ATTACHMENT D

[PROPOSED]

FINDINGS and STATEMENT OF OVERRIDING CONSIDERATIONS

Introduction

The California Air Resources Board (ARB), as the lead agency for the proposed Low Carbon Fuel Standard (LCFS) and Alternative Diesel Fuel (ADF) regulations (or "proposed regulations"), prepared a Draft Environmental Analysis (EA) in accordance with its certified regulatory program (Cal. Code Regs., tit. 17, §§ 60000 – 60008) to comply with the requirements of the California Environmental Quality Act (CEQA) (Pub. Resources Code, §21000, *et seq.*). The Draft EA, entitled *Draft Environmental Analysis prepared for the Low Carbon Fuel Standard and Alternative Diesel Fuel Regulations*, and included as Appendix D to the Staff Reports (Initial Statement of Reasons), provided an analysis of the potential environmental impacts associated with the two proposed regulations combined.

The Draft EA is based on the expected compliance responses of the regulated entities covered by the proposed LCFS and ADF regulations. Although the policy aspects and requirements of the proposed regulations do not directly change the physical environment, there are potential indirect physical changes to the environment that could result from reasonably foreseeable actions undertaken by entities in response to the proposed regulations and the market. These indirect impacts are the focus of the programmatic-level impacts analysis in the Draft EA.

The Draft EA concluded that compliance responses to the proposed regulations would result in beneficial impacts from reduced greenhouse gas (GHG) emissions through substantial reductions in lifecycle emissions from transportation fuels in California from 2016 through 2020 and beyond, long-term beneficial impacts to air quality through reductions in criteria pollutants, and beneficial impacts from reduced energy demand. It further concluded that the proposed regulations could result in: less than significant impacts or no impacts to mineral resources, population and housing, public services, and recreation; and potentially significant and unavoidable adverse impacts to aesthetics, agriculture resources, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use and planning, noise, transportation and traffic, utilities, and short-term construction-related impacts to air quality (primarily related to reasonably foreseeable construction projects and minor expansions to existing operations). (Attachment 2 of the Draft EA provides a table with a summary of impacts.)

ARB's certified regulatory program requires that before adoption of an action for which significant adverse environmental impacts have been identified during the review process, ARB consider feasible mitigation measures and alternatives that could substantially reduce the impacts. (Cal. Code Regs, tit. 17, §60006.) CEQA places the burden on the approving agency to affirmatively show that it has considered feasible mitigation and alternatives that can lessen or avoid identified impacts through a statement of findings for each identified significant impact. (Pub. Resources Code, §21081.) CEQA Guidelines section 15091

provides direction on the content of the statement of findings. That section states that one or more of the following findings should be identified for each impact:

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

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

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

Because the potential adverse impacts identified in this programmatic level EA are potential indirect impacts associated with the compliance responses of covered entities, the authority to determine site- or project-specific mitigation is within the purview of jurisdictions with local permitting authority, such as city or county governments and local air districts. ARB does not have the ability to determine with any specificity the project level impacts, nor the authority to require project level mitigation in approving the proposed regulations, as discussed in the findings below.

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

As noted above, the agency action analyzed in the EA is ARB's proposed adoption of the LCFS and ADF regulations, and the two regulations are consequently the "project" as defined in CEQA Guidelines section 15378. However, these findings – as the EA itself – also use the word "project" in discussing the subsequent actions individual regulated entities may take in response to the regulations, for example, the construction and operation of new or expanded fuel facilities. In most cases, these future projects, while a reasonably foreseeable indirect consequence of the proposed regulations and analyzed on a programmatic level in the EA, will be subject to review by and approval by agencies other than ARB.

STATEMENT OF FINDINGS

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

Aesthetics

Finding and Explanation

Implementation of the proposed regulations is anticipated to provide incentives for various construction projects (processing plants for agriculture-based ethanol, cellulosic ethanol, and biomethane), minor expansions to existing operations (digester facilities at dairies, modifications to crude production facilities with onsite solar, wind, heat, and/or steam generation electricity), and installation of energy management systems at refineries. In addition, LCFS credits could be generated through development of carbon capture and sequestration (CCS) facilities and expansion of fixed guideway systems. The EA found development and operation of these facilities, although expected to occur in areas appropriately zoned, could conceivably introduce or increase the presence of visible artificial elements (e.g., heavy-duty equipment, vegetation removal, new or expanded buildings) in areas of scenic importance, such as visibility from State scenic highways. In addition, facility operation may introduce substantial sources of glare, exhaust plumes, and nighttime lighting for safety and security purposes. Therefore, short-term construction-related impacts and long-term operational impacts on aesthetics associated with implementation of the proposed LCFS and ADF regulations could be potentially significant.

