

Comment Letters Received on PR 4001

Comment Letter	Commentator
#1	BizFed - Los Angeles County Business Federation
#2	City/Port of Los Angeles and City/Port of Long Beach
#3	Union Pacific Railroad Company and BNSF Railway
#4	Wilmington Chamber of Commerce

Strengthening the Voice of Business

- Chambers of Commerce
- Agoura-Oak Park-Conejo Valley-Calabasas
- Alhambra
- Arcadia
- Armenian American
- Bell Gardens
- Beverly Hills
- Burbank
- Century City
- Chinese Chamber LA
- Claremont
- Culver City
- El Monte
- Filipino American
- Filipino American South East Corridor
- Glendale
- Greater Lakewood
- Greater Los Angeles African American
- Harbor City / Harbor Gateway
- Hollywood
- Irwindale
- Korean American
- Los Angeles Area
- LAX Coastal Area
- La Canada Flintridge
- Long Beach Area
- Los Angeles Metropolitan Hispanic
- Malibu
- Manhattan Beach
- Montebello
- Pacific Palisades
- Pasadena
- Pomona
- Redondo Beach
- Regional Black
- Regional Hispanic
- Regional San Gabriel Valley
- Rosemead
- San Pedro Peninsula
- Santa Clarita Valley
- Santa Monica
- South Bay Association
- Toluca Lake
- Torrance Area
- United Chambers San Fernando Valley
- Universal City North Hollywood
- Vernon
- Vietnamese American
- West Hollywood
- West Los Angeles
- Westside Council
- Wilmington
- Woodland Hills-Tarzana
- Trade Associations and Minority Business Groups
- AIA Los Angeles
- American Beverage Association
- Antelope Valley Board of Trade
- Apartment Association, CA Southern Cities
- Apartment Association of Greater Los Angeles
- Arcadia Association of Realtors
- Asian American Business Women Association
- Asian Business Association
- Associated Builders and Contractors - LA/Ventura
- Beverly Hills / Greater LA Association of Realtors
- British American Business Council
- Building Industry Association, LA / Ventura
- Building Owners & Managers Association, LA
- Burbank Association of Realtors
- California Apartment Association, LA
- California Contract Cities Association
- California Grocers Association
- California Independent Bankers
- California Independent Petroleum Association
- California Metals Coalition
- California Small Business Alliance
- Carson Dominguez Employers Alliance
- Central City Association
- Citrus Valley Association of Realtors
- Construction Industry Air Quality Coalition
- Construction Industry Coalition for Water Quality
- Employers Group
- Entrepreneurs' Organization LA
- Fixing Angelenos Stuck In Traffic (FAST)
- FuturePorts
- Gateway to LA
- Glendale Association of Realtors
- Greater Asian Business Federation
- Greater LA New Car Dealers Association
- Harbor Association of Industry & Commerce
- Harbor Trucking Association
- Hospital Association of Southern CA
- Hotel Association of Los Angeles
- Industry Manufacturers Council
- International Warehouse Logistics Association
- LA SHARES
- League of California Cities
- Los Angeles County Economic Development Corp.
- Los Angeles County Waste Management Association
- Motion Picture Association of America
- NAIOP Southern California
- National Association of Women Business Owners, LA
- National Latina Business Women Association
- New Majority Los Angeles
- Overseas Chinese Business Exchange
- Pasadena-Foothills Association of Realtors
- Recording Industry Association of America
- San Gabriel Valley Economic Partnership
- Santa Clarita Valley Economic Development
- San Gabriel Valley Supplier Development Council
- South Asian Business Alliance Network
- South Bay Association of Realtors
- South Park Stakeholders Group
- Southern California Grantmakers
- Southland Regional Association of Realtors
- Tri-Counties Association of Realtors
- Valley Economic Alliance
- Valley Economic Development Center
- Valley Industry Association of Santa Clarita
- Valley Industry & Commerce Association
- Valley International Trade Association
- West San Gabriel Valley Association of Realtors
- Western Manufactured Housing Association

January 29, 2014

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 91756-4178

Re: Opposition to Proposed Rule 4001—Maintenance of AQMD Emission Reduction Targets at Commercial Marine Ports

Dear Dr. Pasek,

On behalf of the BizFed, the Los Angeles County Business Federation, representing over 120 business organizations with more than 250,000 businesses employing nearly 3 million people across our region, we are writing to oppose Proposed Rule 4001—Maintenance of AQMD Emission Reduction Targets at Commercial Marine Ports (PR 4001).

