APPENDIX A

Responses to Comments on Proposed Rule 9510 (Indirect Source Review) and Rule 3180 (Administrative Fees for Indirect Source Review)

December 15, 2005

SUMMARY OF COMMENTS AND RESPONSES ON THE RECEIVE AND FILE OF DRAFT RULE NOVEMBER 17, 2005

Public Comment
Date November 5, 2005
Multiple Letters- Signed by

Kaaren Page	Betty Sanderson	Theresa Stump
Stephen Page	J Wesley Sanderson	Bill Moffit
Warren A. Minna	Georgette Theotig	Deb See
Nancy Faisselman	Isabel Stierle	Rosmarie Grabski
Nany Bacon	Li?? Wa???	Monte Harper
		Emid Harper

As a resident of the San Joaquin Valley, I am very well aware that the Valley is rated as '*extreme non-attainment*' when it comes to meeting federal air quality standards. We must take bold steps to clean up our air while allowing reasonable housing growth.

The best way to reach this goal is through your proposed Indirect Source Rule Package (Rules 9510 and 3180) that the District is sponsoring. This is accomplished two ways: allowing housing and commercial developments to be designed to reduce air pollution and to charge a fee for that air pollution that cannot be eliminated, with the fees being used to fund other projects that reduce air pollution.

1. **COMMENT:** I support a strong version of the rule that offers a real chance to improve the air in the valley and at the same time allow developers to use innovative design features to reduce our dependency on automobile transportation.

Our lungs, our health, and our children deserve no less.

RESPONSE: Comment Noted

California State Department of Housing and Community Development:
Date: November 29, 2005

Thank you for the continued opportunity to comment on the San Joaquin Valley Air Pollution Control District's (District) proposed Draft Rules 9510 and 3180 (Rules). The Department has reviewed the draft Rules as revised November 17, 2005 and the District's "Response to Comments" found in Appendix A of the draft Rules. The Department appreciates the District addressing some of the issues raised in the

comment letters of July 25, 2005 and September 15, 2005. However, as discussed below, the Department continues to have a number of concerns with the revised draft of the Rules.

Proposed Rule 9510 does not comply with the "clarity," "consistency," and "nonduplication" requirements set forth in Health and Safety Code Section 40727, and an adequate nexus has not been established to support these rules. In addition,

2. **COMMENT: The proposed inclusion, followed by the deletion of, an exemption for housing directly assisted by federal, State, or local government is of particular concern.** The District's response to comment #92 indicated the government supported housing exemption (affordable housing) was removed "based on the District's internal analysis of applicability and impacts….". Although affordable housing qualifies as a mitigation measure, it is unclear how the URBEMIS model assesses and credits affordable housing. Affordable housing is often a catalyst for the type of transit-oriented development that is encouraged by the District's policy recommendations as described in District's *Air Quality Guidelines for General Plans*. According to the Air Resources Board's study, *The Land Use – Air Quality Linkage*, densities found in affordable housing developments are generally high enough to provide the ridership needed to support transit service (page 15).

RESPONSE: As stated in the November 17th Staff Report (p. 11) and in the September 1, 2005 Response to Comments, the methodology for emission reduction is detailed in the URBEMIS User's Guide (http://www.aqmd.gov/ceqa/urbemis.html). Basically, the trip reduction benefit of below-market-rate housing will be credited to a development that includes this feature. In addition, Appendix D- Recommended Changes to URBEMIS details the research supporting the emission reduction and the methodology for the reduction on pages D-38 through 39 and includes the following statement:

> *… Thus, the total reduction is as follows:*
>
> *Trip reduction = % units that are BMR * 0.04*
>
> *A development with 20% BMR units would thus gain a 0.8% reduction. A development with 100% BMR units would gain a 4% reduction.*

3. **COMMENT:** There is also insufficient information in the draft Rule analyses to discern whether and to what extent affordable housing developments, despite qualifying for some mitigation credits, might be subject to fees for off-site emissions reductions. This has the potential to render projected affordability levels or the projects themselves, infeasible as proposed. Affordable housing development proposals, are already subject to significant development constraints despite their acknowledged benefit potential relative to air quality.

Applying Rule 9510 to these projects would subject them to an additional and ambiguous permit requirement. This effect would be inconsistent with State laws which require affirmative actions to promote affordable housing opportunities. Accordingly, the Department urges the District to reinstate the exemption for housing projects in which at least 49 percent of the units are reserved for lower-income households and which are directly assisted by federal, State, or local government.

RESPONSE: The staff report and socio-economic impact analysis recognize that any fee would increase costs, but that market forces so far outweigh the effect of the fee that they render it insignificant. The District disagrees that the rule is contrary to state law promoting affordable housing. Rule 9510 is being adopted to reduce the air quality impacts of new development, including housing projects serving all market segments. Since the rule contains provisions to reduce potential fees for developments that contain affordable housing, it encourages affordable housing to be included in more projects.

4. **COMMENT:** Having deleted the exemption, the District must now amend those documents that were based on the exemption being part of the project. This includes the CEQA initial study which describes the project as exempting some sources including “certain low-income housing projects” (page 4). By removing the exemption, the District has redefined the project.

RESPONSE: The District does not concur that removing the low-income housing exemption substantially changes the project analyzed in the CEQA initial study. First, the socioeconomic impact analysis that is the basis of the initial study discussion on impacts on housing and population indicated that low-income households were already unable to afford new homes and rental units affected by the rule. The revised socioeconomic impact analysis was based on the latest rule version and arrived at the same conclusions regarding impacts with and without the exemption. Therefore, the impacts examined in the initial study are also the same. Second, by removing the exemption for "certain low-income housing projects", the language of the Rule would result in a slight reduction in air quality impacts, as some additional housing projects would now be subject to the Rule. The change in language does not substantively affect the analysis of environmental impacts. On the contrary, the language change would result in an environmental benefit.

5. **COMMENT: Although the District does have the authority to implement regulations to accomplish the reduction or mitigation of emission from indirect sources, it does not have the authority to operate a permitting system for the operation or construction of these sources and has failed to show the required nexus.** The proposed Rules would impose an (off-site) fee

on development projects which are unable to incorporate on-site measures adequate to reduce indirect emissions to a specified level. The fee is determined via an application (Air Impact Assessment Application (AIA)) which is required to be approved by the District before a final discretionary permit is issued for the construction of the development project. Unless the AIA application is submitted, the project cannot go forward without the developer incurring civil penalties. In such circumstances, contrary to the assertions of the staff analyses, a fee is being imposed as a condition of approval of a development project. A 1993 Attorney General Opinion explained that "the Legislature has recognized indirect sources as essentially different from other sources of pollution and consequently has made them exempt from ordinary permitting requirements" (Ops. Cal. Atty. Gen. 92-519). The opinion goes on to clarify that "permits may not be required of indirect sources under either the general permitting authority (Government Code Section 42300) or the special permitting authority provision relating to the attainment of State ambient air quality standards (Government Code Sections 40910-40926). Further, the imposition of fees as a condition of permit approval is subject to the nexus requirements of Government Code Section 66000 et. seq. and the District has failed to show the "reasonable relationship" nexus as required.

RESPONSE: The author is mistaken about the nature of the ISR program and how the rule is designed to be implemented. The rule is consistent with the Attorney General opinion cited in that it does not require permits. Under the commenters theory, any fee is a de facto permit. Developers are subject to civil penalties if they fail to follow any District regulation. For example, failure to comply with Regulation VIII – Fugitive Dust Rules during construction or Rule 4901 – Residential Wood Combustion fireplace installation limitations may result in civil penalties. Similarly, failure to comply with the mitigation requirements of Rule 9510 may result in civil penalties, but cannot stop a development from being constructed. The District will not be implementing a permitting system for the operation or construction of projects. The ISR program will not be a permitting system, have discretionary actions, or have any land-use authority. The author states:

> The fee is determined via an application (Air Impact Assessment Application (AIA)) which is required to be approved by the District before a final discretionary permit is issued for the construction of the development project.

However, this is not the case. The application is required, but is not tied to the *issuance* of a discretionary permit. The purpose of the application is to provide information necessary to determine if a fee must be paid and the amount of the payment if one is required. The application must be submitted concurrent with the *application* to the local land use authority for a final discretionary permit. This timing is to allow the applicant to take credit for reducing project air impacts during the local agencies approval process. The District does not require completion *prior to* issuance of a permit by the local agency, nor does the District

have the authority to stop the project from being issued a final discretionary permit by the local agency.

The District's action is ministerial, and does not involve conditions of approval. All projects are subject to the same requirements, and must fulfill the requirements. The District does have the authority to enact penalties for non-compliance; however, this does not make the actions of the District discretionary or make the program a permitting program. Further, the fee is only enacted if a project is, "unable to incorporate on-site measures adequate to reduce indirect emissions to a specified level". The required emission reduction applies to all applicable projects equally, and must be satisfied. The project applicant has the *option* to reduce the fee through on-site measures. There is no discretion on the part of the District. The author's statements on applicability of laws regulating permitting actions do not apply to the ISR program, as it is not a permitting program.

The District continues to assert that Rule 9510 is not subject to Government Code Section 66000 et. Seq. Regarding the reasonable relationship requirement, the District has clearly made this demonstration. The air quality impacts of construction, area source and indirect source emissions from development projects and the methods used to quantify these impacts are clearly identified in the staff report and are undeniably contributing to the air basin's serious air quality problems. The emission reduction projects that will be utilized to mitigate a portion of these impacts are also clearly identified. Sufficient checks and balances are in place in the rule through an elected Governing Board and EPA oversight of this state implementation commitment to ensure that the mitigation funds will be used effectively on the impacts created by the development projects.

6. COMMENT: The consistency analysis (Appendix G) fails to include analysis and findings relative to other State laws and regulations, including directly related provisions of the California Environmental Quality Act (CEQA). The District already has existing procedures for permit review pursuant to CEQA, which are put forth in its "Guide for Assessing and Mitigating Air Quality Impacts". Proposed Rule 9510 should be subjected to a rule consistency analysis with this guide, as well as requirements for air quality analysis and mitigation pursuant to CEQA which is undertaken in the permitting process of local governments. The Department remains concerned about the duplication of assessment and potential duplication of mitigations pursuant to CEQA and the proposed Rule 9510. The District's decision to modify its CEQA handbook *after* the adoption of the proposed rules (G-2) is inconsistent with the requirement of Health and Safety Code 40727.

RESPONSE: The Guide for Assessing and Mitigating Air Quality Impacts (GAMAQI) identified by the author is a voluntary guidance document for use by lead agencies addressing air quality in CEQA documents and is in no way regulatory. Under CEQA, for most development projects the District is a commenting agency. As a commenting agency the District provides comments to the Lead Agency to the following aspects: the potential significance of air quality impacts of a project; applicable District Rules; potential mitigation measures; and if an analysis is provided to the District, the adequacy and accuracy of that analysis. Requesting comments from the District is voluntary by the Lead Agency, and comments and mitigation measures suggested by the District are non-binding. CEQA requires *disclosure* of environmental effects for discretionary actions by a public agency, and requires reasonable and feasible mitigation of effects that are determined to be significant. Nowhere within CEQA can the District require a reduction in emissions from a development project. Voluntary CEQA commenting is not parallel to an ISR program. Mitigation required by CEQA is not the same in intent, requirements, or in practice with the emission reduction requirements of the ISR program. ISR is not duplicative of any mitigation required by the lead agency since the rule provides for credit for all measures and features included in the project that reduce emissions when project emissions are calculated. The District disagrees that modifying the District's GAMAQI after adoption is inconsistent with the California Health and Safety Code (CH&SC) Section 40272 for all the reasons stated above.

CH&SC Section 40272(b)(4) states:

> **"Consistency" means that the regulation is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or state or federal regulations.**

CH&SC Section 40272(b)(5) states:

> "Nonduplication" means that a regulation **does not impose the same requirements** as an existing state or federal regulation unless a district finds that the requirements are necessary or proper to execute the powers and duties granted to, and imposed upon, a district.

CH&SC Section 40727.2(a) states:

> **…** the district shall identify all existing **federal air pollution control requirements,** including, but not limited to, emission control standards constituting best available control technology for new or modified equipment, **that apply to the same equipment or source type as the rule or regulation proposed for adoption or modification by the district…**
>
> ***And***
>
> **…**The analysis shall also identify **any of that district's existing or proposed rules and regulations that apply to the same equipment or source type, and all air pollution control requirements and guidelines that apply to the same**

equipment or source type and of which the district has been informed pursuant to subdivision (b)

CH&SC Section 40727.2(h) states:

Nothing in this section limits the existing authority of districts to determine the form, content, and stringency of their rules and regulations. In implementing this section, it is the intent of the Legislature that the districts retain their existing authority and flexibility to tailor their air pollution emission control requirements to local circumstances.

The District has performed the analysis required by CH&SC 40727 et. seq, in Appendix G: Rule Consistency Analysis. First, no person has identified any existing federal or state requirement or guideline that applies to the same type of source that the District is proposing to regulate per CH&SC Section 40272(b). Second, the District identified few District rules for consistency analysis, and no US EPA rules or guidelines that apply to development projects in terms of New Source Performance Standards, Control Technique Guidelines, Maximum Achievable Control Technology or National Emission Standards for Hazardous Pollutants.

The District has found that the proposed ISR program is consistent with existing District rules, and has determined that there is no conflict or duplication with existing state law and CEQA.

7. COMMENT: The direct and indirect costs imposed by the Rules on the residential development process will result in increased housing costs. The preparation of the AIA (which not only calls for a detailed Urban Emissions analysis (URBEMIS)), but also for ongoing monitoring of selected mitigation measures), is likely to result in increased costs. In some instances, despite the assessment of the socio-economic analysis, the mitigation fees could have a detrimental impact on the economic feasibility of developers of market-rate mixed-use and workforce housing. These types of developments are already financially burdened since they typically have a more difficult time obtaining financing and quickly bringing a project into the market place.

RESPONSE: The cost of the preparation of a typical AIA is included in the application-filing fee— $400 for residential projects and $600 for non-residential projects, regardless of number of units. Worst case for a 50 unit residential subdivision would be $80 per housing unit. The modeling required for an AIA will be done by the District if not provided by the applicant. Monitoring of mitigation measures selected will only occur for measures that are not already required by another public agency, and the costs will be born out of the administrative fees from the rule (assessed at 4% of the off-site fee amount). Therefore, there are no costs additional to those discussed in the Socioeconomic Analysis.

8. COMMENT: By proposing to control emissions through fees that will be used to fund other projects, the District would be treating housing developments as direct sources when they are in fact indirect sources. The CEQA initial study for the proposed rules describes the project's purpose as being to "reduce emissions of NOx and PM 10 from new development projects" (page 4). If the fees collected under the Rules are a mechanism to control emissions from new development projects, then the District is adopting a market-based incentive program and is subject to the Economic Incentive Program (EIP) requirements, as was asserted by the Environmental Protection Agency (EPA) in their comments. Market-based programs may only be used for direct sources. "An EIP is a regulatory program that achieves an air quality objective by providing market-based incentives or information to ***emission sources*** (emphasis in original). By providing information or flexibility in how sources meet an emission reduction target, an EIP empowers sources to find the means that are most suitable and most cost-effective for their particular circumstances. By setting a price on pollution and pollution reductions through a fee-based approach or a trading program, some sources can realize an economic reductions for less than the cost imposed by a fee (*Improving Air Quality with EIP, EPA-452/R-01-001, January 2001 at 23)*. The proposed Rules allow a developer to either use the on-site emissions controls or to pay a fee and thus "realize an economic gain or avoid additional costs by making the reductions for less than the cost imposed by a fee." The District has failed to show the proposed Rules are consistent with EPA's EIP guidance and is treating new developments as direct sources.

RESPONSE: The District disagrees that EIP guidance applies. Although there are similar elements in EIPs, Rule 9510 contains both voluntary elements (onsite mitigation) and mandatory elements (mitigation fees) that preclude the use of the EIP guidance in its entirety. Still, the rule meets the SIP submittal criteria that apply to all rules of being surplus, enforceable, quantifiable, and permanent for the time required in the SIP and meets the fundamental EIP principles of integrity, equity, and environmental benefit.

9. COMMENT: It is impractical, and an excessive and unnecessary burden for applicants to be required to include justification of mitigation measures not selected, as is proposed by Section. 5.3.2. The on-site checklist contains a number of emission reduction measures, which will often be inapplicable. As a result, Section 5.3.2 should be deleted. As proposed, the provision implies, for example, that all 18 of the on-site measures listed in Appendix C for residential projects (or 39 if the "on-site enhancing measures" also required justification) could be applicable for all projects. Measures which would not be routinely feasible or applicable, include but are not limited to:

- An on-site bike lane would not likely be warranted or feasible on the site of a 50-unit apartment building (R-7) nor would an apartment building involve the design of street patterns (R-10).

- "Reduce Wood Fireplaces and/or Woodstove above that required by District Rule 4901" would not be applicable to most new apartment buildings (R-14).

- All new subdivisions cannot be sited within half a mile of an existing transit stop, and it is beyond the ability of applicants to have a transit stop added within a half a mile of a new subdivision (R-2), independent of where the project is located.

RESPONSE: The District does not agree with the author's statement that it is impractical, excessive and/or an unnecessary burden to include justification. The purpose of the justification is to encourage developers to examine the potential measures more closely and not immediately reject a measure without considering its feasibility. Onsite measures have permanent air quality benefits and typically create value and provide other benefits to the development. Measures included as mitigation measures in the lead agencies CEQA document, as most are expected to be, will not require District long term monitoring. If a measure is impractical or not applicable to a project, the applicant needs only to state that in the justification. The District does not see how this is an undue burden. Finally, onsite measures are implemented voluntarily by the developer and are not required by Rule 9510.

10. **COMMENT:** As a result of these concerns, the Department respectfully requests that the District not adopt the Draft Rules as proposed and continue to work with all interested parties on needed revisions. Thank you for your consideration of these concerns. For further discussion or to set-up a meeting, please contact Linda Wheaton, Assistant Deputy Director, at (916) 327-2642.