The EA identified recognized measures, including existing statutes and regulations and operating permit requirements, designed to reduce these potentially significant impacts. The Board finds that because the adverse impacts identified in the EA are potential indirect impacts associated with the compliance responses of covered entities, the authority to determine site- or project-specific mitigation is within the purview of jurisdictions with land use approval and permitting authority, such as city or county governments. Public agencies with authority can and should implement the identified measures to the degree feasible. Because the authority to determine project-level impacts and require project-level mitigation lies with land use and/or permitting agencies for individual projects, and the programmatic level of analysis associated with the EA does not attempt to address project-specific details of mitigation, there is inherent uncertainty in the degree of mitigation that may ultimately by implemented to reduce potentially significant impacts to this resource. Consequently, while impacts could be reduced to a less-than-significant level by land use and/or permitting agency conditions of approval, the Board takes a conservative approach in its post-mitigation significance conclusion and finds the impacts to this resource associated with the proposed LCFS and ADF regulations would be potentially significant and unavoidable.

Agricultural and Forest Resources

Finding and Explanation

Implementation of the proposed regulations is anticipated to provide incentives for various construction projects (processing plants for agriculture-based ethanol, cellulosic ethanol, and biomethane), minor expansions to existing operations (digester facilities at dairies, modifications to crude production facilities with onsite solar, wind, heat, and/or steam generation electricity), and installation of energy management systems at refineries. In addition, LCFS credits could be generated through development of CCS facilities and expansion of fixed guideway systems. The EA found that new facilities or modification of existing facilities and increased demand for and cultivation of fuel-based agricultural

feedstocks associated with implementation of the proposed regulations could result in potentially significant impacts to agricultural and forest resources.

The EA identified recognized measures, including existing statutes and regulations and operating permit requirements, designed to reduce these potentially significant impacts. The Board finds that because the adverse impacts identified in the EA are potential indirect impacts associated with the compliance responses of covered entities, the authority to determine site- or project-specific mitigation is within the purview of jurisdictions with land use approval and permitting authority, such as city or county governments. Public agencies with authority can and should implement the identified measures to the degree feasible. Because the authority to determine project-level impacts and require project-level mitigation lies with land use and/or permitting agencies for individual projects, and the programmatic level of analysis associated with the EA does not attempt to address project-specific details of mitigation, there is inherent uncertainty in the degree of mitigation that may ultimately by implemented to reduce potentially significant impacts to this resource. Consequently, while impacts could be reduced to a less-than-significant level by land use and/or permitting agency conditions of approval, the Board takes a conservative approach in its post-mitigation significance conclusion and finds the impacts to this resource associated with the proposed LCFS and ADF regulations would be potentially significant and unavoidable.

Air Quality

Finding and Explanation

Implementation of the proposed regulations is anticipated to provide incentives for various construction projects (processing plants for agriculture-based ethanol, cellulosic ethanol, and biomethane), minor expansions to existing operations (digester facilities at dairies, modifications to crude production facilities with onsite solar, wind, heat, and/or steam generation electricity), and installation of energy management systems at refineries. In addition, LCFS credits could be generated through development of CCS facilities and expansion of fixed guideway systems. The EA found that development of new or modified facilities could result in short-term construction-related air quality impacts, resulting in a temporary and intermittent increase in pollutant emissions, including emissions of criteria air pollutants, toxic air contaminents (TACs), particulate matter (PM), nitrogen oxides (NOx), and reactive organic gases (ROG). The EA found implementation of the proposed regulations would result in long-term beneficial air quality impacts from reduced emissions of PM, CO, TAC, and other air pollutants compared to current baseline conditions.

