorough review of the scoping comments and inclusion of said comments in the Draft Program EIR.

Aesthetics

The Initial Study identifies potential significant impacts on aesthetics due to the implementation of control devices such as hoods or bonnets on ship exhaust stacks. The Port agrees with the SCAQMD that such control devises and equipment would be similar in structure and design to existing features within the Port environment and would not constitute a significant aesthetic impact. Further, control measure ADV-03, which may include the construction of electric gantry cranes within the Port, should not be considered aesthetically significant as gantry cranes are an existing feature within the Port environment.

Energy

The Draft Program EIR should analyze how the mobile source control measures related to the electrification of vehicles will impact regional energy demand. Additionally, the need for new electrical power or natural gas utilities should be analyzed, including analysis of times of peak energy demand.

Land Use

The Draft Program EIR should analyze whether the implementation of specific control measures could physically divide established communities. Control measure ONRD-05 states that this control could be "implemented with the development of zero-emission fixed-guideway systems" and that to the extent feasible this would be extended beyond "near-dock application." The construction and operation of such structures may impact established communities.

Noise

The Port requests that the Draft Program EIR evaluate potential noise impacts related to the construction and implementation control measures in support of the AQMP. Section XII fails to account for noise impacts resulting from the construction and operation of control measure ONRD-05, which may include fixed-guideway systems near sensitive receptors.

Transportation/Traffic

Section XVII of the Initial Study concludes that adoption of the proposed 2012 AQMP is not expected to generate any significant adverse project-specific impacts to transportation or traffic systems, and that no further evaluation will be conducted in the Draft Program EIR.

However, impacts on major freeways or other transportation corridors as a result of construction and operation of potential zero emission control measures related to on-road heavy-duty vehicles, such as the use of overhead catenary power lines, which will potentially affect lane choice by trucks and traffic flow patterns on major traffic corridors, has not been fully analyzed. The Port requests that these potential impacts be analyzed in the Draft Program EIR.

Socioeconomics

While not required under CEQA, the Draft 2012 AQMP should include a thorough socioeconomic impact analysis for each proposed control measure, most notably the proposed backstop measure and the measures related to zero emission technologies. This could be accomplished with an expanded discussion under the cost effectiveness section of each control measure summary in the Draft AQMP.

The Port of Long Beach appreciates the opportunity to comment on the NOP/IS for the Draft 2012 AQMP and reviewing both the Draft Program EIR and the Draft 2012 AQMP. We look forward to working with the SCAQMD throughout the environmental review process.

Sincerely,

Richard D. Cameron
Director of Environmental Planning

DP:hat

August 30, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Comments on the Draft 2012 Air Quality Management Plan

Dear Dr. Wallerstein:

The Port of Long Beach and Port of Los Angeles (Ports) appreciate the opportunity to serve on the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) Advisory Committee. We support the AQMD's clean air goals and have a proven leadership record of developing and implementing appropriate and effective strategies that have resulted in the port-related goods movement industry's achievement of real and dramatic emissions reductions. Although the Ports do not own or control the emission sources, the Ports have worked cooperatively with business operators in the port area and the air quality regulatory agencies (i.e. Environmental Protection Agency, California Air Resources Board, and AQMD) to help the port industry reduce its fair share of air quality impacts to the region from port-related operations, as outlined in the San Pedro Bay Ports Clean Air Action Plan (CAAP) and the associated San Pedro Bay Standards. As a result, between 2005 and 2011 emissions from port-related sources were reduced by 73 percent for diesel particulate matter (DPM) and by 50 percent for nitrogen oxides (NOx). The Ports' San Pedro Bay Standards for 2014 established goals to reduce port-related DPM by 72 percent and NOx by 22 percent. Therefore, as a result of implementation of aggressive actions by the port industry, port-related emission reductions have exceeded our goals several years ahead of schedule.

While we remain a committed partner in the effort to improve air quality in the region, we have significant concerns with several proposed control measures in the Draft 2012 AQMP that improperly misclassify the Ports as "stationary sources" or "indirect sources" under AQMP Stationary Source measures, or as "implementing agencies" of specific AQMP mobile source measures. In particular, the proposed Stationary Source Measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources" contains many legal flaws, as explained in greater detail below, and inappropriately proposes to impose enforcement actions on the Ports for emissions generated by emissions sources that the Ports do not own,

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operate, or control, which is counterproductive to the cooperative relationship that our agencies have established since we began working together on the voluntary CAAP in 2006.

This letter provides the Ports' specific comments on the control measures in the Draft 2012 AQMP that we believe must be addressed prior to finalization and adoption by your agency.

Proposed Stationary Source Measure IND-01

There are three fundamental problems with Proposed Measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources." First, the proposed backstop rule would transform the Ports' voluntary CAAP into the AQMD's mandatory regulation of the Ports. This would jeopardize the Ports and the Port-related emissions sources' grant funding for equipment replacement and modernization if it is now necessary to comply with regulation, while offering nothing to assist the Ports with compliance in terms of additional technologies, facilitating regulations, tools, or funding. Second, although the CAAP was a voluntary cooperative effort of the Ports and the air agencies designed to encourage the industry operators of regulated equipment to go beyond regulation, the proposed backstop rule would improperly subject the Ports to the AQMD's enforcement action for industry's missed emissions reductions by equipment not operated or controlled by the Ports, or even potential loss of federal funding under federal conformity principles if the AQMP is adopted into the State Implementation Plan (SIP) and approved by the U.S. EPA as federal law. Third, the proposed backstop rule exceeds the AQMD's authority and if implemented may violate the State Tidelands Trust. If Measure IND-01 (as well as the Offroad Mobile Source Measures discussed below) are in reality the AQMD's regulation of Port-related mobile emissions sources such as locomotives, ships, rail, and trucks, then this is beyond AQMD's legal authority and AQMD should obtain a waiver under the Clean Air Act from the U.S. EPA. The Ports provide further detailed comments on Proposed Measure IND-01 below, and object to it being included in the 2012 AQMP.

Based upon the AQMD's modeling results, existing control measures are expected to result in attainment of the Federal 24-hour PM2.5 standard by the 2014 deadline without Measure IND-01. Section 39602 of the California Health and Safety Code states that the State Implementation Plan (SIP) shall only include those provisions necessary to meet the requirements of the Clean Air Act. Hence, there is no identified need or legal basis for implementing Measure IND-01. The AQMD's proposed measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

The Ports are neither "direct emissions sources" nor "stationary sources" subject to AQMD permitting, and the AQMD has not complied with requirements for regulation under Health and Safety Code. The Ports are also not "indirect sources" subject to an AQMD indirect source review program within the meaning of the Clean Air Act, and the AQMD has not complied with requirements of the Clean Air Act, 42 U.S.C. §7410 and various other requirements for indirect source classification. The Ports are also not air agency regulators. The Ports do not own, operate, regulate, or control any of the goods movement equipment serving the Ports that are

targeted emissions sources under Measure IND-01. Additionally, the equipment are mobile sources regulated by state, federal, and/or international regulation, sometimes under jurisdiction preempting Port or AQMD action. It is inappropriate for the AQMD to regulate the Ports without the Ports' ownership, operation, or jurisdiction to regulate the various industry businesses actually causing the emissions within our boundaries.

The proposed backstop measure continues to state that if there is a South Coast Air Basin-wide shortfall in emission reductions, then the AQMD will mandate additional emission reductions from the Ports, even if the port-related sources have already met their commitments. This moving target standard is unconstitutionally vague and therefore illegal. The Ports are unfairly targeted, as there are no backstop measures proposed for other entities or source categories should other modeling assumptions not come to pass, such as anticipated natural fleet turnover, or other non-regulated initiatives failing to meet their goals, such as those expected by the Carl Moyer Program. If the AQMD's emissions projections for achieving attainment are incorrect, including control factors and growth rates, this measure appears to imply that the Ports will be specifically tasked with rectifying the shortfall. If the Basin fails to achieve the federal air quality standard, the proper channel to address this is through the established SIP process, not to establish a contingency rule to unfairly burden one specific industry out of the entire Basin.

AQMD staff has indicated that Measure IND-01 is proposed to account for measures that are not backed by enforceable requirements. However, significant programs such as the CAAP's Clean Truck Program, Ocean-going Vessel Low Sulfur Fuel Program, Cargo-handling Equipment requirements, and the Shore-side Power/Alternative Maritime Power programs are currently backstopped by CARB and International Maritime Organization (IMO) regulations. The Ports also require higher rates of vessel or equipment compliance than regulation through terminal leases, when such commercial opportunities are able to be negotiated with tenants. Therefore, Proposed Measure IND-01 is unnecessary.

Measure IND-01 is vague and incomplete. It is unclear whether the AQMD has taken credit for actual/current emission reductions in the baseline only, or if assumptions have been made for future year reductions. We take issue with a measure moving forward where emissions projections are "on-going." Further, no detail is provided on the level of emission reductions that are needing to be maintained. This is further complicated by the differences that exist between the emissions inventories produced by the Ports and the inventory used for the AQMP. It is unclear if a specific emission reduction shortfall will trigger implementation of the measure, or if it is simply left to the discretion of the AQMD. Additionally, the control costs have not yet been developed or justified in a cost-benefit analysis.

The CAAP is a planning document that provides a guideline of strategies and targets that are often "stretch goals," which ultimately are implemented through individual actions adopted by the Long Beach and Los Angeles Boards of Harbor Commissioners (Boards). The Ports are sovereign Tidelands granted to the cities of Los Angeles and Long Beach by the state under the oversight of the State Lands Commission. Each city has been appointed as a trustee and has established their respective Board of Harbor Commissioners with exclusive control and management of the Tidelands and revenues and expenditures from the Tidelands. However,

such discretion must be exercised in accordance with their obligations to prudently manage Tidelands assets and revenues within a nexus and proportionality to the Tidelands Trust interests, as well as in accordance with applicable laws such as the California Environmental Quality Act (CEQA) and principles of federal preemption.[1] The AQMD cannot mandate action by each Port's Board of Harbor Commissioners, nor can the AQMD direct how the Ports obligate state Tidelands money; only the appointed trustee can make discretionary actions to obligate state Tidelands funds. Specifically, the CAAP measures listed in the Draft 2012 AQMP each require the Boards to authorize the expenditure of incentive monies and program costs, or to approve conditions of infrastructure project development in their discretion as CEQA lead agency and as Tidelands trustees.

We strongly believe that the voluntary and cooperative CAAP process established by the Ports remains the most appropriate forum for the Ports and the air regulatory agencies to discuss technical and policy issues related to reducing emissions from port-related sources. As stated above, we remain committed to achieving the clean air goals identified in the CAAP and working with port industry and the air regulatory agencies on implementation of appropriate strategies.

For your reference, attached is our comment letter dated July 10, 2012, expressing our preliminary concerns related to the proposed Measure IND-01 and a comment letter dated May 4, 2010, in which the Ports initially expressed concerns regarding backstop rules.

Proposed Off-Road Mobile Source and Advanced Control Technology Measures

The Draft 2012 AQMP also identifies the San Pedro Bay Ports as "Implementing Agencies" for several of the proposed Off-Road measures (OFFRD-02, OFFRD-04, and OFFRD-05) and Advanced Control Technology measures (ADV-01, ADV-02, ADV-03, ADV-04, and ADV-05). The Ports should not be listed as Implementing Agencies, which the AQMP Appendix IV-A defines as "the agency(ies) responsible for implementing the control measure." While the Ports have been moving forward with voluntary efforts in these areas, as mentioned above, the Ports are not air agency regulators. We also do not own or operate the equipment identified in the proposed measures, and therefore we do not have direct control over any of the sources listed. During the Advisory Committee meetings, AQMD staff has provided clarification that the Ports are listed as Implementing Agencies because of our voluntary commitments to work on these

[1] The Ports' experience with the first phase of the 2006-2010 CAAP showed that in actual implementation, many CAAP measures were carried out in a different manner than originally conceptualized, or not carried out at all, based on limitations on the Boards' opportunities and their exercise of their discretion to manage Tidelands assets and funds under real-world circumstances. Some of the CAAP measures can only be implemented if businesses apply to the Ports for permits to build or expand their lease premises and CEQA mitigation required by law or lease conditions that can be negotiated with a Port tenant. Other CAAP measures involve emissions sources (rail or ocean vessels) that may assert federal preemption against efforts to compel use of specific technology, so the CAAP goals involve the Ports offering economic incentives in voluntary compliance programs, such as the Ocean Vessel incentive programs. However, only the Boards have the legal authority to fund such incentives or impose CEQA mitigation or lease conditions to project approval, which decisions also fall within the Boards' sole discretion regarding their respective Port's properties and their individual Harbor Revenue Fund budgets, which may be affected by the global economy.

efforts, and that being listed as an implementation agency does not obligate the Ports to any specific requirement, however, this is contrary to the language of the AQMP that implementing agencies are "responsible for implementing the control measure." We believe that listing the Ports, and not including all of the other public and private partners that are also working on these efforts, gives the impression that the Ports do have an assigned obligation, or that the Ports must bear a larger burden in the effort to implement these programs. We also repeat our comment stated above that the AQMD cannot mandate in the AQMP that the Ports must expend monies in these voluntary efforts, since most of these Off-Road and Advanced Control Technology measures require incentive monies to fund demonstration projects or accelerated use of new technology.

We believe that the appropriate Implementing Agencies for these measures are the United States Environmental Protection Agency and the California Air Resources Board.

The Ports urge AQMD to make all of the above-requested changes to the draft 2012 AQMP, in particular, to eliminate Measure IND-01 Port Backstop Rule as a legally unnecessary measure exceeding AQMD's authority and violating the State Tidelands Trust. We believe it is much more effective to advance our mutual clean air goals for our agencies to continue working cooperatively together, but if the AQMD takes the above 2012 AQMP measures forward, the Ports will have no choice but to vigorously oppose such action through the administrative and legal process.

Sincerely,

Chris Lytle
Executive Director
Port of Long Beach

Geraldine Knatz
Executive Director
Port of Los Angeles

HAT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Susan Nakamura, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Port of Long Beach Harbor Commission
Port of Los Angeles Harbor Commission
Robert Kanter, Port of Long Beach
Rick Cameron, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Chris Cannon, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles
David Reich, Los Angeles City Mayor's Office

Attachment 1

July 10, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Initial Comments on the Proposed 2012 Air Quality Management Plan, Control Measure IND-01

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While we continue to remain a committed partner in the effort to improve air quality in the region, we disagree with AQMD's proposed control strategy for port-related sources in the Draft 2012 AQMP. The inclusion of proposed measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources," is unnecessary and counter-productive.

The two Ports have a proven track record of developing and implementing appropriate and effective emission reduction strategies. These efforts have been entered into voluntarily, working cooperatively with operators in the port area and the air quality regulatory agencies (i.e. Environmental Protection Agency, California Air Resources Board and AQMD). Since the Ports initially implemented the CAAP, many of the port-related control strategies have been or will be superseded by state or international requirements, such as the rules for replacing drayage trucks, switching to cleaner marine fuels, and using shore power while at berth. The Ports' emissions inventories in 2010 show reductions that are meeting or are in excess of the emission reductions that the Ports committed to in the San Pedro Bay Standards. However, it is important to note that in order to remain on track to meet the Standards, a collaborative and concerted effort with our agency partners is essential, with the understanding that while the Ports can achieve significant emission

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The Ports are sustaining and growing long-standing successful CAAP programs, such as the Vessel Speed Reduction Incentive Program and, on July 1, 2012, the Ports implemented new, groundbreaking incentive programs to encourage cleaner ocean-going vessels to call at the Ports. With programs such as these, along with the above-referenced regulatory rules becoming effective and ensuring significant additional emission reductions by 2014, there is no identified need for implementing a backstop measure. The AQMD's proposed backstop measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

It is inappropriate for the AQMD to attempt to regulate the Ports, which are the Harbor Departments of the cities of Long Beach and Los Angeles, in an attempt to control emissions from equipment within our boundaries, but which we do not own or operate. Further, the proposed backstop measure identifies that the "…requirements will be triggered if the reported emissions for 2014 for port-related sources exceed the 2014 target milestone, *or the Basin fails to meet the 24-hour PM2.5 standard as demonstrated in the 2012 AQMP and basin-wide reductions are needed, in which case a new reduction target for each pollutant will be established*." (emphasis added). While clarification has been provided by AQMD staff that any effort to make up for a basin-wide shortfall will be the responsibility of all sectors, not just the Ports, this statement still implies that if the port industry meets their targeted emission reductions, but other sectors fail to meet their fair share obligations, then the AQMD will mandate additional reductions from the Ports. This is counter to the cooperative relationship that our agencies have established since we began working together on the CAAP in 2006, and ignores the tremendous air quality benefits that have been gained from voluntary actions.

Lastly, based on the preliminary calculations by AQMD, the majority of the region is expected to be in attainment for PM2.5 by the target year of 2014, with the remainder anticipated to be in attainment by the expected extension date of 2019. The inclusion of IND-01 is therefore unnecessary for the region to reach attainment. If these emission reductions are needed in the baseline emissions calculation, there is precedent for mechanisms other than control measures to be used for this purpose, and we would like to discuss those options with your staff.

We strongly believe that the voluntary and cooperative CAAP process established by the Ports remains the most appropriate forum for the Ports and the air regulatory agencies to discuss technical and policy issues related to reducing emissions from port-related sources. As stated above, we remain committed to achieving our fair share of clean air goals identified in the CAAP and working with port industry and the air regulatory agencies on implementation of appropriate strategies.

For your reference, attached is a comment letter dated May 4, 2010, in which the Ports initially expressed concerns regarding backstop rules. The letter was submitted as a public comment on the proposed Rules 4010 and 4020, which were proposed backstop rules for health risk and criteria pollutant emissions.

We look forward to working with AQMD on resolving our concerns related to the proposed backstop measure in the Draft 2012 AQMP.

Sincerely,

CHRIS LYTLE
Executive Director
Port of Long Beach

MICHAEL R. CHRISTENSEN
Deputy Executive Director, Development
Port of Los Angeles

HAT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
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Robert Kanter, Port of Long Beach
Rick Cameron, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Chris Cannon, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles

Attachment 2

San Pedro Bay Ports Clean Air Action Plan

May 4, 2010

Susan Nakamura
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Subject: AQMD Proposed Rules 4010 and 4020

Dear Ms. Nakamura:

This letter is on behalf of the Ports of Long Beach and Los Angeles (Ports) as a preliminary response to the "backstop" Rules 4010 and 4020 (Proposed Rules) proposed by the South Coast Air Quality Management District (AQMD). As will be explained below, based upon the limited amount of information released by the AQMD about the Proposed Rules thus far, the Ports have a number of preliminary questions and concerns at this stage of the first public consultation meeting and will be providing more detailed comments on the Proposed Rules at a later stage.

The Ports have had tremendous success with implementing the San Pedro Bay Port Clean Air Action Plan (CAAP). The development of the original CAAP and the update to the CAAP has been conducted through a cooperative effort with staff from the AQMD, the United States Environmental Protection Agency (EPA), and the California Air Resources Board (CARB). The Ports strongly believe that this partnership of over four years, and the collaboration that has occurred throughout that time, have aided in the success of the CAAP and the emissions reductions that have been achieved.

Since the CAAP was adopted in late 2006, the Ports have exceeded our interim emissions reductions milestones and are well on our way to meeting the original forecasted emissions reductions of at least 45% by 2011, compared to uncontrolled conditions. This has been accomplished through the steadfast implementation of CAAP measures, highlighted as follows:

- Development, approval, and implementation of the Clean Trucks Program in which two major milestones have been achieved resulting in truck pollution reductions of nearly 80% (January 2010), almost two years ahead of schedule (HDV1).
  - October 2008: ban pre-1989 trucks.
  - January 2010: ban pre-1993 trucks; 1994-2003 trucks require Level 3 plus NO_x retrofit.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

- Facilitated construction of an LNG on-road truck fueling station in the port area. Fueling operations have been underway since early 2009. In addition the Ports have contributed to funding the construction of two additional LNG on-road truck fueling stations in the Port area, due to open later in 2010 (HDV2).
- Over $6.5 million in incentives for vessels participating in the voluntary Vessel Speed Reduction Program and Vessel Fuel Incentive Program (OGV1, OGV4).
- Design, construction, and operation of shore power infrastructure completed at 5 berths and underway for over 40 additional berths (OGV2).
- Replaced entire fleet of port switching locomotives with new, cleaner locomotives in 2008, and a subsequent fleet turnover to cleaner locomotives anticipated by end of 2011 (RL1).
- Provided funding of $5.4 million toward projects through our Technology Advancement Program, conducted with input from an Advisory Committee consisting of AQMD, EPA, and CARB.
- The Ports' 2008 Emissions Inventories show combined emission reductions of 20% diesel particulate matter (DPM), 10% nitrogen oxides (NOx) and 24% sulfur oxides (SOx) compared to the 2005 baseline. The 2009 Emissions Inventories, which are expected to be finalized and published in June, will show an even greater level of emission reductions as additional CAAP efforts have come into effect.

In addition to the implementation efforts listed above, the Ports have also worked in coordination with CARB and EPA on development of rules and regulations affecting port sources. These regulatory requirements have helped to ensure that emissions reductions from specific equipment types operating at the Ports will continue into the future. The Ports look forward to continuing these cooperative efforts on regulatory development with CARB and EPA, with the support of AQMD, to ensure that the early action measures being taken by the Ports are supported and implemented more broadly.

Further, as you are aware, the Ports recently released our draft CAAP Update, where we revisited and updated each of the control measures and proposed aggressive, long-term goals for emissions reductions and health risk reductions, titled the San Pedro Bay Standards. Once the CAAP Update is adopted, the Ports will quantitatively measure our progress against these long-term goals and will make adjustments to our implementation efforts over time as necessary to ensure that we remain on track for achieving these goals.

With these demonstrated results carried out voluntarily, and further efforts underway, the Ports regard the AQMD's proposed Rules 4010 and 4020 as unnecessary, and raise several questions regarding the Proposed Rules and the rulemaking process. Below is a list of preliminary questions to help us gain a better understanding of the AQMD's proposed approach:

Emissions and Health Risk Reduction Targets

Proposed Rule 4020 Sections (d) (1) and (2) will include targets for criteria pollutant and health risk reductions to be met by the Ports to avoid triggering the backstop provisions. The Ports have the following concerns and questions regarding the targets:

1. How were the targets developed? In June 2007, the Ports provided AQMD with detailed comments and concerns regarding the methodology and the specific port-related emission reduction targets contained in the 2007 Air Quality Management Plan (AQMP). CARB declined to adopt the port targets into the 2007 State Implementation Plan (SIP). In the AQMD Governing Board's resolution adopting the 2007 AQMP, it committed that AQMD staff would work with the Ports and, based on its technical review, would recommend any appropriate adjustments to the AQMP criteria pollutant targets attributable to the Ports. Although initial coordination efforts have occurred, the AQMD has not completed detailed analyses necessary for the Ports to understand how the AQMP targets and the targets contained in the Proposed Rules have been developed, or to understand how these targets differ from the Emission Reduction Standards contained in the Draft 2010 CAAP Update. We request that the AQMD present the methodology and resulting targets to a Stakeholder Working Group, including the Ports, before progressing further with the rulemaking process. Further, to the extent that the targets in proposed Rule 4020 go beyond the 2007 SIP/AQMP targets to address future regulations that have not yet been adopted, the Ports have even greater concerns.

2. The Emission Reduction Standards contained in the Draft 2010 CAAP Update were developed by the Ports in coordination with the EPA, CARB, and AQMD. Achievement of these Standards will require aggressive implementation of strategies by the Ports and the port operators. Further, the Standards are predicated on a conservative 2007 cargo forecast developed before the recent economic crisis and assume that the Ports reach capacity in 2023. Instead, there has been a significant downturn in cargo volumes from 2008 to present, such that the Ports do not anticipate returning to 2007 cargo throughput levels until 2014-2015, and reaching capacity until approximately 2035. This has reduced the Ports' emissions footprint, as well as potentially reduced the Ports' proportion of basin-wide pollution. Nonetheless, to be conservative and to voluntarily strive to ensure a "fair share" contribution of port-related sources to regional attainment goals, the Ports retained the higher growth forecast in the CAAP. It is important to note that, even with these higher than anticipated rates of future emissions growth, the Ports project DPM reductions greater than 70%, SOx reductions greater than 90%, and NOx reductions of nearly 60% by 2023.

3. The 2007 SIP identified several regulatory and technology strategies to be undertaken by EPA and CARB to contribute to the reduction in port-related emissions. This is consistent with the philosophy that achieving emission reductions from port-related sources must be a cooperative partnership effort, because no one entity can meet the need by itself. Since the 2007 SIP was developed, for various reasons including technical feasibility, technology availability, and cost-effectiveness, several key federal and state regulatory and technology strategies have failed to occur. These include, but are not limited to: commercial availability of Tier 4 line haul and switcher locomotive engines in 2012, implementation of a statewide regulation requiring use of shoreside power for all vessel types while at berth, and implementation of a statewide regulation requiring retrofitting of existing ocean-going vessels and the preferential deployment of progressively cleaner new build vessels to California ports. The Ports are concerned that the emission reductions associated with these proposed EPA and CARB strategies are now being fully assigned to the Ports through the proposed targets in order to make the

SIP "whole," even though the strategies may not be technically feasible and/or cost-effective. Further, as you know, the Ports do not own or operate the emissions sources targeted by this regulation and the Ports may not have implementation mechanisms available within their jurisdiction to implement the controls even if they were deemed feasible and cost-effective.

DISTRICT RULEMAKING PROCESS

The Ports have a number of initial questions geared towards gaining a better understanding of AQMD's intended rulemaking process for the Proposed Rules.

4. As suggested above, will the AQMD form a Stakeholder Working Group, including the Ports, to discuss the AQMD's Proposed Rules and analysis?

5. What is the AQMD's authority for regulating the Ports under the Proposed Rules?

6. The Ports would like to understand what level of CEQA analysis the AQMD is proposing for this rulemaking. Will there be a scoping meeting?

7. When will the AQMD release a Preliminary Draft Staff Report (PDSR)? Given the unprecedented nature and broad technical, practical, regulatory, and legal implications of these Proposed Rules, we believe that the PDSR must be very detailed or the Ports, air agencies, and other stakeholders will not have the information necessary to participate fully in the rule development process. We request that the PDSR include:
    a. Technical analysis of the Proposed Rules, targets, etc.
    b. An analysis of potential Draft Findings required under Health and Safety Code (e.g., Necessity, Authority, Clarity, Consistency, Non-Duplication, and References)
    c. Detailed information on control technologies and programs that the AQMD believes the Ports and affected sources would need to implement to meet the proposed rule reduction requirements.
    d. As part of cost-effectiveness analysis, detailed information on the feasibility, control effectiveness, and costs of these technologies and programs, including who would bear those costs. The AQMD should work with the Ports, their tenants, and others in the goods movement industry to estimate these costs.
    e. A preliminary Socioeconomic Impact Report (SIR) based on input from the Ports, their tenants, and other affected industries. Given the broad implications to the region's economy, the Ports recommend a detailed preliminary SIR be prepared and released with the PDSR.
    f. AQMD's proposal for how it will specifically apply the scheme of fines, penalties, or other enforcement provisions of the Health and Safety Code to the Ports to enforce the Proposed Rules, including providing an understanding of how the enforcement action would be assessed, given that the Ports are two separate and distinct departments of their respective cities.

The Ports look forward to receiving AQMD's responses to these preliminary questions. We will follow up with additional questions and comments later, as more information is provided by AQMD on the proposed rules.

The Ports are committed to achieving aggressive and feasible emissions reductions and health risk reductions from port-related sources, and have already proven that such reductions can be achieved while allowing the Ports to continue to move forward as a strong economic engine for the region. The Ports remain committed to implementing the CAAP and working in cooperation with the agencies and the industry to achieve our goals. We believe the Proposed Rules are unnecessary and that the AQMD should consider alternative mechanisms to achieve the AQMD's goals. We bring to your attention that the Bay Area AQMD initiated a backstop measure but ultimately determined to pursue a Memorandum of Agreement approach for similar work with the Bay Area ports.

If you have any questions regarding this correspondence, please contact Heather Tomley, Assistant Director of Environmental Planning, Port of Long Beach, at (562) 590-4160; or Christopher Patton, Environmental Affairs Officer, Port of Los Angeles, at (310) 732-3677.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Director of Environmental Management
Port of Los Angeles

cc: Dick Steinke, Executive Director, POLB
Geraldine Knatz, Executive Director, POLA
Mike Christensen, Deputy Executive Director, POLA
Robert Kanter, Managing Director, POLB
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

October 22, 2012

Jeff Inabinet
c/o Office of Planning, Rule Development, and Area Sources/CEQA Facilities
South Coast Air Quality Management District Development and Planning Branch
21865 Copley Drive
Diamond Bar, CA 91765-4182

Subject: Draft 2012 AQMP Program Environmental Impact Report

Dear Mr. Inabinet:

The Port of Long Beach (POLB) and Port of Los Angeles (POLA) appreciate the opportunity to comment on the Draft Program Environmental Impact Report (Draft EIR) developed for the 2012 Air Quality Management Program (AQMP). The ports appreciate that AQMD staff took steps to address the scoping comments provided by the ports, specifically the inclusion of a transportation and traffic impact analysis as part of the Draft EIR.

However, the ports must reiterate their concerns relating to AQMP Control Measure IND-01 (Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources). As the AQMD knows from prior comment letters submitted by the ports (please see AQMP comment letters dated August 30, 2012; July 10, 2012; and May 4, 2010), the ports believe that Measure IND-01 exceeds the AQMD's authority and should not be included in the AQMP for the reasons set forth in the referenced letters.

Measure IND-01 also contains various flaws which contribute to the inadequacy of the Draft EIR and failure to comply with the California Environmental Quality Act (CEQA). First, Measure IND-01, as described in the project description of the Draft EIR and in the AQMP itself, is unconstitutionally vague and lacks sufficient description of exactly what it proposes to impose on the ports or substantial evidence in support. The Draft EIR's failure to describe the project fully makes it impossible for AQMD, the ports, or the public to assess its 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. Because of the importance and consequences of the AQMP to the State of California's State Implementation Plan (SIP) if adopted by California Air Resources Board (ARB), and to the Federal Clean Air Act enforcement if approved by the U.S. Environmental Protection Agency (EPA), the AQMD is required to fully disclose the details of Measure IND-01 before adoption, and CEQA requires a full disclosure and discussion, which AQMD has failed to do.

Second, to the extent the AQMD intends to approve the Draft EIR and AQMP containing the vague current version of Measure IND-01, and later, as a part of future rulemaking, provide details regarding its proposed actions against the ports including an environmental assessment, that would be segmentation or piecemealing of its CEQA analysis.

Third, Measure IND-01 has serious problems of infeasibility which the Draft EIR has failed to analyze at all. Measure IND-01 in effect attempts to convert the ports' various aspirational goals, set forth in their voluntary Clean Air Action Plan (CAAP), into enforceable regulation against the ports. However, the CAAP goals depend upon future technology advancement which has not yet occurred, all of which are beyond the control of the ports. Therefore, there are technology feasibility issues with the AQMD making the ports' goals into required emissions limits. Further, as the ports are not air regulators and they do not themselves own, operate, or control the emissions equipment operated by the port industry, there are legal feasibility questions over the ports' ability to exercise authority to carry out the actions of Measure IND-01. There are also serious legal feasibility questions including federal preemption asserted by railroads in connection with locomotive specifications and rail operations, and international preemption asserted over ocean vessels. The Draft EIR is flawed in its failure to discuss these infeasibility issues, and had it done so, it would lead to the conclusion that Measure IND-01 should be removed from the AQMP.

Fourth, the AQMD has concluded in the air quality analysis that specific measures associated with Measure IND-01 "are unknown, and therefore the impacts are speculative," (see page 4.2-7 of Draft EIR). This is yet another reason why the Draft EIR is flawed. CEQA Guidelines Section 15145 specifies that if, after thorough investigation, a Lead Agency finds that a particular impact is too speculative for evaluation the agency should note its conclusion and terminate discussion of the impact. Instead, the AQMD proceeded to analyze secondary impacts to air quality that are based on speculative assumptions regarding construction emissions, energy demand, and operations.

Lastly, to the extent that Measure IND-01 proposes to impose upon the ports a form of enforcement for port industry's failure to meet the CAAP's target emissions reduction goals, when the ports do not own, operate, or control the emissions sources, it violates constitutional limitations requiring that exactions imposed on a party must be proportional to the party's contribution, when it fails to include all parties involved in the CAAP, including the actual emissions sources.

Given these deficiencies and speculation under CEQA and with the AQMP rulemaking, Measure IND-01 should be removed from the final EIR and the AQMP, and the analysis should be revised accordingly. With this change, the ports can support the revised AQMP and can continue to work with AQMD, other agencies, and the port industry in the collaborative manner that has made the ports' voluntary CAAP a success.

Thank you for considering the above comments. If you have any questions, please contact Dylan Porter, Port of Long Beach, at (562) 283-7100 or Lisa Wunder, Port of Los Angeles, at (310) 732-7688.

Sincerely,

Richard D. Cameron
Director of Environmental Planning, Port of Long Beach

Christopher Cannon
Director of Environmental Management, Port of Los Angeles

DP:s

cc: Elaine Chang, South Coast Air Quality Management District
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

October 31, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Supplemental Comments on the Revised Draft 2012 Air Quality Management Plan

Dear Dr. Wallerstein:

The Port of Long Beach and Port of Los Angeles (ports) are submitting this comment letter to add to comments previously submitted on August 30, 2012.

As members of the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) Advisory Committee, the ports have worked with AQMD staff to provide comments on the draft plan, including the emissions data being used. Included in this effort, ports' staff provided the 2008 base year emissions inventories for the port sources based on the most recent methodologies agreed upon by the Technical Working Group (TWG) in the ports' 2011 air emissions inventories.

As noted in the Draft AQMP, *"An effective AQMP relies on an adequate emission inventory."* Discrepancies exist between the emissions inventories prepared by the ports and the inventory prepared by the AQMD. The emissions shown in the Draft 2012 AQMP are different from those prepared by the ports in cooperation with the AQMD, California Air Resources Board, and Environmental Protection Agency, during development of the San Pedro Bay Standards. If the AQMD's emissions projections for achieving attainment are incorrect, the concerns expressed in our August 30 comments are greatly increased. The emissions projections drive both the Measure IND-01 analysis and the PM2.5 analysis. The basis for the Draft 2012 AQMP emissions projections is impossible to determine, because the assumptions and methodologies (including control factors and growth factors) are not disclosed.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

Additionally, it concerns the ports that the AQMP has made a commitment to Measure IND-01 before AQMD has released details of its intended implementation actions against the ports, or the socioeconomic and other analyses for such actions. Elaine Chang admitted at the AQMD's October 24, 2012, meeting that it is unknown what a port compliance plan would include and that AQMD would develop it during a future rulemaking process. This violates due process, to commit to implement an AQMP measure without disclosing what AQMD's actions against the ports will be under the backstop measure, as it deprives the public and the ports of the opportunity to review and comment to influence the decision, prior to committing to it in the AQMP.

This further demonstrates that the collaborative process established by the ports and the air quality regulatory agencies remains the most appropriate forum to identify and implement strategies to reduce emissions from port-related sources.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

AT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Randall Pasek, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Robert Kanter, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

November 8, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Dear Dr. Wallerstein:

SUBJECT: COMMENTS ON THE DRAFT SOCIOECONOMIC REPORT FOR THE DRAFT 2012 AIR QUALITY MANAGEMENT PLAN

The ports of Los Angeles and Long Beach (Ports) appreciate the opportunity to comment on the South Coast Air Quality Management District's (AQMD) Draft Socioeconomic Report for the Draft 2012 Air Quality Management Plan (AQMP).

The Draft Socioeconomic Report states that "District staff performs a socioeconomic analysis of the Draft Plan in order to further inform public discussions and the decision making process of the Draft Plan." However, the Draft Socioeconomic Report shows that no cost data have been developed for Measure IND-01 – Backstop Measures for Indirect Sources of Emissions from the Ports and Port-Related Sources, despite the fact that there are real and significant costs to the Port industry to implement the emission controls that could result from the proposed Backstop Measure. Presentation of this measure to AQMD's Board, as well as the public, is incomplete without an associated socioeconomic analysis. Potential regulation of the Port could have a very significant economic effect on the region that AQMD does not address, and therefore the Ports believe that it is inappropriate to move forward with inclusion of this measure in the Draft AQMP without a full socioeconomic analysis.

By not including a socioeconomic analysis of Measure IND-01, the AQMD is completely ignoring the economic importance of the Ports. The Ports are a major economic engine for the region and nation, and port-related industry generates $5.1 billion and $21.5 billion in state and federal tax revenue, respectively. The Ports account for over 1.1 million jobs in California and 3.3 million jobs in the United States. Additionally, for every one job created by a Port customer, nearly 1.7 additional jobs are created elsewhere in the region.

Even just the potential of additional regulation of the Ports brings with it a significant uncertainty for the Port industry that may result in the diversion of goods to other ports outside of this region. There are more environmental requirements on the Port industry operating in this region than anywhere else in the world. The threat of additional regulatory requirements, especially when no details have been provided as to what those requirements would be, results in significant concerns for these operators and a significant potential for loss of regional economic benefits due to diversion. The Draft Socioeconomic Report fails to analyze this potential impact.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

Additionally, AQMD has indicated that Measure IND-01 does not have a socioeconomic analysis associated with it because there are no emission reductions associated/committed with this measure. As noted in our comment letter on the Draft AQMP dated August 30, 2012, Section 39602 of the California Health and Safety Code states that, the State Implementation Plan (SIP) shall only include those provisions necessary to meet the requirements of the Clean Air Act. Hence, there is no identified need or legal basis for implementing Measure IND-01. AQMD's proposed measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

Finally, as stated in our letter dated October 31, 2012, Measure IND-01 should not move forward because the AQMP makes a commitment to implement it before AQMD has developed or released details of its intended compliance actions against the Ports, or the socioeconomic and other analyses for such actions. Failing to disclose the AQMD's intended actions against the Ports violates due process, depriving the public and the Ports of the opportunity to adequately review and comment on this measure prior to finalizing the AQMP.

For the reasons listed above and those presented in our previous letters, the Ports reiterate our consistent position that Measure IND-01 should be eliminated from the AQMP. Further, we continue to believe that the successful, collaborative approach established by the Ports and the regulatory agencies remains the best mechanism for identifying and implementing strategies to reduce emissions from Port-related sources.

Sincerely,

CHRISTOPHER CANNON
Director of Environmental Management
Port of Los Angeles

RICHARD D. CAMERON
Director of Environmental Planning
Port of Long Beach

CC:CLP:KM:LW:myd
ADP No.: 061024-605

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Robert Kanter, Port of Long Beach
Mike Christensen, City of Los Angeles Harbor Department, Deputy Executive Director
Dominic Holzhaus, City of Long Beach, Deputy City Attorney
Joy Crose, City of Los Angeles Harbor Department, General Counsel

November 19, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Ports' Proposed Revision and Resolution Language for the Draft 2012 Air Quality Management Plan

Dear Dr. Wallerstein:

On November 15, 2012, staff from the ports of Long Beach and Los Angeles met with AQMD Boardmember Judy Mitchell and AQMD staff to discuss concerns and comments that have been raised by the ports in previous comment letters on the Draft 2012 Air Quality Management Plan (AQMP). At the conclusion of the meeting, it was determined that staff would continue to work together to attempt to resolve the concerns that have been raised.

In that spirit, the ports of Long Beach and Los Angeles propose the following revisions to the 2012 AQMP, consistent with our past comment letters to AQMD:

1. Measure IND-01 must be removed from the 2012 Air Quality Management Plan if it continues to apply or recommend any form of AQMD oversight and approvals of the ports' actions, or enforcement (in terms of fines, penalties, administrative actions) against the Ports for failures of the Port industry to achieve designated emissions reductions. This includes the intent to develop such enforcement actions in later IND-01 rulemaking after adoption of the AQMP, even if such details regarding enforcement activity are absent from the draft AQMP.

2. With the removal of the Measure IND-01, the following language could be added to the adopting resolution for the 2012 Air Quality Management Plan:

   BE IT FURTHER RESOLVED, the District commits to continue working with the Port of Long Beach and the Port of Los Angeles on the implementation of the San Pedro Bay Ports Clean Air Action Plan (CAAP) in order to meet the emission reduction goals identified in the San Pedro Bay Standards, and as a part of the annual report to the Board, District staff will continue to provide information on the progress of the ports in implementing the CAAP.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

BE IT FURTHER RESOLVED, if the ports do not demonstrate sufficient progress for achieving the San Pedro Bay Standards, the District will work with the ports, the other air quality regulatory agencies, and port industry emission sources that are stakeholders under the CAAP, to identify additional feasible strategies for implementation within the ports' jurisdiction.

We look forward to discussing these recommendations with you.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

HAT:s

cc: AQMD Boardmember Judy Mitchell
Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Susan Nakamura, South Coast Air Quality Management District
Robert Kanter, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

November 27, 2012

Ms. Susan Nakamura
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Ports' Comments on South Coast Air Quality Management District (AQMD) Revisions to Measure IND-01 in Draft 2012 Air Quality Management Plan

Dear Ms. Nakamura:

Thank you for the AQMD's proposed revisions to Measure IND-01, "Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities" (IND-01) in the Draft 2012 Air Quality Management Plan (AQMP). We appreciate that efforts were made by AQMD staff to address the concerns that the ports of Long Beach and Los Angeles (Ports) have raised in our various comments letters on the AQMP and in our meeting on November 15, 2012 among the Ports' staff, AQMD staff and AQMD Boardmember Judy Mitchell.

However, the ports are disappointed that the fundamental structure of Measure IND-01, to treat the ports as "stationary sources" and "indirect sources," and convert the ports' voluntary Clean Air Action Plan into enforceable regulation by AQMD, was not altered in any respect. The ports do not own or operate any of the targeted equipment, and the ports are not regulatory agencies. The ports can't accept any regulatory action by the AQMD that will result in AQMD oversight and approvals of port actions, or enforcement actions by AQMD on the ports for failure of the port industry to meet the ports' emission reduction goals. Therefore the Ports continue to object to Measure IND-01's inclusion and request that it be removed from the AQMP. Measure IND-01 contains the fatal flaw of defining the ports as stationary and indirect sources responsible for the emissions from equipment they do not regulate, own, or control. We also believe that this measure is beyond AQMD's authority.

We reiterate our prior requests that AQMD reconsider its approach and allow the continuation of the successful collaborative work by the ports, regulatory agencies and other stakeholders under the voluntary Clean Air Action Plan and San Pedro Bay Standards. Moving forward with Measure IND-01 in this current draft form will actually reduce rather than improve the future success of programs, since conversion of voluntary plans into regulation will reduce voluntary

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

cooperation by the industry with port programs, and will eliminate the ability of the ports, agencies and industry emissions sources to obtain grants to accelerate emission reductions from port industry equipment.

Thank you for your continued attention to this matter and we hope that we can continue with the successful, cooperative partnership that we have built over the past seven years.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

HAT:s

cc: AQMD Boardmember Judy Mitchell
Barry Wallerstein, South Coast Air Quality Management District
Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Chris Lytle, Port of Long Beach
Robert Kanter, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Geraldine Knatz, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles

October 2, 2013

VIA ELECTRONIC MAIL – rpasek@aqmd.gov
VIA FACSIMILE - (909) 396-3324

Randall Pasek, Ph.D.
Planning Manager, Off-Road Section
Mobile Source Division
Science and Technology Advancement
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765-4178

Re: Initial Comments for Public Consultation on Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports"

Dear Mr. Pasek and Staff of the South Coast Air Quality Management District:

We appreciate this opportunity to submit comments during the public consultation period on the South Coast Air Quality Management District's (AQMD's) proposed "Rule 4001: Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports" on behalf of the City of Long Beach acting by and through its Harbor Department (referred to herein as "COLB") and the City of Los Angeles acting by and through its Harbor Department ("COLA," collectively with COLB, the "Cities" or the "Ports").

The Cities take their role as environmental leaders seriously and through the years have achieved tremendous success in obtaining substantial emissions reductions through the efforts guided by the joint San Pedro Bay Ports Clean Air Action Plan ("CAAP"). The Cities continue to support programs that will result in cleaner air for the local communities and the region and have worked aggressively with the port industry to reduce air quality impacts from the equipment they operate. As a result, the recently released emissions inventories have shown that between 2005 and 2012, emissions from sources at both the Port of Long Beach and Port of Los Angeles were reduced by 80% for diesel particulate matter and 55% for nitrogen oxides. However, the Cities continue to disagree with the AQMD's current proposal to inappropriately and unnecessarily regulate the Cities. The Cities have been consistent in our comments to the AQMD about the serious concerns and objections to the proposed rulemaking approach. A compilation of these comments was recently submitted to the AQMD in our comment letter on the Notice of Preparation and Initial Study for Proposed Rule 4001, dated August 21, 2013.

As for the comments the AQMD is currently seeking, we have concerns that the process recently initiated by the AQMD to solicit comments on Proposed Rule 4001 deviates from the rule-

The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

making procedures called for by the Health & Safety Code and by the AQMD's own rules (Rule 110), in several respects. For example, it is essential that a copy of the Proposed Rule, or the text of the Proposed Rule, "be made available to the general public in connection with a request for comments" on a proposed rule in order to commence a legally-compliant rule-making process. (E,g., H & S Code §§ 40727.2, 40727(i).) The Cities have previously pointed out the inherent inconsistency of inviting public comment on Proposed Rule 4001 before the AQMD has publicly-disclosed the text of the Proposed Rule, as well as the resulting limitations on the ability of the Cities and other members of the public to provide specific input on the Proposed Rule. As a result of the failure to provide the text of the Proposed Rule, or necessary information regarding the Proposed Rule, a meaningful and legally valid rule-making procedure has not yet been commenced, and it is premature for the AQMD to demand the submission of comments on the anticipated but still undefined new "backstop" rule.

Further, it appears that the AQMD is attempting to limit comment by setting an agenda for the items on which they are seeking input, as shown on slide 8 "Soliciting Inputs/Comments" of the presentation provided during the CEQA Scoping Meeting on August 14, 2013. In addition, limiting the public process primarily to a small working group with seats set at a small table does not allow for significant input from the broader affected public, including the port tenants and operators. Input could be more meaningfully provided if the Proposed Rule was released with sufficient time for the Cities and the public to review and provide detailed comment.

The Cities are further concerned that not enough time is being included in the schedule for rule development. To date, a draft of the Proposed Rule has not been released, nor is it expected to be released for at least several weeks; however, a hearing date for the AQMD Board to consider approval of the Proposed Rule has already been identified for early December. Well in advance of any such hearing, the AQMD must provide the public with substantial information and analysis of the Proposed Rule as required by the Health & Safety Code and AQMD rules (e.g., H & S Code §§ 40727.2; Rule 110(b), (c), and (d).), as well as responses to the public comments. The AQMD also must provide the comprehensive assessment of socioeconomic impacts required by Section 40728.5.

This timeline for review and comment is unacceptably short for a rule of this magnitude. The failure to provide the draft rule language with adequate time for the public to review and submit comments to AQMD, and for those comments to be meaningfully considered by AQMD staff, is a denial of due process.

In this regard, we also have concerns about the demand that comments be submitted by September 6, 2013. There is no explanation, nor any apparent legal basis, for imposing such a deadline for public comments. It is unreasonable, particularly in light of the absence of text or details regarding the Proposed Rule, and fails to provide due process to the Cities or other members of the public who may be burdened or affected by the Proposed Rule, to demand comments by such an early cut-off. The imposition of such a premature deadline for submission

of comments appears arbitrary, and in conflict with Health & Safety Code § 40726, which states that the AQMD "shall provide for the submission of statements, arguments, or contentions, either oral or written or both," up until the time of the public hearing on the Proposed Rule. We therefore respectfully object to the imposition of a deadline for submission of comments on the Proposed Rule, and reserve all rights to comment on the Proposed Rule in the manner, and at the times, provided by state law and the AQMD rules, and to insist on compliance with the procedures and rights afforded by state law and AQMD rules.

The Cities are therefore providing these comments on a preliminary (and non-binding) basis, considering only the limited information on Proposed Rule 4001 thus far provided by the AQMD, based upon presentations by AQMD staff about the general concepts of the approach. The Cities reserve our rights, however, to make further comments after the September 6 deadline and to continue to provide input throughout the process, including submission of additional or different comments after the draft rule is made available.

First, there is an issue of need. As a rule that is contained in the proposed State Implementation Plan, Proposed Rule 4001 violates Section 39602 of the California Health and Safety Code, which states that the State Implementation Plan shall only include those provisions necessary to meet the requirements of the Clean Air Act. There is no need for Proposed Rule 4001 since the AQMP's emissions targets for port industry equipment in 2014 will be met by United States Environmental Protection Agency (EPA) and California Air Resources Board (CARB) regulations and existing Clean Ocean Vessel Voluntary Incentive Programs. Further, AQMD staff has suggested that Proposed Rule 4001 will require the Ports to develop a "Contingency Plan" immediately following rule adoption, prior to any indication that an emissions shortfall may occur. This approach is punitive, requiring the Ports to invest resources into a type of corrective action, when there is no identified need for that action, and therefore goes against the Act and is inconsistent with due process.

Second, there is an issue of legal authority and jurisdiction. The AQMD has failed to cite any legal authority for characterization of governmental entities as a stationary source, or imposing an indirect source rule on governmental entities that do not own, operate or control the sources of emissions, based merely upon the location of facilities operated by private parties within the government entities' geographic area. The Ports are not "indirect sources" and no authority has been cited to authorize the use of an indirect source rule against fellow governmental agencies that have their own jurisdiction and responsibilities by law and do not have regulatory authority to issue air regulations. The AQMD has failed to cite any legal authority for imposing an indirect source rule on Trustees for the Tidelands of California or how it could legally compel the Ports to make expenditure of Tidelands Trust revenues for the purpose of incentives or to adopt other emission reduction programs to be funded as contemplated in AQMD enforcement activity under Measure IND-01. The AQMD has failed to show any legal authority that would allow it to (1) regulate mobile sources by making another governmental entity, that is not an air regulator, its agent for enforcement of its desired mobile source emission reductions, or (2) "enforce" the

Proposed Rule, which under AQMD administrative rules would eventually mean fines and penalties, against such other governmental entity that does not control the emissions of indirect sources located within its jurisdictional boundaries. The AQMD has failed to show any constitutional or statutory basis for attempting to regulate mobile sources "indirectly" that it is preempted from regulating directly, or to purport to impose penalties or corrective action against another governmental entity for failure of private third party emissions sources to achieve emissions reductions that such other governmental entity is also preempted from regulating.

Third, while the Cities remain firm in our position that the rulemaking is unnecessary, counterproductive and beyond the AQMD's jurisdiction, if AQMD does continue to proceed, the following significant issues must be addressed.

AQMD staff appears to be proceeding with development of the proposed rule in a manner that is inconsistent with the provisions of AQMP Measure IND-01 and the discussion between the AQMD Board and the staff during the approval of AQMP Measure IND-01 at the Board Meeting of February 1, 2013. During that discussion, it was identified that the requirements under any proposed rule would only be triggered if the ports failed to meet their goals for the target year. The proposed rulemaking concepts that have been presented by AQMD staff more recently have indicated that the Ports may be required to develop corrective action plans in advance of any identified shortfall. Further, it appears AQMD staff is considering that the Ports will be required to submit emission inventories to AQMD for approval each year through 2020 and that compliance action may be triggered for any potential shortfalls that may occur during interim years, prior to the target years. These potential requirements are inappropriate and go beyond the direction from the AQMD Board.

Also, because the Cities are not regulatory agencies, have not been granted authority to regulate sources of air pollution, and have limitations on their ability to impose requirements on sources operating within their jurisdiction, AQMD must ensure that Proposed Rule 4001 does not mandate that the Cities implement strategies that are outside of their authority or ability to implement. AQMD must recognize that the Cities do not even have contractual relationships with many of the emissions sources that AQMD has attributed to the Cities' "responsibility" for emissions reductions under Proposed Rule 4001, and that even if Cities have leases with some of the operators, they are negotiated business agreements that constrain the Cities' ability to unilaterally impose new terms in response to whatever new conditions AQMD may desire.

In addition, the Boards of Harbor Commissioners of the Cities have the discretion for making business decisions related to the ports and their tenants, consistent with the Tidelands Trust and California Coastal Act. Neither AQMD staff nor its Board can override the discretion of the Harbor Commissions including decisions related to the management of the port or how port funds are spent. Therefore, AQMD cannot disapprove an Emission Reduction Plan simply because AQMD disagrees with the chosen strategies.

Moreover, approval or disapproval of any Emission Reduction Plan cannot be at the sole discretion of AQMD staff. Any plan development should be coordinated with the agencies involved in the development of the CAAP, specifically EPA, CARB and the AQMD. The partnerships established through the CAAP process, and the actions over the past seven years that have been taken by the regulatory agencies, in addition to the Ports, have been critical in the success that has been achieved. As CARB has stated[1], "[s]uccessful implementation of the CARB emission reduction plan will depend upon actions at all levels of government and partnership with the private sector. No single entity can solve this problem in isolation." Therefore, AQMD staff should not place themselves in a position to be the sole authority to approve or deny plans for emission reductions at the Ports. Any plans should be developed in partnership, with input by all agencies, and final approval on actions to be taken specifically by the Cities should be at the discretion of the Boards of Harbor Commissioners.

Slide 8 of the AQMD presentation at the August 14 Scoping Meeting identified that AQMD is seeking input on "[f]lexibility to garnish emission reductions/air quality benefits off port property". Under the Tidelands Trust, the Boards of Harbor Commissioners are limited in their ability to spend Tidelands funds outside of the Tidelands areas. The Cities cannot be mandated by an AQMD rule to mitigate emissions that are unrelated to port-operations outside of the Harbor Districts and the Tidelands areas.

AQMD has stated that the goal of the Proposed Rule is to ensure that the Cities meet their commitments outlined in the CAAP. The Cities have clearly demonstrated over the past seven years that they are committed to working with the industry and will do what they can to reduce, from port-related sources, the port sector's fair share of regional air emissions. If other non-port related sectors within the region do not achieve their share of emissions reductions, the Cities cannot be held responsible for making up for those shortfalls, regardless of whether or not those shortfalls are anticipated to result in a delay in regional attainment of the $PM_{2.5}$ Standard in 2014.

In addition, the Cities should not be held responsible for any potential emissions shortfalls from regulatory agencies not implementing emission reduction regulations as identified within the SIP, even if those regulations are related to equipment operating at the ports. If an agency makes a decision to delay a regulation schedule, or if a regulation is overturned due to a court decision that the requirements are not within their authority to implement, the Cities should not then be mandated to backfill the potential shortfall.

