

ATTACHMENT D

FINDINGS and STATEMENT OF OVERRIDING CONSIDERATIONS

Introduction

The California Air Resources Board (CARB), as the lead agency for the *Proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation and California's Proposed Compliance Plan for the Federal Clean Power Plan* (Proposed Project), 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 Proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation and California's Proposed Compliance Plan for the Federal Clean Power Plan*, and included as Appendix B to the Staff Report (Initial Statement of Reasons) for the Proposed Cap-and-Trade Regulatory Amendments and as Appendix J to California's Proposed Compliance Plan for the Federal Clean Power Plan, provided an analysis of the potential environmental impacts associated with the Proposed Project. Following circulation of the Draft EA for a 45-day public review and comment period from August 5, 2016 through September 19, 2016, CARB prepared the *Final Environmental Analysis prepared for the Proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation and California's Proposed Compliance Plan for the Federal Clean Power Plan* (Final EA) which includes minor revisions to the Draft EA. While minor modifications have been made to the Final EA to ensure it reflects the proposed project as accurately as possible, these changes merely clarify, amplify, or make insignificant modifications to the otherwise-adequate Draft EA. Therefore, there is no significant new information that would require the Final EA to be recirculated. The Final EA was posted on CARB's webpage on July 17, 2017.

This statement of findings and overriding considerations was prepared to comply with CEQA's requirement to address the environmental impacts identified in the Final EA. (Pub. Resources Code, §§ 21081, 21081.6, Cal. Code Regs, tit. 14, §§ 15091, 15093.) The Final EA is based on the expected compliance responses of the regulated entities covered by the Proposed Project. Although the policy aspects and requirements of the Proposed Project 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 Project. These indirect impacts are the focus of the programmatic-level impacts analysis in the Final EA.

Collectively, across all categories, the Final EA concluded that the reasonably foreseeable compliance responses associated with the Proposed Project could result in the following short-term and long-term impacts: beneficial long-term impacts to energy demand, and greenhouse gases; less-than-significant or no impacts to aesthetics, agriculture and forest resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use and planning, noise, population, employment and housing, public services, recreation, transportation/traffic, and utilities and service systems; and potentially significant

and unavoidable adverse impacts to aesthetics, agriculture and forest resources, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use and planning, noise, recreation, and transportation/traffic. The potentially significant and unavoidable adverse impacts are disclosed for both short-term, construction-related activities and long-term operational activities, which is why some resource areas are identified above as having both less-than-significant impacts and potentially significant impacts.

CARB's certified regulatory program requires that before adoption of an action for which significant adverse environmental impacts have been identified during the review process, CARB 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.

The potential adverse impacts identified in this programmatic level EA are potential indirect impacts associated with the compliance responses reasonably foreseeable in response to the Proposed Project based on currently available information. The ability to determine site- or project-specific impacts of projects carried out by third parties and the authority to require feasible mitigation lies with those agencies with authority to approve such actions, e.g. local permitting authorities in city or county governments and local air districts. CARB 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 Project, 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 Final EA, accompanied by a brief explanation, and its statement of overriding considerations.

STATEMENT OF FINDINGS

The Board has independently reviewed and considered the entire record, including the information contained in the Final 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

The Final EA found that the reasonably foreseeable actions associated with implementation of mine methane capture offset projects associated with linkage with Ontario, Canada could result in potentially significant short-term construction-related impacts and long-term operational impacts on aesthetic resources. The reasonably foreseeable compliance responses that could result from implementation of mine methane capture offset projects could include: installation of gas extraction, capture, transportation, processing, destruction, and monitoring equipment at existing active or abandoned mine sites. The installed equipment is likely to be of similar size, scale, and visual character to those typical of mining operations. However, abandoned mining sites and adjacent areas may have been subject to varying degrees of reclamation, reuse, and/or redevelopment since mine closure and abandonment. Construction of offset projects at abandoned mining sites could thus alter the visual character of such sites and adjacent surrounding areas, or introduce new sources of nighttime lighting that could adversely affect surrounding areas that may have been restored for active public recreation or uses other than mining.

The Final EA determined that while Canadian federal, provincial, and municipal environmental laws contain some requirements similar to those associated with the Surface Mining Control and Reclamation Act and other environmental laws in California and the United States, it is unknown where and under which jurisdiction individual projects may be located. Thus, the authority to determine project-level impacts and applicable regulations lies with the permitting agency for individual projects. This programmatic analysis and CARB's lack of authority over certain aspects of project-level development do not allow CARB to require project-specific mitigation or guarantee its implementation, resulting in an inherent uncertainty in the degree of mitigation ultimately implemented to reduce the potentially significant impacts.