RESPONSE: Comment Noted.

City of Porterville
Date: November 29, 2005

11. **COMMENT:** The City of Porterville appreciates and encourages the District's efforts to improve air quality in our Valley, however, the District staff report does not clearly define how the additional fees acquired through adoption of the DESIGN program would result in a quantifiable improvement to air quality in the San Joaquin Valley air basin beyond the measures already in place. Further, neither rule dictates a funding source to compensate local jurisdictions for the

additional efforts resulting from approval. Please provide clarification of these points in the final rules. Thank you for the opportunity to comment.

RESPONSE: First, Appendix B – Emission Reduction Analysis, Attachments 2 and 3 show the tonnage of offsite reductions that are estimated to occur as a result of the adoption of the ISR rules. By 2010, it is estimated that the ISR will achieve 5.4 tons per day (tpd) reduction of NOx, and 5.8 tpd reduction of PM10 from growth. The amount of off-site reductions (from the fees) are 4.7 tpd and 4 tpd of NOx and PM10, respectively. These estimates are based on the amount of reduction required by the rule, and assume an amount of that reduction is achieved on-site. The off-site fees will be used to achieve this reduction, as specified in Appendix E: Cost Effectiveness Analysis, which states how much in off-site fees is expected and how that money will be spent to achieve quantifiable reductions. Specifically, Appendix E: Cost Effectiveness Analysis, Attachment 1 (p. E-13 through E-33) details potential projects, the amount of reduction achievable, the cost of those reductions and a potential spending plan.

Second, the rule does not dictate a funding source to compensate local jurisdictions because there are no requirements placed on local jurisdictions. The local jurisdiction is not required to review, assess or otherwise act on ISR projects. The District is committed to including local jurisdictions in the process through informing them of projects and project-specific information received by the District, and District actions on those projects just as it does now when it provides comments on local agency CEQA referrals. However, neither the ISR rules nor the administrative process require 'additional efforts' from local agencies.

Visalia Unified School District
Date: October 25, 2005

On behalf of the Visalia Unified School District ("the School District"), I respectfully submit the following comments and questions to Draft Rules 9510 and 3180 of the San Joaquin Valley Air Pollution Control District ("the Valley Air District"). I am unclear about several items in the Valley Air District's proposed fee and plan to decrease emissions' impact from new development in the area. The School District's main concern is that the Draft Rules lack sufficient clarity to allow the School District to analyze what the potential impact of the new fees may be and whether the fees would actually be applicable to our projects. The School District is particularly concerned because any fees that must be paid as a result of the enactment of the Draft Rules will reduce the School District's financial ability to provide classrooms to students in these newly developed areas.

12. COMMENT: Applicability of Draft Rules to the School District

It is unclear whether the Draft Rules apply to the School District's construction of new schools. Section 2.1 of Draft Rule 9510 states that the rule applies "to any developer that seeks to gain a final discretionary approval for a development project… of … 9,0000 square feet of educational space." The Draft Rules define "developer" as any person or entity that undertakes a development project. Also, the definition of a "development project" includes any project that it "subject to a discretionary approval by a public agency" where the discretionary approval "requires the exercise of judgment or deliberation."

The school District takes the position that the Draft Rules do not apply to it because it does not operate as a "developer" and the School District school construction projects are not development projects since they are not "subject to the discretionary approval by a public agency." However, according to the Draft Rules, if a developer is constructing a school facility on behalf of the School District, then due to the definitions in the Draft Rules, the fee may be applicable.

RESPONSE: If the approval to site and construct a new school is not subject to a discretionary permit, then the author is correct that the ISR rules would not apply. Otherwise, schools have many options available in onsite measures that would substantial reduce any potential fee.

13. COMMENT: Fee Calculation

In addition to the question of the fee's applicability, the formula to be used in calculating the air impact mitigation fee is extremely confusing. A more straightforward formula from which the estimates of fees can be made would prove beneficial to those impacted by the Draft Rules. If these Draft Rules are intended to apply to the School District's development of new schools, a more concise formula would help us in the planning and estimating process.

RESPONSE: Although the fee formula is somewhat complex, it is the most accurate and equitable way to assess fees based on emissions to achieve the emission reduction committed to in the District's SIP. The District has found that using an excel file to calculate fees is easy and accurate. The District will make a calculator with the formula built in available to the public prior to implementation. Prior to that, the District is willing help applicants and agencies create an excel file that calculates emission reductions required and fees required.

14. COMMENT: Requirement of Nexus

The School District has reviewed comments to the Draft Rules submitted by other associations that are impacted by these rules. One major problem noted by many of the commentators related to the fact that the Draft Rules fail to comply with the nexus test required by AB 1600, enacted as Government Code

Sections 66000 et seq, and as required by case law such as in *Ehrlich v. City of Culver City* (1996) 12 Cal4th 854.

Similarly, we would like to express our concerns that the fees proposed do not appear to demonstrate a reasonable relationship to the cost of implementing the air pollution mitigation program. It appears to us that there is a huge disparity between the cost of implementing the mitigation program and the fees to be collected. Further, the Draft Rules and supporting analyses are largely silent on the actual mitigation measures to be funded that will reduce emissions' impact resulting from a given project. It would be helpful if the Valley Air District provided details of the actual measures and projects that will be undertaken to reduce emissions' impact as well as the benefits accruing to the public as a result of these measures.

RESPONSE: Please refer to the September 1, 2005 Response to Comment #125 about the analysis of nexus applicability that the District performed. The District disagrees that there is a disparity between the fees to be collected, estimated as up to $103 million between 2006 and 2008, and the cost of achieving off-site reductions. In Appendix E: Cost Effectiveness Analysis, Attachment 1 (p. E-13 through E-33) details potential projects, the amount of reduction achievable, the cost of those reductions and a potential spending plan.

15. COMMENT: Notice to Those Impacted by Draft Rules

Although the School District is within the San Joaquin Valley Air Basin and is subject to the jurisdiction of the Valley Air District, we feel we were not provided with adequate notice of the Draft Rules. If the Draft Rules are held to apply to the School District, the fees imposed will greatly impact our ability to plan for the development of new classrooms and educational facilities. Therefore, in the future, we request written notice of proposed rules and regulations that are intended to apply to the School District.

RESPONSE: The District regrets that the School District did not receive notice of the proposed rules; however, this rule was noticed in accordance with all legal requirements. The District will add the School District to the ISR mailing list. In addition, the District suggests that the School District visit the District website at http://www.valleyair.org/lists/list.htm. The School District can receive District news, workshop notices, and other important information for this or other plans via e-mail by subscribing to one of the District's e-mail notification lists. The e-mail notification lists are setup and maintained by the end user and not by District staff. Individuals may add or delete their names from these lists at anytime.

California League of Food Processors (CLFP)
Date: November 22, 2005

16. **COMMENT:** First, CLFP supports the amendments proposed by the District that would exempt canning and food processing from Rule 9510. Most of the primary activities performed by food processors are already regulated by the District and are subject to Rule 2201 (New and Modified Stationary Source Review Rule) and Rule 2010 (Permit Rule), so the proposed exemption will avoid redundant or confusing new regulations.

RESPONSE: Comment Noted

17. **COMMENT:** Second, CLFP and other organizations have expressed concern to the District regarding the cumulative cost of complying with the various new air pollution control requirements imposed on manufacturers in recent years. The food processing industry is one of the major sources of employment in the San Joaquin Valley and the firms operate in a very competitive economic environment. The financial resources available for complying with new regulations are very limited. CLFP appreciates that the District has responded to industry concerns by recognizing the cumulative impact of air regulations and the major investments made in stationary source emission controls.

RESPONSE: Comment Noted

California Building Industry Association
Date: November 29, 2005

On behalf of the California Building Industry Association (CBIA) and its Affiliate Associations located in the San Joaquin Valley, I am entering into the formal record comments on the proposed Draft Rules 9510 and 3180 (the "ISR"). CBIA member companies provide housing that is the cornerstone of quality of life in the San Joaquin Valley.

18. **COMMENT:** The Federal Clean Air Act, 42 U.S.C. Section 7410 (a)(2)(F), requires that approvable control measures provide quantifiable, surplus, enforceable, permanent, and adequately supported reductions in air emissions. The proposed Draft ISR does not provide sufficient analysis or findings to establish that the proposed Indirect Source Mitigation Program meets these criteria. Indeed, the document barely addresses these fundamental topics. Because these criteria have not been met, the Indirect Source Mitigation Program does not meet the Federal Clean Air Act test for full approval and inclusion in the State Implementation Plan ("SIP").

Indirect Source programs, on the scale proposed by the San Joaquin Valley Air District, have not been adopted or implemented successfully anywhere in the United States. We note that USEPA has never approved a proposed indirect source rule for emission reduction credit.

RESPONSE: The District has complied with the cited Clean Air Act section. EPA has recognized that areas with a long history of air regulation must pursue new and innovative ways to reach emission reduction requirements since the stationary sources in many cases are already in their second or third retrofit requirement with rapidly diminishing air quality returns. This had led EPA to produce guidance on voluntary and emerging measures and for taking SIP credit for mobile source incentive programs. Although Rule 9510 is unique, it still meets all control measure approvability criteria. See also the District's response to EPA's comment letter on the September 1, 2005 draft.

19. COMMENT: The expected emissions benefits are not properly quantified. The URBEMIS model-based approach proposed to calculate project travel and emission impacts is inconsistent with the SIP inventory methodology. The SIP emissions inventory used the California Air Resources Board's EMFAC-2002 model to establish the NOX and PM10 emission reductions targeted by the ISR rules. One of the key components of EMFAC is a regional travel demand model ("TDM"). The TDM is used to calculate regional travel impacts such as vehicle miles traveled ("VMTs") and trips within the SIP inventory. The SIP calculations that identify further emission reductions needed for the San Joaquin Valley to attain federal ambient air quality standards are, in turn, based on vehicle travel activity forecasts from TDMs.

New project impacts determined under the ISR rules should be calculated in a manner consistent with the SIP targets to ensure no over- or under-compliance. There is an inconsistency between the way URBEMIS and TDMs calculate new or net added vehicle miles traveled (VMT) and vehicle trips. The fundamental difference between TDMs and URBEMIS is that TDMs robustly account for the interaction effects between multiple land uses, while URBEMIS does not.

Interaction effects refer to the fact that when considered together, each individual land use (or project) "competes" with others for vehicle trips. Where these land uses are located within a metropolitan area or county and how well the regional roadway network provides access to each land use affects the number of trips taken and their length (and thus VMT). For example, locating a new shopping center near an existing residential area would likely shorten the length of existing shopping trips taken from the residential area (and thus reduce VMT). It may also increase the number of shopping trips from the residential area due to its proximity compared to the location of existing shopping centers.

The Draft ISR relies primarily on URBEMIS to calculate project level impacts, even though the District's own modeling consultant has stated that this model was designed to be a "sketch planning" tool, and was never intended to provide a detailed numerical analysis of project level air quality impacts. If the travel activity (VMT and trips) of all the URBEMIS-based individual ISR project analyses were added together, they would overstate the net travel impacts determined when jointly simulating the same new projects using a TDM. This conclusion is based on a side-by-side comparison of impacts of a hypothetical but typical new residential project performed by Sierra/Dowling using URBEMIS and the Fresno County TDM. Correcting the existing biases in the URBEMIS default assumptions does not change this result because URBEMIS treats each new project and its interaction with existing land uses and other new projects separately.

The District has attempted to account for this fundamental difference between TDMs and URBEMIS by applying a 50% discount factor in the NOx and PM10 fee formulas to require mitigation of only half or one direction of two way trips between a new project and existing land uses. While in concept this approach could eliminate the double counting problem, simply slicing URBEMIS impacts in half does not demonstrate SIP consistency.

On top of this fundamental discrepancy with the SIP methodology, URBEMIS overstates residential project emissions by over 70% as a result of multiple technical shortcomings. On this basis alone, URBEMIS cannot be considered a reliable and accurate gauge of project emissions. URBEMIS' technical problems as an emission estimation tool are documented in detail in Sierra Research's comment letter of July 22, 2005.

RESPONSE: The author states that the "emission reduction benefits are not properly quantified". The District assumes the author is discussing the emission reduction benefits from implementation of the rule, which were properly quantified in Appendix B: Emission Reduction Analysis, using the known growth data (provided to the state by the COGs), and applying a standard rule penetration, estimated on-site emission reduction achievement, and applying the emission reduction requirements to the growth emissions. This analysis is considered 'top-down' and is standard practice. The analysis did not rely on URBEMIS, a project-level model or 'bottom-up' analysis, for valley-wide emissions estimates from valley-wide growth.

The District has repeatedly addressed the "70%" overestimation cited by the author as a distortion of fact. The District has stated that project-specific data is acceptable when available and has committed to addressing the few issues that have been raised concerning URBEMIS default values, and will provide guidance on those items prior to ISR implementation.

The District could not find any reference in the Clean Air Act or in EPA guidance that prescribes implementation to use the same methodology as the SIP. Indeed, the District did not find any reference prescribing a model or methodology to assess mobile and area emissions from development projects. The author's assertion that the methodology itself must be the same for the SIP and implementation is not based on any statute, guidance, or on historical methods of rule implementation. What is important is that the rule achieves the amount of reduction committed to in the SIP, and that the model produce consistent and repeatable results and be based on widely accepted inputs and methods, all of which apply to URBEMIS.

The author mischaracterizes the fee formula's use of a 50 percent baseline as a discount factor used to correct a deficiency in URBEMIS. URBEMIS correctly uses ITE trip generation rates to show the impact of all trips associated with a development project including those generated and those attracted to the site. The purpose of the 50% of the baseline in the fee formula is to meet the nexus requirements and to meet the intent of Health and Safety Code 40717.5(a)(1) for Districts to… "make reasonable and feasible efforts to assign responsibility for existing and new vehicle trips in a manner that equitably distributes responsibility among indirect sources." By basing the fee on half the emissions, the District is ensuring that only trips from the project site are assigned responsibility. Furthermore, URBEMIS has the capability to account for reductions for passby trips where someone stops on their way to their primary destination and diverted linked trips where the trip length is shortened to account for trips that although not directly on the route to the primary destination, still result in a shorter trip length than would occur if someone went there directly. Finally, URBEMIS can accept project specific trip generation information based on market studies and local traffic studies when a proposed project may produce different results than would be expected using default trip information. We believe this a reasonable and feasible effort to meet the Health and Safety Code requirements.

The District believes the best model should be used based on the needs and parameters of the project. For SIP inventory purposes, regional TDMs are the most appropriate model for estimating emissions. However, as admitted by Sierra Research (letter November 29, 2005, Comment #29 below), TDMs are regional models that are inappropriate for project-level analysis and TDMs contain their own flaws. These flaws are ignored in the author's 'URBEMIS vs. TDM' discussion. For instance, TDMs do not account for some trips on arterial and collector streets. TDMs require a large amount of data input, are not easily used, were not developed to estimate land-use impacts, and are not available to the public. Simply, TDMs are too broad of tools to accurately estimate the emissions from individual projects. A side-by-side comparison of a project-level analysis using URBEMIS and a TDM would be misleading, as a regional TDM was never meant to be, nor should be, used to estimate and individual project's emissions.

URBEMIS uses emissions factors derived from EMFAC2002, the same model used in the SIP. Several issues raised with URBEMIS (silt loading, fleet mix) will be remedied prior to implementation. URBEMIS is maintained by a statewide working group of technical experts and air districts. URBEMIS is used in CEQA analysis across the state, and is commonly used for Environmental Impact Reports (EIRs) to assess project-specific air quality impacts. URBEMIS has been used by the District and applicants in assessing air emissions for Mitigation Agreements, as well as other agencies to assess air impacts for mitigation settlements. The District has more than adequately shown URBEMIS to be the best model for the job.

The 'fundamental flaw' raised by the author simply does not exist. It has been well demonstrated that URBEMIS is the best program for ISR's needs, and it is widely recognized across the state by other air districts, local land use agencies, and other agencies as an appropriate tool for assessing specific project-level air impacts. It is the District's assessment that the author compares TDMs to URBEMIS in raising 'SIP methodology consistency' as a 'fundamental flaw' to discredit URBEMIS; and, since TDM's are inappropriate for project-level analysis, leave the District with no available model to use.

20. COMMENT: There is no discussion of whether the emissions are surplus. New development is already controlled by existing and proposed District rules, some of which overlap the ISR proposal. Dozens of cities and counties with the San Joaquin Air Basin have adopted ordnances creating local traffic mitigation and congestion relief programs, funded by fees on new development and, in the case of several counties, increased sales taxes. In addition, large scale developments, such as planned communities, are increasingly entering into air quality mitigation agreements within the context of the environmental review process mandated by the California Environmental Quality Act ("CEQA"). All of these measures address the same concerns as the Draft ISR, improved traffic flow and reduction of tail pipe emissions.

The failure of the Draft ISR and the supporting documentation to discuss or quantify the emissions reductions attributable to these other programs undercut the ability of the measure to provide surplus and quantifiable emission reductions as required by statute.

RESPONSE: The emissions growth estimates used to develop the rule are from the District's emission inventory that includes the benefit of all adopted local, state, and federal regulations and so are surplus to adopted control programs and regulations. Local regulations that have been adopted as transportation control measures currently have no emission reductions claimed in the District's SIP. Congestion relief measures and other transportation impact fees are

required just to keep emissions from exceeding emission budgets and do not provide additional SIP creditable reductions. Local programs and ordinances that do provide a surplus benefit will now be able to provide credit to their communities through the onsite mitigation component of the rule and will reduce the fees paid by developments contributing to those programs. In addition, reductions obtained through CEQA measures and Development Mitigation Agreements will be credited toward the emission reduction requirements of the rule.

There are no existing or proposed District rules that overlap the proposed ISR program. Appendix G: Rule Consistency Analysis describes other District rules and analyzes potential for inconsistency—none were found.