The last update to the CAAP took over two years to develop and cost over $1 million. The Cities should not be required by the Proposed Rule to prepare an Emission Reduction Plan when no need for such a plan has been identified (e.g. region is anticipated to reach attainment with the $PM_{2.5}$ Standard, emission reductions will be achieved by in-place regulations, no emission shortfall has been identified, etc.). Further, development of a plan should not be mandated if the

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[1] *Emission Reduction Plan for Ports and Goods Movement in California*, Executive Summary, ES-1, CARB, 2006.

reasons for any emissions shortfall are due to reasons outside of the Cities control or if no feasible strategies are available. Any plan that is required by AQMD should be streamlined and focused solely on actions that will be taken by the Ports and/or agencies to make up for any identified shortfall.

As identified in the 2012 Air Quality Management Plan, it was determined that the 2014 $PM_{2.5}$ Standard could be achieved by 2014 and no request for an extension would be needed[2]. Therefore, it is inappropriate for the AQMD to require an emission target year of 2019 in the Proposed Rule.

As stated above, these comments represent the Cities' initial concerns with the AQMD's proposed approach. Further comments will be provided as the process progresses and as more information is made available by AQMD.

We appreciate your consideration. Thank you.

Sincerely,

Heather Tomley
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

cc: Al Moro, Acting Executive Director Port of Long Beach
Geraldine Knatz, Executive Director Port of Los Angeles
Rick Cameron, Acting Managing Director of Environmental Affairs and Planning, POLB
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Dominic Holzhaus, Principal Deputy City Attorney City of Long Beach
Joy Crose, Assistant General Counsel City of Los Angeles, Harbor Division
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Cynthia Marvin, Division Chief, California Air Resources Board
Elizabeth Adams, Deputy Director, U.S. Environmental Protection Agency, Region 9

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[2] *2012 Air Quality Management Plan*, Executive Summary, ES-11, AQMD, 2013.

January 15, 2014

VIA E-MAIL – bradlein@aqmd.gov
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Ms. Barbara Radlein
c/o CEQA
SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT
21865 Copley Drive
Diamond Bar, California 91756-4178

Re: Recirculated Notice of Preparation and Initial Study
Proposed Rule 4001— Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports
November 2013

SCAQMD File No. 0722013BAR
SCH No.: 2013071072

Comments on Recirculated Notice of Preparation, Initial Study, and Scope of Proposed Program Environmental Assessment and Alternatives Analysis

Dear Ms. Radlein and Staff of the South Coast Air Quality Management District:

On behalf of the City of Long Beach (referred to herein as "COLB)" and the City of Los Angeles acting by and through their respective Harbor Department ("COLA", and collectively with COLB referred to herein as the "Cities"), we appreciate this opportunity to submit responses and comments on the District's recent "Recirculated Notice of Preparation of a Draft Program Environmental Assessment" ("Recirculated NOP") and the accompanying Initial Study ("IS") prepared in connection with the District's consideration of the proposed project entitled "Rule 4001: Maintenance of AQMP Emission Reduction Targets At Commercial Marine Ports" (the "Project" or "PR 4001"). We appreciate that the District has extended the public comment period to January 16, 2014, in light of the serious and substantial issues raised by this Project and the original comment period scheduled over the holidays limiting stakeholder time for review.

This letter is organized in the following manner:

A. Introductory Comments
B. General Comments on the Recirculated NOP and Initial Study
C. Specific Comments on the Recirculated Initial Study
    1. Comments on Chapter 1
    2. Comments on Chapter 2 (Environmental Checklist)
D. Conclusion

Additionally, the Cities' previous comment letter on the original NOP dated August 21, 2013 has been attached for reference.

A. Introductory Comments:

We have previously commented on, and objected to, Air Quality Management Plan (AQMP) Control Measure IND-01 (Measure IND-01) and have expressed our grave concerns about the District's rulemaking approach to craft a ostensible "backstop rule" that would be applicable only to the Cities and their respective San Pedro Bay Ports ("Ports") such as that embodied in the new draft PR 4001. As the District is well aware, the Cities have been dedicated, innovative, and effective leaders in the efforts of public agencies to improve air quality despite the fact that we have no regulatory authority or control over the emissions sources. Working collaboratively and voluntarily with the District, our efforts have been successful in helping the maritime goods movement industry achieve very substantial reductions in emissions from the wide range of industrial and mobile sources they operate at or near the Ports, and we look forward to continuing to work with the District, other air regulatory agencies, and industry in building on these successes.

While we appreciate that the District staff has finally released the draft text of PR 4001, together with the recirculation of a new NOP and Initial Study, we find that many of the questions and issues raised in our previous comments remain unanswered or contain the same deficiencies in the new description of the "Project" and the Recirculated NOP, and still fail to identify or address feasible alternatives to PR 4001. Therefore, we respectfully reiterate and incorporate by reference all of our previous comments and objections (including, but not limited to, our letter dated August 21, 2013, and comments on the District's 2012 Air Quality Management Plan ("AQMP") and Control Measure IND-01), in addition to our new comments on the Recirculated NOP and IS.

Our responses are submitted in light of the California Environmental Quality Act ("CEQA") which calls for public review, critical evaluation, and comment on the scope of the environmental review proposed to be conducted in response to a Notice of Preparation, including the significant environmental issues, alternatives, and mitigation measures that should be analyzed in the proposed draft EIR (or Environmental Assessment, "EA") (14 CCR

15082(b)(1).) (See, CEQA Guidelines, at Title 14 Cal. Code of Regulations, §§ 15000, *et seq*..) Since it is anticipated that the proposed Project will have substantial impacts on the Cities and other communities served by the Ports, it is particularly important that the scope of this proposed review take into account jurisdictional and legal limitations, established state and local plans and policies, and other potentially feasible and less-impactful alternatives to the Project. In addition, it will be important to consider the impacts of the proposed Project on the important missions, facilities, and operations of the San Pedro Bay Ports.

In that context, we respectfully submit the following comments regarding the Recirculated NOP as well as questions, concerns and objections related to the omissions of critical information, unsupported assumptions, or analytical deficiencies in the Initial Study, and comments as to the scope of the proposed environmental assessment ("EA") as contemplated and invited by the District's Recirculated NOP.

B. General Comments on the Recirculated NOP and Initial Study.

1. **Changed Project Title**: What is the authority of the District to change the proposed Project from a "*Backstop Measure for Indirect Sources of Emissions from Ports and Port-related Facilities*" authorized by the District's Governing Board, to a new Project title of "*Maintenance of AQMP Emission Reduction Targets At Commercial Marine Ports*"? The District inexplicably no longer describes this as "a backstop measure" – although such a "contingency measure" concept has been the basis for District consideration of this type of proposed rule going back to Control Measure IND – 01 and a similar mobile source port backstop rule in the 2007 AQMP/SIP. What is the significance of this change and has the District now moved from a backstop of the voluntary Clean Air Action Plan goals of the Cities, which it sold to its board, to full District regulation setting District targets for the Cities' ports beyond backstopping voluntary programs? Does this change require the approval of the District's board? In any event, the Cities repeat their strong protest of both Project concepts and further comment on this issue below.

2. **Changed Project Description:** The Recirculated NOP/IS cover letter (11/22/2013) acknowledges that "changes were made to the project description *and* the environmental analysis subsequent to release of the original NOP/IS on July 23, 2013." However, the new NOP/IS fails to describe the "changes" in "the Project" and fails to describe or evaluate the significance of those Project changes. We note at least a few changes between the previous Initial Study and this new Recirculated NOP/IS:

(a) The Project Description now includes *the draft text of the Proposed Rule*. The new Initial Study states (p. 1-3) that the prior NOP/IS had tried to use the text of Control Measure IND-01 as a surrogate for the Project, because the rule language for PR 4001 had not been developed. However, **the draft text of PR 4001 is not the same as Control Measure**

IND-01. The distinct jurisdictional, legal, administrative, due process and procedural issues posed by the draft text of PR 4001 (as well as its semantic ambiguities) add new levels of complexity to the evaluation of the environmental impacts of the Project, which are not adequately explained or evaluated in the new Initial Study.

As detailed below, the draft text now creates uncertainty as to how and when the requirements of the new PR 4001 that the Cities "take actions" would be triggered, as well as the scope of their obligations to act under the new Rule. Indeed, the draft text of PR 4001 raises questions as to whether the Project as now described is even consistent with the Final 2012 AQMP, the EIR for that AQMP, or with subsequently-adopted Control Measure IND-01, or other state and regional plans. Most importantly, to the extent the provisions of PR 4001 vary in purpose and scope from Measure IND-01, they are not authorized by the AQMD Governing Board.

(b) The initial Project description (and Control Measure IND-01) would have required "actions to be taken" [by the Cities] only "in the event that emissions from port-related sources *do not meet* the emission targets assumed in the final 2012 AQMP. Similarly, Control Measure IND-01 represented that the "backstop" requirements will be triggered "if the reported aggregate emissions *for 2014* for all port-related sources exceed the 2014 emissions targets." (Final 2012 AQMP, Appendix IV-A-41.) By contrast, however, the new Project description would apparently require the Cities to "take actions" in the event that "port-related sources do not meet *or are not on track to maintain* the emission targets ... *for the purpose of meeting and maintaining the federal 24-hrs PM2.5 standard*." The new version of the Project description appears to have expanded the "triggering" events, and extended the trigger period, beyond those events and time periods contemplated in the 2012 Final AQMP. Accordingly, the new version of PR 4001 may no longer be consistent with the AQMP or with the environmental review of that document.

(c) The new NOP and Initial Study changed the type of CEQA document from an Environmental Assessment to a Program Environmental Assessment for the Project that will be programmatic in nature (as described in 14 CCR 15168) rather than a project-specific environmental review, and suggests that the District may thereby intend to *defer* more detailed CEQA analysis to some undefined future stage of "the Project" (p. 1-2). The District has already prepared and certified a Final Program Environmental Impact Report (Program EIR) for the 2012 AQMP which was considered to be the appropriate document pursuant to CEQA Guidelines Section 15168(a)(3) and included a programmatic analysis of Control Measure IND-01. However, the District has now presented the adoption of PR 4001 as "the Project" but is still preparing yet another Program Environmental Assessment with the same reasoning as it did in the prior CEQA analysis. It is not clear how the District believes two program-level environmental documents can be prepared for the same rule and when, if at all, the District may intend to provide such more specific "project-level" analysis as required under CEQA.

Moreover, this part of the new Initial Study implies a commitment that the "program CEQA document" would include "consideration of broad policy alternatives and program-wide mitigation measures." (*id*.). However, *the new Initial Study fails to identify or discuss any such "policy alternatives" or "program-wide mitigation measures"* and gives no indication that *the scope* of the eventual EA will in fact include any such policy alternatives or mitigation measures.

In their prior comment letter on the Draft 2012 AQMP Program EIR dated October 22, 2012, the Cities expressed very similar concerns over the vague and deficient "project description" of backstop Measure IND-01. In the District's response to comment #5-4 in the Final Program EIR, the District represented that: "*The exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted.*" The District also committed, in its response to the same comment #504 in the AQMP Final Program EIR, that "*further details regarding the future requirements* [a Rule implementing Control Measure IND-01] *will be determined more appropriately* ***during the rule development process***."

The new Initial Study indicates that the District may be reneging on these commitments to provide the necessary analysis of "the exact impacts" of PR 4001 "during the rule-development process, in violation of CEQA and in violation of the District's own Rule 110.

(d) The District also appears to have made other subtle changes to the Project Description, without announcement, which are **not consistent with Control Measure IND-01**, and which may have potentially significant – but unaddressed -- impacts. For example:

i. The new Initial Study has changed the description of the Project from adoption of a "backstop measure" to the adoption of "backstop *requirement*" and has made other changes to the Project which are not consistent with Control Measure IND-01 as adopted (p. 1-1.) Control Measure IND-01 provides a description of the Cities' successful Clean Air Action Plan (CAAP) and its various emissions reductions goals. "This AQMP Control Measure is designed to provide a "backstop" to the Ports' actions to provide assurance that, if emissions do not continue to meet projections, the Ports will develop and implement plans to get back on track, to the extent that cost effective and feasible strategies are available." (Final 2012 AQMP Appendix IV-A, page 3) The Proposed Project describes its purpose as: "The purpose of the rule is to establish actions to be taken in the event that emissions from port-related sources do not meet the emission targets assumed in the Final 2012 Air Quality Management Plan for the purpose of meeting the federal 24-hour $PM_{2.5}$ standard in 2014 and maintenance of attainment in subsequent years." (PR 4001, Section (a)) The proposed

Project has eliminated the references in its Board-adopted IND-01 to backstopping the Ports Clean Air Action Plan targets to the extent cost effective and feasible strategies are available and replaced with a traditional regulation by the District to meet District-set targets.

ii. The new Initial Study has apparently changed the District's concern from assuring "the attainment demonstration" for 2014 PM2.5 emission targets (as embodied in the 2012 AQMP) to add "*maintenance of the air quality standard in subsequent years*." (p. 1-1.) This change in the Project appears to add a new undefined and open-ended element into the Project, not consistent with the District's adopted Control Measure IND-01.

(e) **Changed Definition of "Feasible Control Strategy:"** The draft text for the new PR 4001 proposes to change the definition of "feasible control strategy" so that it is *not consistent with* the obligations that could potentially be imposed on the Cities under *Control Measure IND -01* as adopted by the District Board. Instead, the draft of PR 4001 (at Paragraph (c)(1)) and the new Initial Study have *changed the limitations* on the proposed obligations of the Cities to achieve additional emission reductions under PR 4001. Previously, the Project was described as requiring the Cities to "propose additional emission reduction methods ... [but only] *to the extent cost-effective strategies are technically feasible* and within the Ports' authority." However, new PR 4001, and the new Initial Study (p. 1-1) have inexplicably omitted (at several points*)* the prior limitation on the Cities' potential obligations to measures that are "*technically feasible*." Again, these subtle changes in the Project description are not consistent with the text of IND-01 or any other legal or regulatory authority identified by the District in the new Initial Study. The Initial Study should address (i) whether these changes have been authorized by the District's Board, and (2) what potential environmental impacts (as well as socio-economic impacts) may arise from the changes in the concept of "feasible control strategies."

(f) The District should clearly identify all other "changes" in the Project.

Other comments on the flawed "project description" are set out in Section C(1), below.

3. **Changed Environmental Analysis:** We appreciate that the Recirculated NOP/IS has expanded the range of environmental subjects which it now acknowledges may be subject to the proposed Project's significant adverse environmental impacts, perhaps partly in response to our previous comments. However, the scope of the proposed environmental analysis still does not take into account all of our concerns and still fails to comply with CEQA, e.g., by failing to identify potential significant environmental impacts, failing to propose a range of feasible

alternatives, and failing to evaluate reasonable mitigation measures. We therefore reiterate our prior comments on the scope of the proposed EA.

4. **Reiteration and Incorporation of Prior Comments:** The new NOP/IS states that it "replaces the July 23, 2013 NOP/IS" and that there will be no District responses to previously-submitted comments. We recognize that the Recirculated NOP purports to reflect changes made, in part, to previously submitted comments on the July 2013 NOP/IS. However, the new NOP/IS does not take into account all of our previous comments nor do the changes made in the new NOP/IS necessarily reflect or satisfy the requests made in our previous comments. Accordingly, we incorporate and include our previous comments as detailed in our letter dated August 21, 2013.

5. **Failure to Adequately Identify and Include Feasible Alternatives:** The Recirculated NOP/IS still fails to comply with CEQA's requirements for identification and consideration of all feasible project alternatives. Like the original IS, the new IS fails to identify a single "alternative" to the District Board's adoption of PR 4001. The superficial mention of "alternatives" on page 1-15 of the IS merely recites the legal obligations of the District to "discuss and compare" a range of "reasonable alternatives" to the proposed Project. This fails to fulfill the "scoping" purpose of an Initial Study. The District should analyze, among a range of alternatives, a collaborative Memorandum of Agreement between all of the stakeholders, as previously suggested by the Cities and recommended by the District to its Board (which speaks well to its feasibility as an alternative). The District should also evaluate the use of the EPA's policy and guidance for the Voluntary Mobile Source Emission Reduction Program (VMEP), which was developed for voluntary emission reduction programs of the sort outlined in the CAAP.

"The scoping process is the screening process by which a local agency makes its initial determination as to which alternatives are feasible and merit in-depth consideration, and which do not." (*Goleta II, supra*, 52 Cal.3d at p. 569; see Guidelines §15083.) It involves "consult[ation] directly with any person or organization [the lead agency] believes will be concerned with the environmental effects of the project" in hopes of "solv[ing] many potential problems that would arise in more serious forms later in the review process." (Guidelines, § 15083.)" "The determination of whether to include an alternative during the scoping process is whether the alternative is potentially feasible (*Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 489 (*Mira Mar*)), and the EIR "is required to make an in-depth discussion of those alternatives identified as at least potentially feasible." (*Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1505, fn. 5].)" (*South County Citizens for Smart Growth v. County of Nevada* (3d Dist. 2013) 221 Cal.App.4th 316, 327 (*South County*.)

"A lead agency must give reasons for rejecting an alternative as 'infeasible' during the scoping process (Guidelines, § 15126.6, subd. (c)), the scoping process takes place prior to

completion of the draft EIR. (*Gilroy Citizens for Responsible Planning v. City of Gilroy*, *supra*, 140 Cal.App.4th at p. 917, fn. 5; Guidelines, § 15083.)" (*South County*, p. 328.)[1]

The Initial Study also uses the wrong legal standard in its passing acknowledgement of the District's duty to consider alternatives: the Initial Study must identify "potentially feasible" alternatives ("feasibility" is a defined, and critical, term under CEQA), rather than "reasonable" alternatives (as mis-stated in the IS on page 1-15.)

6. **Deficient Initial Study:** The CEQA Guidelines contemplate that an Initial Study is to be used in defining the scope of environmental review (14 CCR §§ 15006(d), 15063(a), 15143.) However, as a result of the omissions, inconsistencies, and deficiencies in the Initial Study, the District's proposed scope of environmental assessment for this Project will be unduly narrowed and limited, and is likely to erroneously exclude issues, feasible alternatives, and mitigation measures from the proposed Environmental Assessment. (More detailed comments on the deficient Initial Study are set out in Section D, below.)

As detailed below in Section C, the new Initial Study does not provide the information, potentially feasible alternatives, evidence, or analysis required by the CEQA Guidelines (14 C.C.R. §15063, subd. (d)):

(1) A description of the Project including the location of the Project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries . . .

(4) A discussion of ways to mitigate the significant effects identified, if any;

(5) An examination of whether the Project would be consistent with existing zoning, plans, and other applicable land use controls;

(6) The name of the person or persons who prepared or participated in the initial study."

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[1] "Differing factors come into play when the final decision on project approval is made; at that juncture the decisionmaking body evaluates whether the alternatives are actually feasible. (Guidelines, § 15091, subd. (a)(3).) "[T]he decision makers may reject as infeasible alternatives that were identified in the EIR as potentially feasible." (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 981.)" (*South County*, p. 327.)

An Initial Study that fails to provide all of the information, analysis, and evidence called for by CEQA may be deemed to be inadequate and not a valid basis for CEQA review or Project approval (See, e.g., *City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, at pp. 407–408, invalidating the County's proposed general plan amendments because of a deficient initial study: "[T]he initial threshold study is inadequate because it fails to provide sufficient evidence or analysis of the potential environmental effects of the amendments.")

7. **Request for Correction and Recirculation of Corrected NOP and IS:**

For the multiple reasons summarized above, and detailed below, it is essential that the Recirculated NOP and Initial Study be withdrawn and further revised and corrected in order to properly fulfill their role in seeking meaningful public input on the appropriate "scope" of the proposed environmental assessment for the Project. A more accurate, complete, and CEQA-compliant Initial Study that addresses specific project-level impacts should be prepared and released for public review, along with a new set of public meetings, to provide the public with sufficient time and opportunity to comment on the scope and adequacy of the revised NOP/IS.

The District has already commenced its Rule- development process. It appears from the District's records that District staff has already committed to the District Board that the Proposed Rule will be adopted in April of 2014. District documents also indicate that District staff has further committed to shortly thereafter embarking on revisiting and changing the emissions targets that are the subject of this Proposed Rule, likely placing even more burdensome requirements on the Cities It is imperative, not only for Due Process reasons but also for reasons of sound public policy, meaningful community input, and well-informed decision-making, that the District provide adequate, complete, and accurate information – and time -- to allow the Project to be fully vetted before it is rushed to the District's Board for consideration.

It is therefore respectfully urged that the Recirculated Initial Study (and the related NOP) be recalled, corrected, and again be recirculated for public review and comment as corrected before the District proceeds with any further action in connection with the proposed Project.

The comments on the Recirculated Initial Study included in this letter are organized in the same format used by the Initial Study, i.e., comments on "*Chapter 1 – Project Description*" in Section C, below, followed by comments on "*Chapter 2 – Environmental Checklist*" in Section D. The comments are limited to those matters which appear in the Recirculated Initial Study, but we reserve the right to provide further comments in the event that additional or different information about the proposed Project becomes available.

C. Specific Comments on the Recirculated Initial Study:

1. Chapter 1 of the Initial Study -- Inadequate "Project" Description.

(a). Deficient "Project Description" – In General

"A correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA." (*Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 267).

> **The initial study must include a description of the project.**" (*City of Redlands, supra,* 96 Cal.App.4th at pp. 405–406, fns. omitted.) **An accurate and complete project description is necessary** to fully evaluate the project's potential environmental effects. [Citations.]" (*El Dorado County, supra,* 122 Cal.App.4th at p. 1597.) (*Id*.)

As noted above (Section B(2)), the District's cover letter for the Recirculated NOP states that "the Project" has been changed, and that the Project description has been "changed." However, the Recirculated NOP and Initial Study do not explain the "changes" in the Project, and they still fail to provide an accurate and complete description of the Project as mandated by CEQA. The failure of the Initial Study and NOP to provide an accurate, complete, and coherent description of the "Project" is a fundamental deficiency, which permeates the entire document.

The Initial Study fails to describe additional planned or reasonably foreseeable activities or actions by the District (e.g., changes to emissions targets) or by other agencies in response to or associated with the proposed Rule, or to address cumulative impacts of this proposed Project in light of other related actions and plans.

The Initial Study suggests, instead, that the intent of PR 4001 would be to delegate the District's responsibilities for regulating or reducing emissions of NOx, SOx, and PM2.5 air emissions to other agencies, specifically the officials governing the ports of Long Beach and Los Angeles. The Initial Study further 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 Rule 4001 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 entire project*, improper project "segmentation," *improper deferral* of impact analysis and mitigation, failure to identify and evaluate *potentially feasible project alternatives*, etc.)

The absence of such a clear description of the proposed Project inherently prevents the IS from facilitating meaningful review and analysis of the proposed "Project," and violates the requirements of CEQA. (See, e.g., CEQA Guidelines, 14 CCR § 15124; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376.)

The Initial Study falls far short of these requirements in describing the proposed Project, and thus falls short of serving the "public awareness" purposes mandated by CEQA:

> An accurate and complete project description is necessary for an intelligent evaluation of the potential 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, citing *Aberdeen & Rockfish RR. v. SCRAP* (1975) 422 U.S. 289, 322 [an accurate, complete and consistent project description is the sine qua non of informative, legally adequate CEQA review].) (*City of Redlands v. County of San Bernardino, supra,* 96 Cal. App. 4th at pp. 407–408.)

In sum, the Recirculated NOP/IS still erroneously limits the scope of the required environmental analysis and calls for impermissible speculation or impossible prescience on the part of the Cities or other members of the concerned public to undertake effective analysis of the proposed Project, or to provide meaningful comments as to the scope of review of the Project, until and unless the District provides an adequate and complete description of the "Project."

Incomplete Description of Environmental Setting

The Initial Study also fails to provide an adequate description of "the environmental setting" of the proposed Project.

While the CEQA Guidelines do not specifically define "environmental setting" with regard to an initial study, they do explain, in regard to EIR preparation, that the "environmental setting" must be informative: "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." (Guidelines, § 15125, subd. (a).) A description of the environmental setting must be sufficient to allow "an understanding of the significant effects of the proposed projects and its alternatives" but "no longer." (Guidelines, § 15125, subd. (a).) That description should place "[s]pecial emphasis" "on environmental resources that are rare or unique to that region and would be affected by the project" and "must permit the significant effects of the project to be considered in the full environmental context." (Guidelines, § 15125, subd. (c).)

Failure to Examine All Phases of the Entire Project as Proposed

"The Initial Study must include a description of the project, and the scope of the environmental review conducted for the initial study must include the *entire* project." (*Nelson v. County of Kern, supra*, 190 Cal.App.4th at 270, emph. in original.)

The Initial Study here improperly fails to describe "the entire Project" and fails to consider all phases of the proposed Project. The CEQA Guidelines (14 C.C.R §15063(a)(1)) make clear that an initial study must take a comprehensive view of the proposed project *as a whole*. "All phases of project planning, implementation, and operation must be considered in the initial study of the project."

Since the Project also contemplates the possibility of future discretionary actions and measures on the part of the Cities, if compelled under PR 4001, which may in themselves have additional, not-yet-identified environmental impacts, the Initial Study should call for the scope of the EA to be expanded to include such issues.

The scope of the environmental review conducted for the initial study must include the entire project. (*Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1222.) Thus, a correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA. (*Nelson v. County of Kern, supra*, 190 Cal.App.4th at 267.)

The NOP/IS indicates that proposed Rule 4001 is intended to require actions by the Cities, to adopt and implement plans and strategies to address any "shortfall" in emissions reductions. The Initial Study improperly fails, however, to address or to provide information and analysis relating to the environmental impacts of the anticipated "subsequent approvals," "discretionary permits" and amendments to the Cities' plans and regulations that appear to be proposed as parts of the Project, or the physical environmental effects of social or economic impacts that may result from those anticipated changes in land use regulations. (Guidelines § 15063.) Such anticipated and intended actions by other governmental agencies thus appear to be part of this Project, and must be identified and evaluated in the Project EA, along with their potential impacts. As such, we reiterate our prior comment on the Draft 2012 AQMP Program EIR dated October 22, 2012 where it is stated that the District has failed to fully disclose the details of Measure IND-01 and as a result is segmenting or piecemealing its CEQA analysis.

Failure to Describe Existing Land Use Regulations

The Initial Study does not include an examination of whether the Project would be consistent with existing zoning, plans and other applicable land use controls, as required by CEQA Guideline Section 15063. Although the Initial Study includes some background discussion of the CAAP, it provides little or no description of the existing planning and zoning designations applicable to the "Project" location, and relies on (unsupported) assertions that the Project would be in furtherance of the CAAP. It provides no information or analysis of other existing plans or policies applicable in the Harbor Districts, which may be affected or impacted by the Project. Additionally, the Initial Study contemplates impacts beyond the Harbor Districts but does not specifically define these areas nor the applicable land-use regulations.

Uncertain and Inadequate Identification of "Baseline" Used for Review

It is critical under CEQA that any level of environmental review make it clear as to the "baseline" being used as the basis for analysis of the significance of potential Project impacts. (CEQA Guidelines Section 15125(a).) Normally, the "baseline" will be the existing environmental conditions in the vicinity of the Project. (Guideline Section 15125(a); see also, 48 Cal.4th 310, 315 [the baseline for an agency's primary environmental analysis under CEQA must ordinarily be the *actually* existing physical conditions rather than *hypothetical* conditions that could have existed under applicable permits or regulations].) The Supreme Court has explained that the requirement for identification and use of the appropriate "baseline" applies in the context of an Initial Study as well as in an EIR. (*Communities for a Better Environment, supra*, 48 Cal.4th at 512, and n. 5.)

The Initial Study here, however, fails to make it clear as to what "baseline" is being used. In many places the Initial Study compares the anticipated "impacts" of adopting proposed Rule 4001 to the permitted emissions levels anticipated (in the future) under the 2012 AQMP, or alternatively to the (future) emission reduction targets of the CAAP -- rather than to the existing environmental conditions. While the recent Supreme Court decision in *Neighbors for Smart Rail v. Exposition Metroline Constr. Authority* (2013) 57 Cal.4th 439, 451-52 indicates that the baseline need not always be the existing physical conditions, and that "projected future conditions" may be used in rare situations as a baseline "if their use in place of measure existing conditions ... is justified by unusual aspects of the project or the surrounding conditions", it does not detract from the rule that the Initial Study must accurately and consistently describe the baseline being used. Nor does it permit the use of "future conditions" in the absence of a showing of unusual circumstances. The Initial Study in this case does neither.

For each of these fundamental reasons, the Recirculated NOP/IS should be rescinded in order that it may be revised, completed and corrected to meet CEQA requirements.

(b) The Initial Study Improperly Fails to Identify or Address Alternatives to the Proposed Project:

As noted above, CEQA requires that an Initial Study identify a range of "potentially feasible alternatives" to the proposed project which are to be more carefully analyzed in the draft environmental study. (14 CCR § 15083; "The determination of whether to include an alternative during the scoping process is whether the alternative is potentially feasible (*Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 489.)

However, the new Initial Study totally fails to identify any alternatives for study in the eventual EA. Instead, it merely "commits" the District to "discuss and compare alternatives" in the future, as part of the Draft EA. This is insufficient. The Initial Study also suggests the District is looking to the public or other agencies to identify "alternatives" during the scoping process. The Cities previously (January 2013) submitted such a potential alternative to PR 4001, in the form of a proposed Memorandum of Agreement. The District Board directed District staff to follow up and confer with the Cities on that approach. Nevertheless, it is not even mentioned in the Initial Study. Additionally, the EPA's long-established VMEP program is not considered as an alternative although it was developed for this very purpose.

If the District is authorized to prepare a PEA, rather than an EIR, the PEA must at least comply with Guideline Section 15252. Section 15252(a) requires that a substitute document, like a PEA, must include at least – a description of the proposed activity, and "**alternatives** to the activity and **mitigation measures** to avoid or reduce and significant or potentially significant effects that the project may have on the environment."

The No Project Alternative is not defined in the NOP/IS. In accordance with CEQA Guidelines Section 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. Therefore, the Draft EA should consider the impacts that would occur under the existing 2012 AQMP without Control Measure IND-01 or proposed Rule 4001.

As an example, an analysis should be conducted of the grant funding that would be available under the No Project Alternative that would not be available if the proposed Project constitutes regulation, and the environmental impact if grant funding necessary to make certain actions economically feasible is no longer available under the proposed Project. If the District's position is that there is no loss of grant funding in order to comply with Rule 4001 as a regulation that the District purports to make enforceable under the State Implementation Plan and the Clean Air Act, the District must explain in the Rule its basis for this conclusion in the context of why grants made for compliance with a regulation is not a gift of public funds.

Due to the District's failure to satisfy this CEQA requirement of alternatives development, the Cities direct the District to review the feasible alternative to the Project set forth in their January 16, 2014 letter to the United States Environmental Protection Agency Region 9, copied to the District. The Cities have noted the problems with including Measure IND-01 in the California State Implementation Plan (SIP) and recommended to the US EPA to instead apply as an alternative, the Voluntary Mobile Source Emission Reduction Program (VMEP) to grant SIP credit for the small percentage of emission reductions that are not already achieved by other regulations. The VMEP can work with or similarly to the memorandum of agreement approach that was suggested by the Cities to the District as an alternative to Measure IND-01 last year. One additional alternative would be for the District to formulate its own "backstop" measures and strategies for addressing any shortfall in emission reduction targets, relying on the District or CARB regulatory authority, expertise and resources, rather than pursuing proposed Rule 4001, which appears to be an attempt to solely rely upon the Cities, which lack regulatory authority or control over the actual sources, or use of the EPA's VMEP.

(c) Comments on the District's new Proposed Rule 4001:

The "project description" in the Recirculated Initial Study includes the *draft text* of PR 4001, at Appendix B. Notwithstanding the inclusion of a draft of the text of the proposed Rule, the "project description" remains incomplete and deficient. The Initial Study does <u>not</u> provide an adequate description of how the proposed Rule would work in practice (as distinct from the superficial summary of the text at pages 1-7 through 1-10) or how it would be likely to impact the Cities, the tenants and users of the Ports, and the surrounding communities and environments. The Cities anticipate the submission of additional, more detailed, comments on inconsistencies and problems raised by the draft text of PR 4001 itself and additional questions and concerns about the District's "rule-making" process.

Other deficiencies and questions about the draft text of PR 4001 include the following:

<u>What Is the District'scLegal Authority for PR 4001?</u>

The new Initial Study asserts that if the "backstop requirement" of PR 4001 "becomes effective," then the new Rule would require the Cities to submit an Emissions Reduction Plan "to address the emission reduction "shortfall."" Under what legal authority does the District believe that its proposed Rule 4001 may purport to compel distinct governmental bodies (the Cities and the Boards of Harbor Commissioners) to legislate or to exercise their discretion in particular ways to achieve District objectives?

The new NOP continues to dodge the questions (previously raised) about the District's legal authority – if any – to adopt PR 4001 or to compel the Ports to participate in the new backstop planning process contemplated by the rule. The NOP includes only the perfunctory

assertion that PR 4001 would "implement Control Measure IND-01" – as though that were an independent and sufficient source of authority. However, even the District's Final 2012 AQMP document acknowledges that it confers no new authority on the District, and CEQA similarly cautions that it confers no new or additional legal authority on agencies independent of the powers granted to the agency by other laws. (Guidelines, sec. 15040(b).)

Moreover, as noted previously, to the extent that the draft of PR 4001 is not consistent with the Control Measure IND -01 as approved by the District's Board, it is unauthorized.

The source of the District's purported legal authority for processing this PR 4001 is important for determining whether or not the District may claim to be acting within the scope of the District's "Certified Regulatory Program" – and thus outside of CEQA. The CEQA Guidelines limit that "certified regulatory program" exemption to "that portion of the regulatory program of the SCAQMD which involves the adoption, amendment, and repeal of regulations *pursuant to the Health & Safety Code*." (Guideline, sec. 15251(l).)

If the NOP/IS seeks to justify the District preparing an environmental assessment under its "certified regulatory program" rather than an EIR under CEQA, then the District should clearly demonstrate that the PR 4001 would be enacted pursuant to some specific statutory authority in the Health & Safety Code.

The District previously sought to characterize Control Measure IND-01 as an "indirect source rule." The current references to proposed Rule 4001 in the NOP/IS have omitted all mention of an "indirect source rule." However, the new Initial Study does not cite any authority the District is relying on for its processing of the proposed Rule. This should be corrected so that the public can perceive and comment on whatever "legal authority" may be invoked by the District.

Is it anticipated that the "plans" and strategies that would be required to be adopted by the legislative boards of the two Cities under the mandate of proposed Rule 4001 would be within SCAQMD's regulating authority and subject to the District's approval or disapproval? If so, why would SCAQMD not directly adopt such "backstop" strategies and plans itself? If not, is the Rule being proposed in order accomplish something indirectly that SCAQMD itself cannot do directly? (Cf., *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 [same].)

The vague disclaimer in the Initial Study to the effect that proposed Rule 4001 would not require any measure that *lacks legal authority* raises more questions than it answers. (Note also the new Initial Study, and PR 4001, no longer disclaim any intent to require the Cities to adopt measures that are not "*technically feasible*.") Whatever types of "emissions reduction plans"

may be anticipated by PR 4001 should be identified by the District in the NOP/IS so that the feasibility and legality of such approaches can be evaluated as part of the environmental assessment for the Project. (The new Initial Study omitted the examples of 'control strategies' that had been in the previous Initial Study.)

On What Basis Would PR 4001 Impose "Requirements" on the Cities

The NOP/IS states that none of the CAAP strategies would be "prescribed in PR 4001." Instead, the NOP states that if proposed Rule 4001 becomes effective, the Cities (presumably the Boards of Harbor Commissioners) -- "individually or jointly" -- would be required to identify sources that could undergo potential emission reduction to "make up for the shortfall."

Why would/should the obligation to make up for a possible shortfall in meeting emission reduction targets (which are primarily the responsibility of the District to attain) be shifted so as to fall upon two independent governmental entities? The Cities are governmental entities, and are not directly producing emissions or otherwise directly responsible for the targeted emissions or for the attainment of the emissions reduction targets.

Moreover, if there were to be a "shortfall" in attaining the targets, it could well be due to factors not caused or controlled by the Cities, and not due to any actions or derelictions on the part of the Cities or their tenants or users. Would uncontrollable/unforeseeable factors resulting in all or part of a shortfall be excluded from whatever obligation may be imposed on the Cities? Would it be required/permitted that any such "shortfall" be allocated to sources or causes bearing some actual responsibility for the lack of attainment? How would any shortfall be "allocated" between the Cities?

Would proposed Rule 4001 take into account the statutory limits on the jurisdiction and authority of the Cities (i.e, the Boards of Harbor Commissioners) to impose restrictions on most mobile sources of emissions?

The NOP/IS mentions a possible "option" that would "allow" the Cities to reduce emissions from "non-port-related sources." This vague reference requires clarification before it may be evaluated in connection with the Project. Direct and indirect effects would need to be considered that may occur beyond the geographic boundaries of the Harbor Districts. Therefore, it is premature for the District to conclude that any changes based on the working group or public scoping comments will be within the scope of the analysis in the NOP/IS.

What is meant by an "Emissions Shortfall"?

What environmental baseline and other parameters would be required by proposed Rule 4001 in order for the Cities to determine the extent of any "emissions shortfall" that may need to

be addressed in the Cities' plans in the event they were to undertake to submit plans under the Rule?

The term "shortfall" first appears in the Proposed Rule in (d)(1)(A), where it appears to call for a Plan to report on progress in "meeting the shortfall" but that seems logically inconsistent with the structure of the Proposed Rule, i.e., the District can't require the Ports to submit an emissions reduction plan unless and until the annually-reported emissions reductions "show that the percent reduction in PM2.5 from the baseline emissions is less than the reduction target of 75%" (Para (e)(1)B).) So there would not be any "shortfall" identified until that time; and therefore it would seem premature and illogical to require the Ports to submit a Plan that "reports the progress in meeting the shortfall" that was just identified.?

To the limited extent the PR 4001 describes the shortfall that might trigger the need to prepare a Plan, the provisions for annual estimating or reporting of the emissions appear imprecise and vague. Para (f) appears to contemplate that once a 'shortfall' had been determined in one year, then the District could demand a Revised Plan in following years if targets are still not met; but what happens if the shortfall is "corrected" in subsequent years and targets are again being met?

Does an Emissions Reduction Plan, once required by the District, ever go away?

<u>On What Authority Would the District Purport to "Revise the Reduction Target"?</u>

The new Initial Study reports (p. 1-8) that PR 4001 (e)(2) purports to require the District's Executive Officer to review the reduction target before July 2017, and to "develop a proposed amendment to Rule 4001..." that would "revise the reduction target as necessary to conform to the 2016 AQMP reduction target."

By what authority would these targets be "revised" in the future? Under what objective standards? What public process would the Executive Officer need to follow in order to "develop" a proposed "amendment" to PR 4001? How would such a "moving target" affect the Cities and what environmental impacts would be possible consequences of such "revisions"?

<u>Does PR 4001 Provide a Clear and Feasible Process for Cities to Develop a "Plan"?</u>

Para (f) (E) would require that "the Plan shall be approved by the Board of Harbor Commissioners" at each Port, and would require the Port to conduct at least one "public meeting" ... but is this an improper attempt by the District to control and dictate the exercise of discretion" conferred on the Board of Harbor Commissioners? The Board of Harbor Commissioners may in fact disagree that a plan is required or may exercise its own discretion, as required by law, that it cannot commit expenditures to a program desired by the District. Under what authority can the District's Executive Officer, acting alone without even District Governing

Board authority, disapprove a plan or compel a plan to be approved by the Cities' own governing authorities? What is the District's intended mystery penalty or consequence, which the proposed Project still has not revealed to the cities and the public in PR 4001? Furthermore, discretionary action by the Boards of Harbor Commissioners requires compliance with CEQA. What type of CEQA review would be triggered for the emission reduction plans if the Program Environmental Assessment being prepared by the District is only programmatic in nature and how is the timing for either a consistency review or project-specific analysis, if warranted, accounted for in PR 4001?

Would PR 4001 Create Violations of Due Process?

The draft of PR 4001 raises several questions regarding apparent violations of Due Process:

Para (f)(2)(B) -- the District's Executive Officer would be given nearly unfettered discretion to "disapprove" a Plan submitted by the Cities?

There must be some requirement at least that the Executive Officer must make "findings" of "non-compliance" with some provision of (f)(1) of the Rule, based on some objective standards.

What would be the procedure if the Cities submitted a Plan, and the District (either by its Executive Officer or its Hearing Board) "disapproved" the Plan (per Para (f)(2)(C))? The Port would apparently be required to submit a Revised Plan within 60 days of the disapproval. But what about the Harbor Commissioners holding a new "public meeting" for input on the Revised Plan? And would there be any time or procedure for the Harbor Commissioners to consider and approve a new Revised Plan and comply with CEQA within that arbitrary 60 day time frame?

At the end of Para (g)(2) is the threat again that if the District Board denies the Port's appeal from a "disapproval" of the Port's emissions reduction plan, then the "*Ports shall comply* with ... [or subparagraph (f)(2)(F)]" -- which means the Port shall be self-confessed as "in violation" of the Rule? This would appear to inflict a denial of Due Process on the Cities.

Variance: PR 4001 must provide more detail as to what is meant by Para (g) - petitioning for a "variance" ? What are the criteria? What would the process be? What would be the effect of the District granting a variance?

How Would the District Determine the "Consequences" for "Violation" of PR 4001?

By what authority would the District sit in judgment as to the sufficiency of the Cities' efforts to manage activities and uses of the Ports? What might the consequences be if a City were to be deemed to be "in violation" simply because the District may choose to "disapprove" a

Revised Plan, and by what legal authority would the District purport to sanction the Cities in the event of some perceived "violation"?

By what objective standards would the District judge the sufficiency of any plans or measures proposed by the Cities to achieve the emission reduction targets?

What is the consequence of disapproval of a City plan by the District? The rule should provide more detail at Para (f)(2)(F) (iii) -- what is meant by the obscure reference here that the Ports "shall be in violation of this Rule... "?

Does PR 4001 Provide for Judicial Review of District Actions?

Should the Rule make provision for judicial review of the actions of the District in enforcing or interpreting the Proposed Rule?

As drafted, PR 4001, at Para (h): "Severability" appears to contemplate that a "judicial order" could hold some provision of the Rule to be invalid? Otherwise the Rule is silent on Judicial Review.

Are the Cities Supposed to Regulate Off-Site "Sources"?

The Initial Study indicates (p. 1-4) that the District anticipates that the "control strategies" contemplated by this Project "may potentially include" measures for the Cities to adopt and implement policies or programs extending beyond their jurisdictions or to try to reduce emissions from sources *not entering* onto port properties. What does this mean? By what legal authority might the Cities try to regulate *off-site* sources that do not come within the jurisdiction of the respective Harbor Commissions? (Municipal police power authority may generally be exercised only within the territorial boundaries of their jurisdiction, and the Boards of Harbor Commissioners have special Tidelands limits on their authority.)

Would such (unidentified) measures be part of Rule 4001, or would proposed Rule 4001 require that the Cities formulate (unidentified) measures in the future to somehow regulate *off-site* "sources?"

How Does the District Contemplate Funding of Backstop Measures?

The draft of PR 4001 implies that "funding" would be necessary for many of the potential future emission reduction measures that may be compelled under proposed Rule 4001. Would such funding be provided by the District? What other "funding" sources are contemplated?

The conversion of the Cities' voluntary programs into PR 4001 as a district regulation and potentially state and federal law if adopted into an approved SIP, will impose constitutional

or common law "gift of public funds" restrictions on federal and state grant funding currently relied upon by the Cities for emission reduction activities under their CAAP.

To the extent the District expects the Cities to fund future programs, this demonstrates a lack of understanding of the Cities' own governmental authority and obligations. The Boards of Harbor Commissioners of the Cities are trustees for the Tidelands Trust funds they are entrusted to manage and have specific legal obligations to meet, including promotion of maritime commerce, navigation and fisheries and keeping their budgets in balance amidst a current global shipping economy with many dynamic and threatening competitive pressures to retain market share. By what authority may the Harbor Commissioners impose taxes, assessments, and charges on users of the Harbor Districts, given the restrictions of various state laws, including, among others, Proposition 26?

(d) Specific Comments and Questions re "Project Description" and Text

The following comments and questions refer to specific portions or pages of Chapter 1 of the new Initial Study:

Pp. 1-1 - 1-2 – Introduction

(i) *Erroneous Characterization of Existing Emission Reduction Requirements:* The Introduction states, in the first sentence of the third paragraph on page 1-1, that Control Measure IND-01 "...does not call for additional emission reductions beyond those realized with existing regulations and emission reductions programs implemented at the Ports to date." This is an untrue statement. The CAAP is only a planning document which specifically provides for discretionary future decisions to be made regarding implementation by each of the Cities' respective Board of Harbor Commissioners, and the resolution adopting the CAAP update states:

> The CAAP is a living document intended to establish a process to develop solutions, not a static document binding the Ports to particular future actions….The CAAP is a planning document that identifies goals and potential implementation strategies to guide further actions, and as such does not constrain the discretion of either Board of Harbor Commissioners with respect to any particular action.[2]

[2] Los Angeles Resolution No. 10-7041 adopted by the Board of Harbor Commissioners of the City of Los Angeles and Long Beach Resolution No. HD 2600 adopted by the Board of Harbor Commissioners of the City of Long Beach on November 22, 2010.

Not all individual Board actions that may be required in order to achieve the CAAP's goals and activities have been adopted; in fact, many of these goals were stretch targets with uncertainty as to whether they could be achieved. Control Measure IND-01 and Rule 4001 propose to *require* the Cities to potentially adopt future discretionary, quasi-legislative actions that create potentially-conflicting authorities between the District, as regulator, and the Cities, as independent governmental agencies regulated by the District, so as to force the Cities to exercise their discretionary police power authority in a particular way. The Constitution does not permit such usurpation of the Cities' authority.

(ii) *Misleading and Inaccurate References to "Port-Related" Sources of Emissions:* The new Initial Study and Recirculated NOP continue to describe PR 4001 in the misleading context of "port-related sources" of PM2.5 emissions, and as ensuring that emissions from "port-related sources" meet the targets included in the Final 2012 AQMP. The term "port-related sources", however, is not used in the federal Clean Air Act ("CAA") or Health &Safety Code. As described in the NOP, "port related sources" are mobile and vehicular sources ("ocean-going vessels, on-road trucks, locomotives, harbor craft, and cargo-handling equipment"). Those *actual* "sources" of emissions are distinct from the geographic area in which they operate and are generally and comprehensively regulated by other State and federal agencies, not regional air quality districts.

The District's continued references to "port-related sources" of emissions are misleading and are no more accurate or descriptive than would be similarly generic references to "coastal-related sources" or "County-related sources" or "Air District-related sources" of emissions.

(iii). *Misleading Failure of the Project to Limit the Cities' New Obligations to "Technically Feasible" Measures:* The previous Initial Study for PR 4001 at least made it clear that the District only intended to require the Cities to propose additional emission reduction methods for vessels, trucks, locomotives, etc., "to the extent cost-effective strategies are *technically feasible* and within the Ports' authority." (Similar limitations on the Cities' new obligations under the proposed 'backstop measure' are included in IND-01.) However, the new Initial Study no longer includes any limitation to "technically-feasible" measures that could be required of the Cities (p. 1-1.) This omission creates uncertainty about the District's intentions as to the scope of PR 4001, i.e. whether it might be construed to be a "technology-forcing" regulation or not.

(iv). *Inconsistent or Uncertain Emissions Reduction Targets.* The Introduction states, in the last paragraph beginning on Page 1-1, that the emission targets for "port-related sources" are those assumed in the 2012 AQMP emissions inventory. The draft text of PR 4001 now purports to define "emissions target" by reference to page IV-A-36 of Appendix IV to the Final 2012 AQMP. The Cities raised questions during the Measure IND-01 adoption process regarding the District's calculation of these targets, which are *different* from the emissions targets set under the

CAAP. Although the specific emission targets of the proposed Project do not appear at all in the NOP (which omission itself is a defect), the District has verbally advised the Cities and a working group on August 8, 2013, that the Rule will be such as to be triggered on set emission targets for 2014 and 2019. Those comments, however, left the Cities and working group participants with many questions about how the District set the emissions inventory, particularly for 2019, which was not in the CAAP. These examples are provided to illustrate that the Initial Study's description of the applicable emission reduction targets to be covered by PR 4001 are uncertain, or inconsistent.

P. 1-4 - Project Location

The new Initial Study provides no finite "project location." It again refers to the District's jurisdictional boundaries. It then states that "PR 4001 would apply to POLA and POLB, both of which are located within Los Angeles County." It is unclear if this was an attempt to state that the Project location would be Harbor Districts of the Cities. The lack of clarity regarding the Project location is further compounded by the Rule's reference to "sources not entering Port," and by a new but vague reference to the effect that the unidentified "strategies proposed by the Ports" under compulsion of PR 4001 could extend the "project location" beyond Los Angeles County.

Is it the intention that any portion of the Project may be implemented outside the geographic areas of the two Ports? It remains unclear from this description whether the Project may have impacts or foreseeably result in actions being taken outside the geographic areas of the two ports. This may have jurisdictional implications which cannot be evaluated without additional information.

Also, the Initial Study fails to disclose or analyze the possibility that if the option for the Cities to reduce emissions from sources not entering Port properties is included in proposed Rule 4001, even the vague "project location" and geographic scope of the proposed Rule in the Initial Study would not be accurate and would need to be modified in the NOP/IS.

P. 1-5 – Project Background

The new Initial Study appears to recognize that distinct "emission sources at the Ports" such as vehicles, engines, ships, trains, trucks and other cargo-moving equipment operated by distinct tenants, users, and visitors of the ports are the intended targets of the Project's emission reductions requirements. It also acknowledges that the Ports themselves adopted the San Pedro Bay Ports Clean Air Action Plan ("CAAP") in 2006, and further that emissions from these so-called "port-related sources" have been "substantially reduced since 2006" as a result of collaborative and voluntary programs and regulations developed by both Ports. (p. 1-6).

These acknowledgements raise again the question of the need or justification for the Project, or for the attempt by the District to foist the responsibilities for regulating emissions from such mobile or vehicular sources of emissions from state and federal agencies onto the Cities.

Also, on Page 1-6, the new Initial Study states that the intent of PR 4001 is to "provide a backstop to the Ports' actions" in case emission reductions "from port-related sources do not meet *or are not on track to maintain the emissions targets*..." This appears to be an unauthorized change in the Project description and is not consistent with IND-01. Also, notion that the District would be empowered by PR 4001 to enforce sanctions against the Cities if the District somehow deems that they are "not on track" to maintain targets is ambiguous, and without objective standards or legally-necessary procedural protections.

Pp. 1-11 -- Technology Overview/Implementation Strategies

The new Initial Study refers to some emission reduction strategies included in the CAAP, but the Initial Study does not explain how these may relate to proposed Rule 4001, or whether they should be considered as part of the Project.

The suggestion in the Initial Study of possible "tariff changes" or "impact fees" on the activities of users of the Harbor Districts raises other questions (e.g., legal authority, funding for studies and public review processes required before such measures could be considered or adopted, indemnification for costs of defense, etc.) requiring identification and study. Moreover, such measures may themselves be considered as "projects" subject to CEQA review and may have impacts on the activities of Harbor District users that themselves would require analysis or mitigation.

The Initial Study also includes reference to "Port funded incentives" as possible measures to reduce emissions, but also observes that there is not adequate funding for such strategies in the Cities' budgets or other grant programs. The source of funding any "Port-funded" measures contemplated by proposed Rule 4001 should be clearly identified and evaluated.

Any such contemplated implementation strategies should be included in the "Project description" and better identified in a more complete NOP/IS, so that they may be evaluated along with the rest of the Project.

Feasibility: The new Initial Study abjures any consideration of technical feasibility or other concepts of "feasibility" despite CEQA's recognition of feasibility as a critical limitation on environmental regulation. The scope of the EA should be expanded to address the legal, technological and economic feasibility of the seven bulleted items listed in this section.

2. Chapter 2 of the Initial Study – The "Environmental Checklist"

(a) General Comments on the Environmental Checklist

The Recirculated NOP/IS relies on a standard CEQA environmental checklist to identify those "impact areas" it recognizes to be potentially affected by the Project. In several respects, however, the Initial Study appears to merely assume the absence of potentially significant impacts, rather than factually demonstrating that significant impacts will not occur if the Project is adopted and implemented. This is insufficient under CEQA, and under the District's own rules. (SCAQMD Rule 110; *City of Redlands, supra*, 96 Cal.App.4th at 408-09; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296).

The new NOP includes many statements that the PEA will rely on "conservative assumptions" about the possible environmental impacts of the Proposed Rule. Reliance on any assumptions in CEQA analysis is unsound, and if assumptions are to be used, the District must explain why it would rely on "conservative" assumptions about the scope of impacts.

Furthermore, it is contrary to the District's response to comment #5-4 in the Final Program EIR, which indicates that "[t]he exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted."

We appreciate that the new Initial Study has expanded the number of environmental areas to be studied in the eventual EA from the six (6) topics identified in the previous Initial Study to thirteen areas now recognized as being subject to potentially significant impacts if the Project is approved. The new Initial Study now recognizes the following *additional areas* of potential environmental impact to be addressed in the EA: (1) Aesthetics, (2) Biological Resources, (3) Cultural Resources, (4) Land Use and Planning, (5) Noise, (6) Public Services, and (7) *broadened evaluation* of potential impacts and issues in the areas of Energy, Hazards and Hazardous Materials, Air Quality, and Transportation and Traffic.

However, the new Initial Study continues to provide only superficial and inadequate discussion of the areas of environmental impact, and thus fails to properly indicate the necessary scope for the eventual EA. Unless and until those areas are more fully addressed, the new NOP/IS still improperly limits the scope of the proposed EA, and still erroneously exclude areas requiring further assessment.

(b) Specific Comments on the Environmental Checklist

As detailed below, there are numerous areas of potential environmental impact in the checklist as to which the Initial Study either omits required evidence to support its conclusions of "no potential impact" or treats with insufficient detail.