The EA identified recognized measures, including existing statutes and regulations and operating permit requirements, designed to reduce the short-term construction-related air quality impacts. The Board finds that because the adverse impacts identified in the EA are potential indirect impacts associated with the compliance responses of covered entities, the authority to determine site- or project-specific mitigation is within the purview of jurisdictions with land use approval and permitting authority, such as city or county governments. Public agencies with authority can and should implement the identified measures to the degree feasible. Because the authority to determine project-level impacts and require project-level mitigation lies with land use and/or permitting agencies for individual projects, and the programmatic level of analysis associated with the EA does not attempt to address project-specific details of mitigation, there is inherent uncertainty in the degree of mitigation that may

ultimately by implemented to reduce potentially significant impacts to this resource. Consequently, while impacts could be reduced to a less-than-significant level by land use and/or permitting agency conditions of approval, the Board takes a conservative approach in its post-mitigation significance conclusion and finds the short-term construction-related impacts to this resource associated with the proposed LCFS and ADF regulations would be potentially significant and unavoidable.

The EA found that while use of biodiesel can increase NOx emissions in some engines, depending in part on feedstock and blend level, total NOx emissions from biodiesel will decline from the 2014 baseline level under the proposed LCFS and ADF. Therefore, the Board finds that the use of biodiesel consistent with the proposed ADF will not result in a significant adverse impact to air quality.

Biological Resources

Finding and Explanation

Implementation of the proposed regulations is anticipated to provide incentives for various construction projects (processing plants for agriculture-based ethanol, cellulosic ethanol, and biomethane), minor expansions to existing operations (digester facilities at dairies, modifications to crude production facilities with onsite solar, wind, heat, and/or steam generation electricity), and installation of energy management systems at refineries. In addition, LCFS credits could be generated through development of CCS facilities and expansion of fixed guideway systems. The EA found that biological resources could be affected by the construction and operation of new or modified manufacturing plants or renewable energy projects depending on the specific location of any necessary construction and its environmental setting. There is uncertainty as to the exact location and construction could require disturbance of undeveloped areas; therefore, short-term construction-related and long-term operational impacts on biological resources could be potentially significant. Additionally, implementation of the proposed regulations could encourage the production of lower-CI value crops and land conversion, which could result in significantly adverse impacts on biological species and their habitat.

The EA identified recognized measures, including existing statutes and regulations and operating permit requirements, designed to reduce these potentially significant impacts. The Board finds that because the adverse impacts identified in the EA are potential indirect impacts associated with the compliance responses of covered entities, the authority to determine site- or project-specific mitigation is within the purview of jurisdictions with land use approval and permitting authority, such as city or county governments. Public agencies with authority can and should implement the identified measures to the degree feasible. Because the authority to determine project-level impacts and require project-level mitigation lies with land use and/or permitting agencies for individual projects, and the programmatic level of analysis associated with the EA does not attempt to address project-specific details of mitigation, there is inherent uncertainty in the degree of mitigation that may ultimately by implemented to reduce potentially significant impacts to this resource. Consequently, while impacts could be reduced to a less-than-significant level by land use and/or permitting agency conditions of approval, the Board takes a conservative approach in its post-mitigation significance conclusion and finds the impacts to this resource associated with the proposed LCFS and ADF regulations would be potentially significant and unavoidable.

Cultural Resources

Finding and Explanation

Implementation of the proposed regulations is anticipated to provide incentives for various construction projects (processing plants for agriculture-based ethanol, cellulosic ethanol, and biomethane), minor expansions to existing operations (digester facilities at dairies, modifications to crude production facilities with onsite solar, wind, heat, and/or steam generation electricity), and installation of energy management systems at refineries. In addition, LCFS credits could be generated through development of CCS facilities and expansion of fixed guideway systems. The EA found that new facilities or modification of existing facilities associated with implementation of the proposed regulations could potentially affect cultural resources through ground disturbance activities that may include prehistoric and historical archaeological sites, paleontological resources, historic buildings, structures, or archaeological sites associated with agriculture and mining, and heritage landscapes. Therefore, Short-term construction-related impacts on cultural resources associated with the proposed LCFS and ADF regulations would be potentially significant.

The EA identified recognized measures, including existing statutes and regulations and operating permit requirements, designed to reduce these potentially significant impacts. The Board finds that because the adverse impacts identified in the EA are potential indirect impacts associated with the compliance responses of covered entities, the authority to determine site- or project-specific mitigation is within the purview of jurisdictions with land use approval and permitting authority, such as city or county governments. Public agencies with authority can and should implement the identified measures to the degree feasible. Because the authority to determine project-level impacts and require project-level mitigation lies with land use and/or permitting agencies for individual projects, and the programmatic level of analysis associated with the EA does not attempt to address project-specific details of mitigation, there is inherent uncertainty in the degree of mitigation that may ultimately by implemented to reduce potentially significant impacts to this resource. Consequently, while impacts could be reduced to a less-than-significant level by land use and/or permitting agency conditions of approval, the Board takes a conservative approach in its post-mitigation significance conclusion and finds the impacts to this resource associated with the proposed LCFS and ADF regulations would be potentially significant and unavoidable.

