

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* (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*, included as Appendix B to the Staff Report (Initial Statement of Reasons) for the Proposed Cap-and-Trade Regulatory Amendments, 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 September 7, 2018 through October 22, 2018, 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* (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 December 3, 2018, a slightly revised version was released on December 10, 2018.

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 impacts to aesthetics, agriculture and forest resources, hazards and hazardous materials, population employment and housing, public services, recreation, and utilities and service systems; and potentially significant and unavoidable adverse impacts to air quality, biological resources, cultural resources, geology and soils, hydrology and water quality, land use planning, mineral resources, noise, 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.

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 air pollutant emissions statewide. While the Final EA concluded that localized criteria pollutant emissions increases at individual facilities due to the Proposed Project are extremely unlikely, the 2010 *Functional Equivalent Document prepared for the California Cap on GHG Emissions and Market-Based Compliance Mechanisms* (2010 FED), the 2016 Cap-and-Trade EA, 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.

Attachment B of the Final EA included Mitigation Measures 3.a and 3.c.i. Mitigation Measures 3.a and 3.c.i 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 Mitigation Measures 3.a and 3.c.i is within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in Mitigation Measures 3.a and 3.c.i 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.

Biological Resources

Finding and Explanation

The Final EA found that ground disturbances associated with actions related to the reasonably foreseeable compliance responses undertaken by covered entities and implementation of Mine Methane Capture (MMC) Protocol projects 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 adversely impact any protected biological resources that might exist at those locations. The reasonably foreseeable compliance responses that could result from implementation of MMC Protocol 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.

Attachment B of the Final EA included Mitigation Measure 4.a. Mitigation Measure 4.a 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 Mitigation Measure 4.a is within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in Mitigation Measure 4.a 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 undertaken by covered entities and implementation of Livestock, Urban Forest, and MMC Protocol projects 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 adversely impact any cultural resources that might exist at those locations. 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).

Attachment B of the Final EA included Mitigation Measure 5.a. Mitigation Measure 5.a 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 Mitigation Measure 5.a is within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in Mitigation Measure 5.a 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 soil erosion, dust generation, and sedimentation and degradation of local waterways.

Attachment B of the Final EA included Mitigation Measure 7.a. Mitigation Measure 7.a 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 Mitigation Measure 7.a is within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in Mitigation Measure 7.a 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.

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.

Attachment B of the Final EA included Mitigation Measure 10.a. Mitigation Measure 10.a 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 Mitigation Measure 10.a is within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in Mitigation Measure 10.a 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.

Land Use and Planning

Finding and Explanation

The Final EA found that implementation of the Proposed Project would not result in a physical change to the environment beyond what would occur under the existing Cap-and-Trade Regulation as adopted in 2016 and considered in the 2016 Cap-and-Trade EA. The 2016 Cap-and-Trade 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.

Attachment B of the Final EA included Mitigation Measure 11.b.i. Mitigation Measure 11.b.i 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 Mitigation Measure 11.b.i is within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in Mitigation Measure 11.b.i 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.

Mineral Resources

Finding and Explanation

The Final EA found that implementation of the Proposed Project would not result in a physical change to the environment beyond what would occur under the existing Cap-and-Trade Regulation as adopted in 2016 and considered in the 2016 Cap-and-Trade EA. The 2016 Cap-and-Trade EA found that impacts to mineral resources associated with extension of the cap post-2020 and extension of industrial allowance allocation beyond 2020 were found to be potentially significant and unavoidable related to construction-related activities that may be reasonably foreseeable compliance responses for covered entities.

Attachment B of the Final EA included Mitigation Measure 12. Mitigation Measure 12 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 Mitigation Measure 12 is within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in Mitigation Measure 12 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.

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.

Attachment B of the Final EA included Mitigation Measure C.13.a. Mitigation Measure C.13.a 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 Mitigation Measure C.13.a is within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in Mitigation Measure C.13.a 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.

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.