Even as to those areas that are now identified in the new Initial Study as having potential impacts, the new Checklist still errs by limiting the scope of the potential impacts identified for further study based on unfounded assumptions as to the environmentally benign intent behind the Project. However, the law is clear that environmentally "benign" objectives for a project do not excuse non-compliance with CEQA and do not justify reliance on assumptions in lieu of evidence to demonstrate the absence of potential impacts. *See, e.g., California Farm Bureau v. California Wildlife Conservation Board* (2006) 143 Cal.App.4th 173, 196, emph. added [State environmental agency violated CEQA by exempting environmentally beneficial habitat project from review]:

"[I]t cannot be assumed that activities intended to protect or preserve the environment are immune from environmental review. [Citations.]" (*Davidon Homes, supra*, 54 Cal.App.4th 106, at p. 119; see, e.g., *Dunn-Edwards Corp. v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644 (disapproved on other grounds in *Western States Petroleum Assn. v. Superior Court, supra*, 9 Cal.4th 559, 570.) **There may be environmental costs to an environmentally beneficial project, which must be considered and assessed**.

P. 2-4 -- Preliminary Discussion of Checklist

First Paragraph: We reiterate the same comment as noted above, regarding Cities not being the "source" of emissions. It is "the operational activities by the Ports' tenants" [and other users of the area] that produce emissions (as the new Initial Study more accurately recognizes) and which should be the true District targets as the sources of emissions.

First Paragraph, Last Sentence: The Initial Study states that "some emission reductions [assumed by the District's 2012 AQMP] may be contingent upon the Ports taking and maintaining *actions which are not required by air quality regulations*." This suggests that one of the purposes for District proposal of proposed Rule 4001 may be to establish a new regulatory "authority" over the Cities (and the communities served by and dependent upon the Harbor Departments of the Cities) that is not in fact already provided by existing federal, state, or regional air quality regulations. The policy implications of such a Project may well include significant impacts on the environment, if regulatory authority over activities, facilities, and uses of the Harbor Districts is shifted or arrogated to the District. (See, e.g., *City of Redlands, supra,* 96 Cal. App. 4th 398 [proposed new County policy re exercise of County authority over annexations and sphere of influence was not supported by adequate CEQA review].)

Page 2-5: The new Initial Study makes reference to a "survey" of existing CEQA documents to try to identify projects "similar to the types of projects the Ports may choose to implement in an Emission Reduction Plan." It then suggests that "reasonably foreseeable projects" resulting from this survey will be evaluated in the EA. While we respect these goals, we submit that the new Initial Study is vague as to what may be deemed to be "reasonably

foreseeable projects" warranting analysis in the EA, and would request that more objective criteria be provided.

(1) **Aesthetic Impacts:**

The brief discussion of "potentially significant" Aesthetic impacts in the new IS does not address many of the Cities' prior comments on these impacts, and we reincorporate those comments.

(2) **Biological Resources:**

The new discussion of impacts on Biological Resources does not address the Cities' prior comments re possible impacts on migratory birds and least terns, and we reincorporate those comments.

(3) **Energy:**

The new Initial Study section VI (c) must be expanded to also consider and analyze 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 required in the event of a major disaster. Also some types of emission control measures, facilities, or technologies contemplated by the Project could increase or shift demand for different types of energy or fuel usage. Although "risk of upset" is not considered in the new Initial Study checklist. The scope of the proposed EA should be expanded to include this additional analysis.

(4) **Hazards and Hazardous Materials:**

In addition to our comments on the prior Initial Study, the new Initial Study section VIII(f) must be expanded to also consider and analyze the increase reliance on alternative fuels or electrical powered technologies that would require sufficient supply and emergency storage in the event of a major disaster. Although interference with emergency response plans was marginally addressed in this section, "risk of upset" is not considered in the new Initial Study Checklist. The scope of the proposed EA should be expanded to include this additional analysis.

(5) **Land Use & Planning Impacts:**

The new IS now identifies Land Use and Planning as an area involving potential significant impacts, to be studied in the EA. However, the new IS states that such impacts will be considered in the EA only "if the project conflicts with the land use and zoning designations established by local jurisdictions." This is insufficient.

We previously pointed out that the PR would cause conflicts with existing land use plans and policies, circulations plans, congestion management plans, etc. The prior IS itself admitted that the Project would cause potentially significant impacts or conflicts with existing land use plans (but was only going to address them in the Transportation section). This should be a definite area for evaluation in the EA, not a 'conditional' topic of study.

We also note that the new Initial Study is internally inconsistent. It makes the remarkable assertion (inexplicably placed in its discussion of impacts on Biological Resources, at p. 2-18) that "there are no provisions in the proposed project that would adversely affect land use plans, local policies, ordinances or regulations. LAND USE AND OTHER PLANNING CONSIDERATIONS ARE DETERMINED BY LOCAL GOVERNMENTS AND NO LAND USE OR PLANNING REQUIREMENTS WOULD BE ALTERED BY THE PROPOSED PROJECT." We strongly disagree, as pointed out in our prior comments, which are incorporated.

The measures contemplated in the Initial Study include the adoption of new "regulatory requirements," new "impact fees" on the movement of cargo or sources, and changing the tariffs for use of the Harbor Districts – all of which would cause at least potential "conflicts" with applicable plans and policies. (Cf., *Orinda Ass'n v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1169 [the CEQA requirements for initial study examination of non-conformity with existing land use plans are intended to allow lead agency to modify the Project to avoid inconsistencies with existing plans – not vice versa].)

The Initial Study itself acknowledges that the Project is anticipated to cause "potentially significant impacts" or conflicts with "an applicable plan ... for the performance of the circulation system" and conflicts with "an applicable congestion management plan." (Initial Study, p. 2-44.) Although the Initial Study proposes to address those admitted conflicts in the "transportation" section of the EA, these acknowledged conflicts confirm the necessity for including "land use and planning" impacts in the proposed EA as well.

Also, the proposed Project would seemingly create conflicts with the Cities' 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 are detailed in the previous port letters included in Attachment A to this letter. In addition, the proposed Project would create inconsistencies with the Clean Air Action Plan.

The proposed Rule is apparently structured in a way that would impermissibly usurp the (non-delegable) police power authority of the Cities and their respective Boards of Harbor Commissioners to plan, implement, and regulate land use policies and actions in their respective jurisdictions. (This comment has also been raised above, in Project Description comments.)

The numerous inconsistencies between the Project as proposed and the existing plans and policies require identification in the Initial Study and inclusion in the proposed EA. (Guidelines § 15125(d).) The scope of the proposed EA should be expanded to include environmental analysis of all of these potential impacts on land use and planning.

The EA should also include analysis of the impacts of the proposed/anticipated Project-related subsequent amendments to the Cities' plans, policies, and other land use regulations. (See, e.g., *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1197 [CEQA review failed to consider incidental results from adoption of revised policy; incidental impacts could not be disregarded in an initial study based upon "net" environmental impact of the change in policy being benign since CEQA requires each environmental impact of project be discretely evaluated].) "Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project." (Guidelines, § 15064, subd. (e); see §§ 21080, subd. (e)(2), 21082.2, subd. (c).)

The scope of the EIR should be expanded to include analysis of possible physical changes in port facilities and operations that might be caused by economic or social effects of the Project itself or by the anticipated amendments to land use and zoning policies by the Cities subsequent implementation of the Project.

(6) **Transportation and Traffic Impacts**

The new Initial Study fails to adequately describe and analyze potential impacts to rail and marine vessel traffic and ignores the significance criteria identified as "[w]ater borne, rail car or air traffic is substantially altered" on page 2-45. The new Initial Study erroneously considers vehicular traffic impacts to local roadways.

Socioeconomics Analysis

The proposed EA needs to include a broad-based analysis of the socioeconomic effects of Proposed Rule 4001, including the potential for job loss, business closures, and diversion of cargo to other ports due to the potential loss of regional competitiveness. The socioeconomic analysis needs to consider both the existence of the rule, even if not triggered, and the future enforcement of the rule. Because these conditions have the potential to physically change the environment in and around the ports, these impacts should be identified and assessed in the EA. (See CEQA Guidelines §§ 15064€ and 15131; *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3rd433,445 [EIR must consider possibility of economic blight from rezoning].) Moreover, this assessment should not be limited to businesses and operations within the ports, but should extend to those facilities, business and operations that while located outside of the Harbor Districts are dependent upon the flow of cargo for their continued operations.

This CEQA analysis of the socioeconomics effects of PR 4001 in the proposed PEA would be separate from, and in addition to, the assessment of socioeconomic impacts of the proposed Rule that the District is required to prepare in compliance with Health & Safety Code § 40728.5 and § 40440.8.

D. Conclusion:

The current version of the Recirculated NOP/IS still fails to comply with CEQA or with the District's own Rules for environmental review, and fails to properly provide an adequate "scope" for the eventual Environmental Assessment to be prepared for analysis of the Proposed Rule 4001. The Initial Study must therefore be revised, corrected, and re-circulated with all of the descriptions and other content required by CEQA.

While it is clear that an EA is called for in connection with this proposed Project, it is equally clear that the EA should be more complete than what is envisioned by the current NOP/IS. More fundamentally, its scope must be determined by a legally-adequate revised NOP/IS. The EA for the Project must, of course, be supported by credible and substantial evidence, including independent professional analysis.

Even this inadequate NOP/IS makes it clear that **the scope of the proposed EA has been unduly narrowed and fails to identify any potentially feasible alternatives to the Project.** Consequently any ensuing environmental review will be limited in a way that erroneously fails to provide the relevant decision-makers, affected public agencies, residents and the public generally with sufficient evidence and analysis of all potential impacts from the Project as a whole, or of all potentially feasible mitigation measures or appropriate Project alternatives as required by CEQA.

We respectfully request that these comments and questions be considered before the District embarks on preparation of the EA and all of the other required independent studies in connection with the CEQA review of the proposed Project. We therefore look forward to working with the District, and any study teams or working groups tasked with evaluation of the proposed Rule 4001.

The NOP requests that we provide you with a contact person for each responding agency. For the **COLB,** the contact persons are as follows:

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We appreciate your consideration. Thank you.

Sincerely,

Matthew Arms
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachments:

- August 21, 2013 Letter; Port of Long Beach and Port of Los Angeles to SCAQMD; *Comments on Notice of Preparation, Initial Study, and Scope of Proposed Environmental Assessment*

- October 2, 2013 Letter; Port of Long Beach and Port of Los Angeles to SCAQMD, *Initial Comments for Public Consultation on Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets are Met at Commercial Marine Ports"*

cc: Al Moro, Acting Executive Director, Port of Long Beach
Gary Lee Moore, Interim Executive Director, Port of Los Angeles
Dominic Holzhaus, Principal Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles, Harbor Division
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Doug Ito, Chief, Freight Transportation Branch, CARB
Jared Blumenfeld, Administrator, U.S. EPA, Region 9
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August 21, 2013

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Ms. Barbara Radlein
c/o CEQA
SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT
21865 Copley Drive
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Re: Notice of Preparation and Initial Study
Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports"

SCAQMD File No. 0722013BAR
SCH No. 2013071072

Comments on Notice of Preparation, Initial Study, and Scope of Proposed Environmental Assessment

Dear Ms. Radlein and Staff of the South Coast Air Quality Management District:

We appreciate this opportunity to submit comments on the Notice of Preparation ("NOP") and the accompanying Initial Study prepared in connection with the District's consideration of the proposed project entitled "Rule 4001: Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports" (the "Project") on behalf of the City of Long Beach acting by and through its Harbor Department (referred to herein as "COLB") and the City of Los Angeles acting by and through its Harbor Department ("COLA", collectively with COLB, the "Cities").

As environmental leaders nationwide, the Cities have achieved tremendous success in obtaining substantial emissions reductions from their joint San Pedro Bay Ports Clean Air Action Plan ("CAAP") and other air quality measures implemented under the Cities' initiatives. The Cities continue to be supportive of projects and programs that are intended to contribute to improvement of air quality and promote other environmental values. However, the Cities must fundamentally disagree with the District's current proposal to unnecessarily convert an effective voluntary plan, built on multi-agency and industry cooperation, into potentially punitive regulations imposed unlawfully on the Cities. The Cities have previously sought to make the District aware of the serious concerns and objections to this approach. The Cities incorporate by reference their previous comments on the 2012 Air Quality Management Plan ("AQMP")

Measure IND-01 Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities ("Measure IND-01") as comments on the proposed Project. The Cities' comments on Measure IND-01 are Attachment "A" to this letter.

We are also mindful that the California Environmental Quality Act ("CEQA") calls for public review, critical evaluation, and comment on the scope of the environmental review to be conducted prior to approval of proposed projects. Such review and critique 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. Thorough identification of the proposed Project, and candid disclosure of all phases of the Project and their potential impacts, is essential to assure 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, mitigation measures, and alternatives. In addition, it will be important to consider the impacts of the proposed Project on the San Pedro Bay Ports' communities, missions, 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 NOP for this "Project" as well as questions, concerns and objections related to the omissions of critical information, unsupported assumptions, or analytical deficiencies in the Initial Study, and comments as to the scope of the proposed environmental assessment ("EA") as contemplated and invited by the District's NOP.

A. General Comments on the Initial Study

While we recognize the effort that has gone into preparation of the current Initial Study, it is apparent that the Initial Study does not provide the information, evidence, or analysis required under CEQA. The Initial Study thus fails to fulfill its critical role as mandated by CEQA in educating the public generally, other affected regulatory agencies and governments, such as the Cities, 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 initial study are described in the CEQA Guidelines (14 C.C.R. §15063, subd. (d)). An initial study must "contain in brief form:

(1) A description of the Project including the location of the Project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries . . . ;

(4) A discussion of ways to mitigate the significant effects identified, if any;

(5) An examination of whether the Project would be consistent with existing zoning, plans, and other applicable land use controls;

(6) The name of the person or persons who prepared or participated in the initial study."

An initial study that fails to provide all of the information, analysis, and evidence called for by CEQA may be deemed to be inadequate and not a valid basis for CEQA review or project approval. (See, e.g., *City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, at pp. 407–408, [invalidating the County's proposed general plan amendments because of a deficient initial study: "[T]he initial threshold study is inadequate because it fails to provide sufficient evidence or analysis of the potential environmental effects of the amendments."].)

It is therefore respectfully urged that the Initial Study (and the related NOP) be revised, corrected, and recirculated for public review and comment before the District proceeds with any further action or EA in connection with the proposed Project.

The CEQA Guidelines contemplate that an initial study is to be used in defining the scope of environmental review (Guidelines, Sections 15006(d), 15063(a), 15143). However, as a result of the omissions, open questions, and deficiencies in the Initial Study as noted below, it appears to have unduly narrowed the District's proposed scope of environmental assessment, and to have caused the NOP to erroneously exclude critical issues and topics from the proposed scope of the EA.

The comments on the current Initial Study included in this letter are organized in the same format used by the Initial Study, i.e., comments on "Chapter 1 – Project Description" followed by comments on "Chapter 2 – Environmental Checklist." The comments are limited to those matters that appear in the current version of the Initial Study, and we reserve the right to provide further comments in the event that additional or different information about the proposed Project becomes available, or the District provides a revised and CEQA-compliant Initial Study.

B. Request for Revision of NOP and Re-Circulation of Revised NOP/IS To Include a Legally-Adequate "Project" Description and Text of Proposed Rule 4001

It is essential that the NOP and the Initial Study be revised to include an adequate "project description" including the text of the proposed Rule that is the "project" before the public, or the Cities, can be expected to provide comments and input.

In their prior comment letter on the Draft 2012 AQMP Program EIR dated October 22, 2012, the Cities expressed the very same concern over the vague and deficient "project description" of backstop Measure IND-01. In the District's response to comment #5-4 in the

Final Program EIR, the District stated: "*The exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted*." The District also committed, in its response to the same comment #5-4 in the AQMP Final Program EIR, that "*further details regarding the future requirements* [a Rule implementing Control Measure IND-01] *will be determined more appropriately during the rule development process.*"

The District has already commenced the rule development process. However, it has not yet provided even a draft of the proposed Rule 4001. To the contrary, at a public meeting held on August 8, 2013, the District's staff announced that the Rule will be developed after various public meetings with a "Rule 4001 working group," with a goal of releasing a draft of the Rule on August 28, 2013. Such a deferred release date for the "draft" of the proposed Rule would be one week after the deadline for comments on this NOP. The details and text of the promised Rule must be developed and disclosed before the "particular methods" and "exact impacts" anticipated may be analyzed or the subject of comment. Accordingly, it is still not possible for the District to proceed with appropriate project-level CEQA review or to issue an accurate NOP/IS at this stage if the details of proposed Rule 4001 are under development.

It is necessary that the current NOP and Initial Study be revised to include a revised "Project" Description, to incorporate the text of the draft Rule 4001 in detail, and to recirculate the revised documents for public review. A new set of public meetings, including a new "scoping meeting" should be scheduled to provide the public with sufficient time and opportunity to comment on the scope and adequacy of the revised NOP/IS.

C. Comments on the Initial Study

1. Chapter 1 of the Initial Study -- Inadequate "Project" Description

(a) Deficient "Project" Description – In General

The failure of the Initial Study and NOP to provide an accurate, complete, and coherent description of the "Project" is a fundamental deficiency, which permeates the entire document. The absence of such a clear description of the proposed Project inherently prevents the Initial Study from facilitating meaningful review and analysis of the proposed Rule 4001, and violates the requirements of CEQA. (See, e.g., CEQA Guidelines, Section 15124; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376.)

The Initial Study does not include or even describe the text of the proposed Rule that is supposed to be the "Project." The section of the Initial Study that purports to "describe" the Project, "PR 4001," includes nothing more than summaries of "key concepts provided in the 2012 AQMP Control Measure IND- 01." Those summaries and "concepts" are insufficient to describe the Project itself, and prevent effective public review and comment. Moreover, since

the 2012 AQMP Control Measure IND- 01 has already been adopted, it is perplexing that the District would use that measure as a substitute for the Project description.

The Initial Study does not provide a description of how the proposed Rule would work. It fails to describe reasonably foreseeable activities or actions of other agencies in response to or associated with the proposed Rule. This Initial Study suggests, instead, that the intent of proposed Rule 4001 would be to delegate the District's responsibilities for regulating or reducing emissions of NOx, SOx, and PM2.5 air emissions to other agencies, specifically the public officials governing the ports of Long Beach and Los Angeles, 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 Rule 4001 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 evaluation project alternatives, etc.).

The importance of providing an accurate and informative project description in an Initial Study was re-emphasized in *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 267, emph. added:

> "**The initial study must include a description of the project.**" (*City of Redlands, supra,* 96 Cal.App.4th at pp. 405–406, fns. omitted.) "Where an agency fails to provide an accurate project description, or fails to gather information and undertake an adequate environmental analysis in its initial study, a negative declaration is inappropriate. [Citation.] An accurate and complete project description is necessary to fully evaluate the project's potential environmental effects. [Citations.]" (*El Dorado County, supra*, 122 Cal.App.4th at p. 1597.)
>
> "**The scope of the environmental review conducted for the initial study must include the entire project**." (*Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1222.) Thus, a correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA. (*Tuolumne County Citizens, supra*, at p. 1222.)

The Initial Study currently falls far short of these requirements in describing the proposed Project, and thus falls equally short of serving the "public awareness" purposes described above and mandated by CEQA:

> An accurate and complete project description is necessary for an intelligent evaluation of the potential 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, citing *Aberdeen & Rockfish RR. v. SCRAP* (1975) 422 U.S. 289, 322 [an accurate, complete and consistent project description is the sine qua non of informative, legally adequate CEQA review].) (*City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, 407–408.)

The Initial Study (p. 1-5) indicates that "the approaches and concepts considered in this NOP/IS may be subject to change" based on comments from the working group. In light of the District's initiative in forming a "working group" of interested participants to help formulate the proposed Rule, and thereby provide an actual "project description," it would be more appropriate to undertake CEQA analysis and compliance after the actual Rule is developed. Furthermore, it is premature for the District to assume or conclude that any changes received from the working group as well as comments received relative to this NOP/IS will all be within the scope of the analysis in the NOP/IS.

In brief, the NOP/IS erroneously limits the scope of the analysis and inherently calls for impermissible speculation or impossible prescience on the part of the Cities or other members of the concerned public to undertake effective analysis of the proposed Project, or to provide meaningful comments as to the scope of review of the Project, until and unless the District provides an adequate description of the "Project."

(b) Specific Comments and Questions re "Project Description" and Text

The following comments and questions refer to specific portions or pages of Chapter 1 of the Initial Study:

Pp. 1-1 - 1-2 – Introduction

The Introduction states, in the first sentence of the third paragraph on page 1-1, that Control Measure IND-01 "...does not call for additional emission reductions beyond those realized with existing regulations and emission reductions programs implemented at the Ports to date." This is an untrue statement. The CAAP is only a planning document which specifically provides for discretionary future decisions to be made regarding implementation by each of the Cities' respective Board of Harbor Commissioners, and resolution adopting the CAAP update states: "The CAAP is a living document intended to establish a process to develop solutions, not a static document binding the Ports to particular future actions….The CAAP is a planning document that identifies goals and potential implementation strategies to guide further actions, and as such does not constrain the discretion of either Board of Harbor Commissioners with

respect to any particular action."[1] Not all individual Board actions that may be required in order to achieve the CAAP's goals and activities have been adopted, many of which goals were stretch targets with uncertainty as to whether they could be achieved. Measure IND-01 and Rule 4001 propose to require the Cities to potentially adopt future actions that create potentially-conflicting authorities between the District, as regulator, and the Cities, as independent governmental agencies regulated by the District, so as to force the Cities to exercise their discretionary police power authority in a particular way. The Constitution does not permit such usurpation of the Cities' authority.

The Introduction states, in the last paragraph beginning on Page 1-1, that the emission targets for port-related sources are those assumed in the 2012 AQMP emissions inventory. The Cities raised questions during the Measure IND-01 adoption process regarding the District's calculation of these targets, which are different from the emissions targets set under the CAAP. Although the specific emission targets of the proposed Project do not appear at all in the NOP (which omission itself is a defect), the District has verbally advised the Cities and a working group on August 8, 2013, that the Rule will be such as to be triggered on set emission targets for 2014 and 2019. Those comments, however, left the Cities and working group participants with many questions about how the District set the emissions inventory, particularly for 2019, which was not in the CAAP. These examples are provided to illustrate that the NOP's description of the proposed Rule is not only flawed but missing altogether.

P. 1-3 - Project Location

The Initial Study provides no finite "project location." It describes the District's jurisdictional boundaries. It then states that "PR 4001 would apply to POLA and POLB, both of which are located within Los Angeles County." It is unclear if this was an attempt to state that the Project location would be Harbor Districts of the Cities. The lack of clarity regarding the Project location is further compounded by the Rule's reference to "sources not entering Port properties." During the August 14th Scoping Meeting, Mr. Hogo attempted to clarify this reference by referencing an undefined area outside of but near the two Harbor Districts. Unfortunately, Mr. Hogo's statement did not clarify the proposed Project's location.

Is it the intention that any portion of the Project may be implemented outside the geographic areas of the Harbor Districts of the Cities? It is unclear from this description whether the Project may have impacts or foreseeably result in actions being taken outside these Harbor Districts. This may have jurisdictional implications which cannot be evaluated without additional information.

[1] Los Angeles Resolution No. 10-7041 adopted by the Board of Harbor Commissioners of the City of Los Angeles and Long Beach Resolution No. HD 2600 adopted by the Board of Harbor Commissioners of the City of Long Beach on November 22, 2010.

Also, the Initial Study fails to disclose or analyze the possibility that if the option for the Cities to reduce emissions from sources not entering Port properties is included in proposed Rule 4001, even the vague "project location" and geographic scope of the proposed Rule in the Initial Study would not be accurate and would need to be modified in the NOP/IS.

P. 1-4 – Project Background

The Initial Study's description of the "Project Background" implies that the two Cities' ports themselves actually conduct cargo operations. For example, the text states that the COLA "serves approximately 80 shipping companies." This illustrates a fundamental lack of understanding by the District of how ports work. There are two types of business models of ports: some are "operating ports," that conduct cargo operations directly, such as the Port of Charleston, South Carolina and some are "landlord ports," such as the Ports of Los Angeles and Long Beach, that merely lease wharves and land to operators who conduct cargo operations.

The Ports of Los Angeles and Long Beach are not, "the single largest fixed source of air pollution in Southern California." The EA should clarify that the referenced sources of air emissions are the vehicles, engines, ships, trains, trucks and other cargo-moving equipment operated by distinct tenants, users, and visitors of the ports, not the Harbor Districts or the Cities.

P. 1-5 – Legal Authority for PR 4001

The Initial Study suggests that if the (unspecified) "backstop measure" that would be mandated under PR 4001 "becomes effective," then the new Rule would require the Cities to take (unspecified) action "to develop and implement plans to get back on track" regarding attainment of emissions targets. Under what legal authority does the District believe that its proposed Rule 4001 may purport to compel distinct governmental bodies (the Cities and the Boards of Harbor Commissioners) to legislate or to exercise their discretion in particular ways to achieve District objectives?

Measure IND-01 was prominently referred to as an "indirect source rule." The current general references to proposed Rule 4001 in the NOP/IS have lost all mention of an "indirect source rule." However, the references to proposed Rule 4001 do not cite to any authority the District is relying on for its processing of the proposed Rule. This should be corrected so that the public can comment on whatever legal authority may be invoked by the District.

Is it anticipated that the "plans" and strategies that would be required to be adopted by the legislative boards of the two Cities under the mandate of proposed Rule 4001 would be within SCAQMD's regulating authority and subject to the District's approval or disapproval? If so, why would SCAQMD not directly adopt such "backstop" strategies and plans itself? If not, is the Rule being proposed in order accomplish something indirectly that SCAQMD itself cannot do directly? (Cf., *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 [same].)

P. 1-5 – Call for Cities to Regulate Off-Site "Sources"

The Initial Study indicates that the District will be inviting and considering proposals, as part of this "Project," regarding potential measures for the Cities to adopt and implement to try to reduce emission from sources *not entering* onto port properties. What does this mean? What legal authority might the Cities have to try to regulate *off-site* sources that do not come within the jurisdiction of the respective Harbor Commissions? (Municipal police power authority may generally be exercised only within the territorial boundaries of their jurisdiction, and the Boards of Harbor Commissioners have special Tidelands limits on their authority.)

Would such (unidentified) measures be part of Rule 4001, or would proposed Rule 4001 require that the Cities formulate (unidentified) measures in the future to somehow regulate *off-site* "sources?"

Until such options are identified, shown to be legally authorized and technically feasible, how can the CEQA analysis for proposed Rule 4001 be undertaken?

P. 1-6 – First Bullet – Imposing "Requirements" on the Cities?

The Initial Study indicates that if proposed Rule 4001 becomes effective the Cities "would be required to submit an emissions reduction plan to address the emissions reduction shortfall."

As noted above, this raises questions as to the intent and legal authority behind the Rule. Has the District identified legal authority for a rule that would require other governmental agencies (the Boards of Harbor Commissioners for the respective Cities) to exercise their legislative discretion/authority in any particular manner? Does the District intend to reserve to itself some authority to approve or disapprove any such plans submitted by the Cities?

What is the consequence of disapproval by the District?

What environmental baseline and other parameters would be required by proposed Rule 4001 in order for the Cities to determine the extent of any "emissions shortfall" that may need to be addressed in the Cities' plans in the event they were to undertake to submit plans under the Rule?

P. 1-6 – Second Bullet -- Funding

This bullet point implies that "funding" would be necessary for many of the potential future emission reduction measures that may be compelled under proposed Rule 4001. Would such funding be provided by the District? What other "funding" sources are contemplated? Will

there be constitutional or common law "gift of public funds" restrictions on funding imposed on the Cities for activities under their CAAP if Rule 4001 makes CAAP compliance a potential state or even federal regulation?

Are the Cities expected to fund these programs from Tidelands Funds? By what authority may the Harbor Commissioners impose taxes, assessments, and charges on users of the Harbor Districts, given the restrictions of various state laws, including, among others, Proposition 26?

The vague disclaimer in the Initial Study to the effect that proposed Rule 4001 would not require any measure that lacks legal authority or feasibility raises more questions than it answers. Whatever types of "emissions reduction plans" may be anticipated by proposed Rule 4001 should identified by the District in the NOP/IS so that the feasibility and legality of such approaches can be evaluated as part of the environmental assessment for the Project.

Pp. 1-6 – 1-7 -- Technology Overview/Implementation Strategies

This refers to some emission reduction strategies included in the CAAP, but the Initial Study does not explain how these may relate to proposed Rule 4001, or whether they should be considered as part of the Project.

The suggestion in the Initial Study of possible "tariff change" or "impact fees" on the activities of users of the Harbor Districts raises other questions (e.g., legal authority, funding for studies and public review processes required before such measures could be considered or adopted, indemnification for costs of defense, etc.) requiring identification and study. Moreover, such measures may themselves be considered as "projects" subject to CEQA review and may have impacts on the activities of Harbor District users that themselves would require analysis or mitigation.

The Initial Study also includes reference to "Port funded incentives" as possible measures to reduce emissions, but also observes that there is not adequate funding for such strategies in the Cities' budgets or other grant program. The source of funding any "Port-funded" measures contemplated by proposed Rule 4001 should be clearly identified and evaluated.

Any such contemplated implementation strategies should be included in the "Project description" and better identified in a more complete NOP/IS, so that they may be evaluated along with the rest of the Project.

Pp. 1-10 – 1-11 -- Imposition of "Requirements" on the Cities

The NOP/IS states that none of the CAAP strategies would be "prescribed in PR 4001." Instead, the NOP states that if proposed Rule 4001 becomes effective, the Cities (presumably the Boards of Harbor Commissioners) -- "individually or jointly" -- would be required to identify sources that could undergo potential emission reduction to "make up for the shortfall."

Why would/should the obligation to make up for a possible shortfall in meeting emission reduction targets (which are primarily the responsibility of the District to attain) be shifted so as to fall upon two independent governmental entities? The Cities are governmental entities, and are not directly producing emissions or otherwise directly responsible for the targeted emissions or for the attainment of the emissions reduction targets. Moreover, if there were to be a "shortfall" in attaining the targets, it could well be due to factors not caused or controlled by the Cities, and not due to any actions or derelictions on the part of the Cities or their tenants or users.

Other issues: How would a "shortfall" be measured or determined? Would any such "shortfall" be allocated to sources or causes bearing some actual responsibility for the lack of attainment? How would it be "allocated" between the Cities? Would uncontrollable/unforeseeable factors resulting in all or part of a shortfall be excluded from whatever obligation may be imposed on the Cities?

Would proposed Rule 4001 take into account the statutory limits on the jurisdiction and authority of the Cities (i.e, the Boards of Harbor Commissioners) to impose restrictions on most mobile sources of emissions?

Footnote 6 (on page 1-11)

The NOP/IS mentions a possible "option" that would "allow" the Cities to reduce emissions from "non-port-related sources." This vague reference requires clarification before it may be evaluated in connection with the Project. Direct and indirect effects would need to be considered that may occur beyond the geographic boundaries of the Harbor Districts. Therefore, it is premature for the District to conclude that any changes based on the working group or public scoping comments will be within the scope of the analysis in the NOP/IS.

P. 1-11 -- Technologies

The EA should be expanded to address the legal, technological and economic feasibility of the seven bulleted items listed in this section.

P. 1-12 -- Alternatives

No alternatives have been identified for study in the NOP/IS. Instead, it merely commits the District to "discuss and compare alternatives" in the future, as part of the Draft EA.

It also suggests the District is looking to the public or other agencies to identify "alternatives" during the scoping process. As previously explained however, how can alternatives realistically be suggested when the Project itself has not been identified or described?

The No Project Alternative is not defined in the NOP/IS. In accordance with CEQA Guidelines Section 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. Therefore, the Draft EA should consider the impacts that would occur under the existing 2012 AQMP without Control Measure IND-01 or proposed Rule 4001. In particular, an analysis should be conducted of the grant funding that would be available under the No Project Alternative that would not be available if the proposed Project constitutes regulation, and the environmental impact if grant funding necessary to make certain actions economically feasible is no longer available under the proposed Project. If the District's position is that there is no loss of grant funding in order to comply with Rule 4001 as a regulation that the District purports to make enforceable under the State Implementation Plan and the Clean Air Act, the District must explain in the Rule its basis for this conclusion in the context of why grants made for compliance with a regulation is not a gift of public funds.

In light of the technical complexities of the issues and the ambiguities as to what the District is actually seeking to accomplish by way of proposed Rule 4001, it seems unreasonable to expect others to develop the project alternatives. One suggested alternative would be for the District to formulate its own "backstop" measures and strategies for addressing any shortfall in emission reduction targets, relying on the District legal authority, expertise and resources, rather than pursuing proposed Rule 4001, which appears to be an attempt to rely upon presumed authority of the Cities. Another suggested alternative would be, the memorandum of understanding approach that was suggested by the Cities and proposed by staff as an alternative to Measure IND-01.

(c) Other Comments on Chapter 1 - "Project Description"

Incomplete Description of Environmental Setting

The Initial Study also fails to provide an adequate description of "the environmental setting" of the proposed Project.

While the CEQA Guidelines do not specially define "environmental setting" with regard to an initial study, they do explain, in regard to EIR preparation, that the "environmental setting" must be informative: "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." (Guidelines, § 15125, subd. (a).) A description of the environmental setting must be sufficient to allow "an understanding of the significant effects of the proposed projects and its alternatives" but "no longer." (Guidelines, § 15125, subd. (a).) That description should place "[s]pecial emphasis" "on environmental resources that are rare or unique to that region and would be affected by the project" and "must permit the significant effects of the project to be considered in the full environmental context." (Guidelines, § 15125, subd. (c).)

Failure to Examine All Phases of the Entire Project as Proposed

"The Initial Study must include a description of the project, and 'the scope of the environmental review conducted for the initial study must include the *entire* project." (*Nelson v. County of Kern, supra*, 190 Cal.App.4th at 270, emph. in original.)

The Initial Study here improperly fails to describe "the entire Project" and fails to consider all phases of the proposed Project. The CEQA Guidelines (14 C.C.R §15063(a)(1)) make clear that an initial study must take a comprehensive view of the proposed project *as a whole*. "All phases of project planning, implementation, and operation must be considered in the initial study of the project."

The NOP/IS indicates that proposed Rule 4001 is intended to require actions by the Cities, to adopt and implement plans and strategies to address any "shortfall" in emissions reductions. The Initial Study improperly fails to address or to provide information and analysis relating to the environmental impacts of the anticipated "subsequent approvals," "discretionary permits" and amendments to the Cities' plans and regulations that appear to be proposed as parts of the Project, or the physical environmental effects of social or economic impacts that may result from those anticipated and apparently necessary changes in land use regulations." (Guidelines § 15063.) Such anticipated and intended actions by other governmental agencies thus appear to be part of this Project, and must be identified and evaluated in the Project EA, along with their potential impacts. As such, we reiterate our prior comment on the Draft 2012 AQMP Program EIR dated October 22, 2012 where it is stated that the District has failed to fully disclose the details of Measure IND-01 and as a result is segmenting or piecemealing its CEQA analysis.

Failure to Describe Existing Land Use Regulations

The Initial Study does not include an examination of whether the Project would be consistent with existing zoning, plans and other applicable land use controls, as required by CEQA Guideline Section 15063. Although the Initial Study includes some background discussion of the CAAP, it provides little or no description of the existing planning and zoning designations applicable to the "Project" location, and relies on (unsupported) assertions that the Project would be in furtherance of the CAAP. It provides no information or analysis of other existing plans or policies applicable in the Harbor Districts, which may be affected or impacted by the Project.

Uncertain and Inadequate Identification of "Baseline" Used for Review

It is critical under CEQA that any level of environmental review make it clear as to the "baseline" being used as the basis for analysis of the significance of potential Project impacts. (CEQA Guidelines Section 15125(a).) Normally, the "baseline" will be the existing environmental conditions in the vicinity of the Project. (Guideline Section 15125(a); see also,

Communities for a Better Environment v. South Coast Air Quality Management District (2010) 48 Cal.4th 310, 315 [the baseline for an agency's primary environmental analysis under CEQA must ordinarily be the *actually* existing physical conditions rather than *hypothetical* conditions that could have existed under applicable permits or regulations].) The Supreme Court has explained that the requirement for identification and use of the appropriate "baseline" applies in the context of an Initial Study as well as in an EIR. (*Communities for a Better Environment, supra*, 48 Cal.4th at 512, and n. 5.)

The Initial Study here, however, fails to make it clear as to what "baseline" is being used. In many places the Initial Study compares the anticipated "impacts" of adopting proposed Rule 4001 to the permitted emissions levels anticipated (in the future) under the 2012 AQMP, or alternatively to the (future) emission reduction targets of the CAAP -- rather than to the existing environmental conditions. While the recent Supreme Court decision in *Neighbors for Smart Rail v. Exposition Metroline Constr. Authority* (8/5/2013, No. S202828) ___ Cal.4th ___, indicates that the baseline need not always be the existing physical conditions, and that "projected future conditions" may be used in rare situations as a baseline "if their use in place of measure existing conditions ... is justified by unusual aspects of the project or the surrounding conditions" (Slip Opinion, p. 11), it does not detract from the rule that the Initial Study must accurately and consistently describe the baseline being used. Nor does it permit the use of "future conditions" in the absence of a showing of unusual circumstances. The Initial Study in this case does neither.

For each of these fundamental reasons, the NOP/IS should be rescinded in order that it may be revised, completed and corrected to meet CEQA requirements.

2. Chapter 2 of the Initial Study – The "Environmental Checklist"

(a) General Comments and Questions on the Environmental Checklist

The NOP/IS apparently relied on a standard CEQA environmental checklist to identify those "impact areas" it recognizes to be potentially affected by the Project. In several respects, however, the Initial Study appears to merely assume 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, supra*, 96 Cal.App.4th at 408-09; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296). Furthermore, it is contrary to the District's response to comment #5-4 in the Final Program EIR, which indicates that "[t]he exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted."

The NOP/IS currently indicates that the scope of the proposed EA for this "Project" will be limited to the six topics listed at p. 2-2. Compliance with CEQA, however, would require not only a new and corrected Initial Study, providing an adequate "Project description" but also a more comprehensive EA that addressed additional areas of potentially significant impact, including (without limitation): (1) Aesthetics, (2) Biological Resources, (3) Cultural Resources, (4) Land Use and Planning, (5) Noise, (6) Public Services, and (7) *broadened evaluation* of potential impacts and issues in the areas of Energy, Hazards and Hazardous Materials, Air Quality, and Transportation and Traffic.

Unless and until those areas are more fully addressed, the NOP/IS appears to improperly limit the scope of the proposed EA, and to erroneously exclude areas requiring further assessment.

(b) Specific Comments and Questions on the Environmental Checklist

As detailed below, there are numerous areas of potential environmental impact in the checklist as to which the Initial Study either omits required evidence to support its conclusions of "no potential impact" or treats with insufficient detail.

More specific questions and comments follow:

P. 2-4 -- Preliminary Discussion of Checklist

First Paragraph: We reiterate the same comment as noted on page 1-4 regarding Cities being the source of emissions. The geographic location itself does not produce emissions. It is the users of the area that produce impacts. The users of the two ports are the owners and operators of the ships, trains, trucks and equipment which the District targets as the sources of emissions.

First Paragraph, Last Sentence: The Initial Study states that "some emission reductions [assumed by the District's 2012 AQMP] may be contingent upon the Ports taking and maintaining *actions which are not required by air quality regulations*." This suggests that one of the purposes for District proposal of proposed Rule 4001 may be to establish a new regulatory "authority" over the Cities (and the communities served by and dependent upon the Harbor Departments of the Cities) that is not in fact already provided by existing federal, state, or regional air quality regulations. The policy implications of such a Project may well include significant impacts on the environment, if regulatory authority over activities, facilities, and uses of the Harbor Districts is shifted or arrogated to the District. (See, e.g., *City of Redlands, supra,* 96 Cal. App. 4th 398 [proposed new County policy re exercise of County authority over annexations and sphere of influence was not supported by adequate CEQA review].)

Second Paragraph, Last Sentence: Same comment as page 1-5.

Third Paragraph. The NOP/IS states that the checklist responses focus on "the above mentioned actions." This is extremely vague. Is the reference intended to be the items referenced in the paragraph immediately above, or in the earlier pages?

Identification of precisely what measures are being assumed or proposed in proposed Rule 4001 is essential to being able to review the Initial Study.

Aesthetics -- P. 2-5

Discussion of I a), b) and c). The Initial Study suggests that "because PR 4001 would implement IND-01" the District may simply assume that this Project would not be expected to generate significant adverse aesthetics impacts. However, given that the measures that would be used to implement IND-01 are not identified, the Initial Study does not provide evidence to demonstrate that proposed Rule 4001 has no potential for impact. To the contrary, the Initial Study admits that "PR 4001 will primarily affect operations at two ports" and but then simply assumes from the industrial and commercial zoning of the Harbor Districts that there could not be a potential for impacts on "scenic vistas" nor any potential degradation of the visual character of the areas around the Harbor Districts.

The Initial Study fails to describe the environmental setting and include any evidence or analysis to support its assumption that whatever is done to implement proposed Rule 4001 would "likely easily blend in" with the surrounding activities, especially since what would be done to implement the Rule is not yet known. Specifically, the Initial Study 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. 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 Harbor Districts and if modified, through obstruction, alteration, or demolition could have a negative aesthetic impact. Without a clearly defined project, project location, or description of the environmental setting, it is not possible to conclude that any port modifications will have little or no noticeable effect on adjacent areas and would blend in with the visual setting.

The Initial Study indicates that "Control devices may include hoods or bonnets on ship exhaust stacks to capture emissions and are expected to be as high as 80 feet (POLB, 2006)" and concludes that "these control devices would be similar to other structures used within the heavily industrialized portions of the Ports…" First, the "POLB" citation is missing in the list of references. Second, it is speculative and erroneous to assume that control devices as high as 80 feet would have "no visual impact" without knowing the location, dimensions, color scheme or critical viewpoints. No such analysis has been considered here and the impact is dismissed with no evidence to support the conclusion.

The last sentence of the first paragraph (on p. 2-6; I. d) suggests there are no residential areas "next to" the Harbor Districts, and thus the Initial Study may dispense with analysis of light and glare impacts. It is evident however that was an inaccurate assumption given the residential communities of San Pedro, Wilmington and Long Beach located adjacent to the Harbor Districts. This is also contradictory to the description of surrounding land uses and setting on page 2-1 which indicates "potentially residential."

The Initial Study further errs by dispensing with environmental analysis or evidence, simply because of the (assumed) beneficial air quality goals of proposed Rule 4001. The law is clear that environmentally "benign" objectives for a project do not excuse non-compliance with CEQA and do not justify reliance on assumptions in lieu of evidence to demonstrate the absence of potential impacts. *See, e.g., California Farm Bureau v. California Wildlife Conservation Board* (2006) 143 Cal.App.4th 173, 196, emph. added [State environmental agency violated CEQA by exempting environmentally beneficial habitat project from review]:

> "[I]t cannot be assumed that activities intended to protect or preserve the environment are immune from environmental review. [Citations.]" (*Davidon Homes, supra*, 54 Cal.App.4th 106, at p. 119; see, e.g., *Dunn-Edwards Corp. v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644 (disapproved on other grounds in *Western States Petroleum Assn. v. Superior Court, supra*, 9 Cal.4th 559, 570.) **There may be environmental costs to an environmentally beneficial project, which must be considered and assessed**.

This topic should not be dismissed. Given the nature of proposed Rule 4001, it cannot be determined that its implementation would have no impact on aesthetics. The EA therefore should include "Aesthetics" as a potentially impacted area of study.

Air Quality -- P. 2-11, Discussion

In the first paragraph (p. 2-11), last sentence, the stated assumption is speculative given there is no information about what physical changes to the environment proposed Rule 4001 will entail. There is no evidence to support the assumption in the Initial Study that proposed Rule 4001 would be identical to Measure IND -01 or have identical (previously-studied) impacts on air quality.

P. 2-11, III.a

The first paragraph, last sentence, again raises the question of why it should become the obligation of the Cities to take actions on their own to fulfill the obligations of the District for reaching emissions reductions targets? What is the legal authority for this shifting (or delegation) of the District's air quality responsibility?

In the second paragraph, the Initial Study relies on an assumption that "the Port" would be installing control equipment. Again, this erroneously confuses the Harbor Departments of the Cities with the operators of vessels, vehicles, and equipment. The Harbor Boards serve as trustees of tideland assets.

The conclusion in this section assumes that the undefined strategies and approaches suggested in conceptual description of proposed Rule 4001 will be successful. That is dependent on the feasibility of the approaches, which must be identified and assessed. Therefore, this topic should be analyzed in the EA.

P. 2-12, III.b, c, and g

Given the total lack of information regarding what proposed Rule 4001 would entail and whether it's implementation is feasible, it is premature to assess impacts in this category. These details must be provided and these topics should also be identified and assessed in the EA.

P. 2-13, III.e

There is no factual basis in the Initial Study upon which to conclude that implementation of proposed Rule 4001 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 Initial Study analysis only applies to construction odors and ignores any potential odors that may occur during long-term operations.

The NOP should be amended to make clear that at least these additional areas of potential impacts on air quality should also be identified and assessed in the EA.

Biological Resources – P. 2-14

The Initial Study fails to adequately describe, and improperly minimizes, possible impacts to biological resources, including least terns and migratory birds.

The scope of the proposed EA should be expanded to include environmental analysis of the Project's potential impacts on biological resources.

Cultural Resources – P. 2-16

The Initial Study fails to adequately describe, and improperly minimizes, possible impacts to cultural resources. Not all areas within the Harbor Districts are devoid of cultural resources or have cultural resources that have been previously disturbed, as concluded in the Initial Study on page 2-18 in section V(b), (c), and (d). There are known recorded historic and prehistoric sites throughout the Harbor Districts. For example, see COLA's website at http://www.portoflosangeles.org/idx_history.asp. Without knowing the location and extent of ground disturbance from possible construction activities associated with proposed Rule 4001, it

is speculative to assume that no significant adverse cultural resources impacts are expected from implementing proposed Rule 4001. The conclusion in the Initial Study is unsupported and lacks evidence or facts to support the findings.

The scope of the proposed EA should be expanded to include environmental analysis of the Project's potential impacts on cultural resources.

Energy – P. 2-18

The Initial Study section VI(c) must be expanded to also consider and analyze 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 required in the event of a major disaster. Also, some types of emissions control measures, facilities, or technologies contemplated by the Project could increase or shift demand for different types of energy or fuel usage. Although "risk of upset" is not considered in the Initial Study checklist, it should be cross referenced here and addressed in the Hazards section of the Initial Study.

The scope of the proposed EA should be expanded to include this additional analysis.

Hazards and Hazardous Materials – P. 2-24

The Initial Study section VIII(f) must be expanded to also consider and analyze the increased reliance on alternative fuels or electrical powered technologies that would require sufficient supply and emergency storage in the event of a major disaster. Although interference with emergency response plans was marginally addressed in this section, "risk of upset" is not considered in the Initial Study checklist.

The scope of the proposed EA should be expanded to include this additional analysis.

Land Use and Planning – P. 2-34

The Initial Study fails to adequately describe, and improperly minimizes, possible inconsistencies between the proposed Project and the existing and applicable land use plans and policies.

The Initial Study erroneously claims that "there are no provisions in PR 4001 that would affect land use plans, policies, or regulations." (P. 2-34.) The Initial Study does not support that conclusion with any substantial evidence.

First, the NOP/IS fails to identify any of "the provisions of PR 4001" so the statement cannot be supported or evaluated.

Second, and more importantly, however, the Initial Study repeatedly references "implementation strategies," "plans" and other new measures that it anticipates the Cities will be required to enact if proposed Rule 4001 becomes effective. Presumably this is because of inconsistencies between the existing plans and policies and the requirements of the new Rule. (See, e.g., pages 1-6 through 1-11.) The measures contemplated in the Initial Study include the adoption of new "regulatory requirements," new "impact fees" on the movement of cargo or sources, and changing the tariffs for use of the Harbor Districts – all of which would cause at least potential "conflicts" with applicable plans and policies. (Cf., *Orinda Ass'n v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1169 [the CEQA requirements for initial study examination of non-conformity with existing land use plans are intended to allow lead agency to modify the Project to avoid inconsistencies with existing plans – not vice versa].)

Third, the Initial Study itself acknowledges that the Project is anticipated to cause "potentially significant impacts" or conflicts with "an applicable plan ... for the performance of the circulation system" and conflicts with "an applicable congestion management plan." (Initial Study, p. 2-44.) Although the Initial Study proposes to address those admitted conflicts in the "transportation" section of the EA, these acknowledged conflicts confirm the necessity for including "land use and planning" impacts in the proposed EA as well.

Fourth, the proposed Project would seemingly create conflicts with the Cities' 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 are detailed in the previous port letters included in Attachment A to this letter. In addition, the proposed Project would create inconsistencies with the Clean Air Action Plan.

Fifth, the proposed Rule is apparently structured in a way that would impermissibly usurp the (non-delegable) police power authority of the Cities and their respective Boards of Harbor Commissioners to plan, implement, and regulate land use policies and actions in their respective jurisdictions. (This comment has also been raised above, in Project Description comments.)

The numerous inconsistencies between the Project as proposed and the existing plans and policies require identification in the Initial Study and inclusion in the proposed EA. (Guidelines § 15125(d).)

The scope of the proposed EA should be expanded to include environmental analysis of the Project's potential impacts on land use and planning.

The EA should also include analysis of the impacts of the proposed/anticipated Project-related subsequent amendments to the Cities' plans, policies, and other land use regulations. (See, e.g., *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1197 [CEQA review failed to consider incidental results from adoption of revised policy; incidental impacts could not be disregarded in an initial study based upon "net" environmental impact of the change in policy being benign since CEQA requires each environmental impact of

project be discretely evaluated].) "Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project." (Guidelines, § 15064, subd. (e); see §§ 21080, subd. (e)(2), 21082.2, subd. (c).)

The scope of the EIR should be expanded to include analysis of possible physical changes in port facilities and operations that might be caused by economic or social effects of the Project itself or by the anticipated amendments to land use and zoning policies by the Cities subsequent implementation of the Project.

Noise – P. 2-36

The NOP/IS acknowledges that approval of the Project and "triggering" of the PR 4001 could result in the construction or installation of new control equipment. The Initial Study improperly dismisses the potential noise impacts from such work as "not expected to be in excess of current operations." There is no substantial evidence in the Initial Study to justify such assumptions.

Similarly, there is no evidence cited in the Initial Study to support its further assumption that additional permanent noise impacts anticipated from the operations of new control equipment would not "substantially increase ambient operational noise levels in the area."

This section of the Initial Study is littered with mere "expectations" unsupported by any evidence regarding the magnitude of new noise impacts, even though such new impacts are anticipated by the Initial Study. Nor is there any analysis of the potential for significant adverse impacts from new noise generators related to the Project.

The NOP/IS must be revised, and the scope of the proposed EA expanded to include a detailed analysis, supported by evidence, regarding these anticipated new noise impacts, alternatives, and possible mitigation measures.

Public Services – P. 2-39

The Initial Study assumes that the Project would not generate any increased need for public services. However, the Initial Study does not provide any substantial evidence to support its assumptions regarding the "absence of impact" on additional public services or facilities.

The Initial Study should be expanded to address potential impacts that may arise from the increased "diversion" of existing "dirty" vehicles and vessels into solid waste sites if proposed Rule 4001 is triggered.

Transportation and Traffic – P. 2-44

The Initial Study fails to adequately describe and analyze potential impacts to rail and marine vessel traffic and ignores the significance criteria identified as "[w]ater borne, rail car or air traffic is substantially altered" on page 2-45. The Initial Study erroneously considers only vehicular traffic impacts to local roadways.

The NOP/IS must be revised, and the scope of the proposed EA expanded to include a detailed analysis, supported by evidence, regarding potential impacts to rail and marine vessel traffic.

Socioeconomics Analysis

The EA needs to include a broad-based analysis of the socioeconomic effects of the proposed Rule 4001, including the potential for job loss, business closures, and diversion of cargo to other ports due to the potential loss of regional competitiveness. The socioeconomic analysis needs to consider both the existence of the rule, even if not triggered, and the future enforcement of the rule. Because these conditions have the potential to physically change the environment in and around the ports, these impacts should be identified and assessed in the EA. (See CEQA Guidelines §§ 15064(e) and 15131; *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3rd 433, 445 [EIR must consider possibility of economic blight from rezoning].) Moreover, this assessment should not be limited to businesses and operations within the ports, but should extend to those facilities, businesses and operations that while located outside of the Harbor Districts are dependent upon the flow of cargo for their continued operations.

Too-Narrowly "Focused" Environmental Review

We note in closing that the Initial Study appears to reflect a preliminary decision to conduct less-than-full disclosure or environmental review of the proposed Project. Although the Initial Study concludes that "the proposed Project may have a significant effect on the environment and an Environmental Assessment will be required," it nevertheless appears that environmental review in the admittedly-required EA is proposed to be curtailed and "focused" on just the six topics listed in the current the NOP. One obvious indication of this is the miniscule list of references that were relied upon to support the Initial Study analysis; the list is limited to three sources.

It is respectfully submitted that such an approach would be too narrow and not in conformance with the requirements of CEQA, or with the District's own policies and rules for environmental analysis. While the CEQA Guidelines call for emphasis and "focus" on the significant environmental impacts of the Project, the authority to use such focus is misapplied in the Initial Study. For example, CEQA Guideline § 15143 explains that such focus may be used to limit the analysis in an EIR [or, in this case, EA] 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 NOP/IS here, by contrast, appears to exclude from consideration in the EA numerous effects that it has not shown to be "clearly insignificant and unlikely to occur."

D. Conclusion

The current version of the NOP/IS fails to adequately describe the "Project" thereby thwarting effective public review and comment on proposed Rule 4001. The Initial Study must therefore be revised, corrected, and re-circulated with all of the descriptions and other content required by CEQA.

Even this inadequate NOP/IS makes it clear that **the scope of the proposed EA has been unduly narrowed**, and that environmental review will be limited in a way that erroneously fails to provide the relevant decision-makers, affected public agencies, residents and the public generally with sufficient evidence and analysis of all anticipated and potential impacts from the Project as a whole, or of all potentially feasible mitigation measures or appropriate Project alternatives as required by CEQA.

While it is clear that an EA is called for in connection with this proposed Project, it is equally clear that the EA should be more complete than what is envisioned by the current NOP/IS. More fundamentally, its scope must be determined by a legally-adequate revised NOP/IS. The EA for the Project must, of course, be supported by credible and substantial evidence, including independent professional analysis.

