

December 15, 2006

Dr. Joe Cassmassi
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765-4178

Dear Dr. Cassmassi:

The Building Industry Association of Southern California is pleased to submit comments on the Draft 2007 Air Quality Management Plan. We urge that our recommendations be reflected in the Final Draft AQMP, Draft EIR and Socio-Economic Analysis to be released in January 2007.

Our comments in Attachment A cover eleven control measures that impact the development process and development projects, with particular emphasis on EGM-01, Emission Reductions from New Development and Redevelopment Projects. We will continue to work with the District, local governments and the broader business community to insure that the cleanest new residential, commercial and industrial development is neither delayed nor discouraged in the South Coast Air Basin, as it is the lynchpin of continued economic competitiveness, affordable housing, and a cleaner environment. To this end, we recommend that EGM-01 focus on the District's CEQA Approach option.

Further, we urge the District to work with the building and construction industries to achieve CARB construction equipment modernization requirements that are feasible and effective. This means rethinking the District's proposals to pursue VOC, NOx and PM reductions from construction equipment one pollutant at a time through three separate regulations within 12 years.

We also wish to highlight the widespread overlap between proposed control measures. For example, the Urban Heat Island, Energy Conservation, and New Development and Redevelopment Project measures are all designed to reduce emissions associated with energy consumption in duplicative ways. We urge the District to remove redundant measures from the Draft to avoid double-counting of emission benefits.

We look forward to continued discussion of these recommendations with you and your staff. Please do not hesitate to contact Mark Grey, BIA/SC's Director of Environmental Affairs, at 909/396-9993 or mgrey@biasec.org.

Sincerely,



Richard Lambros
Chief Executive Officer



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Cc: Dr. Barry Wallerstein
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District Governing Board Members and Assistants

Attachment A
Draft 2007 AQMP Control Measure Comments

1. EGM-01, Emission Reductions from New or Redevelopment Projects

Control Measure Summary

The Control Measure Summary that prefaces the New Development and Redevelopment control measure description is misleading:

Emissions due to new development and redevelopment are not estimated in this table. The emission inventory represents total emission growth from both existing and new development, not emission growth due to new development and redevelopment. For example, the proposed goal of 0.5 ton per day PM 2.5 benefit in 2020 amounts to 6.4% of the total PM 2.5 emissions growth due to both existing and new development and redevelopment projects. It is not possible to design an effective control strategy without knowing the amount of emissions that this measure is attempting to address.

The proposed emission reductions listed in the Control Measure Summary table were set by the District staff, rather than based on emission reduction potential of the control strategy. The text provides no insight into how these “goals” were selected.

Recommendation: Similar to other un-quantified control measures at this time, we recommend that the District remove all inventory estimates from the table, and replace with TBD, unless the emissions inventory for new development/redevelopment can be separated from total emission growth and quantified.

Furthermore, it is unknown how much emission reduction benefit the development/redevelopment measure could provide. The emission inventory for this source category has not been quantified and the control measure actions cannot be quantified at this time. Consistent with other un-quantified control measures, emission benefits should be listed as TBD.

CEQA Approach

Of the three compliance options outlined in the Draft AQMP, we support the District’s third option for EGM-01, the CEQA Approach. The District would provide improved guidance on state-of-the-art reasonable and feasible mitigation measures, control costs and efficiencies, and methods for analyzing project impacts and emission reductions. This updated information would make the District’s current CEQA Handbook, which has not received a comprehensive update since 1993, more relevant and usable for project sponsors, consultants,

local elected officials and local lead agencies. In addition, the District would enhance its actions as a CEQA commenting agency, forging working relationships with local governments to improve project analysis and mitigation.

Benefits of this approach include the following:

- The legal framework for CEQA already exists, is well-understood and respects local prerogatives.
- The best available mitigation information will be available to project sponsors and lead agencies at the earliest stages of project design when mitigation can best be accomplished.
- Local governments and air quality regulators will maintain their proper roles in project decision-making but forge better working relationships for long-term results.
- No additional mandatory or voluntary District fee is required; lead agencies, working with project proponents, retain their ability to select project mitigation measures and/or in-lieu fees as appropriate.
- Mitigation efforts and expenditures will provide benefits to residents and occupants in the community impacted by project emissions.

However, we do not support the new CEQA Mitigation Fee proposal. This fee goes beyond all reasonable and feasible control measures determined by the local lead agency based on the District's improved mitigation guidance and enhanced commenting functions.