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 implementation of mine methane capture offset projects associated with linkage with Ontario, Canada would be potentially significant and unavoidable. This impact is overridden by the project's benefits as set forth in the statement of overriding considerations.

Agriculture and Forest Resources

Finding and Explanation

The Final EA found that the reasonably foreseeable actions associated with implementation of mine methane capture offset projects associated with linkage with Ontario, Canada could result in potentially significant impacts on agriculture and forest resources. The reasonably foreseeable compliance responses that could result from implementation of mine methane capture offset projects could include: installation of gas extraction, capture, transportation, processing, destruction, and monitoring equipment at existing active or abandoned mine sites. The installed equipment is likely to be of similar size, scale, and visual character to those typical of mining operations. However, abandoned mining sites and adjacent areas may have been subject to varying degrees of reclamation, reuse, and/or redevelopment since mine closure and abandonment.

The Final EA determined that while Canadian federal, provincial, and municipal environmental laws contain some requirements similar to those associated with the Surface Mining Control and Reclamation Act and other environmental laws in California, it is unknown where and under which jurisdiction individual projects may be located. Thus, the authority to determine project-level impacts and applicable regulations lies with the permitting agency for individual projects. This programmatic analysis and CARB's lack of authority over certain aspects of project-level development do not allow CARB to require project-specific mitigation or guarantee its implementation, resulting in an inherent uncertainty in the degree of mitigation ultimately implemented to reduce the potentially significant impacts.

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 implementation of mine methane capture offset projects associated with linkage with Ontario, Canada would be potentially significant and unavoidable. This impact is overridden by the project's benefits as set forth in the statement of overriding considerations.

Air Quality

Finding and Explanation

The Final EA found that odor-related impacts associated with Livestock Protocol projects, as well as construction-related activities and operational activities that may be reasonably foreseeable compliance responses for covered entities could result in impacts relating to air quality and odors. The covered entity compliance responses consist of upgrading equipment, switching to lower intensity carbon fuels, and implementing maintenance and process changes at existing facilities. Construction, grading, and trenching have the potential to adversely impact air quality related to dust emissions and equipment emissions. Overall, the Final EA found that the Proposed Project would continue to reduce GHG emissions statewide. While the Final EA concluded that localized criteria pollutant emissions increases at individual facilities due to the Proposed Project are extremely unlikely, both the 2010 *Functional Equivalent Document prepared for the California Cap on GHG Emissions and Market-Based Compliance Mechanisms* (2010 FED) and the Draft and Final EAs for this proceeding took a conservative approach and disclosed that this impact would be potentially

significant and unavoidable. Implementation of Livestock Protocol projects could also result in potentially significant and unavoidable odor-related impacts.

The 2010 FED included mitigation measures in sections 4.B.4.d and 4.D.4.c, which are incorporated by reference into the Draft and Final EAs, and are relied upon for this Final EA as well. These mitigation measures identify existing statutes and regulations and construction and operational permit requirements, as well as other recognized practices designed to reduce these potentially significant impacts. The Board finds that 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. Therefore, the Board finds that the authority to implement the mitigation measures in sections 4.B.4.d and 4.D.4.c is within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in those mitigation measures should be adopted by those agencies. Public agencies with authority can and should implement the identified measures to the degree feasible. Because the authority and responsibility 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 be implemented to reduce potentially significant impacts to this resource.

The Final EA also found that the reasonably foreseeable actions associated with implementation of mine methane capture offset projects associated with linkage with Ontario, Canada could result in potentially significant impacts on air quality resources. The reasonably foreseeable compliance responses that could result from implementation of mine methane capture offset projects could include: installation of gas extraction, capture, transportation, processing, destruction, and monitoring equipment at existing active or abandoned mine sites. The installed equipment is likely to be of similar size, scale, and visual character to those typical of mining operations. However, abandoned mining sites and adjacent areas may have been subject to varying degrees of reclamation, reuse, and/or redevelopment since mine closure and abandonment.

The Final EA determined that while Canadian federal, provincial, and municipal environmental laws contain some requirements similar to those associated with the Surface Mining Control and Reclamation Act and other environmental laws in California, it is unknown where and under which jurisdiction individual projects may be located. Thus, the authority to determine project-level impacts and applicable regulations lies with the permitting agency for individual projects. This programmatic analysis and CARB's lack of authority over certain aspects of project-level development do not allow CARB to require project-specific mitigation or guarantee its implementation, resulting in an inherent uncertainty in the degree of mitigation ultimately implemented to reduce the potentially significant impacts.

Consequently, at this stage without full details on the design of potential programs and associated required mitigation, 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 actions in the Proposed Project would be potentially significant and unavoidable. This impact is overridden by the project's benefits as set forth in the statement of overriding considerations.