We respectfully request that these comments and questions be considered before the District embarks on preparation of the EA and all of the other required independent studies in connection with the CEQA review of the proposed Project. We therefore look forward to working with the District, and any study teams or working groups tasked with evaluation of the proposed Rule 4001.

The NOP requests that we provide you with a contact person for each responding agency. For the COLB, the contact persons are as follows:

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Director of Environmental Management
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With a copy to:

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City of Los Angeles, Harbor Division
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We appreciate your consideration. Thank you.

Sincerely,

Heather Tomley
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachment A:

Letters dated July 10, 2012; July 27, 2012; August 30, 2012 (which includes letter dated May 4, 2010); October 22, 2012; October 31, 2012; November 8, 2012; November 19, 2012; and November 27, 2012 from Port of Los Angeles and Port of Long Beach to SCAQMD

cc: Al Moro, Acting Executive Director Port of Long Beach
Geraldine Knatz, Executive Director Port of Los Angeles
Dominic Holzhaus, Principal Deputy City Attorney City of Long Beach
Joy Crose, Assistant General Counsel City of Los Angeles, Harbor Division
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Randall Pasek, Planning and Rules Manager, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Cynthia Marvin, Division Chief, California Air Resources Board
Elizabeth Adams, Deputy Director, U.S. Environmental Protection Agency, Region 9

ATTACHMENT A

July 10, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Initial Comments on the Proposed 2012 Air Quality Management Plan, Control Measure IND-01

Dear Dr. Wallerstein:

The Port of Long Beach and Port of Los Angeles (Ports) appreciate the opportunity to participate in the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) Advisory Committee. We support the AQMD's clean air goals and have worked aggressively with the port industry to reduce our fair share of air quality impacts to the region from port-related operations, as outlined in the San Pedro Bay Ports Clean Air Action Plan (CAAP) and the associated San Pedro Bay Standards. As a result, between 2005 and 2010, emissions from port-related sources were reduced by 70 percent for diesel particulate matter and by 49 percent for nitrogen oxides. Emissions inventory work currently underway indicates additional, continued emission reductions in 2011.

While we continue to remain a committed partner in the effort to improve air quality in the region, we disagree with AQMD's proposed control strategy for port-related sources in the Draft 2012 AQMP. The inclusion of proposed measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources," is unnecessary and counter-productive.

The two Ports have a proven track record of developing and implementing appropriate and effective emission reduction strategies. These efforts have been entered into voluntarily, working cooperatively with operators in the port area and the air quality regulatory agencies (i.e. Environmental Protection Agency, California Air Resources Board and AQMD). Since the Ports initially implemented the CAAP, many of the port-related control strategies have been or will be superseded by state or international requirements, such as the rules for replacing drayage trucks, switching to cleaner marine fuels, and using shore power while at berth. The Ports' emissions inventories in 2010 show reductions that are meeting or are in excess of the emission reductions that the Ports committed to in the San Pedro Bay Standards. However, it is important to note that in order to remain on track to meet the Standards, a collaborative and concerted effort with our agency partners is essential, with the understanding that while the Ports can achieve significant emission

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

reductions, no single entity can accomplish this task. The previous State Implementation Plan identified several regulatory strategies that have not yet materialized into regulations for various reasons. Moving forward, the Ports will need agency assistance, particularly on the development and deployment of zero-emission technologies and at-berth controls for non-regulated vessels, as well as on the preferential deployment of cleaner vessels to the basin.

The Ports are sustaining and growing long-standing successful CAAP programs, such as the Vessel Speed Reduction Incentive Program and, on July 1, 2012, the Ports implemented new, groundbreaking incentive programs to encourage cleaner ocean-going vessels to call at the Ports. With programs such as these, along with the above-referenced regulatory rules becoming effective and ensuring significant additional emission reductions by 2014, there is no identified need for implementing a backstop measure. The AQMD's proposed backstop measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

It is inappropriate for the AQMD to attempt to regulate the Ports, which are the Harbor Departments of the cities of Long Beach and Los Angeles, in an attempt to control emissions from equipment within our boundaries, but which we do not own or operate. Further, the proposed backstop measure identifies that the "…requirements will be triggered if the reported emissions for 2014 for port-related sources exceed the 2014 target milestone, *or the Basin fails to meet the 24-hour PM2.5 standard as demonstrated in the 2012 AQMP and basin-wide reductions are needed, in which case a new reduction target for each pollutant will be established*." (emphasis added). While clarification has been provided by AQMD staff that any effort to make up for a basin-wide shortfall will be the responsibility of all sectors, not just the Ports, this statement still implies that if the port industry meets their targeted emission reductions, but other sectors fail to meet their fair share obligations, then the AQMD will mandate additional reductions from the Ports. This is counter to the cooperative relationship that our agencies have established since we began working together on the CAAP in 2006, and ignores the tremendous air quality benefits that have been gained from voluntary actions.

Lastly, based on the preliminary calculations by AQMD, the majority of the region is expected to be in attainment for PM2.5 by the target year of 2014, with the remainder anticipated to be in attainment by the expected extension date of 2019. The inclusion of IND-01 is therefore unnecessary for the region to reach attainment. If these emission reductions are needed in the baseline emissions calculation, there is precedent for mechanisms other than control measures to be used for this purpose, and we would like to discuss those options with your staff.

We strongly believe that the voluntary and cooperative CAAP process established by the Ports remains the most appropriate forum for the Ports and the air regulatory agencies to discuss technical and policy issues related to reducing emissions from port-related sources. As stated above, we remain committed to achieving our fair share of clean air goals identified in the CAAP and working with port industry and the air regulatory agencies on implementation of appropriate strategies.

For your reference, attached is a comment letter dated May 4, 2010, in which the Ports initially expressed concerns regarding backstop rules. The letter was submitted as a public comment on the proposed Rules 4010 and 4020, which were proposed backstop rules for health risk and criteria pollutant emissions.

We look forward to working with AQMD on resolving our concerns related to the proposed backstop measure in the Draft 2012 AQMP.

Sincerely,

CHRIS LYTLE
Executive Director
Port of Long Beach

MICHAEL R. CHRISTENSEN
Deputy Executive Director, Development
Port of Los Angeles

HAT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Susan Nakamura, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Robert Kanter, Port of Long Beach
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The Port of
LONG BEACH
The Green Port

July 27, 2012

Steve Smith, Ph.D.
Program Supervisor, CEQA
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765
Sent via email to ceqa_admin@aqmd.gov

RE: Comments on the Notice of Preparation for the Proposed 2012 Air Quality Management Plan Program Environmental Impact Report

Dear Dr. Smith:

The Port of Long Beach has reviewed the Notice of Preparation of a Draft Program Environmental Impact Report (EIR) for the Proposed 2012 Air Quality Management Plan Program and appreciates the opportunity to comment. Regarding preparation of the Draft Program EIR, we offer the following scoping comments for use by your agency during its environmental review process under the California Environmental Quality Act (CEQA):

Schedule

The EIR schedule is very aggressive, with the scoping period ending on July 27, 2012, followed immediately by the release of the Draft EIR scheduled for August 2012, and final approval planned for October 5, 2012. There does not appear to be sufficient time allowed for meaningful input on the proposed scope and content of the Draft Program EIR by the public. Further, the Port is concerned that, given the quick turnaround between closure of the scoping period and the scheduled release of the Draft Program EIR, insufficient time will be allowed for thorough review of the scoping comments and inclusion of said comments in the Draft Program EIR.

Aesthetics

The Initial Study identifies potential significant impacts on aesthetics due to the implementation of control devices such as hoods or bonnets on ship exhaust stacks. The Port agrees with the SCAQMD that such control devises and equipment would be similar in structure and design to existing features within the Port environment and would not constitute a significant aesthetic impact. Further, control measure ADV-03, which may include the construction of electric gantry cranes within the Port, should not be considered aesthetically significant as gantry cranes are an existing feature within the Port environment.

Energy

The Draft Program EIR should analyze how the mobile source control measures related to the electrification of vehicles will impact regional energy demand. Additionally, the need for new electrical power or natural gas utilities should be analyzed, including analysis of times of peak energy demand.

Land Use

The Draft Program EIR should analyze whether the implementation of specific control measures could physically divide established communities. Control measure ONRD-05 states that this control could be "implemented with the development of zero-emission fixed-guideway systems" and that to the extent feasible this would be extended beyond "near-dock application." The construction and operation of such structures may impact established communities.

Noise

The Port requests that the Draft Program EIR evaluate potential noise impacts related to the construction and implementation control measures in support of the AQMP. Section XII fails to account for noise impacts resulting from the construction and operation of control measure ONRD-05, which may include fixed-guideway systems near sensitive receptors.

Transportation/Traffic

Section XVII of the Initial Study concludes that adoption of the proposed 2012 AQMP is not expected to generate any significant adverse project-specific impacts to transportation or traffic systems, and that no further evaluation will be conducted in the Draft Program EIR.

However, impacts on major freeways or other transportation corridors as a result of construction and operation of potential zero emission control measures related to on-road heavy-duty vehicles, such as the use of overhead catenary power lines, which will potentially affect lane choice by trucks and traffic flow patterns on major traffic corridors, has not been fully analyzed. The Port requests that these potential impacts be analyzed in the Draft Program EIR.

Socioeconomics

While not required under CEQA, the Draft 2012 AQMP should include a thorough socioeconomic impact analysis for each proposed control measure, most notably the proposed backstop measure and the measures related to zero emission technologies. This could be accomplished with an expanded discussion under the cost effectiveness section of each control measure summary in the Draft AQMP.

The Port of Long Beach appreciates the opportunity to comment on the NOP/IS for the Draft 2012 AQMP and reviewing both the Draft Program EIR and the Draft 2012 AQMP. We look forward to working with the SCAQMD throughout the environmental review process.

Sincerely,

Richard D. Cameron
Director of Environmental Planning

DP:hat

August 30, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Comments on the Draft 2012 Air Quality Management Plan

Dear Dr. Wallerstein:

The Port of Long Beach and Port of Los Angeles (Ports) appreciate the opportunity to serve on the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) Advisory Committee. We support the AQMD's clean air goals and have a proven leadership record of developing and implementing appropriate and effective strategies that have resulted in the port-related goods movement industry's achievement of real and dramatic emissions reductions. Although the Ports do not own or control the emission sources, the Ports have worked cooperatively with business operators in the port area and the air quality regulatory agencies (i.e. Environmental Protection Agency, California Air Resources Board, and AQMD) to help the port industry reduce its fair share of air quality impacts to the region from port-related operations, as outlined in the San Pedro Bay Ports Clean Air Action Plan (CAAP) and the associated San Pedro Bay Standards. As a result, between 2005 and 2011 emissions from port-related sources were reduced by 73 percent for diesel particulate matter (DPM) and by 50 percent for nitrogen oxides (NOx). The Ports' San Pedro Bay Standards for 2014 established goals to reduce port-related DPM by 72 percent and NOx by 22 percent. Therefore, as a result of implementation of aggressive actions by the port industry, port-related emission reductions have exceeded our goals several years ahead of schedule.

While we remain a committed partner in the effort to improve air quality in the region, we have significant concerns with several proposed control measures in the Draft 2012 AQMP that improperly misclassify the Ports as "stationary sources" or "indirect sources" under AQMP Stationary Source measures, or as "implementing agencies" of specific AQMP mobile source measures. In particular, the proposed Stationary Source Measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources" contains many legal flaws, as explained in greater detail below, and inappropriately proposes to impose enforcement actions on the Ports for emissions generated by emissions sources that the Ports do not own,

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

operate, or control, which is counterproductive to the cooperative relationship that our agencies have established since we began working together on the voluntary CAAP in 2006.

This letter provides the Ports' specific comments on the control measures in the Draft 2012 AQMP that we believe must be addressed prior to finalization and adoption by your agency.

Proposed Stationary Source Measure IND-01

There are three fundamental problems with Proposed Measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources." First, the proposed backstop rule would transform the Ports' voluntary CAAP into the AQMD's mandatory regulation of the Ports. This would jeopardize the Ports and the Port-related emissions sources' grant funding for equipment replacement and modernization if it is now necessary to comply with regulation, while offering nothing to assist the Ports with compliance in terms of additional technologies, facilitating regulations, tools, or funding. Second, although the CAAP was a voluntary cooperative effort of the Ports and the air agencies designed to encourage the industry operators of regulated equipment to go beyond regulation, the proposed backstop rule would improperly subject the Ports to the AQMD's enforcement action for industry's missed emissions reductions by equipment not operated or controlled by the Ports, or even potential loss of federal funding under federal conformity principles if the AQMP is adopted into the State Implementation Plan (SIP) and approved by the U.S. EPA as federal law. Third, the proposed backstop rule exceeds the AQMD's authority and if implemented may violate the State Tidelands Trust. If Measure IND-01 (as well as the Offroad Mobile Source Measures discussed below) are in reality the AQMD's regulation of Port-related mobile emissions sources such as locomotives, ships, rail, and trucks, then this is beyond AQMD's legal authority and AQMD should obtain a waiver under the Clean Air Act from the U.S. EPA. The Ports provide further detailed comments on Proposed Measure IND-01 below, and object to it being included in the 2012 AQMP.

Based upon the AQMD's modeling results, existing control measures are expected to result in attainment of the Federal 24-hour PM2.5 standard by the 2014 deadline without Measure IND-01. Section 39602 of the California Health and Safety Code states that the State Implementation Plan (SIP) shall only include those provisions necessary to meet the requirements of the Clean Air Act. Hence, there is no identified need or legal basis for implementing Measure IND-01. The AQMD's proposed measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

The Ports are neither "direct emissions sources" nor "stationary sources" subject to AQMD permitting, and the AQMD has not complied with requirements for regulation under Health and Safety Code. The Ports are also not "indirect sources" subject to an AQMD indirect source review program within the meaning of the Clean Air Act, and the AQMD has not complied with requirements of the Clean Air Act, 42 U.S.C. §7410 and various other requirements for indirect source classification. The Ports are also not air agency regulators. The Ports do not own, operate, regulate, or control any of the goods movement equipment serving the Ports that are

targeted emissions sources under Measure IND-01. Additionally, the equipment are mobile sources regulated by state, federal, and/or international regulation, sometimes under jurisdiction preempting Port or AQMD action. It is inappropriate for the AQMD to regulate the Ports without the Ports' ownership, operation, or jurisdiction to regulate the various industry businesses actually causing the emissions within our boundaries.

The proposed backstop measure continues to state that if there is a South Coast Air Basin-wide shortfall in emission reductions, then the AQMD will mandate additional emission reductions from the Ports, even if the port-related sources have already met their commitments. This moving target standard is unconstitutionally vague and therefore illegal. The Ports are unfairly targeted, as there are no backstop measures proposed for other entities or source categories should other modeling assumptions not come to pass, such as anticipated natural fleet turnover, or other non-regulated initiatives failing to meet their goals, such as those expected by the Carl Moyer Program. If the AQMD's emissions projections for achieving attainment are incorrect, including control factors and growth rates, this measure appears to imply that the Ports will be specifically tasked with rectifying the shortfall. If the Basin fails to achieve the federal air quality standard, the proper channel to address this is through the established SIP process, not to establish a contingency rule to unfairly burden one specific industry out of the entire Basin.

AQMD staff has indicated that Measure IND-01 is proposed to account for measures that are not backed by enforceable requirements. However, significant programs such as the CAAP's Clean Truck Program, Ocean-going Vessel Low Sulfur Fuel Program, Cargo-handling Equipment requirements, and the Shore-side Power/Alternative Maritime Power programs are currently backstopped by CARB and International Maritime Organization (IMO) regulations. The Ports also require higher rates of vessel or equipment compliance than regulation through terminal leases, when such commercial opportunities are able to be negotiated with tenants. Therefore, Proposed Measure IND-01 is unnecessary.

Measure IND-01 is vague and incomplete. It is unclear whether the AQMD has taken credit for actual/current emission reductions in the baseline only, or if assumptions have been made for future year reductions. We take issue with a measure moving forward where emissions projections are "on-going." Further, no detail is provided on the level of emission reductions that are needing to be maintained. This is further complicated by the differences that exist between the emissions inventories produced by the Ports and the inventory used for the AQMP. It is unclear if a specific emission reduction shortfall will trigger implementation of the measure, or if it is simply left to the discretion of the AQMD. Additionally, the control costs have not yet been developed or justified in a cost-benefit analysis.

The CAAP is a planning document that provides a guideline of strategies and targets that are often "stretch goals," which ultimately are implemented through individual actions adopted by the Long Beach and Los Angeles Boards of Harbor Commissioners (Boards). The Ports are sovereign Tidelands granted to the cities of Los Angeles and Long Beach by the state under the oversight of the State Lands Commission. Each city has been appointed as a trustee and has established their respective Board of Harbor Commissioners with exclusive control and management of the Tidelands and revenues and expenditures from the Tidelands. However,

such discretion must be exercised in accordance with their obligations to prudently manage Tidelands assets and revenues within a nexus and proportionality to the Tidelands Trust interests, as well as in accordance with applicable laws such as the California Environmental Quality Act (CEQA) and principles of federal preemption.[1] The AQMD cannot mandate action by each Port's Board of Harbor Commissioners, nor can the AQMD direct how the Ports obligate state Tidelands money; only the appointed trustee can make discretionary actions to obligate state Tidelands funds. Specifically, the CAAP measures listed in the Draft 2012 AQMP each require the Boards to authorize the expenditure of incentive monies and program costs, or to approve conditions of infrastructure project development in their discretion as CEQA lead agency and as Tidelands trustees.

We strongly believe that the voluntary and cooperative CAAP process established by the Ports remains the most appropriate forum for the Ports and the air regulatory agencies to discuss technical and policy issues related to reducing emissions from port-related sources. As stated above, we remain committed to achieving the clean air goals identified in the CAAP and working with port industry and the air regulatory agencies on implementation of appropriate strategies.

For your reference, attached is our comment letter dated July 10, 2012, expressing our preliminary concerns related to the proposed Measure IND-01 and a comment letter dated May 4, 2010, in which the Ports initially expressed concerns regarding backstop rules.

Proposed Off-Road Mobile Source and Advanced Control Technology Measures

The Draft 2012 AQMP also identifies the San Pedro Bay Ports as "Implementing Agencies" for several of the proposed Off-Road measures (OFFRD-02, OFFRD-04, and OFFRD-05) and Advanced Control Technology measures (ADV-01, ADV-02, ADV-03, ADV-04, and ADV-05). The Ports should not be listed as Implementing Agencies, which the AQMP Appendix IV-A defines as "the agency(ies) responsible for implementing the control measure." While the Ports have been moving forward with voluntary efforts in these areas, as mentioned above, the Ports are not air agency regulators. We also do not own or operate the equipment identified in the proposed measures, and therefore we do not have direct control over any of the sources listed. During the Advisory Committee meetings, AQMD staff has provided clarification that the Ports are listed as Implementing Agencies because of our voluntary commitments to work on these

[1] The Ports' experience with the first phase of the 2006-2010 CAAP showed that in actual implementation, many CAAP measures were carried out in a different manner than originally conceptualized, or not carried out at all, based on limitations on the Boards' opportunities and their exercise of their discretion to manage Tidelands assets and funds under real-world circumstances. Some of the CAAP measures can only be implemented if businesses apply to the Ports for permits to build or expand their lease premises and CEQA mitigation required by law or lease conditions that can be negotiated with a Port tenant. Other CAAP measures involve emissions sources (rail or ocean vessels) that may assert federal preemption against efforts to compel use of specific technology, so the CAAP goals involve the Ports offering economic incentives in voluntary compliance programs, such as the Ocean Vessel incentive programs. However, only the Boards have the legal authority to fund such incentives or impose CEQA mitigation or lease conditions to project approval, which decisions also fall within the Boards' sole discretion regarding their respective Port's properties and their individual Harbor Revenue Fund budgets, which may be affected by the global economy.

efforts, and that being listed as an implementation agency does not obligate the Ports to any specific requirement, however, this is contrary to the language of the AQMP that implementing agencies are "responsible for implementing the control measure." We believe that listing the Ports, and not including all of the other public and private partners that are also working on these efforts, gives the impression that the Ports do have an assigned obligation, or that the Ports must bear a larger burden in the effort to implement these programs. We also repeat our comment stated above that the AQMD cannot mandate in the AQMP that the Ports must expend monies in these voluntary efforts, since most of these Off-Road and Advanced Control Technology measures require incentive monies to fund demonstration projects or accelerated use of new technology.

We believe that the appropriate Implementing Agencies for these measures are the United States Environmental Protection Agency and the California Air Resources Board.

The Ports urge AQMD to make all of the above-requested changes to the draft 2012 AQMP, in particular, to eliminate Measure IND-01 Port Backstop Rule as a legally unnecessary measure exceeding AQMD's authority and violating the State Tidelands Trust. We believe it is much more effective to advance our mutual clean air goals for our agencies to continue working cooperatively together, but if the AQMD takes the above 2012 AQMP measures forward, the Ports will have no choice but to vigorously oppose such action through the administrative and legal process.

Sincerely,

Chris Lytle
Executive Director
Port of Long Beach

Geraldine Knatz
Executive Director
Port of Los Angeles

HAT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Susan Nakamura, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Port of Long Beach Harbor Commission
Port of Los Angeles Harbor Commission
Robert Kanter, Port of Long Beach
Rick Cameron, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Chris Cannon, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles
David Reich, Los Angeles City Mayor's Office

Attachment 1

July 10, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Initial Comments on the Proposed 2012 Air Quality Management Plan, Control Measure IND-01

Dear Dr. Wallerstein:

The Port of Long Beach and Port of Los Angeles (Ports) appreciate the opportunity to participate in the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) Advisory Committee. We support the AQMD's clean air goals and have worked aggressively with the port industry to reduce our fair share of air quality impacts to the region from port-related operations, as outlined in the San Pedro Bay Ports Clean Air Action Plan (CAAP) and the associated San Pedro Bay Standards. As a result, between 2005 and 2010, emissions from port-related sources were reduced by 70 percent for diesel particulate matter and by 49 percent for nitrogen oxides. Emissions inventory work currently underway indicates additional, continued emission reductions in 2011.

While we continue to remain a committed partner in the effort to improve air quality in the region, we disagree with AQMD's proposed control strategy for port-related sources in the Draft 2012 AQMP. The inclusion of proposed measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources," is unnecessary and counter-productive.

The two Ports have a proven track record of developing and implementing appropriate and effective emission reduction strategies. These efforts have been entered into voluntarily, working cooperatively with operators in the port area and the air quality regulatory agencies (i.e. Environmental Protection Agency, California Air Resources Board and AQMD). Since the Ports initially implemented the CAAP, many of the port-related control strategies have been or will be superseded by state or international requirements, such as the rules for replacing drayage trucks, switching to cleaner marine fuels, and using shore power while at berth. The Ports' emissions inventories in 2010 show reductions that are meeting or are in excess of the emission reductions that the Ports committed to in the San Pedro Bay Standards. However, it is important to note that in order to remain on track to meet the Standards, a collaborative and concerted effort with our agency partners is essential, with the understanding that while the Ports can achieve significant emission

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

reductions, no single entity can accomplish this task. The previous State Implementation Plan identified several regulatory strategies that have not yet materialized into regulations for various reasons. Moving forward, the Ports will need agency assistance, particularly on the development and deployment of zero-emission technologies and at-berth controls for non-regulated vessels, as well as on the preferential deployment of cleaner vessels to the basin.

The Ports are sustaining and growing long-standing successful CAAP programs, such as the Vessel Speed Reduction Incentive Program and, on July 1, 2012, the Ports implemented new, groundbreaking incentive programs to encourage cleaner ocean-going vessels to call at the Ports. With programs such as these, along with the above-referenced regulatory rules becoming effective and ensuring significant additional emission reductions by 2014, there is no identified need for implementing a backstop measure. The AQMD's proposed backstop measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

It is inappropriate for the AQMD to attempt to regulate the Ports, which are the Harbor Departments of the cities of Long Beach and Los Angeles, in an attempt to control emissions from equipment within our boundaries, but which we do not own or operate. Further, the proposed backstop measure identifies that the "…requirements will be triggered if the reported emissions for 2014 for port-related sources exceed the 2014 target milestone, *or the Basin fails to meet the 24-hour PM2.5 standard as demonstrated in the 2012 AQMP and basin-wide reductions are needed, in which case a new reduction target for each pollutant will be established*." (emphasis added). While clarification has been provided by AQMD staff that any effort to make up for a basin-wide shortfall will be the responsibility of all sectors, not just the Ports, this statement still implies that if the port industry meets their targeted emission reductions, but other sectors fail to meet their fair share obligations, then the AQMD will mandate additional reductions from the Ports. This is counter to the cooperative relationship that our agencies have established since we began working together on the CAAP in 2006, and ignores the tremendous air quality benefits that have been gained from voluntary actions.

Lastly, based on the preliminary calculations by AQMD, the majority of the region is expected to be in attainment for PM2.5 by the target year of 2014, with the remainder anticipated to be in attainment by the expected extension date of 2019. The inclusion of IND-01 is therefore unnecessary for the region to reach attainment. If these emission reductions are needed in the baseline emissions calculation, there is precedent for mechanisms other than control measures to be used for this purpose, and we would like to discuss those options with your staff.

We strongly believe that the voluntary and cooperative CAAP process established by the Ports remains the most appropriate forum for the Ports and the air regulatory agencies to discuss technical and policy issues related to reducing emissions from port-related sources. As stated above, we remain committed to achieving our fair share of clean air goals identified in the CAAP and working with port industry and the air regulatory agencies on implementation of appropriate strategies.

For your reference, attached is a comment letter dated May 4, 2010, in which the Ports initially expressed concerns regarding backstop rules. The letter was submitted as a public comment on the proposed Rules 4010 and 4020, which were proposed backstop rules for health risk and criteria pollutant emissions.

We look forward to working with AQMD on resolving our concerns related to the proposed backstop measure in the Draft 2012 AQMP.

Sincerely,

CHRIS LYTLE
Executive Director
Port of Long Beach

MICHAEL R. CHRISTENSEN
Deputy Executive Director, Development
Port of Los Angeles

HAT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Susan Nakamura, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Robert Kanter, Port of Long Beach
Rick Cameron, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Chris Cannon, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles

Attachment 2

San Pedro Bay Ports Clean Air Action Plan

May 4, 2010

Susan Nakamura
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Subject: AQMD Proposed Rules 4010 and 4020

Dear Ms. Nakamura:

This letter is on behalf of the Ports of Long Beach and Los Angeles (Ports) as a preliminary response to the "backstop" Rules 4010 and 4020 (Proposed Rules) proposed by the South Coast Air Quality Management District (AQMD). As will be explained below, based upon the limited amount of information released by the AQMD about the Proposed Rules thus far, the Ports have a number of preliminary questions and concerns at this stage of the first public consultation meeting and will be providing more detailed comments on the Proposed Rules at a later stage.

The Ports have had tremendous success with implementing the San Pedro Bay Port Clean Air Action Plan (CAAP). The development of the original CAAP and the update to the CAAP has been conducted through a cooperative effort with staff from the AQMD, the United States Environmental Protection Agency (EPA), and the California Air Resources Board (CARB). The Ports strongly believe that this partnership of over four years, and the collaboration that has occurred throughout that time, have aided in the success of the CAAP and the emissions reductions that have been achieved.

Since the CAAP was adopted in late 2006, the Ports have exceeded our interim emissions reductions milestones and are well on our way to meeting the original forecasted emissions reductions of at least 45% by 2011, compared to uncontrolled conditions. This has been accomplished through the steadfast implementation of CAAP measures, highlighted as follows:

- Development, approval, and implementation of the Clean Trucks Program in which two major milestones have been achieved resulting in truck pollution reductions of nearly 80% (January 2010), almost two years ahead of schedule (HDV1).
  - October 2008: ban pre-1989 trucks.
  - January 2010: ban pre-1993 trucks; 1994-2003 trucks require Level 3 plus NO_x retrofit.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

- Facilitated construction of an LNG on-road truck fueling station in the port area. Fueling operations have been underway since early 2009. In addition the Ports have contributed to funding the construction of two additional LNG on-road truck fueling stations in the Port area, due to open later in 2010 (HDV2).
- Over $6.5 million in incentives for vessels participating in the voluntary Vessel Speed Reduction Program and Vessel Fuel Incentive Program (OGV1, OGV4).
- Design, construction, and operation of shore power infrastructure completed at 5 berths and underway for over 40 additional berths (OGV2).
- Replaced entire fleet of port switching locomotives with new, cleaner locomotives in 2008, and a subsequent fleet turnover to cleaner locomotives anticipated by end of 2011 (RL1).
- Provided funding of $5.4 million toward projects through our Technology Advancement Program, conducted with input from an Advisory Committee consisting of AQMD, EPA, and CARB.
- The Ports' 2008 Emissions Inventories show combined emission reductions of 20% diesel particulate matter (DPM), 10% nitrogen oxides (NOx) and 24% sulfur oxides (SOx) compared to the 2005 baseline. The 2009 Emissions Inventories, which are expected to be finalized and published in June, will show an even greater level of emission reductions as additional CAAP efforts have come into effect.

In addition to the implementation efforts listed above, the Ports have also worked in coordination with CARB and EPA on development of rules and regulations affecting port sources. These regulatory requirements have helped to ensure that emissions reductions from specific equipment types operating at the Ports will continue into the future. The Ports look forward to continuing these cooperative efforts on regulatory development with CARB and EPA, with the support of AQMD, to ensure that the early action measures being taken by the Ports are supported and implemented more broadly.

Further, as you are aware, the Ports recently released our draft CAAP Update, where we revisited and updated each of the control measures and proposed aggressive, long-term goals for emissions reductions and health risk reductions, titled the San Pedro Bay Standards. Once the CAAP Update is adopted, the Ports will quantitatively measure our progress against these long-term goals and will make adjustments to our implementation efforts over time as necessary to ensure that we remain on track for achieving these goals.

With these demonstrated results carried out voluntarily, and further efforts underway, the Ports regard the AQMD's proposed Rules 4010 and 4020 as unnecessary, and raise several questions regarding the Proposed Rules and the rulemaking process. Below is a list of preliminary questions to help us gain a better understanding of the AQMD's proposed approach:

Emissions and Health Risk Reduction Targets

Proposed Rule 4020 Sections (d) (1) and (2) will include targets for criteria pollutant and health risk reductions to be met by the Ports to avoid triggering the backstop provisions. The Ports have the following concerns and questions regarding the targets:

1. How were the targets developed? In June 2007, the Ports provided AQMD with detailed comments and concerns regarding the methodology and the specific port-related emission reduction targets contained in the 2007 Air Quality Management Plan (AQMP). CARB declined to adopt the port targets into the 2007 State Implementation Plan (SIP). In the AQMD Governing Board's resolution adopting the 2007 AQMP, it committed that AQMD staff would work with the Ports and, based on its technical review, would recommend any appropriate adjustments to the AQMP criteria pollutant targets attributable to the Ports. Although initial coordination efforts have occurred, the AQMD has not completed detailed analyses necessary for the Ports to understand how the AQMP targets and the targets contained in the Proposed Rules have been developed, or to understand how these targets differ from the Emission Reduction Standards contained in the Draft 2010 CAAP Update. We request that the AQMD present the methodology and resulting targets to a Stakeholder Working Group, including the Ports, before progressing further with the rulemaking process. Further, to the extent that the targets in proposed Rule 4020 go beyond the 2007 SIP/AQMP targets to address future regulations that have not yet been adopted, the Ports have even greater concerns.

2. The Emission Reduction Standards contained in the Draft 2010 CAAP Update were developed by the Ports in coordination with the EPA, CARB, and AQMD. Achievement of these Standards will require aggressive implementation of strategies by the Ports and the port operators. Further, the Standards are predicated on a conservative 2007 cargo forecast developed before the recent economic crisis and assume that the Ports reach capacity in 2023. Instead, there has been a significant downturn in cargo volumes from 2008 to present, such that the Ports do not anticipate returning to 2007 cargo throughput levels until 2014-2015, and reaching capacity until approximately 2035. This has reduced the Ports' emissions footprint, as well as potentially reduced the Ports' proportion of basin-wide pollution. Nonetheless, to be conservative and to voluntarily strive to ensure a "fair share" contribution of port-related sources to regional attainment goals, the Ports retained the higher growth forecast in the CAAP. It is important to note that, even with these higher than anticipated rates of future emissions growth, the Ports project DPM reductions greater than 70%, SOx reductions greater than 90%, and NOx reductions of nearly 60% by 2023.

3. The 2007 SIP identified several regulatory and technology strategies to be undertaken by EPA and CARB to contribute to the reduction in port-related emissions. This is consistent with the philosophy that achieving emission reductions from port-related sources must be a cooperative partnership effort, because no one entity can meet the need by itself. Since the 2007 SIP was developed, for various reasons including technical feasibility, technology availability, and cost-effectiveness, several key federal and state regulatory and technology strategies have failed to occur. These include, but are not limited to: commercial availability of Tier 4 line haul and switcher locomotive engines in 2012, implementation of a statewide regulation requiring use of shoreside power for all vessel types while at berth, and implementation of a statewide regulation requiring retrofitting of existing ocean-going vessels and the preferential deployment of progressively cleaner new build vessels to California ports. The Ports are concerned that the emission reductions associated with these proposed EPA and CARB strategies are now being fully assigned to the Ports through the proposed targets in order to make the

SIP "whole," even though the strategies may not be technically feasible and/or cost-effective. Further, as you know, the Ports do not own or operate the emissions sources targeted by this regulation and the Ports may not have implementation mechanisms available within their jurisdiction to implement the controls even if they were deemed feasible and cost-effective.

DISTRICT RULEMAKING PROCESS

The Ports have a number of initial questions geared towards gaining a better understanding of AQMD's intended rulemaking process for the Proposed Rules.

4. As suggested above, will the AQMD form a Stakeholder Working Group, including the Ports, to discuss the AQMD's Proposed Rules and analysis?

5. What is the AQMD's authority for regulating the Ports under the Proposed Rules?

6. The Ports would like to understand what level of CEQA analysis the AQMD is proposing for this rulemaking. Will there be a scoping meeting?

7. When will the AQMD release a Preliminary Draft Staff Report (PDSR)? Given the unprecedented nature and broad technical, practical, regulatory, and legal implications of these Proposed Rules, we believe that the PDSR must be very detailed or the Ports, air agencies, and other stakeholders will not have the information necessary to participate fully in the rule development process. We request that the PDSR include:
    a. Technical analysis of the Proposed Rules, targets, etc.
    b. An analysis of potential Draft Findings required under Health and Safety Code (e.g., Necessity, Authority, Clarity, Consistency, Non-Duplication, and References)
    c. Detailed information on control technologies and programs that the AQMD believes the Ports and affected sources would need to implement to meet the proposed rule reduction requirements.
    d. As part of cost-effectiveness analysis, detailed information on the feasibility, control effectiveness, and costs of these technologies and programs, including who would bear those costs. The AQMD should work with the Ports, their tenants, and others in the goods movement industry to estimate these costs.
    e. A preliminary Socioeconomic Impact Report (SIR) based on input from the Ports, their tenants, and other affected industries. Given the broad implications to the region's economy, the Ports recommend a detailed preliminary SIR be prepared and released with the PDSR.
    f. AQMD's proposal for how it will specifically apply the scheme of fines, penalties, or other enforcement provisions of the Health and Safety Code to the Ports to enforce the Proposed Rules, including providing an understanding of how the enforcement action would be assessed, given that the Ports are two separate and distinct departments of their respective cities.

The Ports look forward to receiving AQMD's responses to these preliminary questions. We will follow up with additional questions and comments later, as more information is provided by AQMD on the proposed rules.

The Ports are committed to achieving aggressive and feasible emissions reductions and health risk reductions from port-related sources, and have already proven that such reductions can be achieved while allowing the Ports to continue to move forward as a strong economic engine for the region. The Ports remain committed to implementing the CAAP and working in cooperation with the agencies and the industry to achieve our goals. We believe the Proposed Rules are unnecessary and that the AQMD should consider alternative mechanisms to achieve the AQMD's goals. We bring to your attention that the Bay Area AQMD initiated a backstop measure but ultimately determined to pursue a Memorandum of Agreement approach for similar work with the Bay Area ports.

If you have any questions regarding this correspondence, please contact Heather Tomley, Assistant Director of Environmental Planning, Port of Long Beach, at (562) 590-4160; or Christopher Patton, Environmental Affairs Officer, Port of Los Angeles, at (310) 732-3677.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Director of Environmental Management
Port of Los Angeles

cc: Dick Steinke, Executive Director, POLB
Geraldine Knatz, Executive Director, POLA
Mike Christensen, Deputy Executive Director, POLA
Robert Kanter, Managing Director, POLB
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

October 22, 2012

Jeff Inabinet
c/o Office of Planning, Rule Development, and Area Sources/CEQA Facilities
South Coast Air Quality Management District Development and Planning Branch
21865 Copley Drive
Diamond Bar, CA 91765-4182

Subject: Draft 2012 AQMP Program Environmental Impact Report

Dear Mr. Inabinet:

The Port of Long Beach (POLB) and Port of Los Angeles (POLA) appreciate the opportunity to comment on the Draft Program Environmental Impact Report (Draft EIR) developed for the 2012 Air Quality Management Program (AQMP). The ports appreciate that AQMD staff took steps to address the scoping comments provided by the ports, specifically the inclusion of a transportation and traffic impact analysis as part of the Draft EIR.

However, the ports must reiterate their concerns relating to AQMP Control Measure IND-01 (Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources). As the AQMD knows from prior comment letters submitted by the ports (please see AQMP comment letters dated August 30, 2012; July 10, 2012; and May 4, 2010), the ports believe that Measure IND-01 exceeds the AQMD's authority and should not be included in the AQMP for the reasons set forth in the referenced letters.

Measure IND-01 also contains various flaws which contribute to the inadequacy of the Draft EIR and failure to comply with the California Environmental Quality Act (CEQA). First, Measure IND-01, as described in the project description of the Draft EIR and in the AQMP itself, is unconstitutionally vague and lacks sufficient description of exactly what it proposes to impose on the ports or substantial evidence in support. The Draft EIR's failure to describe the project fully makes it impossible for AQMD, the ports, or the public to assess its 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. Because of the importance and consequences of the AQMP to the State of California's State Implementation Plan (SIP) if adopted by California Air Resources Board (ARB), and to the Federal Clean Air Act enforcement if approved by the U.S. Environmental Protection Agency (EPA), the AQMD is required to fully disclose the details of Measure IND-01 before adoption, and CEQA requires a full disclosure and discussion, which AQMD has failed to do.

Second, to the extent the AQMD intends to approve the Draft EIR and AQMP containing the vague current version of Measure IND-01, and later, as a part of future rulemaking, provide details regarding its proposed actions against the ports including an environmental assessment, that would be segmentation or piecemealing of its CEQA analysis.

Third, Measure IND-01 has serious problems of infeasibility which the Draft EIR has failed to analyze at all. Measure IND-01 in effect attempts to convert the ports' various aspirational goals, set forth in their voluntary Clean Air Action Plan (CAAP), into enforceable regulation against the ports. However, the CAAP goals depend upon future technology advancement which has not yet occurred, all of which are beyond the control of the ports. Therefore, there are technology feasibility issues with the AQMD making the ports' goals into required emissions limits. Further, as the ports are not air regulators and they do not themselves own, operate, or control the emissions equipment operated by the port industry, there are legal feasibility questions over the ports' ability to exercise authority to carry out the actions of Measure IND-01. There are also serious legal feasibility questions including federal preemption asserted by railroads in connection with locomotive specifications and rail operations, and international preemption asserted over ocean vessels. The Draft EIR is flawed in its failure to discuss these infeasibility issues, and had it done so, it would lead to the conclusion that Measure IND-01 should be removed from the AQMP.

Fourth, the AQMD has concluded in the air quality analysis that specific measures associated with Measure IND-01 "are unknown, and therefore the impacts are speculative," (see page 4.2-7 of Draft EIR). This is yet another reason why the Draft EIR is flawed. CEQA Guidelines Section 15145 specifies that if, after thorough investigation, a Lead Agency finds that a particular impact is too speculative for evaluation the agency should note its conclusion and terminate discussion of the impact. Instead, the AQMD proceeded to analyze secondary impacts to air quality that are based on speculative assumptions regarding construction emissions, energy demand, and operations.

Lastly, to the extent that Measure IND-01 proposes to impose upon the ports a form of enforcement for port industry's failure to meet the CAAP's target emissions reduction goals, when the ports do not own, operate, or control the emissions sources, it violates constitutional limitations requiring that exactions imposed on a party must be proportional to the party's contribution, when it fails to include all parties involved in the CAAP, including the actual emissions sources.

Given these deficiencies and speculation under CEQA and with the AQMP rulemaking, Measure IND-01 should be removed from the final EIR and the AQMP, and the analysis should be revised accordingly. With this change, the ports can support the revised AQMP and can continue to work with AQMD, other agencies, and the port industry in the collaborative manner that has made the ports' voluntary CAAP a success.

Thank you for considering the above comments. If you have any questions, please contact Dylan Porter, Port of Long Beach, at (562) 283-7100 or Lisa Wunder, Port of Los Angeles, at (310) 732-7688.

Sincerely,

Richard D. Cameron
Director of Environmental Planning, Port of Long Beach

Christopher Cannon
Director of Environmental Management, Port of Los Angeles

DP:s

cc: Elaine Chang, South Coast Air Quality Management District
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

October 31, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Supplemental Comments on the Revised Draft 2012 Air Quality Management Plan

Dear Dr. Wallerstein:

The Port of Long Beach and Port of Los Angeles (ports) are submitting this comment letter to add to comments previously submitted on August 30, 2012.

As members of the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) Advisory Committee, the ports have worked with AQMD staff to provide comments on the draft plan, including the emissions data being used. Included in this effort, ports' staff provided the 2008 base year emissions inventories for the port sources based on the most recent methodologies agreed upon by the Technical Working Group (TWG) in the ports' 2011 air emissions inventories.

As noted in the Draft AQMP, *"An effective AQMP relies on an adequate emission inventory."* Discrepancies exist between the emissions inventories prepared by the ports and the inventory prepared by the AQMD. The emissions shown in the Draft 2012 AQMP are different from those prepared by the ports in cooperation with the AQMD, California Air Resources Board, and Environmental Protection Agency, during development of the San Pedro Bay Standards. If the AQMD's emissions projections for achieving attainment are incorrect, the concerns expressed in our August 30 comments are greatly increased. The emissions projections drive both the Measure IND-01 analysis and the PM2.5 analysis. The basis for the Draft 2012 AQMP emissions projections is impossible to determine, because the assumptions and methodologies (including control factors and growth factors) are not disclosed.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

Additionally, it concerns the ports that the AQMP has made a commitment to Measure IND-01 before AQMD has released details of its intended implementation actions against the ports, or the socioeconomic and other analyses for such actions. Elaine Chang admitted at the AQMD's October 24, 2012, meeting that it is unknown what a port compliance plan would include and that AQMD would develop it during a future rulemaking process. This violates due process, to commit to implement an AQMP measure without disclosing what AQMD's actions against the ports will be under the backstop measure, as it deprives the public and the ports of the opportunity to review and comment to influence the decision, prior to committing to it in the AQMP.

This further demonstrates that the collaborative process established by the ports and the air quality regulatory agencies remains the most appropriate forum to identify and implement strategies to reduce emissions from port-related sources.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

AT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Randall Pasek, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Robert Kanter, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

November 8, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Dear Dr. Wallerstein:

SUBJECT: COMMENTS ON THE DRAFT SOCIOECONOMIC REPORT FOR THE DRAFT 2012 AIR QUALITY MANAGEMENT PLAN

The ports of Los Angeles and Long Beach (Ports) appreciate the opportunity to comment on the South Coast Air Quality Management District's (AQMD) Draft Socioeconomic Report for the Draft 2012 Air Quality Management Plan (AQMP).

The Draft Socioeconomic Report states that "District staff performs a socioeconomic analysis of the Draft Plan in order to further inform public discussions and the decision making process of the Draft Plan." However, the Draft Socioeconomic Report shows that no cost data have been developed for Measure IND-01 – Backstop Measures for Indirect Sources of Emissions from the Ports and Port-Related Sources, despite the fact that there are real and significant costs to the Port industry to implement the emission controls that could result from the proposed Backstop Measure. Presentation of this measure to AQMD's Board, as well as the public, is incomplete without an associated socioeconomic analysis. Potential regulation of the Port could have a very significant economic effect on the region that AQMD does not address, and therefore the Ports believe that it is inappropriate to move forward with inclusion of this measure in the Draft AQMP without a full socioeconomic analysis.

By not including a socioeconomic analysis of Measure IND-01, the AQMD is completely ignoring the economic importance of the Ports. The Ports are a major economic engine for the region and nation, and port-related industry generates $5.1 billion and $21.5 billion in state and federal tax revenue, respectively. The Ports account for over 1.1 million jobs in California and 3.3 million jobs in the United States. Additionally, for every one job created by a Port customer, nearly 1.7 additional jobs are created elsewhere in the region.

Even just the potential of additional regulation of the Ports brings with it a significant uncertainty for the Port industry that may result in the diversion of goods to other ports outside of this region. There are more environmental requirements on the Port industry operating in this region than anywhere else in the world. The threat of additional regulatory requirements, especially when no details have been provided as to what those requirements would be, results in significant concerns for these operators and a significant potential for loss of regional economic benefits due to diversion. The Draft Socioeconomic Report fails to analyze this potential impact.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

Additionally, AQMD has indicated that Measure IND-01 does not have a socioeconomic analysis associated with it because there are no emission reductions associated/committed with this measure. As noted in our comment letter on the Draft AQMP dated August 30, 2012, Section 39602 of the California Health and Safety Code states that, the State Implementation Plan (SIP) shall only include those provisions necessary to meet the requirements of the Clean Air Act. Hence, there is no identified need or legal basis for implementing Measure IND-01. AQMD's proposed measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

Finally, as stated in our letter dated October 31, 2012, Measure IND-01 should not move forward because the AQMP makes a commitment to implement it before AQMD has developed or released details of its intended compliance actions against the Ports, or the socioeconomic and other analyses for such actions. Failing to disclose the AQMD's intended actions against the Ports violates due process, depriving the public and the Ports of the opportunity to adequately review and comment on this measure prior to finalizing the AQMP.

For the reasons listed above and those presented in our previous letters, the Ports reiterate our consistent position that Measure IND-01 should be eliminated from the AQMP. Further, we continue to believe that the successful, collaborative approach established by the Ports and the regulatory agencies remains the best mechanism for identifying and implementing strategies to reduce emissions from Port-related sources.

Sincerely,

CHRISTOPHER CANNON
Director of Environmental Management
Port of Los Angeles

RICHARD D. CAMERON
Director of Environmental Planning
Port of Long Beach

CC:CLP:KM:LW:myd
ADP No.: 061024-605

cc: Peter Greenwald, South Coast Air Quality Management District
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Cynthia Marvin, California Air Resources Board
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Robert Kanter, Port of Long Beach
Mike Christensen, City of Los Angeles Harbor Department, Deputy Executive Director
Dominic Holzhaus, City of Long Beach, Deputy City Attorney
Joy Crose, City of Los Angeles Harbor Department, General Counsel

November 19, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Ports' Proposed Revision and Resolution Language for the Draft 2012 Air Quality Management Plan

Dear Dr. Wallerstein:

On November 15, 2012, staff from the ports of Long Beach and Los Angeles met with AQMD Boardmember Judy Mitchell and AQMD staff to discuss concerns and comments that have been raised by the ports in previous comment letters on the Draft 2012 Air Quality Management Plan (AQMP). At the conclusion of the meeting, it was determined that staff would continue to work together to attempt to resolve the concerns that have been raised.

In that spirit, the ports of Long Beach and Los Angeles propose the following revisions to the 2012 AQMP, consistent with our past comment letters to AQMD:

1. Measure IND-01 must be removed from the 2012 Air Quality Management Plan if it continues to apply or recommend any form of AQMD oversight and approvals of the ports' actions, or enforcement (in terms of fines, penalties, administrative actions) against the Ports for failures of the Port industry to achieve designated emissions reductions. This includes the intent to develop such enforcement actions in later IND-01 rulemaking after adoption of the AQMP, even if such details regarding enforcement activity are absent from the draft AQMP.

2. With the removal of the Measure IND-01, the following language could be added to the adopting resolution for the 2012 Air Quality Management Plan:

   BE IT FURTHER RESOLVED, the District commits to continue working with the Port of Long Beach and the Port of Los Angeles on the implementation of the San Pedro Bay Ports Clean Air Action Plan (CAAP) in order to meet the emission reduction goals identified in the San Pedro Bay Standards, and as a part of the annual report to the Board, District staff will continue to provide information on the progress of the ports in implementing the CAAP.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

BE IT FURTHER RESOLVED, if the ports do not demonstrate sufficient progress for achieving the San Pedro Bay Standards, the District will work with the ports, the other air quality regulatory agencies, and port industry emission sources that are stakeholders under the CAAP, to identify additional feasible strategies for implementation within the ports' jurisdiction.

We look forward to discussing these recommendations with you.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

HAT:s

cc: AQMD Boardmember Judy Mitchell
Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Susan Nakamura, South Coast Air Quality Management District
Robert Kanter, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

November 27, 2012

Ms. Susan Nakamura
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Ports' Comments on South Coast Air Quality Management District (AQMD) Revisions to Measure IND-01 in Draft 2012 Air Quality Management Plan

Dear Ms. Nakamura:

Thank you for the AQMD's proposed revisions to Measure IND-01, "Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities" (IND-01) in the Draft 2012 Air Quality Management Plan (AQMP). We appreciate that efforts were made by AQMD staff to address the concerns that the ports of Long Beach and Los Angeles (Ports) have raised in our various comments letters on the AQMP and in our meeting on November 15, 2012 among the Ports' staff, AQMD staff and AQMD Boardmember Judy Mitchell.

However, the ports are disappointed that the fundamental structure of Measure IND-01, to treat the ports as "stationary sources" and "indirect sources," and convert the ports' voluntary Clean Air Action Plan into enforceable regulation by AQMD, was not altered in any respect. The ports do not own or operate any of the targeted equipment, and the ports are not regulatory agencies. The ports can't accept any regulatory action by the AQMD that will result in AQMD oversight and approvals of port actions, or enforcement actions by AQMD on the ports for failure of the port industry to meet the ports' emission reduction goals. Therefore the Ports continue to object to Measure IND-01's inclusion and request that it be removed from the AQMP. Measure IND-01 contains the fatal flaw of defining the ports as stationary and indirect sources responsible for the emissions from equipment they do not regulate, own, or control. We also believe that this measure is beyond AQMD's authority.

We reiterate our prior requests that AQMD reconsider its approach and allow the continuation of the successful collaborative work by the ports, regulatory agencies and other stakeholders under the voluntary Clean Air Action Plan and San Pedro Bay Standards. Moving forward with Measure IND-01 in this current draft form will actually reduce rather than improve the future success of programs, since conversion of voluntary plans into regulation will reduce voluntary

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

cooperation by the industry with port programs, and will eliminate the ability of the ports, agencies and industry emissions sources to obtain grants to accelerate emission reductions from port industry equipment.

Thank you for your continued attention to this matter and we hope that we can continue with the successful, cooperative partnership that we have built over the past seven years.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

HAT:s

cc: AQMD Boardmember Judy Mitchell
Barry Wallerstein, South Coast Air Quality Management District
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October 2, 2013

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Randall Pasek, Ph.D.
Planning Manager, Off-Road Section
Mobile Source Division
Science and Technology Advancement
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765-4178

Re: Initial Comments for Public Consultation on Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports"

Dear Mr. Pasek and Staff of the South Coast Air Quality Management District:

We appreciate this opportunity to submit comments during the public consultation period on the South Coast Air Quality Management District's (AQMD's) proposed "Rule 4001: Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports" on behalf of the City of Long Beach acting by and through its Harbor Department (referred to herein as "COLB") and the City of Los Angeles acting by and through its Harbor Department ("COLA," collectively with COLB, the "Cities" or the "Ports").

The Cities take their role as environmental leaders seriously and through the years have achieved tremendous success in obtaining substantial emissions reductions through the efforts guided by the joint San Pedro Bay Ports Clean Air Action Plan ("CAAP"). The Cities continue to support programs that will result in cleaner air for the local communities and the region and have worked aggressively with the port industry to reduce air quality impacts from the equipment they operate. As a result, the recently released emissions inventories have shown that between 2005 and 2012, emissions from sources at both the Port of Long Beach and Port of Los Angeles were reduced by 80% for diesel particulate matter and 55% for nitrogen oxides. However, the Cities continue to disagree with the AQMD's current proposal to inappropriately and unnecessarily regulate the Cities. The Cities have been consistent in our comments to the AQMD about the serious concerns and objections to the proposed rulemaking approach. A compilation of these comments was recently submitted to the AQMD in our comment letter on the Notice of Preparation and Initial Study for Proposed Rule 4001, dated August 21, 2013.

As for the comments the AQMD is currently seeking, we have concerns that the process recently initiated by the AQMD to solicit comments on Proposed Rule 4001 deviates from the rule-

The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

making procedures called for by the Health & Safety Code and by the AQMD's own rules (Rule 110), in several respects. For example, it is essential that a copy of the Proposed Rule, or the text of the Proposed Rule, "be made available to the general public in connection with a request for comments" on a proposed rule in order to commence a legally-compliant rule-making process. (E,g., H & S Code §§ 40727.2, 40727(i).) The Cities have previously pointed out the inherent inconsistency of inviting public comment on Proposed Rule 4001 before the AQMD has publicly-disclosed the text of the Proposed Rule, as well as the resulting limitations on the ability of the Cities and other members of the public to provide specific input on the Proposed Rule. As a result of the failure to provide the text of the Proposed Rule, or necessary information regarding the Proposed Rule, a meaningful and legally valid rule-making procedure has not yet been commenced, and it is premature for the AQMD to demand the submission of comments on the anticipated but still undefined new "backstop" rule.

Further, it appears that the AQMD is attempting to limit comment by setting an agenda for the items on which they are seeking input, as shown on slide 8 "Soliciting Inputs/Comments" of the presentation provided during the CEQA Scoping Meeting on August 14, 2013. In addition, limiting the public process primarily to a small working group with seats set at a small table does not allow for significant input from the broader affected public, including the port tenants and operators. Input could be more meaningfully provided if the Proposed Rule was released with sufficient time for the Cities and the public to review and provide detailed comment.

