

COMMENT LETTERS RECEIVED ON THE JULY 2013 NOP/IS FOR PR 4001

The July 2013 NOP/IS for PR 4001 was circulated for a 30-day public review and comment period from July 23, 2013 to August 21, 2013. The SCAQMD received nine comment letters from the following commentators:

Commentator
Native American Heritage Commission
San Pedro Peninsula Homeowner's Coalition
Janet Gunter
San Pedro Peninsula Homeowners United, Inc.
Pacific Merchant Shipping Association
BizFed, Los Angeles County Business Federation
Natural Resources Defense Council
Port of Los Angeles / Port of Long Beach
Union Pacific Railroad Company

NATIVE AMERICAN HERITAGE COMMISSION

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July 29, 2013

Mr. Michael Krause

South Coast Air Quality Management District

21865 E. Copley Drive
Diamond Bar, 91765

RE: SCH# 2013071072 CEQA Notice of Preparation (NOP); draft Environmental Impact Report (DEIR) for the "Rule 4001 – Backstop to Ensure AQMP Emission Reduction Targets Are Met At Commercial Marine Ports Project," located in Los Angeles and San Diego counties, California

Dear Mr. Krause:

The Native American Heritage Commission (NAHC) has reviewed the CEQA Notice regarding the above referenced project. In the 1985 Appellate Court decision (170 Cal App 3rd 604), the court held that the NAHC has jurisdiction and special expertise, as a state agency, over affected Native American resources impacted by proposed projects, including archaeological places of religious significance to Native Americans, and to Native American burial sites.

The California Environmental Quality Act (CEQA) states that any project that causes a substantial adverse change in the significance of an historical resource, which includes archeological resources, is a significant effect requiring the preparation of an EIR (CEQA guidelines 15064.5(b)). To adequately comply with this provision and mitigate project-related impacts on archaeological resources, the Commission recommends the following actions be required:

Contact the appropriate Information Center for a record search to determine if a part or all of the area of project effect (APE) has been previously surveyed for cultural places(s). The NAHC recommends that known traditional cultural resources recorded on or adjacent to the APE be listed in the draft Environmental Impact Report (DEIR).

If an additional archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey. We suggest that this be coordinated with the NAHC, if possible. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native

American human remains, and associated funerary objects should be in a separate confidential addendum, and not be made available for public disclosure pursuant to California Government Code Section 6254.10.

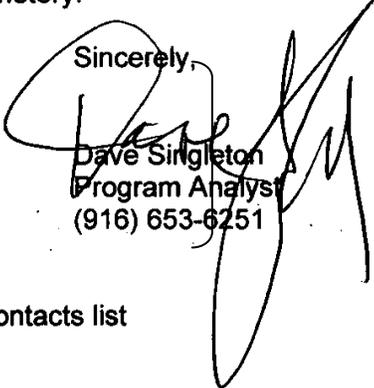
A list of appropriate Native American Contacts for consultation concerning the project site has been provided and is attached to this letter to determine if the proposed active might impinge on any cultural resources. Lack of surface evidence of archeological resources does not preclude their subsurface existence.

Lead agencies should include in their mitigation plan provisions for the identification and evaluation of accidentally discovered archeological resources, pursuant to California Health & Safety Code Section 7050.5 and California Environmental Quality Act (CEQA) §15064.5(f). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American, with knowledge in cultural resources, should monitor all ground-disturbing activities.

Also, California Public Resources Code Section 21083.2 require documentation and analysis of archaeological items that meet the standard in Section 15064.5 (a)(b)(f). Lead agencies should include in their mitigation plan provisions for the disposition of recovered artifacts, in consultation with culturally affiliated Native Americans.

Lead agencies should include provisions for discovery of Native American human remains in their mitigation plan. Health and Safety Code §7050.5, CEQA §15064.5(e), and Public Resources Code §5097.98 mandates the process to be followed in the event of an accidental discovery of any human remains in a location other than a dedicated cemetery.

Sincerely,


Dave Singleton
Program Analyst
(916) 653-6251

CC: State Clearinghouse

Attachment: Native American Contacts list

**Native American Contacts
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July 29, 2013**

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Distribution of this list does not relieve any person of the statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is only applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2013071072; CEQA Notice of Preparation (NOP); draft Environmental Impact Report (DEIR) for the Proposed Rule 4001 - Backup to Ensure AQMP Emission Reduction Targets are Met at Commercial Marine Ports; Los Angeles & San Diego counties, California

**Native American Contacts
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July 29, 2013**

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July 29, 2013**

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From: kathleen dwgkaw [mailto:dwgkaw@hotmail.com]
Sent: Tuesday, August 20, 2013 5:13 PM
To: rpasek@aqmd.com; Barbara Radlein
Subject: CEQA Comments PR 4001

To: South Coast Air Quality Management District

RE: CEQA Comments for Proposed Rule 4001 - Backstop to Ensure AQMP Emission Reduction targets are met at commercial ports for NOx, SOx and PM 2.5

From: Kathleen Woodfield, Vice President, San Pedro Peninsula Homeowner's Coalition

Thank you for this opportunity to provide written comments to the Proposed Rule 4001, Backstop Measure referenced above. I spoke as a representative of the San Pedro Peninsula Homeowner's Coalition at your public hearing at Banning's Landing Community Center on August 14, 2013. I would like to expand on those comments through this written submittal.

