

## **APPENDIX C**

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### **COMMENTS AND RESPONSES TO COMMENTS ON INITIAL STUDY**



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October 14, 2005

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Hand Delivered

Mr. Michael Krause  
c/o CEQA  
South Coast AQMD  
21865 Copley Drive  
Diamond Bar, CA 91765

Re: *Comments on Initial Study: Rules 3501 and 3502, and Regulation XXXV*

Dear Mr. Krause:

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We submit these comments on behalf of the Association of American Railroads (“AAR”), Union Pacific Railroad Company and The BNSF Railway Company (collectively, the “Railroads”) regarding the September 15, 2005 Notice of Preparation of a Draft Program Environmental Assessment (“PEA”) and Initial Study (“IS”) prepared by the South Coast Air Quality Management District (the “District”) regarding Proposed Rules 3501 (Recordkeeping for Locomotive Idling) and 3502 (Minimization of Emissions from Locomotive Idling) (collectively, the “Proposed Rules” or “PR”).<sup>1</sup>

1-2

Our comments address the necessary scope of the environmental analysis that the District should include in the PEA for the Proposed Rules.<sup>2</sup> Regulation XXXV and its rules, including PR 3501 and 3502, constitute a substantial collection of discretionary activities proposed to be carried out or approved by the District and thus are subject to CEQA review. We support the District’s decision to prepare a PEA which will further assess potential environmental impacts that may result from implementing the proposed project. However, in preparing the PEA, the District should consider potential impacts associated with Rule 3503 and PR 3504, as well as PR 3501 and 3502. In addition, the District also must consider all “potentially significant impacts” from this rulemaking, including, but

<sup>1</sup> The Proposed Rules are attached as Exhibit 1 and Exhibit 2, respectively. We also attach as Exhibit 3 AAR and the Railroads’ September 7, 2005 letter commenting on the District’s adoption of Rule 3503 (“Rule 3503 Comments”) and ask that this letter be included in the administrative record for PR 3501 and 3502.

<sup>2</sup> Please note that AAR and the Railroads reserve the right to comment upon the District’s recitation of legislative authority in the Initial Study, which is not addressed in this letter.

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not limited to, the significant impacts that would result from a modal shift from rail to on-highway heavy-duty diesel trucking and direct, indirect and cumulative impacts on environmental factors such as air quality, transportation/traffic, utilities/service systems and noise that may occur if Proposed Rules 3501-3503,<sup>3</sup> and certainly 3504, are adopted or implemented.

A. The District Has Improperly Narrowed the Scope of the Project.

The District improperly limits the scope of this project to PR 3501 and 3502. In March 2005, the District gave notice of the first public workshop for Proposed Regulation XXXV, which is attached to the Rule 3503 Legal Comments as Exhibit 5. The workshop was hosted on April 6, 2005, and copies of Proposed Rules 3501 through 3504<sup>4</sup> as well as Preliminary Draft Staff Reports for each proposed rule dated March 2005<sup>5</sup> were distributed to the attendees. The March Draft Staff Reports for PR 3501 and 3502 provided a detailed introduction to Proposed Regulation XXXV – Railroads and Railroad Operations:

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Proposed Regulation XXXV – Railroads and Railroad Operations proposes four rules focusing on monitoring and recording locomotive idling events and calculating railyard emissions and conducting risk assessment. In addition, the proposed rules seek to minimize emissions from locomotive idling and reduce cancer risk from Basin railyards. A summary of the proposed rules to address railroad operations in the District is as follows:

- PR 3501 – Recordkeeping for Locomotive Idling would require locomotive operators to record the time, date, and duration of any idling event that occurred for more than a 15 minute time period. Locomotives that are equipped with anti-idling devices that would be operated to limit idling to below 15 minutes would be exempt recordkeeping requirements.

Under PR 3501, the locomotive operator would be required to submit a weekly report, for all idling events that occurred over the past week and an

<sup>3</sup> The District adopted PR 3503 at its October 7, 2005 meeting.

<sup>4</sup> The March 2005 drafts of PR 3501-3504 are attached to the Rule 3503 Legal Comments as Exhibits 6 through 9, respectively.

<sup>5</sup> The March 2005 Preliminary Draft Staff Reports for PR 3501-3504 are attached to the Rule 3503 Legal Comments as Exhibits 11 through 14, respectively.

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↑ explanation of the reason for idling. PR 3501 also requires locomotive operators to submit an annual report identifying all locomotives operated in the district and those locomotives that are equipped with anti-idling devices that are exempt from recordkeeping requirements.

- PR 3502 – Minimization of Emissions from Long Duration Idling would prohibit operators from idling for more than 30 minutes unless the locomotive is being used as an emergency vehicle, a mechanic is idling the locomotive for maintenance or diagnostic purposes, or the district could not require an action to be implemented to reduce idling below 30 minutes due to preemption by federal law. In addition, if a locomotive operator can demonstrate that equivalent emission reductions from using a control technology or alternative fuel can achieve emission reduction equivalent to limiting idling to less than 30 minutes, the operator may be allowed to idle more than 30 minutes.

- PR 3503 – Emissions Inventory and Health Risk Assessment for Railyards would require railyard operators to submit facility-wide emissions inventories of criteria and air toxic pollutants for all stationary and mobile sources within the railyard. In addition, operators of railyards would be required to submit facility-wide health risk assessment plans, including diesel PM emission inventories and health risk assessments. Plans would include emissions inventories of all onsite pollutants, documentation of emission factors used and emission calculations. In addition, data would include information to calculate cancer risk and exposure isopleths identifying surrounding areas with cancer risks greater than 10-in-one million. Under PR 3503, railyards with cancer risks exceeding 10-in-one-million would be required to conduct public notification.

- PR 3504 –Risk Reduction from Diesel Related Operations at Railyards would require operators of railyards with cancer risks exceeding 25-in-one-million, as determined pursuant to PR 3503, to submit for AQMD approval risk reduction plans describing strategies to be used to reduce emissions to achieve cancer risks of 25-in-one-million or less. Annual progress reports would be required summarizing progress made toward implementing risk reduction plans. In addition, railyard operators would be required to develop community air emissions action plans to facilitate coordination with the communities surrounding railyards. Fence line air emissions monitoring programs would also be required for facilities with

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approved health risk assessments showing risks greater than 100 in a million or hazard indices of 5.0. Rail operators would be exempt from implementing any risk reduction measures that AQMD could not require due to preemption by federal law, provided the factual basis for the claim of federal preemption is submitted to the AQMD. (Rule 3503 Legal Comments, Ex. 10 and Ex. 11, pp. 1-1 to 1-2).

1-4

As presented by the District, both in its written materials as well as at the April 2005 workshop, Regulation XXXV was a cohesive regulatory project with far-reaching impacts on railroad operations and significant environmental impacts. This cohesive relationship between the rules was recognized by the District in its discussion of the CEQA impact on the proposed regulation:

In accordance with the California Environmental Quality Act (CEQA), the AQMD, as the Lead Agency, has reviewed the proposed locomotive and railyard rules, which includes proposed Rules 3501, 3502, 3503 and 3504. Consistent with CEQA Guidelines §15168(a), the AQMD has decided to prepare a Program Environmental Assessment (PEA) for the proposed locomotive and railyard rules since the proposed project is: (1) a series of actions that are related geographically; (2) logical parts in chain of contemplated actions; (3) connected with the issuance of rules/regulations, which is a continuing program; and/or (4) carried out with the same authorizing statutory or regulatory authority having generally similar environmental effects which can be mitigated in similar ways. Therefore, pursuant to state CEQA Guidelines §15252, AQMD staff will prepare a Draft PEA which will analyze the potential adverse environmental impacts from the proposed project. (Rule 3503 Legal Comments, Ex. 10 and Ex. 11, p. 3-2).

1-5

Following the April 2005 workshop, the District apparently re-assessed its rule-making calendar and subsequently elected to present only PR 3503 for hearing before the Board in October 2005.<sup>6</sup> District staff further represented in public meetings on August 23 and 30, 2005 that PR 3501 and 3502 would be presented for hearing in December 2005, and

<sup>6</sup> During this same period, the Board passed a resolution concerning the MOU. On July 8, 2005 the Board directed staff to continue developing Regulation XXXV, "related to railroad idling and rail operations risk assessment and reduction with the goal of Board consideration this Fall," thus demonstrating that both the Board and District staff intend to promulgate all of the accompanying rules, not merely PR 3501 and 3502 and Rule 3503.

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↑ that PR 3504 had been taken off calendar so that District Staff could “work” on it. However, District staff reported at the August 23, 2005 public meeting that Rule 3504 would be promulgated in the not-too-distant future. The statement in the Project Description of the Initial Study (p. 1-4), “as subsequent railroad rules are adopted to reduce TACs and criteria pollutants from mobile sources... [further environmental review will occur]” documents the District’s intent to further regulate along the lines of PR 3504. The District has provided only legally insufficient explanations of why Regulation XXXV no longer constitutes a single regulatory proposal.