21. COMMENT: The proposed Indirect Source Mitigation Program does not contain an enforceable commitment. The permitting process in the Draft ISR operates independently of any other relevant regulatory process. Numerous parties have commented that the air quality impacts attributable to new development are also subject to CEQA. Early attempts by the Air District to reconcile or streamline the ISR with the normal environmental review process have been abandoned for the time being, replaced with a statement that the Air District will revise its existing Air Quality CEQA Guidelines at some future date to minimize conflicts between the two processes. By separating the Air District permit process from CEQA, the Air District has removed any responsibility for enforcement from local agencies with the land use authority necessary to enforce on-site mitigation measures.

RESPONSE: First, the ISR program is not a permitting program. Second, the ISR program is enforceable, the same as all other District Rules, and does not need to rely on 'other relevant regulatory process' and does not conflict with other regulatory processes. This enforcement authority comes from state law. In fact, most of the District's rules "operate independently of any other relevant regulatory process" as they are stand-alone rules not dependant on other regulations. Please see District Rule 1040 (Enforcement).

The District does not need to revise the Guide for Assessing and Mitigating Air Quality Impacts (GAMAQI) in order to make the rule enforceable. The District will be revising the GAMAQI in order to clarify for those undergoing the CEQA process how ISR will affect their projects. This is no different than how the GAMAQI currently addresses other applicable rules. For instance, Regulation VIII (Fugitive PM10 Prohibitions) is discussed in the text of the GAMAQI. However, the GAMAQI discussion does *create* the enforcement of Regulation VIII, but acts to inform lead agencies, consultants, project applicants, and the public.

22. **COMMENT:** In addition, no legal nexus between the proposed mitigation program and the fees imposed on individual development projects has been established. The cost and ultimate success of the mitigation measures are speculative. The Air District's proposed mitigation program, based upon after-the-fact grant applications and the funding of primarily off-site mitigation, has not worked well in other situations, such as the South Coast Air Quality Management District's Mobile Source Reduction Commitment program. Until nexus can be demonstrated, no enforceable commitment is possible. The language of SB 709 did not repeal the independent, Constitutionally-based requirement that that "rough proportionality" between the impact created and the cost of its mitigation be established. This comment has been made several times, both in writing and testimony, and the Air District has never fully responded to this issue.

The Air District cites the USEPA approved PM10 and Ozone Attainment Plans along with SB 709 as authority that it must impose ISR. In doing so, the District is arguing backward from a conclusion, sidestepping the fundamental issue of whether an enforceable commitment exists. Such backstops are not a substitute for establishing whether an enforceable commitment exists for purposes of the Federal Clean Air Act.

RESPONSE: Although the District believes it has adequately responded to each comment regarding nexus 'rough proportionality', here is a synopsis of how the District makes this demonstration:

> The District developed an estimate of growth in mobile source emissions from new development by using the SIP emission inventory growth-only projections. This allows us to estimate the amount future emissions will increase only accounting for growth. This information was used as the basis for the ISR control measure in the 2003 PM10 Plan. Construction and area source emissions are entirely the responsibility of the development project. The emissions attributable to growth were then reduced to account for projects that will be exempt from the rule. The mitigation requirements were then applied to the emissions subject to the rule to determine the potential emission reductions. The emission reductions are cumulative since each year additional mitigation is accomplished and the benefits from prior years continue to provide a benefit. This information is provided in Appendix B of the staff report.
>
> Once the overall emission reduction target for the ISR control measure was identified, the next step was to determine the method to calculate the fair share of the emissions attributable to individual projects. As has been thoroughly discussed elsewhere, it is not appropriate to use the SIP inventory method to calculate emissions from individual projects. URBEMIS was identified as the best tool for conducting project level estimates. See Appendix D of the staff report.

With the emission estimation tool selected, the District then used URBEMIS to estimate emissions from a variety of different land use projects using basic default inputs. The basic factors used to estimate project mobile emissions are the number of vehicle trips, the length of the trips, and the average vehicle fleet emission rates. Based on comments received on early drafts, the District replaced default values for PM10 silt loading values, and activated the commercial passby trips component. The purpose of this analysis was to estimate the potential emissions and fees from an individual development. The results were then used in socioeconomic impact analysis to determine the potential impacts of worst-case fee amounts.

The next step in determining rough proportionality is to verify that the individual project impact is roughly proportional to the mitigation achieved with the fees that are collected. This is accomplished by using an emission based fee formula to determine the amount of funds collected and a fixed cost of reductions for the emission reductions to be purchased by the District. The cost of reductions was developed for future years based on recent cost-effectiveness history with District grant programs, a determination that the reductions will be continue to surplus to any adopted regulations, the emission inventory for the sources, and the technical and economic feasibility of the projects. This analysis is adequate to confirm that the District will be able to maintain rough proportionality between the emissions generated and the emissions reduced through the fees.

The District has several options for corrective actions should the average cost of reductions achieved by the ISR Program be significantly higher or lower than predicted. Since staff will be continuously monitoring the projects funded, we will be able to identify early if costs are on target. If costs of reductions are coming in high, the first option would be to focus the project mix on more cost-effective projects until the average approaches the target amount. If insufficient low cost off-site projects are available, the cost of reductions could be increased by amending the rule. If costs of reductions are coming in low and it appears that the lower-than-expected cost-effectiveness can be sustained, the fee amount may be lowered. The District may also modify the incentive amounts offered to attract preferred, highly cost-effective projects where potential applicants may be reluctant to participate when the incentive amount offered may be inadequate to cover costs of implementing the project. Modified incentive amounts could also be used if the District has difficulty attracting sufficient projects.

The comparison to mobile source emission reduction credit programs is not valid. The reason those programs have not been highly successful is because stationary sources needing ERCs have been able to obtain those reductions at lower costs using traditional banked ERCs than could be achieved by mobile source reductions. Grant programs throughout the state have been extremely successful in obtaining emission reductions from a wide variety of sources. Since ISR reductions can be obtained from any source of surplus, quantifiable, and enforceable reductions, it can be expected to do even better than the existing grant programs in attracting projects.

23. COMMENT: There is no finding that the benefits of the proposed measures will be permanent.

The Draft ISR assumes that the measures will be in effect for ten years. Because of the passive nature of many of the on-site mitigation measures, there is no guarantee that purchasers of newly developed property will leave those mitigation measures in place. Likewise, there is no documentation that the emission reductions associated with the proposed control measures will persist throughout the life of the SIP. As discussed previously, the benefits are speculative, have not been quantified and documented, and as a result the longevity of the benefits are equally speculative.

RESPONSE: The ISR program differentiates between onsite and off-site measures when demonstrating the permanence of the reductions for SIP purposes. The onsite measures are most closely related to measures covered by EPA's Voluntary and Emerging Measures Policy. This policy recognizes that land use measures are highly desirable, but more difficult to quantify than traditional measures. Once the project is constructed with the onsite features in place, the benefits continue indefinitely into the future. Measures like density, mix of uses, and pedestrian infrastructure are not likely to be eliminated after development. All on-site measures that are not required by the lead agency will be enforced by the District to ensure that the emission reduction benefits will occur for the full duration of ten years. Offsite projects funded with mitigation fees only take credit for SIP reductions during the life of the project. This is accounted for in the emission reduction spreadsheet in Appendix B. Offsite projects meet EPA SIP criteria for permanence. Applicants are under contract to utilize the cleaner equipment through the term of the contract. When the new equipment, device, or paved road reaches the end of its useful life, the new purchase must comply with regulations in place at that time and will use cleaner technology in many cases.

As the District has repeatedly demonstrated, the benefits are not speculative, have been quantified and documented. Please refer to the *entire* Staff Report, Appendix B: Emission Reduction Analysis, Appendix D: Recommended Changes to URBEMIS, and Appendix E: Cost Effectiveness Analysis.

24. COMMENT: The proposed Indirect Source Mitigation Program is not adequately supported. The Air District's socio-economic analysis focused on the narrowest viewpoint available, the impact on residential builders, and did not even attempt to analyze the larger impacts on other business sectors, employment, public services, etc. The proposed rulemaking provides no information on the commitments from other agencies that are necessary to implement the various measures. Finally, there is no indication that the proposed requirements have been integrated into local development plans.

RESPONSE: First, there are no "commitments from other agencies that are necessary" to implement ISR. Therefore, the District did not include "commitments from other agencies" as there are none.

The author mistakenly states that the socioeconomic analysis, "focused on the narrowest viewpoint available." The author is posing that the District did not thoroughly or adequately address the socioeconomic impacts of the ISR program, which is untrue. The socioeconomic analysis included analysis on the impacts to homebuilders, homebuyers, renters, low-income housing and housing affordability. In addition it analyzed the impacts to commercial, office and industrial builders, buyers and renters, and small businesses. The mitigation fees are spent on projects in the San Joaquin Valley that provide benefits to the Valley's economy as described in the revised socioeconomic impacts report.

ISR has been designed to work synergistically with the local development approval process. Developers may use mitigation measures and local requirements of the local development process to reduce their Rule 9510 fees, but are not required to do so. The proposed requirements of ISR, a prescribed amount of emission reduction for particular development projects, do not need to be integrated into local development plans, but may be used to demonstrate that air quality impacts of the project have been reduced. Developers wanting to use Rule 9510 as support for their air quality impact study for the local development approval process can time their application to the District such that it will fit seamlessly with the normal CEQA timelines. For the 'mitigation program', there are no up-front requirements for all projects. Applicants that voluntarily commit to certain measures that are not already requirements by other agencies must enter into an agreement with the District that details the schedule of monitoring and reporting for the District to enforce implementation of those measures. The 'mitigation program' requirements are to implement those measures the applicant has voluntarily committed to. The only possible conflict with local development plans is if a measure is not allowed by the local agency: in that instance, the District would remove that measure from the ISR project, and reassess emissions. Thereby avoiding conflicts with the local agency.

25. COMMENT: In summary, for the reasons stated above, the Draft ISR continues to be fundamentally flawed, and is unlikely to satisfy the requirements of the Federal Clean Air Act. As a result, the Air District will have a difficult time convincing USEPA that the ISR control measure will contribute to the emission reduction goals set forth in the SIP and the District should look to other measures to obtain PM10 and NOx reductions.

RESPONSE: As stated in Response to Comment #18, the EPA is supportive of the rule, and has not raised the 'flaws' that the author claims are present. The emission reduction goals in the SIP will primarily be achieved through grant and incentive programs that have been in operation for over a decade and that meet all SIP submittal criteria. Credit for new grant and incentive programs will follow the same SIP criteria and will comply with the same standards for quantification and verification as the existing programs. Each new program will go through a public review process and be approved by the District's Governing Board. The voluntary onsite measures will only be credited to the extent that they meet the criteria of EPA's Voluntary and Emerging Measures Policy.

Sierra Research – On Behalf of CBIA

Date: November 29, 2005

On behalf of the California Building Industry Association (CBIA), Sierra Research (Sierra) is pleased to submit the following comments on the revised draft Indirect Source Rules (ISR) 9510 and 3180 released by the San Joaquin Valley Unified Air Pollution Control District (District) earlier in November.

Our comments in this letter rebut District responses to earlier comments submitted by Sierra in September. As directed by CBIA, our comments focus on technical and modeling issues related to the use of the URBEMIS model under the proposed rules based on our independent review of the model and its underlying assumptions. In this review we were assisted by Dowling Associates, Inc. (Dowling), a transportation planning firm with extensive travel demand modeling experience supporting a number of the San Joaquin Valley Transportation Planning Agencies (TPAs).

Our rebuttal covers the following two issues:

1. URBEMIS modeling assumptions substantially overestimate residential project emissions. A combination of unresolved technical problems result in overstating both residential PM10 and NOx project emissions, and therefore ISR fees, by over 70%.

2. Rule 9510 consistency with SIP emissions inventory has not been demonstrated. The SIP travel model projects a different amount of travel (and therefore emissions and fees) from each project than URBEMIS calculates. Our Fresno County test case shows that URBEMIS produces higher project emissions than does the SIP methodology.

A detailed discussion of each of these unresolved issues is provided in Attachment A.

26. COMMENT: Summary

The following table summarizes each of the technical modeling issues identified by Sierra/Dowling during the ISR rulemaking process, their impacts, and the District's response to each issue.

Status of District Responses to Sierra/Dowling ISR Comments		
Issue	Emissions Bias	District Response
Residential Fleet Mix	NOx high by **20%**	Will fix, revised fleet mix to be determined
Silt Loading Factors	PM_{10} high by **50%**	Will fix
Average Vehicle Trip Lengths	NOx and PM_{10} high by **20-30%**	Will fix, unsure of approach
Residential Fleet Age Distribution	Exhaust NOx and PM_{10} high by over **20%**	Not convinced data provided warrant a revision
SIP Consistency	NOx and PM_{10} likely **high by unknown amount**	Handled by 50% fee discount?

Although the District has indicated a willingness to address some of the modeling issues we have identified, we believe the responses to our earlier comments on URBEMIS model issues are incomplete (in that corrections will not be made until after ISR adoption) or mildly dismissive (e.g., not willing to consider how revised residential age distribution impacts will be addressed). Some of the unresolved issues are fundamental and still need to be addressed before these rules can go forward

Furthermore, the District has not proven that the URBEMIS-based ISR approach will result in emission reductions that match SIP targets. From a policy standpoint, we believe this burden-of-proof lies with the District and that SIP consistency cannot simply be asserted.

These technical problems result in major discrepancies in estimating emissions and corresponding fees under Rule 9510. Thus, we respectfully recommend that the District delay its scheduled December 15 hearing on ISR adoption until these issues are fully resolved.

If you have any questions about the information presented above or in Attachment A, please feel free to contact Bob Dulla or me at (916) 444-6666.

RESPONSE: The District has determined that all items that the author raises have been adequately addressed. See the following Comments and Response to Comments #27 through #29.

ATTACHMENT A
UNRESOLVED RULE 9510 TECHNICAL ISSUES
THAT RESULT IN OVERSTATED EMISSIONS

27. COMMENT: URBEMIS Modeling Assumptions Substantially Overestimate Residential Project Emissions - In responses to our comments, the District acknowledged that many of the default modeling assumptions in the URBEMIS model do not accurately represent conditions in the San Joaquin Valley when applied to residential projects. These incorrect model defaults identified by Sierra and Dowling substantially overestimate residential project emissions by a minimum of 70% for both pollutants targeted under the ISR rules, oxides of nitrogen (NOx) and "fine" particulate matter (PM10).

The District's response to these URBEMIS model default issues is incomplete. In acknowledging these problems, the District responds only that these faulty model assumptions will be corrected in a future version of URBEMIS that will be released (presumably without opportunity for public review) after the ISR rules are adopted.

Although the District has indicated that a small part of these model corrections will be made prior to rule implementation, no timetable has been provided for revising URBEMIS, nor has it been made clear that these revisions will be publicly reviewed. The District has been aware of these modeling issues since July, yet no further action has been taken. The District's approach does not guarantee the release of a revised and fully reviewed model before implementation.

RESPONSE: The District does not "acknowledge that ***many*** (emphasis added) of the defaults… do not accurately represent conditions in the San Joaquin Valley". The District does acknowledge that a there are a few items that need refinement, specifically the on-road silt loading factor (easily adjusted by a known amount) and the fleet mix (less easily adjusted). The District had already hired a consultant to analyze and recommend a revised fleet mix, and results are expected prior to rule implementation. The author's assertion that "no further action has been taken" is misinformed and false. In addition to researching the fleet mix, the District is participating in the URBEMIS statewide working group (see paragraph below for more information). The model defaults ***do not*** overestimate residential project emissions "by a minimum of 70% for both pollutants". This claim is false, and the District has repeatedly addressed this claim.

The author is incorrect in his assertion that the District will make changes to URBEMIS "without opportunity for public review" and therefore without any review or safeguards. Changes to URBEMIS are made through a statewide working group that includes other air districts, model experts, technical experts and other public agencies such as CalTrans. As consultants such as Sierra Research use URBEMIS, they often find areas for improvement and correction. Any proposed changes impacting the statewide use of the model must be vetted through this group. The District cannot, nor does it propose to, make 'closed door', questionable changes to the URBEMIS model. If an applicant or a consultant can find better input data or another model that more accurately characterizes the emissions from their project, the District will consider them. If they apply broadly, the District is committed to make those changes available to all users. Sierra should recognize that all modeling is based on incremental improvement. The District will use the best information currently available and commits to continuous improvement in its emission estimating techniques and models.

The author states that a "small part" of issues will be addressed. The District finds only three items raised that are legitimate and only two that are substantial, one of which (silt loading) has been resolved, and the other (fleet mix) is currently being researched. As for a "guaranteed release" of a revised program prior to implementation, these *two* issues can be addressed through guidance. A revised program is not necessary to account for the refined default changes. As stated above, the District is participating in the URBEMIS statewide working group, which is currently expecting to release a revised program in more than one year. The District is committed to making URBEMIS as accurate as possible, and is working towards that goal. Any change that can be made through District guidance will be implemented quickly.

In addition, the silt loading factor issue was raised by Sierra Research, which proposed a new factor, and the District agreed that the proposed factor was more accurate. This revised factor has been publicly discussed, and has been included in ISR documentation.

28. **COMMENT:** In addition, the District did not act on the evidence presented by Sierra/Dowling based on U.S. Census and Caltrans Travel Survey data—that new residential developments exhibit newer vehicle fleet age distributions (and therefore have lower average emissions). The District's response indicates a need for further survey data to warrant revising the URBEMIS default vehicle age distribution when applied to new residential projects.

Would data from a third-party survey that gathered information on vehicles per household and age from a random sample of "new" residential households in the

San Joaquin Valley be sufficient to warrant a revision if it showed a similar shift toward newer vehicles in the existing Sierra/Dowling analysis? And if so, how will this be accomplished? The District suggests the possibility of an age correction factor to address the fact that the EMFAC model emission factors used by URBEMIS cannot easily be modified to account for a revised age distribution. Who would develop this age correction factor and how would it be developed?