We are in **support** of your Backstop Measure, Proposed Rule 4001, as we understand the importance of air quality attainment and the critical nature of air pollution impacts on children, the elderly and all peoples residing in the communities adjacent to the ports. As an organization, we have made several recommendations to the Port of Los Angeles in the past, mostly through the venue of the Port Community Advisory Committee (PCAC), as we had three seats on the PCAC; however, the Port has recently disbanded the PCAC and our ability to formally advise the Port has been dissolved.

We have observed, over the decades, that the ports do not mitigate their emission impacts to a level of insignificance when approving their large projects, but rather, make a finding of overriding considerations. The overriding consideration commonly used is that the economic benefit of the project outweighs the damaging effects of the unmitigated emissions. We believe that the ports use the Statement of Overriding Considerations as a CEQA loophole that allows them to move forward with large, polluting projects without mitigating their fair share of environmental damage. We also believe that this abuse of overriding considerations has played a large role in making our air quality some of the worst in the nation.

Many years ago, we recommended to the Port that all air emissions (constructional and operational) associated with their proposed projects (that required a CEQA review) should be mitigated to a level of insignificance and that if emission levels could not be mitigated to a level below significance within the proposed Project area, then the Port would need to mitigate outside the Project area (yet still within the port area) in order to reach a level below significant. The mitigation outside the project area would act as an offset. This advisement was made to the Port through a PCAC motion but was rejected.

We are, therefore, supportive of a backstop provision that would require the ports to mitigate off port property, if necessary, in order to meet the AQMP Emission Reduction targets.

We believe that it would be within the ports' jurisdiction to mitigate off-port emissions as long as a nexus is established. This would be in compliance with State Lands and the Tidelands Trust.

Because the ports' Statement(s) of Overriding Considerations throughout the years have identified that the ports create thousands of jobs locally and regionally, they themselves have identified the required nexus for many off-port emission reduction opportunities, as these thousands of jobs, and the businesses associated with them, are not all on port property. A properly detailed Statement of Overriding Considerations that identifies economics and jobs as the benefit that trumps unmitigated air pollution impacts (and therefore allows the project to move forward) should be a good resource for finding specific off-port emissions mitigation opportunities that have a nexus to port operations. For instance, if the ports identify in their statements of overriding considerations or anywhere in their environmental documents that port projects provide local or regional construction, hotel, restaurant, retail etc. jobs, then these jobs are port-related and a nexus has been created for these jobs and their associated activity.

We believe, however, that all off-port mitigation required by the Proposed Rule 4001, should be in the port-adjacent communities.

We also believe that the port backstop measures should kick in if the ports do not meet their AQMP Emission Targets, even if the region meets its targets overall. The ports should not be given a free pass; they need to do their fair share under every circumstance.

We believe that if port activity returns to prior growth rates it is more likely that the ports will fall short of the AQMP emission reduction targets. Therefore, we would like the PR 4001 to have annual reduction target dates (2014, 2015, 2016, 2017, 2018) rather than only at 2014 and 2019.

We would like to see a strong emphasis on ocean going vessel emissions. Particularly in San Pedro where we are exposed to excessive ocean vessel emissions. We would like to see a broad use of the AMEX system, and we look forward to its final approvals and certifications. We believe that the ports have a strong role to play with this new technology and would like to see a program put into place with the AMEX technology that would rival that of the Clean Trucks Program.

Respectfully,
Kathleen Woodfield
Vice President
San Pedro and Peninsula Homeowner's Coalition
P.O. Box 1106
San Pedro, CA 90733

From: Janet Gunter [mailto:arriane5@aol.com]
Sent: Wednesday, August 21, 2013 11:05 AM
To: rpasek@aqmd.com; Barbara Radlein
Subject: CEQA Comments PR 4001

RE: CEQA Comments for Proposed Rule 4001 - Backstop to Ensure AQMP Emission Reduction at commercial ports for NO_x, SO_x and PM 2.5

To Whom It May Concern:

The issue of the multitude of differing cumulative impacts from the growth of Port operations has been a serious concern to the local residents for decades. It was only after the NRDC intervention in the China Shipping lawsuit that the issue of port air pollution and other impacts were ever honestly acknowledged. As a local community resident, we thank God for that day.

Certainly, I and many others fully support your Backstop Measure, Proposed Rule 4001. It is critical to embrace these types of controls to protect air quality and the health of our citizens residing in the communities adjacent the ports.

Many community recommendations were made over the past decade through a sitting committee of the port of LA, the Port Community Advisory Committee, in relation to quality of life issues facing the local population. However, this very valuable avenue of opportunity through which citizens could responsibly participate and ensure consideration in the port's industrial operation has been discarded. Most likely, this was done by the Port to relieve itself of a process that might be slowing their own progress in achieving goals.