1-6

As the Railroads’ Rule 3505 Comments explain, it is improper to segregate the environmental review of PR 3501 and 3502 from Rule 3503 and future PR 3504. The District improperly defines PR 3501 and 3502, exclusive of Regulation XXXV and the accompanying rules, as the “project.” In PR 3501 and 3502, the District improperly ignores the history of Regulation XXXV and the interrelationship between the rules to be promulgated thereunder. When these rules first were publicized in March 2005, they were part of a single regulation comprising Proposed Rules 3501 through 3504. These rules were intended, collectively, to regulate the railroad operations and emissions in the South Coast air basin:

Proposed Regulation XXXV – Railroads and Railroad Operations proposes four rules focusing on monitoring and recording locomotive idling events and calculating railyard emissions and conducting risk assessment. In addition, the proposed rules seek to minimize emissions from locomotive idling and reduce cancer risk from Basin railyards. (Rule 3503 Legal Comments, Ex. 10 and Ex. 11, p. 1-1).

It was only recently that the District chose to defer promulgation of PR 3501 and 3502 until December 2005 (now January 2006) and to postpone PR 3504 until, likely, calendar year 2006. However, the District’s decision to sequentially pass the four parts of Regulation XXXV does not mean that it can ignore the additional rules and the environmental impacts associated with them.

1-7

CEQA does not allow this type of piecemeal review of environmental impacts. A public agency may not divide what was one project into individual subprojects to avoid responsibility for considering the environmental impact of the project as a whole. *Orinda Association v. Board of Supervisors*, 182 Cal.App.3d 1145, 1171 (1986). The CEQA Guidelines provide that, “[t]he lead agency must consider the whole of an action, not simply its constituent parts, when determining whether it will have a significant environmental effect.” Guidelines, 15003(h) (emphasis added). The Guidelines further provide that, “Where individual projects are, or a phased project is, to be undertaken and

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↑ where the total undertaking comprises a project with significant environmental effect, the lead agency shall prepare a single program EIR for the ultimate project. . . .” Guidelines, § 15165.

The project analyzed by the District must include all key components, notwithstanding the characterization by the District of Rule 3503 as “independent” of PR 3501 and 3502, and the fact that Rule 3503 was passed before the District’s consideration of the other rules pursuant to a more detailed environmental review. The project also must include PR 3504, which the District expects to adopt in the near future.<sup>7</sup> Any uncertainty regarding the date and exact form that PR 3504 will take does not excuse the District from conducting the requisite CEQA analysis, and does not allow for deferral of related impacts since it is a reasonably foreseeable event which will cause, at a minimum, indirect physical changes to the environment. *Laurel Heights Improvement Association v. Regents of the University of California*, 47 Cal.3d 376 (1988) (EIR required to analyze the anticipated but unapproved future use and expansion of a medical research facility despite lack of precise plans, since there was “telling evidence” that at the time the Regents prepared the EIR, they “had either made decisions or formulated reasonably definite proposals as to future uses of the building”); *McQueen v. Board of Directors of the Midpeninsula Regional Open Space District*, 202 Cal. App. 3d 1136, 1143 (1988) (agency improperly deferred CEQA review of its remediation and management of surplus federal property until after property’s acquisition, which it impermissibly found exempt). As the California Supreme Court has held, “The fact that precision may not be possible . . . does not mean that no analysis is required. Drafting an EIR involves some degree of forecasting. While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.” *Laurel Heights, supra*, 47 Cal.3d at p. 397.

1-8

B. The Initial Study Ignores the Modal Shift That Will Result from the Proposed Rules and The Resulting Foreseeable Environmental Impacts.

The PEA must consider all reasonably foreseeable indirect effects, as well as the direct effects, of the Proposed Rules. Guidelines, § 15126.2, 15064(d)(3). However, the NOP and IS demonstrate the District’s intent to shortchange the environmental review of the Proposed Rules by ignoring the foreseeable modal shift in freight transport from rail to truck, and the resulting impacts on air quality, transportation, noise and other environmental factors. The District states that it does not intend to consider the impacts

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<sup>7</sup> The Initial Study itself confirms the District’s intent to adopt further regulation of locomotive emissions. (IS, p. 1-4).

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↑ of a modal shift in freight transportation in the PEA because the issues allegedly are considered “speculative,” “not supported by credible evidence,” and would occur for “other business-related reasons regardless of the implementation of the proposed rules.” (IS, p. 2-3). This decision is in error and ignores the well-known fact that the Proposed Rules will lead to an increase in the cost of rail transport which in turn will shift freight transport to trucks.

1-9

1. Increased Rail Costs Lead to A Modal Shift from Rail to Truck Transport.

The District is well-aware that the Proposed Rules will lead to an increase in the cost of rail transport. As conceded by the District in its evaluation of Rule 3503, the District estimates the average annual costs of compliance with Rule 3503 to be \$4,530,000 per year between 2006 and 2020. The estimated year 1 costs are \$7,240,000. AAR and the Railroads believe these estimates are quite low and clearly do not reflect the estimated cost of compliance with the July 2, 1998 Memorandum of Mutual Understandings and Agreements among the Railroads and the State of California (the “MOU”). Although the District has not published its estimate of the Railroads’ cost of compliance with PR 3501 and 3502 it is well-aware that these costs will be a minimum of several million more dollars per railroad. None of these costs have been factored into the cost structure for rail freight, but certainly will contribute to a near-term increase in freight costs in the South Coast.

As the cost of rail freight incrementally increases, more and more freight will shift to truck transportation. The Railroads have been informed by their customers -- particularly domestic inter-modal freight customers -- that any increase in costs will result in the shift in business to truck transport. The Railroads have advised the District of this fact.

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2. The Proposed PEA Ignores the Foreseeable Impacts of a Modal Shift from Rail to Truck.

The fact that a modal shift will occur is ample evidence to require the district to evaluate resulting impacts in the PEA. This is particularly true given the low threshold of significance for air quality impacts. The shift of even a small number of freight cars to diesel trucks will quickly meet this level of emissions without the commensurate benefit of removing a train from South Coast tracks. In fact, the District previously has required analysis of air quality impacts associated with relatively small changes in emissions associated with freight transport.

For example, when the Union Pacific Railroad Company proposed to relocate its locomotive repair facility from one site within the District’s jurisdiction (Glendale) to

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↑ another (West Colton), the District noted that operational air quality impacts had not been quantified and, therefore, the lead agency had not demonstrated that operational emissions would not be significant. In response, Giroux & Associates prepared an *Air Quality Impacts Analysis*, dated November 6, 2002 (attached hereto as Exhibit 4) that discusses the diversion of even one locomotive per day as significant. (*Id.*, p. 3). Just as a difference of one train could be considered significant in the West Colton example, so too could the shift from transport by a single train to the corresponding number of trucks be considered significant here. Therefore, the District should consider potential impacts of modal shift associated with the Proposed Rules, even if the modal shift is relatively minor.

1-11

As AAR and the Railroads previously have explained to the District, the proposed District measures to reduce locomotive and associated railyard emissions will have potentially drastic impacts on California's environment and beyond. The District asserts that rail operations are a large source of diesel particulate matter emissions and criteria pollutants (NOx, VOC, CO and SOx) in the South Coast Air Basin. (IS, p. 1-1). According to the District, the 2003 Air Quality Management Plan estimates emissions of locomotive particulate matter less than 10 microns to be 1.01 tons per day and emissions of particulate matter less than 2.5 microns to be 0.93 tons per day. (*Id.*). However, despite these emission levels, the District must concede that the railroad emissions levels are well below those of heavy duty diesel trucks.

Numerous studies have evaluated the affect of regulation of emissions from locomotives and the resulting impact of shifting freight transport to truck operations. All of these studies, whether by governmental agency or private parties, have concluded that rail operations account for lower emissions of criteria and toxic pollutants and generate fewer emissions per ton mile of freight. For example, numerous parties agree that, on a per ton mile basis, rail is a significantly less polluting means of freight transport than truck.

The same comparison can be made for overall contribution of emissions to the South Coast Air Basin's criteria and toxic air contaminant inventories. For estimated periods between 1987 and 2010, trains were expected to contribute approximately 2% of the NOx inventory and 0.7% of the PM 2.5 inventory. (Association of American Railroads, *Overview of Rail Issues*, August 12, 2005, attached as Rule 3503 Legal Comments, Ex. 14, at slide 7.) Conversely, diesel trucks are expected to contribute 21% of the NOx inventory and 2.4% of the PM 2.5 inventory. *Id.* These comparisons are expected to remain accurate into the foreseeable future. In addressing the No Net Increase proposal in the Port of Los Angeles, the Pacific Merchant Shipping Association estimated that PM 2.5 from diesel engines in 2030 will come primarily from marine sources. (Garrett, T.L., *Maritime Growth, a Sustainable Future*, July 29, 2005, attached to Rule 3503 Legal

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Comments as Ex. 15, at Slide 9). Mr. Garrett further reported that locomotives will be a dramatically lower source of emissions, even below that of truck traffic. *Id.*

Agreement with the foregoing conclusions comes from both sides of the ideological fence. In its August 2004 report entitled “Harbor Pollution,” the Natural Resources Defense Counsel (“NRDC”) echoed the foregoing statements. (Bailey, Diane, et al., *Harboring Pollution, Strategies to Cleanup U.S. Ports*, August 2004 attached to Rule 3503 Legal Comments as Ex. 16). The NRDC included a comparison of “Rail Versus Road” and posed the question of whether freight should be shipped via rail or by road. NRDC concluded that to minimize emissions, fuel consumption, cost, accidents, and traffic congestion, the better answer was rail. *Id.* at 52. In a study jointly commissioned by the Environmental Protection Agency, the Federal Railroad Administration and the Federal Highway Administration found that transferring freight from today’s average truck fleet to rail would reduce NOx, CO, PM10 and VOC emissions and that pollution reductions can be realized at even greater rates in the future as more freight is transferred to rail. *Id.*

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In light of the significant environmental benefits from freight transport via rail, it is necessary in any environmental analysis to evaluate the impact of any rule or regulation which will result in modal shift from rail to road.<sup>8</sup> Any regulation, such as Proposed Rules 3501, 3502 and 3504, together with impacts of Rule 3503, that may cause the removal of a train from the tracks will result in the freight being transported aboard a long-haul diesel truck. Given that one double stack train could equal up to 280 diesel trucks, this shift clearly could result in significant environmental impacts. (Rule 3503 Legal Comments, Ex. 14, at Slide 14).