The San Pedro Bay Ports are vital to the regional, state, and national economy. The cargo handled by the ports account 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. Therefore, it is critical that emissions standards be achieved without undermining economic competitiveness. The good news is that, working together with the goods movement industry, the San Pedro Bay Ports have been successful in reducing emissions from port-related sources, such that there is no demonstrated need for Proposed Rule 4001:

- The ports' emissions inventories in 2012 show that compared to emissions levels in 2005, emissions reductions are meeting, or are in excess of the targets that the ports committed to in the San Pedro Bay Standards to reduce emissions of DPM by 72% in 2014 and 77% in 2023; NOx by 22% in 2014 and 50% in 2023; and SOx by 93% in 2014 and 2023
- In 2012, the two ports combined have reduced emissions of DPM by 80%; NOx by 53%, and SOx by 88%, compared to 2005 levels.

These reductions have been achieved by the port industry through a combination of voluntary efforts, promulgated state and federal regulations, and the implementation of strategies in San Pedro Bay Ports' Clean Air Action Plan (CAAP) and related green port operations.

Moreover, PR 4001 is unnecessary and duplicative of regulations already in place for port-related sources. Almost all (approximately 98 percent) of the projected emissions reductions in 2014 will be achieved as a result of regulations that have been established since the CAAP was developed:

- CARB Truck and Bus Regulation
- CARB Ocean-going Vessel Shore Power Regulation
- CARB and International Ocean-going Vessels Low Sulfur Fuel Regulations
- CARB Cargo-handling equipment Regulation
- CARB Commercial Harbor Craft Regulation
- CARB Transport Refrigerated Unit (TRU) Regulation
- Establishment of the North American Emission Control Area through IMO
- 2008 Locomotive and Marine Diesel Engine Emissions Standards

PR 4001 ignores the demonstrated success of the process established for the collaborative efforts of the San Pedro Bay Ports Clean Air Action Plan, and will

deter other industries from any type of voluntary action. The voluntary and cooperative CAAP process established by the ports remains the most appropriate forum for the ports, the air regulatory agencies, and the goods movement industry to discuss technical and policy issues related to implementing appropriate strategies for reducing emissions from port-related sources.

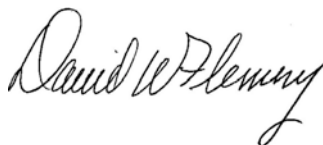
While we believe there is no demonstrated cause to further target your efforts at the ports, if you feel you must take additional action, USEPA's Voluntary Mobile Emission Reduction Program (VMEP) is a favorable alternative to rulemaking. VMEP is an established federal program to account for the 2 percent of emissions not currently backstopped, and VMEP programs are SIP-creditable. Moreover, emphasizing this voluntary program over new rulemaking preserves the spirit of cooperative effort that has thus far delivered reduced emissions.

In short, BizFed strongly believes that PR 4001 is unnecessary in light of the ongoing success of voluntary, collaborative programs at reducing port emissions and the economic threat new rules will pose. Moving away from a voluntary approach through additional rulemaking has the potential to increase costs to port customers and tenants, which would threaten jobs and regional competitiveness. Therefore, we oppose this measure and urge that it should not move forward.

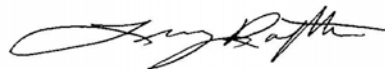
Sincerely,



Don St. Clair
BizFed Chair
Woodbury University



David Fleming
BizFed Founding Chair
Latham & Watkins LLP



Tracy Rafter
BizFed CEO
IMPOWER, Inc.