History has proven that the ports do not mitigate their emission impacts to a level of insignificance when approving their large projects, but rather, make a finding of overriding considerations. The overriding consideration commonly used is that the economic benefit of the project outweighs the damaging effects of the unmitigated emissions. We believe that the ports use the Statement of Overriding Considerations as a CEQA loophole that allows them to move forward with large, polluting projects without mitigating their fair share of environmental damage. We also believe that this abuse of overriding considerations has played a large role in making our air quality some of the worst in the nation.

In an inter-departmental correspondence to the LA Port executive Director, Ernest Perry, from LA director of Planning, Calvin Hamilton in April of 1981, Hamilton states the following relative to the LA Port Master Plan draft regarding overriding considerations:

"The draft RMP elevates "Overriding Considerations" to the level of policy criteria for the issuance of coastal development permits. However, the concept as established by the California Environmental Quality Act is intended to be the exception, not the rule, by which to make "permissive" findings on a development project's adverse environmental impacts. The courts have held that failure to set forth the overriding economic and social values of a project is grounds for denying approval of a project where adverse environmental effects can be identified. Furthermore, the Draft RMP does not afford an equitable "overriding " consideration to vulnerable resources impacted or encroached upon by hazardous port operations."

It is extremely obvious that Mr. Calvin's impression of the Port's attitude was exactly on point.

The Port of LA has been engaged in proving this point for many, many years now since the certification of their Master Plan in 1981 without ever being called on it. The PCAC recommended to the Port that all air emissions (constructional and operational) associated with their proposed projects (that required a CEQA review) should be mitigated to a level of insignificance and that if emission levels could not be mitigated to a level below significance within the proposed Project area, then the Port would need to mitigate outside the Project area (yet still within the port area) in order to reach a level below significant. The mitigation outside the project area would act as an offset. This advisement was made to the Port through a PCAC motion but was rejected.

A "backstop provision" is sorely needed that would require the ports to mitigate off port property, if necessary, in order to meet the AQMP Emission Reduction targets.

It is critical that all off-port mitigation required by the Proposed Rule 4001, should be in the port-adjacent communities. The ports should not be given a free pass; they need to do their fair share under each incremental change. The existing pollution, hazardous risk exposure and blighted conditions in the LA Harbor region are a result of the port's persistent and complete disregard of negative impacts from their operations. Enough is enough!

Sincerely,
Janet Gunter
(310) 251-7075

From: det310@juno.com [mailto:det310@juno.com]
Sent: Wednesday, August 21, 2013 1:29 PM
To: rpasek@aqmd.com; Barbara Radlein
Subject: CEQA Comments PR 4001

To: South Coast Air Quality Management District

RE: CEQA comments for Proposed Rule 4001 - Backstop to Ensure AQMP Emission Reduction targets are met at commercial ports for NOx, SOx and PM 2.5

From: Chuck Hart, President - San Pedro Peninsula Homeowners United, Inc.

Thank you for this opportunity to provide written comments to the Proposed Rule 4001, Backstop Measure referenced above.

SPPHU currently represents more than 2,000 households adjacent to the Port of Los Angeles that are impacted by negative air quality resulting from Port operations. SPPHU is also a member of the San Pedro Peninsula Homeowners Coalition and actively served on the Port Community Advisory Committee from its inception until its recent demise.

I and the SPPHU Board of Directors have read the comment e-mail letter, written by Ms. Kathleen Woodfield, dated 8.20.13 to the South Coast Air Quality Management District re: Proposed Rule 4001 - Backstop to insure AQMP Emissions Reduction targets are met at commercial Ports for NOx, SOx, and PM2.5.

SPPHU Board of Directors agrees with Ms. Woodfield's comments contained in said letter and have voted to accept them as our own.

On behalf of the thousands of our neighbors negatively impacted by the poor air quality resulting from Port operations, SPPHU is formally serving notice that we adopt and sign on to the comment letter attached and referenced above in support of Proposed Rule 4001.

Chuck Hart, President, San Pedro Peninsula Homeowners United, Inc.

PO Box 6455, San Pedro, CA 90734



August 21, 2013

Ms. Barbara Radlein
Air Quality Specialist, CEQA
South Coast Air Quality Management District
21865 E. Copley Drive
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Subject: Comment Letter – Notice of Preparation for Proposed Rule 4001, Backstop to Ensure AQMP Emission Reduction Targets are Met at Commercial Marine Ports

The Pacific Merchant Shipping Association (PMSA), which represents ocean-carriers and terminal operators at ports throughout the state of California, appreciates this opportunity to comment on the South Coast Air Quality Management District's (SCAQMD) Notice of Preparation (NOP) for Proposed Rule 4001 – Backstop to Ensure AQMP Emission Reduction Targets Are Met at Commercial Marine Ports (PR 4001). PR 4001 is based on control measure IND-01 from the 2012 Air Quality Management Plan (AQMP) for the 24-hr PM 2.5 attainment demonstration.