The Cities are further concerned that not enough time is being included in the schedule for rule development. To date, a draft of the Proposed Rule has not been released, nor is it expected to be released for at least several weeks; however, a hearing date for the AQMD Board to consider approval of the Proposed Rule has already been identified for early December. Well in advance of any such hearing, the AQMD must provide the public with substantial information and analysis of the Proposed Rule as required by the Health & Safety Code and AQMD rules (e.g., H & S Code §§ 40727.2; Rule 110(b), (c), and (d).), as well as responses to the public comments. The AQMD also must provide the comprehensive assessment of socioeconomic impacts required by Section 40728.5.

This timeline for review and comment is unacceptably short for a rule of this magnitude. The failure to provide the draft rule language with adequate time for the public to review and submit comments to AQMD, and for those comments to be meaningfully considered by AQMD staff, is a denial of due process.

In this regard, we also have concerns about the demand that comments be submitted by September 6, 2013. There is no explanation, nor any apparent legal basis, for imposing such a deadline for public comments. It is unreasonable, particularly in light of the absence of text or details regarding the Proposed Rule, and fails to provide due process to the Cities or other members of the public who may be burdened or affected by the Proposed Rule, to demand comments by such an early cut-off. The imposition of such a premature deadline for submission

of comments appears arbitrary, and in conflict with Health & Safety Code § 40726, which states that the AQMD "shall provide for the submission of statements, arguments, or contentions, either oral or written or both," up until the time of the public hearing on the Proposed Rule. We therefore respectfully object to the imposition of a deadline for submission of comments on the Proposed Rule, and reserve all rights to comment on the Proposed Rule in the manner, and at the times, provided by state law and the AQMD rules, and to insist on compliance with the procedures and rights afforded by state law and AQMD rules.

The Cities are therefore providing these comments on a preliminary (and non-binding) basis, considering only the limited information on Proposed Rule 4001 thus far provided by the AQMD, based upon presentations by AQMD staff about the general concepts of the approach. The Cities reserve our rights, however, to make further comments after the September 6 deadline and to continue to provide input throughout the process, including submission of additional or different comments after the draft rule is made available.

First, there is an issue of need. As a rule that is contained in the proposed State Implementation Plan, Proposed Rule 4001 violates Section 39602 of the California Health and Safety Code, which states that the State Implementation Plan shall only include those provisions necessary to meet the requirements of the Clean Air Act. There is no need for Proposed Rule 4001 since the AQMP's emissions targets for port industry equipment in 2014 will be met by United States Environmental Protection Agency (EPA) and California Air Resources Board (CARB) regulations and existing Clean Ocean Vessel Voluntary Incentive Programs. Further, AQMD staff has suggested that Proposed Rule 4001 will require the Ports to develop a "Contingency Plan" immediately following rule adoption, prior to any indication that an emissions shortfall may occur. This approach is punitive, requiring the Ports to invest resources into a type of corrective action, when there is no identified need for that action, and therefore goes against the Act and is inconsistent with due process.

Second, there is an issue of legal authority and jurisdiction. The AQMD has failed to cite any legal authority for characterization of governmental entities as a stationary source, or imposing an indirect source rule on governmental entities that do not own, operate or control the sources of emissions, based merely upon the location of facilities operated by private parties within the government entities' geographic area. The Ports are not "indirect sources" and no authority has been cited to authorize the use of an indirect source rule against fellow governmental agencies that have their own jurisdiction and responsibilities by law and do not have regulatory authority to issue air regulations. The AQMD has failed to cite any legal authority for imposing an indirect source rule on Trustees for the Tidelands of California or how it could legally compel the Ports to make expenditure of Tidelands Trust revenues for the purpose of incentives or to adopt other emission reduction programs to be funded as contemplated in AQMD enforcement activity under Measure IND-01. The AQMD has failed to show any legal authority that would allow it to (1) regulate mobile sources by making another governmental entity, that is not an air regulator, its agent for enforcement of its desired mobile source emission reductions, or (2) "enforce" the

Proposed Rule, which under AQMD administrative rules would eventually mean fines and penalties, against such other governmental entity that does not control the emissions of indirect sources located within its jurisdictional boundaries. The AQMD has failed to show any constitutional or statutory basis for attempting to regulate mobile sources "indirectly" that it is preempted from regulating directly, or to purport to impose penalties or corrective action against another governmental entity for failure of private third party emissions sources to achieve emissions reductions that such other governmental entity is also preempted from regulating.

Third, while the Cities remain firm in our position that the rulemaking is unnecessary, counterproductive and beyond the AQMD's jurisdiction, if AQMD does continue to proceed, the following significant issues must be addressed.

AQMD staff appears to be proceeding with development of the proposed rule in a manner that is inconsistent with the provisions of AQMP Measure IND-01 and the discussion between the AQMD Board and the staff during the approval of AQMP Measure IND-01 at the Board Meeting of February 1, 2013. During that discussion, it was identified that the requirements under any proposed rule would only be triggered if the ports failed to meet their goals for the target year. The proposed rulemaking concepts that have been presented by AQMD staff more recently have indicated that the Ports may be required to develop corrective action plans in advance of any identified shortfall. Further, it appears AQMD staff is considering that the Ports will be required to submit emission inventories to AQMD for approval each year through 2020 and that compliance action may be triggered for any potential shortfalls that may occur during interim years, prior to the target years. These potential requirements are inappropriate and go beyond the direction from the AQMD Board.

Also, because the Cities are not regulatory agencies, have not been granted authority to regulate sources of air pollution, and have limitations on their ability to impose requirements on sources operating within their jurisdiction, AQMD must ensure that Proposed Rule 4001 does not mandate that the Cities implement strategies that are outside of their authority or ability to implement. AQMD must recognize that the Cities do not even have contractual relationships with many of the emissions sources that AQMD has attributed to the Cities' "responsibility" for emissions reductions under Proposed Rule 4001, and that even if Cities have leases with some of the operators, they are negotiated business agreements that constrain the Cities' ability to unilaterally impose new terms in response to whatever new conditions AQMD may desire.

In addition, the Boards of Harbor Commissioners of the Cities have the discretion for making business decisions related to the ports and their tenants, consistent with the Tidelands Trust and California Coastal Act. Neither AQMD staff nor its Board can override the discretion of the Harbor Commissions including decisions related to the management of the port or how port funds are spent. Therefore, AQMD cannot disapprove an Emission Reduction Plan simply because AQMD disagrees with the chosen strategies.

Moreover, approval or disapproval of any Emission Reduction Plan cannot be at the sole discretion of AQMD staff. Any plan development should be coordinated with the agencies involved in the development of the CAAP, specifically EPA, CARB and the AQMD. The partnerships established through the CAAP process, and the actions over the past seven years that have been taken by the regulatory agencies, in addition to the Ports, have been critical in the success that has been achieved. As CARB has stated[1], "[s]uccessful implementation of the CARB emission reduction plan will depend upon actions at all levels of government and partnership with the private sector. No single entity can solve this problem in isolation." Therefore, AQMD staff should not place themselves in a position to be the sole authority to approve or deny plans for emission reductions at the Ports. Any plans should be developed in partnership, with input by all agencies, and final approval on actions to be taken specifically by the Cities should be at the discretion of the Boards of Harbor Commissioners.

Slide 8 of the AQMD presentation at the August 14 Scoping Meeting identified that AQMD is seeking input on "[f]lexibility to garnish emission reductions/air quality benefits off port property". Under the Tidelands Trust, the Boards of Harbor Commissioners are limited in their ability to spend Tidelands funds outside of the Tidelands areas. The Cities cannot be mandated by an AQMD rule to mitigate emissions that are unrelated to port-operations outside of the Harbor Districts and the Tidelands areas.

AQMD has stated that the goal of the Proposed Rule is to ensure that the Cities meet their commitments outlined in the CAAP. The Cities have clearly demonstrated over the past seven years that they are committed to working with the industry and will do what they can to reduce, from port-related sources, the port sector's fair share of regional air emissions. If other non-port related sectors within the region do not achieve their share of emissions reductions, the Cities cannot be held responsible for making up for those shortfalls, regardless of whether or not those shortfalls are anticipated to result in a delay in regional attainment of the $PM_{2.5}$ Standard in 2014.

In addition, the Cities should not be held responsible for any potential emissions shortfalls from regulatory agencies not implementing emission reduction regulations as identified within the SIP, even if those regulations are related to equipment operating at the ports. If an agency makes a decision to delay a regulation schedule, or if a regulation is overturned due to a court decision that the requirements are not within their authority to implement, the Cities should not then be mandated to backfill the potential shortfall.

The last update to the CAAP took over two years to develop and cost over $1 million. The Cities should not be required by the Proposed Rule to prepare an Emission Reduction Plan when no need for such a plan has been identified (e.g. region is anticipated to reach attainment with the $PM_{2.5}$ Standard, emission reductions will be achieved by in-place regulations, no emission shortfall has been identified, etc.). Further, development of a plan should not be mandated if the

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[1] *Emission Reduction Plan for Ports and Goods Movement in California*, Executive Summary, ES-1, CARB, 2006.

reasons for any emissions shortfall are due to reasons outside of the Cities control or if no feasible strategies are available. Any plan that is required by AQMD should be streamlined and focused solely on actions that will be taken by the Ports and/or agencies to make up for any identified shortfall.

As identified in the 2012 Air Quality Management Plan, it was determined that the 2014 $PM_{2.5}$ Standard could be achieved by 2014 and no request for an extension would be needed[2]. Therefore, it is inappropriate for the AQMD to require an emission target year of 2019 in the Proposed Rule.

As stated above, these comments represent the Cities' initial concerns with the AQMD's proposed approach. Further comments will be provided as the process progresses and as more information is made available by AQMD.

We appreciate your consideration. Thank you.

Sincerely,

Heather Tomley
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

cc: Al Moro, Acting Executive Director Port of Long Beach
Geraldine Knatz, Executive Director Port of Los Angeles
Rick Cameron, Acting Managing Director of Environmental Affairs and Planning, POLB
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Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Cynthia Marvin, Division Chief, California Air Resources Board
Elizabeth Adams, Deputy Director, U.S. Environmental Protection Agency, Region 9

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[2] *2012 Air Quality Management Plan*, Executive Summary, ES-11, AQMD, 2013.

October 2, 2013

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Diamond Bar, CA 91765-4178

Re: Initial Comments for Public Consultation on Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports"

Dear Mr. Pasek and Staff of the South Coast Air Quality Management District:

We appreciate this opportunity to submit comments during the public consultation period on the South Coast Air Quality Management District's (AQMD's) proposed "Rule 4001: Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports" on behalf of the City of Long Beach acting by and through its Harbor Department (referred to herein as "COLB") and the City of Los Angeles acting by and through its Harbor Department ("COLA," collectively with COLB, the "Cities" or the "Ports").

The Cities take their role as environmental leaders seriously and through the years have achieved tremendous success in obtaining substantial emissions reductions through the efforts guided by the joint San Pedro Bay Ports Clean Air Action Plan ("CAAP"). The Cities continue to support programs that will result in cleaner air for the local communities and the region and have worked aggressively with the port industry to reduce air quality impacts from the equipment they operate. As a result, the recently released emissions inventories have shown that between 2005 and 2012, emissions from sources at both the Port of Long Beach and Port of Los Angeles were reduced by 80% for diesel particulate matter and 55% for nitrogen oxides. However, the Cities continue to disagree with the AQMD's current proposal to inappropriately and unnecessarily regulate the Cities. The Cities have been consistent in our comments to the AQMD about the serious concerns and objections to the proposed rulemaking approach. A compilation of these comments was recently submitted to the AQMD in our comment letter on the Notice of Preparation and Initial Study for Proposed Rule 4001, dated August 21, 2013.

As for the comments the AQMD is currently seeking, we have concerns that the process recently initiated by the AQMD to solicit comments on Proposed Rule 4001 deviates from the rule-

making procedures called for by the Health & Safety Code and by the AQMD's own rules (Rule 110), in several respects. For example, it is essential that a copy of the Proposed Rule, or the text of the Proposed Rule, "be made available to the general public in connection with a request for comments" on a proposed rule in order to commence a legally-compliant rule-making process. (E,g., H & S Code §§ 40727.2, 40727(i).) The Cities have previously pointed out the inherent inconsistency of inviting public comment on Proposed Rule 4001 before the AQMD has publicly-disclosed the text of the Proposed Rule, as well as the resulting limitations on the ability of the Cities and other members of the public to provide specific input on the Proposed Rule. As a result of the failure to provide the text of the Proposed Rule, or necessary information regarding the Proposed Rule, a meaningful and legally valid rule-making procedure has not yet been commenced, and it is premature for the AQMD to demand the submission of comments on the anticipated but still undefined new "backstop" rule.

Further, it appears that the AQMD is attempting to limit comment by setting an agenda for the items on which they are seeking input, as shown on slide 8 "Soliciting Inputs/Comments" of the presentation provided during the CEQA Scoping Meeting on August 14, 2013. In addition, limiting the public process primarily to a small working group with seats set at a small table does not allow for significant input from the broader affected public, including the port tenants and operators. Input could be more meaningfully provided if the Proposed Rule was released with sufficient time for the Cities and the public to review and provide detailed comment.

The Cities are further concerned that not enough time is being included in the schedule for rule development. To date, a draft of the Proposed Rule has not been released, nor is it expected to be released for at least several weeks; however, a hearing date for the AQMD Board to consider approval of the Proposed Rule has already been identified for early December. Well in advance of any such hearing, the AQMD must provide the public with substantial information and analysis of the Proposed Rule as required by the Health & Safety Code and AQMD rules (e.g., H & S Code §§ 40727.2; Rule 110(b), (c), and (d).), as well as responses to the public comments. The AQMD also must provide the comprehensive assessment of socioeconomic impacts required by Section 40728.5.

This timeline for review and comment is unacceptably short for a rule of this magnitude. The failure to provide the draft rule language with adequate time for the public to review and submit comments to AQMD, and for those comments to be meaningfully considered by AQMD staff, is a denial of due process.

In this regard, we also have concerns about the demand that comments be submitted by September 6, 2013. There is no explanation, nor any apparent legal basis, for imposing such a deadline for public comments. It is unreasonable, particularly in light of the absence of text or details regarding the Proposed Rule, and fails to provide due process to the Cities or other members of the public who may be burdened or affected by the Proposed Rule, to demand comments by such an early cut-off. The imposition of such a premature deadline for submission

of comments appears arbitrary, and in conflict with Health & Safety Code § 40726, which states that the AQMD "shall provide for the submission of statements, arguments, or contentions, either oral or written or both," up until the time of the public hearing on the Proposed Rule. We therefore respectfully object to the imposition of a deadline for submission of comments on the Proposed Rule, and reserve all rights to comment on the Proposed Rule in the manner, and at the times, provided by state law and the AQMD rules, and to insist on compliance with the procedures and rights afforded by state law and AQMD rules.

The Cities are therefore providing these comments on a preliminary (and non-binding) basis, considering only the limited information on Proposed Rule 4001 thus far provided by the AQMD, based upon presentations by AQMD staff about the general concepts of the approach. The Cities reserve our rights, however, to make further comments after the September 6 deadline and to continue to provide input throughout the process, including submission of additional or different comments after the draft rule is made available.

First, there is an issue of need. As a rule that is contained in the proposed State Implementation Plan, Proposed Rule 4001 violates Section 39602 of the California Health and Safety Code, which states that the State Implementation Plan shall only include those provisions necessary to meet the requirements of the Clean Air Act. There is no need for Proposed Rule 4001 since the AQMP's emissions targets for port industry equipment in 2014 will be met by United States Environmental Protection Agency (EPA) and California Air Resources Board (CARB) regulations and existing Clean Ocean Vessel Voluntary Incentive Programs. Further, AQMD staff has suggested that Proposed Rule 4001 will require the Ports to develop a "Contingency Plan" immediately following rule adoption, prior to any indication that an emissions shortfall may occur. This approach is punitive, requiring the Ports to invest resources into a type of corrective action, when there is no identified need for that action, and therefore goes against the Act and is inconsistent with due process.

Second, there is an issue of legal authority and jurisdiction. The AQMD has failed to cite any legal authority for characterization of governmental entities as a stationary source, or imposing an indirect source rule on governmental entities that do not own, operate or control the sources of emissions, based merely upon the location of facilities operated by private parties within the government entities' geographic area. The Ports are not "indirect sources" and no authority has been cited to authorize the use of an indirect source rule against fellow governmental agencies that have their own jurisdiction and responsibilities by law and do not have regulatory authority to issue air regulations. The AQMD has failed to cite any legal authority for imposing an indirect source rule on Trustees for the Tidelands of California or how it could legally compel the Ports to make expenditure of Tidelands Trust revenues for the purpose of incentives or to adopt other emission reduction programs to be funded as contemplated in AQMD enforcement activity under Measure IND-01. The AQMD has failed to show any legal authority that would allow it to (1) regulate mobile sources by making another governmental entity, that is not an air regulator, its agent for enforcement of its desired mobile source emission reductions, or (2) "enforce" the

Proposed Rule, which under AQMD administrative rules would eventually mean fines and penalties, against such other governmental entity that does not control the emissions of indirect sources located within its jurisdictional boundaries. The AQMD has failed to show any constitutional or statutory basis for attempting to regulate mobile sources "indirectly" that it is preempted from regulating directly, or to purport to impose penalties or corrective action against another governmental entity for failure of private third party emissions sources to achieve emissions reductions that such other governmental entity is also preempted from regulating.

Third, while the Cities remain firm in our position that the rulemaking is unnecessary, counterproductive and beyond the AQMD's jurisdiction, if AQMD does continue to proceed, the following significant issues must be addressed.

AQMD staff appears to be proceeding with development of the proposed rule in a manner that is inconsistent with the provisions of AQMP Measure IND-01 and the discussion between the AQMD Board and the staff during the approval of AQMP Measure IND-01 at the Board Meeting of February 1, 2013. During that discussion, it was identified that the requirements under any proposed rule would only be triggered if the ports failed to meet their goals for the target year. The proposed rulemaking concepts that have been presented by AQMD staff more recently have indicated that the Ports may be required to develop corrective action plans in advance of any identified shortfall. Further, it appears AQMD staff is considering that the Ports will be required to submit emission inventories to AQMD for approval each year through 2020 and that compliance action may be triggered for any potential shortfalls that may occur during interim years, prior to the target years. These potential requirements are inappropriate and go beyond the direction from the AQMD Board.

Also, because the Cities are not regulatory agencies, have not been granted authority to regulate sources of air pollution, and have limitations on their ability to impose requirements on sources operating within their jurisdiction, AQMD must ensure that Proposed Rule 4001 does not mandate that the Cities implement strategies that are outside of their authority or ability to implement. AQMD must recognize that the Cities do not even have contractual relationships with many of the emissions sources that AQMD has attributed to the Cities' "responsibility" for emissions reductions under Proposed Rule 4001, and that even if Cities have leases with some of the operators, they are negotiated business agreements that constrain the Cities' ability to unilaterally impose new terms in response to whatever new conditions AQMD may desire.

In addition, the Boards of Harbor Commissioners of the Cities have the discretion for making business decisions related to the ports and their tenants, consistent with the Tidelands Trust and California Coastal Act. Neither AQMD staff nor its Board can override the discretion of the Harbor Commissions including decisions related to the management of the port or how port funds are spent. Therefore, AQMD cannot disapprove an Emission Reduction Plan simply because AQMD disagrees with the chosen strategies.

Moreover, approval or disapproval of any Emission Reduction Plan cannot be at the sole discretion of AQMD staff. Any plan development should be coordinated with the agencies involved in the development of the CAAP, specifically EPA, CARB and the AQMD. The partnerships established through the CAAP process, and the actions over the past seven years that have been taken by the regulatory agencies, in addition to the Ports, have been critical in the success that has been achieved. As CARB has stated[1], "[s]uccessful implementation of the CARB emission reduction plan will depend upon actions at all levels of government and partnership with the private sector. No single entity can solve this problem in isolation." Therefore, AQMD staff should not place themselves in a position to be the sole authority to approve or deny plans for emission reductions at the Ports. Any plans should be developed in partnership, with input by all agencies, and final approval on actions to be taken specifically by the Cities should be at the discretion of the Boards of Harbor Commissioners.

Slide 8 of the AQMD presentation at the August 14 Scoping Meeting identified that AQMD is seeking input on "[f]lexibility to garnish emission reductions/air quality benefits off port property". Under the Tidelands Trust, the Boards of Harbor Commissioners are limited in their ability to spend Tidelands funds outside of the Tidelands areas. The Cities cannot be mandated by an AQMD rule to mitigate emissions that are unrelated to port-operations outside of the Harbor Districts and the Tidelands areas.

AQMD has stated that the goal of the Proposed Rule is to ensure that the Cities meet their commitments outlined in the CAAP. The Cities have clearly demonstrated over the past seven years that they are committed to working with the industry and will do what they can to reduce, from port-related sources, the port sector's fair share of regional air emissions. If other non-port related sectors within the region do not achieve their share of emissions reductions, the Cities cannot be held responsible for making up for those shortfalls, regardless of whether or not those shortfalls are anticipated to result in a delay in regional attainment of the $PM_{2.5}$ Standard in 2014.

In addition, the Cities should not be held responsible for any potential emissions shortfalls from regulatory agencies not implementing emission reduction regulations as identified within the SIP, even if those regulations are related to equipment operating at the ports. If an agency makes a decision to delay a regulation schedule, or if a regulation is overturned due to a court decision that the requirements are not within their authority to implement, the Cities should not then be mandated to backfill the potential shortfall.

The last update to the CAAP took over two years to develop and cost over $1 million. The Cities should not be required by the Proposed Rule to prepare an Emission Reduction Plan when no need for such a plan has been identified (e.g. region is anticipated to reach attainment with the $PM_{2.5}$ Standard, emission reductions will be achieved by in-place regulations, no emission shortfall has been identified, etc.). Further, development of a plan should not be mandated if the

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[1] *Emission Reduction Plan for Ports and Goods Movement in California*, Executive Summary, ES-1, CARB, 2006.

reasons for any emissions shortfall are due to reasons outside of the Cities control or if no feasible strategies are available. Any plan that is required by AQMD should be streamlined and focused solely on actions that will be taken by the Ports and/or agencies to make up for any identified shortfall.

As identified in the 2012 Air Quality Management Plan, it was determined that the 2014 $PM_{2.5}$ Standard could be achieved by 2014 and no request for an extension would be needed[2]. Therefore, it is inappropriate for the AQMD to require an emission target year of 2019 in the Proposed Rule.

As stated above, these comments represent the Cities' initial concerns with the AQMD's proposed approach. Further comments will be provided as the process progresses and as more information is made available by AQMD.

We appreciate your consideration. Thank you.

Sincerely,

Heather Tomley
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

cc: Al Moro, Acting Executive Director Port of Long Beach
Geraldine Knatz, Executive Director Port of Los Angeles
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Peter Greenwald, Senior Policy Advisor, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Cynthia Marvin, Division Chief, California Air Resources Board
Elizabeth Adams, Deputy Director, U.S. Environmental Protection Agency, Region 9

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[2] *2012 Air Quality Management Plan*, Executive Summary, ES-11, AQMD, 2013.

August 21, 2013

VIA ELECTRONIC MAIL - bradlein@aqmd.gov
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Ms. Barbara Radlein
c/o CEQA
SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT
21865 Copley Drive
Diamond Bar, CA 91765-4178

Re: Notice of Preparation and Initial Study
Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports"

SCAQMD File No. 0722013BAR
SCH No. 2013071072

Comments on Notice of Preparation, Initial Study, and Scope of Proposed Environmental Assessment

Dear Ms. Radlein and Staff of the South Coast Air Quality Management District:

We appreciate this opportunity to submit comments on the Notice of Preparation ("NOP") and the accompanying Initial Study prepared in connection with the District's consideration of the proposed project entitled "Rule 4001: Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports" (the "Project") on behalf of the City of Long Beach acting by and through its Harbor Department (referred to herein as "COLB") and the City of Los Angeles acting by and through its Harbor Department ("COLA", collectively with COLB, the "Cities").

As environmental leaders nationwide, the Cities have achieved tremendous success in obtaining substantial emissions reductions from their joint San Pedro Bay Ports Clean Air Action Plan ("CAAP") and other air quality measures implemented under the Cities' initiatives. The Cities continue to be supportive of projects and programs that are intended to contribute to improvement of air quality and promote other environmental values. However, the Cities must fundamentally disagree with the District's current proposal to unnecessarily convert an effective voluntary plan, built on multi-agency and industry cooperation, into potentially punitive regulations imposed unlawfully on the Cities. The Cities have previously sought to make the District aware of the serious concerns and objections to this approach. The Cities incorporate by reference their previous comments on the 2012 Air Quality Management Plan ("AQMP")

Measure IND-01 Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities ("Measure IND-01") as comments on the proposed Project. The Cities' comments on Measure IND-01 are Attachment "A" to this letter.

We are also mindful that the California Environmental Quality Act ("CEQA") calls for public review, critical evaluation, and comment on the scope of the environmental review to be conducted prior to approval of proposed projects. Such review and critique 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. Thorough identification of the proposed Project, and candid disclosure of all phases of the Project and their potential impacts, is essential to assure 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, mitigation measures, and alternatives. In addition, it will be important to consider the impacts of the proposed Project on the San Pedro Bay Ports' communities, missions, 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 NOP for this "Project" as well as questions, concerns and objections related to the omissions of critical information, unsupported assumptions, or analytical deficiencies in the Initial Study, and comments as to the scope of the proposed environmental assessment ("EA") as contemplated and invited by the District's NOP.

A. General Comments on the Initial Study

While we recognize the effort that has gone into preparation of the current Initial Study, it is apparent that the Initial Study does not provide the information, evidence, or analysis required under CEQA. The Initial Study thus fails to fulfill its critical role as mandated by CEQA in educating the public generally, other affected regulatory agencies and governments, such as the Cities, 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 initial study are described in the CEQA Guidelines (14 C.C.R. §15063, subd. (d)). An initial study must "contain in brief form:

(1) A description of the Project including the location of the Project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries . . . ;

(4) A discussion of ways to mitigate the significant effects identified, if any;

(5) An examination of whether the Project would be consistent with existing zoning, plans, and other applicable land use controls;

(6) The name of the person or persons who prepared or participated in the initial study."

An initial study that fails to provide all of the information, analysis, and evidence called for by CEQA may be deemed to be inadequate and not a valid basis for CEQA review or project approval. (See, e.g., *City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, at pp. 407–408, [invalidating the County's proposed general plan amendments because of a deficient initial study: "[T]he initial threshold study is inadequate because it fails to provide sufficient evidence or analysis of the potential environmental effects of the amendments."].)

It is therefore respectfully urged that the Initial Study (and the related NOP) be revised, corrected, and recirculated for public review and comment before the District proceeds with any further action or EA in connection with the proposed Project.

The CEQA Guidelines contemplate that an initial study is to be used in defining the scope of environmental review (Guidelines, Sections 15006(d), 15063(a), 15143). However, as a result of the omissions, open questions, and deficiencies in the Initial Study as noted below, it appears to have unduly narrowed the District's proposed scope of environmental assessment, and to have caused the NOP to erroneously exclude critical issues and topics from the proposed scope of the EA.

The comments on the current Initial Study included in this letter are organized in the same format used by the Initial Study, i.e., comments on "Chapter 1 – Project Description" followed by comments on "Chapter 2 – Environmental Checklist." The comments are limited to those matters that appear in the current version of the Initial Study, and we reserve the right to provide further comments in the event that additional or different information about the proposed Project becomes available, or the District provides a revised and CEQA-compliant Initial Study.

B. Request for Revision of NOP and Re-Circulation of Revised NOP/IS To Include a Legally-Adequate "Project" Description and Text of Proposed Rule 4001

It is essential that the NOP and the Initial Study be revised to include an adequate "project description" including the text of the proposed Rule that is the "project" before the public, or the Cities, can be expected to provide comments and input.

In their prior comment letter on the Draft 2012 AQMP Program EIR dated October 22, 2012, the Cities expressed the very same concern over the vague and deficient "project description" of backstop Measure IND-01. In the District's response to comment #5-4 in the

Final Program EIR, the District stated: "*The exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted*." The District also committed, in its response to the same comment #5-4 in the AQMP Final Program EIR, that "*further details regarding the future requirements* [a Rule implementing Control Measure IND-01] *will be determined more appropriately during the rule development process.*"

The District has already commenced the rule development process. However, it has not yet provided even a draft of the proposed Rule 4001. To the contrary, at a public meeting held on August 8, 2013, the District's staff announced that the Rule will be developed after various public meetings with a "Rule 4001 working group," with a goal of releasing a draft of the Rule on August 28, 2013. Such a deferred release date for the "draft" of the proposed Rule would be one week after the deadline for comments on this NOP. The details and text of the promised Rule must be developed and disclosed before the "particular methods" and "exact impacts" anticipated may be analyzed or the subject of comment. Accordingly, it is still not possible for the District to proceed with appropriate project-level CEQA review or to issue an accurate NOP/IS at this stage if the details of proposed Rule 4001 are under development.

It is necessary that the current NOP and Initial Study be revised to include a revised "Project" Description, to incorporate the text of the draft Rule 4001 in detail, and to recirculate the revised documents for public review. A new set of public meetings, including a new "scoping meeting" should be scheduled to provide the public with sufficient time and opportunity to comment on the scope and adequacy of the revised NOP/IS.

C. Comments on the Initial Study

1. Chapter 1 of the Initial Study -- Inadequate "Project" Description

(a) Deficient "Project" Description – In General

The failure of the Initial Study and NOP to provide an accurate, complete, and coherent description of the "Project" is a fundamental deficiency, which permeates the entire document. The absence of such a clear description of the proposed Project inherently prevents the Initial Study from facilitating meaningful review and analysis of the proposed Rule 4001, and violates the requirements of CEQA. (See, e.g., CEQA Guidelines, Section 15124; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376.)

The Initial Study does not include or even describe the text of the proposed Rule that is supposed to be the "Project." The section of the Initial Study that purports to "describe" the Project, "PR 4001," includes nothing more than summaries of "key concepts provided in the 2012 AQMP Control Measure IND- 01." Those summaries and "concepts" are insufficient to describe the Project itself, and prevent effective public review and comment. Moreover, since

the 2012 AQMP Control Measure IND- 01 has already been adopted, it is perplexing that the District would use that measure as a substitute for the Project description.

The Initial Study does not provide a description of how the proposed Rule would work. It fails to describe reasonably foreseeable activities or actions of other agencies in response to or associated with the proposed Rule. This Initial Study suggests, instead, that the intent of proposed Rule 4001 would be to delegate the District's responsibilities for regulating or reducing emissions of NOx, SOx, and PM2.5 air emissions to other agencies, specifically the public officials governing the ports of Long Beach and Los Angeles, 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 Rule 4001 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 evaluation project alternatives, etc.).

The importance of providing an accurate and informative project description in an Initial Study was re-emphasized in *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 267, emph. added:

> "**The initial study must include a description of the project.**" (*City of Redlands, supra,* 96 Cal.App.4th at pp. 405–406, fns. omitted.) "Where an agency fails to provide an accurate project description, or fails to gather information and undertake an adequate environmental analysis in its initial study, a negative declaration is inappropriate. [Citation.] An accurate and complete project description is necessary to fully evaluate the project's potential environmental effects. [Citations.]" (*El Dorado County, supra*, 122 Cal.App.4th at p. 1597.)
>
> "**The scope of the environmental review conducted for the initial study must include the entire project**." (*Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1222.) Thus, a correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA. (*Tuolumne County Citizens, supra*, at p. 1222.)

The Initial Study currently falls far short of these requirements in describing the proposed Project, and thus falls equally short of serving the "public awareness" purposes described above and mandated by CEQA:

> An accurate and complete project description is necessary for an intelligent evaluation of the potential 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, citing *Aberdeen & Rockfish RR. v. SCRAP* (1975) 422 U.S. 289, 322 [an accurate, complete and consistent project description is the sine qua non of informative, legally adequate CEQA review].) (*City of Redlands v. County of San Bernardino* (2002) 96 Cal. App. 4th 398, 407–408.)

The Initial Study (p. 1-5) indicates that "the approaches and concepts considered in this NOP/IS may be subject to change" based on comments from the working group. In light of the District's initiative in forming a "working group" of interested participants to help formulate the proposed Rule, and thereby provide an actual "project description," it would be more appropriate to undertake CEQA analysis and compliance after the actual Rule is developed. Furthermore, it is premature for the District to assume or conclude that any changes received from the working group as well as comments received relative to this NOP/IS will all be within the scope of the analysis in the NOP/IS.

In brief, the NOP/IS erroneously limits the scope of the analysis and inherently calls for impermissible speculation or impossible prescience on the part of the Cities or other members of the concerned public to undertake effective analysis of the proposed Project, or to provide meaningful comments as to the scope of review of the Project, until and unless the District provides an adequate description of the "Project."

(b) Specific Comments and Questions re "Project Description" and Text

The following comments and questions refer to specific portions or pages of Chapter 1 of the Initial Study:

Pp. 1-1 - 1-2 – Introduction

The Introduction states, in the first sentence of the third paragraph on page 1-1, that Control Measure IND-01 "...does not call for additional emission reductions beyond those realized with existing regulations and emission reductions programs implemented at the Ports to date." This is an untrue statement. The CAAP is only a planning document which specifically provides for discretionary future decisions to be made regarding implementation by each of the Cities' respective Board of Harbor Commissioners, and resolution adopting the CAAP update states: "The CAAP is a living document intended to establish a process to develop solutions, not a static document binding the Ports to particular future actions….The CAAP is a planning document that identifies goals and potential implementation strategies to guide further actions, and as such does not constrain the discretion of either Board of Harbor Commissioners with

respect to any particular action."[1] Not all individual Board actions that may be required in order to achieve the CAAP's goals and activities have been adopted, many of which goals were stretch targets with uncertainty as to whether they could be achieved. Measure IND-01 and Rule 4001 propose to require the Cities to potentially adopt future actions that create potentially-conflicting authorities between the District, as regulator, and the Cities, as independent governmental agencies regulated by the District, so as to force the Cities to exercise their discretionary police power authority in a particular way. The Constitution does not permit such usurpation of the Cities' authority.

The Introduction states, in the last paragraph beginning on Page 1-1, that the emission targets for port-related sources are those assumed in the 2012 AQMP emissions inventory. The Cities raised questions during the Measure IND-01 adoption process regarding the District's calculation of these targets, which are different from the emissions targets set under the CAAP. Although the specific emission targets of the proposed Project do not appear at all in the NOP (which omission itself is a defect), the District has verbally advised the Cities and a working group on August 8, 2013, that the Rule will be such as to be triggered on set emission targets for 2014 and 2019. Those comments, however, left the Cities and working group participants with many questions about how the District set the emissions inventory, particularly for 2019, which was not in the CAAP. These examples are provided to illustrate that the NOP's description of the proposed Rule is not only flawed but missing altogether.

P. 1-3 - Project Location

The Initial Study provides no finite "project location." It describes the District's jurisdictional boundaries. It then states that "PR 4001 would apply to POLA and POLB, both of which are located within Los Angeles County." It is unclear if this was an attempt to state that the Project location would be Harbor Districts of the Cities. The lack of clarity regarding the Project location is further compounded by the Rule's reference to "sources not entering Port properties." During the August 14th Scoping Meeting, Mr. Hogo attempted to clarify this reference by referencing an undefined area outside of but near the two Harbor Districts. Unfortunately, Mr. Hogo's statement did not clarify the proposed Project's location.

Is it the intention that any portion of the Project may be implemented outside the geographic areas of the Harbor Districts of the Cities? It is unclear from this description whether the Project may have impacts or foreseeably result in actions being taken outside these Harbor Districts. This may have jurisdictional implications which cannot be evaluated without additional information.

[1] Los Angeles Resolution No. 10-7041 adopted by the Board of Harbor Commissioners of the City of Los Angeles and Long Beach Resolution No. HD 2600 adopted by the Board of Harbor Commissioners of the City of Long Beach on November 22, 2010.

Also, the Initial Study fails to disclose or analyze the possibility that if the option for the Cities to reduce emissions from sources not entering Port properties is included in proposed Rule 4001, even the vague "project location" and geographic scope of the proposed Rule in the Initial Study would not be accurate and would need to be modified in the NOP/IS.

P. 1-4 – Project Background

The Initial Study's description of the "Project Background" implies that the two Cities' ports themselves actually conduct cargo operations. For example, the text states that the COLA "serves approximately 80 shipping companies." This illustrates a fundamental lack of understanding by the District of how ports work. There are two types of business models of ports: some are "operating ports," that conduct cargo operations directly, such as the Port of Charleston, South Carolina and some are "landlord ports," such as the Ports of Los Angeles and Long Beach, that merely lease wharves and land to operators who conduct cargo operations.

The Ports of Los Angeles and Long Beach are not, "the single largest fixed source of air pollution in Southern California." The EA should clarify that the referenced sources of air emissions are the vehicles, engines, ships, trains, trucks and other cargo-moving equipment operated by distinct tenants, users, and visitors of the ports, not the Harbor Districts or the Cities.

P. 1-5 – Legal Authority for PR 4001

The Initial Study suggests that if the (unspecified) "backstop measure" that would be mandated under PR 4001 "becomes effective," then the new Rule would require the Cities to take (unspecified) action "to develop and implement plans to get back on track" regarding attainment of emissions targets. Under what legal authority does the District believe that its proposed Rule 4001 may purport to compel distinct governmental bodies (the Cities and the Boards of Harbor Commissioners) to legislate or to exercise their discretion in particular ways to achieve District objectives?

Measure IND-01 was prominently referred to as an "indirect source rule." The current general references to proposed Rule 4001 in the NOP/IS have lost all mention of an "indirect source rule." However, the references to proposed Rule 4001 do not cite to any authority the District is relying on for its processing of the proposed Rule. This should be corrected so that the public can comment on whatever legal authority may be invoked by the District.

Is it anticipated that the "plans" and strategies that would be required to be adopted by the legislative boards of the two Cities under the mandate of proposed Rule 4001 would be within SCAQMD's regulating authority and subject to the District's approval or disapproval? If so, why would SCAQMD not directly adopt such "backstop" strategies and plans itself? If not, is the Rule being proposed in order accomplish something indirectly that SCAQMD itself cannot do directly? (Cf., *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 [same].)

P. 1-5 – Call for Cities to Regulate Off-Site "Sources"

The Initial Study indicates that the District will be inviting and considering proposals, as part of this "Project," regarding potential measures for the Cities to adopt and implement to try to reduce emission from sources *not entering* onto port properties. What does this mean? What legal authority might the Cities have to try to regulate *off-site* sources that do not come within the jurisdiction of the respective Harbor Commissions? (Municipal police power authority may generally be exercised only within the territorial boundaries of their jurisdiction, and the Boards of Harbor Commissioners have special Tidelands limits on their authority.)

Would such (unidentified) measures be part of Rule 4001, or would proposed Rule 4001 require that the Cities formulate (unidentified) measures in the future to somehow regulate *off-site* "sources?"

Until such options are identified, shown to be legally authorized and technically feasible, how can the CEQA analysis for proposed Rule 4001 be undertaken?

P. 1-6 – First Bullet – Imposing "Requirements" on the Cities?

The Initial Study indicates that if proposed Rule 4001 becomes effective the Cities "would be required to submit an emissions reduction plan to address the emissions reduction shortfall."

As noted above, this raises questions as to the intent and legal authority behind the Rule. Has the District identified legal authority for a rule that would require other governmental agencies (the Boards of Harbor Commissioners for the respective Cities) to exercise their legislative discretion/authority in any particular manner? Does the District intend to reserve to itself some authority to approve or disapprove any such plans submitted by the Cities?

What is the consequence of disapproval by the District?

What environmental baseline and other parameters would be required by proposed Rule 4001 in order for the Cities to determine the extent of any "emissions shortfall" that may need to be addressed in the Cities' plans in the event they were to undertake to submit plans under the Rule?

P. 1-6 – Second Bullet -- Funding

This bullet point implies that "funding" would be necessary for many of the potential future emission reduction measures that may be compelled under proposed Rule 4001. Would such funding be provided by the District? What other "funding" sources are contemplated? Will

there be constitutional or common law "gift of public funds" restrictions on funding imposed on the Cities for activities under their CAAP if Rule 4001 makes CAAP compliance a potential state or even federal regulation?

Are the Cities expected to fund these programs from Tidelands Funds? By what authority may the Harbor Commissioners impose taxes, assessments, and charges on users of the Harbor Districts, given the restrictions of various state laws, including, among others, Proposition 26?

The vague disclaimer in the Initial Study to the effect that proposed Rule 4001 would not require any measure that lacks legal authority or feasibility raises more questions than it answers. Whatever types of "emissions reduction plans" may be anticipated by proposed Rule 4001 should identified by the District in the NOP/IS so that the feasibility and legality of such approaches can be evaluated as part of the environmental assessment for the Project.

Pp. 1-6 – 1-7 -- Technology Overview/Implementation Strategies

This refers to some emission reduction strategies included in the CAAP, but the Initial Study does not explain how these may relate to proposed Rule 4001, or whether they should be considered as part of the Project.

The suggestion in the Initial Study of possible "tariff change" or "impact fees" on the activities of users of the Harbor Districts raises other questions (e.g., legal authority, funding for studies and public review processes required before such measures could be considered or adopted, indemnification for costs of defense, etc.) requiring identification and study. Moreover, such measures may themselves be considered as "projects" subject to CEQA review and may have impacts on the activities of Harbor District users that themselves would require analysis or mitigation.

The Initial Study also includes reference to "Port funded incentives" as possible measures to reduce emissions, but also observes that there is not adequate funding for such strategies in the Cities' budgets or other grant program. The source of funding any "Port-funded" measures contemplated by proposed Rule 4001 should be clearly identified and evaluated.

Any such contemplated implementation strategies should be included in the "Project description" and better identified in a more complete NOP/IS, so that they may be evaluated along with the rest of the Project.

Pp. 1-10 – 1-11 -- Imposition of "Requirements" on the Cities

The NOP/IS states that none of the CAAP strategies would be "prescribed in PR 4001." Instead, the NOP states that if proposed Rule 4001 becomes effective, the Cities (presumably the Boards of Harbor Commissioners) -- "individually or jointly" -- would be required to identify sources that could undergo potential emission reduction to "make up for the shortfall."

Why would/should the obligation to make up for a possible shortfall in meeting emission reduction targets (which are primarily the responsibility of the District to attain) be shifted so as to fall upon two independent governmental entities? The Cities are governmental entities, and are not directly producing emissions or otherwise directly responsible for the targeted emissions or for the attainment of the emissions reduction targets. Moreover, if there were to be a "shortfall" in attaining the targets, it could well be due to factors not caused or controlled by the Cities, and not due to any actions or derelictions on the part of the Cities or their tenants or users.

Other issues: How would a "shortfall" be measured or determined? Would any such "shortfall" be allocated to sources or causes bearing some actual responsibility for the lack of attainment? How would it be "allocated" between the Cities? Would uncontrollable/unforeseeable factors resulting in all or part of a shortfall be excluded from whatever obligation may be imposed on the Cities?

Would proposed Rule 4001 take into account the statutory limits on the jurisdiction and authority of the Cities (i.e, the Boards of Harbor Commissioners) to impose restrictions on most mobile sources of emissions?

Footnote 6 (on page 1-11)

The NOP/IS mentions a possible "option" that would "allow" the Cities to reduce emissions from "non-port-related sources." This vague reference requires clarification before it may be evaluated in connection with the Project. Direct and indirect effects would need to be considered that may occur beyond the geographic boundaries of the Harbor Districts. Therefore, it is premature for the District to conclude that any changes based on the working group or public scoping comments will be within the scope of the analysis in the NOP/IS.

P. 1-11 -- Technologies

The EA should be expanded to address the legal, technological and economic feasibility of the seven bulleted items listed in this section.

P. 1-12 -- Alternatives

No alternatives have been identified for study in the NOP/IS. Instead, it merely commits the District to "discuss and compare alternatives" in the future, as part of the Draft EA.

It also suggests the District is looking to the public or other agencies to identify "alternatives" during the scoping process. As previously explained however, how can alternatives realistically be suggested when the Project itself has not been identified or described?

The No Project Alternative is not defined in the NOP/IS. In accordance with CEQA Guidelines Section 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. Therefore, the Draft EA should consider the impacts that would occur under the existing 2012 AQMP without Control Measure IND-01 or proposed Rule 4001. In particular, an analysis should be conducted of the grant funding that would be available under the No Project Alternative that would not be available if the proposed Project constitutes regulation, and the environmental impact if grant funding necessary to make certain actions economically feasible is no longer available under the proposed Project. If the District's position is that there is no loss of grant funding in order to comply with Rule 4001 as a regulation that the District purports to make enforceable under the State Implementation Plan and the Clean Air Act, the District must explain in the Rule its basis for this conclusion in the context of why grants made for compliance with a regulation is not a gift of public funds.

In light of the technical complexities of the issues and the ambiguities as to what the District is actually seeking to accomplish by way of proposed Rule 4001, it seems unreasonable to expect others to develop the project alternatives. One suggested alternative would be for the District to formulate its own "backstop" measures and strategies for addressing any shortfall in emission reduction targets, relying on the District legal authority, expertise and resources, rather than pursuing proposed Rule 4001, which appears to be an attempt to rely upon presumed authority of the Cities. Another suggested alternative would be, the memorandum of understanding approach that was suggested by the Cities and proposed by staff as an alternative to Measure IND-01.

(c) Other Comments on Chapter 1 - "Project Description"

Incomplete Description of Environmental Setting

The Initial Study also fails to provide an adequate description of "the environmental setting" of the proposed Project.

While the CEQA Guidelines do not specially define "environmental setting" with regard to an initial study, they do explain, in regard to EIR preparation, that the "environmental setting" must be informative: "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." (Guidelines, § 15125, subd. (a).) A description of the environmental setting must be sufficient to allow "an understanding of the significant effects of the proposed projects and its alternatives" but "no longer." (Guidelines, § 15125, subd. (a).) That description should place "[s]pecial emphasis" "on environmental resources that are rare or unique to that region and would be affected by the project" and "must permit the significant effects of the project to be considered in the full environmental context." (Guidelines, § 15125, subd. (c).)

Failure to Examine All Phases of the Entire Project as Proposed

"The Initial Study must include a description of the project, and 'the scope of the environmental review conducted for the initial study must include the *entire* project." (*Nelson v. County of Kern, supra*, 190 Cal.App.4th at 270, emph. in original.)

The Initial Study here improperly fails to describe "the entire Project" and fails to consider all phases of the proposed Project. The CEQA Guidelines (14 C.C.R §15063(a)(1)) make clear that an initial study must take a comprehensive view of the proposed project *as a whole*. "All phases of project planning, implementation, and operation must be considered in the initial study of the project."

The NOP/IS indicates that proposed Rule 4001 is intended to require actions by the Cities, to adopt and implement plans and strategies to address any "shortfall" in emissions reductions. The Initial Study improperly fails to address or to provide information and analysis relating to the environmental impacts of the anticipated "subsequent approvals," "discretionary permits" and amendments to the Cities' plans and regulations that appear to be proposed as parts of the Project, or the physical environmental effects of social or economic impacts that may result from those anticipated and apparently necessary changes in land use regulations." (Guidelines § 15063.) Such anticipated and intended actions by other governmental agencies thus appear to be part of this Project, and must be identified and evaluated in the Project EA, along with their potential impacts. As such, we reiterate our prior comment on the Draft 2012 AQMP Program EIR dated October 22, 2012 where it is stated that the District has failed to fully disclose the details of Measure IND-01 and as a result is segmenting or piecemealing its CEQA analysis.

Failure to Describe Existing Land Use Regulations

The Initial Study does not include an examination of whether the Project would be consistent with existing zoning, plans and other applicable land use controls, as required by CEQA Guideline Section 15063. Although the Initial Study includes some background discussion of the CAAP, it provides little or no description of the existing planning and zoning designations applicable to the "Project" location, and relies on (unsupported) assertions that the Project would be in furtherance of the CAAP. It provides no information or analysis of other existing plans or policies applicable in the Harbor Districts, which may be affected or impacted by the Project.

Uncertain and Inadequate Identification of "Baseline" Used for Review

It is critical under CEQA that any level of environmental review make it clear as to the "baseline" being used as the basis for analysis of the significance of potential Project impacts. (CEQA Guidelines Section 15125(a).) Normally, the "baseline" will be the existing environmental conditions in the vicinity of the Project. (Guideline Section 15125(a); see also,

Communities for a Better Environment v. South Coast Air Quality Management District (2010) 48 Cal.4th 310, 315 [the baseline for an agency's primary environmental analysis under CEQA must ordinarily be the *actually* existing physical conditions rather than *hypothetical* conditions that could have existed under applicable permits or regulations].) The Supreme Court has explained that the requirement for identification and use of the appropriate "baseline" applies in the context of an Initial Study as well as in an EIR. (*Communities for a Better Environment, supra*, 48 Cal.4th at 512, and n. 5.)

The Initial Study here, however, fails to make it clear as to what "baseline" is being used. In many places the Initial Study compares the anticipated "impacts" of adopting proposed Rule 4001 to the permitted emissions levels anticipated (in the future) under the 2012 AQMP, or alternatively to the (future) emission reduction targets of the CAAP -- rather than to the existing environmental conditions. While the recent Supreme Court decision in *Neighbors for Smart Rail v. Exposition Metroline Constr. Authority* (8/5/2013, No. S202828) ___ Cal.4th ___, indicates that the baseline need not always be the existing physical conditions, and that "projected future conditions" may be used in rare situations as a baseline "if their use in place of measure existing conditions ... is justified by unusual aspects of the project or the surrounding conditions" (Slip Opinion, p. 11), it does not detract from the rule that the Initial Study must accurately and consistently describe the baseline being used. Nor does it permit the use of "future conditions" in the absence of a showing of unusual circumstances. The Initial Study in this case does neither.

For each of these fundamental reasons, the NOP/IS should be rescinded in order that it may be revised, completed and corrected to meet CEQA requirements.

2. Chapter 2 of the Initial Study – The "Environmental Checklist"

(a) General Comments and Questions on the Environmental Checklist

The NOP/IS apparently relied on a standard CEQA environmental checklist to identify those "impact areas" it recognizes to be potentially affected by the Project. In several respects, however, the Initial Study appears to merely assume 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, supra*, 96 Cal.App.4th at 408-09; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296). Furthermore, it is contrary to the District's response to comment #5-4 in the Final Program EIR, which indicates that "[t]he exact impacts resulting from the particular methods that will be used under Control Measure IND-01 can only be determined in the future as the measure is developed into a rule or regulation and adopted."

The NOP/IS currently indicates that the scope of the proposed EA for this "Project" will be limited to the six topics listed at p. 2-2. Compliance with CEQA, however, would require not only a new and corrected Initial Study, providing an adequate "Project description" but also a more comprehensive EA that addressed additional areas of potentially significant impact, including (without limitation): (1) Aesthetics, (2) Biological Resources, (3) Cultural Resources, (4) Land Use and Planning, (5) Noise, (6) Public Services, and (7) *broadened evaluation* of potential impacts and issues in the areas of Energy, Hazards and Hazardous Materials, Air Quality, and Transportation and Traffic.

Unless and until those areas are more fully addressed, the NOP/IS appears to improperly limit the scope of the proposed EA, and to erroneously exclude areas requiring further assessment.

(b) Specific Comments and Questions on the Environmental Checklist

As detailed below, there are numerous areas of potential environmental impact in the checklist as to which the Initial Study either omits required evidence to support its conclusions of "no potential impact" or treats with insufficient detail.

More specific questions and comments follow:

P. 2-4 -- Preliminary Discussion of Checklist

First Paragraph: We reiterate the same comment as noted on page 1-4 regarding Cities being the source of emissions. The geographic location itself does not produce emissions. It is the users of the area that produce impacts. The users of the two ports are the owners and operators of the ships, trains, trucks and equipment which the District targets as the sources of emissions.

First Paragraph, Last Sentence: The Initial Study states that "some emission reductions [assumed by the District's 2012 AQMP] may be contingent upon the Ports taking and maintaining *actions which are not required by air quality regulations*." This suggests that one of the purposes for District proposal of proposed Rule 4001 may be to establish a new regulatory "authority" over the Cities (and the communities served by and dependent upon the Harbor Departments of the Cities) that is not in fact already provided by existing federal, state, or regional air quality regulations. The policy implications of such a Project may well include significant impacts on the environment, if regulatory authority over activities, facilities, and uses of the Harbor Districts is shifted or arrogated to the District. (See, e.g., *City of Redlands, supra,* 96 Cal. App. 4th 398 [proposed new County policy re exercise of County authority over annexations and sphere of influence was not supported by adequate CEQA review].)

Second Paragraph, Last Sentence: Same comment as page 1-5.

Third Paragraph. The NOP/IS states that the checklist responses focus on "the above mentioned actions." This is extremely vague. Is the reference intended to be the items referenced in the paragraph immediately above, or in the earlier pages?

Identification of precisely what measures are being assumed or proposed in proposed Rule 4001 is essential to being able to review the Initial Study.

Aesthetics -- P. 2-5

Discussion of I a), b) and c). The Initial Study suggests that "because PR 4001 would implement IND-01" the District may simply assume that this Project would not be expected to generate significant adverse aesthetics impacts. However, given that the measures that would be used to implement IND-01 are not identified, the Initial Study does not provide evidence to demonstrate that proposed Rule 4001 has no potential for impact. To the contrary, the Initial Study admits that "PR 4001 will primarily affect operations at two ports" and but then simply assumes from the industrial and commercial zoning of the Harbor Districts that there could not be a potential for impacts on "scenic vistas" nor any potential degradation of the visual character of the areas around the Harbor Districts.

The Initial Study fails to describe the environmental setting and include any evidence or analysis to support its assumption that whatever is done to implement proposed Rule 4001 would "likely easily blend in" with the surrounding activities, especially since what would be done to implement the Rule is not yet known. Specifically, the Initial Study 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. 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 Harbor Districts and if modified, through obstruction, alteration, or demolition could have a negative aesthetic impact. Without a clearly defined project, project location, or description of the environmental setting, it is not possible to conclude that any port modifications will have little or no noticeable effect on adjacent areas and would blend in with the visual setting.

The Initial Study indicates that "Control devices may include hoods or bonnets on ship exhaust stacks to capture emissions and are expected to be as high as 80 feet (POLB, 2006)" and concludes that "these control devices would be similar to other structures used within the heavily industrialized portions of the Ports…" First, the "POLB" citation is missing in the list of references. Second, it is speculative and erroneous to assume that control devices as high as 80 feet would have "no visual impact" without knowing the location, dimensions, color scheme or critical viewpoints. No such analysis has been considered here and the impact is dismissed with no evidence to support the conclusion.