Port of
LONG BEACH
The Green Port

January 31, 2014

VIA E-MAIL – rpasek@aqmd.gov

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**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 NO_x, SO_x, 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 Report³ and Table 9.4 of the Port of Los Angeles 2012 Inventory of Air Emissions Report⁴.

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	NO _x	PM _{2.5}	SO _x
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 NO_x, SO_x, and PM_{2.5} emissions (in tons per day) as defined by the following formula provided in the Final 2012 AQMP:

$$\text{PM}_{2.5} \text{ Equivalent} = 0.07 * \text{NO}_x + 0.53 * \text{SO}_x + 1.0 * \text{PM}_{2.5}$$

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 emissions 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. PR 4001 Improperly Provides for Moving Emissions Reduction Targets

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 NO_x, PM_{2.5}, and SO_x 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. There is No Statutory Authority for District to Impose PR 4001 On Cities

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 policies.
- (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. Non-compliance with Health & Safety Code § 40727.2 – Written Analysis of Rule:

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. 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

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

Mr. Randall Pasek
January 31, 2014
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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
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Mr. Randall Pasek
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ATTACHMENTS



Port of
LONG BEACH
The Green Port

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 renegeing 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.”

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 NO_x, SO_x, and PM_{2.5} 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 not 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:

What Is the District's Legal Authority for PR 4001?

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?

On What Authority Would the District Purport to "Revise the Reduction Target"?

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"?

Does PR 4001 Provide a Clear and Feasible Process for Cities to Develop a "Plan"?

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.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, 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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Page 31

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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"*

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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



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-

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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

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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 stated¹, “[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

¹ *Emission Reduction Plan for Ports and Goods Movement in California*, Executive Summary, ES-1, CARB, 2006.

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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 needed². Therefore, it is inappropriate for the AQMD to require an emission target year of 2019 in the Proposed Rule.

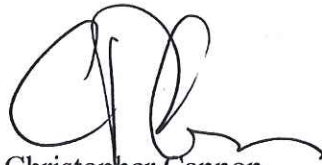
As stated above, these comments represent the Cities' initial concerns with the AQMD's proposed approach. Further comments will be provided as the process progresses and as more information is made available by AQMD.

We appreciate your consideration. Thank you.

Sincerely,



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Port of Long Beach



Christopher Cannon
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Port of Los Angeles

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² 2012 Air Quality Management Plan, Executive Summary, ES-11, AQMD, 2013.



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”)

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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

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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 NO_x, SO_x, and PM_{2.5} 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,

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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

Ms. Barbara Radlein
August 21, 2013
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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
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With copies to:

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With a copy to:

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August 21, 2013
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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



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

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.

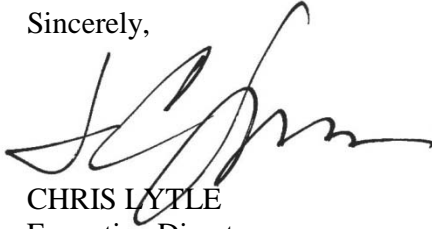
We strongly believe that the voluntary and cooperative CAAP process established by the Ports remains the most appropriate forum for the Ports and the air regulatory agencies to discuss technical and policy issues related to reducing emissions from port-related sources. As stated above, we remain committed 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.

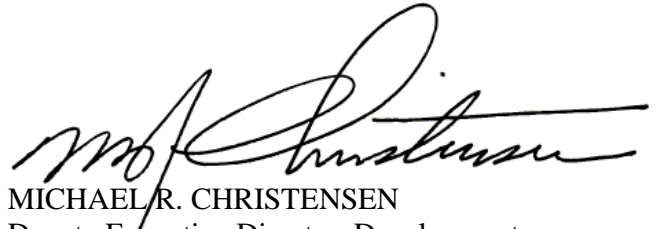
Dr. Wallerstein
July 10, 2012
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We look forward to working with AQMD on resolving our concerns related to the proposed backstop measure in the Draft 2012 AQMP.