Recommendation: The Final Draft 2007 AQMP EGM-01 proposal should reflect the CEQA Approach, minus the proposed CEQA Mitigation Fee Program. The optimal approach requires a combination of updates and initiatives to address construction, building components, and mobile source emissions, with the District's CEQA Approach providing a central point of coordination. Our primary recommendation is to use the existing CEQA project review process set forth in California state law more uniformly and efficiently to insure that project air quality impacts are reduced using all reasonable and feasible mitigation measures. The CEQA Approach requires a sustained working partnership between the District and local agencies with the authority to make permit and mitigation decisions. The District would provide state-of-the-art information to project sponsors and local permitting agencies on available and desirable forms of mitigation. Local permitting agencies would require District-recommended mitigation measures for individual projects to the extent applicable, reasonable, feasible and cost-effective.

Three recommendations support the emission reduction benefits of the CEQA Approach:

- * Construction emissions should be reduced by CARB's forthcoming construction equipment modernization and portable equipment regulations, which should be adopted consistent with reasonable expectations concerning the phasing-out of current inventories and fleets. The required use of low-sulfur diesel for both construction equipment and portable engines will continue to reduce emissions. Construction dust emissions will continue to be reduced by the District's Rule 403 fugitive dust requirements.
- * Building component emissions should be reduced through voluntary energy efficiency programs, including California Green Builder residential program, the LEED commercial/industrial certification program, and other similar initiatives.
- * Mobile source emissions due to passenger and service vehicles should be reduced by three efforts: 1) vehicle engine and fuel requirements adopted and implemented by CARB; 2) strategic transit planning and investments by state, regional and local agencies as described in the Regional Transportation Plan (RTP) and Draft AQMP Appendix IV-C; and 3) coordinated land use/transportation planning by regional and local agencies as incorporated into the RTP and 2% Growth Forecast Policy that underpin the AQMP.

Finally, updated District staff estimates of emissions addressed by EGM-01 have been provided to the EGM-01 stakeholder group convened by the District. The emission inventory appears much smaller than the original emission inventory in the Draft AQMP. We see no reason why emission reductions from new development architectural coatings, construction equipment, and construction/demolition, and similar building components and processes cannot be effectively addressed by existing and proposed District rules and the CEQA air quality mitigation process – without the need for a separate new mitigation process and fees.

San Joaquin Valley APCD Approach.

The regulatory history of the San Joaquin Valley Air Pollution Control District (SJVAPCD) Rule 9510 does not mention that the rule is currently being litigated in state court on the basis that it fails to provide a nexus between the affected development project and the expenditure of new development fees, {California Building Industry Association v. San Joaquin Valley Air Pollution Control District, Case No. 06CECG02 (AMS), Fresno County Superior Court (filed June 27, 2006)}. This fact should be disclosed to all persons reviewing and commenting on the San Joaquin Approach. Further pursuit of this approach in the AQMP could be invalidated by the courts.

The San Joaquin Approach description does not mention that the rule is applicable to institutional projects including schools, libraries and public works.

The SJVAPCD Rule 9510 emission reductions were set arbitrarily and do not reflect any South Coast Air Basin experience or data on new development emissions or control efficiencies. The SJVAPCD Rule 9510 emission reduction thresholds should not be used as a measure of the emission reductions that could be cost-effectively obtained in the South Coast Air Basin from new development and redevelopment.

The description of the San Joaquin Approach fails to provide examples of the fee amounts for typical residential, commercial, industrial and institutional projects estimated by the SJVAPCD. By 2008, SJVAPCD estimates an average new house must pay a \$1,772 fee, or provide equivalent mitigation. A typical light industrial project would pay \$300,677 in 2010; a typical industrial park would pay \$180,926 in 2010. Commercial projects range from \$186,000 for a typical convenience shopping center, to \$450,500 for a mini-mart with gas station, to \$8.36 million for a super-regional shopping center.

Nor does the description provide information on how a fee would be set. The SJVAPCD Rule 9510 relies on URBEMIS to calculate project emissions subject to mitigation and fee requirements, even though URBEMIS is only a screening tool and does not provide the accuracy needed to set proportionate fees.

The San Joaquin Approach description refers to an "other equivalent approach to meet the state law requirements." There is no state law that requires the SCAQMD to adopt a San Joaquin-type rule or any other type of indirect source rule.

The San Joaquin Approach does not guarantee that fees paid by new development and redevelopment projects will be used to purchase mitigations that benefit the project area. This lack of nexus is a strong concern given that the fees are being assessed mainly to reduce mobile source emissions related to, but not controlled by, the project. The District would not be accountable to local agencies or taxpayers for their expenditures or fee increases.

Mitigation decisions and fee payment will require a separate, costly bureaucracy outside of and in addition to the CEQA project review and local permitting processes.