PMSA and our individual members have proactively worked with the local port authorities to develop a systematic approach to the reduction of air quality emissions through the implementation of the voluntary measures of the San Pedro Bay Ports Clean Air Action Plan (CAAP)". In addition, PMSA members have taken a leadership role in developing and implementing most of the measures included in the CAAP and by supporting the development of international standards and regulations. While PMSA and our members are proud of our contributions to air quality in and around the Ports of Los Angeles and Long Beach (Ports), we cannot support PR 4001, for the same reasons that we opposed the 2012 AQMP control measure IND-01. PR 4001 is unnecessary, infeasible, and outside the authority of the SCAQMD.

This NOP is flawed in that it has failed to provide the fundamental element of the proposed project, the rule language. It is unnecessarily difficult to provide meaningful comments without having the proposed rule language. Further, we understand that the proposed rule language will not be released until after the comment period for the NOP is over. While staff has commented that the rule language is not needed for the CEQA process, and the control measure IND-01 is adequate for the project description we disagree. Since IND-01 was approved by the SCAQMD board at the February first public hearing, using IND-01 as the project description is inappropriate unless staff's intent is either to call into question the SCAQMD board's previous approval or they are taking the position that the CEQA analysis for IND-01 was inadequate for that approval – if that is the case then IND-01 cannot be the project description. Since we don't believe either of those conditions is true the only appropriate project description, as indicated by the title, is PR 4001. Therefore, we recommend that SCAQMD withdraw the NOP until PR 4001 is released for public comment.

When the NOP is re-released we urge the SCAQMD to include a full Socioeconomic Analysis as part of the Environmental Assessment (EA). PR 4001 is to be limited to measures that are “cost-effective and feasible”. In order to determine the extent that such measures may be required a full socioeconomic analysis is needed and must be included in the EA.

The EA should also include a detailed explanation on the authority of the Ports. The concept that sources outside of the ports could be included is novel since the limited authority granted to the ports under the state Tidelands Trust Act would limit their ability to implement measure without a clear nexus. Accordingly, the Tidelands Trust Act should be a prime item of the authority analysis.

Finally, at the public Scoping Meeting on August 14, 2013, SCAQMD staff showed a flow chart on how the regulation would be triggered and implemented. However, that flowchart skipped an important step. The first element of the flow chart should be a demonstration of whether or not the 24-hour PM 2.5 NAAQS was achieved for the South Coast Air Basin. If attainment is achieved then there is no reason to trigger PR 4001. In addition, there should be an additional decision point on whether or not any shortfall of the ports to achieve their goals under the CAAP is a result of lack of feasible measures or measures that are beyond the authority of the ports to implement. Without that step the SCAQMD could trigger PR 4001 only to discover that it would generate no additional benefits.

Finally, for either the SCAQMD or the Ports to regulate the equipment under this Port Backstop Measure, the United States Environmental Protection Agency (EPA) would have to grant a waiver under the Clean Air Act. Even then it is difficult to envision how EPA could grant such a wide sweeping waiver since the regulation of locomotive equipment is specifically pre-empted under Section 209 of the act rendering the measure infeasible. Therefore, EPA should be consulted prior to the development of PR 4001 to ensure that it can be approved and is not federally pre-empted.

The Ports and their industry partners have developed an effective mechanism through the CAAP, that is now backstopped by state, federal, and international regulations that ensures that the fair share goal, and hence, the emission reductions alluded to by PR 4001. PMSA and our members are committed to the goals of the voluntary CAAP and consider PR 4001 to be duplicative and counterproductive to the progress made to date by the ports and their goods movement partners. If SCAQMD is to proceed with the development of PR 4001, PMSA and our members are prepared to participate fully in the process although our true goal will be to ensure that PR 4001 is never trigger due to the continuing success of the CAAP.

If you have any questions, or need further clarification of these comments, please feel free to contact me either by phone at (310) 918-3535 or via email at tgarrett @pmsaship.com.

Respectfully submitted,



Vice President



Strengthening the Voice of Business



ORANGE COUNTY
BUSINESS COUNCIL



Harbor City/ Harbor Gateway
CHAMBER OF COMMERCE

BUSINESS ▲ COMMUNITY ▲ GOVERNMENT



Los Angeles Area
Chamber of Commerce

NAIOP

COMMERCIAL REAL ESTATE
DEVELOPMENT ASSOCIATION
INLAND EMPIRE CHAPTER

NAIOP

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SoCAL CHAPTER



August 21, 2013

Barbara Radlein
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**RE: CEQA Comments - Proposed Rule 4001, Backstop To Ensure AQMP
Emission Reduction Targets Are Met At Commercial Marine Ports**

Dear Ms. Radlein:

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. Therefore, we have a strong vested interest in this issue, and we appreciate the opportunity to provide these comments on the District's Notice of Preparation of a Draft Environmental Assessment (the "NOP") and accompanying Initial Study ("IS"), dated July 19, 2013.