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



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 devices 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,

A handwritten signature in black ink that reads "Richard D. Cameron". The signature is written in a cursive, flowing style.

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 PM_{2.5} 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



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

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.

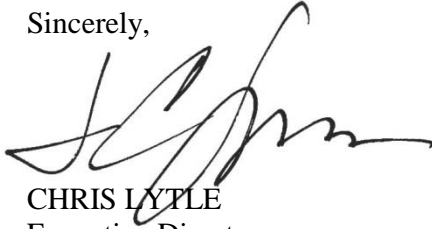
We strongly believe that the voluntary and cooperative CAAP process established by the Ports remains the most appropriate forum for the Ports and the air regulatory agencies to discuss technical and policy issues related to reducing emissions from port-related sources. As stated above, we remain committed 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.

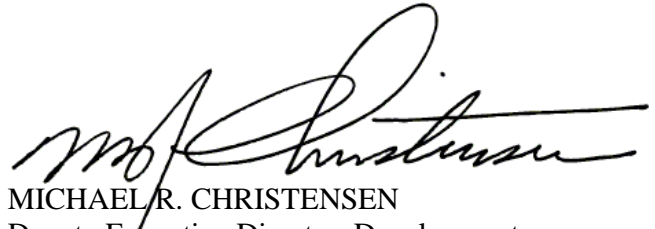
Dr. Wallerstein
July 10, 2012
Page -3-

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



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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- 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.

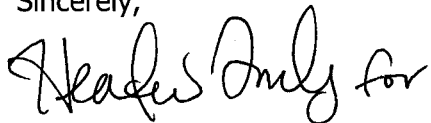
4. As suggested above, will the AQMD form a Stakeholder Working Group, including the Ports, to discuss the AQMD's Proposed Rules and analysis?
5. What is the AQMD's authority for regulating the Ports under the Proposed Rules?
6. The Ports would like to understand what level of CEQA analysis the AQMD 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.

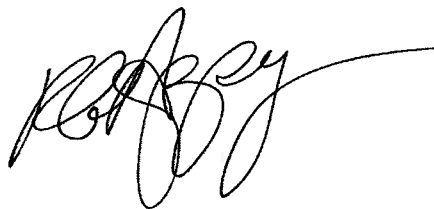
The Ports are committed to achieving aggressive and feasible emissions reductions and health risk reductions from port-related sources, and have already proven that such reductions can be achieved while allowing the Ports to continue to move forward as a strong economic engine for the region. The Ports 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.

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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 PM_{2.5} 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.

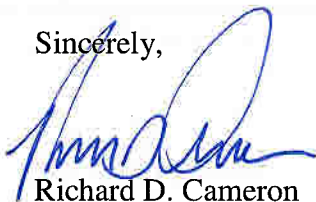
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Additionally, it concerns the ports that the AQMP has made a commitment to Measure IND-01 before AQMD has released details of its intended implementation actions against the ports, or the socioeconomic and other analyses for such actions. Elaine Chang 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



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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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:

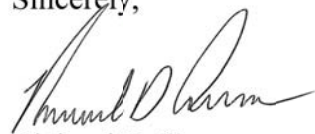
1. Measure IND-01 must be removed from the 2012 Air Quality Management Plan if it continues to apply or recommend any form of AQMD oversight and approvals of the ports' actions, or enforcement (in terms of fines, penalties, administrative actions) against the Ports for failures of the Port industry to 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.

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



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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.