RESPONSE: The District did not act on the survey data because we are not yet convinced that it is more accurate than the information currently used in URBEMIS, which is an age distribution from EMFAC2002 (See September 1, 2005 Response to Comments #121 through #153). As pointed out in your previous comment letter, providing a project-specific fleet-mix age for each land use type would not be easy and would not be possible to automate in the current models used to quantify project emissions. We are not sure if the survey data described is adequate for this purpose. Since Sierra previously stated that it wants any changes vetted through a public process, the District will first pass this information to the URBEMIS Working Group for assessment. If consensus is reached that a major overhaul to URBEMIS is needed to account for fleet age differences, then the District will work to raise the necessary resources to develop the model. The new model would need to be submitted to EPA for approval. The fleet age distribution currently in use is adequate for the ISR program until such a time as a model capable of using this information becomes available.

29. COMMENT: Rule 9510 Consistency with SIP Emissions Inventory Has Not Been Demonstrated We continue to disagree with the District's assertion that the URBEMIS model-based approach proposed to calculate project travel and emission impacts is consistent with the Statewide Implementation Plan (SIP) inventory methodology. This SIP emissions inventory and its underlying methodology were used to establish the NOx and PM10 emission reductions targeted by the ISR rules. Thus, it is critically important to ensure that new project impacts determined under the ISR rules are calculated in a manner consistent with the SIP targets to ensure no over- or under-compliance.

Our disagreement centers on the inconsistency between URBEMIS and regional travel demand models (TDMs) in calculating new or net added vehicle miles traveled (VMT) and vehicle trips. The TDM models are used to calculate regional travel impacts (i.e., VMT and trips) within the SIP inventory. The fundamental difference between TDMs and URBEMIS is that TDMs robustly account for the interaction effects[1] between multiple land uses; URBEMIS does not.

1 Interaction effects refer to the fact that when considered together, each individual land use (or project) "competes" with others for vehicle trips. Where these land uses are located within a metropolitan area or county and how well the regional roadway network provides access to each land use affects the number of trips taken and their length (and thus VMT). For example, locating a new shopping center near an existing

If travel activity (VMT and trips) were totaled across all the URBEMIS-based individual ISR project applications, we believe they would overstate the net travel impacts determined when jointly simulating the same new projects using a TDM. This conclusion is based on a side-by-side comparison of impacts of a hypothetical but typical new residential project performed by Sierra/Dowling using URBEMIS and the Fresno County TDM. Further, we believe this conclusion remains valid even after correcting existing bias in URBEMIS default assumptions. This is because URBEMIS treats each new project and its interaction with existing land uses and other new projects separately.

We understand and agree with the District that it is not practical to make developers run TDM simulations under each ISR application, and readily acknowledge that TDMs are not without flaws of their own. However, calculations performed within the SIP that identify further emission reductions needed for the San Joaquin Valley to attain federal ambient air quality standards (a portion of which are targeted by the ISR rules) are based on vehicle travel activity forecasts from TDMs.

The District suggests that this fundamental difference between TDMs and URBEMIS is accounted for by applying a 50% discount factor in the NOx and PM10 fee formulas to require mitigation of only half or one direction of two-way trips between a new project and existing land uses. We understand the concept in principle, but strongly believe that by simply slicing URBEMIS impacts in half, SIP consistency has not been demonstrated. We believe the acid test of SIP consistency consists of an analysis that compares summed URBEMIS vs. TDM simulated travel impacts for a package of specific projects that have been developed in recent years. We are not aware that this type of URBEMIS analysis has ever been done and is likely one of the key reasons why ISR rules have never been successfully adopted and implemented on this scale.

RESPONSE: Please see Response to Comment #19 above. The District agrees that the model used for the ISR program should be carefully chosen as to not over- or under-comply with the SIP reduction targets. However, the District maintains that the methodology for implementation does not need to be identical to the SIP methodology to achieve this. The author states that for the Valley, if URBEMIS is compared side by side to a TDM, URBEMIS over-estimates net travel impacts. However, a regional TDM was never meant to be, nor should it be, used to estimate emissions from an individual project. To take a project-level model and try to compare it 'side-by-side' to a regional model is inappropriate and misleading.

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residential area would likely shorten the length of existing shopping trips taken from the residential area (and thus reduce VMT). It may also increase the number of shopping trips from the residential area due to its proximity compared to the location of existing shopping centers.

Stop the Air Board Tax *We'll All Pay!*
Date: November 16, 2005
Signed by
City of Clovis – Mayor Nathan Magsig
San Joaquin Busniess Council – President Ron Addington
Visalia Chamber of Commerce – President and CEO Mike Cully
Kern County Taxpayers Association – Executive Director Michael Turnipseed
Greater Merced Chamber of Commerce – CEO Will Lee

30. COMMENT: A broad-based coalition of local chambers of commerce, local government officials, homebuilders, taxpayer organizations, agricultural groups, ethnic and community groups are formally opposing Rules 9510 and 3180 proposed by the San Joaquin Valley Air Pollution Control District (the District). These Rules will collect hundreds of million of dollars by imposing fees on every new home, small and large business, public facilities and other new construction projects within the Central Valley, with questionable air quality benefit.

Indeed, as Rules 9510 and 3180 are currently proposed, the District is proposing to collect more than $670 million in fees over the next five years- taken right out of the regional economy.

RESPONSE: First, the proposed rule does not apply to all new development nor does it impose fees on all new development. For instance, the following projects are exempt from the rule or the fees:

- Projects below the applicable size thresholds in the rule (e.g., 50 residential homes)
- Projects at stationary source businesses already regulated by the District
- New projects and expansions that do not require a new discretionary approval by the local land-use agency
- Projects that employ enough control features to reduce emissions to less than 2 tons per year

The District's most up to date estimate of the offsite mitigation fees is $103 million over the next 3 years. The authors' estimate of $670 million in five years is erroneous. The authors' estimate is based on incorrect use of the fee formulas and emissions estimates and record setting development rates. The District believes that it is not prudent to base revenue estimates on record development rates that would result in SIP commitments that fall short if not realized. Although the authors' estimates are overstated, it should be recognized that solving the Valley's air pollution problems is very costly as can confirmed by industrial sources that have invested billions of dollars on pollution control in the last three decades. The funds will not be taken out of the regional economy. All offsite mitigation fees will be used to purchase emission reductions here and will

result in the funds being reinvested in the Valley. The cost of administering the program is assessed at only four percent of the offsite emission fees.

Finally, the District has thoroughly documented, described and demonstrated that the proposed rules will have a real and substantial beneficial impact on air quality. For more information on the emission reduction analysis or spending plan, please see Staff Report Appendix B: Emissions Reduction Analysis (which used a standard, accepted emission reduction methodology) and Appendix E: Cost Effectiveness Analysis (which thoroughly demonstrates the availability of off-site reductions and a plan for off-site fee use).

31. **COMMENT:** As you are probably aware, the Air District recently released a revised version of these Rules and accompanying documents. In our opinion, the changes have failed to address some of the fundamental concerns of our coalition. Namely, the Rules continue to unfairly target new homeowners and businesses to disproportionately fund air emissions cleanup; the methodology and science remain flawed and they still significantly overestimate emissions and result in inflated fees; the fees still seek to impose enormous and unjustified new costs on businesses, new homeowners, public entities and ultimately all Valley consumers and our economy; and the rules still fail to provide for full accountability.

We all support the goal of cleaner air, but there are better and more effective ways to reduce air pollution in a manner that is balanced and less costly for residents and our economy.

As representatives of the coalition, we feel compelled to share the following key reasons we are respectfully urging you and other Governing Board members to oppose Rules 9510 and 3180 when they come up for a vote on December 15, 2005.

RESPONSE: Please see Response to Comments #32 through #42 below.

32. **COMMENT:** ISSUE #1 – LACK OF FAIRNESS, EFFECTIVENESS OR EFFICIENCY
Indirect source rules place a disproportionate burden on new housing, new businesses and new public facilities to pay for a regional problem that is the responsibility of ALL residents. Indirect source rules are just that – *indirect, unproven* and *inefficient* ways to go about calculating and mitigating air quality emissions. For this reason, no other air district in the nation has adopted this type of indirect source rule. The District should be pursuing more balanced solutions that equally apply to all residents and rules that more directly go after

the true source of emission – namely tail pipe emissions and the dirtiest pollution sources like diesel.

RESPONSE: The authors claim that new homeowners and businesses are being singled out unfairly for controls by this rule. This rule would be only one of many measures that the District has implemented and proposes to implement to control emissions from nearly every possible source category. The District has produced two comprehensive plans, one for ozone and one for PM10, that analyze current and future emissions, and lay out a strategy for emission reductions by a variety of controls and actions. For example, the ISR program is one of more than 20 rules identified in the 2004 Extreme Ozone Attainment Demonstration Plan.

The authors indicate that the ISR program attempts to 'burden' new development to pay for a regional problem. The ISR program only assesses and places requirements on the fair share of the emissions from new development to solve regional ozone and PM10 problems. Each project that would go through the ISR program would be responsible *only* for their own emissions.

In addition, the District has successfully and aggressively regulated existing sources of air pollution. Existing homeowners have contributed in the form of DMV surcharges to the tune $7 per year per vehicle, compliance with fireplace regulations, low-VOC architectural coatings, and smog check programs. New stationary sources must employ Best Available Control Technology and mitigate their new emissions with offsets.

33. COMMENT: ISSUE #2 – THE COST OF THE PROPOSED RULES
Two years into the rule-making process, the District still has failed to provide the public with a comprehensive estimate of the cost of the proposed Rules. Specifically, the socioeconomic analysis fails to address the cumulative impact on housing costs, on business costs, and on economic growth and job creating. The analysis discusses impact on only select segments of the business community, ignoring the full economic impacts of the rule. Our coalition has reviewed what information is available in the District's socioeconomic analysis and we were able to determine that the District will collect as much as $670 million in fees over the next five years.

RESPONSE: Concerning the adequacy of the District's analysis of economic impacts, please refer to Response to Comment #24 above. Concerning the '$670 million' in purported fees, please refer to Response to Comments #30 and #34.

34. COMMENT: Housing:

The District's analysis shows the fees will average more than $1,700 on every home by 2008. Cumulatively, we estimated that the cost on all new housing projects in the eight county region will exceed $225 million over the next 5 years, assuming the current pace of housing permits. That's why the State Department of Housing and Community Development warned that these Rules will negatively impact housing affordability in our region.

RESPONSE: The author has misstated the facts provided in the District's analysis and in the Socioeconomic Analysis. The fee estimates of $1,700 per home and the various numbers sited for industrial and commercial projects represent maximum worst-case fees that may apply if the developers choose to employ no on-site controls. Even so, this amount was found to not have a significant impact on the housing market in the socioeconomic impact analysis. If the high rates of development continue, the air impacts from housing will also be greater than predicted, and so those funds will be needed to offset some of that increase. The District believes that nearly all projects will be able to reduce their fees with on-site-measures since local land use agencies currently require some of the measures and many developers incorporate them as standard practice. The District has published an extensive list of control measures that would reduce the applicable fees. The authors' estimate assumes that all homes and industrial and projects will be built with no control features and is not realistic. In addition, the authors apply the worst-case fee to a higher, possibly unsustainable, rate of housing construction. The author then used this inflated fee amount and based the $670 million on a rough assumption of the ratio between housing and commercial/industrial development. The District finds this methodology of fee estimation to be inappropriate and inflated.

The District hired an independent consultant to perform a comprehensive socioeconomic analysis that assesses the economic impact of the proposed rule including any significant impact on housing affordability. This report concluded that rule would have a negligible impact on housing affordability.

35. COMMENT: New Business Developments:

The District's own assessment estimates the level of likely fees on selected properties to be significant. By 2008 it will cost $397,483 in new fees to build a local community shopping center and $131,000 in new fees to build a neighborhood shopping center. These developments are typically home to mom and pop businesses, restaurants and small retail shops and these fees will be directly passed along to these small business owners (and ultimately their consumers and employees). The District also reports that as much as 2/3 of the total fees they plan to collect will come from non-residential projects. Since the District's figures show that the total fees on housing may exceed $225 million, it

is conceivable that the cost to businesses and non-residential developments will exceed $400 million.

RESPONSE: The fees are based on emissions generated by each project. If a commercial development generated emissions that resulted in a fee of $397,483, it would be a very large development or one composed of many small retail establishments. If it were comprised of many small businesses, each one would be responsible for a fair share of the impact and the fee.

The author falsely states that, "the District's figures show …fees on housing may exceed $225 million." The District's figures ***do not*** show that housing fees will be that high. See Response to Comment #34 above, which illustrates how the authors distorted facts to generate an inflated number. In fact, the District's analysis shows that the District may receive up to $103 million from *all* types of development subject to the rule between 2006 and 2008. The 2/3 ratio cited by the author was provided by the District as a rough estimate arrived at by subtracting residential development emissions from all development related emissions. The District used the emission reduction analysis (Appendix B) for fee income analysis since the emissions growth data from the state is well accepted for this purpose. See also Response to Comment #30 and #34.

36. COMMENT: Public Facilities:

The Rules also apply to public and government facilities such as new schools, transit projects, government office buildings, fire houses, police stations and more – driving up the cost of public works projects and ultimately further burdening taxpayers with higher costs. The District's analysis is silent on these costs and their impact on local finances and fees.

RESPONSE: The District has drafted the rule to fairly allocate emissions among all indirect sources. Public uses are a substantial part of the growth in emissions that if not addressed here, would need to be addressed through other means. We agree that the cost of achieving air quality mandates could increase the cost of these facilities; however, we would expect most transit projects, fire houses, and police stations to be exempt since they would produce emissions below the two ton per year level. In addition, schools and government offices are well suited in many cases to incorporate features that enhance walking, bicycling and transit use and use low emission vehicles and equipment that could reduce the fees, possibly to zero.

37. COMMENT: ISSUE #3 – FLAWED SCIENCE

Members of our coalition and others have repeatedly demonstrated that the methodology and modeling that the District staff is using to calculate indirect sources of emissions – and resulting fees and mitigations – are fundamentally

flawed. These flaws result in grossly inflated fees and mitigation requirements. For instance, the URBEMIS model being used by the District (a computer program used to estimated emissions associated with land development projects), overstates vehicle emissions by over 70% (see public comments filed Sierra Research, July 22, 2005). No other air district in the nation uses URBEMIS to determine fees for vehicle emissions because, as the District's modeling consultant said, it's a "sketch planning" tool, not an accurate gauge of the specific emissions resulting from an individual project.

RESPONSE: In context, the term sketch-planning tool did not imply that it is not an accurate gauge of specific emissions resulting from an individual project. In fact, URBEMIS is a proven statewide model used by other air districts, including South Coast and Sacramento Metro Air Districts, in assessing emissions from project-level developments. URBEMIS is commonly used for CEQA analysis, and is also used by other air districts to determine off-site mitigation fees. In addition, the Development Agreements entered into by the District and applicants relied on URBEMIS for emissions estimates. See Staff Report pages 19 through 22 for a detailed discussion on why URBEMIS is the best model for the purposes of the rule. See also Response to Comment #19 above.

The CBIA and its consultant, Sierra Research, have provided comments (See September 1, 2005 Comments #123 through #162 and above comments #18 through #29) about the adequacy or implied lack thereof of the URBEMIS model. However, the District has shown that the 'flaws' stated by the author are not valid.

For example, the authors assert that the model overstates vehicle emissions by over 70%. The comments received by the District compared the URBEMIS model, which counts both ends of trips, to a regional impact model (admittedly inappropriate for project-level analysis- See Comment #19 above) that only accounts for one end of trips. The URBEMIS program does not overstate emissions, as asserted by the author, but accounts for emissions differently than a regional model. It should also be understood how the fee formulas work. Please see Figure 3 and 4 in Appendix B- Emission Reduction Analysis, which clearly show that half of the estimated baseline emissions are not assessed fees.

URBEMIS reflects the state of art in quantifying emissions from development projects. In fact, developers and local land use agencies routinely use URBEMIS to quantify project impacts during the CEQA process. The proposed rule allows for the use of other models that can better quantify emissions from various types of projects. The accuracy of URBEMIS will be further refined through the use of project-specific information in lieu of the otherwise applicable defaults. The authors' claim may have merit if the District rule only allowed for the use of URBEMIS defaults and disallowed the use of project-specific information such as proper traffic counts and vehicle mix. This is not case.

The District is part of a statewide working group that will continually work on refining and enhancing the accuracy of the URBEMIS model.

38. COMMENT: ISSUE #4 – DISTRICT'S OWN DOCUMENTS DEMONSTRATE THAT FEES CANNOT BE AVOIDED THROUGH ON-SITE MITIGATION.

District staff has continually and erroneously stated that if sponsors of new development satisfy the District's list of on-site mitigation measures, they won't have to pay any fees. According to the Air District's own documents and comments by their own staff, this is simply not true.

Even the District's newly revised staff report demonstrates that new homebuilders and businesses likely cannot completely mitigate indirect source emissions on-site (see Draft staff report page 15, 11/17/05). Perhaps this is why, at a recent meeting before the Bakersfield Chamber of Commerce, District Deputy Executive Officer Seyed Sadredin admitted most projects will not be able to mitigate their estimated air impact on site and will likely have to pay all or most of the fees.

Neither the text of the Rules nor the staff report provide useful guidance on how doing one or all of the proposed on-site mitigations will score against the proposed fees and it has provided no detail about the air quality benefits of each of the proposed mitigation measures. Accordingly, applicants have no way of determining how much on-site mitigation will reduce emissions or how it will reduce the fee they're obligated to pay.

Second, the District's proposed on-site mitigation checklist relies heavily on the existence of mass transit and other forms of transportation that don't exist to achieve emission reductions. Further, since there is no plan or realistic prospect of these necessary transportation projects being built in the near future, it is impossible for sponsors of development to comply with these types of on-site mitigations to avoid fees.