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. **Description of Nature, Purpose and Beneficiaries of Project**¹. CEQA requires a Notice of Preparation to include a description of the project.² The statement is made that, "SCAQMD staff is proposing to adopt Rule 4001 ...", and Rule 4001 is the project³. However, we note that, by definition, there is as yet no such project. The IS section on the Project Description does not contain a draft proposed rule, only a general statement that the rule that will eventually be proposed will be "based on the following key concepts" for a ports backstop measure that were included as control measure IND-01 in the 2012 AQMP for PM2.5 attainment demonstration.⁴ However, a concept is not a proposed rule, and the lack of a draft proposed rule, with specific proposed requirements, limits our ability to provide meaningful comments on the NOP and IS.
2. **Alternatives**⁵. Notwithstanding the fact, as noted above, that there is currently no project, per se, the discussion of alternatives to the proposed project does not mention a "no-project" alternative. As the IS acknowledges on p. 1-11, CEQA requires a lead agency preparing an Environmental Impact Report or its equivalent (in this case, an Environmental Assessment) to consider a no-project alternative. We believe that a backstop rule is unnecessary and lacks any real

¹ NOP, page 2.

² CEQA Guidelines section 15082.

³ "PR4001 is considered a project as defined by CEQA." IS, page 1-2.

⁴ IS, page 1-5.

⁵ IS, pages 1-11 – 1-12.

benefit. However, while that discussion plays out, the discussion of alternatives in the DEA must include evaluation of a no-project alternative.

3. **Other Issues.** There are, in our view, a host of other issues that cannot be addressed in the absence of an actual draft proposed rule. These issues include, 1) rule compliance and test methods, 2) cost effectiveness and feasibility - both mentioned in the 2012 control measure IND-01. There is also a definite need for a robust socioeconomic analysis of any proposed rule that might be brought before the Governing Board. We note the statement in the IS that "... PR4001 may have statewide, regional or areawide significance..."⁶, and we could not agree more.

In closing, we want to clearly convey our interest in providing comments on the eventual draft proposed rule and DEA, and on the rule development process, including CEQA review. However, we are effectively precluded from making comments at this time due to the lack of a draft rule. Accordingly, we strongly urge the District to pause the CEQA process until such time as the stakeholders are presented with rule language.

Thank you for considering our comments.

Sincerely,



Tracy Rafter
BizFed, Los Angeles County Business
Federation



Matt Petteruto
Orange County Business Council



LaDonna DiCamillo
BNSF Railway

Bill La Marr

Bill LaMarr
California Small Business Alliance

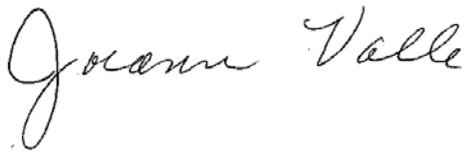


Eric Sauer
California Trucking Association



Mike Lewis
Construction Industry Air Quality Coalition

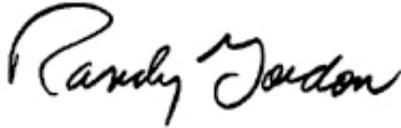
⁶ IS, page 1-2.



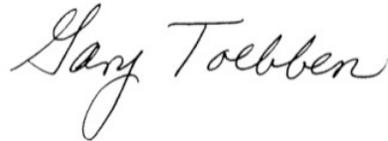
Joann Valle
Harbor City / Harbor Gateway Chamber of
Commerce



Paul C. Granillo
Inland Empire Economic Partnership



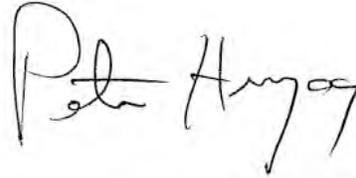
Randy Gordon
Long Beach Area Chamber of Commerce



Gary Toebben
Los Angeles Area Chamber of Commerce



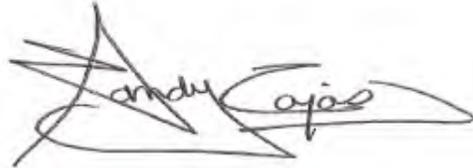
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Marna Smeltzer
Redondo Beach Chamber of Commerce



Sandy Cajas
Regional Hispanic Chamber of Commerce



Donna Duperron
Torrance Area Chamber of Commerce



Dan Hoffman
Wilmington Chamber of Commerce

**Natural Resources Defense Council * Coalition for Clean Air
Los Angeles Alliance for a New Economy * San Pedro Democratic Club
East Yard Communities for Environmental Justice
Communities for a Better Environment * American Lung Association in California**

August 21, 2013

Ms. Barbara Radlein
(c/o CEQA)
South Coast Air Quality Management District
21865 Copley Drive
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Submitted via E-mail

*Re: Comments on the Initial Study and NOP of a Draft EA for Proposed Rule 4001 –
Backstop to Ensure AQMP Emission Reduction Targets are met at Commercial
Marine Ports*

Dear Ms. Radlein:

On behalf of the Natural Resources Defense Council, Coalition for Clean Air, Los Angeles Alliance for a New Economy, San Pedro Democratic Club, East Yard Communities for Environmental Justice, Communities for a Better Environment, and American Lung Association in California, we submit these comments on the Initial Study and Notice of Preparation of a Draft Environmental Assessment for Proposed Rule 4001 – Backstop to Ensure AQMP Emission Reduction Targets are met at Commercial Marine Ports.