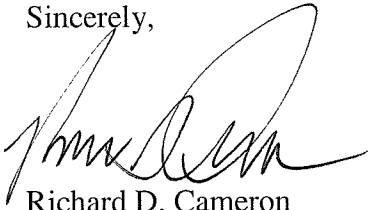
We reiterate our prior requests that AQMD reconsider its approach and allow the continuation of the successful collaborative work by the ports, regulatory agencies and other stakeholders under the voluntary Clean Air Action Plan and San Pedro Bay Standards. Moving forward with Measure IND-01 in this current draft form will actually reduce rather than improve the future success of programs, since conversion of voluntary plans into regulation will reduce voluntary

Ms. Nakamura
November 27, 2012
Page -2-

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



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January 31, 2013

Dr. 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

Submitted via email to: rpasek@aqmd.gov

RE: Initial Comments Proposed Rule 4001 – Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports

Dear Dr. Pasek:

The Union Pacific Railroad Company and BNSF Railway (together, “The Railroads”) appreciate the opportunity to comment on the South Coast Air Quality Management District’s (“SCAQMD” or the “District”) Preliminary Draft Staff Report for Proposed Rule (“PR”) 4001 – Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports (“Preliminary Draft”).

The Railroads play a leading role in moving freight, including international containerized freight, and are an integral part of a global goods movement network. Therefore the Railroads have a vital interest in the proposal to regulate the Ports’ activities.

First, the Railroads reiterate the comments submitted by BizFed, of which the Railroads were a signatory, on September 10th, and we attach a copy of those comments to this letter.

Second, the Railroads continue to support the comments submitted by the Ports of Los Angeles and Long Beach (“the Ports”), the Pacific Maritime Shipping Association, and the Los Angeles Area Chamber of Commerce. More specifically, the Railroads agree with the Ports on the following points:

- The San Pedro Bay Ports are vital to the regional, state, and national economy.
- The 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.
- The Ports, working together with the goods movement industry, have been successful in reducing emissions from port-related sources.
- Proposed Rule 4001 ignores the demonstrated success of the process established for the collaborative efforts of the San Pedro Bay Ports Clean Air Action Plan (“CAAP”) and will deter other industries from any type of voluntary action.
- Proposed Rule 4001 is unnecessary and duplicative of regulations already in place for port-related sources.

RE: Initial Comments Proposed Rule 4001 – Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports

- Almost all (approximately 98 percent) of the projected emissions reductions in 2014 will be achieved as a result of regulations that have been adopted or amended since the CAAP was developed:
 - *CARB Truck and Bus Regulation*
 - *CARB Ocean-going Vessel Shore Power Regulation*
 - *CARB and International Ocean-going Vessels Low Sulfur Fuel Regulations*
 - *CARB Cargo-handling equipment Regulation*
 - *CARB Commercial Harbor Craft Regulation*
 - *CARB Transport Refrigerated Unit (TRU) Regulation*
 - *Establishment of the North American Emission Control Area through IMO*
 - *2008 Locomotive and Marine Diesel Engine Emissions Standards*
- The Ports' emissions inventories in 2012 show that compared to emissions levels in 2005, emissions reductions are meeting, or are in excess of the targets that the Ports committed to in the San Pedro Bay Standards: to reduce emissions of DPM by 72% in 2014 and 77% in 2023; NOx by 22% in 2014 and 50% in 2023; and SOx by 93% in 2014 and 2023
- As of 2012, the two ports combined have reduced emissions of DPM by 80%, NOx by 53%, and SOx by 88%, compared to 2005 levels.
- These reductions have been achieved by the port industry through a combination of voluntary efforts, promulgated state and federal regulations, and the implementation of strategies in the San Pedro Bay Ports' Clean Air Action Plan and related green port operations.
- If the air quality regulatory agencies modify or affect their regulations in a way that reduces the emissions reduction from port-related sources, the port authorities should not bear the responsibility of making up for the potential emissions shortfalls from any implemented regulations, even if those regulations are related to equipment operating at the Ports.
- The voluntary and cooperative CAAP process established by the Ports remains the most appropriate forum for the Ports, the air regulatory agencies, and the goods movement industry to discuss technical and policy issues related to implementing appropriate strategies for reducing emissions from port-related sources.
- Instead of improving air quality in the region, Proposed Rule 4001 will:
 - Minimize voluntary participation in emissions reduction efforts
 - Defeat the collaborative innovation fostered through the CAAP
 - Potentially increase costs to port customers/tenants
 - Potentially divert cargo to other ports due to loss of regional competitiveness
 - Threaten jobs in the region
 - Close businesses