RESPONSE: The authors' comments are incorrect. The District has *not* stated that simply enacting the measures on the on-site list would result in no fees. The District has stated, and has conducted internal analysis that verifies, that it is possible to incorporate enough measures to result in no fees. The page referenced to from Staff Report *does not* assert or state that homebuilders and businesses cannot completely mitigate emissions on-site. The Staff Report does demonstrate how a certain percentage of on-site reduction achieves a larger percentage of fee reduction. District staff is unsure how the author misinterpreted the Staff Report, as the text states, "… the "bigger bang for the buck" is achieved with as much on-site mitigation as possible…..See Table 1 for ***examples*** (emphasis added) of on-site emission reductions and the associated off-site fee reduction".

Concerning guidance on how the measures "score" against the fees, and the air quality benefit associated with the measures, the authors should read page 11 of the Staff Report, which states,

> *The measures listed in the checklist have a known quantification methodology in URBEMIS 8.7. The methodologies can be found in the URBEMIS User's Guide, available at South Coast AQMD's website http://www.aqmd.gov/cega/urbemis.html.*

URBEMIS is a free, easy to use program that can be downloaded and used by the public, project applicants, public agency staff, and anyone else. See also September 1, 2005 Response to Comments #7 and #9. Applicants can easily see on their own how incorporation of measures reduces emissions through using the model (most simple projects take less than ½ hour), and can see how that reduces the fees by running the numbers through the fee formulas.

Finally, the checklist does not 'rely' on mass transit and other transportation for emission reductions, but provides a venue to credit emission reductions from those items. Project applicants are not required to 'comply' with the list, but fill in which measures apply to their project, and which measures do not.

The fees can be reduced significantly by employing the reasonable number of measures suggested by the District. We agree that it will be difficult to total eliminate the fees initially with the type of development that has historically occurred in the Valley.

On how to 'score' the emission reduction from the measures suggested by the District, all measures in the on-site lists have a quantification methodology in the URBEMIS model. These methodologies may be read in the URBEMIS User's Guide. The measures do not have a straight "credit" associated with implementation, but a calculated reduction based on various parameters, which may include interaction with other selected measures, amount input, and other parameters. The District will provide a great deal of assistance to the applicants to properly quantify the emissions and the applicable credits for measures employed.

ISSUE 5 – DISTRICT HAS FAILED TO ADDRESS SOME BASIC – BUT IMPORTANT – POLICY QUESTIONS RAISED THROUGHOUT THIS PROCESS

The following represent just a few of the many very important policy concerns that the Air District has failed to address or respond to, despites these questions being raised for many months. Governing Board members should take great pause before voting on Rules without getting answers to these very serious questions and concerns.

39. COMMENT: District has not quantified fees for the full 5-year rule period: The socio-economic and cost/effectiveness analyses provide an incomplete

accounting of fees that the District expects to assess over the 5-year rule period. No information has been provided in either appendix on the cost to public facilities including schools, parks, and roads. No information has been provided in any appendix on the overall economic impact to the Central Valley.

RESPONSE: The fee schedule holds fees past 2008 at the 2008 level. The socioeconomic impact analysis and cost-effectiveness analysis only assess 2006-2008 because those are the amounts being proposed in the rule. If the rule is amended to change the fee amounts by a significant amount, it would result in the preparation of new analyses. If fees are held to the 2008 level, socio impacts would be the same as the 2008 level. For cost effectiveness, the District is confident that targets are feasible through 2008, but past 2008 would be too speculative.

The District disagrees that overall impact on the economy in the Central Valley is not adequately addressed. Since the impact on the development industry was not significant and fees will be recirculated into the regional economy, it is logical to conclude that the rule would not have a significant adverse impact on the regional economy. See also Response to Comment #24 above.

See Response to Comment #36 regarding public facilities.

40. COMMENT: Incomplete Spending Plan: Although Appendix E offers a spending program for the fees collected by Rule 9510, it falls short of what is acceptable. First, it covers only three of the five years of the rule period. Second, the revenue projects cover roughly one-sixth of the Rule's potential revenue: $102 million vs. the potential $670 million in total fees that could be collected.

RESPONSE: As stated above, the first three years have enough information to be adequately assessed.. Second, the $670 million stated by the authors is based on incorrect information and misinterpretations of rule requirements (see above Response to Comments #30 and #34). District analysis, using factual data, shows that the District may receive up to $103 million between 2005 and 2008 based on the availability of the fee deferral option and historic development rates. The cost of reductions is more uncertain farther into the future. The District will reassess the cost of reductions prior to 2009 so that changes in regulations and the availability of new technologies can be taken into account.

The District has proposed a detailed plan in the staff report that will be considered by the Board at the December hearing. Additionally, as a part of the District's annual budget process, the plan will be reviewed and amended as necessary. The District will also provide routine reports on the quantity fees collected, projects funded, and emission reductions achieved per Rule 9510 Section 10.4.

41. COMMENT: Unresolved fee estimation issues: As noted above, the URBEMIS model overstates project emissions by over 70%. The District has not committed to fix URBEMIS prior to Rule adoption and implementation. Unless resolved, Governing Board adoption will result in projects paying fees that are exaggerated by as much or more than 70% due to improper default values that do not reflect actual conditions in the Central Valley.

RESPONSE: As stated previously (Response to Comment #19), the "70%" overestimation is simply not valid. Previous comments have pointed out refinements that should occur to some URBEMIS default values, such as the silt loading factor, and the District has committed to providing guidance prior to implementation and to update URBEMIS as soon as possible with the revised factors (see Response to Comments #19-22, #27-29, #37, and Staff Report pages 21-22). However, the statement that the model grossly overstates vehicle emissions is not valid.

42. COMMENT: Unresolved CEQA conflicts: CEQA already requires mitigation of air quality impacts associated with new development, yet the District states that Rule 9510 is not duplicative and is completely independent of the CEQA process. However, the District's response to EPA concerns is that it is counting on local agency CEQA requirements to make on-site mitigation measures enforceable. The District has not explained how its Rule will interact with local agency CEQA actions to achieve this result.

RESPONSE: Currently, for measures that are required by a local agency, that agency includes them in CEQA documentation and is required to enforce those measures. The District recognizes this enforcement mechanism through CEQA for those measures that are required by the local agency. Therefore, although the project applicant is taking credit for emission reductions from measures required by lead agencies, the District will not have to enforce those measures independently. For measures that are not required by the local agency, the District will be responsible for enforcement. There are no new requirements on local agencies, and no additional 'interaction' is required by the rules.

43. COMMENT: In closing, members of our coalition agree that improving the region's air quality is an important goal and one that demands that everyone in the Central Valley play a role. Accordingly, the District has a duty to convince the public of the value of its new policy and to win their trust in carrying it out. Regrettably, the District has failed to demonstrate the value or benefit of the proposed Rules.

Members of our coalition stand ready to work with the District on an alternative to proposed Rules 9510 and 3180 and towards achieving a more equitable, efficient and cost effective plan to reduce emissions.

In the meantime, we urge you to reject Rules 9510 and 3180 when they're brought before a vote of the Governing Board on December 15, 2005.

RESPONSE: Comment Noted.

SUMMARY OF COMMENTS AND RESPONSES ON THE SEPTEMBER DRAFT RULE SEPTEMBER 1, 2005

EPA:
Date: September 20, 2005

1. **COMMENT:** We are providing comments based on our preliminary review of the draft rule identified above. In general, we are very supportive of the District's effort to reduce emissions from new development projects and we recognize that this effort raises unique challenges. Please direct any questions about our comments to me at (415) 947-4115 or to Lily Wong at (415) 947-4114.

RESPONSE: Comment Noted.

2. **COMMENT:** 1. Program Evaluations and the EIP
This rule relies on market-based strategies to reduce emissions and, as a result, is subject to national guidance entitled, "Improving Air Quality with Economic Incentive Programs" (EIP), EPA-452/R-01-001, January 2001. Specifically, the DESIGN program has elements similar to Clean Air Investment Funds as described in chapter 9 of the guidance. As a result, the District's staff report should demonstrate that the program is consistent with the EIP guidance including, for example, provisions regarding environmental benefit, consistency with attainment/progress plans and automatic suspensions. Generally, we do not believe these demonstrations will be difficult to make. However, we believe the District should expand the scope of the annual program evaluation requirement (rule provision 10.4) to address elements identified in the EIP (sections 5.3(b) and (c)), including evaluation of the overall effects of the program, whether the Air Impact Mitigation Fees are appropriate based on the cost of reductions, and whether the program is achieving the projected emission reductions. The rule should also describe the procedures and criteria for the evaluations. Lastly, since the District will be responsible for obtaining emission reductions for off-site mitigation projects, the SIP submittal should include the District's commitment to rectify in a timely manner any shortfall in emission reductions.

RESPONSE: The District disagrees that the rule is a market based strategy subject to EIP guidance. Indirect sources are not seeking to use incentive funding as a substitute for controlling emissions directly. Although it is not an EIP, the District intends to demonstrate that the program will provide environmental benefit and is consistent with all plans and rules. The appropriate

mechanism to ensure program performance is with annual reporting and corrective action to make up any shortfall. This can be accomplished by focusing funding on more cost-effective projects and would not require any special rule provision to accomplish. In the event that the rule did not achieve a milestone and altering the project mix was not successful, contingency measures are in place in the SIP to make up the shortfall while revisions to the rule are made or new rule(s) are adopted to correct the situation.

3. **COMMENT:** 2. Mitigation
The District should ensure that on-site mitigation of emissions and off-site emission reductions are enforceable.

RESPONSE: The on-site measures are voluntarily chosen by the developer and, when included as a mitigation measure in the local agency environmental document, are enforceable under the California Environmental Quality Act (CEQA). These types of measures have a relatively large amount of uncertainty, but are highly desirable due to their ability to permanently change trip generation and miles traveled. Therefore the District proposes to account for emission reductions accomplished onsite under Voluntary and Emerging Measures guidance. Projects funded with off-site fees will be under contract with the District enforceable under contract law.

4. **COMMENT:** 3. Director's Discretion
The rule (provisions 3.2, 3.5, 5.3) allows the use of an "APCO-approved model" to calculate emissions and emission reductions from development projects. To avoid inappropriate director's discretion, the rule should identify, by name and version, all models that may be used under this rule, or require that the model or model revisions be approved by the District and EPA.

RESPONSE: The rule has been revised to reflect that the District and EPA will approve models and model revisions used under the rule. Since all emission reduction calculations are accomplished using emission factors approved by the ARB and EPA and are consistent with the emission inventory factors, this should allow for quick implementation of model improvements that will be developed over time.

5. **COMMENT:** 4. Surplus
The rule should include provisions and mechanisms to ensure that emission reductions from on-site and off-site mitigation projects will be surplus to the requirements of the plan (e.g., reductions required by Rule 8061), and are not otherwise relied upon in the plan (e.g., part of the planning or growth assumptions in the plan). At a minimum, the rule should define "surplus" to include consideration of rule requirements and planning assumptions, and include provisions to prevent the double counting of emission reductions. We note, for example, that the May 19, 2005 PM-10 Plan (p. 4-45) lists a few specific

activities expected to provide emission reductions for this rule. However, the URBEMIS model allows credit for on-site mitigation measures not included on this list such as fewer wood burning stoves, energy efficiency projects and off-road maintenance equipment. While the Plan may include assumptions regarding these emissions, the District should ensure that the rule achieves the emissions reductions that the Plan predicts for the rule and that mitigation measures do not result in double counting of emission reductions assumed elsewhere in the plan.

RESPONSE: The District will demonstrate that all offsite emission reduction projects submitted for credit are surplus in the documentation for each program developed to utilize the off-site funds. The District's Heavy Duty Engine Incentive Program is the prototype for how it will manage funding received from Rule 9510. This program has stringent criteria for determining if reductions remain surplus for the wide variety of projects. The District works closely with ARB in developing guidelines such as those adopted for the Carl Moyer Program. These guidelines pay particular attention to the issue of surplus reductions. New project types will undergo a similar rigorous process.

ARB: No comment received.

California State Department of Transportation:
Date: September 8, 2005

6. **COMMENT:** The purpose of this letter is to comment on the proposed San Joaquin Valley Unified Air Pollution Control District (District) Rule 9510 (Decreasing Emissions' Significant Impact from Growth and New Development) and the associated fees as stated in proposed rule 3180 (Administrative Fees for Air Impact Assessment Applications). When applied to the California Department of Transportation's (Department) construction sites, these rules attempt to regulate vehicular (mobile) emissions regardless of the District's lack of specific authority to regulate these emissions.

Both statutory and case law clearly establishes that "local and regional authorities have the primary responsibility for control of air pollution other than vehicular sources." (See *California Health and Safety Code* sections 39002, 40000, 43000 and 43013). The responsibility for regulating vehicle emissions belongs to the California Air Resources Board. The proposed District rules attempt to regulate mobile emissions from vehicles without statutory authority and therefore, it is our position that the proposed rules do not apply to vehicular emissions on Caltrans projects.

RESPONSE: Rule 9510 does not attempt to regulate emissions from vehicles. The rule would regulate the emissions resulting from the act of construction and

the emissions resulting from the act of operation. The distinction lies in the following:

- The rule does not set emission reduction requirements for individual engines or pieces of equipment
- The rule does not require retrofits, the use or purchase of certain pieces of equipment or prescribe any specific use of emission reduction technology
- The rule does not limit emissions through hours of operation or prescribe certain activities that reduce emissions
- The rule does not require emission reductions to be achieved through the equipment or engines used.

Simply, an amount of reduction is required by the rule, which can be achieved through any on-site or off-site means that are quantifiable and meet the requirements of the rule. The rule does not set a fleet average, regulate engines or vehicles or otherwise delve into the realm of mobile emissions, which the District does not have authority to regulate. The District does, however, have the authority to regulate indirect sources per Health and Safety Code, Section 40716:

> *"(a) district may adopt and implement regulations to … reduce or mitigate emissions from indirect and areawide sources of air pollution."*

The District has the authority to control indirect sources, defined in the Clean Air Act (CAA §110(a)(5)(C)) as, "… a facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution"(emphasis added). This authority comes from the CAA §110(a)(5)(A)(i):

> *Any State may include in a State implementation plan … any indirect source review program.*

The Indirect Source Review Program that the District is proposing would review the emissions from that indirect source (the facility, building , installation, real property, *road*, etc.) that occur from the installation of that source (i.e. construction) and the operation of that source (i.e. area and mobile). For transportation projects, essentially road construction, the District would review only the construction emissions associated with that indirect source.

It is the District's position that the proposed rule is within the authority granted to the District by the federal Clean Air Act and the California Health and Safety Code.

California State Department of Housing and Community Development
Date: September 15, 2005

The Department of Housing and Community Development (Department) has reviewed the Draft Rules as revised September 1, 2005 and continues to have significant concerns about their impact on housing development and costs in the San Joaquin Valley. Many of the concerns expressed in the Department's July 25, 2005 letter have not been addressed by subsequent revisions or by the District's responses to our comments, and are reiterated below.

7. **COMMENT:** 1. The on-site mitigation measures for residential development proposed by the Draft Rule 9510 duplicate the type of mitigation measures already required by the environmental review and mitigation process pursuant to CEQA or the local land-use permitting process. For example, requirements for transit measures, tree canopies, bike trails, etc., are already imposed by local governments during the existing local permitting process. This duplication is of particular concern if the projects cannot receive credit for such measures already incorporated in the project, or if the duplication were to result in most projects being charged fees for off-site mitigation programs. It is not evident that imposing the same type of mitigation requirements as those already imposed by State law (or sometimes federal as well) is necessary for the District to execute its powers as required by Health and Safety Code Section 70727 (b)(5).

Recommendation: Clarify that projects will receive mitigation credits for on-site mitigation measures approved or required by the local government's permitting process.

RESPONSE: It is the District's intent that all quantifiable on-site measures that reduce a project's emissions be given credit in the ISR program. The District does not require the applicant to implement any of the measure listed, but requires the applicant to identify which measures will and won't be implemented. The applicant is required to identify measures that are a requirement of another agency so that the District can identify which selected measures will need District enforcement, and which measures will be enforced by another public agency. The measures listed in Appendix C have a known quantification within the URBEMIS model. Measures selected will be credited to the project. The District will amend the rule language and staff report to reflect this.

8. **COMMENT:** 2. Draft Rule 9510 will lengthen and complicate permit-processing times for new homes in a manner inconsistent with the Permit Streamlining Act, which is applicable to all public agencies (*Chapter 4.5 of the Government Code, commencing with Section 65920)*. Draft Rule 9510 does not meet the consistency standard of Health and Safety Code Section 40727 (b)(4)).

- Section 8.1 of Draft Rule 9510 has been revised to require the District to determine the completeness of Air Impact Assessment (AIA) applications in ten days instead of thirty. It is unclear whether this changes will result in a practical benefit, however, as the Draft Rule does not include a mechanism for facilitating concurrent review between the District and local planning agencies. Sections 5.0 and 8.2 suggest the District is cognizant of the need to coordinate with local agencies, but does not specify the timing and nature of the coordination. Without concurrent review, developers who are required to, or elect to, alter a project may be required to resubmit plans to the local planning agency for additional discretionary review. Such outcomes would have additional and redundant cost implications for permit processing. Further, projects which would otherwise be subject to ministerial permit processing only, should not be subjected to discretionary review because of the Draft Rules.

- Draft rule 9510, Section 8.8, proposes the District should have 90 days to take final action on an AIA application. Consequently, absent a concurrent review, process time could now take an additional 90 days. In some cases, Draft Rule 9510 thus has the potential to double existing processing times.

Recommendation: Revise draft Rule to include a mechanism or process for concurrent review by the District and local planning agencies to avoid impacts on local government. The Rule should not directly, or indirectly, prompt local governments to assess yet additional fees for responsibilities which may fall on them in implementing the District's Rule.