Attachment B of the Final EA included Mitigation Measure 17.a. Mitigation Measure 17.a 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 Mitigation Measure 17.a is within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in Mitigation Measure 17.a 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 plan for considering cumulative impacts of the Proposed Project is the 2017 Climate Change Scoping Plan adopted pursuant to Global Warming Solutions Act of 2006 (Assembly Bill 32 or AB 32; Statutes of 2006, Chapter 488; Health & Safety Code section 38500 et seq.). The analysis of cumulative impacts for the Proposed Project included a summary of the cumulative impacts found for each resource area in this plan, 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 air quality, biological resources, cultural resources, geology and soils, hydrology and water quality, land use and planning, mineral resources, noise, 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 air quality, biological resources, cultural resources, geology and soils, hydrology and water quality, land use and planning, mineral resources, noise, 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 current Cap-and-Trade Regulation would continue in its current state until 2030. Other CARB programs intended to reduce greenhouse gas (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 most of the project objectives listed in Chapter 2 of the Final EA. Under the No-Project Alternative, the existing Cap-and-Trade Program would continue in its current state until 2030, and therefore it would meet some of the project objectives. However, this alternative would not meet all of the project objectives. Most importantly, the No-Project Alternative would not comport with legislative direction in AB 398 in that it would not establish the required changes to the offsets limits established by AB 398 (Objective 8), nor would it establish the two post-2020 price containment points or price ceiling (Objective 9). In addition, the No-Project Alternative would not specify leakage assistance factors as required by AB 398 (Objective 7), nor would it ensure consistently applied compliance obligations on electricity imported through the EIM (Objective 10). Moreover, the No-Project Alternative would not provide for further streamlining of the Program (Objective 4). 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, 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. While this alternative could meet objectives related to reducing GHG emissions after 2020 (Objective 2) by requiring facility-by-facility reductions, like the No Project alternative, it is not consistent with the direction provided by AB 398 to maintain the Cap-and-Trade Program after 2020 with the required modifications (Objective 1, 6, 7, 8, and 9). Additionally, it is not consistent with AB 398 because AB 398 directs CARB to designate the Cap-and-Trade Regulation “as the rule” in the Scoping Plan for achieving GHG reductions for petroleum refineries and oil and gas production facilities. This approach of facility-level mandates is substantially different than the objective of the Cap-and-Trade Program, consistent with the mandates of AB 32, to 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 (Objectives 6, 7, and 9). 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 4). In addition, removing the trade component would make the regulation inconsistent with legislation regarding offset credits, and facilitation of linkage with other WCI markets (Objectives 8 and 5). Difficulties with addressing imported power under this alternative would also likely result in failure to satisfy Objective 10. Thus, this alternative would achieve some, but not most, of the basic objectives of the Proposed Project. 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. The principal difference between a carbon fee and the Cap-and-Trade Program is that a fee places an upper limit on the cost of reducing emissions, but leaves the total amount of GHG emissions in a given time period uncertain,

whereas the Cap-and-Trade Program sets a total limit on emissions during a particular period and allows supply and demand to determine the cost of emissions.

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. Like the No Project alternative, this alternative is not consistent with the direction provided by AB 398 to maintain the Cap-and-Trade Program after 2020 with the required modifications (Objective 1, 7, 8, and 9). Additionally, it is inconsistent with AB 398 because AB 398 directs CARB to designate Cap-and-Trade “as the rule” in the Scoping Plan for achieving GHG reductions for petroleum refineries and oil and gas production facilities. Even if this alternative were consistent with AB 398 direction, this alternative is not consistent with the objectives of the Proposed Project to meet GHG emission targets while minimizing costs (Objectives 1, 6, and 9). Because this alternative would not set a specific emissions cap, there would be no guarantee that the chosen allowance cost would be sufficient to achieve the required GHG emissions reductions to meet 2030 targets set by SB 32 (Objectives 2 and 3). 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, CARB staff believes a cap-and-trade program is a better match to California’s goals (Objectives 1-3). 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 (Objective 5). 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 4). For these reasons, the Board rejects this alternative.