RE: Initial Comments Proposed Rule 4001 – Maintenance of AQMP Emission Reduction Targets at Commercial Marine Ports

Given that PR4001 is unnecessary and will have substantial negative impacts on the region, as described above, the Railroads suggest that the District instead allow the Ports to continue to work voluntarily with their tenants and the community through the CAAP process. In addition, ARB recently announced plans to develop a Sustainable Freight Strategy, and we suggest that the District work with ARB and stakeholders collectively to explore more comprehensive vehicles for achieving long-term emission reductions from the freight sector. We look forward to working with the District, ARB, and other stakeholders to develop a near-term, realistic set of policies which will advance our common goal of making California's world-leading green freight system even cleaner than it is today.

Third, the Railroads requests that the District correct a statement in the Preliminary Draft related to the 3500 Rules as follows:

“SCAQMD Rules Governing Locomotive idling and Risk Assessment. In 2005 and 2006, the District adopted rules requiring railroads to minimize unnecessary locomotive idling, and to develop emissions inventories and health risk assessments and notify the public of health risks. The idling rules have been enjoined from implementation ~~until they have been federally approved, through SIP approval, and harmonized with the Interstate Commerce Commission Termination Act (ICCTA).~~ The SCAQMD has submitted the rules to U.S. EPA for approval into the SIP.” (Preliminary Draft, p. 5. December 2013)

Specifically, the statement "... until they have been federally approved, through SIP approval, and harmonized with the Interstate Commerce Commission Termination Act (ICCTA)" is inconsistent with the federal District Court decision that established a permanent injunction on enforcement of these rules.¹ The injunction is not affected by SIP approval or other federal approval of the rules.

Thank you for considering these comments.

Sincerely,



Melissa Hagan
Union Pacific Railroad



Marisa Blackshire
BNSF Railway

¹ Ass'n of Am. R.R. v. S. Coast Air Quality Mgmt. Dist., 2007 U.S. Dist. LEXIS 65685 (C.D. Cal. 2007).



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Los Angeles Area Chamber of Commerce



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September 10, 2013

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, CA 91765

RE: Comments on Initial Concepts for Proposed Rule 4001 – Backstop to Ensure AQMP Emission Reduction Targets are Met at Commercial Marine Ports

Dear Dr. Pasek:

As members of the BizFed-Southern California Business Coalition, we represent Southern California's broader business community. Our diverse group is comprised of major regional business entities and associations, whose members include large and small employers, minority business owners, and job creators from a wide range of industries. Proposed Rule 4001, which has not yet been released and which we have not yet seen, will, if and when it is adopted, likely have a significant impact on our members and on the entire Southern California economy. As of early September, the details of the draft rule have not been released. AQMD is currently seeking comments on the concepts of the proposed rule through a "Public Consultation" process. The comment period closes September 6, 2013.

Our business coalition has a strong vested interest in this issue, and we already submitted comments on the CEQA NOP and accompanying Initial Study on August 21, 2013. We plan to continue to be actively involved in the rulemaking process, and we appreciate the opportunity to provide these initial comments on the concepts presented thus far by District Staff.

First, we hereby indicate our support for the comments submitted by the Ports of Los Angeles and Long Beach. That said, our additional comments are as follows:

1. **Chilling Effect on Jobs and the Southern California Economy.** The San Pedro Bay Ports are vital to the regional, state, and national economy. The 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. We are therefore concerned that the proposed AQMD rule will have a chilling effect on future business planning and growth.
2. **Need for a Thorough Socioeconomic Analysis.** - The socioeconomic impacts of the proposed rule, whether triggered or not, should be fully evaluated and disclosed. Given the anticipated complexity of this analysis, the District should allow sufficient time for thorough review, comment, and discussion.
3. **Process Should Provide Sufficient Opportunity for Review and Comment.** 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.