RESPONSE: Draft Rule language will be revised to make application submittal for ISR concurrent with local agency processes. Specifically, applications must not be submitted after application for a final *discretionary* permit in the San Joaquin Valley Air Basin, and may be submitted prior to that time. The rule will not place requirements upon the public agency for review or implementation of the ISR process. The public agency review (§ 8.2) has been revised to a voluntary review. The District will be coordinating review with the public agency through:

1. Making the ISR process concurrent with or prior to the public agency process;
2. Forwarding a copy of the AIA application (upon determination of completeness), a copy of the AIA approval package (upon approval), and a letter of Final Compliance to the public agency for voluntary review and commenting;
3. Communicating with the public agency when necessary during the application review process; and
4. Providing a letter of project status to the public agency upon request.

It should be noted that this rule will not apply to ministerial projects, nor will it prompt ministerial projects into becoming discretionary projects. That determination is made by the local land use authority.

9. **COMMENT:** 3. There is insufficient information or clarity in the Draft Rules regarding not only permit processing coordination, but also quantification and cost of mitigation measures. According to Health and Safety Code Section 40727 (b)(3), a rule or regulation adopted by a District board should be "…easily understood by the persons directly affected by it." Neither the Draft Rules, the Appendices, nor the Draft Staff Report describes the methodology the District will use to determine the number or value of mitigation credits to be associated with the various mitigation measures. Other aspects of the Draft Rules warranting clarification include, but are not limited to: ….*(District - see Comments 10 through 13 below)*

Recommendation: Revise Draft Rule 9510 to include a detailed description and analysis of the methodology the District will use to determine the number or value of mitigation credits to be associated with various mitigation measures. Clarify the items noted above in Draft Rules 9510 and 3180.

RESPONSE: The District will clarify the staff report to address how emission reductions from measures will be assessed. All measures within Appendix C have a quantification methodology in the URBEMIS model. These methodologies may be read in the URBEMIS User's Guide, available at South Coast Air Quality Management District's website http://www.aqmd.gov/ceqa/urbemis.html, and will be made available at the District's website. The measures do not have a straight "credit" associated with implementation, but a calculated reduction based on various parameters, which may include interaction with other selected measures, amount input, and other parameters.

10. **COMMENT:** Draft Rule 9510, Section 5.5 – Mitigation and Monitoring Report Program: The Draft Rule should specify if the applicant or the District is responsible for preparing this document.

RESPONSE: The rule language will be revised to reflect the following: The applicant is responsible for preparing a proposed document. The District will provide the format and recommended keys for the document. The District will then work with the applicant to finalize the document prior to approval. It should be noted that this will only apply to measures selected by the applicant that do not have another enforcement mechanism, such as being a requirement by another public agency.

11. **COMMENT:** Draft Rule 9510, Section 8.5 – Air Impact Mitigation Fee Estimate Acceptance: What amount of time does the developer have to respond to the estimate provided by the District?

RESPONSE: The draft Rule will be revised to reflect the following Unless the applicant has proposed a Fee Deferral Schedule (FDS) prior to AIA approval, the applicant must pay the fee within 60 days, or may propose a FDS within 15 days of receiving the fee invoice. If the applicant proposes a FDS within the allowed timeframe, the District then has up to 15 days to finalize the FDS with the applicant.

12. **COMMENT:** Draft Rule 9510, Section 10.2.3 – Administration of the Mitigation Funds: what, if any, limits are there on the duration of the contract between the developer and the District?

RESPONSE: A distinction must be drawn between the ISR applicant, and an applicant for the funds. Section 10.2.3 discusses the process between the District and the applicant for funds. The duration of the contract will vary depending on the project. Some contracts will be completed upon installation, while others may require reporting for 5 years. For example, a road-paving project would have a contract that is completed upon installation, whereas an engine contract typically contains a 5-year reporting requirement. The staff report will be amended to include this information.

13. **COMMENT:** Draft Rule 3180, Section 4.2 – Application Processing Time Log: How long does the District have to respond to a developer's request for a copy of the Log?

RESPONSE: The District uses an automated Labor Information System (LIS) to track project time by all staff working on a project. This allows the District to easily prepare the time log within a short timeframe. The District standard for this type of request is 10 days. The District will amend Draft Rule 3180, Section 4.2 to state the District has up to 10 days to provide the information.

14. **COMMENT:** 4. The direct and indirect costs imposed by the Draft Rule on the residential development process will result increased housing costs. The rationale for these increased costs as required by the Health and Safety Code Section 40728.5 are not adequately identified nor justified by the complete analysis.

The Department commends the District's decision to reinstate the exemption for housing projects directly assisted by federal, State, or local housing funds. Assisted projects, however, only account for a small percentage of the San Joaquin Valley's workforce housing stock. The majority of new lower- and moderate-income residents will occupy market-rate units. Increases in

construction costs resulting from the Draft Rules will ultimately be passed on to these residents in the form of higher rents and home prices.

Yet, as indicated below, the Executive Summary of the socioeconomic assessment the District prepared pursuant to the Health and Safety Code Section 40728.5 concludes that increases in the construction and housing costs are irrelevant because lower-income residents are already overpaying for housing and are thus dependent on public subsidies:

The analysis demonstrates that, even before the imposition of an air quality fee(s), most low-income (and) households in the Central Valley are priced out of newly constructed multifamily unit market, the rents for which need to be at levels that account for the price of land, development cost, developer fees, and an adequate level of profit, among other things. The analysis discusses how public subsidies can assist in enhancing the financial feasibility of a real estate project in which a certain portion of units are set-aside as below-market rental units (San Joaquin Valley Unified Air Pollution Control District. Socioeconomic Analysis Proposed Indirect Source Rule: Draft Rules 9510 and 3180. 24 August 2005.p.1.)

The demand for assisted housing far exceeds available resources of all levels of government. The District should not assume that higher rents and home prices can be solely addressed by government subsidies. Furthermore, higher housing prices are problematic because the affordability gap widens, forcing more San Joaquin Valley residents to overpay for housing and/or live in overcrowded conditions. Additional regulatory barriers that increase the cost of housing supply must be restructured and their benefit should exceed their cost impacts.

The Department also notes that the socioeconomic assessment does not address the impact of the Draft Rules on small business or analyze the availability or cost-effectiveness of alternatives, as required by Health and Safety Code Section 40728.5(b)(1), (b)(3), and (b)(4). For example, Part 6 (p. 26-32) includes generic information about impacts on single-family and multifamily homebuilders, but does not specify impacts on small homebuilders.

Recommendation: Revise the socioeconomic assessment to include: 1) a more thorough analysis of the impact of the Draft Rules on the economy of the San Joaquin Valley, including the number of consumers who will be overpaying for housing; 2) the impact of the Draft Rules on small residential developers; and 3) alternatives to the Draft Rules.

RESPONSE: The Socioeconomic Analysis will be amended to include analysis on the rule's impact on small businesses. In addition, the analysis does not discuss alternatives because there are no identified alternatives to adoption of the ISR rules.

Although the Socioeconomic Analysis does discuss the role of public subsidies, the District's conclusion is not that low-income housing impacts are irrelevant due to public subsidies. The Socioeconomic Analysis discusses public subsidies to show the options and availability of what subsidies exist. The conclusion of the Socioeconomic Analysis is that the impacts on housing costs (both to the developer and the buyer/renter) are less than significant. The District's conclusion is similar to how some pollutant thresholds of significance are set. For example, the District is in non-attainment for ozone and PM10. It could be argued that because the air is bad already, *any* increase is contributing to non-attainment and therefore is significant. However, the District finds it impractical and unwarranted to force every project that emits *any amount* of the applicable pollutants into the 'significant' category. Therefore, the District determines significance for PM10 and ozone precursors against a threshold that aims to truly differentiate between less-than-significant and significant impacts. Similarly, the Socioeconomic Analysis states on page 37:

For the most part, rents that low-income households should pay are substantially below the rents that the typical new multi-family units construction in the region should command, even before the imposition of the air fee.

That is to say, the market is such that low-income households are already priced out of most new dwelling units. Any increase in housing costs, regardless of origin, will exacerbate this disparity. However, the analysis shows that the potential increase in mortgage is, "*a small fraction of the original household income required to finance a new home in the event no air quality fees were in place*," and the potential increase in rents are, "*similarly small*." (p.1)

15. **COMMENT:** 5. Draft Rule 9510 would impose mitigation fees without adequately establishing a nexus. The Draft Staff Report and Summary of Comments and Responses from the June 30, 2005 public workshop do not adequately support the nexus between the expenditure of mitigation fees and the location of indirect sources. For example, while NOx occurs throughout the District, the impact of other pollutants, such as PM10, is more localized.

Recommendation: Clarify the nexus between PM10 and the expenditure of mitigation fees.

RESPONSE: The District has prepared documentation included in the staff report for the rule that provides the information necessary to demonstrate a nexus between project impacts and the off-site fee. See Response to Comment #125 for the findings of the District's legal counsel's analysis of nexus requirements.

16. **COMMENT:** In summary, the Draft Rules do not appear to comply with the "clarity", "consistency," and "nonduplication" requirements set forth in Health and Safety Code Section 40727(b). Than you for the opportunity to submit additional comments. Given the magnitude of the concerns identified in this letter, the Department recommends that the District not adopt Draft Rules 9510 and 3180 as drafted and continue to work with all interested parties on needed revision.

RESPONSE: The District disagrees that Rule 9510 conflicts with H&S 40727(b). The District prepared a consistency analysis that is provided as Appendix G to the Staff Report. The rule is being revised to improve clarity of the requirements and will provide detailed rule implementation guidance prior to implementation and typically uses compliance assistance bulletins when issues arise after implementation. The rule does not duplicate other requirements on indirect and areawide sources. Emissions estimates used in the rule account for existing controls on vehicles and equipment. The rule requires a reduction of a portion of the remaining emissions after control. Because of the Valley's rapid growth, a substantial portion of benefit of the controls is offset; hence the need for additional emission reductions to reach attainment by deadlines mandated for the District's PM10 and ozone plans.

Local Public Agencies:

City of Hanford
Date: September 23, 2005

17. **COMMENT:** I applaud your efforts to continue to evaluate methods to improve the air quality in the valley. However, I would request that the San Joaquin Valley Unified Air Pollution Control District take the time to further study Draft Rule 9510 and Draft Rule 3180.

RESPONSE: This rule has been under development for more than two years. The District has had three rounds of workshops, focus groups, stakeholder meetings and other outreach. We believe that the rule development process has been adequate.

18. **COMMENT:** On behalf of the City of Hanford, I would ask that you slow down the process and identify specific steps and programs that will be implemented to reduce air pollution; include additional input from representative agencies and clearly identify how the funds collected will actually improve air quality in the valley.

RESPONSE: See the Staff Report for more information on how the rule works to reduce emissions through on and off-site measures and how the District will use funds received as a result of Rule 9510 and Rule 3180. In addition,

Appendix E (Cost Effectiveness Analysis for Rule 9510) for details on the exercise that the District has completed to ensure that:

1. The emission reduction projects exist in a quantity to provide the reductions necessary, and
2. Those projects exist at a cost-effectiveness that can achieve the schedule listed in the rule in Section 7.2.1 and 7.2.2.

19. **COMMENT:** The incompatibility of the proposed regulations regarding the CEQA requirements poses additional concerns.

RESPONSE: The District believes that Rule 9510 is fully compatible with CEQA requirements. The rule provides a new opportunity to provide consistent air quality analysis and emission reductions on a Valley-wide basis. See Response to Comments #8.

20. **COMMENT:** Restraint must be used in determining actions that would have a significant impact on our residents, the business community and our local governments. Specifically, there must be a nexus for the fee's charged and the specific identification on how the generated funds would be used to remedy the problem which exists.

RESPONSE: The District has designed the rule to address only a fair share of the impacts caused by new development. We are confident that the rule will mitigate emissions in direct proportion to the impact caused by the project in keeping with nexus standards. The key to meeting the nexus is that impact will be estimated with best available tools and emission reductions obtained to offset the impact will be quantified with best available factors and methods. See also Response to Comment #125.

Council of Fresno County Governments (Fresno COG)
Date: September 9, 2005

At the request of our Transportation Technical Committee (TTC), the Council of Fresno County Government (Fresno COG) is submitting this letter regarding the Air District's DESIGN (Decreasing Emissions' Significant Impact from Growth and New development) program. The most recent draft of the DESIGN program was discussed by Fresno COG staff and TTC members at the September 7, 2005 meeting. Many of our member jurisdictions have significant concerns over the proposed rule and requested that we submit the following comments.

21. **COMMENT:** Inadequate Notice and Review Time
In some cases, Fresno COG and our member agencies received only a one-day notice for the September 1, 2005 workshop. This late notice prevented several agencies from attending on that day. On several calls with the Air District last month, Fresno COG staff indicated the need for improved communication and

coordination. This continues to be a concern, as the current rule development schedule allows only two weeks to review and comment on the draft rule.

RESPONSE: The District has a list serve for the rule that enables all interested parties to receive immediate notice of workshops and document availability. The District accepts comments up to and including the Governing Board hearing, allowing for more than a month of additional review time should it be needed.

22. COMMENT: Transportation Projects Subject to the Rule
The short review time is especially troubling given the recent addition of transportation projects (with construction emissions greater than 2 tons per year) as subject to the DESIGN rule. Fresno COG and our local agencies are unclear how this will impact the project approval process and need additional time and information to assess the impacts.

RESPONSE: The rule does not impact the project approval process since the District has no discretion over those projects. The rule just provides a mechanism to enable the agencies to reduce the impacts of project construction. See also the Staff report.

23 COMMENT: Demonstrate the Air Quality Benefits
Fresno COG requests that the Air District clarify how this rule will improve air quality. Please provide additional analysis of the air quality improvements and examples of how the revenue will be used.

RESPONSE: The Staff Report contains analysis that quantifies the projected air quality benefits of the rule. Additional details regarding the potential projects funded by the rule are included in the revised Appendix E. See also Response to Comment #18 on the use of off-site funds.

24. COMMENT: Improve Response to Comments
As noted by several commenters at the September 1st workshop and by our member agencies at our committee meeting, Fresno COG also requests that the District develop and adequate process to address comments received. The "Response to Comments" distributed at the workshop was organized by category, rather than submitting agency; this made it time-consuming to locate and review specific Reponses. In several cases, our local jurisdictions indicated that comments were not addressed and needed to be given sufficient consideration by Air District staff.

RESPONSE: The District has modified the Response to Comment format to address this concern. The District feels that the current format will allow commenters to find their specific comments and the associated responses.

25. **COMMENT:** Identify Rule Changes
Please provide a document on the Air District website that identifies and tracks changes made from previous drafts of the rule. This has been the practice with other rule modifications and is essential to reviewing and commenting on this document.

RESPONSE: The changes to the draft from this round of comments will be made in strikeout/underline format.

Fresno County, Department of Public Works and Planning
Date: September 15, 2005

26. **COMMENT:** We are concerned with the language of the rules as it relates to transportation projects. Should 2.2 say "two (2.0) tons" **per year** "of NOx and PM10 combined.", based on similar language in 2.3.4 and 4.2

However, looking more closely, these three are *not* identical in that:
- 2.2 says "NOx and PM10 combined"
- 2.3.3 says "NOx and PM10"
- 4.2 says "NOx and PM10 each"

If there is a specific reason for the differences, can you explain?

RESPONSE: Since construction emissions occur during a specific period, the emissions are based on the total during the construction period. For example, if a project emits 3 tons of combined emissions during a six month construction period, that amount is subject to the 20% NOx and 45% PM10 emission reduction requirement. If a project emits the same 3 tons of emissions over two years, the calculation is also based on the entire construction project.

Section 2.2 refers to construction NOx and PM10, which is based off of 2 tons of NOx and PM10 total tons combined. The District will revise the rule language to clarify that construction pollutants are total tons combined, and operational pollutants are tons per year non-combined. Section 2.3.2 will be revised to state "NOx *or* PM10" and be specific to operational emissions.

27. **COMMENT:** Also, please look at 8.8. Under it you have 8.7.3, but should that actually be 8.8.4?

RESPONSE: The section will be renumbered as noted.

Kern County Planning Department
Date: July 22, 2005

The Kern County Planning Department appreciates the opportunity to comment on Draft Rule 9510 and Rule 3180 which are being implemented to assist the District's attainment goals for State and Federal standards for ozone and PM10. The stated purpose of Rule 9510 is to provide a mechanism for development to mitigate construction, direct and indirect emissions from their projects through design features, on-site and off-site measures. Rule 3180 will provide for payment of the District's staff cost to implement the new rule.

As our comments have consistently stated, the DESIGN Rule, while using the language of CEQA (Significant Impact) avoids all relationship to CEQA and simply defers any questions to a later time after Rule Development is complete. The following is a preliminary list of questions, comments and concerns regarding this matter.

28. **COMMENT:** What is the basis for the exemption of projects that have mitigated baseline below two tons per year for each pollutant from the Rule? Is this basis evidence that 10 projects in the same area producing less then two tons per year each are not cumulatively considerable under CEQA?

RESPONSE: The District has made changes to the project submittal timing in the rule to ensure that the air analysis conducted can also be used to support the CEQA process for the local agencies discretionary approval.

The rule is designed to reduce the impact of the project to the extent needed for the District to reach attainment of ozone and PM10 standards. The District calculated the level of reduction needed on a per-project basis that would achieve the emission reduction committed to in the PM10 and ozone attainment plans. The rule sets levels that are in compliance with state law regarding indirect source regulations and are feasible to achieve. Based on the District's analysis, project's with emissions below two tons per year of operational NOx and PM10 were not required to reduce emissions to achieve the emission reduction required by the District's plans for attainment.

29. **COMMENT:** Why are only NOx and PM10 being addressed when CEQA requires all pollutants to be quantified and mitigated to the extent they exceed thresholds?