Expenditure of fees collected under a San Joaquin Approach will also require a costly bureaucracy to select and monitor emission reductions purchased with the fees.

We further note that, under the San Joaquin Approach, the District would set the standards for mitigation and fee payment, as well as the amount of the fee. This dual role allows the District to manipulate the revenues from the control measure without any accountability to taxpayers.

Recommendation: We recommend that the San Joaquin Approach be removed from further consideration, given the lack of nexus between the San Joaquin Rule 9510 thresholds and South Coast Air Basin conditions; a fee structure that does not relate to costs and efficiencies in the South Coast Air Basin; the inability of such an approach to directly reduce mobile source emissions related to the affected project; conflicts with the state's affordable housing mandate; the lack of basic information necessary for evaluation in the Draft EIR and socio-economic analysis; and the lack of fiscal accountability to the public.

New Development Project Threshold Approach.

The New Development Project Threshold Approach is described in such general terms that it is not possible to understand the potential air quality benefits and costs of this strategy, or comment constructively on the effects it would have on the development process or local lead agency activities. No examples of a possible threshold are provided. However, District management has discussed mitigating new residential, commercial, industrial, and institutional projects down to the level of CEQA air quality significance, but this threshold is not specified in the Draft AQMP text.

This approach risks setting up an impossible challenge: requiring projects to mitigate beyond all reasonable and feasible mitigations, thereby forcing them to pay a fee. If the rule threshold were set at the level of CEQA significance, most residential projects could not meet the threshold with available mitigation measures and would have no alternative but to reduce the amount of housing or pay an unspecified fee for future mobile source emissions that are beyond the project sponsor's and local lead agency's control in the first place. Both of these outcomes are unacceptable. Reduced housing production is inconsistent with the state mandate for housing production, and will harm local government efforts to produce fair share housing. Likewise, burdensome fees will impact local government efforts to produce affordable housing.

Further, no information is provided on the magnitude of a fee, or the method by which a fee would be set for a project. The description of this approach does not address how the District would direct fees collected to the impacted community.

This additional regulatory requirement for projects would overlap and duplicate the CEQA project review and mitigation process, causing confusion and unnecessary complication and costs for project sponsors and local lead agencies. Local lead agencies would not be required to give CEQA mitigation credit for air quality mitigation required by a District rule.

Additional, unspecified commercial/industrial project air quality costs above and beyond those required through the CEQA process will discourage construction of cleaner workplaces and service businesses, thereby hampering economic development, redevelopment, and brownfield development. For example, brownfield redevelopment is already extremely difficult and costly; additional air

quality mitigation requirements and fees will result in delays or cancellations of desirable projects.

Nothing in the description of this approach explains how the proposed rule and fee would actually reduce emissions from the main target of a new development and redevelopment control measure: passenger vehicle emissions. In fact, mobile source emissions will diminish over time as cleaner vehicles that meet CARB engine and fuel requirements penetrate the fleet. This measure will provide diminishing returns, while imposing significant bureaucracy and costs on projects.

Recommendation: We recommend that this approach be removed from further consideration, given the lack of a proposed threshold, a proposed fee, proposed emission reduction benefits, the inability of such an approach to directly reduce mobile source emissions related to the affected project, conflicts with the state's affordable housing mandate, and the lack of basic information necessary for evaluation in the Draft EIR and socio-economic analysis.

General: Overlap and Duplication Among Proposed Control Measures

We have a general concern about the amount of overlap and duplication of effort and emission benefit between EGM-01 and other proposed control measures. For example, the Urban Heat Island, Energy Conservation and Efficiency, and New Development and Redevelopment Project control measures all include emission reductions resulting from strategies such as light colored roofing, paving and cladding and shade landscaping.

If the District were to adopt Urban Heat Island, Fireplace, and Space Heater rules, they would remove a wide array of mitigation options from the EGM-01 control measure, leaving projects with few options to paying an in-lieu fee.

Recommendation: We recommend that the District remove overlapping measures to avoid double-counting of emission benefits. Our industry favors direct control of emission sources whenever possible to insure that emission reductions can be quantified and counted toward attainment. In removing redundant measures, then, we recommend retaining those that address sources directly rather than indirectly, such as EGM-01.

2. EGM-02, Emission Budget and Mitigation for General Conformity Projects

The text of this measure does not define with sufficient clarity the type of projects that would be affected, nor does it clarify how this measure meshes with EGM-01, Emission Reductions from New Development and Redevelopment Projects. EGM-02 applies only to Federal conformity projects. However, it appears that EGM-01 also applies to the same federal projects, as federal projects are not

identified as exempt in the control measure description. It is unclear which rule, EGM-01 or EGM-02 would govern federal conformity project construction emissions.

