

# ATTACHMENT D

## FINDINGS and STATEMENT OF OVERRIDING CONSIDERATIONS

### Introduction

The California Air Resources Board (CARB), as the lead agency for the *Proposed Innovative Clean Transit Regulation: A Replacement to the Fleet Rule for Transit Agencies* (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 Innovative Clean Transit Regulation: A Replacement to the Fleet Rule for Transit Agencies*, included as Appendix C to the Staff Report (Initial Statement of Reasons) for the Proposed Project, 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 7, 2018 through September 24, 2018, CARB prepared the *Final Environmental Analysis prepared for the Proposed Innovative Clean Transit Regulation: A Replacement to the Fleet Rule for Transit Agencies* (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 7, 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 air quality (long-term), energy demand, and greenhouse gases (GHGs); less than significant impacts to air quality (odors), energy demand, greenhouse gases, mineral resources, population, employment and housing, public services, and recreation; and potentially significant impacts to aesthetics, agricultural and forest resources related to new facilities, air quality (short-term), biological resources, cultural resources, geology and soil, hazards and hazardous materials, hydrology and water quality, land use and planning, mineral resources, noise, traffic and transportation, and utilities and services systems. 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 beneficial or 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 CARB Board's (Board) 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 the Proposed Project could result in potentially significant short-term construction-related impacts and long-term operational impacts on aesthetic resources. Implementation of the Proposed Project could result in an increase in manufacturing and associated facilities to increase the supply of zero-emission buses (ZEBs), along with construction of new hydrogen fueling stations and electric vehicle charging stations to support ZEB operations and associated increase in hydrogen fuel supply and transportation. Increased deployment of ZEBs could result in a relatively small increase in production of electricity and hydrogen fuel, reduce rates of oil and gas extraction, and result in associated increases in lithium and platinum mining and exports from source countries or other states. This could result in increased rates of disposal of lithium batteries and hydrogen fuel cells; however, disposal would need to comply with California law, including but not limited to California's Hazardous Waste Control Law and implementing regulations. For lithium-ion batteries, it is anticipated they still have a useful life at the end of bus life, and are likely to be repurposed for a second life. To meet an increased demand of refurbishing or reusing batteries and fuel cells, new facilities or modifications to existing facilities could be constructed to accommodate recycling activities. Fleet turnover largely would be unaffected since the regulation is implemented at the time of normal bus purchase.

The Final EA includes Mitigation Measures 1-1 and 1-2, which identify existing statutes and regulations and operating 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 1-1 and 1-2 are within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in Mitigation Measures 1-1 and 1-2 should be adopted by those agencies. Public agencies with the requisite 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 Final 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.

Impacts may be reduced to a less-than-significant level by land use and/or permitting agency conditions of approval at a later stage. But at this stage, the Board lacks full details on the design of potential programs and associated required mitigation. Consequently, the Board takes a conservative approach in its post-mitigation significance conclusion and finds the impacts to this resource associated with the Proposed Project would be potentially significant

and unavoidable. This potential 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 the Proposed Project could result in potentially significant impacts on agriculture and forest resources. Implementation of the Proposed Project could result in an increase in manufacturing and associated facilities to increase the supply of ZEBs, along with construction of new hydrogen fueling stations and electric vehicle charging stations to support ZEB operations and associated increase in hydrogen fuel supply and transportation. Increased deployment of ZEBs could result in a relatively small increase in production of electricity and hydrogen fuel, reduce rates of oil and gas extraction, and result in associated increases in lithium and platinum mining and exports from source countries or other states. This could result in increased rates of disposal of lithium batteries and hydrogen fuel cells; however, disposal would need to comply with California law, including but not limited to California's Hazardous Waste Control Law and implementing regulations. For lithium-ion batteries, it is anticipated they still have a useful life at the end of bus life, and are likely to be repurposed for a second life. To meet an increased demand of refurbishing or reusing batteries and fuel cells, new facilities or modifications to existing facilities could be constructed to accommodate recycling activities. Fleet turnover largely would be unaffected since the regulation is implemented at the time of normal bus purchase.

The Final EA includes Mitigation Measure 2-1, which identifies existing statutes and regulations and construction and operating 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 2-1 is within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in Mitigation Measure 2-1 should be adopted by those agencies. Public agencies with the requisite 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 Final 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.