RESPONSE: The ISR program's primary purpose is to meet attainment plan requirements *not* as a CEQA compliance method; however, we believe that reducing one precursor, NOx, will reduce the cumulative impact on ozone from new development to less than significant levels.

It is not the District's intent to reduce the impacts of all pollutants in the valley through this rule. The rules are the result of the District's PM10 and Ozone Attainment Plans, as they identified the need to reduce directly emitted PM10 and NOx in order to reach the standards on schedule. Sufficient ROG was obtained from other control measures to enable the District to predict attainment without additional ROG control. Therefore, the rule was able to focus on those two pollutants and can make the case that ROG from predicted growth from new development will not impact the attainment strategy.

30. **COMMENT:** The District has an established threshold in the GAMAQI of 10 tons of ROG yet no provision for mitigation in the DESIGN rule. Why?

RESPONSE: See Response to Comment #29 above. The GAMAQI is the District's Guide for Assessing and Mitigating Air Quality Impacts, specifically written to help lead agencies, as identified in CEQA, address CEQA for air quality impacts and may be revised to reflect changes that are appropriate.

31. **COMMENT:** Section 6.2 requires mitigation of only apportion of the project's emissions (1/3 of the project's first-year area source and operational baseline NOx emissions over a period of ten years) and then states that it "represents cumulative emissions…". The use of the term "cumulative" should be deleted and replaced by another term to explain the Districts intention. An interpretation of the phrase "cumulative emissions" in a CEQA document, under current case law interpretation, does not include such a reduction as proposed by the District. This disconnect will lead to confusion and legal challenges of CEQA documents.

RESPONSE: The District believes that the term "cumulative" best describes the emissions being reduced by the rule. The NOx emissions are declining over time, so a project that reduces emissions to the extent described by the fee formula will be mitigating its cumulative impact. See also Response to Comment #28.

32. **COMMENT:** The District is the authority that provides guidance and direction for local government on air assessments for CEQA and has been recognized as such by the Courts. If the District has sufficient basis for establishment of this Rule with reductions in required emissions to be mitigated on " the concept that annual NOx emission from motor vehicles declines 50% over ten years.", then the District should include in this Rule making, clear direction from the Governing Board to amend the GAMAQI, through a Public Hearing process, to formally adopt this approach in Air Quality Assessment methodology for CEQA documents. This process, which would necessarily include the fact basis for the adoption of this standard, would provide clear direction for the connection of this Rule to CEQA and provide support of the Lead Agency in current challenges to Air Assessment methodology in CEQA documents.

RESPONSE: The primary purpose of the rule is to help the District meet its attainment plan commitments. The rule provides for emission reductions in a framework that provides strong assurance that reductions will be real, surplus, quantifiable, and permanent and therefore should strengthen environmental documents that rely on reductions to reduce significant air impacts. The District's GAMAQI is formally adopted by the Governing Board at a public hearing. Any revisions will also go through a public review process with a workshop and Governing Board hearing. See also Response to Comment #28.

33. COMMENT: The staff report states on Page 11 that "The current concept is that Rule 9510 will mitigate the cumulative impacts of anticipated growth since the reductions attributed to this program was identified in two attainment plans as necessary to achieve the applicable standards." Yet the next sentence weakly states that "The District may (emphasis added) revise the GAMAQI to define the exact role that Rule 9510 will have in the CEQA process, prior to adoption of this program." Please clarify why the District is not committed to amending the GAMAQI to clearly provide relief for local government in CEQA litigation in a matter, air impacts, for which the District is the recognized expert.

RESPONSE: The District is committed to providing guidance through the GAMAQI that accurately reflects the impacts of all adopted District rules and regulations on air quality.See also Response to Comment #28 and #31.

September 1, 2005 Workshop – Verbal Comments

Bakersfield

Dr. Adrian Moore – Reason Foundation

34. COMMENT: There is a lack of a causal link between new uses and an increase in emissions from new trips. If it is automobiles that are causing the pollution that the rule is targeting, then the District should be going after automobiles.

RESPONSE: There are more than twenty years of CEQA documents that have consistently found that new development has a significant impact on air quality. New development is constructed to accommodate growth. Prior to development of green field areas there are no trips and no construction emissions at the project site. The argument that some trips are displaced from another existing use are not valid except in the short term. When people move to a new house, someone can be expected to move into the existing home and replace the trips the old homeowner was making. When commercial uses open in a new growth area, they may temporarily divert trips from existing commercial uses, but in a growing area the most important factor is an expanding market area. When the community adds enough residents to support another like commercial use, the

trips will be drawn from the area farthest from the existing use to the new use, and overall the number of trips is increasing.

35. **COMMENT:** The sources listed in the District's staff report are not published or peer-reviewed. Specifically, Dr. Holtzclaw's study is not published.

RESPONSE: The Holtzclaw study provides analysis of VMT differences in areas with different levels of pedestrian and transit accessibility in California. The study has been available for all who wish to review it. In addition, the study has been referenced by other researches numerous times in peer-reviewed journals.

36. **COMMENT:** Additionally, the benefits from design identified in the staff report are likely the result of self-selection and not an actual shift in modal choices based on design. Therefore the reductions from the increase in the on-site measures implemented will not materialize from implementation of this rule.

RESPONSE: The author's comment is based on a false assumption that there are no people in the San Joaquin Valley that would choose different development designs if they were available. The District maintains that trip making behavior would change if onsite design measures were widely implemented. The causal link between new development and vehicle emissions has been well documented and is generally accepted. The issue of self-selection v. modal shift in development with 'smart growth', 'transit-oriented' or 'pedestrian-oriented' design has not been resolved. It is known that there is a real, verifiable correlation between land use design and vehicle use. Studies show that well-designed development that considers pedestrian, bicycling and transit generates less emissions than totally automobile oriented design.

The District recognizes that there is always uncertainty when predicting individual travel behavior. For this reason, the District proposes to submit reductions claimed for onsite measures as a voluntary and emerging measure that allows for this type of uncertainty in order to promote innovation.

37. **COMMENT:** If it is automobiles that are causing the pollution that the rule is targeting, then the District should be going after automobiles.

RESPONSE: State and federal controls on motor vehicles are not sufficient for the District to attain federal air quality standards within mandated timeframes. The District has authority to seek additional reduction from indirect and areawide sources to close the gap. Stationary sources must provide offsets to further reduce emissions beyond what is feasible onsite. Indirect source rules operate under a similar concept. See also Response to Comment #6.

38. **COMMENT:** Reducing trips doesn't create large reductions relative to increasingly clean vehicles, regardless of increasing VMT

RESPONSE: The heart of the problem is that although vehicles are increasingly clean, increases in travel and VMT are offsetting a substantial portion of the benefit, hence the need for an indirect source review rule.

39. COMMENT: The housing impact is not near accurate because the market could be in a bubble right now. The Socioeconomic Impact Analysis should use quintiles instead of an average; you would find a huge impact on low incomes with that methodology.

RESPONSE: First, the impact on housing stated in the Socioeconomic Analysis was based on the number of housing units used by the District, which were based on the state population forecasts. If the growth rate exceeds the projection, the impacts will be greater and so will the need for emission reductions. Also, a greater number of units subject to the rule would have no added impact on individual development projects. Second, the use of an average is appropriate because the impact of the fee filters out over time, so the effect, such as an increase in rent, isn't immediate. See also Response to Comment #49.

Arthur Unger – Kern-Kaweah Chapter of the Sierra Club

40. COMMENT: The studies in the District's materials regarding differences in trip generation from different types of development are published.

RESPONSE: Comment Noted.

41. COMMENT: Concerning the information provided in the Socioeconomic Impact Report – the prices of housing in the Valley are a result of supply and demand, not necessarily resultant from fees that are assessed.

RESPONSE: The Socioeconomic Analysis supports the author's comment. The report states, "it is apparent that larger market forces are the primary culprit behind the increases in housing prices…"

Carla Waleka – Construction Industry Air Quality Coalition

42. COMMENT: The Construction Industry Air Quality Coalition would like to see the construction calculator and know the assumptions and inputs.

RESPONSE: The calculations used in the rule were done using URBEMIS construction module. The construction calculator used by SMAQMD is proposed as a model for development of a San Joaquin Valley version. We are now proposing to continue using URBEMIS with the option for developers to use a construction calculator if approved by the APCO.

Renee Nelson – Clean Water and Air Matter, Bakersfield

43. **COMMENT:** The process laid out by the District does not comply with CEQA. The process will allow for negotiations with applicants behind closed doors with no option for public input, which is required under CEQA. In addition, CEQA states that mitigation can't be differed until later. The District also put forth a comment that CEQA timelines vary with jurisdiction, which is untrue.

RESPONSE: The ISR program does not involve discretionary approval of development projects, and therefore is not subject to CEQA. We expect local agencies to use the air analysis accomplished for the rule and o-site emission reduction measures agreed to by the applicant *and the local agency* to reduce air impacts in their CEQA process. If a citizen has an issue with the approval of a project due to air quality impacts they will have the same options that are currently available to them to challenge the project and the validity of the analysis used to support the decision made by the local council or board. See also Response to Comments #8 and #28.

44. **COMMENT:** This program must be aligned with CEQA and should not allow changes to a project behind closed doors.

RESPONSE: The rule is being revised to change the application timeframe to be concurrent with the local agency CEQA process. District has no authority to require applicants to include on-site emission reduction measures. We have traditionally worked with applicants to help them identify changes to the project that would reduce air impacts as early in the development process as possible and will continue this effort. The rule requirement is for the applicant to fill out the on-site emission reduction checklist; however, it does not prescribe a minimum or maximum number of measures that should be checked. The responses on the checklist are solely up to the applicant. The land-use decision making authority is with the local land use authority, not the District. The AIA information will be made available to the public. See also Response to Comments #8 and #29.

45. **COMMENT:** Does the ISR program apply to agricultural projects?

RESPONSE: The District believes the applicability section and the definition of a development project effectively exclude agricultural projects.

46. **COMMENT:** Will the ISR apply to waste-hauling projects?

RESPONSE: Hauling projects are not specifically stated as a project in the rule. ISR projects are land-use based, triggered by a discretionary permit in combination with new construction or increased use that generates construction and/or area and mobile emissions that exceed the ISR threshold. If a land use requires a discretionary permit, and meets or exceeds the applicability threshold, then the emissions from hauling would be subject to the rule. However, if the project is hauling operations alone then it would not be subject to the rule.

47. COMMENT: Where will mitigation funds be used in relation to the project assessed the fees?

RESPONSE: The funds will be spent within an area based on the type of pollutant. NOx is a regional pollutant, but every attempt will be made to fund projects in the vicinity of the project site. PM10 is a more localized pollutant, and PM10 funds would be spent closer to the project assessed the fees.

Brian Todd, BIA and Business, Industry and Government (BIG)

48. COMMENT: The District needs to tell the public about how much more fees will be in the Bakersfield area due to the need for additional PM10 reductions.

RESPONSE: The additional PM10 reductions cited by the commenter is the 1-ton per day by 2010 needed in the Bakersfield Metropolitan area. This rule does not address that reduction. ISR program fees are tonnage based and do not adjust by location. The 1-ton needed in Bakersfield is being addressed through a PM10 task force. Voluntary mitigation agreements in the area may be used to the extent that they mitigate beyond the requirements of Rule 9510.

49. COMMENT: The dynamic driving prices for housing in small and medium cities stated in the presentation is due to school fees. The ISR fees will exacerbate this problem. In addition, the housing market may be a bubble. Basing the fee on housing bubble numbers is a flawed methodology because the market is unstable, and the fee revenue depends on the number of houses.

RESPONSE: The District fees were not based on the number of housing units going in. The fees were based on the amount required to offset emissions, and is purely emission based. The expected *fee revenue* and *future impacts* are estimated from the forecasted population data from the state and the emissions from growth in residential and non-residential development.

It is important to note that the District will only be collecting fees to reduce as in there is development creating emissions to reduce. If the number of houses decrease (bubble burst), the District would have fewer emissions to reduce; therefore, the same fee brings the appropriate amount to reduce those emissions (less revenue). If the number of houses increases, the District would

have more emissions to reduce; therefore, the same fee brings the appropriate amount to reduce those emissions (more revenue).

Heather Ellison

50. COMMENT: What is the meaning of 'recreational space' and 'unidentified space' in the rule?

RESPONSE: Rule 9510 §13.7 defines recreational space for recreational uses such as soccer fields. Unidentified is a catchall category to indicate that other land use categories not listed are still subject to the rule if they generate emissions and are not otherwise exempt.

Mike Kelly – Western State Petroleum, Vector Environmental

51. COMMENT: Previous comments to the District were not adequately addressed in the previous response to comments. The law states that the District can regulate the increase in emissions. There is a concern that the Rule will trigger review of those discretionary permits that don't result in an increase in vehicle traffic, such as certain Conditional Use Permits (CUPs).

RESPONSE: The District typically consolidates similar comments and provides a single response. The District will consider providing individualized responses on a case-by-case basis.

The Rule applies to the *increase* in emissions resulting from land-uses changes that require a discretionary permit. Therefore, if project requires a discretionary permit, but does not result in an increase in emissions that meet the applicability threshold, then it would not be subject to the Rule. However, if the CUP allows for an increase in indirect or area source emissions or new construction activity that generates emissions, it would be subject to the rule if not specifically exempt.

Fresno

Bob Keenan – BIA, BIG

52. COMMENT: Fee collection and use is governed by the Health and Safety Code, §6600 subsection G. The rule does not meet those requirements.

RESPONSE: The author cites Government Code Section 66000 (The Mitigation Fee Act) as the impetus for promulgating a nexus document. The legislation clearly states that it is applicable to fees (§66000(b)), "in connection with approval of a development project." Section 66000(a) defines a development project as including, "a project involving the issuance of a permit for construction

or reconstruction, but not a permit to operate." In addition, Section 66001(a) states:

> *In any action establishing, increasing, or imposing a fee* ***as a condition of approval*** *of a development project by a local agency on or after January 1, 1989, the local agency shall do all of the following:*
> (Emphasis added)

Section 66005(a) also ties the legislation with 'condition of approval of a development project'.

1. The District will not approve or disapprove a development project, but will approve or disapprove the project's analysis to determine the quantity of emission reductions required to comply with the rule. The authority to approve or disapprove the development itself is the local land-use agency, not the District.
2. The District will not be issuing a permit, nor will the District give a discretionary approval of the project.
3. The District's ISR action is ministerial, and therefore will not include conditions of approval.

The District stands by its previous assessment. The Mitigation Fee Act does not apply to the ISR rules. However, the District has analyzed the applicability of nexus requirements to this rule. See Response to Comment #125 for the findings of the analysis.

53. **COMMENT:** Fees paid at the permit doubles to the buyer and prices people out of the market.

RESPONSE: Fee prices may price some people out of a particular house, but not necessarily out of the entire market. Currently, market forces are increasing the price of housing to a much greater extent than the fee would. In addition, the difference between paying prior to building permit issuance and at certificate of occupancy can't possibly double the cost unless the loan was at an astronomical interest rate. If the fee were financed in a mortgage at 30 years it may double, but it also doubles the amount they are paying for anything.

54. **COMMENT:** The fees from the program will drive up the costs of existing housing.

RESPONSE: Existing housing is not subject to the rule. Although the District realizes that sellers of existing housing may take advantage of a potential increase in new housing prices by artificially inflating the price of existing housing, the District does not have control over existing housing prices.

Increases in existing housing prices 'attributable' to the rule would be resultant of the seller, not of the District.

55. COMMENT: The impact of the fees resulting from implementation of the ISR program would ruin the Valley's economy.

RESPONSE: The commenter's position that ISR fees would ruin the economy is not supported by factual evidence. The Socioeconomic Analysis found the worst-case scenario of fees to be within the margin that can be absorbed by the economy. This is not to say that there is no impact, but that the impact is less than significant. In addition, the residential scenario in 2008 resulted in a fee of about $1,800 per house. This scenario had no emission reduction measures included; it had a density of 3 unit per acre (increased density decreases emissions), no sidewalks, or any other measure that reduces emissions (and thus fees). See also response to comment #56 and #14. Finally, housing prices have steadily increased in over the last ten years. This increase is far more than $1,800 *every year*. The District does not state this to justify the potential fee, but to illustrate what has occurred in housing prices and that the Valley's economy has not crashed as a result. It is illogical to suggest that a potential $800 per residential unit in 2006 to $1,800 in 2008 would ruin the Valley's economy. As stated in Response to Comment #14, the fee amount listed in the Socioeconomic report is likely much more than will actually occur.

56. COMMENT: The cost of on-site mitigation is not included in the socioeconomic impact report. Therefore, the report does not accurately reflect the impact of the rule.

RESPONSE: The Socioeconomic Analysis does not include the price of on-site emission reduction measures for a specific reason. That is, it is reasonable to expect that an applicant would not choose a more expensive option over a cheaper option. The 'worst-case', no on-site-measure fees are therefore the most that an applicant would pay. It is also important to note that on-site measures are entirely voluntary.

Also of note, many of the on-site measures that count towards reduced emissions are *already* requirements by local land use agencies. For example, most agencies require some amount of sidewalks or bicycle improvements with development that is adjacent to a street. URBEMIS calculates an emission reduction from the amount of sidewalks and bicycle infrastructure built in the project. Therefore, crediting certain on-site measures are of no additional cost to an applicant because they had already incorporated the measures into the project as a result of the public agency requirements.

Mark Stout - Fresno Metro Ministries

57. **COMMENT:** The proposed rule only mitigates a portion of the emissions. Why does the rule only reduce a portion of the emissions, and why the particular level- for example the 33% for operational NOx.

RESPONSE: The District calculated the level of reduction needed on a per-project basis that would achieve the emission reduction committed to in the PM10 and ozone attainment plans. The rule sets levels that are in compliance with state law regarding indirect source regulations and are feasible to achieve. The 33% is based on the area under the triangle that accounts for declining mobile emissions over time – see the fee formula.