Geology and Soils

Finding and Explanation

Implementation of the proposed regulations is anticipated to provide incentives for various construction projects (processing plants for agriculture-based ethanol, cellulosic ethanol, and biomethane), minor expansions to existing operations (digester facilities at dairies, modifications to crude production facilities with onsite solar, wind, heat, and/or steam generation electricity), and installation of energy management systems at refineries. In addition, LCFS credits could be generated through development of CCS facilities and expansion of fixed guideway systems. The EA found that construction and operational activities could occur but with uncertainty as to the exact location. Construction activities could require disturbance of undeveloped areas susceptible to soil compaction, soil erosion, and loss of topsoil during construction, which could result in potentially significant short-term construction-related impacts and long-term operational impacts on geology and soils. The

EA also found that the proposed regulations could encourage the implementation of carbon capture and sequestration (CCS) projects with potential for increased risk of seismic events, although specific long-term effects of CCS projects are largely unknown due to the uncertainty of locations or geologic settings. Therefore, long-term impacts to soil and geologic resources associated with the proposed LCFS and ADF regulations could be potentially significant. Additionally, the EA found that changes in land use to produce biofuels could change soil properties such as erosion potential, quality, and drainage capability, resulting in long-term operational impacts to geology and soils. Because the location of future lands used, and the extent to which these impacts would result is unknown, this impact could be potentially significant.

The EA identified recognized measures, including existing statutes and regulations and operating permit requirements, designed to reduce these potentially significant impacts. The Board finds that because the adverse impacts identified in the EA are potential indirect impacts associated with the compliance responses of covered entities, the authority to determine site- or project-specific mitigation is within the purview of jurisdictions with land use approval and permitting authority, such as city or county governments. Public agencies with authority can and should implement the identified measures to the degree feasible. Because the authority to determine project-level impacts and require project-level mitigation lies with land use and/or permitting agencies for individual projects, and the programmatic level of analysis associated with the EA does not attempt to address project-specific details of mitigation, there is inherent uncertainty in the degree of mitigation that may ultimately by implemented to reduce potentially significant impacts to this resource. Consequently, while impacts could be reduced to a less-than-significant level by land use and/or permitting agency conditions of approval, the Board takes a conservative approach in its post-mitigation significance conclusion and finds the impacts to this resource associated with the proposed LCFS and ADF regulations would be potentially significant and unavoidable.

Hazard and Hazardous Materials

Finding and Explanation

Implementation of the proposed regulations is anticipated to provide incentives for various construction projects (processing plants for agriculture-based ethanol, cellulosic ethanol, and biomethane), minor expansions to existing operations (digester facilities at dairies, modifications to crude production facilities with onsite solar, wind, heat, and/or steam generation electricity), and installation of energy management systems at refineries. In addition, LCFS credits could be generated through development of CCS facilities and expansion of fixed guideway systems. The EA found that the potential for significant hazard to the public or the environment through upset and accident conditions involving the release of hazardous materials into the environment from fuel transfer and during construction activities, as well as activities related to CCS projects, associated with implementation of the proposed regulations could result in potentially significant short-term construction-related impacts and long-term operational impacts related to hazards and hazardous materials.

The EA identified recognized measures, including existing statutes and regulations and operating permit requirements, designed to reduce these potentially significant impacts. The Board finds that because the adverse impacts identified in the EA are potential indirect impacts associated with the compliance responses of covered entities, the authority to

determine site- or project-specific mitigation is within the purview of jurisdictions with land use approval and permitting authority, such as city or county governments. Public agencies with authority can and should implement the identified measures to the degree feasible. Because the authority to determine project-level impacts and require project-level mitigation lies with land use and/or permitting agencies for individual projects, and the programmatic level of analysis associated with the EA does not attempt to address project-specific details of mitigation, there is inherent uncertainty in the degree of mitigation that may ultimately by implemented to reduce potentially significant impacts to this resource. Consequently, while impacts could be reduced to a less-than-significant level by land use and/or permitting agency conditions of approval, the Board takes a conservative approach in its post-mitigation significance conclusion and finds the impacts to this resource associated with the proposed LCFS and ADF regulations would be potentially significant and unavoidable.