Biological Resources

Finding and Explanation

The Final EA found that ground disturbances associated with actions related to the reasonably foreseeable compliance responses under covered entities and implementation of mine methane capture offset projects (including linkage with Ontario, Canada) could result in potentially significant impacts on biological resources. The covered entity compliance responses consist of upgrading equipment, switching to lower intensity carbon fuels, and implementing maintenance and process changes at existing facilities. Construction, grading and trenching have the potential to result in adverse soil erosion resulting in sedimentation and degradation of local waterways. The reasonably foreseeable compliance responses that could result from implementation of mine methane capture offset projects could include: installation of gas extraction, capture, transportation, processing, destruction, and monitoring equipment at existing active or abandoned mine sites. The installed equipment is likely to be of similar size, scale, and visual character to those typical of mining operations. However, abandoned mining sites and adjacent areas may have been subject to varying degrees of reclamation, reuse, and/or redevelopment since mine closure and abandonment.

The 2010 FED included a mitigation measure in section 4.B.5.b. In addition, the MMC Protocol EA included a mitigation measure in section 4.C.3.d.ii, which are relied upon for this Final EA as well. These mitigation measures identify existing statutes and regulations and construction and operational permit requirements, as well as other recognized practices designed to reduce these potentially significant impacts. The Board finds that 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. Therefore, the Board finds that the authority to implement these mitigation measures is within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in these mitigation measures should be adopted by those agencies. Public agencies with authority can and should implement the identified measures to the degree feasible. Because the authority and responsibility 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 be implemented to reduce potentially significant impacts to this resource.

The Final EA determined that it is unknown where and under which jurisdiction individual projects may be located. Thus, the authority to determine project-level impacts and applicable regulations lies with the permitting agency for individual projects. This programmatic analysis and CARB's lack of authority over certain aspects of project-level development do not allow CARB to require project-specific mitigation or guarantee its implementation, resulting in an inherent uncertainty in the degree of mitigation ultimately implemented to reduce the potentially significant impacts.

Consequently, at this stage without full details on the design of potential programs and associated required mitigation, 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 actions in the Proposed Project would be potentially significant

and unavoidable. This impact is overridden by the project's benefits as set forth in the statement of overriding considerations.

Cultural Resources

Finding and Explanation

The Final EA found that ground disturbances associated with actions related to the reasonably foreseeable compliance responses under covered entities and implementation of Livestock, Urban Forest, and mine methane capture offset projects (including linkage with Ontario, Canada) could result in potentially significant impacts on cultural resources. The covered entity compliance responses consist of upgrading equipment, switching to lower intensity carbon fuels, and implementing maintenance and process changes at existing facilities. Construction, grading and trenching have the potential to result in adverse soil erosion resulting in sedimentation and degradation of local waterways. Implementation of offset projects under the Livestock Offset Protocol, Urban Forest Offset Protocol and MMC Protocol may be implemented in areas where cultural and historic resources could exist (e.g., archeological resources, historic resources, paleontological resources, and undocumented human remains).

The 2010 FED included mitigation measures in sections 4.B.6.b, 4.D.6.b and 4.E.6.b; in addition, the MMC Protocol EA included a mitigation measure in section 4.C.3.e.ii, which are relied upon for this Final EA as well. These mitigation measures identify existing statutes and regulations and construction and operational permit requirements, as well as other recognized practices designed to reduce these potentially significant impacts. The Board finds that 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. Therefore, the Board finds that the authority to implement these mitigation measures is within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in these mitigation measures should be adopted by those agencies. Public agencies with authority can and should implement the identified measures to the degree feasible. Because the authority and responsibility 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 be implemented to reduce potentially significant impacts to this resource.

The Final EA determined that it is unknown where and under which jurisdiction individual projects may be located. Thus, the authority to determine project-level impacts and applicable regulations lies with the permitting agency for individual projects. This programmatic analysis and CARB's lack of authority over certain aspects of project-level development do not allow CARB to require project-specific mitigation or guarantee its implementation, resulting in an inherent uncertainty in the degree of mitigation ultimately implemented to reduce the potentially significant impacts.

Consequently, at this stage without full details on the design of potential programs and associated required mitigation, 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 actions in the Proposed Project would be potentially significant and unavoidable. This impact is overridden by the project's benefits as set forth in the statement of overriding considerations.

Geology and Soils

Finding and Explanation

The Final EA found that the reasonably foreseeable actions associated with construction-related activities for covered entities could result in potentially significant impacts on geology and soil resources. The covered entity compliance responses consist of upgrading equipment, switching to lower intensity carbon fuels, and implementing maintenance and process changes at existing facilities. Construction, grading and trenching have the potential to result in adverse soil erosion resulting in sedimentation and degradation of local waterways.