We strongly support Proposed Rule 4001 and urge the District to adopt it as soon as possible. This rule is necessary to implement the 2012 AQMP and move our region towards meeting clean air standards. We believe the Proposed Rule is a needed insurance policy, to make sure that our region sees the necessary reductions in air emissions from port operations.

If the emission reduction goals are not met, and the rule is triggered, it will be absolutely necessary for the ports to work with the District to make the necessary reductions. We feel that the Proposed Rule allows for ample flexibility and is a fair, practical approach.

As the Initial Study explains, “port sources such as marine vessels, locomotives, trucks, harbor craft, and cargo handling equipment, continue to be amongst the largest sources of NOx, SOx and PM2.5 in the region.” (Initial Study at 1-4). While the ports have made great progress to reduce emissions, they remain a serious and chief source of harmful pollution, and need to do more. The ports’ progress thus far and commitment to continue to reduce emissions does not excuse them or give them a free pass from necessary regulations. There are numerous major industries in our air basin; none of them are entitled to a free pass. To the contrary, each must be

held accountable and the District is obligated to do what is necessary to achieve necessary emissions reductions from each.

Many of the key stakeholders in our region have made significant progress towards working together, proactively, to reduce emissions, including the District, the ports, and several community and environmental organizations. This progress and collaboration is a success in itself, and we whole-heartedly believe that the District's fulfillment of its responsibility to enact necessary regulations cannot be interpreted as a roadblock to continued cooperation and goodwill. We fully expect and trust that the positive relationships and collaboration the various stakeholders in our region have built over the past several years continues to thrive and allow us to continue to clean up harmful pollution and protect public health.

Inclusion of the SCIG and ICTF in Proposed Rule 4001

It is critical that emissions from the proposed Southern California International Gateway (SCIG)—if it gets built—and the Intermodal Container Transfer Facility (ICTF) be included in the emissions requirements in Proposed Rule 4001. Indeed, the measure in the 2012 AQMP is titled “Backstop Measure for Indirect Sources of Emissions From Ports *And Port-Related Facilities*.” IND-01 states that the scope of emissions includes “Emissions from all sources associated with each port, including equipment on port property . . .” (Initial Study, Appendix A at IV-A-6). Both the SCIG and ICTF are located on port-owned property and are integral to port operations.

Scope of Emissions Included

Aside from emphasizing that emissions from the SCIG and ICTF must be included in the scope of the Proposed Rule, we would also like to highlight that *all* the air emissions from port operations be included, not just air emissions from operations on port property. As described in IND-01, the Backstop Rule must include “Emissions from all sources associated with each port, including equipment on port property, marine vessels traveling to and from the port while in California Coastal Waters, locomotives and trucks traveling to and from port-owned property while within the South Coast Air Basin.” (Initial Study, Appendix A at IV-A-6).

Consideration of Offsets

The Initial Study states that the District is “seeking comments regarding a potential option for the Ports to reduce emissions from sources not entering Port properties.” (Initial Study at 1-6). Assuming this refers to emissions reductions from offsets, outside of port property, we would support this approach only if it was a measure of last resort, and only if feasibility was defined by a detailed stipulation within the Proposed Rule. It is critical that the emissions reductions come from port operations, as our region needs reductions from all major pollution sources. If there are absolutely no feasible means to reduce emissions to the necessary levels, with feasibility being defined to err on the side of environmental protection, than we support offsets. It is important to note that these offsets must be very concrete, and not just general grant mitigation programs. The offsets must result in measurable and permanent emissions reductions. Further, these offsets have to reduce emissions that would not otherwise be reduced pursuant to

other programs or regulations. The offsets cannot take credit for emissions reductions that would have happened anyhow, under a different program or regulation. And, most importantly, these offsets have to take place in or close to the communities that are currently most negatively impacted by air pollution from port operations, namely the communities surrounding the ports and along the region's goods movement corridors (i.e. drayage truck corridors, intermodal facilities, rail ways, warehouses, etc).

Conclusion

We support the District in the adoption and implementation of a strong Backstop Rule, and we stand with the District throughout this process. We look forward to continuing to participate in this important rulemaking.

We would also like to thank the District for exhibiting such extraordinary leadership and commitment in the development of this Proposed Rule. This is a landmark step that can set important national precedent, and particularly for harbor communities across the country struggling with the negative impacts of air pollution from freight transportation in their neighborhoods.

If you have any questions or wish to discuss our comments further, please feel welcome to contact Morgan Wyenn at the Natural Resources Defense Council, at (310) 434-2300 or mwyenn@nrdc.org.