Hydrology and Water Quality

Finding and Explanation

Implementation of the proposed regulations is anticipated to provide incentives for various construction projects (processing plants for agriculture-based ethanol, cellulosic ethanol, and biomethane), minor expansions to existing operations (digester facilities at dairies, modifications to crude production facilities with onsite solar, wind, heat, and/or steam generation electricity), and installation of energy management systems at refineries. In addition, LCFS credits could be generated through development of CCS facilities and expansion of fixed guideway systems. The EA found that construction activities could require disturbance of undeveloped areas, and specific construction projects would require compliance with applicable erosion, water quality standards, and waste discharge requirements. Additionally, the EA found that improperly managed agricultural activities from working farms and ranches, including nonpoint source pollution, can adversely affect the water quality of surface water and ground water. Therefore, implementation of the proposed LCFS and ADF regulations could result in potentially significant adverse impacts on water quality associated with short-term construction-related and long-term operational changes in land use. The EA also found that CCS/EOR projects could be incentivized under the proposed LCFS and ADF regulation and could result in risk of emissions of contaminants released into the environment due to unidentified and/or poorly abandoned wells or other pathways. While development of an environmentally protective, regulatory framework to address CCS/EOR projects is ongoing, specific requirements and limitations have not yet been fully established, so potential risks of contamination cannot be entirely dismissed. Therefore, long-term operational impacts to hydrologic resources associated with implementing the regulations could be potentially significant.

The EA identified recognized measures, including existing statutes and regulations and operating permit requirements, designed to reduce these potentially significant impacts. The Board finds that because the adverse impacts identified in the EA are potential indirect impacts associated with the compliance responses of covered entities, the authority to determine site- or project-specific mitigation is within the purview of jurisdictions with land use approval and permitting authority, such as city or county governments. Public agencies with authority can and should implement the identified measures to the degree feasible. Because the authority to determine project-level impacts and require project-level mitigation lies with land use and/or permitting agencies for individual projects, and the programmatic level of analysis associated with the EA does not attempt to address project-specific details of

mitigation, there is inherent uncertainty in the degree of mitigation that may ultimately by implemented to reduce potentially significant impacts to this resource. Consequently, while impacts could be reduced to a less-than-significant level by land use and/or permitting agency conditions of approval, the Board takes a conservative approach in its post-mitigation significance conclusion and finds the impacts to this resource associated with the proposed LCFS and ADF regulations would be potentially significant and unavoidable.

Noise

Finding and Explanation

Implementation of the proposed regulations is anticipated to provide incentives for various construction projects (processing plants for agriculture-based ethanol, cellulosic ethanol, and biomethane), minor expansions to existing operations (digester facilities at dairies, modifications to crude production facilities with onsite solar, wind, heat, and/or steam generation electricity), and installation of energy management systems at refineries. In addition, LCFS credits could be generated through development of CCS facilities and expansion of fixed guideway systems. The EA found that impacts to noise would result in less than significant, except for potentially significant increases in ambient noise as a result of construction-related activities associated with implementation of the proposed LCFS and LDF regulations.

The EA identified recognized measures, including existing statutes and regulations and operating permit requirements, designed to reduce these potentially significant impacts. The Board finds that because the adverse impacts identified in the EA are potential indirect impacts associated with the compliance responses of covered entities, the authority to determine site- or project-specific mitigation is within the purview of jurisdictions with land use approval and permitting authority, such as city or county governments. Public agencies with authority can and should implement the identified measures to the degree feasible. Because the authority to determine project-level impacts and require project-level mitigation lies with land use and/or permitting agencies for individual projects, and the programmatic level of analysis associated with the EA does not attempt to address project-specific details of mitigation, there is inherent uncertainty in the degree of mitigation that may ultimately by implemented to reduce potentially significant impacts to this resource. Consequently, while impacts could be reduced to a less-than-significant level by land use and/or permitting agency conditions of approval, the Board takes a conservative approach in its post-mitigation significance conclusion and finds the impacts to this resource associated with the proposed LCFS and ADF regulations would be potentially significant and unavoidable.