The last sentence of the first paragraph (on p. 2-6; I. d) suggests there are no residential areas "next to" the Harbor Districts, and thus the Initial Study may dispense with analysis of light and glare impacts. It is evident however that was an inaccurate assumption given the residential communities of San Pedro, Wilmington and Long Beach located adjacent to the Harbor Districts. This is also contradictory to the description of surrounding land uses and setting on page 2-1 which indicates "potentially residential."

The Initial Study further errs by dispensing with environmental analysis or evidence, simply because of the (assumed) beneficial air quality goals of proposed Rule 4001. The law is clear that environmentally "benign" objectives for a project do not excuse non-compliance with CEQA and do not justify reliance on assumptions in lieu of evidence to demonstrate the absence of potential impacts. *See, e.g., California Farm Bureau v. California Wildlife Conservation Board* (2006) 143 Cal.App.4th 173, 196, emph. added [State environmental agency violated CEQA by exempting environmentally beneficial habitat project from review]:

> "[I]t cannot be assumed that activities intended to protect or preserve the environment are immune from environmental review. [Citations.]" (*Davidon Homes, supra*, 54 Cal.App.4th 106, at p. 119; see, e.g., *Dunn-Edwards Corp. v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644 (disapproved on other grounds in *Western States Petroleum Assn. v. Superior Court, supra*, 9 Cal.4th 559, 570.) **There may be environmental costs to an environmentally beneficial project, which must be considered and assessed**.

This topic should not be dismissed. Given the nature of proposed Rule 4001, it cannot be determined that its implementation would have no impact on aesthetics. The EA therefore should include "Aesthetics" as a potentially impacted area of study.

Air Quality -- P. 2-11, Discussion

In the first paragraph (p. 2-11), last sentence, the stated assumption is speculative given there is no information about what physical changes to the environment proposed Rule 4001 will entail. There is no evidence to support the assumption in the Initial Study that proposed Rule 4001 would be identical to Measure IND -01 or have identical (previously-studied) impacts on air quality.

P. 2-11, III.a

The first paragraph, last sentence, again raises the question of why it should become the obligation of the Cities to take actions on their own to fulfill the obligations of the District for reaching emissions reductions targets? What is the legal authority for this shifting (or delegation) of the District's air quality responsibility?

In the second paragraph, the Initial Study relies on an assumption that "the Port" would be installing control equipment. Again, this erroneously confuses the Harbor Departments of the Cities with the operators of vessels, vehicles, and equipment. The Harbor Boards serve as trustees of tideland assets.

The conclusion in this section assumes that the undefined strategies and approaches suggested in conceptual description of proposed Rule 4001 will be successful. That is dependent on the feasibility of the approaches, which must be identified and assessed. Therefore, this topic should be analyzed in the EA.

P. 2-12, III.b, c, and g

Given the total lack of information regarding what proposed Rule 4001 would entail and whether it's implementation is feasible, it is premature to assess impacts in this category. These details must be provided and these topics should also be identified and assessed in the EA.

P. 2-13, III.e

There is no factual basis in the Initial Study upon which to conclude that implementation of proposed Rule 4001 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 Initial Study analysis only applies to construction odors and ignores any potential odors that may occur during long-term operations.

The NOP should be amended to make clear that at least these additional areas of potential impacts on air quality should also be identified and assessed in the EA.

Biological Resources – P. 2-14

The Initial Study fails to adequately describe, and improperly minimizes, possible impacts to biological resources, including least terns and migratory birds.

The scope of the proposed EA should be expanded to include environmental analysis of the Project's potential impacts on biological resources.

Cultural Resources – P. 2-16

The Initial Study fails to adequately describe, and improperly minimizes, possible impacts to cultural resources. Not all areas within the Harbor Districts are devoid of cultural resources or have cultural resources that have been previously disturbed, as concluded in the Initial Study on page 2-18 in section V(b), (c), and (d). There are known recorded historic and prehistoric sites throughout the Harbor Districts. For example, see COLA's website at http://www.portoflosangeles.org/idx_history.asp. Without knowing the location and extent of ground disturbance from possible construction activities associated with proposed Rule 4001, it

is speculative to assume that no significant adverse cultural resources impacts are expected from implementing proposed Rule 4001. The conclusion in the Initial Study is unsupported and lacks evidence or facts to support the findings.

The scope of the proposed EA should be expanded to include environmental analysis of the Project's potential impacts on cultural resources.

Energy – P. 2-18

The Initial Study section VI(c) must be expanded to also consider and analyze 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 required in the event of a major disaster. Also, some types of emissions control measures, facilities, or technologies contemplated by the Project could increase or shift demand for different types of energy or fuel usage. Although "risk of upset" is not considered in the Initial Study checklist, it should be cross referenced here and addressed in the Hazards section of the Initial Study.

The scope of the proposed EA should be expanded to include this additional analysis.

Hazards and Hazardous Materials – P. 2-24

The Initial Study section VIII(f) must be expanded to also consider and analyze the increased reliance on alternative fuels or electrical powered technologies that would require sufficient supply and emergency storage in the event of a major disaster. Although interference with emergency response plans was marginally addressed in this section, "risk of upset" is not considered in the Initial Study checklist.

The scope of the proposed EA should be expanded to include this additional analysis.

Land Use and Planning – P. 2-34

The Initial Study fails to adequately describe, and improperly minimizes, possible inconsistencies between the proposed Project and the existing and applicable land use plans and policies.

The Initial Study erroneously claims that "there are no provisions in PR 4001 that would affect land use plans, policies, or regulations." (P. 2-34.) The Initial Study does not support that conclusion with any substantial evidence.

First, the NOP/IS fails to identify any of "the provisions of PR 4001" so the statement cannot be supported or evaluated.

Second, and more importantly, however, the Initial Study repeatedly references "implementation strategies," "plans" and other new measures that it anticipates the Cities will be required to enact if proposed Rule 4001 becomes effective. Presumably this is because of inconsistencies between the existing plans and policies and the requirements of the new Rule. (See, e.g., pages 1-6 through 1-11.) The measures contemplated in the Initial Study include the adoption of new "regulatory requirements," new "impact fees" on the movement of cargo or sources, and changing the tariffs for use of the Harbor Districts – all of which would cause at least potential "conflicts" with applicable plans and policies. (Cf., *Orinda Ass'n v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1169 [the CEQA requirements for initial study examination of non-conformity with existing land use plans are intended to allow lead agency to modify the Project to avoid inconsistencies with existing plans – not vice versa].)

Third, the Initial Study itself acknowledges that the Project is anticipated to cause "potentially significant impacts" or conflicts with "an applicable plan ... for the performance of the circulation system" and conflicts with "an applicable congestion management plan." (Initial Study, p. 2-44.) Although the Initial Study proposes to address those admitted conflicts in the "transportation" section of the EA, these acknowledged conflicts confirm the necessity for including "land use and planning" impacts in the proposed EA as well.

Fourth, the proposed Project would seemingly create conflicts with the Cities' 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 are detailed in the previous port letters included in Attachment A to this letter. In addition, the proposed Project would create inconsistencies with the Clean Air Action Plan.

Fifth, the proposed Rule is apparently structured in a way that would impermissibly usurp the (non-delegable) police power authority of the Cities and their respective Boards of Harbor Commissioners to plan, implement, and regulate land use policies and actions in their respective jurisdictions. (This comment has also been raised above, in Project Description comments.)

The numerous inconsistencies between the Project as proposed and the existing plans and policies require identification in the Initial Study and inclusion in the proposed EA. (Guidelines § 15125(d).)

The scope of the proposed EA should be expanded to include environmental analysis of the Project's potential impacts on land use and planning.

The EA should also include analysis of the impacts of the proposed/anticipated Project-related subsequent amendments to the Cities' plans, policies, and other land use regulations. (See, e.g., *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1197 [CEQA review failed to consider incidental results from adoption of revised policy; incidental impacts could not be disregarded in an initial study based upon "net" environmental impact of the change in policy being benign since CEQA requires each environmental impact of

project be discretely evaluated].) "Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project." (Guidelines, § 15064, subd. (e); see §§ 21080, subd. (e)(2), 21082.2, subd. (c).)

The scope of the EIR should be expanded to include analysis of possible physical changes in port facilities and operations that might be caused by economic or social effects of the Project itself or by the anticipated amendments to land use and zoning policies by the Cities subsequent implementation of the Project.

Noise – P. 2-36

The NOP/IS acknowledges that approval of the Project and "triggering" of the PR 4001 could result in the construction or installation of new control equipment. The Initial Study improperly dismisses the potential noise impacts from such work as "not expected to be in excess of current operations." There is no substantial evidence in the Initial Study to justify such assumptions.

Similarly, there is no evidence cited in the Initial Study to support its further assumption that additional permanent noise impacts anticipated from the operations of new control equipment would not "substantially increase ambient operational noise levels in the area."

This section of the Initial Study is littered with mere "expectations" unsupported by any evidence regarding the magnitude of new noise impacts, even though such new impacts are anticipated by the Initial Study. Nor is there any analysis of the potential for significant adverse impacts from new noise generators related to the Project.

The NOP/IS must be revised, and the scope of the proposed EA expanded to include a detailed analysis, supported by evidence, regarding these anticipated new noise impacts, alternatives, and possible mitigation measures.

Public Services – P. 2-39

The Initial Study assumes that the Project would not generate any increased need for public services. However, the Initial Study does not provide any substantial evidence to support its assumptions regarding the "absence of impact" on additional public services or facilities.

The Initial Study should be expanded to address potential impacts that may arise from the increased "diversion" of existing "dirty" vehicles and vessels into solid waste sites if proposed Rule 4001 is triggered.

Transportation and Traffic – P. 2-44

The Initial Study fails to adequately describe and analyze potential impacts to rail and marine vessel traffic and ignores the significance criteria identified as "[w]ater borne, rail car or air traffic is substantially altered" on page 2-45. The Initial Study erroneously considers only vehicular traffic impacts to local roadways.

The NOP/IS must be revised, and the scope of the proposed EA expanded to include a detailed analysis, supported by evidence, regarding potential impacts to rail and marine vessel traffic.

Socioeconomics Analysis

The EA needs to include a broad-based analysis of the socioeconomic effects of the proposed Rule 4001, including the potential for job loss, business closures, and diversion of cargo to other ports due to the potential loss of regional competitiveness. The socioeconomic analysis needs to consider both the existence of the rule, even if not triggered, and the future enforcement of the rule. Because these conditions have the potential to physically change the environment in and around the ports, these impacts should be identified and assessed in the EA. (See CEQA Guidelines §§ 15064(e) and 15131; *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3rd 433, 445 [EIR must consider possibility of economic blight from rezoning].) Moreover, this assessment should not be limited to businesses and operations within the ports, but should extend to those facilities, businesses and operations that while located outside of the Harbor Districts are dependent upon the flow of cargo for their continued operations.

Too-Narrowly "Focused" Environmental Review

We note in closing that the Initial Study appears to reflect a preliminary decision to conduct less-than-full disclosure or environmental review of the proposed Project. Although the Initial Study concludes that "the proposed Project may have a significant effect on the environment and an Environmental Assessment will be required," it nevertheless appears that environmental review in the admittedly-required EA is proposed to be curtailed and "focused" on just the six topics listed in the current the NOP. One obvious indication of this is the miniscule list of references that were relied upon to support the Initial Study analysis; the list is limited to three sources.

It is respectfully submitted that such an approach would be too narrow and not in conformance with the requirements of CEQA, or with the District's own policies and rules for environmental analysis. While the CEQA Guidelines call for emphasis and "focus" on the significant environmental impacts of the Project, the authority to use such focus is misapplied in the Initial Study. For example, CEQA Guideline § 15143 explains that such focus may be used to limit the analysis in an EIR [or, in this case, EA] 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 NOP/IS here, by contrast, appears to exclude from consideration in the EA numerous effects that it has not shown to be "clearly insignificant and unlikely to occur."

D. Conclusion

The current version of the NOP/IS fails to adequately describe the "Project" thereby thwarting effective public review and comment on proposed Rule 4001. The Initial Study must therefore be revised, corrected, and re-circulated with all of the descriptions and other content required by CEQA.

Even this inadequate NOP/IS makes it clear that **the scope of the proposed EA has been unduly narrowed**, and that environmental review will be limited in a way that erroneously fails to provide the relevant decision-makers, affected public agencies, residents and the public generally with sufficient evidence and analysis of all anticipated and potential impacts from the Project as a whole, or of all potentially feasible mitigation measures or appropriate Project alternatives as required by CEQA.

While it is clear that an EA is called for in connection with this proposed Project, it is equally clear that the EA should be more complete than what is envisioned by the current NOP/IS. More fundamentally, its scope must be determined by a legally-adequate revised NOP/IS. The EA for the Project must, of course, be supported by credible and substantial evidence, including independent professional analysis.

We respectfully request that these comments and questions be considered before the District embarks on preparation of the EA and all of the other required independent studies in connection with the CEQA review of the proposed Project. We therefore look forward to working with the District, and any study teams or working groups tasked with evaluation of the proposed Rule 4001.

The NOP requests that we provide you with a contact person for each responding agency. For the COLB, the contact persons are as follows:

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We appreciate your consideration. Thank you.

Sincerely,

Heather Tomley
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

Attachment A:

Letters dated July 10, 2012; July 27, 2012; August 30, 2012 (which includes letter dated May 4, 2010); October 22, 2012; October 31, 2012; November 8, 2012; November 19, 2012; and November 27, 2012 from Port of Los Angeles and Port of Long Beach to SCAQMD

cc: Al Moro, Acting Executive Director Port of Long Beach
Geraldine Knatz, Executive Director Port of Los Angeles
Dominic Holzhaus, Principal Deputy City Attorney City of Long Beach
Joy Crose, Assistant General Counsel City of Los Angeles, Harbor Division
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Randall Pasek, Planning and Rules Manager, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Cynthia Marvin, Division Chief, California Air Resources Board
Elizabeth Adams, Deputy Director, U.S. Environmental Protection Agency, Region 9

ATTACHMENT A

July 10, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Initial Comments on the Proposed 2012 Air Quality Management Plan, Control Measure IND-01

Dear Dr. Wallerstein:

The Port of Long Beach and Port of Los Angeles (Ports) appreciate the opportunity to participate in the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) Advisory Committee. We support the AQMD's clean air goals and have worked aggressively with the port industry to reduce our fair share of air quality impacts to the region from port-related operations, as outlined in the San Pedro Bay Ports Clean Air Action Plan (CAAP) and the associated San Pedro Bay Standards. As a result, between 2005 and 2010, emissions from port-related sources were reduced by 70 percent for diesel particulate matter and by 49 percent for nitrogen oxides. Emissions inventory work currently underway indicates additional, continued emission reductions in 2011.

While we continue to remain a committed partner in the effort to improve air quality in the region, we disagree with AQMD's proposed control strategy for port-related sources in the Draft 2012 AQMP. The inclusion of proposed measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources," is unnecessary and counter-productive.

The two Ports have a proven track record of developing and implementing appropriate and effective emission reduction strategies. These efforts have been entered into voluntarily, working cooperatively with operators in the port area and the air quality regulatory agencies (i.e. Environmental Protection Agency, California Air Resources Board and AQMD). Since the Ports initially implemented the CAAP, many of the port-related control strategies have been or will be superseded by state or international requirements, such as the rules for replacing drayage trucks, switching to cleaner marine fuels, and using shore power while at berth. The Ports' emissions inventories in 2010 show reductions that are meeting or are in excess of the emission reductions that the Ports committed to in the San Pedro Bay Standards. However, it is important to note that in order to remain on track to meet the Standards, a collaborative and concerted effort with our agency partners is essential, with the understanding that while the Ports can achieve significant emission

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

reductions, no single entity can accomplish this task. The previous State Implementation Plan identified several regulatory strategies that have not yet materialized into regulations for various reasons. Moving forward, the Ports will need agency assistance, particularly on the development and deployment of zero-emission technologies and at-berth controls for non-regulated vessels, as well as on the preferential deployment of cleaner vessels to the basin.

The Ports are sustaining and growing long-standing successful CAAP programs, such as the Vessel Speed Reduction Incentive Program and, on July 1, 2012, the Ports implemented new, groundbreaking incentive programs to encourage cleaner ocean-going vessels to call at the Ports. With programs such as these, along with the above-referenced regulatory rules becoming effective and ensuring significant additional emission reductions by 2014, there is no identified need for implementing a backstop measure. The AQMD's proposed backstop measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

It is inappropriate for the AQMD to attempt to regulate the Ports, which are the Harbor Departments of the cities of Long Beach and Los Angeles, in an attempt to control emissions from equipment within our boundaries, but which we do not own or operate. Further, the proposed backstop measure identifies that the "…requirements will be triggered if the reported emissions for 2014 for port-related sources exceed the 2014 target milestone, *or the Basin fails to meet the 24-hour PM2.5 standard as demonstrated in the 2012 AQMP and basin-wide reductions are needed, in which case a new reduction target for each pollutant will be established*." (emphasis added). While clarification has been provided by AQMD staff that any effort to make up for a basin-wide shortfall will be the responsibility of all sectors, not just the Ports, this statement still implies that if the port industry meets their targeted emission reductions, but other sectors fail to meet their fair share obligations, then the AQMD will mandate additional reductions from the Ports. This is counter to the cooperative relationship that our agencies have established since we began working together on the CAAP in 2006, and ignores the tremendous air quality benefits that have been gained from voluntary actions.

Lastly, based on the preliminary calculations by AQMD, the majority of the region is expected to be in attainment for PM2.5 by the target year of 2014, with the remainder anticipated to be in attainment by the expected extension date of 2019. The inclusion of IND-01 is therefore unnecessary for the region to reach attainment. If these emission reductions are needed in the baseline emissions calculation, there is precedent for mechanisms other than control measures to be used for this purpose, and we would like to discuss those options with your staff.

We strongly believe that the voluntary and cooperative CAAP process established by the Ports remains the most appropriate forum for the Ports and the air regulatory agencies to discuss technical and policy issues related to reducing emissions from port-related sources. As stated above, we remain committed to achieving our fair share of clean air goals identified in the CAAP and working with port industry and the air regulatory agencies on implementation of appropriate strategies.

For your reference, attached is a comment letter dated May 4, 2010, in which the Ports initially expressed concerns regarding backstop rules. The letter was submitted as a public comment on the proposed Rules 4010 and 4020, which were proposed backstop rules for health risk and criteria pollutant emissions.

We look forward to working with AQMD on resolving our concerns related to the proposed backstop measure in the Draft 2012 AQMP.

Sincerely,

CHRIS LYTLE
Executive Director
Port of Long Beach

MICHAEL R. CHRISTENSEN
Deputy Executive Director, Development
Port of Los Angeles

HAT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Susan Nakamura, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Robert Kanter, Port of Long Beach
Rick Cameron, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Chris Cannon, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles

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The Port of
LONG BEACH
The Green Port

July 27, 2012

Steve Smith, Ph.D.
Program Supervisor, CEQA
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765
Sent via email to ceqa_admin@aqmd.gov

RE: Comments on the Notice of Preparation for the Proposed 2012 Air Quality Management Plan Program Environmental Impact Report

Dear Dr. Smith:

The Port of Long Beach has reviewed the Notice of Preparation of a Draft Program Environmental Impact Report (EIR) for the Proposed 2012 Air Quality Management Plan Program and appreciates the opportunity to comment. Regarding preparation of the Draft Program EIR, we offer the following scoping comments for use by your agency during its environmental review process under the California Environmental Quality Act (CEQA):

Schedule

The EIR schedule is very aggressive, with the scoping period ending on July 27, 2012, followed immediately by the release of the Draft EIR scheduled for August 2012, and final approval planned for October 5, 2012. There does not appear to be sufficient time allowed for meaningful input on the proposed scope and content of the Draft Program EIR by the public. Further, the Port is concerned that, given the quick turnaround between closure of the scoping period and the scheduled release of the Draft Program EIR, insufficient time will be allowed for thorough review of the scoping comments and inclusion of said comments in the Draft Program EIR.

Aesthetics

The Initial Study identifies potential significant impacts on aesthetics due to the implementation of control devices such as hoods or bonnets on ship exhaust stacks. The Port agrees with the SCAQMD that such control devises and equipment would be similar in structure and design to existing features within the Port environment and would not constitute a significant aesthetic impact. Further, control measure ADV-03, which may include the construction of electric gantry cranes within the Port, should not be considered aesthetically significant as gantry cranes are an existing feature within the Port environment.

Energy

The Draft Program EIR should analyze how the mobile source control measures related to the electrification of vehicles will impact regional energy demand. Additionally, the need for new electrical power or natural gas utilities should be analyzed, including analysis of times of peak energy demand.

Land Use

The Draft Program EIR should analyze whether the implementation of specific control measures could physically divide established communities. Control measure ONRD-05 states that this control could be "implemented with the development of zero-emission fixed-guideway systems" and that to the extent feasible this would be extended beyond "near-dock application." The construction and operation of such structures may impact established communities.

Noise

The Port requests that the Draft Program EIR evaluate potential noise impacts related to the construction and implementation control measures in support of the AQMP. Section XII fails to account for noise impacts resulting from the construction and operation of control measure ONRD-05, which may include fixed-guideway systems near sensitive receptors.

Transportation/Traffic

Section XVII of the Initial Study concludes that adoption of the proposed 2012 AQMP is not expected to generate any significant adverse project-specific impacts to transportation or traffic systems, and that no further evaluation will be conducted in the Draft Program EIR.

However, impacts on major freeways or other transportation corridors as a result of construction and operation of potential zero emission control measures related to on-road heavy-duty vehicles, such as the use of overhead catenary power lines, which will potentially affect lane choice by trucks and traffic flow patterns on major traffic corridors, has not been fully analyzed. The Port requests that these potential impacts be analyzed in the Draft Program EIR.

Socioeconomics

While not required under CEQA, the Draft 2012 AQMP should include a thorough socioeconomic impact analysis for each proposed control measure, most notably the proposed backstop measure and the measures related to zero emission technologies. This could be accomplished with an expanded discussion under the cost effectiveness section of each control measure summary in the Draft AQMP.

The Port of Long Beach appreciates the opportunity to comment on the NOP/IS for the Draft 2012 AQMP and reviewing both the Draft Program EIR and the Draft 2012 AQMP. We look forward to working with the SCAQMD throughout the environmental review process.

Sincerely,

Richard D. Cameron
Director of Environmental Planning

DP:hat

August 30, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Comments on the Draft 2012 Air Quality Management Plan

Dear Dr. Wallerstein:

The Port of Long Beach and Port of Los Angeles (Ports) appreciate the opportunity to serve on the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) Advisory Committee. We support the AQMD's clean air goals and have a proven leadership record of developing and implementing appropriate and effective strategies that have resulted in the port-related goods movement industry's achievement of real and dramatic emissions reductions. Although the Ports do not own or control the emission sources, the Ports have worked cooperatively with business operators in the port area and the air quality regulatory agencies (i.e. Environmental Protection Agency, California Air Resources Board, and AQMD) to help the port industry reduce its fair share of air quality impacts to the region from port-related operations, as outlined in the San Pedro Bay Ports Clean Air Action Plan (CAAP) and the associated San Pedro Bay Standards. As a result, between 2005 and 2011 emissions from port-related sources were reduced by 73 percent for diesel particulate matter (DPM) and by 50 percent for nitrogen oxides (NOx). The Ports' San Pedro Bay Standards for 2014 established goals to reduce port-related DPM by 72 percent and NOx by 22 percent. Therefore, as a result of implementation of aggressive actions by the port industry, port-related emission reductions have exceeded our goals several years ahead of schedule.

While we remain a committed partner in the effort to improve air quality in the region, we have significant concerns with several proposed control measures in the Draft 2012 AQMP that improperly misclassify the Ports as "stationary sources" or "indirect sources" under AQMP Stationary Source measures, or as "implementing agencies" of specific AQMP mobile source measures. In particular, the proposed Stationary Source Measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources" contains many legal flaws, as explained in greater detail below, and inappropriately proposes to impose enforcement actions on the Ports for emissions generated by emissions sources that the Ports do not own,

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operate, or control, which is counterproductive to the cooperative relationship that our agencies have established since we began working together on the voluntary CAAP in 2006.

This letter provides the Ports' specific comments on the control measures in the Draft 2012 AQMP that we believe must be addressed prior to finalization and adoption by your agency.

Proposed Stationary Source Measure IND-01

There are three fundamental problems with Proposed Measure IND-01, "Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources." First, the proposed backstop rule would transform the Ports' voluntary CAAP into the AQMD's mandatory regulation of the Ports. This would jeopardize the Ports and the Port-related emissions sources' grant funding for equipment replacement and modernization if it is now necessary to comply with regulation, while offering nothing to assist the Ports with compliance in terms of additional technologies, facilitating regulations, tools, or funding. Second, although the CAAP was a voluntary cooperative effort of the Ports and the air agencies designed to encourage the industry operators of regulated equipment to go beyond regulation, the proposed backstop rule would improperly subject the Ports to the AQMD's enforcement action for industry's missed emissions reductions by equipment not operated or controlled by the Ports, or even potential loss of federal funding under federal conformity principles if the AQMP is adopted into the State Implementation Plan (SIP) and approved by the U.S. EPA as federal law. Third, the proposed backstop rule exceeds the AQMD's authority and if implemented may violate the State Tidelands Trust. If Measure IND-01 (as well as the Offroad Mobile Source Measures discussed below) are in reality the AQMD's regulation of Port-related mobile emissions sources such as locomotives, ships, rail, and trucks, then this is beyond AQMD's legal authority and AQMD should obtain a waiver under the Clean Air Act from the U.S. EPA. The Ports provide further detailed comments on Proposed Measure IND-01 below, and object to it being included in the 2012 AQMP.

Based upon the AQMD's modeling results, existing control measures are expected to result in attainment of the Federal 24-hour PM2.5 standard by the 2014 deadline without Measure IND-01. Section 39602 of the California Health and Safety Code states that the State Implementation Plan (SIP) shall only include those provisions necessary to meet the requirements of the Clean Air Act. Hence, there is no identified need or legal basis for implementing Measure IND-01. The AQMD's proposed measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

The Ports are neither "direct emissions sources" nor "stationary sources" subject to AQMD permitting, and the AQMD has not complied with requirements for regulation under Health and Safety Code. The Ports are also not "indirect sources" subject to an AQMD indirect source review program within the meaning of the Clean Air Act, and the AQMD has not complied with requirements of the Clean Air Act, 42 U.S.C. §7410 and various other requirements for indirect source classification. The Ports are also not air agency regulators. The Ports do not own, operate, regulate, or control any of the goods movement equipment serving the Ports that are

targeted emissions sources under Measure IND-01. Additionally, the equipment are mobile sources regulated by state, federal, and/or international regulation, sometimes under jurisdiction preempting Port or AQMD action. It is inappropriate for the AQMD to regulate the Ports without the Ports' ownership, operation, or jurisdiction to regulate the various industry businesses actually causing the emissions within our boundaries.

The proposed backstop measure continues to state that if there is a South Coast Air Basin-wide shortfall in emission reductions, then the AQMD will mandate additional emission reductions from the Ports, even if the port-related sources have already met their commitments. This moving target standard is unconstitutionally vague and therefore illegal. The Ports are unfairly targeted, as there are no backstop measures proposed for other entities or source categories should other modeling assumptions not come to pass, such as anticipated natural fleet turnover, or other non-regulated initiatives failing to meet their goals, such as those expected by the Carl Moyer Program. If the AQMD's emissions projections for achieving attainment are incorrect, including control factors and growth rates, this measure appears to imply that the Ports will be specifically tasked with rectifying the shortfall. If the Basin fails to achieve the federal air quality standard, the proper channel to address this is through the established SIP process, not to establish a contingency rule to unfairly burden one specific industry out of the entire Basin.

AQMD staff has indicated that Measure IND-01 is proposed to account for measures that are not backed by enforceable requirements. However, significant programs such as the CAAP's Clean Truck Program, Ocean-going Vessel Low Sulfur Fuel Program, Cargo-handling Equipment requirements, and the Shore-side Power/Alternative Maritime Power programs are currently backstopped by CARB and International Maritime Organization (IMO) regulations. The Ports also require higher rates of vessel or equipment compliance than regulation through terminal leases, when such commercial opportunities are able to be negotiated with tenants. Therefore, Proposed Measure IND-01 is unnecessary.

Measure IND-01 is vague and incomplete. It is unclear whether the AQMD has taken credit for actual/current emission reductions in the baseline only, or if assumptions have been made for future year reductions. We take issue with a measure moving forward where emissions projections are "on-going." Further, no detail is provided on the level of emission reductions that are needing to be maintained. This is further complicated by the differences that exist between the emissions inventories produced by the Ports and the inventory used for the AQMP. It is unclear if a specific emission reduction shortfall will trigger implementation of the measure, or if it is simply left to the discretion of the AQMD. Additionally, the control costs have not yet been developed or justified in a cost-benefit analysis.

The CAAP is a planning document that provides a guideline of strategies and targets that are often "stretch goals," which ultimately are implemented through individual actions adopted by the Long Beach and Los Angeles Boards of Harbor Commissioners (Boards). The Ports are sovereign Tidelands granted to the cities of Los Angeles and Long Beach by the state under the oversight of the State Lands Commission. Each city has been appointed as a trustee and has established their respective Board of Harbor Commissioners with exclusive control and management of the Tidelands and revenues and expenditures from the Tidelands. However,

such discretion must be exercised in accordance with their obligations to prudently manage Tidelands assets and revenues within a nexus and proportionality to the Tidelands Trust interests, as well as in accordance with applicable laws such as the California Environmental Quality Act (CEQA) and principles of federal preemption.[1] The AQMD cannot mandate action by each Port's Board of Harbor Commissioners, nor can the AQMD direct how the Ports obligate state Tidelands money; only the appointed trustee can make discretionary actions to obligate state Tidelands funds. Specifically, the CAAP measures listed in the Draft 2012 AQMP each require the Boards to authorize the expenditure of incentive monies and program costs, or to approve conditions of infrastructure project development in their discretion as CEQA lead agency and as Tidelands trustees.

We strongly believe that the voluntary and cooperative CAAP process established by the Ports remains the most appropriate forum for the Ports and the air regulatory agencies to discuss technical and policy issues related to reducing emissions from port-related sources. As stated above, we remain committed to achieving the clean air goals identified in the CAAP and working with port industry and the air regulatory agencies on implementation of appropriate strategies.

For your reference, attached is our comment letter dated July 10, 2012, expressing our preliminary concerns related to the proposed Measure IND-01 and a comment letter dated May 4, 2010, in which the Ports initially expressed concerns regarding backstop rules.

Proposed Off-Road Mobile Source and Advanced Control Technology Measures

The Draft 2012 AQMP also identifies the San Pedro Bay Ports as "Implementing Agencies" for several of the proposed Off-Road measures (OFFRD-02, OFFRD-04, and OFFRD-05) and Advanced Control Technology measures (ADV-01, ADV-02, ADV-03, ADV-04, and ADV-05). The Ports should not be listed as Implementing Agencies, which the AQMP Appendix IV-A defines as "the agency(ies) responsible for implementing the control measure." While the Ports have been moving forward with voluntary efforts in these areas, as mentioned above, the Ports are not air agency regulators. We also do not own or operate the equipment identified in the proposed measures, and therefore we do not have direct control over any of the sources listed. During the Advisory Committee meetings, AQMD staff has provided clarification that the Ports are listed as Implementing Agencies because of our voluntary commitments to work on these

[1] The Ports' experience with the first phase of the 2006-2010 CAAP showed that in actual implementation, many CAAP measures were carried out in a different manner than originally conceptualized, or not carried out at all, based on limitations on the Boards' opportunities and their exercise of their discretion to manage Tidelands assets and funds under real-world circumstances. Some of the CAAP measures can only be implemented if businesses apply to the Ports for permits to build or expand their lease premises and CEQA mitigation required by law or lease conditions that can be negotiated with a Port tenant. Other CAAP measures involve emissions sources (rail or ocean vessels) that may assert federal preemption against efforts to compel use of specific technology, so the CAAP goals involve the Ports offering economic incentives in voluntary compliance programs, such as the Ocean Vessel incentive programs. However, only the Boards have the legal authority to fund such incentives or impose CEQA mitigation or lease conditions to project approval, which decisions also fall within the Boards' sole discretion regarding their respective Port's properties and their individual Harbor Revenue Fund budgets, which may be affected by the global economy.

efforts, and that being listed as an implementation agency does not obligate the Ports to any specific requirement, however, this is contrary to the language of the AQMP that implementing agencies are "responsible for implementing the control measure." We believe that listing the Ports, and not including all of the other public and private partners that are also working on these efforts, gives the impression that the Ports do have an assigned obligation, or that the Ports must bear a larger burden in the effort to implement these programs. We also repeat our comment stated above that the AQMD cannot mandate in the AQMP that the Ports must expend monies in these voluntary efforts, since most of these Off-Road and Advanced Control Technology measures require incentive monies to fund demonstration projects or accelerated use of new technology.

We believe that the appropriate Implementing Agencies for these measures are the United States Environmental Protection Agency and the California Air Resources Board.

The Ports urge AQMD to make all of the above-requested changes to the draft 2012 AQMP, in particular, to eliminate Measure IND-01 Port Backstop Rule as a legally unnecessary measure exceeding AQMD's authority and violating the State Tidelands Trust. We believe it is much more effective to advance our mutual clean air goals for our agencies to continue working cooperatively together, but if the AQMD takes the above 2012 AQMP measures forward, the Ports will have no choice but to vigorously oppose such action through the administrative and legal process.

Sincerely,

Chris Lytle
Executive Director
Port of Long Beach

Geraldine Knatz
Executive Director
Port of Los Angeles

HAT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
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Rick Cameron, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Chris Cannon, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles
David Reich, Los Angeles City Mayor's Office

Attachment 1

July 10, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

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The two Ports have a proven track record of developing and implementing appropriate and effective emission reduction strategies. These efforts have been entered into voluntarily, working cooperatively with operators in the port area and the air quality regulatory agencies (i.e. Environmental Protection Agency, California Air Resources Board and AQMD). Since the Ports initially implemented the CAAP, many of the port-related control strategies have been or will be superseded by state or international requirements, such as the rules for replacing drayage trucks, switching to cleaner marine fuels, and using shore power while at berth. The Ports' emissions inventories in 2010 show reductions that are meeting or are in excess of the emission reductions that the Ports committed to in the San Pedro Bay Standards. However, it is important to note that in order to remain on track to meet the Standards, a collaborative and concerted effort with our agency partners is essential, with the understanding that while the Ports can achieve significant emission

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The Ports are sustaining and growing long-standing successful CAAP programs, such as the Vessel Speed Reduction Incentive Program and, on July 1, 2012, the Ports implemented new, groundbreaking incentive programs to encourage cleaner ocean-going vessels to call at the Ports. With programs such as these, along with the above-referenced regulatory rules becoming effective and ensuring significant additional emission reductions by 2014, there is no identified need for implementing a backstop measure. The AQMD's proposed backstop measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

It is inappropriate for the AQMD to attempt to regulate the Ports, which are the Harbor Departments of the cities of Long Beach and Los Angeles, in an attempt to control emissions from equipment within our boundaries, but which we do not own or operate. Further, the proposed backstop measure identifies that the "…requirements will be triggered if the reported emissions for 2014 for port-related sources exceed the 2014 target milestone, *or the Basin fails to meet the 24-hour PM2.5 standard as demonstrated in the 2012 AQMP and basin-wide reductions are needed, in which case a new reduction target for each pollutant will be established*." (emphasis added). While clarification has been provided by AQMD staff that any effort to make up for a basin-wide shortfall will be the responsibility of all sectors, not just the Ports, this statement still implies that if the port industry meets their targeted emission reductions, but other sectors fail to meet their fair share obligations, then the AQMD will mandate additional reductions from the Ports. This is counter to the cooperative relationship that our agencies have established since we began working together on the CAAP in 2006, and ignores the tremendous air quality benefits that have been gained from voluntary actions.

Lastly, based on the preliminary calculations by AQMD, the majority of the region is expected to be in attainment for PM2.5 by the target year of 2014, with the remainder anticipated to be in attainment by the expected extension date of 2019. The inclusion of IND-01 is therefore unnecessary for the region to reach attainment. If these emission reductions are needed in the baseline emissions calculation, there is precedent for mechanisms other than control measures to be used for this purpose, and we would like to discuss those options with your staff.

We strongly believe that the voluntary and cooperative CAAP process established by the Ports remains the most appropriate forum for the Ports and the air regulatory agencies to discuss technical and policy issues related to reducing emissions from port-related sources. As stated above, we remain committed to achieving our fair share of clean air goals identified in the CAAP and working with port industry and the air regulatory agencies on implementation of appropriate strategies.

For your reference, attached is a comment letter dated May 4, 2010, in which the Ports initially expressed concerns regarding backstop rules. The letter was submitted as a public comment on the proposed Rules 4010 and 4020, which were proposed backstop rules for health risk and criteria pollutant emissions.

We look forward to working with AQMD on resolving our concerns related to the proposed backstop measure in the Draft 2012 AQMP.

Sincerely,

CHRIS LYTLE
Executive Director
Port of Long Beach

MICHAEL R. CHRISTENSEN
Deputy Executive Director, Development
Port of Los Angeles

HAT:s

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Robert Kanter, Port of Long Beach
Rick Cameron, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Chris Cannon, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles

Attachment 2

San Pedro Bay Ports Clean Air Action Plan

May 4, 2010

Susan Nakamura
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Subject: AQMD Proposed Rules 4010 and 4020

Dear Ms. Nakamura:

This letter is on behalf of the Ports of Long Beach and Los Angeles (Ports) as a preliminary response to the "backstop" Rules 4010 and 4020 (Proposed Rules) proposed by the South Coast Air Quality Management District (AQMD). As will be explained below, based upon the limited amount of information released by the AQMD about the Proposed Rules thus far, the Ports have a number of preliminary questions and concerns at this stage of the first public consultation meeting and will be providing more detailed comments on the Proposed Rules at a later stage.

The Ports have had tremendous success with implementing the San Pedro Bay Port Clean Air Action Plan (CAAP). The development of the original CAAP and the update to the CAAP has been conducted through a cooperative effort with staff from the AQMD, the United States Environmental Protection Agency (EPA), and the California Air Resources Board (CARB). The Ports strongly believe that this partnership of over four years, and the collaboration that has occurred throughout that time, have aided in the success of the CAAP and the emissions reductions that have been achieved.

Since the CAAP was adopted in late 2006, the Ports have exceeded our interim emissions reductions milestones and are well on our way to meeting the original forecasted emissions reductions of at least 45% by 2011, compared to uncontrolled conditions. This has been accomplished through the steadfast implementation of CAAP measures, highlighted as follows:

- Development, approval, and implementation of the Clean Trucks Program in which two major milestones have been achieved resulting in truck pollution reductions of nearly 80% (January 2010), almost two years ahead of schedule (HDV1).
  - October 2008: ban pre-1989 trucks.
  - January 2010: ban pre-1993 trucks; 1994-2003 trucks require Level 3 plus NO_x retrofit.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

- Facilitated construction of an LNG on-road truck fueling station in the port area. Fueling operations have been underway since early 2009. In addition the Ports have contributed to funding the construction of two additional LNG on-road truck fueling stations in the Port area, due to open later in 2010 (HDV2).
- Over $6.5 million in incentives for vessels participating in the voluntary Vessel Speed Reduction Program and Vessel Fuel Incentive Program (OGV1, OGV4).
- Design, construction, and operation of shore power infrastructure completed at 5 berths and underway for over 40 additional berths (OGV2).
- Replaced entire fleet of port switching locomotives with new, cleaner locomotives in 2008, and a subsequent fleet turnover to cleaner locomotives anticipated by end of 2011 (RL1).
- Provided funding of $5.4 million toward projects through our Technology Advancement Program, conducted with input from an Advisory Committee consisting of AQMD, EPA, and CARB.
- The Ports' 2008 Emissions Inventories show combined emission reductions of 20% diesel particulate matter (DPM), 10% nitrogen oxides (NOx) and 24% sulfur oxides (SOx) compared to the 2005 baseline. The 2009 Emissions Inventories, which are expected to be finalized and published in June, will show an even greater level of emission reductions as additional CAAP efforts have come into effect.

In addition to the implementation efforts listed above, the Ports have also worked in coordination with CARB and EPA on development of rules and regulations affecting port sources. These regulatory requirements have helped to ensure that emissions reductions from specific equipment types operating at the Ports will continue into the future. The Ports look forward to continuing these cooperative efforts on regulatory development with CARB and EPA, with the support of AQMD, to ensure that the early action measures being taken by the Ports are supported and implemented more broadly.

Further, as you are aware, the Ports recently released our draft CAAP Update, where we revisited and updated each of the control measures and proposed aggressive, long-term goals for emissions reductions and health risk reductions, titled the San Pedro Bay Standards. Once the CAAP Update is adopted, the Ports will quantitatively measure our progress against these long-term goals and will make adjustments to our implementation efforts over time as necessary to ensure that we remain on track for achieving these goals.

With these demonstrated results carried out voluntarily, and further efforts underway, the Ports regard the AQMD's proposed Rules 4010 and 4020 as unnecessary, and raise several questions regarding the Proposed Rules and the rulemaking process. Below is a list of preliminary questions to help us gain a better understanding of the AQMD's proposed approach:

Emissions and Health Risk Reduction Targets

Proposed Rule 4020 Sections (d) (1) and (2) will include targets for criteria pollutant and health risk reductions to be met by the Ports to avoid triggering the backstop provisions. The Ports have the following concerns and questions regarding the targets:

1. How were the targets developed? In June 2007, the Ports provided AQMD with detailed comments and concerns regarding the methodology and the specific port-related emission reduction targets contained in the 2007 Air Quality Management Plan (AQMP). CARB declined to adopt the port targets into the 2007 State Implementation Plan (SIP). In the AQMD Governing Board's resolution adopting the 2007 AQMP, it committed that AQMD staff would work with the Ports and, based on its technical review, would recommend any appropriate adjustments to the AQMP criteria pollutant targets attributable to the Ports. Although initial coordination efforts have occurred, the AQMD has not completed detailed analyses necessary for the Ports to understand how the AQMP targets and the targets contained in the Proposed Rules have been developed, or to understand how these targets differ from the Emission Reduction Standards contained in the Draft 2010 CAAP Update. We request that the AQMD present the methodology and resulting targets to a Stakeholder Working Group, including the Ports, before progressing further with the rulemaking process. Further, to the extent that the targets in proposed Rule 4020 go beyond the 2007 SIP/AQMP targets to address future regulations that have not yet been adopted, the Ports have even greater concerns.

2. The Emission Reduction Standards contained in the Draft 2010 CAAP Update were developed by the Ports in coordination with the EPA, CARB, and AQMD. Achievement of these Standards will require aggressive implementation of strategies by the Ports and the port operators. Further, the Standards are predicated on a conservative 2007 cargo forecast developed before the recent economic crisis and assume that the Ports reach capacity in 2023. Instead, there has been a significant downturn in cargo volumes from 2008 to present, such that the Ports do not anticipate returning to 2007 cargo throughput levels until 2014-2015, and reaching capacity until approximately 2035. This has reduced the Ports' emissions footprint, as well as potentially reduced the Ports' proportion of basin-wide pollution. Nonetheless, to be conservative and to voluntarily strive to ensure a "fair share" contribution of port-related sources to regional attainment goals, the Ports retained the higher growth forecast in the CAAP. It is important to note that, even with these higher than anticipated rates of future emissions growth, the Ports project DPM reductions greater than 70%, SOx reductions greater than 90%, and NOx reductions of nearly 60% by 2023.

3. The 2007 SIP identified several regulatory and technology strategies to be undertaken by EPA and CARB to contribute to the reduction in port-related emissions. This is consistent with the philosophy that achieving emission reductions from port-related sources must be a cooperative partnership effort, because no one entity can meet the need by itself. Since the 2007 SIP was developed, for various reasons including technical feasibility, technology availability, and cost-effectiveness, several key federal and state regulatory and technology strategies have failed to occur. These include, but are not limited to: commercial availability of Tier 4 line haul and switcher locomotive engines in 2012, implementation of a statewide regulation requiring use of shoreside power for all vessel types while at berth, and implementation of a statewide regulation requiring retrofitting of existing ocean-going vessels and the preferential deployment of progressively cleaner new build vessels to California ports. The Ports are concerned that the emission reductions associated with these proposed EPA and CARB strategies are now being fully assigned to the Ports through the proposed targets in order to make the

SIP "whole," even though the strategies may not be technically feasible and/or cost-effective. Further, as you know, the Ports do not own or operate the emissions sources targeted by this regulation and the Ports may not have implementation mechanisms available within their jurisdiction to implement the controls even if they were deemed feasible and cost-effective.

DISTRICT RULEMAKING PROCESS

The Ports have a number of initial questions geared towards gaining a better understanding of AQMD's intended rulemaking process for the Proposed Rules.

4. As suggested above, will the AQMD form a Stakeholder Working Group, including the Ports, to discuss the AQMD's Proposed Rules and analysis?

5. What is the AQMD's authority for regulating the Ports under the Proposed Rules?

6. The Ports would like to understand what level of CEQA analysis the AQMD is proposing for this rulemaking. Will there be a scoping meeting?

7. When will the AQMD release a Preliminary Draft Staff Report (PDSR)? Given the unprecedented nature and broad technical, practical, regulatory, and legal implications of these Proposed Rules, we believe that the PDSR must be very detailed or the Ports, air agencies, and other stakeholders will not have the information necessary to participate fully in the rule development process. We request that the PDSR include:
    a. Technical analysis of the Proposed Rules, targets, etc.
    b. An analysis of potential Draft Findings required under Health and Safety Code (e.g., Necessity, Authority, Clarity, Consistency, Non-Duplication, and References)
    c. Detailed information on control technologies and programs that the AQMD believes the Ports and affected sources would need to implement to meet the proposed rule reduction requirements.
    d. As part of cost-effectiveness analysis, detailed information on the feasibility, control effectiveness, and costs of these technologies and programs, including who would bear those costs. The AQMD should work with the Ports, their tenants, and others in the goods movement industry to estimate these costs.
    e. A preliminary Socioeconomic Impact Report (SIR) based on input from the Ports, their tenants, and other affected industries. Given the broad implications to the region's economy, the Ports recommend a detailed preliminary SIR be prepared and released with the PDSR.
    f. AQMD's proposal for how it will specifically apply the scheme of fines, penalties, or other enforcement provisions of the Health and Safety Code to the Ports to enforce the Proposed Rules, including providing an understanding of how the enforcement action would be assessed, given that the Ports are two separate and distinct departments of their respective cities.

The Ports look forward to receiving AQMD's responses to these preliminary questions. We will follow up with additional questions and comments later, as more information is provided by AQMD on the proposed rules.

The Ports are committed to achieving aggressive and feasible emissions reductions and health risk reductions from port-related sources, and have already proven that such reductions can be achieved while allowing the Ports to continue to move forward as a strong economic engine for the region. The Ports remain committed to implementing the CAAP and working in cooperation with the agencies and the industry to achieve our goals. We believe the Proposed Rules are unnecessary and that the AQMD should consider alternative mechanisms to achieve the AQMD's goals. We bring to your attention that the Bay Area AQMD initiated a backstop measure but ultimately determined to pursue a Memorandum of Agreement approach for similar work with the Bay Area ports.

If you have any questions regarding this correspondence, please contact Heather Tomley, Assistant Director of Environmental Planning, Port of Long Beach, at (562) 590-4160; or Christopher Patton, Environmental Affairs Officer, Port of Los Angeles, at (310) 732-3677.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Director of Environmental Management
Port of Los Angeles

cc: Dick Steinke, Executive Director, POLB
Geraldine Knatz, Executive Director, POLA
Mike Christensen, Deputy Executive Director, POLA
Robert Kanter, Managing Director, POLB
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

October 22, 2012

Jeff Inabinet
c/o Office of Planning, Rule Development, and Area Sources/CEQA Facilities
South Coast Air Quality Management District Development and Planning Branch
21865 Copley Drive
Diamond Bar, CA 91765-4182

Subject: Draft 2012 AQMP Program Environmental Impact Report

Dear Mr. Inabinet:

The Port of Long Beach (POLB) and Port of Los Angeles (POLA) appreciate the opportunity to comment on the Draft Program Environmental Impact Report (Draft EIR) developed for the 2012 Air Quality Management Program (AQMP). The ports appreciate that AQMD staff took steps to address the scoping comments provided by the ports, specifically the inclusion of a transportation and traffic impact analysis as part of the Draft EIR.

However, the ports must reiterate their concerns relating to AQMP Control Measure IND-01 (Backstop Measures for Indirect Sources of Emissions from Ports and Port-Related Sources). As the AQMD knows from prior comment letters submitted by the ports (please see AQMP comment letters dated August 30, 2012; July 10, 2012; and May 4, 2010), the ports believe that Measure IND-01 exceeds the AQMD's authority and should not be included in the AQMP for the reasons set forth in the referenced letters.

Measure IND-01 also contains various flaws which contribute to the inadequacy of the Draft EIR and failure to comply with the California Environmental Quality Act (CEQA). First, Measure IND-01, as described in the project description of the Draft EIR and in the AQMP itself, is unconstitutionally vague and lacks sufficient description of exactly what it proposes to impose on the ports or substantial evidence in support. The Draft EIR's failure to describe the project fully makes it impossible for AQMD, the ports, or the public to assess its 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. Because of the importance and consequences of the AQMP to the State of California's State Implementation Plan (SIP) if adopted by California Air Resources Board (ARB), and to the Federal Clean Air Act enforcement if approved by the U.S. Environmental Protection Agency (EPA), the AQMD is required to fully disclose the details of Measure IND-01 before adoption, and CEQA requires a full disclosure and discussion, which AQMD has failed to do.

Second, to the extent the AQMD intends to approve the Draft EIR and AQMP containing the vague current version of Measure IND-01, and later, as a part of future rulemaking, provide details regarding its proposed actions against the ports including an environmental assessment, that would be segmentation or piecemealing of its CEQA analysis.

Third, Measure IND-01 has serious problems of infeasibility which the Draft EIR has failed to analyze at all. Measure IND-01 in effect attempts to convert the ports' various aspirational goals, set forth in their voluntary Clean Air Action Plan (CAAP), into enforceable regulation against the ports. However, the CAAP goals depend upon future technology advancement which has not yet occurred, all of which are beyond the control of the ports. Therefore, there are technology feasibility issues with the AQMD making the ports' goals into required emissions limits. Further, as the ports are not air regulators and they do not themselves own, operate, or control the emissions equipment operated by the port industry, there are legal feasibility questions over the ports' ability to exercise authority to carry out the actions of Measure IND-01. There are also serious legal feasibility questions including federal preemption asserted by railroads in connection with locomotive specifications and rail operations, and international preemption asserted over ocean vessels. The Draft EIR is flawed in its failure to discuss these infeasibility issues, and had it done so, it would lead to the conclusion that Measure IND-01 should be removed from the AQMP.

Fourth, the AQMD has concluded in the air quality analysis that specific measures associated with Measure IND-01 "are unknown, and therefore the impacts are speculative," (see page 4.2-7 of Draft EIR). This is yet another reason why the Draft EIR is flawed. CEQA Guidelines Section 15145 specifies that if, after thorough investigation, a Lead Agency finds that a particular impact is too speculative for evaluation the agency should note its conclusion and terminate discussion of the impact. Instead, the AQMD proceeded to analyze secondary impacts to air quality that are based on speculative assumptions regarding construction emissions, energy demand, and operations.

Lastly, to the extent that Measure IND-01 proposes to impose upon the ports a form of enforcement for port industry's failure to meet the CAAP's target emissions reduction goals, when the ports do not own, operate, or control the emissions sources, it violates constitutional limitations requiring that exactions imposed on a party must be proportional to the party's contribution, when it fails to include all parties involved in the CAAP, including the actual emissions sources.

Given these deficiencies and speculation under CEQA and with the AQMP rulemaking, Measure IND-01 should be removed from the final EIR and the AQMP, and the analysis should be revised accordingly. With this change, the ports can support the revised AQMP and can continue to work with AQMD, other agencies, and the port industry in the collaborative manner that has made the ports' voluntary CAAP a success.

Thank you for considering the above comments. If you have any questions, please contact Dylan Porter, Port of Long Beach, at (562) 283-7100 or Lisa Wunder, Port of Los Angeles, at (310) 732-7688.

Sincerely,

Richard D. Cameron
Director of Environmental Planning, Port of Long Beach

Christopher Cannon
Director of Environmental Management, Port of Los Angeles

DP:s

cc: Elaine Chang, South Coast Air Quality Management District
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

October 31, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Supplemental Comments on the Revised Draft 2012 Air Quality Management Plan

Dear Dr. Wallerstein:

The Port of Long Beach and Port of Los Angeles (ports) are submitting this comment letter to add to comments previously submitted on August 30, 2012.

As members of the South Coast Air Quality Management District's (AQMD) 2012 Air Quality Management Plan (AQMP) Advisory Committee, the ports have worked with AQMD staff to provide comments on the draft plan, including the emissions data being used. Included in this effort, ports' staff provided the 2008 base year emissions inventories for the port sources based on the most recent methodologies agreed upon by the Technical Working Group (TWG) in the ports' 2011 air emissions inventories.

As noted in the Draft AQMP, *"An effective AQMP relies on an adequate emission inventory."* Discrepancies exist between the emissions inventories prepared by the ports and the inventory prepared by the AQMD. The emissions shown in the Draft 2012 AQMP are different from those prepared by the ports in cooperation with the AQMD, California Air Resources Board, and Environmental Protection Agency, during development of the San Pedro Bay Standards. If the AQMD's emissions projections for achieving attainment are incorrect, the concerns expressed in our August 30 comments are greatly increased. The emissions projections drive both the Measure IND-01 analysis and the PM2.5 analysis. The basis for the Draft 2012 AQMP emissions projections is impossible to determine, because the assumptions and methodologies (including control factors and growth factors) are not disclosed.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

Additionally, it concerns the ports that the AQMP has made a commitment to Measure IND-01 before AQMD has released details of its intended implementation actions against the ports, or the socioeconomic and other analyses for such actions. Elaine Chang admitted at the AQMD's October 24, 2012, meeting that it is unknown what a port compliance plan would include and that AQMD would develop it during a future rulemaking process. This violates due process, to commit to implement an AQMP measure without disclosing what AQMD's actions against the ports will be under the backstop measure, as it deprives the public and the ports of the opportunity to review and comment to influence the decision, prior to committing to it in the AQMP.