Sincerely,

Morgan Wyenn
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Natural Resources Defense Council

Patricia Ochoa
Deputy Policy Director
Coalition for Clean Air

Jon Zerolnick
Director, Clean and Safe Ports Project
Los Angeles Alliance for a New Economy

David Greene
Vice President, President Emeritus
San Pedro Democratic Club

Angelo Logan
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East Yard Communities for Environmental Justice

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Communities for a Better Environment

Teresa M. Roberts
Area Director
American Lung Association in California



August 21, 2013

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Ms. Barbara Radlein
c/o CEQA
SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT
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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,

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

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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:

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Ms. Barbara Radlein
August 21, 2013
Page 24

With copies to:

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For COLA, the contact persons are as follows:

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Director of Environmental Management
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(310) 732-3763
e-mail: ccannon@portla.org

With a copy to:

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City of Los Angeles, Harbor Division
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e-mail: jcrose@portla.org

Ms. Barbara Radlein
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.

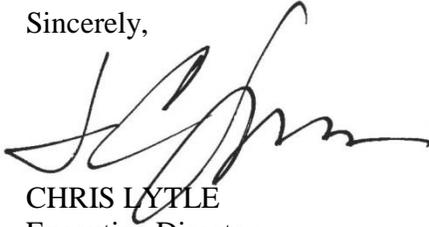
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For your reference, attached is a comment letter dated May 4, 2010, in which the Ports initially expressed concerns regarding backstop rules. The letter was submitted as a public comment on the proposed Rules 4010 and 4020, which were proposed backstop rules for health risk and criteria pollutant emissions.

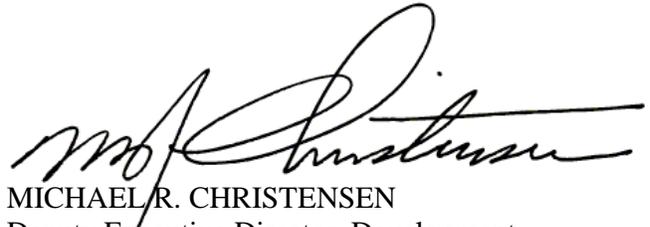
Dr. Wallerstein
July 10, 2012
Page -3-

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



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:

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The two Ports have a proven track record of developing and implementing appropriate and effective emission reduction strategies. These efforts have been entered into voluntarily, working cooperatively with operators in the port area and the air quality regulatory agencies (i.e. Environmental Protection Agency, California Air Resources Board and AQMD). Since the Ports initially implemented the CAAP, many of the port-related control strategies have been or will be superseded by state or international requirements, such as the rules for replacing drayage trucks, switching to cleaner marine fuels, and using shore power while at berth. The Ports' emissions inventories in 2010 show reductions that are meeting or are in excess of the emission reductions that the Ports committed to in the San Pedro Bay Standards. However, it is important to note that in order to remain on track to meet the Standards, a collaborative and concerted effort with our agency partners is essential, with the understanding that while the Ports can achieve significant emission

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.

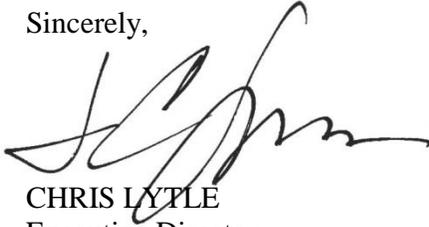
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Dr. Wallerstein
July 10, 2012
Page -3-

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
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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.

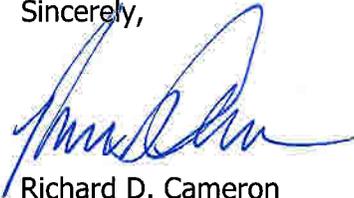
Fourth, the AQMD has concluded in the air quality analysis that specific measures associated with Measure IND-01 "are unknown, and therefore the impacts are speculative," (see page 4.2-7 of Draft EIR). This is yet another reason why the Draft EIR is flawed. CEQA Guidelines Section 15145 specifies that 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.

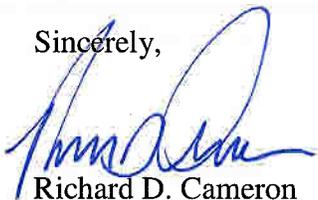
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Additionally, it concerns the ports that the AQMP has made a commitment to Measure IND-01 before AQMD has released details of its intended implementation actions against the ports, or the socioeconomic and other analyses for such actions. Elaine Chang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



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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:

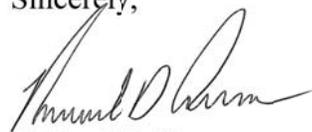
1. Measure IND-01 must be removed from the 2012 Air Quality Management Plan if it continues to apply or recommend any form of AQMD oversight and approvals of the ports' actions, or enforcement (in terms of fines, penalties, administrative actions) against the Ports for failures of the Port industry to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

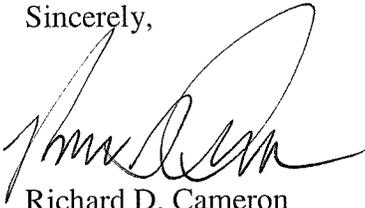
We reiterate our prior requests that AQMD reconsider its approach and allow the continuation of the successful collaborative work by the ports, regulatory agencies and other stakeholders under the voluntary Clean Air Action Plan and San Pedro Bay Standards. Moving forward with Measure IND-01 in this 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
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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