1-13

Even the Federal Environmental Protection Agency is cognizant of the potential environmental impacts of a modal shift for freight transportation. In its December 1997 Regulatory Announcement for regulations implementing section 209(e) of the Clean Air Act, EPA notes that its preemptive regulation of locomotives is beneficial to the environment because without preemption, “there is more of a potential for some shift of freight traffic to more polluting forms of transportation that could occur if the costs of rail

<sup>8</sup> As the Railroads previously have expressed to the District, promulgation of PR 3501, PR 3502 and Regulation XXXV are in direct conflict with the MOU. As a result of this regulation, the Railroads have the right to terminate the MOU. Such termination would result in elimination of the 1998 fleet average agreement, thereby increasing emissions from locomotive operations throughout the State of California. This impact from the promulgation of these rules must be taken into consideration in the District’s CEQA review.

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↑ transportation increased significantly due to patchwork state and local regulations. (For example, transportation by rail causes about one-third of the pollution as transport by truck per ton-mile of freight.)” (Regulatory Announcement, EPA Office of Mobile Sources, EPA420-F-97-050, December 1997, attached to Rule 3503 Legal Comments as Ex. 17). Environmental effects of modal shifts of this nature could have widespread direct and indirect effects that must be evaluated under CEQA.<sup>9</sup>

C. The Initial Study Fails to Consider Foreseeable Air Quality and Other Environmental Impacts.

1. Air Quality

The District concludes in Initial Study section III(b)-(c) (p. 2-9) that certain effects on air quality will be evaluated in the draft PEA, specifically:

- Potential adverse secondary air quality impacts generated from the construction and operational activities associated with the use of control technology or alternative fuels; and
- Potential occurrence of failures from re-starts, and potential delays on roadways at railroad crossings causing an increase in on-road mobile source idling.

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We agree that the draft PEA must consider these potential adverse effects of the Proposed Rules. However, CEQA requires analysis of all potentially significant adverse effects associated with a project. The Initial Study demonstrates the District’s intent to exclude foreseeable adverse impacts from the PEA’s analysis, including those resulting from mitigation measures. For example, measures that “capture” emissions will result in the collection of potentially hazardous waste which could require unique and additional proper handling, reporting and disposal practices. Measures that treat the emissions could cause the formation of new chemicals that could be released into, and have an adverse effect on, the environment. The Initial Study contemplates the potential use of alternative control technology (scrubbers and catalysts) to reduce emissions as part of an Emission Equivalency Plan (IS, p. 1-12 to 1-13). Therefore, anticipated use of these technologies must be considered.

<sup>9</sup> Please note that additional adverse environmental impacts will likely arise as a result of a modal shift. As discussed below, these impacts relate to, among other things, transportation and traffic.

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An objective of PR 3502 is to minimize idling emissions from locomotives, including diesel particulate matter (Ex. 2, PR 3502(a)). In PR 3502(g) and the Initial Study (pp. 2-4 and 2-19), the District apparently further contemplates that use of an alternative fuel<sup>10</sup> could serve as a possible alternative control strategy to minimize emissions of diesel particulate matter in lieu of, or in conjunction with, anti-idling devices which merely turn off the idling locomotives.

However, potential impacts associated with alternative fuel are not necessarily all positive. As discussed below, storage or use of alternative fuel could cause adverse effects upon air quality or aesthetics (visual and/or offensive odors), and also could cause associated with aerial deposition onto soil, water or surfaces like playground equipment where sensitive receptors would be more likely to ingest the materials. The District concedes that it will evaluate “potential adverse secondary air quality impacts generated from the construction and operational activities associated with the use of... alternative fuels in the draft PEA.” (IS, p. 2-9). However, the District must consider all potential impacts of alternative fuels – not just secondary air quality impacts.

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The District also concludes in the Initial Study that adoption of PR 3501 and 3502 will have “no impact” on potential exposure of “sensitive receptors to substantial pollutant concentrations.” (IS, p. 2-7). The District’s entire discussion of possible air quality effects of the Proposed Rules on sensitive receptors is limited to the following passage:

Sensitive receptors in the district are currently exposed to daily toxic risk from diesel particulate and other train idling emissions. PM10 has been found to lodge within the lungs contributing to respiratory problems. Implementing the proposed project is intended to reduce train idling emissions, including PM10 emissions, which would reduce the exposure of surrounding neighborhoods around the facility, including sensitive receptors to PM10 concentrations. Reducing train idling emissions is expected to provide a benefit to sensitive receptors by improving public health in the vicinity of affected railroad facilities. This topic will not be further analyzed in the draft PEA.

<sup>10</sup> “Alternative Fuel” is defined in PR 3501 § (c)(1) as: “fuel used in hybrid electric locomotive propulsion systems, natural gas, propane, ethanol, methanol, hydrogen, electricity, fuel cells, advanced technologies that do not rely on diesel fuel, and any of these fuels used in combination with each other or in combination with other non-diesel fuel.”

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↑ The possibility that a beneficial impact could result from adoption and implementation of PR 3501 and 3502 does not absolve the District of its CEQA obligation to consider potentially significant adverse impacts in an EIR or equivalent document. *Dunn-Edwards Corp. v. Bay Area Air Quality Management Dist.*, 9 Cal. App. 4th 644 (1992), *disapproved on another ground in Western States Petroleum Ass'n v. Superior Court*, 9 Cal.4th 559, 570 and fn. 2 (1995); *County Sanitation District v. County of Kern*, 127 Cal. App. 4th 1544 (2005).

Use of alternative fuels may expose sensitive, as well as other, receptors to substantial pollutant concentrations. For example, benzene, 1,3-butadiene, acetaldehyde, formaldehyde, polycyclic aromatic hydrocarbons (PAHs), and ultrafine particulate matter are present in the emissions from engines powered by one commonly used alternative fuel, compressed natural gas (“CNG”). See, for example, the data provided by the California Air Resources Board in tests comparing emissions in-use transit buses powered by CNG and diesel.<sup>11</sup> Moreover, emissions from CNG-powered engines were observed to be more mutagenic than diesel engines under specific operating conditions. (*Id.*). Similar emissions could be expected for other forms of natural gas such as liquefied natural gas.

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The use and combustion of alternative fuel(s) also could result in substantial emissions of harmful compounds, or in increased emissions of greenhouse gases. The District should evaluate emissions relating to alternative fuels and the potential for health effects in the draft PEA to the same degree as it has evaluated diesel exhaust, and should use realistic and representative values and assumptions in its analysis. Furthermore, while the long-term health effects of new alternative fuels and their associated exhaust(s) may be unknown, the District also should consider the potential effects associated with unintended consequences, similar to the unintended adverse water quality impacts associated with MTBE.

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↓ The District concludes in the Initial Study that the proposed project will have “no impact” on the creation of “objectionable odors affecting a substantial number of people.” IS, p. 2-7. However, this conclusion is based solely on the District’s report that “[o]dors are often associated with diesel emissions” and that it expects a reduction in diesel emissions under the Proposed Rules. (IS, p. 2-10). However, the District should analyze this topic further in the draft PEA, since odors associated with non-diesel sources are ignored, and

<sup>11</sup> Such data is available online: <http://www.arb.ca.gov/research/cng-diesel/cng-diesel.htm>.

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1-18 ↑ since objectionable odors are known to be associated with the use of some alternative  
cont. fuels or related combustion products, such as odorized CNG.<sup>12</sup>

2. Transportation and Traffic

1-19 The District incorrectly concludes in the Initial Study that a traffic evaluation is not necessary. (IS, pp. 2-33 and 2-34). As a result of the modal shift in freight transport, the potential for a dramatic increase in truck traffic over rail traffic exists that could adversely affect the environment under all of these Initial Study categories and in potentially many more locations than rail traffic as increased truck traffic spreads out across numerous interstate and intrastate highways and roadways. For example, the myriad of potential unintended consequences of increased non-rail shipment of goods includes intensified freeway congestion, increased energy costs, and higher probability of accidents and related spills and releases. Such impacts also would be more likely to occur closer to the public, which tends to be closer in proximity to roadways than freight railways. As a result, the physical impacts of trucking operations on various environmental factors are compounded dramatically over rail operations.