This further demonstrates that the collaborative process established by the ports and the air quality regulatory agencies remains the most appropriate forum to identify and implement strategies to reduce emissions from port-related sources.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

AT:s

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Randall Pasek, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Robert Kanter, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

November 8, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Dear Dr. Wallerstein:

SUBJECT: COMMENTS ON THE DRAFT SOCIOECONOMIC REPORT FOR THE DRAFT 2012 AIR QUALITY MANAGEMENT PLAN

The ports of Los Angeles and Long Beach (Ports) appreciate the opportunity to comment on the South Coast Air Quality Management District's (AQMD) Draft Socioeconomic Report for the Draft 2012 Air Quality Management Plan (AQMP).

The Draft Socioeconomic Report states that "District staff performs a socioeconomic analysis of the Draft Plan in order to further inform public discussions and the decision making process of the Draft Plan." However, the Draft Socioeconomic Report shows that no cost data have been developed for Measure IND-01 – Backstop Measures for Indirect Sources of Emissions from the Ports and Port-Related Sources, despite the fact that there are real and significant costs to the Port industry to implement the emission controls that could result from the proposed Backstop Measure. Presentation of this measure to AQMD's Board, as well as the public, is incomplete without an associated socioeconomic analysis. Potential regulation of the Port could have a very significant economic effect on the region that AQMD does not address, and therefore the Ports believe that it is inappropriate to move forward with inclusion of this measure in the Draft AQMP without a full socioeconomic analysis.

By not including a socioeconomic analysis of Measure IND-01, the AQMD is completely ignoring the economic importance of the Ports. The Ports are a major economic engine for the region and nation, and port-related industry generates $5.1 billion and $21.5 billion in state and federal tax revenue, respectively. The Ports account for over 1.1 million jobs in California and 3.3 million jobs in the United States. Additionally, for every one job created by a Port customer, nearly 1.7 additional jobs are created elsewhere in the region.

Even just the potential of additional regulation of the Ports brings with it a significant uncertainty for the Port industry that may result in the diversion of goods to other ports outside of this region. There are more environmental requirements on the Port industry operating in this region than anywhere else in the world. The threat of additional regulatory requirements, especially when no details have been provided as to what those requirements would be, results in significant concerns for these operators and a significant potential for loss of regional economic benefits due to diversion. The Draft Socioeconomic Report fails to analyze this potential impact.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

Additionally, AQMD has indicated that Measure IND-01 does not have a socioeconomic analysis associated with it because there are no emission reductions associated/committed with this measure. As noted in our comment letter on the Draft AQMP dated August 30, 2012, Section 39602 of the California Health and Safety Code states that, the State Implementation Plan (SIP) shall only include those provisions necessary to meet the requirements of the Clean Air Act. Hence, there is no identified need or legal basis for implementing Measure IND-01. AQMD's proposed measure will not result in any additional benefit for the region beyond what is currently being achieved and expected to be achieved in the near future, and is therefore unnecessary.

Finally, as stated in our letter dated October 31, 2012, Measure IND-01 should not move forward because the AQMP makes a commitment to implement it before AQMD has developed or released details of its intended compliance actions against the Ports, or the socioeconomic and other analyses for such actions. Failing to disclose the AQMD's intended actions against the Ports violates due process, depriving the public and the Ports of the opportunity to adequately review and comment on this measure prior to finalizing the AQMP.

For the reasons listed above and those presented in our previous letters, the Ports reiterate our consistent position that Measure IND-01 should be eliminated from the AQMP. Further, we continue to believe that the successful, collaborative approach established by the Ports and the regulatory agencies remains the best mechanism for identifying and implementing strategies to reduce emissions from Port-related sources.

Sincerely,

CHRISTOPHER CANNON
Director of Environmental Management
Port of Los Angeles

RICHARD D. CAMERON
Director of Environmental Planning
Port of Long Beach

CC:CLP:KM:LW:myd
ADP No.: 061024-605

cc: Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Cynthia Marvin, California Air Resources Board
Roxanne Johnson, Environmental Protection Agency, Region 9
Robert Kanter, Port of Long Beach
Mike Christensen, City of Los Angeles Harbor Department, Deputy Executive Director
Dominic Holzhaus, City of Long Beach, Deputy City Attorney
Joy Crose, City of Los Angeles Harbor Department, General Counsel

November 19, 2012

Barry Wallerstein, D. Env.
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Ports' Proposed Revision and Resolution Language for the Draft 2012 Air Quality Management Plan

Dear Dr. Wallerstein:

On November 15, 2012, staff from the ports of Long Beach and Los Angeles met with AQMD Boardmember Judy Mitchell and AQMD staff to discuss concerns and comments that have been raised by the ports in previous comment letters on the Draft 2012 Air Quality Management Plan (AQMP). At the conclusion of the meeting, it was determined that staff would continue to work together to attempt to resolve the concerns that have been raised.

In that spirit, the ports of Long Beach and Los Angeles propose the following revisions to the 2012 AQMP, consistent with our past comment letters to AQMD:

1. Measure IND-01 must be removed from the 2012 Air Quality Management Plan if it continues to apply or recommend any form of AQMD oversight and approvals of the ports' actions, or enforcement (in terms of fines, penalties, administrative actions) against the Ports for failures of the Port industry to achieve designated emissions reductions. This includes the intent to develop such enforcement actions in later IND-01 rulemaking after adoption of the AQMP, even if such details regarding enforcement activity are absent from the draft AQMP.

2. With the removal of the Measure IND-01, the following language could be added to the adopting resolution for the 2012 Air Quality Management Plan:

   BE IT FURTHER RESOLVED, the District commits to continue working with the Port of Long Beach and the Port of Los Angeles on the implementation of the San Pedro Bay Ports Clean Air Action Plan (CAAP) in order to meet the emission reduction goals identified in the San Pedro Bay Standards, and as a part of the annual report to the Board, District staff will continue to provide information on the progress of the ports in implementing the CAAP.

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

BE IT FURTHER RESOLVED, if the ports do not demonstrate sufficient progress for achieving the San Pedro Bay Standards, the District will work with the ports, the other air quality regulatory agencies, and port industry emission sources that are stakeholders under the CAAP, to identify additional feasible strategies for implementation within the ports' jurisdiction.

We look forward to discussing these recommendations with you.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

HAT:s

cc: AQMD Boardmember Judy Mitchell
Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Susan Nakamura, South Coast Air Quality Management District
Robert Kanter, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Joy Crose, Assistant General Counsel, City of Los Angeles

THE PORT OF LOS ANGELES

Port of LONG BEACH
The Green Port

November 27, 2012

Ms. Susan Nakamura
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Ports' Comments on South Coast Air Quality Management District (AQMD) Revisions to Measure IND-01 in Draft 2012 Air Quality Management Plan

Dear Ms. Nakamura:

Thank you for the AQMD's proposed revisions to Measure IND-01, "Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities" (IND-01) in the Draft 2012 Air Quality Management Plan (AQMP). We appreciate that efforts were made by AQMD staff to address the concerns that the ports of Long Beach and Los Angeles (Ports) have raised in our various comments letters on the AQMP and in our meeting on November 15, 2012 among the Ports' staff, AQMD staff and AQMD Boardmember Judy Mitchell.

However, the ports are disappointed that the fundamental structure of Measure IND-01, to treat the ports as "stationary sources" and "indirect sources," and convert the ports' voluntary Clean Air Action Plan into enforceable regulation by AQMD, was not altered in any respect. The ports do not own or operate any of the targeted equipment, and the ports are not regulatory agencies. The ports can't accept any regulatory action by the AQMD that will result in AQMD oversight and approvals of port actions, or enforcement actions by AQMD on the ports for failure of the port industry to meet the ports' emission reduction goals. Therefore the Ports continue to object to Measure IND-01's inclusion and request that it be removed from the AQMP. Measure IND-01 contains the fatal flaw of defining the ports as stationary and indirect sources responsible for the emissions from equipment they do not regulate, own, or control. We also believe that this measure is beyond AQMD's authority.

We reiterate our prior requests that AQMD reconsider its approach and allow the continuation of the successful collaborative work by the ports, regulatory agencies and other stakeholders under the voluntary Clean Air Action Plan and San Pedro Bay Standards. Moving forward with Measure IND-01 in this current draft form will actually reduce rather than improve the future success of programs, since conversion of voluntary plans into regulation will reduce voluntary

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The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

cooperation by the industry with port programs, and will eliminate the ability of the ports, agencies and industry emissions sources to obtain grants to accelerate emission reductions from port industry equipment.

Thank you for your continued attention to this matter and we hope that we can continue with the successful, cooperative partnership that we have built over the past seven years.

Sincerely,

Richard D. Cameron
Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

HAT:s

cc: AQMD Boardmember Judy Mitchell
Barry Wallerstein, South Coast Air Quality Management District
Peter Greenwald, South Coast Air Quality Management District
Elaine Chang, South Coast Air Quality Management District
Henry Hogo, South Coast Air Quality Management District
Chris Lytle, Port of Long Beach
Robert Kanter, Port of Long Beach
Dominic Holzhaus, Deputy City Attorney, City of Long Beach
Geraldine Knatz, Port of Los Angeles
Joy Crose, Assistant General Counsel, City of Los Angeles

October 2, 2013

VIA ELECTRONIC MAIL – rpasek@aqmd.gov
VIA FACSIMILE - (909) 396-3324

Randall Pasek, Ph.D.
Planning Manager, Off-Road Section
Mobile Source Division
Science and Technology Advancement
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765-4178

Re: Initial Comments for Public Consultation on Proposed Rule 4001: "Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports"

Dear Mr. Pasek and Staff of the South Coast Air Quality Management District:

We appreciate this opportunity to submit comments during the public consultation period on the South Coast Air Quality Management District's (AQMD's) proposed "Rule 4001: Backstop to Ensure AQMP Emission Targets Are Met At Commercial Marine Ports" on behalf of the City of Long Beach acting by and through its Harbor Department (referred to herein as "COLB") and the City of Los Angeles acting by and through its Harbor Department ("COLA," collectively with COLB, the "Cities" or the "Ports").

The Cities take their role as environmental leaders seriously and through the years have achieved tremendous success in obtaining substantial emissions reductions through the efforts guided by the joint San Pedro Bay Ports Clean Air Action Plan ("CAAP"). The Cities continue to support programs that will result in cleaner air for the local communities and the region and have worked aggressively with the port industry to reduce air quality impacts from the equipment they operate. As a result, the recently released emissions inventories have shown that between 2005 and 2012, emissions from sources at both the Port of Long Beach and Port of Los Angeles were reduced by 80% for diesel particulate matter and 55% for nitrogen oxides. However, the Cities continue to disagree with the AQMD's current proposal to inappropriately and unnecessarily regulate the Cities. The Cities have been consistent in our comments to the AQMD about the serious concerns and objections to the proposed rulemaking approach. A compilation of these comments was recently submitted to the AQMD in our comment letter on the Notice of Preparation and Initial Study for Proposed Rule 4001, dated August 21, 2013.

As for the comments the AQMD is currently seeking, we have concerns that the process recently initiated by the AQMD to solicit comments on Proposed Rule 4001 deviates from the rule-

The San Pedro Bay Ports Clean Air Action Plan was developed with the participation and cooperation of the staff of the US Environmental Protection Agency, California Air Resources Board and the South Coast Air Quality Management District.

making procedures called for by the Health & Safety Code and by the AQMD's own rules (Rule 110), in several respects. For example, it is essential that a copy of the Proposed Rule, or the text of the Proposed Rule, "be made available to the general public in connection with a request for comments" on a proposed rule in order to commence a legally-compliant rule-making process. (E,g., H & S Code §§ 40727.2, 40727(i).) The Cities have previously pointed out the inherent inconsistency of inviting public comment on Proposed Rule 4001 before the AQMD has publicly-disclosed the text of the Proposed Rule, as well as the resulting limitations on the ability of the Cities and other members of the public to provide specific input on the Proposed Rule. As a result of the failure to provide the text of the Proposed Rule, or necessary information regarding the Proposed Rule, a meaningful and legally valid rule-making procedure has not yet been commenced, and it is premature for the AQMD to demand the submission of comments on the anticipated but still undefined new "backstop" rule.

Further, it appears that the AQMD is attempting to limit comment by setting an agenda for the items on which they are seeking input, as shown on slide 8 "Soliciting Inputs/Comments" of the presentation provided during the CEQA Scoping Meeting on August 14, 2013. In addition, limiting the public process primarily to a small working group with seats set at a small table does not allow for significant input from the broader affected public, including the port tenants and operators. Input could be more meaningfully provided if the Proposed Rule was released with sufficient time for the Cities and the public to review and provide detailed comment.

The Cities are further concerned that not enough time is being included in the schedule for rule development. To date, a draft of the Proposed Rule has not been released, nor is it expected to be released for at least several weeks; however, a hearing date for the AQMD Board to consider approval of the Proposed Rule has already been identified for early December. Well in advance of any such hearing, the AQMD must provide the public with substantial information and analysis of the Proposed Rule as required by the Health & Safety Code and AQMD rules (e.g., H & S Code §§ 40727.2; Rule 110(b), (c), and (d).), as well as responses to the public comments. The AQMD also must provide the comprehensive assessment of socioeconomic impacts required by Section 40728.5.

This timeline for review and comment is unacceptably short for a rule of this magnitude. The failure to provide the draft rule language with adequate time for the public to review and submit comments to AQMD, and for those comments to be meaningfully considered by AQMD staff, is a denial of due process.

In this regard, we also have concerns about the demand that comments be submitted by September 6, 2013. There is no explanation, nor any apparent legal basis, for imposing such a deadline for public comments. It is unreasonable, particularly in light of the absence of text or details regarding the Proposed Rule, and fails to provide due process to the Cities or other members of the public who may be burdened or affected by the Proposed Rule, to demand comments by such an early cut-off. The imposition of such a premature deadline for submission

of comments appears arbitrary, and in conflict with Health & Safety Code § 40726, which states that the AQMD "shall provide for the submission of statements, arguments, or contentions, either oral or written or both," up until the time of the public hearing on the Proposed Rule. We therefore respectfully object to the imposition of a deadline for submission of comments on the Proposed Rule, and reserve all rights to comment on the Proposed Rule in the manner, and at the times, provided by state law and the AQMD rules, and to insist on compliance with the procedures and rights afforded by state law and AQMD rules.

The Cities are therefore providing these comments on a preliminary (and non-binding) basis, considering only the limited information on Proposed Rule 4001 thus far provided by the AQMD, based upon presentations by AQMD staff about the general concepts of the approach. The Cities reserve our rights, however, to make further comments after the September 6 deadline and to continue to provide input throughout the process, including submission of additional or different comments after the draft rule is made available.

First, there is an issue of need. As a rule that is contained in the proposed State Implementation Plan, Proposed Rule 4001 violates Section 39602 of the California Health and Safety Code, which states that the State Implementation Plan shall only include those provisions necessary to meet the requirements of the Clean Air Act. There is no need for Proposed Rule 4001 since the AQMP's emissions targets for port industry equipment in 2014 will be met by United States Environmental Protection Agency (EPA) and California Air Resources Board (CARB) regulations and existing Clean Ocean Vessel Voluntary Incentive Programs. Further, AQMD staff has suggested that Proposed Rule 4001 will require the Ports to develop a "Contingency Plan" immediately following rule adoption, prior to any indication that an emissions shortfall may occur. This approach is punitive, requiring the Ports to invest resources into a type of corrective action, when there is no identified need for that action, and therefore goes against the Act and is inconsistent with due process.

Second, there is an issue of legal authority and jurisdiction. The AQMD has failed to cite any legal authority for characterization of governmental entities as a stationary source, or imposing an indirect source rule on governmental entities that do not own, operate or control the sources of emissions, based merely upon the location of facilities operated by private parties within the government entities' geographic area. The Ports are not "indirect sources" and no authority has been cited to authorize the use of an indirect source rule against fellow governmental agencies that have their own jurisdiction and responsibilities by law and do not have regulatory authority to issue air regulations. The AQMD has failed to cite any legal authority for imposing an indirect source rule on Trustees for the Tidelands of California or how it could legally compel the Ports to make expenditure of Tidelands Trust revenues for the purpose of incentives or to adopt other emission reduction programs to be funded as contemplated in AQMD enforcement activity under Measure IND-01. The AQMD has failed to show any legal authority that would allow it to (1) regulate mobile sources by making another governmental entity, that is not an air regulator, its agent for enforcement of its desired mobile source emission reductions, or (2) "enforce" the

Proposed Rule, which under AQMD administrative rules would eventually mean fines and penalties, against such other governmental entity that does not control the emissions of indirect sources located within its jurisdictional boundaries. The AQMD has failed to show any constitutional or statutory basis for attempting to regulate mobile sources "indirectly" that it is preempted from regulating directly, or to purport to impose penalties or corrective action against another governmental entity for failure of private third party emissions sources to achieve emissions reductions that such other governmental entity is also preempted from regulating.

Third, while the Cities remain firm in our position that the rulemaking is unnecessary, counterproductive and beyond the AQMD's jurisdiction, if AQMD does continue to proceed, the following significant issues must be addressed.

AQMD staff appears to be proceeding with development of the proposed rule in a manner that is inconsistent with the provisions of AQMP Measure IND-01 and the discussion between the AQMD Board and the staff during the approval of AQMP Measure IND-01 at the Board Meeting of February 1, 2013. During that discussion, it was identified that the requirements under any proposed rule would only be triggered if the ports failed to meet their goals for the target year. The proposed rulemaking concepts that have been presented by AQMD staff more recently have indicated that the Ports may be required to develop corrective action plans in advance of any identified shortfall. Further, it appears AQMD staff is considering that the Ports will be required to submit emission inventories to AQMD for approval each year through 2020 and that compliance action may be triggered for any potential shortfalls that may occur during interim years, prior to the target years. These potential requirements are inappropriate and go beyond the direction from the AQMD Board.

Also, because the Cities are not regulatory agencies, have not been granted authority to regulate sources of air pollution, and have limitations on their ability to impose requirements on sources operating within their jurisdiction, AQMD must ensure that Proposed Rule 4001 does not mandate that the Cities implement strategies that are outside of their authority or ability to implement. AQMD must recognize that the Cities do not even have contractual relationships with many of the emissions sources that AQMD has attributed to the Cities' "responsibility" for emissions reductions under Proposed Rule 4001, and that even if Cities have leases with some of the operators, they are negotiated business agreements that constrain the Cities' ability to unilaterally impose new terms in response to whatever new conditions AQMD may desire.

In addition, the Boards of Harbor Commissioners of the Cities have the discretion for making business decisions related to the ports and their tenants, consistent with the Tidelands Trust and California Coastal Act. Neither AQMD staff nor its Board can override the discretion of the Harbor Commissions including decisions related to the management of the port or how port funds are spent. Therefore, AQMD cannot disapprove an Emission Reduction Plan simply because AQMD disagrees with the chosen strategies.

Moreover, approval or disapproval of any Emission Reduction Plan cannot be at the sole discretion of AQMD staff. Any plan development should be coordinated with the agencies involved in the development of the CAAP, specifically EPA, CARB and the AQMD. The partnerships established through the CAAP process, and the actions over the past seven years that have been taken by the regulatory agencies, in addition to the Ports, have been critical in the success that has been achieved. As CARB has stated[1], "[s]uccessful implementation of the CARB emission reduction plan will depend upon actions at all levels of government and partnership with the private sector. No single entity can solve this problem in isolation." Therefore, AQMD staff should not place themselves in a position to be the sole authority to approve or deny plans for emission reductions at the Ports. Any plans should be developed in partnership, with input by all agencies, and final approval on actions to be taken specifically by the Cities should be at the discretion of the Boards of Harbor Commissioners.

Slide 8 of the AQMD presentation at the August 14 Scoping Meeting identified that AQMD is seeking input on "[f]lexibility to garnish emission reductions/air quality benefits off port property". Under the Tidelands Trust, the Boards of Harbor Commissioners are limited in their ability to spend Tidelands funds outside of the Tidelands areas. The Cities cannot be mandated by an AQMD rule to mitigate emissions that are unrelated to port-operations outside of the Harbor Districts and the Tidelands areas.

AQMD has stated that the goal of the Proposed Rule is to ensure that the Cities meet their commitments outlined in the CAAP. The Cities have clearly demonstrated over the past seven years that they are committed to working with the industry and will do what they can to reduce, from port-related sources, the port sector's fair share of regional air emissions. If other non-port related sectors within the region do not achieve their share of emissions reductions, the Cities cannot be held responsible for making up for those shortfalls, regardless of whether or not those shortfalls are anticipated to result in a delay in regional attainment of the $PM_{2.5}$ Standard in 2014.

In addition, the Cities should not be held responsible for any potential emissions shortfalls from regulatory agencies not implementing emission reduction regulations as identified within the SIP, even if those regulations are related to equipment operating at the ports. If an agency makes a decision to delay a regulation schedule, or if a regulation is overturned due to a court decision that the requirements are not within their authority to implement, the Cities should not then be mandated to backfill the potential shortfall.

The last update to the CAAP took over two years to develop and cost over $1 million. The Cities should not be required by the Proposed Rule to prepare an Emission Reduction Plan when no need for such a plan has been identified (e.g. region is anticipated to reach attainment with the $PM_{2.5}$ Standard, emission reductions will be achieved by in-place regulations, no emission shortfall has been identified, etc.). Further, development of a plan should not be mandated if the

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[1] *Emission Reduction Plan for Ports and Goods Movement in California*, Executive Summary, ES-1, CARB, 2006.

reasons for any emissions shortfall are due to reasons outside of the Cities control or if no feasible strategies are available. Any plan that is required by AQMD should be streamlined and focused solely on actions that will be taken by the Ports and/or agencies to make up for any identified shortfall.

As identified in the 2012 Air Quality Management Plan, it was determined that the 2014 $PM_{2.5}$ Standard could be achieved by 2014 and no request for an extension would be needed[2]. Therefore, it is inappropriate for the AQMD to require an emission target year of 2019 in the Proposed Rule.

As stated above, these comments represent the Cities' initial concerns with the AQMD's proposed approach. Further comments will be provided as the process progresses and as more information is made available by AQMD.

We appreciate your consideration. Thank you.

Sincerely,

Heather Tomley
Acting Director of Environmental Planning
Port of Long Beach

Christopher Cannon
Director of Environmental Management
Port of Los Angeles

cc: Al Moro, Acting Executive Director Port of Long Beach
Geraldine Knatz, Executive Director Port of Los Angeles
Rick Cameron, Acting Managing Director of Environmental Affairs and Planning, POLB
Mike Christensen, Deputy Executive Director, POLA
Dominic Holzhaus, Principal Deputy City Attorney City of Long Beach
Joy Crose, Assistant General Counsel City of Los Angeles, Harbor Division
Barry Wallerstein, Executive Officer, SCAQMD
Henry Hogo, Assistant Deputy Executive Officer, SCAQMD
Peter Greenwald, Senior Policy Advisor, SCAQMD
Veera Tyagi, Deputy District Counsel, SCAQMD
Cynthia Marvin, Division Chief, California Air Resources Board
Elizabeth Adams, Deputy Director, U.S. Environmental Protection Agency, Region 9

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[2] *2012 Air Quality Management Plan*, Executive Summary, ES-11, AQMD, 2013.

SAN PEDRO BAY PORTS

CLEAN AIR ACTION PLAN

November 7, 2016

Mr. Wayne Nastri
Acting Executive Officer
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Electronic Submittal Via:
https://onbase-pub.agmd.gov/sAppNet/UnityForm.aspx?key=UFSessionIDKey

SUBJECT: COMMENTS BY PORTS OF LONG BEACH AND LOS ANGELES ON *REVISED DRAFT* OF SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT'S 2016 AIR QUALITY MANAGEMENT PLAN

Dear Mr. Nastri:

The Port of Long Beach and Port of Los Angeles (Ports) appreciate the opportunity to participate in the South Coast Air Quality Management District's (District or SCAQMD) 2016 Air Quality Management Plan Advisory Committee, and to comment on the *District's Revised Draft 2016 Air Quality Management Plan* (either "Revised Draft" or "AQMP") released to the public on October 7, 2016.

The Ports previously submitted comments on the June 2016 draft of the 2016 AQMP on August 19, 2016, which are attached hereto. The Revised Draft, however, does not acknowledge or respond to the Ports' previous comments and objections to the proposed AQMP (and in some cases appears to further aggravate issues to which objections have been raised). The Ports therefore respectfully request that their comments be deemed to be incorporated in the Ports' comments on the current Revised Draft.

The Ports also note that their ability to provide comments on all aspects of the proposed new 2016 AQMP is precluded by the lack of complete information in the Revised Draft AQMP;

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e.g., proposed control measure MOB-01 is incomplete and vague, the socio-economic analysis and incentive funding plans have not yet been completed and the critical Appendices V and VI have not yet been finalized or released to the public. Accordingly, the Ports request that the District extend the comment period on the 2016 AQMP to allow the public an adequate opportunity to review and further comment on all Appendices and other critical components of the AQMP (e.g., the socioeconomic analysis, Incentive Funding Action Plan, etc.) well before the AQMP is to submitted for consideration by the District Board.

OVERVIEW OF ISSUES

The cities and businesses that move goods in and out of the Ports are vital to the regional, state, and national economy. The international cargo handled by the Ports accounts for over 1.1 million jobs in California and 3.3 million jobs in the United States; however, competition for much of this cargo is intensifying particularly with other international ports (Panama Canal, Canada, Mexico). The Ports are global leaders in the highly successful Clean Air Action Plan (CAAP) and other environmental programs, working in partnership with the port-related industry to reduce emissions from goods movement sources (ships, trains, trucks, cargo handling equipment, harbor craft). The CAAP, however, is not a blue print for the AQMP. The control measures in the Revised AQMP holds the Ports and related facilities responsible for shortfalls in voluntary CAAP measures, and will deter other ports and industries from any type of voluntary action.

The Ports have been innovative and effective leaders in the efforts of public agencies to improve air quality despite the fact that the Ports do not have regulatory authority or control over the emissions sources. Working collaboratively and voluntarily with the EPA, CARB, and the District, the Ports' efforts have achieved unprecedented success in helping the maritime goods movement industry obtain substantial reductions in emissions. The Ports continue to remain firm in our position that the District's attempt to regulate the Ports as "indirect sources" is unnecessary and counterproductive to the successful collaborative approach, and should not be included in the SIP. The District is inappropriately proposing to impose enforcement actions on the Ports for emissions generated by emissions sources that the Ports do not own, operate, or control. The District should, respectfully, focus on funding efforts as opposed to regulation that would detour from the overall objective of improving air quality.

As the Ports have noted in these and prior comments, the District lacks authority to adopt any control measure or "backstop" rule that would go into effect if the emission targets for NOx, SOx, and $PM_{2.5}$ from port-related sources are not met. Nor are such measures necessary because the Ports' recent emissions inventories show that the ports have exceeded the projected emission reduction targets identified in the CAAP. For example, diesel particulate matter (DPM) emissions have been reduced by 85% over the 9 year period between 2005 and 2014. In addition, emissions of nitrogen oxides (NOx) are down by 51%, and sulfur oxides (SOx) emissions have been reduced by 97%.

The Ports continually develop and support emission reduction strategies and programs that will result in cleaner air for the local communities and the region. These efforts have been entered into voluntarily, working cooperatively with the operators in the port area and the air quality regulatory agencies working aggressively with the goods movement industry to reduce

air quality impacts from the equipment they operate. The potential for additional regulation by the District on the Ports brings significant uncertainty that will have broad negative effects on the goods movement industry and the economy as a whole, and will jeopardize the voluntary, collaborative partnership between the cities, the industry, and all of the air agencies that has led to the significant emissions reductions achieved to date.

The current Revised Draft 2016 AQMP raises many concerns, and grounds for objection, in addition to the numerous concerns with the 2016 AQMP previously raised by the Ports. Those comments and objections are detailed in the attachment(s) to this letter. However, we take this opportunity to briefly note, and highlight for the District's consideration and response, the following points raised by the Revised Draft AQMP:

1. <u>The District Lacks Jurisdiction To Adopt Or Implement Several Of The Control Measures Proposed By The 2016 AQMP</u>.

The Ports, and others, have repeatedly pointed out the limitations imposed by federal and state law on the District's authority to impose regulations on emission sources that are not within its jurisdiction. Air pollution control districts only have the authority "to adopt and enforce rules and regulations" as to "emission sources under their jurisdiction. (Health & Safety Code, § 40001, sub. (a).)" (*Friends of Oceano Dunes, Inc. v. San Luis Obispo County Air Pollution Control District* (2015) 235 Cal.App.4th 957, 963, as modified on denial of reh'g (Apr. 23, 2015).

The revisions to the current draft AQMP have not only ignored those objections, but have actually proposed to move the District into even more flagrant excesses of the District's limited regulatory jurisdiction by repeatedly calling not just for incentive-based "control measures" but threatening the creation of new rule-making and "regulations" that would be imposed on emission sources beyond the District's existing legal jurisdiction. (E.g., Revised Draft AQMP, p. 4-3: "These strategies include *aggressive new regulations and* development of incentive funding ... " [newly revised text in italics]; *id.* at p. 4-22 & 23, also, Appendix IV-A-6 through 9.)

The District's authority to regulate is limited to its jurisdictional boundaries. The District was created by the California Legislature "in those portions of the Counties of Los Angeles, Orange, Riverside, and San Bernardino included within the area of the South Coast Air Basin, as described in Section 60104 of Title 17 of the California Administrative Code, as now or hereafter amended." (Cal. Health & Safety Code, § 40410.) The District's boundaries do not include the ocean area adjacent to the South Coast Air Basin. Thus, the District lacks authority to adopt and enforce measures in the AQMP because it does not have jurisdiction to regulate emission sources outside of its geographical boundaries as would be required if the CAAP programs become involuntary and mandatory.

The Cities' management of the Ports is largely subject to their roles as trustees of tidelands under the legislative acts that granted tidelands to the Cities under a public trust. As tidelands trustees, the Cities have been granted the discretion over how to best fulfill the express trust purposes. The District cannot adopt policies, control measures, or regulations that might attempt to compel the Ports to violate these tidelands trust obligations.

2. <u>The 2016 AQMP Would Exacerbate The Legal Conflicts Resulting From The District's Attempts To Regulate Mobile Sources Disguised As "indirect source control measures and regulations</u>."

The District has no authority to regulate mobile sources, or to arbitrarily group source categories or invoke geographic boundaries (e.g., the Ports) and declare those areas or groups of sources, by mischaracterizing them as an "indirect source." The Ports and the activities conducted there are not "indirect sources" of emissions within the meaning of the federal Clean Air Act (42 U.S.C. § 7410(a)(5)(C).) An "indirect source review program" is "the facility-by-facility review of indirect sources of air pollution, including such measures as are necessary to assure, or assist in assuring, that a new or modified indirect source will not attract mobile sources of air pollution" that would contribute to the exceedance of the NAAQS. (42 U.S.C., § 741O(a)(5)(D)(i).) "Direct emissions sources or facilities at, within, or associated with, any indirect source shall not be deemed indirect sources for the purpose" of an indirect source review program. (42 U.S.C. § 7410(a)(5)(C).) Indirect source control measures cannot be required as a condition of SIP approval by EPA or CARB. (42 U.S.C., § 7410(a)(5)(A)(ii); Health & Safety Code, § 40468.) There are no provisions in the Clean Air Act for including "backstop" measures. Only those provisions necessary to meet the requirements of the Clean Air Act can be included in the SIP. (Health & Safety Code, § 39602.) Backstop measures are not necessary to meet the 24-hour PM2.5 NAAQS requirements of Clean Air Act, and there is no emission reduction target in the attainment strategy for AQMP which the proposed measures purport to implement. (See e.g., 40 C.F.R. §§ 51.112-51.114.)

Furthermore, air pollution control districts such as SCAQMD are <u>not</u> authorized to regulate or impose a permit system on "indirect sources" of emissions. (*Friends of Oceano Dunes, Inc. v. San Luis Obispo County Air Pollution Control District*, *supra,* 235 Cal.App.4th at 964.)

The AQMP control measures appear to be yet another misguided effort to use the Clean Air Act's indirect source provisions as a guise to impermissibly regulate mobile sources. The District cannot regulate emissions from on- and off-road mobile sources operating at, and to and from, the Ports, which includes ocean-going vessels and locomotives. The District cannot regulate emissions from the tailpipes of on-road and off-road mobile sources, or enact mobile source regulations. The District also cannot regulate off-site emissions (emissions occurring during transit "to and from" the purported "site"). Congress did not intend or authorize the use of the indirect source provisions of the Clean Air Act as a way to circumvent mobile source preemption.

3. <u>The 2016 AQMP Would Violate The Dormant Commerce Clause</u>.

The control measures proposed in the Revised Draft AQMP would have serious negative effects on international and interstate commerce, navigation, maritime as well as land-based commerce, are will add unique and 'discriminatory' burdens which will have the effect of impeding California's and the Ports' economic competitiveness. Accordingly, these measures will likely undergo close scrutiny under the federal constitution's "dormant commerce clause" and "rights and immunities" protections.

"The high court's dormant commerce clause jurisprudence "'significantly limits the ability of States and localities to regulate or otherwise burden the flow of interstate commerce.'" (*McBurney, supra*, 569 U.S. at p. ___ [133 S.Ct. at p. 1719] ....) . Generally speaking, the Commerce Clause protects against inconsistent legislation arising from the projection of one state regulatory regime into the jurisdiction of another State. [Citation.]" (*Healy, supra*, at pp. 336-337.)" (*Alamo Recycling, LLC v. Anheuser Busch InBev Worldwide, Inc.* (2015) 239 Cal. App.4th 983, 996.)

4. <u>The AQMP Would Unconstitutionally Impose Unfunded State Mandates</u>.

The California Supreme Court recently ruled in *State Department of Finance v. Commission of State Mandates (County of Los Angeles)* (2016) 220 Cal.App.4th 740, that certain requirements of the 2001 Los Angeles County Municipal Separate Storm Sewer System (MS4) Permit could be considered unfunded State mandates that would violate the constitutional prohibition against such unfunded mandates (Cal.Const. art. X III B, sec. 6(C), unless adequate state reimbursement was also provided. The same rationale would apply to any unfunded requirements that are imposed upon the Ports under the 2016 AQMP. As framed, the requirements being imposed on the Ports are the creation of the District. The requirements are not "federal mandates" that might be exempted from this constitutional mandate.

5. <u>The 2016 AQMP Would Unnecessarily And Erroneously Include Measures Based On Inapplicable NAAQS</u>.

The District asserts that it is required to have a new attainment demonstration for three NAAQS: (1) the 8-hour ozone NAAQS established in 2008, 75 ppb (2008 8-hour Ozone); (2) the annual PM2.5 NAAQS established in 2012, 12 µg/m3 (2012 annual PM2.5); and, (3) the 24-hour PM2.5 NAAQS established in 2006, 35 µg/m3 (2006 24-hour PM2.5). This is not entirely accurate. EPA has yet to decide whether to revoke the 2008 8-hour ozone NAAQS or to impose appropriate anti-backsliding requirements. EPA will provide guidance on these issues in a subsequent rulemaking. It is premature to address the 2008 8-hour Ozone in the 2016 AQMP until EPA finalizes its rule. The 2016 AQMP demonstrates that the 2006 24-hour PM2.5 standard will be met by the 2019 attainment year with no additional reductions needed beyond already adopted measures. Therefore, the 2016 AQMP does not need to include new control measures to meet this standard. The 2016 AQMP states that the 2012 annual PM2.5 standard cannot be met by 2021, which is the attainment year for the current "moderate" designation. Therefore, the District will be requesting EPA re-designate the Basin as a "serious" nonattainment area, which will provide four more years to attain the annual PM2.5 standard by 2025. The Ports agree this request should be included in the draft 2016 AQMP. The District also concedes it is voluntarily submitting attainment demonstrations for the following NAAQS: (1) 1997 8-hour Ozone NAAQS, 80 ppb and (2) the 1979 1-hour Ozone NAAQS, 120 ppb. The District has prematurely chosen to provide for the alternative NOx/VOC reductions instead of the reasonable further progress demonstration under 42 U.S.C., § 7511a(c)(2) without conducting an economic analysis of these options. (40 C.F.R., § 51.1100(o)(12).) This economic analysis should be conducted and public input sought on this issue before the draft 2016 AQMP addresses the 1997 8-hour Ozone NAAQS and 1979 1-hour Ozone NAAQS.

6. <u>The District should not conduct its CEQA review or require public comment on the AQMP before all aspects of the Plan have been completed</u>.

The Ports note the difficulty, if not the inefficiencies, posed by the District's continuing practice of releasing the proposed new 2016 AQMP in piecemeal and incomplete fashion. It appears that the current Revised Draft AQMP is itself not yet complete, and anticipates additional substantive content. The necessary socio-economic analysis is also not yet complete.

As noted in the Ports comments on the Draft EIR, it is procedurally and legally inappropriate for the District to be conducting its CEQA review before the details of the proposed AQMP have been completed. The Ports and the public should not be required to review and comment on important environmental documents before the full shape of the proposed project (2016 AQMP) is better known and disclosed. (See, e.g., *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1450: "A <u>complete</u> project description is necessary [for CEQA] to assure that <u>all</u> of a project's environmental impacts are considered."].)

Additional comments and objections are further detailed in the attachment(s) to this letter.

<u>CONCLUSION</u>

The Ports strongly encourage the District to strongly consider the issues identified herein and in its prior comments on the Draft 2016 AQMP, and to make the above-requested changes to the Draft 2016 AQMP, including but not limited to the following:

- eliminate control measure MOB-01 as it is unnecessary and exceeds the District's authority;
- clarify that control measure EGM-01 and any subsequent rulemaking related to indirect source review does not apply to the Ports; and
- revise control measure MOB-14 to clarify that it does not preclude the maritime goods movement industry's ability to secure grant funding for early actions.

The Ports also urge the District to complete the appropriate Incentive Funding Action Plan, as well as the appropriate socioeconomic impact analysis, and to provide the Ports and other members of the public with an adequate opportunity for comprehensive review and comment on those documents along with the (revised) Draft 2016 AQMP *prior to* submitting the Plan to the Board for consideration.

The Ports remain committed to achieving our clean air goals identified in the CAAP to help improve regional air quality. We strongly believe that the voluntary and cooperative CAAP process established by the Ports remains the most appropriate forum for the Ports and the air regulatory agencies to discuss technical and policy issues related to reducing emissions from port-related sources.

The Ports appreciate this opportunity to provide comments on the proposed 2016 AQMP. We look forward to continuing to work with the District on advancing our shared goals for clean air in the South Coast region.

Sincerely,

RICHARD D. CAMERON
Managing Director,
Environmental Affairs and Planning
Port of Long Beach

CHRISTOPHER CANNON
Director
Environmental Management
Port of Los Angeles

ATTACHMENT
DETAILED COMMENTS ON THE REVISED DRAFT 2016 AQMP

1. The District Lacks Jurisdiction Over Ocean-Going Vessels.

The District's authority to regulate is limited to its jurisdictional boundaries. The District was created by the California Legislature "in those portions of the Counties of Los Angeles, Orange, Riverside, and San Bernardino included within the area of the South Coast Air Basin, as described in Section 60104 of Title 17 of the California Administrative Code, as now or hereafter amended." (Cal. Health & Safety Code, § 40410.)

The South Coast Air Basin includes the portion of Los Angeles County "[b]eginning at the Los Angeles-San Bernardino County boundary and running west along the township line common to T.3 N and T.2 N, San Bernardino Base and Meridian; then north along the range line common to R.8 W and R.9 W; then west along the township line common to T.4 N and T.3 N; then north along the range line common to R.12 W and R.13 W to the southeast corner of Section 12, T.5 N, R.13 W; then west along the south boundaries of Sections 12, 11, 10, 9, 8, 7, T.5 N, R.13 W to the boundary of the Angeles National Forest which is collinear with the range line common to R.13 W and R.14 W; then north and west along the Angeles National Forest boundary to the point of intersection with the township line common to T.7 N and T.6 N (point is at the northwest corner of Section 4 in T.6 N, R.14 W); then west along the township line common to T.7 N and T.6 N; then north along the range line common to R.15 W and R.16 W to the southeast corner of Section 13, T.7 N, R.16 W; then along the south boundaries of Sections 13, 14, 15, 16, 17, 18, T.7 N, R.16 W; then north along the range line common to R.16 W and R.17 W to the north boundary of the Angeles National Forest (collinear with township line common to T.8 N and T.7 N); then west and north along the Angeles National Forest boundary to the point of intersection with the south boundary of the Rancho La Liebre Land Grant; then west and north along this land grant boundary to the Los Angeles-Kern County boundary. (17 Cal. Code Regs., § 60104(d).)

The District's boundaries do not include the ocean area adjacent to the South Coast Air Basin. Thus, the District lacks authority to adopt and enforce measures in the AQMP (e.g., MOB-01, MOB-02, MOB-03, and EGM-01) because it does not have jurisdiction to regulate emission sources outside of its geographical boundaries as would be required if the CAAP programs become involuntary and mandatory. The Ocean Going Vessel (OGV) Vessel Speed Reduction program would require OGVs to slow vessel speed to 12 knots during their approach and departure from the ports at a distance of either 20 nm or 40 nm from Point Fermin, which is outside the District's jurisdictional boundary. The OGV Low Sulfur Fuel for Auxiliary Engines

and Auxiliary Boilers program would require OGVs to switch to low sulfur distillate fuel within 40 nm from Point Fermin, which is outside of the District's jurisdictional boundary. The OGV Low Sulfur Fuel for Main Engines program would require OGVs to switch to low sulfur distillate fuel within 40 nm from Point Fermin, which is outside of the District's jurisdictional boundary.

The OGV Vessel Speed Reduction program is the only CAAP measure that is not already part of regulations adopted by other agencies. Yet, the Ports also lack jurisdiction to mandate any OGV actions of the ship owners if CAAP voluntary incentive targets are not met. OGVs are regulated by the federal government implementing its treaty obligations under MARPOL, administered by the IMO, specifically MARPOL Annex VI Regulations for the Prevention of Air Pollution from Ships (Annex VI), which sets global limits for SOx, NOx, and PM emissions from OGVs. Congress vested MARPOL and Annex VI authority with the Secretary of the U.S. Coast Guard (Secretary) and the Administrator (Administrator) of the EPA. (33 U.S.C., § 1903.) The Secretary has exclusive MARPOL administrative and enforcement authority. (33 U.S.C., § 1903(a).) The Administrator has Annex VI administrative, regulatory, investigative, and enforcement authority. (33 U.S.C., §§ 1901 et seq.)

The District's ability to adopt, enforce, and require the Ports to comply with any measure mandating the Vessel Speed Reduction program is precluded and preempted by Annex VI and federal regulations. (40 CFR § 1043.10.) The federal government has historically been the principal regulator of emissions from U.S. and foreign-flagged ships (or OGVs) under Annex VI. (40 C.F.R., § 94; 40 C.F.R., § 1043, 33 C.F.R. § 151).

The Ports are located within the "North American Environmental Control Area" (ECA) established under Annex VI. The North American ECA's limits are much stricter than Annex VI's global requirements. It would be unlawful for the District to require the Ports to collect and report NOx, SOx, and PM emissions information from OGVs subject to Annex VI requirements in the North American ECA. To collect this information, the Ports must impose a reporting requirement for OGVs coming and going from the Ports– effectively regulating them under Annex VI. The Ports lack authority to regulate U.S. and foreign-flagged ships in this manner. (33 U.S.C., §§ 1903, 1907.) Federal recordkeeping and reporting requirements for fuel and marine engines are expressly allowed (40 C.F.R., § 1043.70(b)-(c)), but no other recordkeeping and reporting requirements are authorized by statute or regulation. Any reporting requirement by the District is thus preempted by both Annex VI's record-keeping requirements for NOx engine standards and sulfur content in fuel (Regulations 13 and 14, Annex VI; incorporated by reference at 40 C.F.R., § 1043.100) and federal regulatory record-keeping and reporting requirements (40 C.F.R., § 1043.70).

The District's attempt to mandate certain voluntary CAAP programs would also be preempted on enforcement grounds. Congress expressly reserved enforcement authority of Annex VI regulations to the U.S. Coast Guard and EPA. (33 U.S.C., §§ 1903, 1907.) Enforcement inspections will be conducted only by the U.S. Coast Guard and, when referred by the Secretary, investigated by the Administrator. (33 U.S.C., §§ 1907(f)(1)-(2).) The U.S. Coast Guard and EPA are authorized to impose civil penalties for violations of MARPOL (including Annex VI) and 33 U.S.C., §§ 1901 et seq., § 1908(b)(1). The Ports and the District are not so authorized and cannot inspect, penalize, or undertake enforcement actions against OGVs under Annex VI and 33 U.S.C., §§ 1901 et seq.

The District's Executive Officer also lacks authority to decide that any emission target is not met. To satisfy the Emission Reduction Plan requirement, the Ports may have to impose more stringent emissions requirements on U.S. and foreign-flagged vessels than required by Annex VI. The Ports and the District both lack this authority.

2. The District Lacks Authority To Regulate Port Activities As "Indirect Sources."

The District has no authority to regulate mobile sources, and may not do so by mischaracterizing them as "indirect sources." (*Friends of Oceano Dunes, Inc. v. San Luis Obispo County Air Pollution Control District*, *supra*, 235 Cal.App.4th at 964 [air pollution control districts are not authorized to regulate or impose a permit system on "indirect sources" of emissions].) The Clean Air Act defines an indirect source as "a facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution." (42 U.S.C., § 7410(a)(5)(C).) The Ports are not within this definition. "Direct emissions sources or facilities at, within, or associated with, any indirect source shall not be deemed indirect sources for the purpose" of an indirect source review program. (42 U.S.C., § 7410(a)(5)(C).)

Indirect source control measures cannot be required as a condition of SIP approval by EPA or CARB. (42 U.S.C., § 7410(a)(5)(A)(ii); Health & Safety Code, § 40468.) There are no provisions in the Clean Air Act for including "backstop" measures. Only those provisions necessary to meet the requirements of the Clean Air Act can be included in the SIP. (Health & Safety Code, § 39602.) Backstop measures are not necessary to meet the 24-hour PM2.5 NAAQS requirements of Clean Air Act, and there is no emission reduction target in the attainment strategy for AQMP which the proposed measures purport to implement. (See e.g., 40 C.F.R., §§ 51.112-51.114.)

The District advances the novel theory that it can designate a geographic area, such as a city or a Port, to be an "indirect source." Further, the geographic line drawn by the District does not respect political boundaries and lumps portions of the cities together as a single indirect source. The District believes it can draw any geographic boundary it desires and declare that area to be an "indirect source" without regard for whether the landowner operates or controls mobile sources that pass through the area. Under the District's theory, a local air district could designate as a stationary source, and an indirect source, any city or county that has natural features that attract ships or cars or other mobile sources, even if the city or county does not own, operate or control those sources. Is a city with oil fields a stationary source and indirect source because it attracts refineries, trucks and trains to transport the petroleum products? If Riverside County has increased the numbers of warehouses and distribution centers within its borders, is the governmental agency or county geographical area now a stationary source and indirect source because such distribution centers within their borders attract trucks and trains?

The AQMP control measures would use the Clean Air Act's indirect source provisions as a guise to impermissibly regulate mobile sources. The District cannot regulate emissions from on- and off-road mobile sources operating at, and to and from, the Ports, which includes ocean-going vessels and locomotives. The District cannot regulate emissions from the tailpipes of on-road and off-road mobile sources, or enact mobile source regulations. The District also cannot regulate off-site emissions (emissions occurring during transit "to and from" the purported

"site"). Congress did not intend or authorize the use of the indirect source provisions of the Clean Air Act as a way to circumvent mobile source preemption.

The AQMP measures also fail as an indirect source review program because the Ports are not a "new or modified indirect emissions source." The Clean Air Act defines modification as "any physical change in, or change in the method of operation, of a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of an air pollutant not previously emitted." (42 U.S.C., § 7411(a)(4).) The criteria pollutants targeted are among those that have been identified and reduced for the duration of the CAAP. Because the Ports do not qualify as either a new or modified source, any attempt to regulate them as such exceeds the the District's authority.

The AQMP control measures also violate the nexus requirement for indirect source review programs. The purpose of an indirect source review program is to ensure that mobile source emissions do not "cause or contribute to air pollution concentrations exceeding any national primary ambient air quality standard for a mobile-source related air pollutant." (42 U.S.C., § 7410(a)(5)(D)(i).) The District's own PM2.5 monitors show that emissions from mobile sources operating in and around the Ports are not causing or contributing to the South Coast Air Basin's nonattainment of the PM2.5 NAAQS. The District has in the past attributed nonattainment to a single monitor – Mira Loma (Van Buren) – which is located in Riverside, approximately 60 miles northeast of the Ports. This monitor has purportedly failed to attain the PM2.5 NAAQS because of drought conditions in Southern California, even though all of the South Coast Air Basin has experienced the drought and none of SCAQMD's other monitors have failed to demonstrate attainment with the PM2.5 NAAQS, including the two State and Local Air Monitoring Stations nearest to the Ports – in North and South Long Beach. The Long Beach monitors have consistently demonstrated attainment for at least the last four years and are projected to continue attaining the standard through 2019. The data thus suggest a nexus between nonattainment and a source located near the Mira Loma (Van Buren) monitor – not the Ports.

MOB-01 also fails as an indirect source review program because the businesses within the geographic and source designated areas are not a "new or modified indirect emissions source." (42 U.S.C., § 7410(A)(5).) A source is new if it adds to the air basin's existing emissions baseline. (*National Ass'n of Home Builders v. San Joaquin Valley Unified Air Pollution Control Dist.* (9th Cir. 2010) 627 F.3d 730, 731-32.) The Clean Air Act defines modification as "any physical change in, or change in the method of operation, of a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of an air pollutant not previously emitted." (42 U.S.C., § 7411(a)(4).)

3. "Mobile Sources" Are Beyond The Scope Of District Authority.

The revised AQMP continues and aggravates previously-objected-to proposals seeking to create and assert novel District regulatory authority over emission sources attributed to the Ports, which are mischaracterized as "facility-based mobile sources" – without identifying any legal authority for those proposed actions. (Revised Draft, pp. 4-27 through 4-33.) While the District acknowledges that it only has "limited authority to regulate mobile sources" (Revised Draft, p. ES-7), the AQMP nonetheless persists in attempting to do just that in MOB-01. The current revisions make explicit the threat to take such unauthorized actions "in the form of a regulation

by the SCAQMD ... " in order to characterize the Ports' voluntary, but effective, CAAP measures as "*enforceable commitments*." (Revised Draft, p. 4.28.) The Revised Draft continues to describe MOB-01 as a control measure to achieve and enforce emission reductions at commercial marine ports and continues to erroneously characterize it as a "facility-based mobile source control measure." The proposed MOB-01 is yet another attempt by the District (like prior IND-01 and PR 4001) to justify the imposition of illusory regulatory authority over the Ports as "indirect sources" of emissions.

By characterizing the Ports as a "facility-based mobile source," it appears that the District intends to use MOB-01 as not just an "indirect source" control measure, but as a prelude to "immediate" rule-making and enactment of regulations that might be enforced against the independent Ports. The Ports continue to oppose any form of a "rule" that would shift the District's oversight obligations on the Ports. They strongly oppose the District creating or relying on any concept of a "facility-based mobile source measure," whether described as an "Indirect Source Rule," "Backstop Rule" or the "freight hub," "facility cap," and/or "freight facility performance targets" approach.

The Ports are not a "Facility" as required by the Clean Air Act's indirect source provisions. Together, the Port of Los Angeles and Port of Long Beach encompass 10,700 acres, miles of waterfront and features 50 passenger and cargo terminals, including dry and liquid bulk, container, breakbulk, automobile and warehouse facilities, and a cruise passenger complexes. While some U.S. ports are "operating ports" that own and operate their terminals and equipment and hire longshoremen to handle cargo, the Ports are "non-operating" or "landlord" ports that hold the tidelands property in trust for the State of California and lease it out to port tenants that operate the terminals. Each port tenant is treated as an individual stationary source facility by the District and their activities are separately regulated and permitted by the District.

"Mobile sources" of emissions are beyond the limited regulatory authority conferred by the Legislature on local or regional districts (e.g., Health & Safety Code § 40001(a); *also see*, 76 Ops. Cal. Atty. Gen. 11 (1993); 75 Ops. Cal. Atty. Gen. 256 (1992); 74 Ops. Cal. Atty. Gen. 196 (1991); 73 Ops. Cal. Atty. Gen. 229, 234-35 (1990)). Congress vested the federal government with the authority to set nationwide emissions standards for mobile sources, including non-road mobile engines and vehicles. (42 U.S.C. §§ 7521, 7547.) Congress expressly and impliedly preempted states from setting standards or other requirements relating to the control of emissions for mobile sources. (42 U.S.C., § 7543, (a) & (e).) The maritime goods movement emission sources are within the express and implied preemption. The Clean Air Act allows California to seek authorization from EPA to adopt "standards and other requirements related to the control of emissions" for some, but not all, mobile sources covered by MOB-01. (42 U.S.C., §§ 7543 (b) & (e)(2)(A).) Thus, the District simply does not have mobile source regulatory authority.

The mobile emission sources that utilize the Ports already exist and are part of the baseline. Moreover, only those provisions necessary to meet the requirements of the Clean Air Act are included in the SIP. (Health & Safety Code, § 39602.) The purpose of an indirect source program is to ensure that mobile source emissions do not "cause or contribute to air pollution concentrations exceeding any national primary ambient air quality standard for a mobile-source related air pollutant." (42 U.S.C., § 7410(a)(5)(D)(i).) MOB-01 is not necessary to meet the NAAQS requirements of Clean Air Act. The emissions reductions listed in the Revised Draft for MOB-1 for the years 2023 and 2031 are listed as '**To Be Determined**" -- which indicates that

the reductions will be determined once the inventory and control approach are identified, and are not relied upon for attainment demonstration purposes. In reality, there would be little to no emission reduction benefit from indirect source measures because state, federal and international authorities have adopted rules and regulations to significantly reduce NOx emissions from these on- and off-road mobile sources. According to the AQMP, "[t]he effect of the rules and regulations are significant, showing reductions of over 67 percent in NOx emissions and close to 60 percent in VOC emissions between 2012 and 2023, even with increases in fleet population" (p. 3-4).

Despite repeated requests, the District still has not identified any legislation purporting to confer authority on the District to regulate public marine facilities as "mobile sources."[1] The District itself acknowledges that it does not have "primary regulatory authority" over the Port (or other large facilities identified as major sources of emissions, e.g., rail yards, airports, and distribution centers). Nevertheless, the Revised Draft states: "[T]he enforceable commitment may be in the form of a regulation by the SCAQMD within its existing legal authority, or by the State or federal government, or other enforceable mechanisms." (p. 4-28.) This statement raises the very same legal issues regarding the extent of the District's limited "existing legal authority" that the Ports have previously raised in opposition to PR 4001, and in their August 19, 2016 comment letter. The Revised Draft continues to ignore these basic, jurisdictional, flaws in the approach proposed to be taken by the 2016 AQMP.