Alternative 4: Higher Ceiling Price –

Alternative 4 is the same as the Proposed Project, but sets the price ceiling well above the level of the post-2020 single tier Reserve price under the current Regulation as well as the price ceiling value of the proposed amendments. This alternative would set the price ceiling at \$78.52 in 2021 to \$229.18 in 2030 (in real \$2018 dollars). The price ceiling would increase each year by an escalation factor assigned to each pricing point. All other features of the alternative follow the AB 398 requirements regarding distribution of allowances between the price ceiling and two pricing points, the restoration of direct allocation to covered entities in 2021, the transfer of allowances remaining unsold at auction for 24 months to the Reserve, the lower quantitative offset use limit, and the direct environmental benefit requirement on half of the offsets used for compliance.

The Board finds that the objective of this price structure is to encourage more direct reductions than the Proposed Project. However, the price ceiling may be too high for existing and future linkage partners, which would jeopardize meeting Objective 5 (Continue Linkage with Existing Partner Jurisdictions and Facilitate Linkage with Other Partners in the Future). The price ceiling may also be too high to minimize emissions leakage, which would jeopardize a component of meeting Objective 1 (Continue Objectives of 2016 Cap-and-Trade Program). It cannot be predicted whether the higher prices in California would affect the willingness of

other partners to link their programs with California. Therefore, it is not clear that this alternative would avoid or substantially reduce a significant impact of the Proposed Project. For these reasons, the Board rejects this alternative.

Alternative 5: Lower Ceiling Price –

Alternative 5 is the same as the Proposed Project, except for the values assigned to the price ceiling and two price containment points. In this alternative, CARB would set the price ceiling well below the level of the post-2020 single tier Reserve price under the current Regulation as well as the price ceiling value of the proposed amendments. This alternative would set the price ceiling at \$50 in 2021 to \$59.27 in 2030 (in real \$2018 dollars).

The Board finds that the price ceiling may be too low to encourage abatement technologies that achieve the GHG reductions necessary to achieve the State's 2030 reduction target, and California's ability to meet long-term climate objectives (Objective 3). This may jeopardize existing and future linkages (Objective 6). This could possibly result in additional environmental damages, which can be valued using social cost of carbon, and risk not achieving the GHG reductions necessary to achieve the State's 2030 reduction target. For these reasons, the Board rejects this alternative.

Alternative 6: No Inclusion of Direct Environmental Benefits Requirements –

Alternative 6 would be the same as the Proposed Project, except it would not include the requirement to distinguish between offset projects that provide a direct environmental benefit in the State and those that do not. In essence, this alternative would attempt to maintain the status quo in that only the offset quantitative usage limits established by AB 32 and AB 398 would apply, without a distinction in the percentage of that quantitative usage limit that would apply to individual offset projects. Under this alternative, amendments required by AB 398, which requires the distinction between projects that provide a direct environmental benefit in the State from those that do not, would not be promulgated.

The Board finds that this alternative would fail to meet project objectives because it would not respond to legislative direction in AB 398. This alternative would not establish the required changes to the offsets limits established by AB 398 (Objective 8). This alternative, in addition to failing to meet the directive from AB 398, would not result in any additional environmental benefits in the State related to offset project development. 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, including the cumulative benefits, 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 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 2020 target and the SB 32 2030 target;
5. Establishing a price ceiling pursuant to AB 398 and a mechanism to maintain the environmental integrity of the Program in the unlikely event the price ceiling is accessed;
6. Continuing to provide a durable framework that has the potential to provide further GHG reductions beyond the 2020 and 2030 targets;
7. 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;
8. Providing a program with proven, long-established design features to minimize emissions leakage and protect California consumers and utility rate-payers;
9. Providing a price signal needed to drive long-term investment in cleaner fuels and more efficient buildings and technologies;
10. Helping to mitigate the economic consequences of continued reliance on fossil fuels;
11. Ensuring emissions associated with the California Independent System Operator's Energy Imbalance Market are appropriately accounted for;
12. 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;
13. 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;
14. Helping to incentivize more offset projects that provide direct environmental benefits in the State;
15. Helping to incentivize further greenhouse gas reduction and mitigation effort through the continuance and expansion of linkage with other programs such as Québec;

16. 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;
17. 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
18. 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.