The 2010 FED included a mitigation measure in section 4.B.8.b, which is relied upon for this Final EA as well. This mitigation measure identifies existing statutes and regulations and construction and operational permit requirements, as well as other recognized practices designed to reduce these potentially significant impacts. The Board finds that 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. Therefore, the Board finds that the authority to implement this mitigation measure is within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in Mitigation Measure 4.B.8.b should be adopted by those agencies. Public agencies with authority can and should implement the identified measures to the degree feasible. Because the authority and responsibility 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 be implemented to reduce potentially significant impacts to this resource.

The Final EA also found that the reasonably foreseeable actions associated with implementation of mine methane capture offset projects associated with linkage with Ontario, Canada could result in potentially significant impacts on geology and soil resources. The reasonably foreseeable compliance responses that could result from implementation of mine methane capture offset projects could include: installation of gas extraction, capture, transportation, processing, destruction, and monitoring equipment at existing active or abandoned mine sites. The installed equipment is likely to be of similar size, scale, and visual character to those typical of mining operations. However, abandoned mining sites and adjacent areas may have been subject to varying degrees of reclamation, reuse, and/or redevelopment since mine closure and abandonment.

The Final EA determined that while Canadian federal, provincial, and municipal environmental laws contain some requirements similar to those associated with the Surface Mining Control and Reclamation Act and other environmental laws in California, it is unknown where and under which jurisdiction individual projects may be located. Thus, the authority to determine project-level impacts and applicable regulations lies with the permitting agency for individual projects. This programmatic analysis and CARB's lack of authority over certain aspects of project-level development do not allow CARB to require project-specific mitigation

or guarantee its implementation, resulting in an inherent uncertainty in the degree of mitigation ultimately implemented to reduce the potentially significant impacts.

Consequently, at this stage without full details on the design of potential programs and associated required mitigation, 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 actions in the Proposed Project would be potentially significant and unavoidable. This impact is overridden by the project's benefits as set forth in the statement of overriding considerations.

Hazards and Hazardous Materials

Finding and Explanation

The Final EA found that the reasonably foreseeable actions associated with implementation of mine methane capture offset projects associated with linkage with Ontario, Canada could result in potentially significant impacts on hazards and hazardous materials resources. The reasonably foreseeable compliance responses that could result from implementation of mine methane capture offset projects could include: installation of gas extraction, capture, transportation, processing, destruction, and monitoring equipment at existing active or abandoned mine sites. The installed equipment is likely to be of similar size, scale, and visual character to those typical of mining operations. However, abandoned mining sites and adjacent areas may have been subject to varying degrees of reclamation, reuse, and/or redevelopment since mine closure and abandonment.

The Final EA determined that while Canadian federal, provincial, and municipal environmental laws contain some requirements similar to those associated with the Surface Mining Control and Reclamation Act and other environmental laws in California, it is unknown where and under which jurisdiction individual projects may be located. Thus, the authority to determine project-level impacts and applicable regulations lies with the permitting agency for individual projects. This programmatic analysis and CARB's lack of authority over certain aspects of project-level development do not allow CARB to require project-specific mitigation or guarantee its implementation, resulting in an inherent uncertainty in the degree of mitigation ultimately implemented to reduce the potentially significant impacts.

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 implementation of mine methane capture offset projects associated with linkage with Ontario, Canada would be potentially significant and unavoidable. This impact is overridden by the project's benefits as set forth in the statement of overriding considerations.

Hydrology and Water Quality

Finding and Explanation

The Final EA found that the reasonably foreseeable actions associated with construction-related activities for covered entities could result in potentially significant impacts on hydrology and water quality resources. The covered entity compliance responses consist of

upgrading equipment, switching to lower intensity carbon fuels, and implementing maintenance and process changes at existing facilities. Construction, grading and trenching have the potential to result in adverse soil erosion resulting in sedimentation and degradation of local waterways.

The 2010 FED included a mitigation measure in section 4.B.11.b, which is relied upon for this Final EA as well. This mitigation measure identifies existing statutes and regulations and construction and operational permit requirements, as well as other recognized practices designed to reduce these potentially significant impacts. The Board finds that 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. Therefore, the Board finds that the authority to implement this mitigation measure is within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in this mitigation measure should be adopted by those agencies. Public agencies with authority can and should implement the identified measures to the degree feasible. Because the authority and responsibility 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 be implemented to reduce potentially significant impacts to this resource.