The Ports maintain their fundamental objections to the provisions of the new AQMP that would inject the Ports into a newly-contrived regulatory scheme in an attempt to extend de facto District jurisdiction over mobile emission sources where no such jurisdiction exists as a matter of law. We refer to and incorporate the objections to this approach previously detailed in comment letters submitted in response to proposed IND-01, and to Proposed Rule 4001, and the Ports' August 19, 2016 letter commenting on the June draft AQMP.

4. <u>The AQMP Includes Procedural Deficiencies</u>.

Even though the Revised Draft AQMP would impose a strict timeline on the District to undertake rulemaking to create enforceable regulations "immediately" after the adoption of the Final 2016 AQMP (Table 4-3), the District has not complied with the procedural requirements to adopt indirect source control rules that are contemplated in MOB-01. The requirements are: (1) ensure, to the extent feasible, and based upon the best available information, assumptions, and methodologies that are reviewed and adopted at a public hearing, that the proposed rule or regulation would require an indirect source to reduce vehicular emissions only to the extent that the district determines that the source contributes to air pollution by generating vehicle trips that would not otherwise occur; (2) ensure that, to the extent feasible, the proposed rule or regulation does not require an indirect source to reduce vehicular trips that are required to be reduced by other rules or regulations adopted for the same purpose; (3) take into account the feasibility of implementing the proposed rule or regulation; (4) consider the cost effectiveness of the proposed rule or regulation; (5) determine that the proposed rule or regulation would not place any requirement on public agencies or on indirect sources that would duplicate any requirement

[1] The EPA itself treats "facilities based" emission sources as distinct from "mobile sources". See, e.g., 66 FR 65208 "Database of sources of environmental releases of dioxin-like compounds in the U.S.", ref year 1987-1995. December 18, 2001.

placed upon those public agencies or indirect sources as a result of another rule or regulation adopted pursuant to Health and Safety Code sections 40716 or 40717. (Health & Saf. Code, § 40717.5.)

The Revised Draft also inappropriately refers to the Ports as an "Implementing Agency," (Appendix IV-A, p. 126), which the AQMP elsewhere defines as "the agency(ies) responsible for implementing the control measure." On pages IV-A-127, the Revised Draft AQMP now purports to commit the Ports and District staff "to develop an enforceable mechanism to recognize the voluntary actions ... that can be credited in the SIP in a timely manner." However, to the extent the AQMP would mischaracterize the Ports as "Implementing Agencies," without including all of the other public and private partners working to achieve emission reductions, it improperly shifts an unwarranted burden of regulatory implementation to the Ports and erroneously implies that the Ports would have an assigned enforcement obligation, While the Ports have successfully adopted voluntary efforts to reduce emissions from maritime goods movement sources, and continue to be devoted to reducing emissions by working with the District as well as their own initiatives, the Ports are not air agency regulators. The AQMP should not commit the Ports to regulatory responsibility for "development" of enforceable mechanisms or control measures as to sources over which they do not have jurisdiction, ownership or operational control.

Further, as the District is well aware from the Ports' previous comment letters on these issues, the Ports lack authority to enforce as mandates the programs on all mobile sources operating in the Ports as they are preempted by state, federal and international law. This portion of the AQMP, requiring the Ports to select and implement the control measures, does not address or overcome these legal impediments.

5. <u>Control Measures in the AQMP would violate the dormant Commerce Clause</u>.

The "facility-based mobile source measure" approaches proposed in the revised draft AQMP would have serious negative effects on international and interstate commerce, navigation, maritime as well as land-based commerce, are will add unique and 'discriminatory' burdens which will have the effect of impeding California's and the Ports' economic competitiveness. Accordingly, these measures will likely undergo close scrutiny under the federal constitution's "dormant commerce clause" and "rights and immunities" protections.

"[A]ny state statute or regulation that impacts domestic interstate or foreign commerce is subject to judicial scrutiny under the commerce clause unless the statute or regulation has been preempted, or expressly authorized, by an act of Congress. (See, e.g., *Atlantic Coast Demo. v. Bd. of Chosen Freeholders* (3d Cir. 1995) 48 F.3d 701, 710.) The commerce clause's implicit, self-executing restriction on the states' power to regulate domestic interstate and foreign commerce is commonly referred to as the "negative" or "dormant" commerce clause. (*Barclays Bank, supra*, 512 U.S. 298, fn. 9....)" (*Pacific Merchant Shipping Assn. v. Voss* (1995) 12 Cal.4th 503, 514-15.)

The California Court of Appeal recently explained the broad scope of these constitutional limitations on state or local "regulations" impacting commerce, in *Alamo Recycling, LLC v. Anheuser Busch InBev Worldwide, Inc.* (2015) 239 Cal.App.4th 983, 996:

> The high court's dormant commerce clause jurisprudence "'significantly limits the ability of States and localities to regulate or otherwise burden the flow of interstate commerce.'" (*McBurney, supra*, 569 U.S. at p. ___ [133 S.Ct. at p. 1719] ....) More broadly, the high court in *Healy* explained that, taken together, its dormant commerce clause cases "stand at a minimum" for the three propositions. (*Healy, supra*, 491 U.S. at p. 336.) First, a state law violates the commerce clause if it applies to commerce that takes place wholly outside of the state's borders, regardless of whether the commerce has effects within the state. (*Id.* at p. 336, ...) Second, a state law that "directly controls" commerce occurring wholly outside the state's borders is invalid regardless of whether the law's extraterritorial reach was intentional....*Brown-Forman Distillers v. N. Y. Liquor Auth.* (1986) 476 U.S. 573, 579 [A statute that "directly regulates or discriminates against interstate commerce … is virtually *per se* invalid under the Commerce Clause … ."].) Third, "the practical effect of the statute must be evaluated not only by considering the consequences of the statute itself, but also by considering how the challenged statute may interact with the legitimate regulatory regimes of other States and what effect would arise if not one, but many or every, State adopted similar legislation. Generally speaking, the Commerce Clause protects against inconsistent legislation arising from the projection of one state regulatory regime into the jurisdiction of another State. [Citation.]" (*Healy, supra*, at pp. 336-337.)

Those burdensome and counter-productive approaches would be directly in conflict with the goals of Governor Brown's Executive Order to improve freight transportation efficiency and increase competitiveness of California's freight system, as well as the recently-released California Sustainable Freight Action Plan.

6. <u>The AQMD'S Imposition Of Unfunded Obligations On The Ports Violates The California Constitution, Article XIII B, Section 6</u>.

Article XIII B, Section 6(a) of the California Constitution states in relevant part as follows: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service ...."

The California Supreme Court recently ruled in *State Department of Finance v. Commission of State Mandates (County of Los Angeles)* (2016) 220 Cal.App.4th 740, that certain requirements of the 2001 Los Angeles County Municipal Separate Storm Sewer System (MS4) Permit could be considered unfunded State mandates that would violate the above quoted constitutional mandate unless state reimbursement was provided.

The same rationale would apply to any unfunded requirements that are imposed upon the Ports under the 2016 AQMP. As framed, the requirements being imposed on the Ports are the creation of the District. The requirements are not "federal mandates" that might be exempted from this constitutional mandate.

7. The AQMP Is Duplicative Of CARB and EPA Actions

Control Measure MOB-01 is duplicative of existing ARB, EPA and international rules. When the CAAP was first released in 2006, there were few if any rules regulating port-related sources. A decade later, many of the voluntary port-related control strategies implemented under the CAAP have been superseded by state or international regulation. Much of the unprecedented emissions reductions from port-related sources that have been achieved to date rely on, and are largely (over 90% of emission reductions), the result of regulations for port-related sources at the state and international levels, including:

- CARB Truck Bus Regulation
- CARB Ocean-going Vessel At-Berth Regulation
- CARB and International Ocean-going Vessels Low-Sulfur Fuel Regulations
- CARB Cargo-handling Equipment Regulation
- CARB Commercial Harbor Craft Regulation
- International Maritime Organization North American Emission Control Area

The draft 2016 AQMP acknowledges this regulatory history and that the CAAP has been superseded by existing regulations.

8. The District Cannot Adopt Control Measures Based On Unattainable Modeling Assumptions.

Through MOB-01 through MOB-05 and EGM-01, the District is also inappropriately attempting to enforce the unattainable modeling assumptions in the SCAG's SCS, and any modifications the District utilized in the draft 2016 AQMP. If EPA approves this novel and significant change in SIPs in its final rulemaking, it will be signaling to states and local agencies that they can enforce assumptions. This will undermine the SIP process and lead to serious disagreements and controversies over all assumptions states and local agencies include in their SIPs because the regulated community will be fearful that any technical assumptions included in the SIP will be enforced in the future. Technical assumptions estimated by scientists will become political decisions. Further, this approach has been disapproved by the Ninth Circuit Court of Appeal in *Bayview Hunters Point Community Advocates v. Metropolitan Transportation Commission*, 366 3d 692 (9th Cir. 2004).

9. The Requirements For RACM/RACT (Technologically And Economically Feasible) Have Not Been Met.

The requirements in subparts 1 and 4 relative to RACM/RACT have not been met. EPA states that RACM includes any potential control measure for non-road emission sources that is both technologically and economically feasible. (80 Fed. Reg. 63647.) There must be an evaluation of technical feasibility that includes operation conditions, and non-air quality impacts as well as an economic feasibility that includes consideration of cost per ton of pollutant reduced, capital costs and annualized costs. There is no such analysis in the AQMP. The District cannot evade these requirements by calling a control measures an indirect source measure or a measure to simply enforce an attainment demonstration assumption.

10. No Emission Reductions Are Attributed To The MOB-01 Measure.

EPA has never approved the 2012 Backstop Measure for Indirect Sources of Emissions from Ports and Port-Related Facilities [PR4001] as part of the SIP. No emission reductions from this measure are included in the attainment demonstration for the 2012 AQMP. Yet, the draft 2016 AQMP states that rulemaking is underway for PR 4001. There is no requirement or legal basis for continuing to develop PR 4001. MOB-01 addresses the same emissions sources. The District is singling out the Ports for double regulation. The impacts of this double regulation have not been assessed in the socio-economic analysis. The Ports' will be at a competitive disadvantage compared to other west-coast Ports. This will negatively impact the regional economy.

The District Governing Board previously found that without Control Measure IND-01: (1) "the 2012 AQMP, in conjunction with earlier AQMPs contains every feasible control strategy and measure to ensure progress toward attainment…."; (2) "the AQMP satisfies all the attainment deadlines for federal ambient air quality standards for 24-hour PM2.5 and 1-hour ozone NAAQS"; (3) "the 2012 AQMP satisfies the planning requirements set forth in the federal and California Clean Air Acts"; and, (4) "the 2012 AQMP includes every feasible measure and an expeditious adoption schedule". (Attachment 21, Resolution, motions, deleted Control Measure IND-01.)

On January 25, 2013, the CARB Board adopted Resolution No. 13-3. (Attachment 22, Resolution.) The CARB Board found that without Control Measure IND-01: (1) "the attainment analysis in the 2012 AQMP demonstrates that the 24-hour PM2.5 standard will be met throughout the [South Coast Air] Basin by the proposed attainment date"; (2) the 2012 AQMP demonstrates the [South Coast Air] Basin will attain the 1-hour ozone standard by 2022"; (3) "[t]the 2012 AQMP meets the applicable planning requirements established by the [Clean Air] Act and the Rule for 24-hour PM2.5 SIPs, and includes the required air quality and emissions data, modeled attainment demonstrations, RACM/RACT demonstrations, new source review, transportation conformity emission budgets, and contingency measures"; (4) "[t]he 2012 AQMP identifies contingency measures that will achieve additional emission reductions, beyond those relied on in the attainment demonstration, in the event that the South Coast Air Basin does not attain the 24-hour PM2.5 standard by 2014"; and, (5) "[t]he 2012 AQMP meets applicable planning requirements established by the [Clean Air] Act for 1-hour ozone SIPs, and includes the required air quality and emissions data, modeled attainment demonstrations, new source review and RACM/RACT demonstrations".

EPA proposes to conclude that RACM/RACT have been met without Control Measure IND-01/Proposed Rule 4001. Because there is no need for Control Measure IND-01/Proposed Rule 4001, there is no basis for approving it as part of the SIP.

11. Provisions Of The Proposed AQMP Would Improperly Infringe Upon The Ports' Roles As Trustees Of California Tidelands.

The Cities' management of the Ports is largely subject to their roles as trustees of tidelands under the legislative acts that granted tidelands to the Cities under a public trust. (E.g., *State of California ex rel. California State Lands Com. v. City of Long Beach* (2005) 125 Cal.App.4th 767, 771: "In 1911, the State granted the City of Long Beach all of its right, title and

interest in the tidelands situated within the boundaries of the city, to be held in trust and used to establish a harbor and to construct anything necessary or convenient for the promotion of commerce and navigation.") As tidelands trustees, the Cities have been granted the discretion over how to best fulfill the express trust purposes. The District cannot adopt policies, control measures, or regulations that might attempt to compel the Ports to violate these tidelands trust obligations.

The Revised Draft AQMP would strip the Cities of their discretion in administering the tidelands for the benefit of the State of California and compels the Cities to utilize their revenues for air quality purposes ahead of the purposes expressly set forth in the enactments granting tidelands to the Cities. As a practical matter, compliance with the incentives, control measures, and regulations proposed by the AQMP would depend in part on the Cities providing financial incentives to the owners and operators of mobile sources to incentivize emission reductions. If the District's Executive Officer could effectively require the Ports to develop an Emission Reduction Plan that requires more generous financial incentives must be offered by the Ports to achieve the emission targets (which is contemplated by the Revised Draft AQMP), this would ultimately impair and diminish the Cities' ability to execute their tidelands trust obligations by depleting revenues reserved for express trust purposes.

In their discretion, the Ports consider environmental quality to fall within the implied scope of the tidelands trust and have in fact made substantial expenditures when their operating budgets allow. The Ports also fully comply with the California Environmental Quality Act when developing their properties for tenants' use, which may include providing mitigation such as air quality reduction measures to address any environmental impacts. However, the tidelands trust does not expressly require revenues be expended for "air quality improvement", and the financial incentive programs and control measures proposed in the Revised Draft appear to infringe on the Cities' jurisdiction over their own funds, if the only way to increase compliance with a CAAP incentive program, for example, would be to increase the amount of incentives.

The proposed AQMP also compels the Cities to violate their Tidelands Trust obligations by mandating requiring the Ports to utilize trust for an entirely local program to reduce PM 2.5, SOx, and NOx emissions. The funding to implement the AQMP would confer only an emission reduction benefit to the South Coast Air Basin rather than to the entire State of California. Thus, funding or financial incentives compelled by the AQMP would require the Ports to provide "mitigation" beyond their direct impacts, and in conflict with the tidelands trust.

Moreover, the proposed AQMP would place the Ports at a competitive disadvantage to other California or West Coast ports. If commercial maritime business meant for the Los Angeles or Long Beach ports is diverted elsewhere as a result of compliance with the novel regulations and economic burdens arising from the AQMP, the Cities will be deprived of revenues they need to fulfill their tidelands trust obligations.

The Ports respectfully remind the District that the CAAP is a planning document that provides guidance on strategies and targets that are ultimately implemented through individual actions adopted by each Port's respective Board of Harbor Commissioners (Boards). The State granted to the Cities of Long Beach and Los Angeles exclusive authority to implement the tidelands trust under the oversight of the State Lands Commission. Each City has been appointed as a trustee and has established their respective Board of Harbor Commissions with

exclusive control and management of the Tidelands and revenues and expenditures from the Tidelands. However, such discretion must be exercised in accordance with their obligations to prudently manage Tidelands assets and revenues within a nexus and proportionality to the Tidelands Trust interest, as well as in accordance with applicable laws such as the California Environmental Quality Act (CEQA) and principles of federal preemption. The District cannot mandate action by each Port's Board of Harbor Commissioners, nor can the District direct how the Ports may be obligated to spend state Tidelands money; only the appointed trustee can make discretionary actions to obligate state Tidelands funds. Specifically, any measures listed in the AQMP or the CAAP must each require the Boards to authorize the expenditure of monies and program costs, or to approve conditions of infrastructure project development in their discretion as a CEQA lead agency and as Tidelands trustees.

12. <u>The AQMP Improperly Includes Control Measures That Identify Emissions Reductions as "TBD</u>."

The proposed control measures that identify the emission reductions as "TBD" should be removed from the draft 2016 AQMP (i.e., EGM-01& MOB-01). According to the draft 2016 AQMP, "TBD" is for emission reductions to be determined once the measure is further evaluated, the technical assessment is complete, and the inventory and cost-effective control approaches are identified. The District also concedes that the "TBD" measures are not relied upon for attainment demonstration purposes. As these control measures stand, they cannot meet the CAA requirements for a SIP submittal. The District has not shown these measures are cost-effective or feasible. The District is also including activities in these measures that the District lacks jurisdiction to adopt (as discussed in the previous section of this letter). These two "TBD" measures have virtually no details explaining how these measures will be implemented. This makes it difficult for the Ports' to assess the impacts, which is contrary to a public review and comment process.

It is not until after adoption of the 2016 AQMP, that the District proposes to engage in a public process to develop rules to implement these AQMP control measures. All of this "process" was supposed to take place during the development of the 2016 AQMP. The post adoption process includes identifying actions (voluntary and regulatory) that will result in emission reductions. The District intends to convene working groups for EGM-01 and MOB-01 within one month after adopting the 2016 AQMP, and then define objectives; seek initial input on the types of actions with potential criteria pollutant reductions; identify existing actions with potential emission reductions; identify future actions with potential emission reductions; develop model quantification methodologies for emission reductions associated with identified actions; quantify potential emission reductions; and develop mechanisms to ensure reductions are real, surplus and enforceable on-going on a monthly basis. This process is supposed to be completed in the next six months. After this task is completed, District staff will report to the Mobile Source Committee and Governing Board as to whether the District should continue with the process or recommend formal rule development. There is no option for dropping the control measures if the process concludes these control measures should not be implemented. By including these control measures in the 2016 AQMP, the District is committing to develop these rules regardless of the process outcome, and will place the South Coast Air Basin at risk of sanctions if the process shows these measures should not be implemented. Because these measures are not sufficiently developed, the impacts of these measures on the economy are not

taken into consideration in the socio-economic analysis, which significantly underestimates the costs associated with the 2016 AQMP.

The District's approach is not consistent with the Clean Air Act. In *Sierra Club v. Environmental Protection Agency* (D.C. Cir. 2004) 356 F.3d 296, 301-304, the court struck down the EPA's approval of a SIP that contained similar deferral and ambiguous strategies. The court held that the EPA's interpretation of the Act "cannot be squared with the unambiguous statutory language. The statute requires that the States commit to adopt *specific* enforceable measures. Here, the agency has accepted as sufficient a commitment to adopt what it concedes are *unspecified* measures –with the specifics to be named later." (*Id.* at 302, emphasis in original). These "TBD" measures must be removed from the 2016 AQMP.

The "TBD" measures do not quality as feasible at this time, and as such are not required to be in the 2016 AQMP. The District asserts that the emission reductions achieved and quantified by these "TBD" measures can be applied toward contingency requirements, make up for any shortfalls in reductions from other quantified measures, be credited towards rate-of-progress reporting, and/or be incorporated into future Plan revisions. Accordingly, it is premature to include these "TBD" measures in the 2016 AQMP.

13. <u>The AQMP Over-Reaches On Toxics And Enforceable Commitments</u>.

The Revised Draft 2016 AQMP also "embraces strategies that reduce toxic risk impacting local neighborhoods and disadvantaged communities adjacent to goods movement and transportation corridors." The Ports concur that reducing toxic risk is important and that there should be a strategy. However, the CAA does not address toxics through the SIP process; it is through NESHAPs, MACTs, etc. The strategies that reduce toxic risk should not be submitted to CARB or EPA as a SIP submittal. There is no reason for the District to put the South Coast Air Basin at risk of SIP sanctions or FIPs by including control measures that are not required by the CAA.

In the Revised Draft AQMP, the District implies it intends to only rely upon the EPA's economic incentive programs (EIP) to render the incentive measures enforceable. None of the incentive programs meet the requirements of the EIP. In addition, there are other more worthy options that the District excludes such as MOUs and EPA's Voluntary Mobile Source Emission Reduction Program (VMEP). EPA has issued guidance on incorporating VMEPs into SIPs pursuant to Section 110 of the federal Clean Air Act. EPA developed the VMEP as an innovative program to assist states and local air agencies in implementing incentive programs. The VMEPs accommodates the uncertainty associated with the incentive and voluntary measures in the 2016 AQMP. For example, the SIP submittal must include a "good faith estimate" of emission reductions, including assumptions, and addressing both compliance and programmatic uncertainty. EPA's Guidance suggests that states enter into a Memorandum of Understanding with VMEP sponsors.

14. Comments Specific To Individual Proposed Control Measures.

a. EGM-01: "Emission Reductions From New Development And Redevelopment Projects [All Pollutants]."

There is only proposed control measure in the category for "emission growth management measures" in the AQMP ... "EGM-01. The Revised Draft (p.IV-A-7) explains that this proposed measure is intended to "evaluate the applicability" of the "Indirect Source Review – Rule 9510" as adopted by the San Joaquin Valley Air Pollution Control District ("SJVAPCD"), apparently pursuant to the District's belief that such evaluation is required by "a provision under state law." The Ports recognize the District's interest in evaluating "all feasible measures" to reduce emissions, but respectfully urge that any such evaluation of a "Rule 9510-style" indirect source review be framed so as to exclude the Ports or activities at the Ports.

i. Ports Should Not Be Subject To EGM-01.

The SJVAPCD adopted its Rule 9510 back in December 2005, near the height of a land development and residential construction boom in the San Joaquin air basin. The SJVAPCD explained that its primary purpose for pursuing its novel "indirect source review" program under Rule 9510 was "to reduce the impacts of growth in emissions resulting from new land development in the San Joaquin Valley." Those types of concerns – emissions from new land development" and housing construction – are not applicable to the Ports or the types of activities typically conducted at the Ports.

The Revised Draft explains that the "purpose" of EGM-01 is to mitigate emissions from new development and redevelopment projects, which it characterizes as "indirect sources." (Appendix IV-A, p. 185.) The Ports have previously pointed out, however, that the AQMP misuses that term at least as it seeks to use the "indirect source" characterization as a justification for imposing measures on mobile sources (even "facility-based mobile sources") associated with the Ports. To the extent that this measure appears to be an attempt to assert "indirect source" regulatory authority over activities at the Ports, it would be in excess of the District's jurisdiction, as explained in the comments on "indirect sources" and MOB-01.

The Ports have further explained that even if authority to regulate "indirect source" emissions may be appropriate as to some types of stationary facilities, such authority applies only to "new" sources of air pollution. The Revised Draft appears to justify this measure based on its anticipation that unspecified "outlying areas continue to be developed" in parts of the District. (Cf. Appendix IV-A, p. 185.) However, the Ports do not fit that description either, and cannot be characterized as areas of significant "new land development" such as served as the justification for SJVAPCD's Rule 9510.

Accordingly, the AQMP should make clear that this measure and any rule-making that may emerge from the District's evaluation of an indirect source review program like Rule 9510 would not be intended to be applicable to the Ports.

ii. Adoption Of An "indirect source rule" Like San Joaquin Valley APCD Rule 9510 Would NOT Be Appropriate Or Lawful.

The Revised Draft AQMP further states: "[f]or the purposes of this measure [EGM-01], indirect sources include all facilities not covered by another 2016 AQMP Control Measure, *specifically, control measures MOB-01 through MOB-14 to the extent that these control measures are part of the adoption of the Final 2016 AQMP."* . In addition, during the rule development process, additional indirect sources may be included or excluded" (Appendix IV-A, p. 185).

The Ports should not be included within this control measure in the event MOB-01 is removed from the Final 2016 AQMP or during the rule development process. In addition to the reasons stated above, the Ports have serious concerns about the District making a commitment to the state and federal governments that the SCAQMD will control growth or dictate land use decisions in areas subject to the Cities' police power (and the Ports' tidelands trust roles). SCAQMD has no authority to control growth or overrule local land use decisions. (Health & Saf. Code, § 40716 [air districts cannot infringe on the existing authority of counties and cities to plan or control land use]; see also Health & Safety Code, §§ 40000, 40414, 40440.1, 40717.5(c)(1).) Land use is within the exclusive preview of local cities and counties.

In addition, the legal constraints on the establishment or imposition of fees and charges, may no longer allow the District to pursue an indirect source review program with fees like Rule 9510. That Rule was adopted in 2005, and was subjected to judicial review in 2008, prior to passage of Proposition 26.. Accordingly, the District's evaluation of a similar rule (to the extent that such an contemplated rule may include a component requiring the payment of ISR mitigation fees or regulatory fees) may need to be able to meet the requirements of these subsequent constitutional amendments, imposing more stringent burdens on state and local agencies when they seek to establish or impose fees or other charges. (Cal. Const. art. XIII A, § 3 subd. (d); art. XIII C, § 1, subd. (e); art. XIII D, § 6, subd. (b)(5); *Schmeer v. City of Los Angeles* (2014) 213 Cal.App.4th 1310, 1322.) Accordingly, provisions for voter approval may need to be considered.

Further, the District cannot justify the inclusion of EGM-01 in the 2016 AQMP based on the premise that the CAA requires that all measures adopted by other air district must be included in the 2016 AQMP. Because EGM-01 is an indirect source control measure, the measure cannot be required as a condition of SIP approval by EPA or CARB. (42 U.S.C., § 7410(a)(5)(A)(ii); Cal. Health & Safety Code, § 40468.) Only those provisions necessary to meet the requirements of the Clean Air Act can be included in the SIP. (Cal. Health & Safety Code, § 39602.) Therefore, the District is not required by the CAA to adopt EGM-01 simply because San Joaquin Valley APCD adopted this measure.

b. MOB-01: "Emission Reductions At Commercial Marine Ports."

The Revised Draft continues to recognize the Ports' successful efforts in implementing the CAAP since 2006, exceeding our emission reduction goals in 2014. The Revised Draft, however, now asserts that the goal of proposed control measure MOB-01 is related to sources, admittedly mobile sources that "operate in and out of" the Ports. (Appendix IV-A, p. 121, also, p. 124.) The Revised Draft AQMP continues to mischaracterize the Ports as a "facility-based

mobile source," and seeks to justify MOB-01 as an indirect source control measure in order to quantify and to further the "enforceability" of emissions reductions achieved by the Ports under the CAAP. MOB-01 is described as a control measure to achieve emission reductions at commercial marine ports and is characterized in the AQMP as a "facility-based mobile source control measure."

The Revised Draft continues to attempt to hold the Ports responsible for achieving the Port Standards, and the AQMP continues to propose MOB-01 in this attempt. Further, MOB-01 suggests that if the emission reductions occurring at the Ports are not maintained after they are reported into the SIP that this measure may be implemented in the form of new rule-making or other "regulatory" action by the SCAQMD, or other "enforceable mechanisms," notwithstanding the limitations of the federal Clean Air Act. The Ports have previously addressed those limitations on the District's authority, above as well as in prior communications on this topic.

The most recent revisions to the Draft AQMP appear to signal that the District is seeking to even more aggressively pursue this "regulatory" approach, despite the objections to such measures. (Appendix IV-A, pp. 125-126.) It proposes to go so far as to "provide a schedule" for implementation of rule-making leading to new regulations or "other enforceable mechanisms" "immediately after adoption of the Final 2016 AQMP." (*Ibid*.) The Revised Draft would even commit the District staff to report "within six months after adoption of the Final 2016 AQMP" as to whether the Board should consider adopting rules within its existing authority or seek additional authority to adopt and implement measures. (Revised draft AQMP p. 4.23.) It also would require the District to make a recommendation "whether to proceed with formal rulemaking" no later than one year after adoption of the Final 2016 AQMP. (Appendix IV-A, p. 125) and would include a "schedule" for such enforcement and rulemaking (Table 4-3.)

The Revised Draft reveals that the District still fails to identify any statutory authority for its continued pursuit of this measure, despite its recognition that its authority in this regard is "limited." The Ports raised many questions and objections when the District has previously considered various other approaches, e.g., control measure MOB-03 in the 2007 AQMP and control measure IND-01 in the 2012 AQMP, to pursue this approach. The District ultimately appeared to recognize their shortcomings. The 2007 MOB-03 was described as "a backstop measure for indirect sources of emissions from ports and port-related facilities" and in the ensuing years, District staff proposed and sought public review of a 'backstop" rule that would be enforceable and applicable to the Ports, "Proposed Rule 4001." EPA, in its April 2016 action partially approving the 2012 SIP, excluded the commitments proposed by IND-01 from its action and stated that would respond to that in a separate rulemaking. (See 81 FR 22025 (April 14, 2016) "US EPA Partial Approval and Partial Disapproval of California Air Quality SIP.") The District has reported that Proposed Rule 4001 has been placed on hold, in light of work to develop supposedly different approaches for the pending 2016 AQMP.2

i. <u>Exceeds District Authority.</u>

Neither EPA nor CARB can require the District to adopt a control measure such as MOB-01 because indirect source control measures cannot be required as a condition of SIP

[2] Minutes of the District's "Mobile Source Committee" meeting of April 15, 2016, included in the District's Board Meeting minutes from May 6, 2016 (agenda item #21).

approval. (42 U.S.C. § 7410(a)(5)(A)(ii); Health & Safety Code, § 40468.) Therefore, the Ports have serious concerns about, and continuing objections to, the proposals in the revised draft AQMP for the District making enforceable commitments to the state and federal governments that the Ports will control and regulate "indirect sources."

The District has not identified any legislation purporting to confer authority on the SCAQMD to regulate public marine facilities as "mobile sources."[3] The District itself acknowledges that it does not have "primary regulatory authority" over the Port (or other large facilities identified as major sources of emissions, e.g., rail yards, airports, and distribution centers), and acknowledges that "additional authority provided to the State or SCAQMD for sources traditionally under the jurisdiction of the federal government (e.g., locomotives, aircraft and ships.)" (Revised Draft AQMP at p. ES-5.)

The District has no authority to regulate mobile sources or to draw any geographic boundary or to arbitrarily characterize source categories and declare those areas or groups of sources to be an "indirect source." "Mobile sources" of emissions are beyond the limited regulatory authority conferred by the Legislature on local or regional districts (e.g., Health & Safety Code § 40001(a); also see, 76 Ops. Cal. Atty. Gen. 11 (1993); 75 Ops. Cal. Atty. Gen. 256 (1992); 74 Ops. Cal. Atty. Gen. 196 (1991); 73 Ops. Cal. Atty. Gen. 229, 234-35 (1990)).

The Ports respectfully suggest, as more feasible and lawful alternatives to MOB-01, that these portions of the AQMP should pursue the District's reasonable goals by a collaborative, voluntary approach that will continue to be the most effective means for controlling emissions from maritime goods movement activities within the jurisdiction of Ports. This approach, which could be memorialized under a cooperative agreement between the Ports and SCAQMD, CARB, and EPA, would benefit all parties because it continues the collaborative effort that has resulted in unprecedented emission reductions at the Ports, shares responsibility between Parties, provides more certainty for the local economy, avoids litigation, insures incentive funding that is tied to excess emissions will continue to be available, and will result in better air quality.

ii. <u>Preemption By The Federal Clean Air Act</u>.

Congress vested the federal government with the authority to set nationwide emissions standards for mobile sources, including nonroad mobile engines and vehicles. (42 U.S.C., §§ 7521, 7547.) Congress expressly and impliedly preempted states from setting standards or other requirements relating to the control of emissions for mobile sources. (42 U.S.C., § 7543, (a) & (e) The goods movement sources that would be regulated by Proposed Rule 4001 are within the express and implied preemption. The Clean Air Act allows California to seek authorization from the EPA to adopt "standards and other requirements relating to the control of emissions" for some but not all mobile sources that would be covered by Proposed Rule 4001. (42 U.S.C., §§ 7543, (b) & (e)(2)(A).) The Clean Air Act does not allow for California to seek an EPA waiver for every one of the goods movement emission sources, nor has CARB made such a request.

c. <u>MOB-14: "Emission Reductions From Incentive Programs [NOx, PM]</u>."

[3] The EPA itself treats "facilities based" emission sources as <u>distinct</u> from "mobile sources". See, e.g., 66 FR 65208 "Database of sources of environmental releases of dioxin-like compounds in the U.S., ref year 1987-1995. December 18, 2001.

i. Impact On Existing Funding Programs.

The District is relying on securing significant funding for incentives to implement early deployment and commercialization of zero and near-zero technologies." There are a number of funding sources available provided the emission reductions are not required by a plan or rule. By making voluntary actions, mandatory, the District will reduce the funding sources that would otherwise be available.

Specifically, the Revised Draft 2016 AQMP mobile source control measures include development of incentive funding programs and supporting infrastructure for early deployment of advanced control technologies. MOB-14 states that it seeks to develop a rule similar to the San Joaquin Valley Air Pollution Control District Rule 9610 – "State Implementation Plan Credit for Emission Reductions Generated through Incentive Programs" -- such that emissions reductions generated through incentive programs can be credited in the SIP emission inventories (p. 4-33.). MOB -14 would also create "a new administrative mechanism to credit toward SIP requirements for future emission reductions achieved... through incentive programs administered by the District, CARB or US EPA." (Appendix IV-A-178.)

It will be critical to prioritize and secure the necessary funding needed to implement the proposed incentive-based measures in the Draft AQMP and achieve the aggressive emission reduction targets in the South Coast Air Basin. The Ports know first-hand that the move toward zero emissions is a costly endeavor and have placed significant emphasis on efforts to advance the development of near-zero and zero emissions equipment for on-terminal and on-road applications. Through the Ports' Technology Advancement Program (TAP), we have been involved with funding the demonstration of clean technologies used in port operations for nearly a decade. Significant progress has been made and we expect that zero emissions operations will be feasible in the future. The scale of this effort will be significant, with cost for the equipment and fueling infrastructure in the *Billions* of dollars.

The Ports and the maritime goods movement industry will require a substantial amount of funding assistance from the local, state and federal agencies. As such, the Ports are supportive of incentive funding to accelerate advancement of technologies. The Ports continue to strongly support the implementation of funding programs such as the Proposition 1B Goods Movement Emission Reduction Program and the Carl Moyer Memorial Air Quality Attainment Program, both of which have provided funding for much needed assistance with upgrading wharves for shore power, the replacement of drayage trucks, and the replacement and repower of engines in cargo-handling equipment, harbor craft, and locomotives.

While the Ports support funding programs and the need to credit emissions reductions generated from through incentive funding programs, the Ports strongly recommend that MOB-14, or any resulting regulatory strategy be structured in such a way that does not preclude the maritime goods movement industry's ability to secure grant funding for early actions. For example, it is not clear from the description of MOB-14 whether facility emission caps or port backstop rules could effectively disqualify companies and agencies from received grants, because typically grants funds cannot be used for regulatory compliance. The Ports believe that this unintended consequence of a control measure like MOB-14 could significantly impede early equipment replacement and transition to zero emission technologies, and also severely affect the economic competitiveness of the maritime goods movement industry. In addition, if the required

emission levels for attainment are not be met in the region, the Ports must not be held accountable for attaining emission reductions that are predicated on incentive funding if the funding does not come through at the necessary and appropriate levels.

We also note that the AQMP is vague as to how this measure may be "implemented," and merely asserts that "the District has developed [unspecified] policies and procedures to ensure that this control measure is successfully implemented." (Appendix IV-A-182.) Concerns would be raised if the AQMP were to contemplate "implementation" by measures including the imposition of purported "regulatory fees" such as those in the San Joaquin Valley APCD Rule 9510 scheme, as discussed above.

The District also proposes to revise Credit Rules 1612 and 1612.1 so that mobile source emission reduction credits generated under these rules would only be available to help facilities affected by the facility-based measures (MOB-01 through MOB-04 and EGM-01). The credits are proposed to not be eligible for offset stationary source emissions. This will unnecessarily constrain the market for mobile source emission reduction credits and reduce the incentives for the conversion of mobile sources to zero and near-zero technologies.

15. <u>The District Lacks Authority To Require The Ports To Enforce Or Implement The Control Measures</u>.

The AQMP unlawfully compels the Ports to regulate local air quality in violation of California Health and Safety Code sections 40414 and 40440. The District's authority is confined to air quality and cannot infringe on the land use authority of counties and cities. (42 U.S.C., § 7431; Cal. Health and Safety Code, § 40414.) The Ports, not the District, have the authority to determine their own land use needs to advance trade and commerce. The Ports play a critical role in facilitating domestic and international maritime commerce. The Los Angeles City Charter charges the Port of Los Angeles with possession, management, and control of all navigable waters, tidelands, submerged lands, and other lands as specified in the City Charter. (City Charter, Sections 602 and 651.) Similarly, the Long Beach City Charter vests in the Long Beach Harbor Department the authority to control and supervise the Harbor District to provide for the needs of commerce, navigation, recreation and fishery. (Long Beach charter Article X11.) As an exercise of this authority, the ports decided to develop an emission inventory and implement CAAP programs after having weighed the risks of losing business to other ports without a CAAP-equivalent program. These emissions are not caused by the ports' own equipment or operations – they are caused by tenants and other goods movement customers that operate in or near the ports.

The Ports are not authorized by state or federal law to carry out the air quality responsibilities of an air district or state. (40 C.F.R., § 51.232(a).) The delegation requirements are also not met. (40 C.F.R., § 51.232(b).) The AQMP nevertheless requires the Ports to conduct regulatory activities, such as developing and adopting emission reduction strategies for maritime goods movement emission sources, which may include retrofit, idling, or fuel requirements; seeking the District's approval to implement the ERP regulations; and establishing enforcement procedures to ensure that PM2.5 emission reductions from mobile sources operating in or near the ports meet the 2012 AQMP assumptions.

16. <u>The AQMP's Contingency Measures Are Inconsistent With The Control Measures</u>.

The District intends to utilize the "TBD" control measures as contingency measures, which is inconsistent with the proposed control description in the "TBD" control measures. The inclusion of contingency measures is for federally enforceable attainment demonstrations (i.e., those SIP submittals approved by EPA). The 2016 AQMP attainment demonstration has not been approved by EPA as a SIP submittal. Under the CAA contingency measures consists of other available control measures that are not included in the control strategy and become effective upon a determination by the EPA Administrator that the area has failed to make reasonable further progress or to attain the NAAQS by the applicable statutory deadline. Reasonable further progress is quantitative emissions reduction milestones which are to be achieved every 3 years until the area is redesignated attainment. The contingency measures are supposed to be interim measures that address only the shortfall of either the reasonable further progress target or specific attainment deficiency until a SIP revision is prepared. The MOB-01 control measure is not a suitable contingency measure. Such measures must be fully adopted rules that are ready for rapid implementation upon failure to achieve RFP or attainment. The issues that are listed in this letter prove MOB-01 cannot and will not meet the contingency measure requirements.

The District should instead explore using excess emission reductions from existing rules as contingency measures. The RFP contingency requirement may also be met by utilizing an RFP above the requirement amount. EPA also allows reductions achieved through early implementation of an emission reduction measure to be used towards the contingency requirement. According to the 2016 AQMP, U.S. EPA's March 2015 ozone implementation rule provides that "extreme" areas with approved Section 182(e)(5) commitments only had to submit contingency measures under three years before the attainment date, and not the general CAA contingency measures.

17. <u>The AQMP Prematurely Includes Attainment Demonstrations For Revised And Revoked NAAQS</u>.

The draft 2016 AQMP addresses five NAAQS. The District asserts that it is required to have a new attainment demonstration for three NAAQS: (1) the 8-hour ozone NAAQS established in 2008, 75 ppb (2008 8-hour Ozone); (2) the annual PM2.5 NAAQS established in 2012, 12 $\mu g/m^3$ (2012 annual PM2.5); and, (3) the 24-hour PM2.5 NAAQS established in 2006, 35 $\mu g/m^3$ (2006 24-hour PM2.5). The District concedes it is ***voluntarily*** submitting an attainment demonstration for the following NAAQS: (1) 1997 8-hour Ozone NAAQS, 80 ppb and the 1979 1-hour Ozone NAAQS, 120 ppb.

<u>2008 8-hour Ozone</u>: The 2016 AQMP includes control measures and an attainment strategy to reach attainment of this standard by 2032. As part of EPA's development of an ozone NAAQS Implementation Rule for the revised 2015 8-hour ozone standard, EPA intends to, among other things, decide whether to revoke the 2008 8-hour ozone NAAQS, and to impose appropriate anti-backsliding requirements to ensure that the protections afforded by that standard are preserved. It is premature to include a full-scale attainment demonstration when anti-backsliding controls would govern the strategies available for the applicable demonstrations if and when the 2008 standard is revoked. The draft 2016 AQMP currently shows a transportation conformity demonstration under 42 U.S.C. § 7506(c) is required for the 2008 standard. (Table 6-1, page 6-10.) However, this requirement became inapplicable after revocation of the 1997 standard and may also become inapplicable under the Implementation Rule for the 2015

standard. (See 80 FR 12264, 12284.) Further, the anti-backsliding requirements applicable to a revoked 2008 standard may include those currently set forth for the 1997 revoked standard. (40 C.F.R. §§ 51.1105(a)(1), 51.1100(o); 42 U.S.C. §§ 7502(c)(4), 7511a(b)(1) and (c)(2).) But they could also be amended, as they were in the Implementation Rule for the 2008 standard. (80 FR 12264, 12298.)

2012 annual PM2.5: The 2016 AQMP states that the 2012 annual PM2.5 standard cannot be met by 2021, which is the attainment year for the current "moderate" designation. Therefore, the District will be requesting EPA re-designate the Basin as a "serious" nonattainment area, which will provide four more years to attain the annual PM2.5 standard by 2025. The Ports believe this is a prudent approach.

2006 24-hour PM2.5: The 2016 AQMP demonstrates that the 2006 24-hour PM2.5 standard will be met by the 2019 attainment year with no additional reductions needed beyond already adopted measures. Therefore, no additional measures should be included in the 2016 AQMP to achieve this standard.

1997 8-hour Ozone: In 2008, the 1997 8-hour Ozone standard was lowered to 75 ppb (the 2008 8-hour Ozone standard). EPA revoked the 8-hour 1997 standard, effective in 2015. The District included new control measures and prepared an attainment demonstration of 2031 in the 2016 AQMP. The District has prematurely chosen to provide for the alternative NOx/VOC reductions instead of the reasonable further progress demonstration under 42 U.S.C. § 7511a(c)(2) without conducting an economic analysis of these options. (40 C.F.R. § 51.1100(o)(12).) The District should study the costs associated with each analysis to determine which results in lower costs to businesses and the Ports. Additionally, it is unclear whether the attainment demonstration incorporates transportation conformity thereby subjecting the District to possible sanctions. Transportation conformity should be excluded because it became inapplicable after revocation of the standard. (See 80 FR 12264, 12284.)

1979 1-hour Ozone: EPA revoked the 1-hour standard entirely, effective in 2005. As stated above, the District should conduct an economic analysis of the NOx/VOC reductions and the reasonable further progress demonstration before selecting one over the other. It is also necessary to know whether the attainment demonstration incorporates transportation conformity for the reasons set forth above.

18. The Socio-Economics Analysis Is Incomplete.

The Ports note the difficulty, if not the inefficiencies, posed by the District's continuing practice of releasing the proposed new 2016 AQMP in piecemeal and incomplete fashion. It appears that the current Revised Draft AQMP is itself not yet complete, and anticipates additional substantive content. The necessary socio-economic analysis is also not yet complete.

The Revised Draft 2016 AQMP also indicates that there will be no analysis of contingency measures in the Socioeconomic study. Also, it appears that several measures that do not have emissions reduction targets or other information will not be included in the Socioeconomic analysis. This means there will be no comprehensive review of the impact

associated with implementation of all measures or the repercussions of the potential adoption of the "facility-based mobile source measures" discussed in the MOB-1 section above.

The Revised Draft (p.9-7) states that it anticipates that "the 2016 AQMP Socioeconomic Report will contain enhanced impact analyses on Environmental Communities...." That information should be made available as part of a complete analysis.

Furthermore, it appears that the Socioeconomic study will only analyze the impacts associated with approximately $16 billion in government subsidies, not including the match funding that will be required from private operators. The Ports are concerned that this amount is substantially underestimated and ignores the necessary private capital that will be necessary to purchase thousands of pieces of costly near-zero and zero emission equipment to be deployed at the ports and throughout the region.

Finally, the description of the anticipated socioeconomic study assumes that there will be no tax increases to fund these incentives; however, the Revised Draft AQMP contradicts this assumption as it clearly states AQMD's intent to seek local and state ballot measures, which would include taxpayer funding (p. 4-68).

The Socioeconomic analysis must include an analysis of the impacts on the private sector from having to invest in significant new capital costs associated with cleaner equipment, and it must include an analysis of the impact on taxpayers as a result of higher taxes.

To the limited extent portions of the Socioeconomic Report have been released, it appears that it may: (a) Underestimate the costs of compliance with new measures contemplated by the 2016 AQMP; (b) Overestimate the extent and benefits of changes in health costs and risk reductions; and (c) Fail to accurately address or quantify the likely impacts on Port competiveness and other related impacts on the regional economy.

The Ports request a full socioeconomic analysis of all control measures, and that the socioeconomic analysis be completed and an adequate opportunity for public comment be provided *prior to* action on the Revised Draft 2016 AQMP.

19. <u>The District Is Improperly Conduction CEQA Review Before The AQMP Is Complete</u>.

The draft Environmental Impact Report for the proposed 2016 AQMP is now out for public review and comment. The Ports are submitting separate comments on that Draft EIR, and we refer to and incorporate those comments here as well.

As noted in the Ports comments on the Draft EIR, it seems to be procedurally and legally inappropriate for the District to be conducting its CEQA review before the details of the proposed AQMP have been completed. The Ports and the public should not be required to review and comment on important environmental documents before the full shape of the proposed project (2016 AQMP) is better known and disclosed. (See, e.g., *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1450: "A <u>complete</u> project description is necessary [for CEQA] to assure that <u>all</u> of a project's environmental impacts are considered."].)

20. Specific Technical Comments On AQMP

The Ports previously submitted specific technical comments on the June 2016 draft AQMP, and we appreciate that some of these comments are reflected in the revised draft, particularly the revised emissions under MOB-01, which are more consistent with the Ports' emission inventories. Many of our comments, however, are not explicitly addressed in the revised draft, and it is not clear that the current revised draft AQMP has acknowledged or responded to those comments.

We therefore incorporate by reference the technical comments raised in our August 19, 2016 letter, which is attached, and additionally, highlight the following new and/or restated technical issues.

a. Appendix IV-A, Table IV-A-2 SCAQMD Proposed Mobile Source 8-Hour Ozone Measures, p. IV-A-4.

For MOB-01, the emission reductions in tons per day (tpd) for 2023/2031 is identified as "TBD" with a corresponding footnote "b", which states "Submitted into the SIP as part of reporting or in baseline inventories for future AQMP/SIP Revisions." We request that the District provide further clarification on how the "Rate of Progress" will be calculated and compared to ensure that the emissions reductions achieved by the proposed control measure are surplus emissions.

b. Appendix IV-A, Page 7, Emission Reduction Benefits Of Funding Programs.

The Ports each prepare annual air emissions inventories of port-related sources. These inventories are based on actual equipment and activity data, and as such, incorporate emission reductions due to funding incentive programs if they occurred in the current or previous years emission inventories. The Revised Draft AQMP contains this language: "In addition, the SCAQMD is implementing several incentives funding programs that have resulted in early emission reductions (e.g., the Carl Moyer Memorial Air Quality Standards Attainment Program, the Surplus Off-Road Opt-In for NOx (SOON) program, and Proposition 1B – Goods Movement Emissions Reduction Program). The emission reduction benefits of the funding programs are quantified and are proposed to be included as part of the overall emission reductions for attainment of the NAAQS." (IV-A, page 7).

It is important to identify those reductions for port sources to avoid double-counting in the baseline and future emissions reductions analysis. The Ports' emissions inventories include incentive programs in the baseline year but do not project additional benefits that may occur due to additional incentive funding from these programs.

c. Appendix IV-A, Emission Reductions At Commercial Marine Ports [NOx, SOx, PM], p. IV-A-120.

The Ports each prepare annual air emissions inventories of port-related sources, and in July 2015, transmitted the San Pedro Bay Ports 2012 air emissions inventory, as well as forecasted port-related emissions for each year through 2031 for inclusion on the 2016 AQMP based on discussions with District and ARB staff. The Ports appreciate that emissions under MOB_01 have been revised, and they are within 5% of the San Pedro Bay Ports emissions that we shared with SCAQMD and ARB.

It is the Ports' understanding that the emissions from port-related sources in the 2016 AQMP would reflect the actual emissions reported by the Ports. These discrepancies should be addressed.

To provide for a meaningful and comprehensive review, the Ports request that the District identify the port-related sources (i.e., ocean-going vessels, harbor craft, locomotives, cargo-handling equipment, and heavy-duty trucks) of emissions that make up the total emissions in the Control Measure Summary (p. IV-A-109). It is also important to identify the assumptions used to estimate future emissions in 2022, 2023, and 2031. For instance, it is important to understand the assumed International Maritime Organization (IMO) tier level of ocean-going vessels calling at the Ports, as well as the fleet makeup of all other port-related source categories, including heavy-duty trucks, cargo-handling equipment, locomotives, and harbor craft. It is also important to identify the source-specific "growth" factors that were used to estimate future year emissions.

The **table** below shows a comparison of the emissions provided in the Revised Draft 2016 AQMP and the Ports' actual 2012 emissions and forecasted emissions for 2023 and 2031.

ANNUAL AVERAGE	All Source Categories			
	2012	**2022**	**2023**	**2031**
MOB1 NOx (Draft 2016 AQMP as of October 2016)	43.61	46.57	45.27	41.37
SPBP EIs	41.95	47.80	46.35	42.03
MOB1 /Ratio from 2012	1.00	1.07	1.04	.95
SPBP EIs PM2.5 Ratio from 2012	1.00	1.14	1.10	1.00
MOB1 PM2.5 (Draft 2016 AQMP)	1.03	0.83	0.84	0.93
SPBP EIs	1.03	0.83	0.84	0.93
MOB1 Ratio from 2012	1.00	0.81	0.82	0.90
SPBP EIs Ratio from 2012	1	0.80	0.81	0.91
MOB1 SOx (Draft 2016 AQMP)	3.9	0.81	0.82	0.91
SPBP EIs	3.90	0.81	0.82	0.91
MOB1 Ratio from 2012	1.00	0.21	0.21	0.23
SPBP EIs Ratio from 2012	1.00	0.21	0.21	0.23

As stated in our previous comment letter, to provide for a meaningful and comprehensive review, the Ports' request that the District identify the port-related sources (i.e., ocean-going vessels, harbor craft, locomotives, cargo-handling equipment, and heavy-duty trucks) of emissions that make up the total emissions in the Control Measure Summary (p. IV-A-120). It is also important to identify the assumptions used to estimate future emissions in 2022, 2023, and 2031. For instance, it is important to understand the assumed International Maritime Organization (IMO) tier level of ocean-going vessels calling at the Ports, as well as the fleet makeup of all other port-related source categories, including heavy-duty trucks, cargo-handling equipment, locomotives, and harbor craft. It is also important to identify the source-specific "growth" factors that were used to estimate future year emissions.

d. Appendix IV-A, Format Of Control Measures, Emission Reductions. p. IV-A-21.

This section states that: "During the rule development, the most current inventory will be used. However, for tracking rate-of-progress for the SIP emission reduction commitment, the approved AQMP inventory will be used. More specifically, emission reductions due to mandatory or voluntary, but enforceable actions shall be credited toward SIP obligations" (p. IV-A-21).

We request that any differences between the "most current inventory" used for rule development and the "approved AQMP inventory" be clearly described and addressed prior to any mandatory or voluntary emissions being credited toward SIP obligations.

e. Appendix IV-B, South Coast Mobile Source Emission Reductions, p. IV-B-5.

In this table, NOx reductions for 2031 are shown from 2015 level whereas the AQMP reductions are from 2012 level. SCAQMD should clarify how it plans to reconcile the emission reductions as the discrepancy could cause confusion when setting up goals and emission reduction targets.

f. Appendix IV-B, Tier 4 Vessel Standards. p. IV-B-50.

Under this proposed action, the ARB intends to work with the EPA, U.S. Coast Guard, and international partners to urge the International Maritime Organization (IMO) to adopt a Tier 4 NOx standard for new ocean-going vessels and efficiency requirements for existing vessels (p. IV-B-50).

The Ports support the advocacy for more stringent IMO standards and efficiency targets for ships. Currently, newly built ships are required to meet IMO Tier 3 standards for NOx. The Ports have developed an IMO Tier distribution forecast based on the existing world fleet, estimated future vessel calls at the Ports, and Tier 3 order information provided by the engine manufactures. The Ports' Tier distribution forecast indicates strongly that there will be no significant (less than 5%, best case scenario) Tier 3 penetration of the ship calls by 2023. Further, the forecast indicates that the existing world fleet (Tier 0-2) could service the Ports through the mid to late 2030s to 2040s.

Recognizing that Tier 3 fleet penetration will be significantly slower than CARB is estimating and coupled with the fact that there have been NO discussions at IMO Marine Environmental Protection Committee related to a Tier 4 NOx engine standard, the Ports believe that it is highly inappropriate to assume aspirational reductions related to Tier 4 fleet penetration until the standard is at least drafted if not promulgated. Taking reductions for standards that are neither in discussion nor in development is not appropriate for SIP planning purposes. Therefore, the Ports request that the estimated emissions reductions associated with Tier 3 fleet penetration this measure be reconsidered for the proposed SIP commitment and that all reductions associated with Tier 4 be removed.

Furthermore, it is stated that: "The new standards would be allowed to enter the fleet using natural turnover and would not be accelerated by additional rules or incentives" (p. IV-B-51). While the Ports are in favor of the ARB advocating for IMO Tier 4 NOx standards and efficiency targets for ships, we believe that effort should be placed on encouraging the cleanest ships to deploy to our ports now. There are currently fewer than 50 ships worldwide on order that will have IMO Tier 3 capabilities and it is unknown where they will be they deployed. We do not foresee a sizeable number of Tier 3 ships servicing our ports in the near term. As more of these ships become available for deployment, the Ports recommend the development of statewide strategies, such as incentive funding programs to attract these clean new ships to our Ports.