1-20 Because a certain level of modal shift and increased trucking of freight will occur as a result of these regulations, it is certain that the significance criteria of increased traffic hazards and increased traffic (at least 350 heavy-duty truck roundtrips in the South Coast air basin per day will occur) will arise. In addition the traffic impacts on the major arterials and intersections surrounding the South Coast railyards must similarly be examined for adverse effects arising from the rule promulgation. For example, traffic impacts currently are being evaluated as part of the Union Pacific Railroad Company Mira Loma Auto Facility entrance relocation. Preliminary studies indicate that the entrance streets (Harrel Street and Galena Street) currently are suffering from heavy traffic. Particularly Harrel Street is close to its truck capacity during peak hour truck traffic. Any increase in traffic due to an outbound modal shift from rail to truck traffic could further degrade the peak period level of service, as well as adjoining intersection volume to capacity, of surrounding streets.

3. Hazards and Hazardous Materials

1-21 ↓ The District concludes in the Initial Study that adoption and implementation of PR 3501 and 3502 would have “no impact” on “a site which is included on a list of hazardous

<sup>12</sup> For example, residents near the Omnitrans facility in San Bernardino County complained of smells associated with releases of odorized CNG. See <http://www.aqmd.gov/news1/2001/Omnitrans.htm>.

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↑ materials sites compiled pursuant to Government Code § 65962.5 and, as a result, would [not] create a significant hazard to the public or the environment.” (IS, p. 2-18). The District explains that Section 65962.5 refers specifically to hazardous waste handling practices at facilities subject to the Resource Conservation and Recovery Act (RCRA) and that compliance with PR 3501 and 3502 is not expected to affect in any way any facility’s hazardous waste handling practices. (IS, p. 2-19). However, this section of the Government Code appears to be much broader than the hazardous waste facilities described by the District. In fact, section 65962.5 also relates to sites requiring the cleanup of hazardous substances as well as other pollutants that may affect water quality, i.e., sites subject to cleanup programs administered by the Department of Toxic Substances Control and the regional water quality control boards. The District does not indicate whether any of the railyards that would be governed by PR 3501 and 3502 are identified under the Government Code section 65962.5.

1-22

If one or more of the subject railyards is listed, then the District must determine in the draft PEA whether the Proposed Rules, particularly PR 3502, create a potentially significant hazard to the public or the environment. “Hazard” is not defined. However, given that some alternative fuels, such as CNG, are explosive and flammable, it would seem that they pose a “hazard” under any reasonable definition. The use of alternative fuels could result in the significant hazards to the public and environment. With respect to other possible control measures, such as scrubbers or catalysts, some waste may be generated that could require specific management practices and procedures akin to hazardous waste management practices. Improper management of such waste could create a significant additional hazard to the public or environment. The District should consider these possibilities in the draft PEA.

1-23

↓ The District concludes in the Initial Study that adoption and implementation of PR 3501 and 3502 would have “no impact” on the safety of people residing or working near an airport. (IS, p. 2-18). While the District states that “some rail lines might be located within two miles of a public airport or within the vicinity of a private airstrip,” it concludes that no change is expected to result from PR 3501 and 3502. As a threshold matter, the District should identify whether facilities that would be subject to PR 3501 and 3502 are located within the relevant distance of an airport. If so, the District must analyze potential effects on people residing or working nearby caused by the presence of large quantities of the alternative fuel(s) that would occur as a result of adoption and implementation of the Proposed Rules. As discussed above, some alternative fuels are explosive. A number of factors could affect the relative threat presented by a particular alternative fuel, such as its flammability/explosivity, the volume present, its pervasiveness in the relevant area, and the availability of reasonable mitigation measures

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1-23  
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↑ to reduce the potential threat to safety. However, the place to consider such factors and possible effects is in the draft PEA.

1-24

The District further concludes in the Initial Study that adoption and implementation of the Proposed Rules would have “no impact” on any adopted emergency response or evacuation plans. (IS, p. 2-18). However, possible control measures considered by PR 3501 and 3502 include use of alternate fuels and changes in fuel transport, distribution systems and storage facilities. The presence of the alternative fuels and related structures could impair or physically interfere with an adopted emergency response plan or emergency evacuation plan for the regulated railyard, as well as other nearby non-railroad facilities. For example, local emergency response or evacuation plans prepared prior to the construction of alternative fueling and storage facilities for compliance with PR 3502 are unlikely to specifically address potential hazards associated with emergency conditions at or near these new facilities. The appropriateness and adequacy of the plans’ response actions or evacuation routes may be compromised due to the addition of the alternative fueling and storage facilities. Consistent with CEQA, the District should consider related potential effects in the draft PEA.

1-25

The District concludes in the Initial Study that adoption and implementation of the Proposed Rules would have “no impact” on risk of loss, injury or death involving wildland fires. (IS, p. 2-18). In support of this conclusion, the District states (IS, p. 2-20):

Minor construction might result from the implementation of PRs 3501 and 3502, however, the construction is expected to take place at existing facilities and, therefore, the construction of any building, structure or facility is expected to be in wildlands or any location that could expose people or structures to significant loss, injury, or death involving wildland fires.

The District should make clear whether construction will, or will not, occur on or adjacent to “wildlands.” Further, especially because the District acknowledges that “the construction of any building, structure or facility is expected to be in wildlands...” it should consider, in the draft PEA, the potential for alternative fuels to be transported through, or located at, such locations, and thereby expose people or structures to a significant risk of loss, injury, or death involving wildland fires – particularly if the alternative fuel is flammable/explosive.

1-26

↓ The District also concludes in the Initial Study that adoption and implementation of the Proposed Rules would have “no impact” on fire hazard in areas with flammable

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cont. ↑ materials. (IS, p. 2-18). In this regard, the District states (IS, p. 2-20) that compliance with the Proposed Rules by turning off idling locomotives, using alternative fuels or operating a control technology would not require or involve the use of flammable materials that could increase fire hazards in areas with flammable materials. Again, especially with regard to alternative fuels, which can be flammable/explosive, this statement cannot be supported. The presence of such fuel could increase the fire hazard within railyards, which can be areas where other flammable materials are present. If alternative fuels or other flammable materials are present in the railyard, then the potential increase in fire hazard could be significant. The District should consider this potential in the draft PEA.

1-27 Regarding operation of possible control technologies also could pose physical hazards in addition to chemical, explosion, fire, and other hazards. Such potential hazards to workers in the railyard who would be implementing, using or maintaining new systems required by the Proposed Rules should be analyzed in the draft PEA.

1-28 Finally, as addressed above, a modal shift in freight transportation will arise as a result of the proposed project. The hazardous materials and hazardous waste implications arising from the transport of these materials via heavy duty diesel truck should therefore be evaluated.

4. Energy

1-29 The District concludes in the Initial Study that adoption and implementation of PR 3501 and 3502 would have “no impact” on “peak and base period demands for electricity and other forms of energy” and so does not intend to discuss such impacts in the draft PEA. (IS, pp. 2-14, 2-15). However, the Proposed Rules anticipate and expect the Railroads to use alternative fuels. (*See, e.g.*, Ex. 1, PR 3501(g)). Depending upon the fuel type, consumption rate, availability, and infrastructure to supply it to the subject railyards, the use of alternative fuels could have an effect upon local or regional demands, availability, and prices for these same fuels. The District must consider, consistent with CEQA, such potentially significant effects in the draft PEA.

1-30 Furthermore, it is quite possible that electricity could be used as an alternate power source instead of or in conjunction with other alternative fuels, and that such use could have an effect on peak and base period demands for electricity. The District should consider this possibility in the draft PEA.

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5. Hydrology and Water Quality

1-31

The District concludes in the Initial Study that adoption and implementation of PR 3501 and 3502 would have “no impact” on drainage patterns, on runoff, or require construction of new, or expansion of existing, stormwater drainage and infrastructure. (IS, pp. 2-20 to 2-21). However, the District acknowledges that new fuel stations or other structures associated with alternative fuel or the control technology may be constructed. (Initial Study, p. 2-23). Construction of such structures could alter existing drainage patterns in railyards that would be subject to PR 3501 and 3502, and could contribute to surface water runoff. It also is possible that such construction could require new, or expansion of existing, storm water infrastructure. Such changes could have a potentially significant effect, and should be analyzed in the draft PEA.

1-32

The District also concludes in the Initial Study that adoption and implementation of PR 3501 and 3502 would have “no impact” on flood flows within a 100-year flood hazard area. (IS, p. 2-21). However, it is unclear whether any of the affected railyards are located within such an area. To the extent that any are, the District should analyze the possible effects that the new fuel stations or other structures associated with alternative fuel or the control technology, discussed above, could have on flood flows.

6. Land Use Planning

1-33

The District concludes in the Initial Study that adoption and implementation of PR 3501 and 3502 would have “no impact” on applicable land use plans, policies or agency regulations. (IS, p. 2-24). However, the District provides no citations or other proper basis for reaching this conclusion.