Transportation and Traffic

Finding and Explanation

Implementation of the proposed regulations is anticipated to provide incentives for various construction projects (processing plants for agriculture-based ethanol, cellulosic ethanol, and biomethane), minor expansions to existing operations (digester facilities at dairies, modifications to crude production facilities with onsite solar, wind, heat, and/or steam generation electricity), and installation of energy management systems at refineries. In addition, LCFS credits could be generated through development of CCS facilities and expansion of fixed guideway systems. The EA concluded that implementation of the LCFS

and ADF regulations would result in less than significant impacts to transportation and traffic, except for potential effects of short-term construction-related activities, due to commute and material delivery-related trips, associated with development of new facilities and/or modifications to existing facilities.

The EA identified recognized measures, including existing statutes and regulations and operating permit requirements, designed to reduce these potentially significant impacts. The Board finds that because the adverse impacts identified in the EA are potential indirect impacts associated with the compliance responses of covered entities, the authority to determine site- or project-specific mitigation is within the purview of jurisdictions with land use approval and permitting authority, such as city or county governments. Public agencies with authority can and should implement the identified measures to the degree feasible. Because the authority to determine project-level impacts and require project-level mitigation lies with land use and/or permitting agencies for individual projects, and the programmatic level of analysis associated with the EA does not attempt to address project-specific details of mitigation, there is inherent uncertainty in the degree of mitigation that may ultimately by implemented to reduce potentially significant impacts to this resource. Consequently, while impacts could be reduced to a less-than-significant level by land use and/or permitting agency conditions of approval, the Board takes a conservative approach in its post-mitigation significance conclusion and finds the impacts to this resource associated with the proposed LCFS and ADF regulations would be potentially significant and unavoidable.

Utilities and Service Systems

Finding and Explanation

Implementation of the proposed regulations is anticipated to provide incentives for various construction projects (processing plants for agriculture-based ethanol, cellulosic ethanol, and biomethane), minor expansions to existing operations (digester facilities at dairies, modifications to crude production facilities with onsite solar, wind, heat, and/or steam generation electricity), and installation of energy management systems at refineries. In addition, LCFS credits could be generated through development of CCS facilities and expansion of fixed guideway systems. The EA found that implementation of the LCFS and ADF regulations would involve construction of new facilities and/or modification of existing facilities that would affect the demand for water supply, wastewater treatment, stormwater, and solid waste infrastructure, but these are not expected to exceed the capacity of the local providers or necessitate an increase in service capacities and associated infrastructure. New facilities, however, could generate substantial increases in the demand for water supply, wastewater treatment, stormwater, and solid waste services for their local areas that could result in potentially significant impacts to utilities and service systems.

The EA identified recognized measures, including existing statutes and regulations and operating permit requirements, designed to reduce these potentially significant impacts. The Board finds that because the adverse impacts identified in the EA are potential indirect impacts associated with the compliance responses of covered entities, the authority to determine site- or project-specific mitigation is within the purview of jurisdictions with land use approval and permitting authority, such as city or county governments. Public agencies with authority can and should implement the identified measures to the degree feasible. Because the authority to determine project-level impacts and require project-level mitigation lies with

land use and/or permitting agencies for individual projects, and the programmatic level of analysis associated with the EA does not attempt to address project-specific details of mitigation, there is inherent uncertainty in the degree of mitigation that may ultimately by implemented to reduce potentially significant impacts to this resource. Consequently, while impacts could be reduced to a less-than-significant level by land use and/or permitting agency conditions of approval, the Board takes a conservative approach in its post-mitigation significance conclusion and finds the impacts to this resource associated with the proposed LCFS and ADF regulations would be potentially significant and unavoidable.

Cumulatively Considerable Impacts

The cumulative analysis of the proposed LCFS and ADF regulations, which are designed to reduce annual emissions of GHGs, spur innovation, and facilitate the introduction of alternative diesel fuels, relied on the summary of projections contained in the Environmental Analysis (EA) prepared for the 2014 First Update to the Climate Change Scoping Plan (Scoping Plan Update EA). The Scoping Plan Update EA provided a program level review of significant adverse impacts associated with the reasonably foreseeable compliance responses that appeared most likely to occur as a result of implementing the recommended actions identified in each of the nine sectors discussed in the Scoping Plan Update, including the proposed LCFS and ADF within the Transportation Sector, along with the expected background growth in California. The analysis of cumulative impacts for the proposed LCFS and ADF regulations included a summary of the cumulative impacts found for each resource area in the Scoping Plan Update EA and a conclusion regarding whether the proposed LCFS and ADF regulations could result in a cumulatively considerable contribution to an existing significant cumulative impact identified in the Scoping Plan Update EA.