Impacts may be reduced to a less-than-significant level by land use and/or permitting agency conditions of approval at a later stage. But at this stage, the Board lacks full details on the design of potential programs and associated required mitigation. Consequently, the Board takes a conservative approach in its post-mitigation significance conclusion and finds the impacts to this resource associated with the Proposed Project would be potentially significant and unavoidable. This potential 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 reasonably foreseeable actions associated with implementation of the Proposed Project could result in potentially significant short-term construction-related impacts on air quality. Implementation of the Proposed Project could result in an increase in manufacturing and associated facilities to increase the supply of ZEBs, along with construction of new hydrogen fueling stations and electric vehicle charging stations to support ZEB operations and associated increase in hydrogen fuel supply and transportation. Increased deployment of ZEBs could result in a relatively small increase in production of electricity and hydrogen fuel, reduce rates of oil and gas extraction, and result in associated increases in lithium and platinum mining and exports from source countries or other states. This could result in increased rates of disposal of lithium batteries and hydrogen fuel cells; however, disposal would need to comply with California law, including but not limited to California's Hazardous Waste Control Law and implementing regulations. For lithium-ion batteries, it is anticipated they still have a useful life at the end of bus life, and are likely to be repurposed for a second life. To meet an increased demand of refurbishing or reusing batteries and fuel cells, new facilities or modifications to existing facilities could be constructed to accommodate recycling activities. Fleet turnover largely would be unaffected since the regulation is implemented at the time of normal bus purchase.

The Final EA included Mitigation Measure 3-1, which 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 3-1 within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in Mitigation Measure 3-1 should be adopted by those agencies. Public agencies with the requisite 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 potential 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 reasonably foreseeable actions associated with implementation of the Proposed Project could result in potentially significant impacts on biological resources. Implementation of the Proposed Project could result in an increase in manufacturing and associated facilities to increase the supply of ZEBs, along with construction of new hydrogen fueling stations and electric vehicle charging stations to support ZEB operations and associated increase in hydrogen fuel supply and transportation. Increased deployment of ZEBs could result in a relatively small increase in production of electricity and hydrogen fuel, reduce rates of oil and gas extraction, and result in associated increases in lithium and platinum mining and exports from source countries or other states. This could result in increased rates of disposal of lithium batteries and hydrogen fuel cells; however, disposal would need to comply with California law, including but not limited to California's Hazardous Waste Control Law and implementing regulations. For lithium-ion batteries, it is anticipated they still have a useful life at the end of bus life, and are likely to be repurposed for a second life. To meet an increased demand of refurbishing or reusing batteries and fuel cells, new facilities or modifications to existing facilities could be constructed to accommodate recycling activities. Fleet turnover largely would be unaffected since the regulation is implemented at the time of normal bus purchase.

The Final EA included Mitigation Measures 4-1 and 4-2, which 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 4-1 and 4-2 are within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in Mitigation Measures 4-1 and 4-2 should be adopted by those agencies. Public agencies with the requisite 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 potential 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 reasonably foreseeable actions associated with implementation of the Proposed Project could result in potentially significant impacts on cultural resources. Implementation of the Proposed Project could result in an increase in manufacturing and associated facilities to increase the supply of ZEBs, along with construction of new hydrogen fueling stations and electric vehicle charging stations to support ZEB operations and associated increase in hydrogen fuel supply and transportation. Increased deployment of ZEBs could result in a relatively small increase in production of electricity and hydrogen fuel, reduce rates of oil and gas extraction, and result in associated increases in lithium and platinum mining and exports from source countries or other states. This could result in increased rates of disposal of lithium batteries and hydrogen fuel cells; however, disposal would need to comply with California law, including but not limited to California's Hazardous Waste Control Law and implementing regulations. For lithium-ion batteries, it is anticipated they still have a useful life at the end of bus life, and are likely to be repurposed for a second life. To meet an increased demand of refurbishing or reusing batteries and fuel cells, new facilities or modifications to existing facilities could be constructed to accommodate recycling activities. Fleet turnover largely would be unaffected since the regulation is implemented at the time of normal bus purchase.