1-34

As explained in the Initial Study, page 1-4, the Proposed Rules are applicable to railyards located within the 10,473 square miles of the four-county South Coast Air Basin. Within the Basin, there are well over 100 incorporated cities, as well as additional unincorporated cities, with land use and planning jurisdiction. (See, SCAQMD, *Cities in South Coast AQMD's Jurisdiction*, <<http://www.aqmd.gov/aqmd/cities.html>> (rev. Sept. 14, 2005)). As discussed above, the Initial Study acknowledges that new structures and/or infrastructure could be constructed to implement PR 3501 and 3502, and that existing structures and infrastructure could be expanded. Given the myriad of governmental authorities having land use and zoning authority throughout the Basin, it is likely that the construction of new or expansion of existing structures and infrastructure could conflict with applicable land use plans, policies, or regulations adopted for the purpose of avoiding or mitigating an environmental effects. For example, the siting of

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↑ fuel storage or delivery facilities is highly-regulated by local municipalities. The District should analyze the potential for related potentially significant effects in the draft PEA.

E. Conclusion.

1-35

The record in this case – including the District’s own materials for Regulation XXXV as well as the documents submitted with these comments -- contains substantial evidence that the Proposed Rules will result in potentially significant environmental impacts beyond those identified in the Initial Study, ranging from air quality to transportation, hazards and hazardous materials, to name a few. Before the District can act upon the Proposed Rules, CEQA requires the preparation of an adequate and complete PEA which considers all of the four rules proposed under Regulation XXXV and their foreseeable environmental impacts.

Sincerely,



Mark E. Elliott

Enclosures

cc: Steve Smith, Ph.D., South Coast Air Quality Management District  
Mr. Chris Abe, South Coast Air Quality Management District  
Michael Rush, AAR  
Lanny Schmidt, UP  
David Young, UP  
Russell Light, BNSF  
Mark Stehly, BNSF  
Kirk Marckwald, CEA  
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Eric White, ARB  
Michael Terris, ARB  
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**COMMENT LETTER NO. 1  
PILLSBURY, WINTHROP, SHAW, PITTMAN**

**Mark E. Elliott**  
October 14, 2005

**Response 1-1**

The SCAQMD acknowledges that the commentator is writing on behalf of the Association of American Railroads (AAR), Union Pacific Railroad Company and BNSF Railway Corporation.

The commentator requests that the September 7, 2005 AAR comment letter regarding Rule 3503, attached as Exhibit 3, be included in the administrative record for proposed Rules (PR) 3501 and 3502. Since the commentator included the letter as part of this comment letter on PRs 3501 and 3502, Exhibit 3 will be included in the administrative record for PR 3501 and 3502.

**Response 1-2**

The commentator states that the proposed Regulation XXXV rules constitute a substantial collection of discretionary activities. Further, that environmental impacts from Rule 3503 and PR 3504 should also be considered in the Draft Program Environmental Assessment (PEA) along with PRs 3501 and 3502. Initially, when the SCAQMD began the rule development process for the Regulation XXXV rules, it was anticipated that, because the rules regulated locomotives and emission sources at rail yards and because it was anticipated that they would be considered for adoption in the same timeframe by the SCAQMD's Governing Board, all rules would be evaluated in a program CEQA document pursuant to CEQA Guidelines §15168. After further research on railroad operations and in discussions with affected railroad operators, staff has concluded that the proposed Regulation XXXV rules are not as intimately related, as originally thought, and the timeframes for adoption are expected to vary considerably. The reasons for these conclusions are explained in the following paragraphs.

First, it was determined that PR 3501 and PR 3502 are sufficiently different in purpose and affect from PR3503 that it was not necessary to adopt these rules at the same time. The District found that the causal link between Rule 3503 on one hand and PR3501 and PR3502 on the other was lacking, and, therefore, all three rules were not required to be treated as a single project for purposes of CEQA. See *Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified Sch. Dist.*, 9 Cal. App. 4th 464, 474 (1992)(requiring a causal link between the creation of a community facility district and future construction of new schools before CEQA applied); *Fullerton Joint Union High School Dist. v. State Bd. of Ed.*, 32 Cal. 3d 779, 798-97 (1982)(recognizing that CEQA applies when it is shown that the government action constitutes an essential step culminating in future action which may impact the environment).

Here, PR3501 and PR3502 focus on evaluating and actually reducing emissions associated with unneeded locomotive idling in the basin. This function stands independent of Rule 3503, which is solely an information gathering rule intended to advise the District and public about the type

of, amount of, and risks from, air pollution emissions associated with railyard facilities. Also, idling controls reduce *regional* air pollutants and, thus has an additional independent purpose from gathering information about *localized* health risks from railyards. Therefore, like in *Kaufman*, adoption of Rule 3503 did not create any need to adopt rules relating to locomotive idling. Nor was adoption of Rule 3503 required for the district to proceed with PR3501 and PR3502. Under such circumstances, the District properly went forward with Rule 3503 separate from PR3501 and PR3502.

Second, the District decided to forgo adoption of PR 3504 until additional information could be gathered from railroads under Rule 3503 to assist the District in best fashioning any future rule regarding railyard risk reduction plans. Based upon future information provided from the railroads, either from the Interim Railyard Emission Inventory Reports, the railyard-wide criteria pollutant and toxic air contaminant emissions inventory, or the health risk assessments, the District will further consider the scope of PR3504. Depending on the level of risk, the District may consider different applicability, requirements, or compliance schedules, or even propose an entirely different approach to limit railyard risk. Indeed, if risks are determined to be at acceptable levels and likely to be maintained at such levels, the agency may not move forward with promulgation of PR3504 at all. Accordingly, CEQA review at this time of PR3504 would be premature because no definite plan has been formulated as to when or how to proceed with the rule. See *Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified Sch. Dist.*, 9 Cal. App. 4<sup>th</sup> 464, 474-75 (1992); *Berkeley Keep Jets Over The Bay Committee v. Board of Port Commissioners of the City of Oakland*, 91 Cal. App. 4<sup>th</sup> 1344, 1362 (1991); *Lake County Energy Council v. County of Lake*, 70 Cal. App. 3d 851, 854-55 (1977).

Rule 3503 and PR 3504 were further evaluated to determine how they related to each other and how to proceed with the environmental analysis. Although SCAQMD staff previously released a draft version of PR 3504, it was concluded that information resulting from the health risk assessments (HRAs) required under Rule 3503 could profoundly change the need for and/or the requirements of PR 3504. As a result, PR 3504 has been withdrawn from consideration at this time pending the SCAQMD's review of the information provided by the HRAs required pursuant to Rule 3503. Rule 3503 has been promulgated separately, determined to be exempt from CEQA requirements and was adopted by the SCAQMD's Governing Board at a public hearing on October 7, 2005. In the adopting resolution for Rule 3503, the SCAQMD's Governing Board directed staff to return with a report summarizing information submitted pursuant to Rule 3503 and staff's recommendation on whether or not to proceed with PR 3504. If SCAQMD staff resumes work on PR 3504, the rule will undergo the appropriate California Environmental Quality Act (CEQA) analysis at that time, which will consider any cumulative impacts from all Regulation XXXV rules adopted at the time the CEQA analysis is initiated. At present, it is not possible to determine what will be the environmental effects, if any, of PR 3504 since it is uncertain what the rule will require; therefore, any attempt at analysis would be speculative.

With regard to the commentator's assertion that the proposed project will result in a modal shift from rail to on-highway heavy-duty diesel truck transport of freight, see response #1-8. This topic is further discussed in Chapter 1 of the Draft PEA. With regard to potential air quality impacts from the proposed project, refer to responses #1-13 through #1-18 and the air quality

analysis in the Draft PEA. With regard to potential traffic/transportation impacts, refer to responses #1-19 and #1-20. With regard to potential impacts to utilities, refer to responses #1-29 and #1-30. With regard to potential noise impacts from PRs 3501 and 3502, the SCAQMD performed a comprehensive noise analysis at the Metro Link Maintenance Facility in the City of Los Angeles. Results of the noise analysis can be found in Chapter 4 of the Draft EA.

### **Response 1-3**

For information on the rationale for promulgating the Regulation XXXV rules on different schedules, refer to Response to comment #1-2.

This comment primarily consists of summary descriptions of the Regulation XXXV rules considered at the April 6, 2005 public workshop. For a more complete description of PRs 3501 and 3502, refer to Chapter 2 and Appendix A of the Draft EA. Finally, as noted in Response #1-2, PR 3504 has been withdrawn and may be revised considerably depending on SCAQMD review of the HRAs required under Rule 3503. The results of the HRAs will also determine whether or not PR 3504 is even needed.

### **Response 1-4**

This comment, again, discusses SCAQMD staff's original intent to prepare a program EA for the proposed Regulation XXXV rules, citing CEQA Guidelines §16168 for situations when preparing program CEQA documents are appropriate. Refer to Response #1-2 for the rationale why the proposed Regulation XXXV rules are being promulgated under different time frames. Cumulative impacts of the proposed Regulation XXXV rules will be considered in the CEQA documents for the projects as they are promulgated.

### **Response 1-5**

The SCAQMD disagrees with the commentator's opinion that "The District has provided only legally insufficient explanations of why Regulation XXXV no longer constitutes a single regulatory proposal. Please refer to Response #1-2 for the rationale why the proposed Regulation XXXV rules are being promulgated under different time frames.

### **Response 1-6**

For information on the rationale for promulgating the Regulation XXXV rules on different schedules, refer to Response to comment #1-2.