The EA concluded the proposed LCFS and ADF regulations could result in a cumulatively considerable contribution to significant cumulative impacts to aesthetics, agriculture resources, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use and planning, noise, transportation and traffic, utilities, and short-term construction-related cumulative impacts to air quality (primarily related to reasonably foreseeable construction projects and minor expansions to existing operations). While suggested mitigation is provided within the respective resource areas of the EA analyses that could address the contribution of the proposed regulations to each of these potentially cumulatively considerable impacts, the Board finds that because these adverse impacts are potential indirect impacts associated with the compliance responses of covered entities, the authority to determine site- or project-specific mitigation is within the purview of jurisdictions with land use approval and permitting authority, such as city or county governments. Public agencies with authority can and should implement the identified measures to the degree feasible. Because the authority to determine project-level impacts and require project-level mitigation lies with land use and/or permitting agencies for individual projects, and the programmatic level of analysis associated with the EA does not attempt to address project-specific details of mitigation, there is inherent uncertainty in the degree of mitigation that may ultimately by implemented to reduce potentially significant impacts to this resource. Consequently, while cumulative impacts could be reduced to a less-than-significant level by land use and/or permitting agency conditions of approval, the Board takes a conservative approach in its post-mitigation significance conclusion and finds the cumulatively considerable contribution of the LCFS and ADF regulations to existing significant cumulative impacts to aesthetics, agriculture resources,

biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use and planning, noise, transportation and traffic, utilities, and short-term construction-related cumulative impacts to air quality to be potentially significant and unavoidable.

Findings on Alternatives to the Project

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

The Board finds the alternatives analysis is sufficient to inform the Board and the public regarding the tradeoffs between the degree to which the alternatives could reduce environmental impacts and the corresponding degree to which the alternatives could achieve the project objectives.

Based upon a full evaluation of the alternatives, and the entirety of the record, the Board finds that adoption and implementation of the proposed LCFS and ADF regulations is the most desirable, feasible, and appropriate action for achieving the objectives of the project, and the Board rejects the other alternatives as either less desirable or infeasible based on consideration of the relevant factors identified in the EA and briefly described below:

<u>Alternative 1: No Project Alternative –</u>

Alternative 1 in the EA describes a reasonably foreseeable scenario if ARB did not approve the proposed LCFS and ADF regulations. The proposed action is intended in large part to satisfy the mandate of the State of California Court of Appeal, Fifth Appellate District (Court) decision in the case *POET, LLC versus California Air Resources Board* (2013) 218 Cal.App.4th 681 (POET vs. ARB). Under the No Project Alternative, the existing LCFS regulations left in place by the court in POET vs. ARB would likely be set aside and CI reduction standards for fuels would no longer exist.

The Board finds that under this alternative the basic project objectives to reduce the CI of transportation fuels in the California market by at least 10 percent of its 2010 level by 2020 is not met. Also this alternative would not meet the other project objectives to reduce greenhouse gas (GHG) emissions from the state's transportation sector during 2016-2020, achieve greater diversification of the state's fuel portfolio, achieve a reduced dependence on petroleum and a decrease in the associated economic impacts of gasoline and diesel price spikes caused by volatile oil price changes, greater innovation and development of cleaner fuels, and support for California's ongoing efforts to improve ambient air quality. Under this alternative, the shortfall in GHG reductions, almost 20 percent of the total GHG emission reductions needed to meet the AB 32 mandate of reducing California's GHG emissions to 1990 levels by 2020, would need to be made up through the development of other measures to reduce GHGs. Therefore, the No Project Alternative would not meet the most basic objective of the project. Furthermore, adoption of the No Project Alternative does not create an environmentally advantageous outcome because although the potentially significant impacts related to the compliance responses of the proposed regulations as identified in the EA would not occur, the beneficial impacts related to GHG emissions and air quality would also not be realized. For this reason, the Board rejects this alternative.

Alternative 2: Re-Adoption of a LCFS Regulation without Updates, and Adoption of the Proposed ADF Regulation

Alternative 2 describes an alternative where the Board would re-adopt the existing 2012 LCFS without any of the revisions that are currently included in the proposed LCFS. Under this alternative, the Board would also proceed with adoption of the proposed ADF regulation.