The Final EA included Mitigation Measure 5-1, which 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 5-1 is within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in Mitigation Measure 5-1 should be adopted by those agencies. Public agencies with the requisite 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 potential 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 reasonably foreseeable actions associated with implementation of the Proposed Project could result in potentially significant impacts on geology and soil resources. Implementation of the Proposed Project could result in an increase in manufacturing and associated facilities to increase the supply of ZEBs, along with construction of new hydrogen fueling stations and electric vehicle charging stations to support ZEB operations and associated increase in hydrogen fuel supply and transportation. Increased deployment of ZEBs could result in a relatively small increase in production of electricity and hydrogen fuel, reduce rates of oil and gas extraction, and result in associated increases in lithium and platinum mining and exports from source countries or other states. This could result in increased rates of disposal of lithium batteries and hydrogen fuel cells; however, disposal would need to comply with California law, including but not limited to California's Hazardous Waste Control Law and implementing regulations. For lithium-ion batteries, it is anticipated they still have a useful life at the end of bus life, and are likely to be repurposed for a second life. To meet an increased demand of refurbishing or reusing batteries and fuel cells, new facilities or modifications to existing facilities could be constructed to accommodate recycling activities. Fleet turnover largely would be unaffected since the regulation is implemented at the time of normal bus purchase.

The Final EA included Mitigation Measure 7-1, which 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 7-1 is within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in Mitigation Measure 7-1 should be adopted by those agencies. Public agencies with the requisite 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 potential 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 the Proposed Project could result in potentially significant short-term construction-related and long-term operational-related impacts on hazards and hazardous material resources. Implementation of the Proposed Project could result in an increase in manufacturing and associated facilities to increase the supply of ZEBs, along with construction of new hydrogen fueling stations and electric vehicle charging stations to support ZEB operations and associated increase in hydrogen fuel supply and transportation. Increased deployment of ZEBs could result in a relatively small increase in production of electricity and hydrogen fuel, reduce rates of oil and gas extraction, and result in associated increases in lithium and platinum mining and exports from source countries or other states. This could result in increased rates of disposal of lithium batteries and hydrogen fuel cells; however, disposal would need to comply with California law, including but not limited to California's Hazardous Waste Control Law and implementing regulations. For lithium-ion batteries, it is anticipated they still have a useful life at the end of bus life, and are likely to be repurposed for a second life. To meet an increased demand of refurbishing or reusing batteries and fuel cells, new facilities or modifications to existing facilities could be constructed to accommodate recycling activities. Fleet turnover largely would be unaffected since the regulation is implemented at the time of normal bus purchase.

The Final EA includes Mitigation Measures 9-1 and 9-2, which identify existing statutes and regulations and construction and operating 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 9-1 and 9-2 is within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in Mitigation Measures 9-1 and 9-2 should be adopted by those agencies. Public agencies with the requisite 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, the degree of mitigation that may ultimately be implemented to reduce potentially significant impacts to this resource is inherently uncertain.

Impacts may be reduced to a less-than-significant level by land use and/or permitting agency conditions of approval at a later stage. But at this stage, the Board lacks full details on the design of potential programs and associated required mitigation. Consequently, the Board takes a conservative approach in its post-mitigation significance conclusion and finds the impacts to this resource associated with the Proposed Project would be potentially significant

and unavoidable. This potential 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 reasonably foreseeable actions associated with implementation of the Proposed Project could result in potentially significant impacts on hydrology and water quality resources. Implementation of the Proposed Project could result in an increase in manufacturing and associated facilities to increase the supply of ZEBs, along with construction of new hydrogen fueling stations and electric vehicle charging stations to support ZEB operations and associated increase in hydrogen fuel supply and transportation. Increased deployment of ZEBs could result in a relatively small increase in production of electricity and hydrogen fuel, reduce rates of oil and gas extraction, and result in associated increases in lithium and platinum mining and exports from source countries or other states. This could result in increased rates of disposal of lithium batteries and hydrogen fuel cells; however, disposal would need to comply with California law, including but not limited to California's Hazardous Waste Control Law and implementing regulations. For lithium-ion batteries, it is anticipated they still have a useful life at the end of bus life, and are likely to be repurposed for a second life. To meet an increased demand of refurbishing or reusing batteries and fuel cells, new facilities or modifications to existing facilities could be constructed to accommodate recycling activities. Fleet turnover largely would be unaffected since the regulation is implemented at the time of normal bus purchase.