4. **No Need for This Rule.** The Ports, working together with the port-related industry, have been successful in reducing emissions. Port-related emissions reductions have exceeded the ports' goals. There is no demonstrated need for the proposed rule. Proposed Rule 4001 is unnecessary and duplicative of CARB regulations.
5. **Authority.** Lastly, the ports and the industry have worked collaboratively to achieve the successes to date. It is inappropriate for AQMD to now put themselves in a position to be the authority to approve or deny any current or future programs – this goes against the successful approach that has worked so well to date.

In closing, we want to clearly convey our interest in providing comments on all draft documents associated with this rulemaking, which include, but are not limited to the draft proposed rule, draft socioeconomic analysis, draft CEQA review documents, and draft staff report.

Thank you for considering our comments.

Sincerely,



Tracy Rafter
BizFed, Los Angeles County Business
Federation



LaDonna DiCamillo
BNSF Railway



Robert A. Curry
California Cartage Company



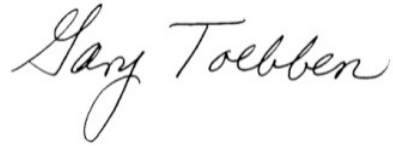
Eric Sauer
California Trucking Association



Mike Lewis
Construction Industry Air Quality Coalition



Paul C. Granillo
Inland Empire Economic Partnership



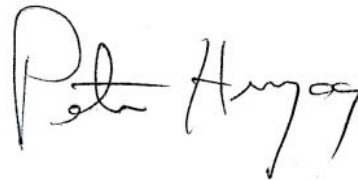
Gary Toebben
Los Angeles Area Chamber of Commerce



Fran Inman
Majestic Realty



Rob Evans
NAIOP Inland Empire Chapter



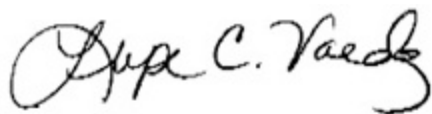
Peter Herzog
NAIOP Southern California Chapter



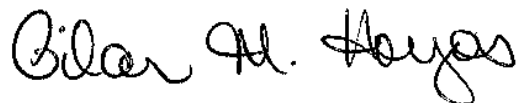
Marna Smeltzer
Redondo Beach Chamber of Commerce



Cynthia Kurtz
San Gabriel Valley Economic Partnership



Lupe Valdez
Union Pacific Railway



Pilar Hoyos
Watson Land Company



January 27, 2014

SCAQMD Governing Board
21865 Copley Drive
Diamond Bar, CA 91765

Dear Governing Board:

In 2012, the twin ports reduced emissions of DPM by 80%; NOx by 53%, and SOx by 88%, compared to 2005 levels. These numbers will continue to improve as more ships AMP up, Terminals continue to become more automated; on dock rail is expanded and projects such as SCIG are implemented.

The San Pedro Bay Ports are vital to the regional, state, and national economy. Accounting 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.

Proposed Rule 4001, duplicates regulations already in place. Approximately 99.5 percent of the projected emissions reductions in 2014 will be achieved as a result of regulations that have been established since the CAAP was developed:

- CARB Truck and Bus Regulation
- CARB Ocean-going Vessel Shore Power Regulation
- CARB International Ocean-going Vessels Low Sulfur Fuel Regulations
- CARB Cargo-handling equipment Regulation
- CARB Commercial Harbor Craft Regulation
- CARB Transport Refrigerated Unit (TRU) Regulation
- Establishment of the North American Emission Control Area through IMO international Maritime Organization
- 2008 Locomotive and Marine Diesel Engine Emissions Standards Pacific Harbor Line is the cleanest in the country

The voluntary and cooperative CAAP process established by the ports remains the most appropriate forum for the ports, the air regulatory agencies, and the goods movement industry to discuss technical and policy issues related to implementing appropriate strategies for reducing emissions from port-related sources.

We urge the South Coast Air Quality Management District (AQMD) Governing Board to **not** approve Proposed Rule 4001

Sincerely,

Dan Hoffman
Executive Director