### **Response 1-7**

As explained in Response #1-2, PRs 3501 and 3502 do not rely on, nor are they reasonably foreseeable consequences of the adoption of Rule 3503. Similarly, Rule 3503 does not rely on, nor is it a reasonably foreseeable consequence of PRs 3501 and 3502.

Although the SCAQMD previously circulated PR 3504, it has been withdrawn from consideration and is not considered to be a “reasonably foreseeable event” which needs to be evaluated at this point in time for the following reasons. SCAQMD staff has concluded that before any risk reduction rule is promulgated, staff will evaluate HRAs submitted pursuant to Rule 3503. The results of these reviews will determine if PR 3504 is even necessary. If it is concluded that a risk reduction rule is necessary, the specific requirements of such a rule cannot be forecast with any certainty at this time.

Therefore, any action on PR3504 remains uncertain and unspecified, the decision not to prepare a CEQA analysis of that rule is distinguishable from those court cases cited by the railroads that found improper piecemealing of a project. Those cases overwhelmingly involve government agency approvals which the court found strong evidence were part of larger construction or development projects, or that directly created the need for future action or approvals. Thus, in *Laurel Heights* the Court was able to find a “myriad of facts” revealing that at the *very time* the University of California was approving the acquisition of an office building, it already had future plans to significantly expand the use of that *very same building*. See *Sacramento Old City Ass’n. v. City Council of Sacramento*, 229 Cal. App. 3d 1011, 1026 (1991) (explaining and distinguishing the holding *Laurel Heights*). In *Bozung v.LAFCO*, 13 Cal. 3d 263 (1975) the court found that none of the parties made “any bones about the fact” that the impetus for the action – approval of a land annexation plan – was part of a larger project to allow an individual landowner to subdivide his 677 acres of agricultural land into residential lots). In *Orinda Association v. Board of Supervisors*, 182 Cal. App. 3d 1145 (1986) (the court found that the administrative record showed from the “outset” that future demolition of two buildings was considered part the larger construction project approved by the agency). Finally, in *McQueen v. Board of Dir. Mid-Peninsula Regional Open Space Dist.*, 202 Cal. App. 3d 1136 (1998) (the court found that the agency had defined its project – the purchase of two parcels of land – too narrowly by failing to mention the agency’s nearly simultaneous adoption of a land use and management plan for the newly acquired land).

### **Response 1-8**

According to the *Port of Los Angeles Portwide Rail Synopsis* report, intermodal transport of containerized cargo is the standard method of moving goods worldwide accounting for 90 percent of cargo movement. (Port of Los Angeles, July 2004) These containers are delivered outside the boundaries of the Port to both regional and national markets by various combinations of truck or rail transit to their customers or final destination. According to the Port study, 50 percent of the cargo coming into the Port will travel within the regional market (within 550 miles of the Port) and the remaining 50 percent of cargo is destined for the national market (greater than 550 miles) traveling to such cities as Chicago, Atlanta, St. Louis, Memphis, New Orleans, and New York.

The commentator, who represents the Association of American Railroads (AAR), was informed by AAR customers “particularly domestic inter-modal freight customers” that any increase in costs will result in the shift in business to truck transport. According to Figure 1-1 in Chapter 1 of this Draft PEA, regional or “domestic” shipments within 350 miles, and possibly as far out as 950 miles, are already being transported primarily by delivery truck. Therefore, since regional

shipments are already being transported primarily by truck, a shift from “domestic” train to heavy-duty truck is not likely because most of these shipments are already made by heavy-duty truck. Since the decision to transport cargo either by truck or train is based on cost and delivery time, it is logical to presume that cargo not delivered through the Port will be under the same cost and delivery time restraints and, thus, will be shipped using the same transport methods.

The method of transport to the known destination relies on a complex decision-making process that takes into account a number of factors. These factors, as illustrated in the Port study (see Figure 1-2 in Chapter 1 of this Draft PEA), include whether the regional shipment can be delivered directly to the customer via truck (32 percent of total cargo) or transported to an intermediary warehouse where the cargo is unloaded and repacked before delivered by truck to its final destination (18 percent of incoming cargo). According to Figure 1-2, there are currently no regional train shipments considered vulnerable to an intermodal “domestic” shift from rail to truck transport. For national shipments, most cargo is already being transported from the port to a train either near-dock (0-8 miles from Port) or off-dock (8-22 miles from Port) or at an intermediary warehouse. Due to the cost and delivery time of shipping cargo across the country, it is unlikely that these shipments would shift to truck delivery because limiting unnecessary idling should not cause a price increase that cannot be absorbed by the railroad industry. According to industry representatives, there exists an intense competition in the goods movement business so it is unlikely that the locomotive industry would be willing to lose clients to the trucking transport business as a result of price increases that could be internalized. The amount of increased cost that a railroad would be willing to absorb internally before having to transfer those costs onto the customer would depend on the budget and business strategy of the individual railroad company. Such information was not provided by the railroad industry when the broad issue of potential intermodal shift was raised. However, based on the above analysis, this issue is not considered to be a likely outcome from the proposed project.

### **Response 1-9**

The commentator does not substantiate his opinion of why the cost estimates to comply with Rule 3503 are low. Nor does the commentator provide reasoning why the cost impacts from implementing the 1998 MOU needs to be considered as part of this project outside of the fact the financial burden exists to comply with various regulations and agreements. Further, the commentator notes the impact to domestic inter-modal freight customers but fails to provide any further information, such as percentage of business, which would be useful in the analysis.

### **Response 1-10**

The commentator’s opinion “that a modal shift will occur” is unsupported by any evidence or other data. At a Public Workshop/Scoping meeting held on October 12, 2005, SCAQMD staff requested from the commentator any information or data that supported the assertion of a modal shift so that potential adverse environmental impacts could be evaluated. To date no information has been provided by the commentator. As a result, SCAQMD staff must rely on available information such as the *Port of Los Angeles Portwide Rail Synopsis* report and the SCAQMD’s own cost estimates (see Response #1-9). Based on this available information, there is no support for the assertion that there will be a modal shift to any extent.



The example cited by the commentator is irrelevant to the proposed project because the original CEQA document for the UP project did not quantify construction or operational air quality impacts from the proposed project. This Draft PEA includes a comprehensive analysis of construction and operational air quality impacts. Although a modal shift from rail to truck could have potentially significant air quality impacts, based on available information there is no indication that such a shift is expected to occur as a result of implementing Rule 3503 and proposed Rules 3501 and 3502 (see Responses #1-8 and #1-9).

### **Response 1-11**

According to the 2003 AQMP, total PM10 emissions from railroads in the Basin for the year 2003 are approximately 1.01 tons per day. Although reducing PM10 emissions from railroads will contribute to the SCAQMD's efforts to attain state and national ambient air quality standards, one of the goals of the proposed project is to reduce population exposure to carcinogenic air toxics. All PM10 emissions from diesel combustion are considered to be carcinogenic. Further, there is no safe level of exposure below which carcinogenic effects will not occur. Consequently, regulating PM10 emissions from railroads reduces exposure to carcinogenic air toxics which is consistent with control measure AT-MBL-09 in the SCAQMD's *Air Toxics Control Plan for the Next Ten Years* (SCAQMD, 2000).

With regard to NOx emissions, the commentator states that, between 1987 and 2010, trains contribute to two percent of the inventory. According to the 2003 AQMP inventory for the year 2003, trains actually contributed approximately 3.5 percent of the total emission inventory. This translates to NOx emissions from trains of 36.52 tons per day compared, for example, to NOx emissions from all petroleum refining facilities of 0.34 ton per day. As a result, trains constitute a major source of relatively unregulated NOx emissions in the Basin. If the SCAQMD is to obtain state and national ambient air quality standards for ozone and PM2.5, substantial NOx emission reductions are necessary from all sources, including trains.

By contrast, existing state and federal regulations will require new heavy-duty trucks to comply with low NOx standards in the future. For example, currently new heavy-duty trucks must comply with a 2.5 gram per brake-horsepower (gm/brk hp-hr) hydrocarbon/NOx standard (EPA assumes the NOx portion is approximately 2.2 gm/brk hp-hr). By 2007 state and federal laws require new heavy-duty truck engines to achieve a NOx standard of 2.0 gm/brk hp-hr and by 2010 new heavy-duty engines must achieve a NOx standard of 0.2 gm/brk hp-hr, approximately a 90 percent reduction in NOx emissions from this source. Between 2007 and 2010, 50 percent of new trucks sold by manufacturers must comply with the 0.2 gm/brk hp-hr standard or demonstrate an equivalent fleet wide average NOx emission standard of 1.2 gm/brk hp-hr. Further, state and federal mandates require use of low sulfur diesel (15 ppmv) for on-road mobile sources by 2007, which will also contribute to reducing NOx emissions from these sources. This can be contrasted with federal regulations for locomotives to use low sulfur diesel by 2012.

With regard to the commentator's opinion that PRs 3501 and 3502 will cause a modal shift from rail transport of freight to truck transport, refer to Response #1-8.