The Final EA included Mitigation Measures 10-1 and 10-2, which 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 10-1 and 10-2 are within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in Mitigation Measures 10-1 and 10-2 should be adopted by those agencies. Public agencies with the requisite 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 potential 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 reasonably foreseeable actions associated with implementation of the Proposed Project could result in potentially significant impacts on land use and planning resources. Implementation of the Proposed Project could result in an increase in manufacturing and associated facilities to increase the supply of ZEBs, along with construction of new hydrogen fueling stations and electric vehicle charging stations to support ZEB operations and associated increase in hydrogen fuel supply and transportation. Increased deployment of ZEBs could result in a relatively small increase in production of electricity and hydrogen fuel, reduce rates of oil and gas extraction, and result in associated increases in lithium and platinum mining and exports from source countries or other states. This could result in increased rates of disposal of lithium batteries and hydrogen fuel cells; however, disposal would need to comply with California law, including but not limited to California's Hazardous Waste Control Law and implementing regulations. For lithium-ion batteries, it is anticipated they still have a useful life at the end of bus life, and are likely to be repurposed for a second life. To meet an increased demand of refurbishing or reusing batteries and fuel cells, new facilities or modifications to existing facilities could be constructed to accommodate recycling activities. Fleet turnover largely would be unaffected since the regulation is implemented at the time of normal bus purchase.

Construction and operation of new manufacturing and recycling facilities may require the conversion of non-industrial land uses to industrial land uses. Potential environmental effects associated with land use change on agriculture and forestry, biology, geology and soils, and hydrology and their related mitigation measures are discussed in further detail under their respective impact discussions.

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 land use associated with the proposed actions in the Proposed Project would be potentially significant and unavoidable. This potential 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 the Proposed Project could result in impacts to mineral resources. Implementation of the Proposed Project could result in an increase in manufacturing and associated facilities to increase the supply of ZEBs, along with construction of new hydrogen fueling stations and electric vehicle charging stations to support ZEB operations and associated increase in hydrogen fuel supply and transportation. Increased deployment of ZEBs could result in a relatively small increase in production of electricity and hydrogen fuel, reduce rates of oil and gas extraction, and result in associated increases in lithium and platinum mining and exports from source countries or other states. This could result in increased rates of disposal of lithium batteries and hydrogen fuel cells; however, disposal would need to comply with California law, including but not limited to California's Hazardous

Waste Control Law and implementing regulations. For lithium-ion batteries, it is anticipated they still have a useful life at the end of bus life, and are likely to be repurposed for a second life. To meet an increased demand of refurbishing or reusing batteries and fuel cells, new facilities or modifications to existing facilities could be constructed to accommodate recycling activities. Fleet turnover largely would be unaffected since the regulation is implemented at the time of normal bus purchase.

The Final EA included Mitigation Measure 12-1, which 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 12-1 is within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in Mitigation Measure 12-1 should be adopted by those agencies. Public agencies with the requisite 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 potential 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 reasonably foreseeable actions associated with implementation of the Proposed Project could result in potentially significant impacts on noise resources. Implementation of the Proposed Project could result in an increase in manufacturing and associated facilities to increase the supply of ZEBs, along with construction of new hydrogen fueling stations and electric vehicle charging stations to support ZEB operations and associated increase in hydrogen fuel supply and transportation. Increased deployment of ZEBs could result in a relatively small increase in production of electricity and hydrogen fuel, reduce rates of oil and gas extraction, and result in associated increases in lithium and platinum mining and exports from source countries or other states. This could result in increased rates of disposal of lithium batteries and hydrogen fuel cells; however, disposal would need to comply with California law, including but not limited to California's Hazardous Waste Control Law and implementing regulations. For lithium-ion batteries, it is anticipated they still have a useful life at the end of bus life, and are likely to be repurposed for a second life. To meet an increased demand of refurbishing or reusing batteries and fuel cells, new facilities or modifications to existing facilities could be constructed to accommodate recycling

activities. Fleet turnover largely would be unaffected since the regulation is implemented at the time of normal bus purchase.