The Final EA also found that the reasonably foreseeable actions associated with implementation of mine methane capture offset projects associated with linkage with Ontario, Canada could result in potentially significant impacts on hydrology and water quality resources. The reasonably foreseeable compliance responses that could result from implementation of mine methane capture offset projects could include: installation of gas extraction, capture, transportation, processing, destruction, and monitoring equipment at existing active or abandoned mine sites. The installed equipment is likely to be of similar size, scale, and visual character to those typical of mining operations. However, abandoned mining sites and adjacent areas may have been subject to varying degrees of reclamation, reuse, and/or redevelopment since mine closure and abandonment.

The Final EA determined that while Canadian federal, provincial, and municipal environmental laws contain some requirements similar to those associated with the Surface Mining Control and Reclamation Act and other environmental laws in California, it is unknown where and under which jurisdiction individual projects may be located. Thus, the authority to determine project-level impacts and applicable regulations lies with the permitting agency for individual projects. This programmatic analysis and CARB's lack of authority over certain aspects of project-level development do not allow CARB to require project-specific mitigation or guarantee its implementation, resulting in an inherent uncertainty in the degree of mitigation ultimately implemented to reduce the potentially significant impacts.

Consequently, at this stage without full details on the design of potential programs and associated required mitigation, 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 actions in the Proposed Project would be potentially significant and unavoidable. This impact is overridden by the project's benefits as set forth in the statement of overriding considerations.

Land Use and Planning

Finding and Explanation

The Final EA found that the reasonably foreseeable actions associated with implementation of U.S. Forest Offset projects could result in potentially significant impacts on land use and planning resources. The U.S. Forest Offset Protocol includes avoided conversion projects that could conflict with local land use plans that envision development or other uses of forested areas.

The 2010 FED included a mitigation measure in section 4.F.12.c, which is relied upon for this Final EA as well. This mitigation measure identifies existing statutes and regulations and construction and operational permit requirements, as well as other recognized practices designed to reduce these potentially significant impacts. The Board finds that 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. Therefore, the Board finds that the authority to implement this mitigation measure is within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in this mitigation measure should be adopted by those agencies. Public agencies with authority can and should implement the identified measures to the degree feasible. Because the authority and responsibility 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 be implemented to reduce potentially significant impacts to this resource.

The Final EA also found that the reasonably foreseeable actions associated with implementation of mine methane capture offset projects associated with linkage with Ontario, Canada could result in potentially significant impacts on land use and planning resources. The reasonably foreseeable compliance responses that could result from implementation of mine methane capture offset projects could include: installation of gas extraction, capture, transportation, processing, destruction, and monitoring equipment at existing active or abandoned mine sites. The installed equipment is likely to be of similar size, scale, and visual character to those typical of mining operations. However, abandoned mining sites and adjacent areas may have been subject to varying degrees of reclamation, reuse, and/or redevelopment since mine closure and abandonment.

The Final EA determined that while Canadian federal, provincial, and municipal environmental laws contain some requirements similar to those associated with the Surface Mining Control and Reclamation Act and other environmental laws in California, it is unknown where and under which jurisdiction individual projects may be located. Thus, the authority to determine project-level impacts and applicable regulations lies with the permitting agency for individual projects. This programmatic analysis and CARB's lack of authority over certain aspects of project-level development do not allow CARB to require project-specific mitigation or guarantee its implementation, resulting in an inherent uncertainty in the degree of mitigation ultimately implemented to reduce the potentially significant impacts.

Consequently, at this stage without full details on the design of potential programs and associated required mitigation, 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 actions in the Proposed Project would be potentially significant and unavoidable. This impact is overridden by the project's benefits as set forth in the statement of overriding considerations.

Noise

Finding and Explanation

The Final EA found that the reasonably foreseeable actions associated with implementation of Livestock Offset projects could result in potentially significant impacts on noise resources. The reasonably foreseeable compliance responses that could result from implementation of the proposed Livestock Offset projects could include construction of digesters in agricultural settings that could adversely impact sensitive receptors.

The 2010 FED included a mitigation measure in section 4.D.13.c, which is relied upon for this Final EA as well. This mitigation measure identifies existing statutes and regulations and construction and operational permit requirements, as well as other recognized practices designed to reduce these potentially significant impacts. The Board finds that 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. Therefore, the Board finds that the authority to implement this mitigation measure is within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in this mitigation measure should be adopted by those agencies. Public agencies with authority can and should implement the identified measures to the degree feasible. Because the authority and responsibility 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 be implemented to reduce potentially significant impacts to this resource.

Consequently, at this stage without full details on the design of potential programs and associated required mitigation, 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 actions in the Proposed Project would be potentially significant and unavoidable. This impact is overridden by the project's benefits as set forth in the statement of overriding considerations.