### **Response 1-12**

As noted in Response #1-10, at a Public Workshop/Scoping meeting held on October 12, 2005, SCAQMD staff requested from the commentator any information or data that supported the assertion of a modal shift so that potential adverse environmental impacts could be evaluated. To date no information has been provided by the commentator. As a result, SCAQMD staff is relying on available information to evaluate this comment. As indicated in Response #1-8, little, if any modal shift from rail to truck is expected to occur.

With respect to the 1998 CARB-Railroad MOU, that agreement achieves additional reductions in NOx emissions from locomotives by expediting the dates that the railroads must achieve EPA Tier 2 standards within the Basin. The 1998 MOU contains a termination clause that would allow the railroad to escape its obligation, but only under very limited circumstances. In relevant part, the agreement states that the railroad may terminate if “the State of California or any political subdivision thereof takes any action to establish (i) locomotive emission standards, (ii) any mandatory locomotive fleet average emission standards, or (iii) any requirement applicable to locomotives or locomotive engines and within the scope of the preemption established in the final EPA national locomotive rule.”

PR 3501 and PR 3502 will further the aim of reducing NOX, and are not inconsistent with the goals and objectives of the 1998 MOU. Further PR 3501 and PR 3502 are not inconsistent with the termination clause. Neither rule establishes any type of emission standard. Moreover, for reasons fully discussed in the SCAQMD’s response to the railroad’s written legal comments, dated November 14, 2005, neither rule is within the scope Clean Air Section 209 preemption, as established in the final EPA locomotive rule.

### **Response 1-13**

With regard to the opinion that there will be modal shift from rail to truck, refer to Response #1-8. With regard to potential costs from Rule 3503 and PRs 3501 and 3502, refer to Response #1-9. It should be noted that EPA’s assertion that “transportation by rail causes about one-third of the pollution as transport by truck,” is based on a national statistic where diesel emissions from diesel trucks were higher because they are regulated by less stringent national standards that are higher than comparable, but more stringent California standards. This difference means that EPA’s assertion overestimates the emission benefit of freight transport by rail compared to transport by truck in California.

### **Response 1-14**

SCAQMD staff disagrees with the commentator’s opinion that there is “an intent to exclude foreseeable adverse impacts from the PEA’s analysis, including those resulting from mitigation measures.” Potential adverse impacts noted by the commentator, waste and secondary air quality impacts, were checked in the Initial Study under Solid/Hazardous Waste and Air Quality, respectively, as requiring further analysis in the Draft PEA. These impacts are further analyzed in this Draft PEA in Chapter 4.

### **Response 1-15**

As indicated in the Initial Study, in addition to air quality SCAQMD staff has identified the following environmental topics that will be analyzed further in the Draft PEA: energy, hazards and hazardous materials, hydrology and water quality, noise, public services, and solid/hazardous wastes. SCAQMD staff disagrees that the propose project will generate significant adverse aesthetics impacts because any modifications to install control equipment or alternative fuel fueling stations will occur onsite at existing rail yards, which are industrial sites. Further, any modifications at the rail yards will be consistent in form and height with existing industrial equipment, including the trains and rail cars. As a result, staff disagrees with the opinion that there will be aesthetics impacts as a result of implementing the proposed project.

To provide an alternative to the prohibition of unnecessary idling, the PR 3502 allows an Emission Equivalency Plan. While staff does not believe that the railroads will implement such a plan to avoid unnecessary idling, the Initial Study listed the use of alternative fuels. The Initial Study also highlights, as the commentator states, the possibility of adverse direct and indirect environmental impacts if the use of alternative fuels was chosen to comply with the Emission Equivalency Plan. It is not clear what type of deposition impacts the commentator is referring to. LNG is the primary alternative clean fuel expected to be used as an alternative compliance option. It is expected that reduced idling or use of alternative clean fuels will eliminate deposition of PM and soot particulates. As noted in other responses air quality impacts anticipated from implementing the proposed project are evaluated and provided in Chapter 4 of the Draft PEA.

### **Response 1-16**

One of the objectives of the proposed rules is to reduce exposure to the public from locomotive idling emissions. Therefore, the requirements are intended to reduce the current toxic and criteria pollutant exposure to sensitive receptors as well as the surrounding community. Alternative fuels, like diesel fuel, have the potential to emit toxic air contaminants. SCAQMD staff had previously evaluated the CARB reports cited by the commentator in a presentation to the SCAQMD's Mobile Source Committee on April 22, 2004. Based on staff's review, the CARB results comparing mutagenicity between diesel buses and CNG buses appeared to be equivocal possibly because of the small sample size, contamination, or other factors. Further, when comparing potency-weight emissions between diesel emissions from buses compared to CNG buses with control technology (i.e., oxidation catalysts, etc.), the cancer potency value for diesel buses was substantially higher than the cancer potency value for CNG buses with control technology. Based on this information, no further evaluation of exposure to air toxics is warranted.

### **Response 1-17**

The Draft PEA examines and provides a full analysis and comparison of potential adverse air quality hazardous materials, and hydrology/water quality impacts associated with alternative fuels compared to diesel fuel. With regard to greenhouse gases, in a study conducted by CARB (<http://www.arb.ca.gov/research/cng-diesel/2002ARBPhase1BResults.pdf>), the results showed

that greenhouse gases such as CO<sub>2</sub> were higher for diesel buses than CNG buses with an oxidation catalyst. Consequently, it is not expected that the proposed project will increase greenhouse emissions. Regarding unintended consequences, CEQA Guidelines §15144 states, “While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.” The analysis of the proposed project is consistent with CEQA Guidelines §15144.

### **Response 1-18**

The commentator cites an SCAQMD news release to indicate that CNG used as an alternative fuel could generate odor impacts because it typically has a nontoxic odorant, methyl mercaptan added so leaks can be detected. The odors at the Omnitrans facility were associated with the off-gassing vents from the old-style compressors used to fuel CNG-powered buses. The CNG fueling station was replaced with an LNG fueling station to eliminate the problem. However, state-of-the-art CNG compressors when properly maintained can effectively eliminate odors from CNG stations. As a result, potential odor impacts were not further analyzed in the Draft PEA.

### **Response 1-19**

As mentioned in Response 1-8, according to a Port of Los Angeles study (Port of Los Angeles, July 2004), regional or “domestic” shipments within 350 miles, and possibly as far out as 950 miles, are already being transported primarily by delivery truck. Therefore, since regional shipments are already being transported primarily by truck, a shift from “domestic” train to heavy-duty truck is not likely to occur because most of these shipments are already made by heavy-duty truck. As a result, traffic/transportation impacts such as those described by the commentator are not expected to occur and were not analyzed further in the Draft PEA.

### **Response 1-20**

As noted in Response 1-8, the proposed project is not expected to create intermodal shift impacts. Traffic congestion at existing facilities is part of the existing setting and is unrelated to the proposed project. Since the proposed project is not expected to create intermodal shift impacts, existing traffic congestion would be unaffected by the proposed project.

### **Response 1-21**

The Draft PEA evaluates potential impacts to hazards/hazardous materials, as well as water quality, from implementing PR 3501 and 3502.

Government Code §65962.5 requires the California Environmental Protection Agency to develop at least annually an updated Cortese List. The Hazardous Waste and Substances Sites (Cortese) List is a planning document used by the State, local agencies and developers to comply with the CEQA requirements in providing information about the location of hazardous materials release sites. The Department of Toxic Substance Control (DTSC) Site Mitigation and Brownfields Reuse Program Database (also known as "CalSites") provides DTSC's component of Cortese List

data by identifying Annual Workplan and Backlog sites listed under Health and Safety Code section 25356. In addition, DTSC's Cortese List includes Certified with Operation and Maintenance sites. Accordingly, there are various listings on the DTSC's website of which none list any of the anticipated affected rail yards. The following links contain Cortese list for: 1) the County of Los Angeles; 2) the County of Orange; 3) the County of San Bernardino; the County of Riverside; and 5) the "CalSites" list, respectively.

1. [http://www.dtsc.ca.gov/database/Calsites/Cortese\\_List.cfm?county=19](http://www.dtsc.ca.gov/database/Calsites/Cortese_List.cfm?county=19)
2. [http://www.dtsc.ca.gov/database/Calsites/Cortese\\_List.cfm?county=30](http://www.dtsc.ca.gov/database/Calsites/Cortese_List.cfm?county=30)
3. [http://www.dtsc.ca.gov/database/Calsites/Cortese\\_List.cfm?county=36](http://www.dtsc.ca.gov/database/Calsites/Cortese_List.cfm?county=36)
4. [http://www.dtsc.ca.gov/database/Calsites/Cortese\\_List.cfm?county=33](http://www.dtsc.ca.gov/database/Calsites/Cortese_List.cfm?county=33)
5. [http://www.dtsc.ca.gov/database/Calsites/Deed\\_List\\_Name.cfm](http://www.dtsc.ca.gov/database/Calsites/Deed_List_Name.cfm)

**Response 1-22**

As noted in Response 1-21, no affected rail yards are identified on the Cortese lists for the four counties within the SCAQMD's jurisdiction. However, the explosive and flammable characteristics of the alternative fuels, as well as diesel fuel, are evaluated and included in the Draft PEA. It is expected that operators of affected facilities will comply with all existing waste disposal regulations and laws, such that improper management would not occur. In any event, solid/hazardous waste impacts have been evaluated in the Draft PEA.