The Final EA included Mitigation Measures 13-1 and 13-2, which 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 13-1 and 13-2 is within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in Mitigation Measures 13-1 and 13-2 should be adopted by those agencies. Public agencies with the requisite 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 potential 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 reasonably foreseeable actions associated with implementation of the Proposed Project could result in potentially significant impacts on transportation and traffic resources. Implementation of the Proposed Project could result in an increase in manufacturing and associated facilities to increase the supply of ZEBs, along with construction of new hydrogen fueling stations and electric vehicle charging stations to support ZEB operations and associated increase in hydrogen fuel supply and transportation. Increased deployment of ZEBs could result in a relatively small increase in production of electricity and hydrogen fuel, reduce rates of oil and gas extraction, and result in associated increases in lithium and platinum mining and exports from source countries or other states. This could result in increased rates of disposal of lithium batteries and hydrogen fuel cells; however, disposal would need to comply with California law, including but not limited to California's Hazardous Waste Control Law and implementing regulations. For lithium-ion batteries, it is anticipated they still have a useful life at the end of bus life, and are likely to be repurposed for a second life. To meet an increased demand of refurbishing or reusing batteries and fuel cells, new facilities or modifications to existing facilities could be constructed to accommodate recycling activities. Fleet turnover largely would be unaffected since the regulation is implemented at the time of normal bus purchase.

The Final EA included Mitigation Measures 17-1 and 17-2, which identify 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 Measures 17-1 and 17-2 are within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in Mitigation Measures 17-1 and 17-2 should be adopted by those agencies. Public agencies with the requisite 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 potential impact is overridden by the project's benefits as set forth in the statement of overriding considerations.

## **Utilities and Service Systems**

### Finding and Explanation

The Final EA found that the reasonably foreseeable actions associated with implementation of the Proposed Project could result in potentially significant long-term operational impacts on utilities and service systems resources. Implementation of the Proposed Project could result in an increase in manufacturing and associated facilities to increase the supply of ZEBs, along with construction of new hydrogen fueling stations and electric vehicle charging stations to support ZEB operations and associated increase in hydrogen fuel supply and transportation. Increased deployment of ZEBs could result in a relatively small increase in production of electricity and hydrogen fuel, reduce rates of oil and gas extraction, and result in associated increases in lithium and platinum mining and exports from source countries or other states. This could result in increased rates of disposal of lithium batteries and hydrogen fuel cells; however, disposal would need to comply with California law, including but not limited to California's Hazardous Waste Control Law and implementing regulations. For lithium-ion batteries, it is anticipated they still have a useful life at the end of bus life, and are likely to be repurposed for a second life. To meet an increased demand of refurbishing or reusing batteries and fuel cells, new facilities or modifications to existing facilities could be constructed to accommodate recycling activities. Fleet turnover largely would be unaffected since the regulation is implemented at the time of normal bus purchase.

The EA includes Mitigation Measure 18-1, which identifies existing statutes and regulations and construction and operating 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 18-1 is within the responsibility and jurisdiction of other public agencies, and that the requirements and practices in Mitigation Measure 18-1 should be adopted by those agencies. Public agencies with the requisite 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, the degree of mitigation that may ultimately be implemented to reduce potentially significant impacts to this resource is inherently uncertain.

Impacts may be reduced to a less-than-significant level by land use and/or permitting agency conditions of approval at a later stage. But at this stage, the Board lacks full details on the design of potential programs and associated required mitigation. Consequently, 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 potential impact is overridden by the project's benefits as set forth in the statement of overriding considerations.

### **Cumulatively Considerable Impacts**

The applicable plan containing the appropriate summary of projections for considering cumulative impacts of the Proposed Project is the 2016 State SIP Strategy. 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 aesthetics, agriculture and forest resources, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, mineral resources, noise, transportation and traffic, and utilities and service systems. 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 the requisite 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, agriculture and forest resources, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, mineral resources, noise, transportation and traffic, and utilities and service systems 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. Please see the Final EA for more in-depth discussion and analysis regarding project alternatives.

#### **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, the Proposed Project would not occur. Existing conditions would continue: the previously-issued advisory would remain in place, and transit agencies would continue purchasing buses as they have been to date.