The Board finds this alternative has a lower ability to meet the primary project objectives than the proposed project. The revisions included in the proposed LCFS help achieve the basic project objectives, including reducing CI of transportation fuels in the California market, through improved implementation of the regulation with revised provisions that better foster investments in the production of the low-CI fuels, offer additional flexibility to regulated parties, update critical technical information, simplify and streamline program operations, and enhance enforcement. In addition, the proposed revisions in the LCFS incorporate new information that will produce CI values that more accurately reflect the lifecycle GHG emissions of transportation fuels. Without these additional provisions, this alternative does not meet the project objectives as well as the proposed project. Further, adoption of this alternative does not create an environmentally advantageous outcome because exclusion of these provisions does not substantially reduce the potential adverse environmental impacts associated with the proposed regulation since the potentially significant impacts related to the compliance responses of the proposed regulations as identified in the EA would still occur. For these reasons, the Board rejects this alternative.

Alternative 3: Gasoline-Only Compliance Curve Alternative

Alternative 3 describes an alternative that would remove the diesel standard from the proposed LCFS regulation so that it would achieve a 10% reduction in CI by 2020 from a 2010 baseline for gasoline and gasoline substitute fuels only. This alternative proposes no reduction in CI for diesel and diesel substitute fuels. This alternative is less stringent than the proposed regulation, as it would exempt nearly four billion gallons of transportation fuel from any CI-reduction requirements. Under this alternative, the proposed ADF regulation would not be adopted by the Board.

The Board finds this alternative has a lower ability to meet the primary project objective to achieve CI reductions in transportation fuels in the California market by at least 10 percent of its 2010 level by 2020 because it would achieve reductions in the CI of only a portion of transportation fuels. Also, since this alternative would include only gasoline in the proposed LCFS regulation and would not regulate ADFs, the basic project objectives related to ADFs would not be met. When compared to the proposed action, this alternative would not result in the same diversification of California's fuel portfolio, reliance on fossil-based fuels would not be decreased, and it would not incentivize innovation and investment in low-carbon gasoline fuel technologies. This alternative would decrease GHG emissions, but to a lesser extent than the proposed regulations. The shortfall in GHG reductions needed to meet the AB 32 mandate of reducing California's GHG emissions to 1990 levels by 2020 would need to be made up through the development of other measures to reduce GHGs.

Further, adoption of this alternative on balance does not create an environmentally advantageous outcome as it is likely to result in similar types of environmental impacts as the proposed regulations. Although there may be fewer new or modified facilities constructed under this alternative because the incentive in LCFS for innovative diesel substitute fuels is

eliminated, the beneficial impacts related to GHG emissions and air quality would also not be realized. Most importantly, because the proposed ADF regulation would not be implemented under this alternative, emissions benefits from the use of alternative diesels would be greater than anticipated under the proposed actions. For these reasons, the Board rejects this alternative.

STATEMENT OF OVERRIDING CONSIDERATIONS

ARB expects that many of the significant adverse impacts identified in the EA will be avoided or mitigated; however, since uncertainty exists as to the extent of mitigation that other agencies will required at the site- and project-specific level, the Board is conservatively considering the impacts to be significant and unavoidable. The Board finds that despite the potential for adverse environmental impacts associated with the proposed LCFS and ADF regulations, other benefits of this regulatory action are determined to be overriding considerations that warrant approval of the proposed regulations and outweigh and override its unavoidable significant impacts. These benefits include:

1. Reduction in the CI of transportation fuels in the California market by at least 10% of its 2010 level by 2020 as one of the measures to meet statewide reductions of greenhouse gas emissions mandated by the California Global Warming Solutions Act of 2006, thereby benefitting the environment for current and future generations;

2. Generation of greater diversification of the state's fuel portfolio in subsequent years;

3. Establishment of a comprehensive path to bring new or emerging diesel fuel substitutes to the commercial market in California;

4. Establishment of provisions for biodiesel as the first recognized alternative diesel fuel to regulate its use within California's commercial fuels market and decrease impacts on public health and the environment, relative to conventional petroleum CARB diesel;

5. Reduction in dependence on petroleum, and decrease in associated economic impacts of gasoline and diesel price spikes caused by volatile oil price changes;

6. Creation of greater innovation and development of cleaner lower-carbon transportation fuels; and

7. Support of California's ongoing efforts to improve ambient air quality, thereby enhancing public health, the environment, and the emissions benefits of the State's existing diesel regulations.