**Response 1-23**

PR 3502 requires reduction of unnecessary idling. This idling activity could take place at various junctures along the main line and sidings, as well as in the rail yard. As requested by the commentator, the SCAQMD has reviewed the location of the rail yards and the relevant distance of an airport. As noted in Table C-1 below, the closest airport to a rail yard where affected locomotives might be located is six miles. Such a distance does not constitute the need to evaluate the potential effect from the use of the alternative fuel on the nearby airport.

**TABLE C-1**  
 Railyard Distance to Nearby Airport

<b>Railyards where Affected Locomotives Could Idle</b>	<b>Location of Railyard</b>	<b>Nearest Airport</b>	<b>Distance to Nearest Airport*</b>
Anaheim Yard	200 S. Adams Street, Anaheim, CA 92802	John Wayne Airport	15 miles
City of Industry Yard	17225 Arenth Street, City of Industry, CA 91748	Ontario International Airport (ONT)	25 miles
Colton Yard	19100 Slover Avenue, Bloomington, CA 92316	ONT	13 miles
Commerce Diesel Maintenance Facility	6300 Sheila Avenue, Commerce, CA 90040	Long Beach Airport (Daugherty Field) (LGB)	16 miles



**TABLE C-1 (CONCLUDED)**  
**Railyard Distance to Nearby Airport**

<b>Railyards where Affected Locomotives Could Idle</b>	<b>Location of Railyard</b>	<b>Nearest Airport</b>	<b>Distance to Nearest Airport*</b>
Commerce Eastern Intermodal Facility	2818 Eastern Avenue, Commerce, CA 900??	LGB	17 miles
Commerce Intermodal Facility	4341 E. Washington Blvd, Commerce, CA 90023	LGB	17 miles
Dolores Yard	2442 Carson Street, Carson, CA 90810	LGB	8 miles
Intermodal Container Transfer Facility	2401 Sepulveda Blvd, Long Beach, CA 90810	LGB	6 miles
La Mirada Yard	14503 Macaw Street, La Mirada, CA 90638	LGB	12 miles
Los Angeles Intermodal Facility	3770 Washington Blvd, Commerce, CA 90023	LGB	18 miles
Los Angeles Junction Railway	4433 Exchange Ave, Los Angeles, CA 90058	Los Angeles International Airport (LAX) / LGB	18 miles / 17 miles
Los Angeles Transportation Center Intermodal Facility	750 Lamar Street, Los Angeles, CA 90031	LAX	21 miles
Meade Yard	2402 Anaheim Street, Wilmington, CA 90744	LGB	8 miles
Mira Loma Auto Distribution Facility	4500 Etiwanda Avenue, Mira Loma, CA 91752	ONT	9 miles
Montclair Yard	10773 Central Place, Montclair, CA 91763	ONT	8 miles
Pacific Harbor Lines	340 W. Water Street, Wilmington, CA 90744	LGB	12 miles
Pico Rivera Yard	7427 Rosemead Blvd, Pico Rivera, CA 90660	LGB	15 miles
San Bernardino Yard	1535 W. 4 <sup>th</sup> Street, San Bernardino, CA 92411	ONT	22 miles
Watson Yard	1302 Lomita Blvd, Wilmington, CA 90744	LGB	10 miles

\* Distances obtained online from Yahoo Driving Directions

**Response 1-24**

It is expected that any new fueling stations constructed in response to PR 3502 would occur at the existing 19 affected rail facilities. It is expected that alternative clean fuel refueling stations would be located in the same area as any existing fueling stations since it is unlikely the

locomotive operators would change their fueling behavior or location. In the event that any fueling station is constructed in a different location than where existing diesel fueling stations are located, it is unlikely that rail operators would locate a station or other structure in a location that impedes emergency access. Further, railroad representatives have provided information to the SCAQMD indicating that no fueling stations would be built at sidings because of lack of space and fueling doesn't currently occur at sidings. Regardless, depending on the nature of any modifications at existing rail yards, it is possible that the business emergency response and emergency evacuation plans might need to be altered or modified to include provisions that consider the fueling station or other structure. Modifications to existing business emergency response plans would require review and approval typically by the local fire department. So, in the event rail yard operators need to modify existing business emergency response plans, this would, in effect, facilitate emergency preparedness and response and, therefore, would not constitute a significant adverse impact.

### **Response 1-25**

The text cited by the commentator has a typographical error. The corrected text should read as follows, "Minor construction might result from the implementation of PRs 3501 and 3502, however, the construction is expected to take place at existing facilities and, therefore, the construction of any building, structure or facility is *not* expected to be in wildlands or any location that could expose people or structures to significant loss, injury, or death involving wildland fires. Further, if the locomotive operator chooses to comply using the alternative compliance option and relies on alternative fuels to achieve equivalent emission reductions, the construction of alternative fueling station, as noted in Response 1-24, is expected to take place at the existing location where locomotives currently fuel with diesel fuel. These locations are in existing urban areas and not in wildlands. In addition, the affected rail yards are also located in the same urban area of southern California so the transport "through" wildlands is not expected.

### **Response 1-26**

Potential fire hazard impacts from the use of alternative fuels, as compared to the current use of diesel fuel, are evaluated and presented in this Draft PEA.

### **Response 1-27**

It is expected that the primary method of complying with PR 3502 will be to eliminate unnecessary idling, followed by installing anti-idling devices. Alternative methods of compliance include the use of emulsified diesel fuel, green goat switchers, and use of LNG instead of diesel. There are no increased hazard impacts associated with using the hybrid switch locomotives compared to existing diesel locomotives. Hazard impacts associated with emulsified diesel would be the same as for conventional diesel, so this will not be evaluated further. The potential hazard impacts to workers at affected facilities from installing LNG fueling stations are addressed in Draft PEA.

### **Response 1-28**



As already noted in Response 1-8, according to the Port of Los Angeles (Port of Los Angeles, 2004), regional or “domestic” shipments within 350 miles, and possibly as far out as 950 miles, are already being transported primarily by delivery truck. Therefore, since regional shipments are already being transported primarily by truck, a shift from “domestic” train to heavy-duty truck is not likely because most of these shipments are already made by heavy-duty truck. Consequently, potential “hazardous materials and waste implications” suggested by the commentator are not expected to occur.

### **Response 1-29**

The potential energy impacts from installing and using alternative fuels are addressed in the Draft PEA.

### **Response 1-30**

The only technology identified as an alternative compliance option that uses electricity is the hybrid yard switchers called green goats. This technology replaces the large switcher diesel engine with a large battery pack, a small, 90 to 200kW, diesel generator and a computerized control module. The switcher is powered by the battery pack, which is constantly charged by the diesel generator. Consequently, power from the grid is not required so this technology is not expected to affect peak or base demands for electricity. According to one manufacturer, the green goat technology can achieve up to 80 to 90 percent NOx and diesel particulate emission reductions.

### **Response 1-31**

Potential water demand impacts from installing and using alternative fuels are addressed in the Draft PEA. SCAQMD staff, however, disagrees that the proposed project will substantially alter drainage patterns at affected facilities. It is expected that any new fueling stations constructed in response to PR 3502 would occur at the existing 19 affected rail facilities. Railroad representatives have provided information to the SCAQMD indicating that no fueling stations would be built at sidings because of lack of space and fueling doesn’t currently occur at sidings. The affected facilities are generally located in flat areas that have been substantially modified and graded to allow easy ingress and egress of trains and other equipment. Installation of fueling stations might require installing a concrete pad to support tanks and controls, but this is not expected to affect or alter any drainage patterns at a site that is already flat. In addition, because the proposed project is not expected to require any modifications that will alter the course of a stream or river it is not expected that the proposed project will require modifications to existing storm water infrastructure or affect the quantity or quality of storm water drain-off.

### **Response 1-32**

The proposed project does not involve placing structures within a 100-year flood zone. PR 3502 could involve install LNG fueling stations at the 19 affected rail yards. As noted in Response 1-24 and 1-25, alternative fueling station is expected to take place at the existing location where locomotives currently fuel with diesel fuel which is currently not impeding or redirecting flood

flow. If an affected rail yard is currently located in a 100-year flood hazard area, it is not expected LNG fueling stations located at existing facilities would further impede or redirect flood flows.

**Response 1-33**

Adopting and implementing the proposed project does not affect land use decisions in any way. Subsequent land use projects that may follow adoption of the proposed project, such as construction of LNG fueling stations, must comply with local land use, zoning and planning ordinances to receive local approval for construction. Any subsequent project that is not consistent with local land use ordinances will not receive approval and the railroad operator will need to consider other available compliance options.

**Response 1-34**

The construction of the alternative fueling stations is not expected to alter land use plans, policies and regulations as they are expected to be constructed in the same location where locomotives currently refuel on diesel. See also Response 1-24 and 1-33 for additional information regarding why land use impacts are not expected to adversely affected by the proposed project.

**Response 1-35**

The Draft PEA provides a comprehensive analysis of potential adverse impacts anticipated to occur as a result of implementing the proposed project currently under evaluation. As discussed in Responses 1-2 through 1-7, the evaluation in the Draft PEA will address the current proposed rules and will not include a speculative analysis of future rules that may or may not be proposed.