Recreation

Finding and Explanation

The Final EA found that the reasonably foreseeable actions associated with implementation of mine methane capture offset projects associated with linkage with Ontario, Canada could result in potentially significant impacts on recreation resources. The reasonably foreseeable compliance responses that could result from implementation of mine methane capture offset projects could include: installation of gas extraction, capture, transportation, processing, destruction, and monitoring equipment at existing active or abandoned mine sites. The installed equipment is likely to be of similar size, scale, and visual character to those typical

of mining operations. However, abandoned mining sites and adjacent areas may have been subject to varying degrees of reclamation, reuse, and/or redevelopment since mine closure and abandonment.

The Final EA determined that while Canadian federal, provincial, and municipal environmental laws contain some requirements similar to those associated with the Surface Mining Control and Reclamation Act and other environmental laws in California, it is unknown where and under which jurisdiction individual projects may be located. Thus, the authority to determine project-level impacts and applicable regulations lies with the permitting agency for individual projects. This programmatic analysis and CARB's lack of authority over certain aspects of project-level development do not allow CARB to require project-specific mitigation or guarantee its implementation, resulting in an inherent uncertainty in the degree of mitigation ultimately implemented to reduce the potentially significant impacts.

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 implementation of mine methane capture offset projects associated with linkage with Ontario, Canada would be potentially significant and unavoidable. This impact is overridden by the project's benefits as set forth in the statement of overriding considerations.

Transportation and Traffic

Finding and Explanation

The Final EA found that the reasonably foreseeable actions associated with implementation of Livestock Offset projects could result in potentially significant impacts on transportation and traffic resources. The reasonably foreseeable compliance responses that could result from implementation of the proposed Livestock Offset projects could include construction activities related to new livestock digesters which could require the operation of heavy equipment on rural roads, potentially creating unsafe conditions.

The 2010 FED included a mitigation measure in section 4.D.17.b, which is relied upon for this Final EA as well. This mitigation measure identifies existing statutes and regulations and construction permit requirements, as well as other recognized practices designed to reduce these potentially significant impacts. The Board finds that 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. Therefore, the Board finds that the authority to implement this mitigation measure is within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in this mitigation measure should be adopted by those agencies. Public agencies with authority can and should implement the identified measures to the degree feasible. Because the authority and responsibility 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 be implemented to reduce potentially significant impacts to this resource.

Consequently, at this stage without full details on the design of potential programs and associated required mitigation, 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 actions in the Proposed Project would be potentially significant and unavoidable. This impact is overridden by the project's benefits as set forth in the statement of overriding considerations.

Cumulatively Considerable Impacts

The most relevant plans and programs for considering cumulative impacts of the Proposed Project are the AB 32 Scoping Plan Update (both the First Update, adopted in 2014 and the 2017 Scoping Plan Update), Low Carbon Fuel Standard and Alternative Diesel Fuel (LCFS/ADF) Renewable Energy Standard, Short-Lived Climate Pollutant Reduction Strategy, 2016 Statewide State Implementation Plan Strategy, and the Oil and Gas Regulation. The analysis of cumulative impacts for the Proposed Project included a summary of the cumulative impacts found for each resource area in these programs, and a conclusion regarding whether the Proposed Project could result in a cumulatively considerable contribution to an existing significant cumulative impact.

The EA concluded the Proposed Project could result in a cumulatively considerable contribution to significant cumulative impacts to aesthetics, agricultural and forest resources, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use and planning, noise, recreation, and transportation and traffic. While suggested mitigation is provided within the respective resource areas of the EA analyses that could address the contribution of the Proposed Project 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 and responsibility 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 be implemented to reduce potentially significant impacts to these resources. 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 Proposed Project to existing significant cumulative impacts to aesthetics, agricultural and forest resources, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use and planning, noise, recreation, and transportation and traffic 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 potentially feasible alternatives that could potentially reduce or eliminate the significant adverse environmental impacts associated with the Proposed Project, while accomplishing most of the basic 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 Project is the most desirable, feasible, and appropriate action for achieving the objectives of the project, and the Board rejects the other alternatives because they either fail to meet most project objectives, or are infeasible based on consideration of the relevant factors identified in the EA and briefly described below:

Alternative 1: No Project Alternative –

Alternative 1 in the EA describes a reasonably foreseeable scenario if CARB did not approve the Proposed Project. Under the No-Project Alternative, amendments associated with the Proposed Project would not be approved. The Cap-and-Trade Program would expire and conclude after it completes its third compliance period in 2020. No linkages with Ontario, Canada would occur, and linkages with Québec would also expire and conclude in 2020. Other ARB programs intended to reduce GHG emissions would continue in accordance with their statutory authorities and adopted regulations.