The General Conformity measure reserves 1% of remaining emissions in every source category for federal projects. The control measure description does not explain how the size of this reserve was determined, nor why the District believes this is an appropriate reserve.

Recommendation: Overlaps between EGM-02 and EGM-01 should be sorted out and eliminated. The rationale for setting a budget of 1% for all emission categories should be explained and related to the types of projects that would be eligible for the General Conformity reserve.

3. LTM-04, Concurrent Reductions from Global Warming Strategies

To the extent that global warming measures pursuant to AB 32 provide concurrent VOC, NO_x, and PM 2.5 emission reductions, they should be counted toward the South Coast Air Basin's attainment status. While we support this concept of taking concurrent credit, the 15% emission reduction estimate included in the Draft AQMP is neither explained nor related to any available emission reduction data. We cannot determine at this time if a 15% reduction in criteria pollutants is a realistic expectation.

The control measure text identifies the California Solar Initiative, the Building Efficiency Standards, and Green Building Initiative as programs under other state agencies that might be a source of concurrent greenhouse gas and criteria pollutant reductions. It is too early to know the extent to which these programs can provide NO_x, VOC and PM 2.5 emission reductions above and beyond energy efficiency, urban heat island, and emissions growth management measures already in the Draft AQMP. In refining its longterm expectations, the District must identify and eliminate any duplication between its proposed control measures and this long-term measure.

4. LTM-05, Further VOC Reductions from Mobile Sources

This measure proposes to achieve 20 tons per day of VOC emission reductions by 2020 from mobile sources including construction equipment. The building and construction industries are focused on accelerating construction equipment fleet turnover, and have been working with CARB to draft a construction equipment modernization rule. CARB's construction equipment regulation is expected to result in an 85% reduction in construction emissions. It is not clear that construction equipment can contribute to the 20 tons per day emission reduction target beyond the emission reductions that will already be achieved through the CARB regulation.

This measure, along with District's other proposed fleet modernization rule that would go beyond CARB's proposal, would result in three successive waves of requirements in twelve years. Given the cost and complexity of implementing engine add-on technology, retrofits, repowering and replacement, this plan to make three changes is unrealistic and counterproductive to encouraging compliance in the regulated community.

Recommendation: We recommend that the District work with CARB to establish a single set of statewide regulations for construction equipment, and eliminate construction equipment from this extra round of regulation.

5. FUG-03 Emission Reductions from Cutback Asphalt

The building industry would like to work with the District to achieve cleaner asphalt use in the South Coast Air Basin, provided that new requirements are cost-effective. However, we are concerned with the prospect of seasonal prohibitions against use of asphalts. Such prohibitions would interfere with delivery of housing and other projects needed to meet the needs of the South Coast Air Basin's growing population. The resulting project delays would have a major impact on congestion and regional economic competitiveness.

Recommendation: We recommend that the District eliminate seasonal prohibitions from the proposed control measure on the grounds that they are impractical in a heavily developed and populated area such as the South Coast Basin that requires maintenance and new facilities all year long. Seasonal prohibitions would delay delivery of projects that provide air quality, affordable housing and transportation congestion benefits that outweigh any shift in asphalt emissions from hot to colder seasons.

6. CMB-03 Further NOx Reductions from Space Heaters

The building industry looks forward to installing space heaters that comply with this rule in all new homes. We caution, though, that the proposed compliance deadline of 2011 may not be practically feasible. Compliant space heater prototypes must meet all applicable state and federal safety and performance requirements in addition to the District's proposed emission requirements before they can be sold and installed in the South Coast Air Basin. The District's experience with pushing low-emission water heater technology indicates that while compliant prototypes may be available, complete certification of the units is dependent on factors and certification procedures outside the control of the manufacturer and District.

Recommendation: We urge the District to work with the gas appliance manufacturers to establish an appropriate compliance deadline that reflects safety and performance, as well as emission reduction, considerations.

7. BCM-02 PM Emission Hot Spots—Localized Control Programs

We support localized PM control programs that are confined only to those areas requiring additional efforts to reach the federal standards.

We note that implementation of this measure must be coordinated with other measures. For example, one proposed control strategy calls for the District to work with economic development agencies to expedite construction activities affecting fugitive dust sources, including paving of roads and parking areas, which would require the use of asphalt, and would cause construction emissions.

Recommendation: The District must avoid proposed seasonal cutback asphalt regulations and emission growth management construction emission requirements that would work against prompt paving.