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, criteria pollutant and GHGs emissions would not decrease. The No Project Alternative would also fail to fulfill either the AB 1493 mandate to achieve maximum feasible GHG reductions or the AB 32 mandate to reduce GHG emissions to 1990 levels by 2020. The No Project Alternative would not result in energy savings. The No Project Alternative would not help attain the California and national ambient air quality standards, and it would fail to ensure all Californians live, work, and play in a healthful environment free from harmful exposure to air pollution. For these reasons, the Board rejects this alternative.

#### **Alternative 2: Less Stringent Purchase Requirement –**

This alternative includes a less stringent purchase requirement than the Proposed Project. Under this alternative, starting in 2023, large transit agencies with more than 100 buses would need to purchase 15 percent ZEB when bus purchases are made. This same 15 percent purchase requirement would apply to small size transit fleets starting in 2026.

However, under this alternative, transit agencies would not achieve 100 percent ZEB fleets as is required for the Proposed Project.

The Board finds that emissions reduction achieved under this alternative would not be as great as the reductions that would be achieved under the Proposed Project. The less stringent purchase requirement will result in less emissions reduction benefits compared with the Proposed Project. In addition, the less stringent purchase requirement may not accelerate the zero-emission technology advancement and drive down the price of ZEBs as fast as the current proposal. This could jeopardize the project objectives relating to technology advancement and ZEV-related GHG emissions reductions. This could also prevent California from achieving the GHG reduction goal of AB 32, particularly if CARB cannot develop other programs or regulations to reduce GHG emissions. As such, this alternative would partially achieve some of the project objectives identified for the Proposed Project, but would fail to meet other objectives of the Proposed Project. For these reasons, the Board rejects this alternative.

### Alternative 3: More Stringent Purchase Requirement -

This alternative includes a more stringent purchase requirement than the Proposed Project. Under this alternative, starting in 2020, large transit agencies with more than 100 buses would need to purchase 100 percent ZEB when bus purchases are made. This same 100 percent purchase requirement would apply to small size transit fleets starting in 2023.

The Board finds that this alternative concept could provide more emission reductions and health benefits from early years; however, it also bears some risks. First, it moves all infrastructure cost earlier which could be too much of a financial burden for transit agencies. Second, a sudden high cost in the early years does not allow transit agencies time to plan for funding sources and could result in adverse impacts like service cuts. Third, it does not allow transit agencies time to adjust for technology learning curve and troubleshooting. Fourth, this alternative does not allow the use of funding sources (shown in Chapter III) that may be available in later years and unnecessarily increases the upfront program incremental cost. Finally, this alternative would not reduce or avoid significant environmental impacts from the Proposed Project, and could increase certain environmental impacts, as discussed in the Final EA at pages 116-118. For these reasons, the Board rejects this alternative.

### Alternatives Considered but Rejected –

Two additional alternatives were considered during development of the alternatives to the Proposed Project. The first was “Bus with Low NOx Engine Renewable Fuel Purchase Requirement” and the second was “Bus Manufacture Sale Requirement”. The CEQA Guidelines Section 15126.6(c) includes three factors that may be used to eliminate alternatives from detailed consideration in an Environmental Impact Report (EIR): “(i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impact.” Both of these alternatives were rejected because they do not meet the most basic of the project objectives and neither alternative would result in additional GHG emission benefits.

## 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. Substantial public health benefits for the 12 million Californians currently breathing unhealthy air with elevated levels of ozone and PM<sub>2.5</sub>, exposure to which is associated with emergency room visits and hospitalization, lost work and school days, and premature mortality;
2. Provide the necessary emission reductions for all of California's nonattainment areas to meet federal ambient air quality standards by the attainment dates specified by U.S. EPA, including the 75 ppb ground level ozone standard and the annual PM<sub>2.5</sub> standard of 12 µg/m<sup>3</sup>;
3. Accelerate the use of advanced vehicle technologies (both Low-NOx coupled with cleaner renewable fuels and zero-emission technologies);
4. Incentivize early introduction of advanced clean technologies;
5. Reduce transit-related air pollution in communities throughout California;
6. Reduce the state's dependence on petroleum;
7. Achieve transportation-related GHG reductions in furtherance of California's GHG reduction goals;
8. Lead advanced clean technologies in the heavy duty vehicle sector to support goods movement and freight policy; and
9. Lead workforce training and related green job creation to support the entire heavy-duty sector's transformation towards zero-emission technologies.

## 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.