The Board finds that the No-Project Alternative would fail to meet many of the project objectives listed in Chapter 2 of the Final EA and reiterated above. A major component of the AB 32 Scoping Plan strategy for reducing GHGs would expire and not contribute to further reductions after 2020. The No-Project Alternative does not include streamlining of the program, would not continue objectives of the 2010 Cap-and-Trade Program, would not expand the availability of approved offset credits, would not incorporate results of leakage studies, and would not facilitate linkages with other WCI Markets (Objectives 1-5). Without submission of approved Cap-and-Trade Regulation amendments, regulatory amendments to facilitate CPP compliance would not occur and Objective 6 would also not be satisfied. Without further amendments to address new CAISO markets, emissions obligations could be incompletely applied to those markets, so Objective 7 would not be fully satisfied. Therefore, the No-Project Alternative would not meet the most basic objectives of the project. For these reasons, the Board rejects this alternative.

Alternative 2: Facility-Specific Requirements –

Under Alternative 2, the Cap-and-Trade Program would not continue beyond 2020, and all covered entities would be required to achieve onsite emissions reductions from a historical baseline level to 40 percent below that level by 2030 with interim targets. There would be no trading of “excess reductions,” in which an entity that exceeds the reduction target can sell excess reductions to another entity, and there would be no use of offset credits. While some flexibility would remain for each entity to decide how best to reduce emissions, Alternative 2 would eliminate any trading and would force emission reductions to be achieved on a facility-by-facility basis at a consistent rate over interim compliance periods. For some sectors, onsite emissions reductions could potentially be achieved through fuel switching and electrification of boilers. There is less potential to reduce process-related emissions for other sectors, including the cement sector, and one potential compliance path may include production decreases at certain facilities.

The Board finds that this alternative represents an approach to reducing GHG emissions that is not consistent with the current Cap-and-Trade Regulation; that is, trading of allowances would not be available. Nonetheless, this alternative could meet objectives related to meeting the 2030 target set by EO B-30-15, and might be able to support compliance with CPP (Objectives 1, 2, and 6) by requiring facility-by-facility reductions if such reduction requirements could be designed to be effective and consistent with federal legal requirements. This approach of facility-level mandates is substantially different than the objective of the Cap-and-Trade Program to, consistent with the mandates of AB 32, incentivize the marketplace to reduce GHG emissions with price signals and an overall declining cap. Because it does not take advantage of market mechanisms, the approach is also likely to be less effective in achieving certain AB 32 objectives, such as cost-containment and minimizing leakage (Objective 1). Because it would not amend the Cap-and-Trade Regulation, as it is currently implemented, it would not be consistent with the objective of streamlining the program (Objective 3). In addition, removing the trade component would make the regulation inconsistent with expansion of available approved offset credits, and facilitation of linkage with other WCI markets (Objectives 2 and 5). Difficulties with addressing imported power under this alternative would also likely result in failure to satisfy Objective 6. Thus, this alternative may not feasibly meet objectives related to the purpose and need of the Proposed Project. Furthermore, it is not clear that CARB would have legal authority to pursue the Facility-Specific Requirements Alternative for all source types, particularly petroleum refineries and oil and gas production facilities. This is because CARB is legislatively mandated to designate the market-based compliance mechanism (here, the Cap-and-Trade Program) as the rule for reducing GHG reductions from petroleum refineries and oil and gas production facilities, per AB 398. For these reasons, the Board rejects this alternative.

Alternative 3: Carbon Fee -

Under Alternative 3, CARB would pursue a carbon fee for sectors that are currently covered by the Cap-and-Trade Program. The primary similarity between a carbon fee and the Cap-and-Trade Program is that both put a price on GHG emissions, providing an incentive for businesses and individuals to reduce their emissions, in contrast to a command-and-control approach in which government would mandate how much individual entities could emit or what technologies they should use. Alternative 3 incorporates concepts received from the Environmental Justice Advisory Committee regarding potential alternatives to the Cap-and-Trade Program. This alternative includes a fixed cost for each metric ton of carbon emitted, which is priced at the US EPA social cost of carbon of \$36 per metric ton in 2015, increasing to \$50 in 2030. (These values are in 2007 dollars and translate roughly to \$48 and \$57 in 2015 dollars, respectively.) Under Alternative 3, all revenue from this program would be fully returned to California consumers.