August 21, 2013

Ms. Barbara Radlein
Air Quality Specialist, CEQA
South Coast Air Quality Management District
21865 E. Copley Drive
Diamond Bar, CA 91765

Submitted via email to: bradlein@aqmd.gov

Re: Union Pacific's Comments regarding the Notice of Preparation of a Draft Environmental Assessment for the Proposed Rule 4001 – Backstop to Ensure AQMP Emission Reduction Targets are Met at Commercial Marine Ports

Dear Ms. Radlein:

The Union Pacific Railroad Company (“UP”) appreciates the opportunity to comment on the South Coast Air Quality Management District’s (“SCAQMD” or the “District”) Notice of Preparation of a Draft Environmental Assessment for the Proposed Rule (“PR”) 4001 – Backstop to Ensure AQMP Emission Reduction Targets are Met at Commercial Marine Ports (“NOP”). The NOP was published on July 19, 2013, but the subject of the NOP—PR 4001—has not yet been drafted.

UP plays a leading role in moving freight, including international containerized freight and is an integral part of a global goods movement network, and is therefore vitally interested in the proposal to regulate the Ports’ activities.

The NOP fails to provide adequate notice as required by the California Environmental Quality Act (“CEQA”) and its Guidelines: The CEQA and its Guidelines require that a notice of preparation contain a description of the project. The NOP is inadequate because it does not include a description of the project to be analyzed.¹ The NOP and Initial Study (“IS”) describe the project as PR 4001²—yet PR 4001 has not yet been drafted. Notice means that adequate information is provided, so that the public can be informed of a project’s impacts. Without the project description defining the project, the public is prevented from providing meaningful comments on the NOP. The Project Description in the IS does not contain a proposed rule. Instead, it states that the District will propose a rule “based on the following key concepts” for a port backstop measure that was “provided in the 2012 AQMP Control Measure IND-01” for the

¹ CEQA Guidelines section 15082.

² For example, the IS states: “PR 4001 is considered a “project” as defined by CEQA.” See IS, page 1-2. Similarly, the NOP states: “SCAQMD staff is proposing to adopt Rule 4001 – Backstop to Ensure AQMD Emission Reduction Targets Are Met At Commercial Marine Ports, to require emission reduction actions to be taken in the event that emissions of NOx, SOx, and PM2.5 from port-related sources do not meet the emission targets assumed in the Final 2012 Air Quality Management Plan (AQMP).” See NOP, page 2.

PM2.5 attainment demonstration.³ This description of the proposed action is inadequate under the CEQA.

The District's failure to properly define the proposed project means that the District has also failed to identify alternatives in the NOP. It is impossible to identify alternatives when the project is not described.

Although the District is a certified agency, and therefore partially exempt from CEQA requirements, it is not exempt from the requirements to adequately define the project, consider feasible alternatives and consult with other affected agencies. Pub. Res. Code §21080.5; Guidelines §15252.

The District should withdraw the current NOP until PR 4001 draft rule language is released for public comment.

The Environmental Analysis should examine socioeconomic impacts: In order for the public and the affected agencies to understand the full impact of PR 4001, socioeconomic impacts must be carefully and fully examined. The District states that IND-01 “does not call for additional emission reductions beyond those realized with existing regulations and emission reduction programs implemented at the Ports to date.”⁴ However, should a backstop be triggered, it is possible that new measures, beyond what is currently adopted, will be necessary to make up for any shortfall. In addition to the analysis of direct and indirect environmental effects in the draft Environmental Assessment, a socioeconomic analysis is necessary analyze the potential new economic impacts.

If PR 4001 regulates locomotives, it could be preempted under the federal Clean Air Act (“CAA”): The CAA prohibits the District or Ports from the regulation of new locomotives and requires the state of California to seek a waiver from the United States Environmental Protection Agency (“EPA”) in order to regulate non-preempted locomotives under PR 4001. 42 U.S.C. §7543(e). The CAA preemption renders the measure infeasible and unenforceable, and therefore it could not become a part of the State Implementation Plan.

The railroads are active participants in the efforts of the state and the Ports to reduce emissions: The railroads have made numerous commitments to reduce emissions from their operations in California and southern California in particular—and have met or exceeded every one of these commitments for the last fifteen years.

EPA should be consulted prior to the development of PR 4001 to ensure that it can be approved and is not federally pre-empted. These voluntary actions by the railroads compliment and contribute to the efforts by the Ports. The District should recognize the extraordinary gains made by the Ports through their own innovations and initiatives. For example, as the Port of Long

³ IS, page 1-5.

⁴ IS, page 1-1.

Beach announced earlier this week, it has cut diesel particulates by eighty-one percent since 2005. The results for 2012 mark six straight years of improving air quality in the harbor area thanks to the Ports' focused efforts to reduce air pollution.

Please feel free to contact me if you have questions about these comments.

Regards,

UNION PACIFIC RAILROAD COMPANY



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