8. BCM-03 Wood Burning Fireplaces and Wood Stoves

We support cost-effective, commercially available technological controls for fireplaces in new developments and in remodeling and redevelopment projects. To this end, our industry will continue to work with the District's Residential Wood Burning Working Group to reach a regulatory requirement that allows fireplace amenities in new developments as long as they are controlled.

We also encourage the District to complete its discussions with the Residential Wood Burning Working Group regarding the residential wood burning emission inventory. Emission inventory information would be more useful if fireplaces and wood burning stove emissions were separated. The two devices are used differently and appropriate regulations will need to recognize these different characteristics. The Control Measure Summary indicates that this measure would achieve a 0.7 ton per day reduction of PM 2.5 in both 2014 and 2020. However, this benefit is a rough estimate based on the Sacramento Air Basin rather than the South Coast Air Basin, and should be refined to reflect local conditions.

Recommendation: This control measure should allow fireplaces and wood burning stoves in all new housing as long as the emissions are controlled using cost-effective technology. The District should provide separate emission inventories for fireplaces and for wood-burning stoves. Based on these inventories, the District should adjust its control efficiency estimate for fireplaces and for wood burning stoves to reflect the actual emission reduction potential in the South Coast Air Basin, rather than rely on percentages prepared by the Sacramento Metropolitan Air Quality Management District. Further, the District

should work with the Residential Wood Burning Working Group to develop separate compliance regulations for these two devices as appropriate.

9. MCS-02 Urban Heat Island

Many green building strategies designed to reduce energy consumption intersect with the reflective roofing/paving/building cladding and landscaping measures described in this control measure. Project sponsors would benefit from information on the full array of options that would contribute to lower ambient heat at the earliest design stages. We support a control measure that encourages these features through incentives and public outreach. We do not support the District or local governments mandating new development projects, remodels or redevelopment projects to incorporate urban heat island features that go beyond the state's Title 24 Energy Efficiency Code.

Recommendation: We recommend that this measure be revised to focus on the use of incentives and public information campaigns to encourage voluntary inclusion of light colored roofing, paving and cladding in new projects, along with shading landscaping.

10. MCS-03 Energy Efficiency and Conservation

New development that complies with Title 24 is already the least energy-consuming in the nation, and many times cleaner than existing structures that pre-date unified energy code requirements. In fact, new homes in California are 30% more efficient than their nationwide counterparts. However, our industry is supportive of programs to reduce energy consumption beyond Title 24 as long as they are voluntary for the project sponsor.

The incentive approach described by the District is the most effective way to encourage more aggressive energy conservation. We question, though, whether the District is the most appropriate agency to undertake either voluntary public outreach or incentive programs given the expertise and track record of the energy utilities and California Energy Commission in offering rebate programs and other incentives.

Further, it is unclear that this voluntary, incentive-based approach to energy conservation would provide emission reductions within the South Coast Air Basin. Finally, this measure and its emission reduction benefits overlap with the Urban Heat Island measure; both include efforts to reduce emissions through lowered energy consumption from project features such as reflective roofs, paving, cladding and landscaping. This measure also overlaps with the Emission Reductions from New Development and Redevelopment; EGM-01 also takes emission reduction credit for reduced energy consumption from new development

emission mitigation measures which includes more efficient appliances, reflective building features, and shade landscaping.

Recommendation: We recommend that this measure be tabled unless and until a realistic emission reduction benefit and funding source can be defined. It appears that the other control measures in the Draft AQMP that address facility modernization, new development, and urban heat island would adequately address voluntary and incentive-based opportunities to encourage energy efficiency beyond Title 24.

11. OFFRD-01 Construction /Industrial Fleet Modernization

As part of the Construction Industry Air Quality Coalition (CIAQC), our industry has worked with CARB to prepare feasible construction equipment modernization regulations. This proposed District overlay to CARB's draft regulation fails to coordinate NOx and PM emission reductions.

This measure, along with LTM-05, Further VOC Reductions from Mobile Sources, and CARB's proposed construction equipment regulations appear to result in three successive waves of requirements in twelve years to deal with VOC, NOx and PM. Given the cost and complexity of implementing engine retrofits, repowers and replacements, this plan to make separate technology changes to address VOC, NOx and PM is unrealistic, very costly and counterproductive to encouraging compliance in the regulated community.

Recommendation: We encourage the District to work with CARB to develop a single coordinated, cost-effective, feasible state program to accomplish construction equipment modernization at the earliest practicable date. CIAQC is proposing a regulation that would reduce PM emissions statewide 75% by 2015 with a Tier 1 fleet PM emission average by 2015 and a Tier 3 fleet PM emission average by 2025. This proposal would also result in significant reductions in NOx.