The Board finds that Alternative 3 would implement a carbon fee that would provide price certainty, but an uncertain amount of emission reductions. There would be no absolute GHG emissions cap mandated by law, and there would likely be no allowance or offset credit trading as occurred under the Proposed Project. Generally, this alternative is not consistent with the objectives of the Proposed Project to meet GHG emission targets while minimizing costs. Because this alternative would not set a specific emissions cap, there would be no guarantee that the chosen carbon fee would be sufficient to achieve the required GHG emissions reductions to meet 2030 targets set by EO B-30-15. It is also possible that this

alternative could result in overshooting the target at an unnecessarily high cost. Because the primary goal of the Cap-and-Trade Program is to meet GHG emissions targets while minimizing costs, ARB staff believes a cap-and-trade program is a better match to California's goals. (Objectives 1 and 2). While this alternative could offer more price certainty to regulated entities, it would result in less flexibility in achieving the GHG emissions targets since each metric ton of GHG emissions would incur a fee at a specific dollar amount. Because the Cap-and-Trade Program, as it is currently implemented, would no longer exist after 2020, a cap-and-trade program linkage between California and Québec would no longer exist. California would forgo future linkages of this type with other programs, such as the Ontario program (Objective 5). Any potential federal trading system for CPP would also be forgone, therefore California would need to develop an alternate CPP compliance plan; though the form of any such plan is speculative, it likely would have to be in addition to the fee in this alternative, and so could add additional regulatory complexities and costs, thereby potentially not most effectively fulfilling the CPP compliance objective (Objective 6). Alternative 3 would also not be consistent with the objective of streamlining the Cap-and-Trade Program, since it would result in an entirely new program (Objective 3). Furthermore, it is not clear that CARB would have legal authority to pursue the Carbon Fee Alternative for all source types, particularly petroleum refineries and oil and gas production facilities. This is because CARB is legislatively mandated to designate the market-based compliance mechanism (here, the Cap-and-Trade Program) as the rule for reducing GHG reductions from petroleum refineries and oil and gas production facilities, per AB 398. For these reasons, the Board rejects this alternative.

STATEMENT OF OVERRIDING CONSIDERATIONS

CARB 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 require at the site- and project-specific level, the Board is conservatively considering the impacts to be potentially significant and unavoidable. The Board finds that despite the potential for adverse environmental impacts associated with the Proposed Project, other benefits of the proposed actions are determined to be overriding considerations that warrant approval of the Proposed Project and outweigh and override its unavoidable significant impacts. Each benefit set forth below constitutes an overriding consideration warranting approval of the project, independent of the other benefits, despite each and every unavoidable impact. These benefits include:

1. Reducing greenhouse gas emissions, thereby benefitting the environment and current and future generations;
2. Benefitting statewide health through the reduction of co-pollutants by complementing and supporting California's existing efforts to reduce criteria and toxic air pollutants;
3. Providing a program that complements other Scoping Plan measures, such as standards for cleaner vehicles, low-carbon fuels, renewable electricity and energy efficiency;
4. Providing a firm cap that will decline to levels in 2020 and 2030 designed to ensure that emissions decline over time and, in conjunction with other climate programs

identified in the Scoping Plan, providing the highest certainty California achieves the AB 32 GHG emissions target in 2020 and the 2030 target;

5. Providing a durable framework that has the potential to provide further GHG reductions beyond the 2020 and 2030 targets;
6. Achieving emission reductions in a cost-effective manner by affording covered entities flexibility to seek out and implement the most cost-effective options to reduce emissions;
7. Providing a program with proven, long-established design features to minimize emissions leakage and protect California consumers and utility rate-payers;
8. Providing a price signal needed to drive long-term investment in cleaner fuels and more efficient buildings and technologies;
9. Helping to mitigate the economic consequences of continued reliance on fossil fuels;
10. Ensuring emissions associated with new CAISO markets are appropriately accounted for;
11. Helping to incentivize additional emissions reductions in non-covered sectors through the implementation of mine methane capture, livestock, ozone depleting substances, forestry, and other approved offset projects;
12. Helping to incentivize reforestation and avoided conversion forest projects that will provide for carbon sequestration while resulting in long-term beneficial effects on scenic resources, soil erosion, and loss of topsoil;
13. Helping to incentivize further greenhouse gas reduction and mitigation effort through the continuance and expansion of linkage with other programs such as Québec and Ontario;
14. Helping to incentivize further greenhouse gas reduction and mitigation effort by providing a program that other jurisdictions will continue to use as a model for their own greenhouse gas reduction and emissions trading programs;
15. Providing a mechanism to ensure compliance with federal requirements of the Clean Power Plan;
16. Demonstrate to the federal government and to other states that well-designed greenhouse gas reduction programs, including for the power sector, are feasible and appropriate; and
17. Providing monies for California Climate Investments, with a focus on investment in disadvantaged communities.

LOCATION AND CUSTODIAN OF THE RECORD

The documents and other materials that constitute the record of proceedings on which these findings are based are located at 1001 I Street Sacramento, CA 95814. The custodian for these documents is the California Air Resources Board Legal Office.