58. **COMMENT:** A slide of the presentation showed huge NOx emissions increase from 2006 to 2010 from development. The number listed for reduction attributable to the rule seems rather small in comparison.

RESPONSE: The slide incorrectly showed the reductions attributable to construction as cumulative instead of temporary during the construction phase of development.

59. **COMMENT:** The District would benefit from making the URBEMIS runs available to the community groups. The community groups should be able to review what developers are inputting, and verify the modeling.

RESPONSE: The runs will typically be used in the CEQA process and included with negative declarations and EIRs. The files will be available with a public information request. The District will make this information public. See also Response to Comment #8.

Colby Morrow – Southern California Gas Company

60. **COMMENT:** Appendix C should be amended. PUC Energy Efficiency programs can be administered by energy companies and municipalities.

RESPONSE: Appendix C, page C-5 will be amended.

Cathy Crosby, Fresno County Public Works, Transportation and Planning

61. **COMMENT:** The response to comment format from the previous workshop made it difficult to find one's comments and the associated responses. The preferred format would be the EIR format, where the original comment letter is retained.

RESPONSE: The District has revised the response to comment format to address this issue. The format is a hybrid, retaining the original comment but not in the original letterform.

62. COMMENT: Several of the Fresno County July 22nd comments weren't addressed in the response to comments. Specifically:

- Transportation projects should be re-written to include non-vehicle projects, such as pedestrian projects.

RESPONSE: The definition of Transportation projects does not include non-vehicle projects because of the definition of an indirect source. The Clean Air Act (CAA §110(a)(5)(C)) defines and indirect source as, "… a facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution". Pedestrian projects do not attract mobile sources of pollution, but pedestrians. It would be inappropriate to include non-indirect sources in with transportation projects to be subject to the requirements of the rule.

63. COMMENT: §7.2.2.2 of their letter describers the dissolution of community service districts.

Previous Comment
7.2.2.2- Community Service Districts (as a means to insure perpetual funding for operational mitigation): The Air District may want to evaluate under what conditions a Community Service District that funds any mitigation activity not directly related to health & safety may, after formation, discontinue assessment or dissolve the Community Service District by vote of property owners making up the District.

RESPONSE: All measures within the on-site checklist have an emission reduction benefit associated with their implementation. The District identified those on-site measures that reduce emissions from development projects, and help reduce the air impact of development projects. The goal of the rule is to reduce emissions from development project to achieve the emission reduction committed to by the PM10 and ozone attainment plans. Although each measure is indirectly associated with an air benefit (reduced emissions and attainment of the PM10 and ozone standards), the District considers the measures to be health-related. Therefore, funding of these measures constitutes a health-related activity.

64. COMMENT: Maintenance concern. Where will the funds for County enforcement of the rule come from?

RESPONSE: The County will not be required to enforce the rule. See Response to Comment #8.

Ray Leon – Latino Issues Forum

65. **COMMENT:** The District should clarify the PM2.5 and toxics issue. Suggests that the District break PM10 down further to strengthen the rule.

RESPONSE: This rule is a result of the PM10 and ozone attainment plan commitments. The rule controls NOx and PM10. Some fraction of PM10 is PM2.5 and will be reduced as a result of the rule. NOx reduces ozone during the warm months and reduces ammonium nitrate, most of which is PM2.5, during the cold months of the year.

The District recognizes the issue of toxic emissions from diesel engines, and the particular hazards of PM2.5. However, toxics are addressed through the District's permitting program, state regulation, and through CEQA commenting. District thresholds of significance for these pollutants are contained in the Guide for Assessing and Mitigating Air Quality Impacts (GAMAQI). In addition, PM2.5 will be addressed in the federal PM2.5 Attainment Plan due in 2005.

Mike Sanchez – City of Fresno

66. **COMMENT:** The city's July 22nd comments need to be addressed; they weren't addressed in the previous response to comments.

Previous Comments (paraphrased)

Nexus and Proportionality

- **A.** What is the Nexus determination for the project
- **B.** ISR rules address emissions from existing development; so, placing requirements on new development to remedy problems from existing development would be inappropriate.

Relationship of SJVAPCD and Rules 9510 and 3180 to CEQA and Planning Law

- **C.** Rule appears to defer or circumvent CEQA analysis because analysis and mitigation would be prepared after CEQA analysis. Also, it appears that the District would be issuing a construction permit, making the District a responsible or trustee agency.
- **D.** There may be differences in interpretation of mitigation measures and the reductions associated with them.
- **E.** Because the District is the appropriate agency to make a detailed determination of air quality impacts and appropriate mitigations, the District should fulfill its CEQA responsibilities by providing analysis and recommendations to the local land use jurisdictions so that the CEQA analysis work can be completed with this information.
- **F.** The District should not determine locations or patterns for development, this is the local jurisdiction's authority.

G. "Analysis and conclusions regarding land use and its vehicular emissions need to be rooted in data… recommend objective criteria"

Applicability of the Rules 9510 and 3180

H. It is not addressed if the rule applies to general, regional, community or specific plan adoptions. At that level, project specific information may not be known, and analysis may not be accurate. Therefore, they should be exempted from the rule**.**

I. Each public agency defines 'discretionary' and there is variability as to what each public agency considers discretionary. Therefore, the ISR rules will be applied inconsistently.

J. Language should be included in the rules to prevent piecemealing.

Timing and Project Tracking

K. Request ISR review to be shortened from 30 to 10 days to , "remain within the statutory CEQA timelines for responding to initial study requests" because URBEMIS runs are quick. The District should send the ISR project information to the public agency for incorporation into CEQA documents.

L. How will timing of construction be controlled for mixed use projects, since commercial often lags behind residential development?

M. How will the District track projects, such as multi-phase tract maps or shell buildings, for review and analysis.

Interagency Cooperation

N. "The ISR Rules propose that cities and counties withhold building permits pending satisfaction of SJVUAPCD requirements." There should be an agreement between the public agencies and the District that includes indemnification of the city.

O. "Local land use jurisdictions should be made a party to any mitigation agreements entered with the developer…(and) it would be ideal if such agreements were recorded as covenants running with the land…for which the … analysis was done."

Use of Mitigation Fees Collected Through ISR Rules

P. It appears that the ISR funds will be used to fund existing programs. New programs that expand mass transit and similar systems should be considered. "… the majority of the funding generated through the ISR rule should address vehicular pollution through measures to reduce traffic volume and relieve traffic congestion in the vicinity of the land use projects paying the ISR Rule-related fee."

RESPONSE:

A. See Response to Comment #125

B. ISR rules address emissions from *growth*, not from existing emissions. See Response to Comment #170. See also, Response to Comments #34 and #39.

C. Rule has been revised to be concurrent with CEQA analysis and Public Agency approval process. See Response to Comments #8 and #44. Also,

the District would not become a Responsible agency as a result of ISR implementation (See Response to Comment #52 and #187)

D. The measures listed in the On-Site Emission Reduction Checklists have a known quantification method associated with them. Applicants will identify the *specific* implementation of each measure, so there will not be interpretation of the amount of reduction. See also Response to Comments #7 and #9.

E. Although the ISR rules were not written to address CEQA, the reductions committed to in the PM10 and ozone attainment plans from this rule and individual project compliance can be used in CEQA documents at the public agency's discretion. See Response C above for timing of ISR implementation. See Response to Comment #8 for information on communications between the District and the land-use authority.

F. The District will not be making land-use decisions, and recognizes that that is the authority of the local land use agency. The land-use design considerations discussed by the District are discussed because they are known to reduce air quality impacts. The District provides these types of measures to encourage applicants to design projects submitted for city/county approval in ways that improve air quality and reduce potential ISR fees. The District has no authority over implementing land-use changes. Please note, the District will not require a minimum selection for the on-site checklist, measures selected are voluntarily identified by the applicant and are likely already part of the project. See also Response to Comment #43 and #44.

G. The measures listed on the on-site checklist have objective criteria, based on extensive research within URBEMIS. Please refer to Appendix D (Recommended Changes to URBEMIS for Rule 9510 and 3180) and the URBEMIS User's Guide (available at URBEMIS User's Guide, available at South Coast Air Quality Management District's website http://www.aqmd.gov/ceqa/urbemis.html). See also Response to Comments #7 and #9.

H. The ISR rules are applied to the last discretionary approval of a development project per Rule 9510 Section 2.1. The adoption of a general plan or specific plan is not usually the last discretionary approval a project will go through. Residential development may be rezoned, and must get a subdivision or tract map. Conditional Use Permits and Site Plan Reviews often apply to commercial and office development. However, the District recognizes that some projects may not require additional discretionary approval after the zoning is approved. Specifically, industrial development may not require additional approval. Therefore, the last discretionary approval will vary depending on the project. The District will provide outreach to developers and the public to ensure awareness of the rule; however, it is the responsibility of the applicant to be aware of the need, or lack thereof, for additional discretionary approval by the local land-use agency, and to apply at

the appropriate time. Additionally, applicants are encouraged to apply *prior* to the application for last discretionary approval with the land-use agency.

I. The District recognizes the variability of the application of 'discretion' in the Valley. As stated in H above, the last discretionary action is the trigger for the rule. This may cause inconsistency early in ISR implementation; however,

J. Language has been included. See Rule 9510 Section 2.3

K. First, the ISR program is not a CEQA compliance program (See Comments above). Analysis of the AIA application involves more than opening and running URBEMIS. The District will be analyzing the documentation for projects, running modeling program, finalizing MRS's, finalizing FDS's, etc. See the Draft Staff Report for additional information. The District will be sending information to the public agency. See Response to Comment #8.

L. The District does not have the authority to control construction timing. See Comments F, G and H above.

M. The District will be tracking projects through a database, and will be tracking project location primarily through APN. Multi-phase projects will be entered as such, with the applicable expected build-out dates. The applicant is responsible for identifying the use and build out of the projects. Should the project change, the applicant is responsible for notifying the District. If the project changes such that there is an increase in air emission and the applicant does not notify the District, they will be in violation of the rule and subject to District enforcement action. The District will share project information with public agencies to coordinate project tracking.

N. The District will not require or request that public agencies withhold building permits for ISR enforcement. However, the District may enter into an agreement with a public agency for information sharing that would facilitate District enforcement of the rules.

O. The District will be sending the public the on-site emission reduction checklist, as well as other information (see Response to Comment #8) during the review process. The District will consider the use of covenants for MRS compliance enforcement.

P. The District will not be using the ISR funds solely for existing emission reduction programs. The District has conducted an analysis of emission reduction projects available, and the cost effectiveness associated with them. This analysis can be found in Appendix E. See Response to Comments #18 for the use of funds, and #47 and #188 on the location of funding projects.

Modesto

Sally Rodeman – CalTrans, District 10

67. COMMENT: District 10 did not receive the notice for the meeting.

RESPONSE: You will be added to the rule mailing list. Other Caltrans staff received notice.

CalTrans District 10 is on the District's mailing list as a street address, to which the District has been mailing notices. District staff looked into the issue, and found that the CalTrans website lists a PO Box for District 10. The District will work to resolve this issue.

68. COMMENT: Is CalTrans a developer as defined by the rule?

RESPONSE: CalTrans would be a developer in those instances where the project meets the applicability of the rule.

69. COMMENT: Can the District put that in writing in the rule?

RESPONSE: The District does not specify or write out *who* a rule applies to, but write *what* a rule applies to. The rule is written so that all entities and individuals conducting activities subject to the rule must comply, so there is no need to list every possible agency or entity subject to the rule.

70. COMMENT: Does the Socioeconomic Impact Report account for impacts on the State of California, considering that the state is broke?

RESPONSE: The socioeconomic analysis provides the overall impact to the economy but does not specifically separate out impact to individual government agencies.

71. COMMENT: Does the District have a list of mitigation measures for construction?

RESPONSE: The Staff Report contains a discussion of measures that reduce emissions from construction activities.

Tom Carlson – Sierra Research

Thanks for addressing Sierra Research's comments from the last draft of the rule. Particularly, for Sierra Research's comments on silt loading, trip links and fleet mix.

72. COMMENT: How will the District be addressing the needed changes to the URBEMIS model?

RESPONSE: Updated default values will be provided as rule guidance. This information may be contained in the next update to the GAMAQI. The next upgrade to URBEMIS, beginning next year will include many of the new defaults and an improved construction module. The upgrade may take as much as a

year to complete, so in the interim, the guidance documents will be provided as needed.

73. **COMMENT:** What is the basis for the targets on PM and NOx reductions from construction?

RESPONSE: The District researched what other air districts had set for reductions, and found that those targets are achieved in practice. The reductions (20% NOx and 45% PM10) are achievable with existing technology with a mix of newer equipment and retrofit devices, and will allow applicants applying moderate effort to pay no fee on construction.

74. **COMMENT:** What is the District's response to the vehicle age distribution by age of project that Sierra Research had provided? Is the information provided by Sierra Research not adequate or substantial enough to change the modeling?

RESPONSE: The District is not currently convinced that the data cited would be valid in all circumstances, but will consider projects that provide evidence supporting a reduction for fleet age. There may be other factors that offset the possible benefit from newer vehicles such as higher rates of vehicle ownership (more vehicles per household).

75. **COMMENT:** URBEMIS is a sketch planning tool. Sierra Research believes the District should use a travel model. Sierra Research believes that a travel model is more accurate than URBEMIS, and found that URBEMIS estimates are 60% higher than the travel model estimates for the same project. In addition, as a sketch tool, URBEMIS is inconsistent with SIP methodology.

RESPONSE: The District believes that URBEMIS has been improved beyond its characterization as a sketch planning tool. Very few of the modules of the program are overly conservative. Most modules rely on statewide averages extracted from the emission inventory which should not be considered conservative estimates. The most important module is the mobile source module that includes the same emission factors used to build the emission inventory. It does a good job of arriving at a composite emission rate needed for a project level analysis. Models can always be made more accurate by individualizing more and more input factors. The District believes that URBEMIS balances data requirements with reasonable output accuracy and ease of use. The travel demand models described by Sierra Research are extremely data intense and would be very costly to run for the approximately 1,000 projects that will be submitted to the District each year. It is uncertain whether the demand models are more accurate for project level analyses than URBEMIS with local information**.**

Jan Ennenga – Manufacturing Council

76. **COMMENT:** There is a concern that the ISR program would apply to CEQA processes and permits for existing facilities that make modifications.

RESPONSE: ISR projects are land-use based, triggered by a discretionary permit in combination with new construction or increased use that generates construction and/or area and mobile emissions that exceed the ISR threshold. If a land use requires a discretionary permit, and meets or exceeds the applicability threshold, then the emissions from hauling would be subject to the rule.

77. **COMMENT:** What exactly does "primary source of emissions" mean for the exemptions section?

RESPONSE: The District had originally include an exemption for "A development project, whose primary source of emissions are from stationary sources…" However, the District is revising exemption to make specific land uses exempt. The District has completed a review of industries permitted by the District. This analysis details the amount of rules that apply to each industry and the amount of pollutants regulated by these rules. The intent is to remove the ambiguity of "primary" emissions and detail which industries will be exempt from the rule. In addition, industries with stationary sources may petition the APCO for ISR exemption.

Bill Zelocci – BIA CC, PSSP, StanCo (Affordable Housing)

78. **COMMENT:** The bill targets housing only. The fees, at least the biggest fees are from housing. The Rule doesn't affect other land uses that produce vehicle trips.

RESPONSE: The rule targets new development that results in area and/or mobile emissions. The rule contains an applicability section and an exemptions section. The rule *does not* target housing exclusively or charge higher fees for residential development. Housing constitutes about 1/3 of the development related emissions and therefore 1/3 of the potential for fees under the rule. Other land uses such as commercial office and retail generate more emissions and potential fees. Housing is used extensively in discussing socio-economic impacts because that is what concerns most people. Fees are emission based, not land-use specific. Fees apply to the broad categories of land uses specified in the rule. Certain land uses are exempted from the rule because their emissions are primarily from stationary sources, and they have been subject to extensive controls and requirements already. The sector targeted by the rule are those land uses without the majority of emissions from controlled stationary sources, which haven't been subject to rules or emission controls.

All fees are tonnage based, and the required reduction formula applies equally to all applicable projects. This means that a particular project only pays the off-site emission reduction fee for the required reductions that are not achieved on-site.

The Socioeconomic Analysis discusses the potential impacts to housing more extensively than the impacts to commercial or industrial, because the impact on housing affordability is of a greater concern to the affected industries and the general public than the impacts on commercial or industrial.

Certain land uses are exempted from the rule because their emissions are primarily from permitted stationary sources (the rule only covers area and mobile emissions), and they are and have been subject to extensive controls and requirements.

79. COMMENT: The rule should also address existing housing.

RESPONSE: The goal of the rule is to achieve an emission reduction from *growth* that was identified in the PM10 and ozone plans. Although VMT is increasing valley wide, the majority of new emissions are attributable to new development. It would be inequitable to assess fees on existing uses with the purpose of mitigating emissions from growth.

80. COMMENT: Part of the presentation used small, unreadable font. Please use a reasonably large font for presentations, so that people may be able to read what is on the screens.

RESPONSE: Comment Noted. The District apologizes for the illegible font-size, and will attempt to make future presentations clear and readable.

Randy Hatch – Planning Director, City of Ceres

81. COMMENT: There is a concern that the ISR program will cause changes to a project after a local agency has granted approval to the project.

RESPONSE: The rule has been changed to make the process concurrent or prior to the approval process by the public agency. The District defers land-use choices to the public agency and the applicant. See Response to Comment #8 for more information.

The District does not place requirements for land-use measures on the project. The on-site emission reduction checklist must be filled out by the applicant, but the District does not have a minimum or maximum requirement for the number or type of measures to be selected. Inclusion of measures is voluntary by the applicant (see Response to Comments #56). The District will not engage in negotiations to include on-site measures (See Response to Comment#44).

Therefore, the District will not be imposing measures that conflict with the local land use agency. It is the applicant's responsibility to make sure that those measures they have voluntarily selected are consistent and approvable by the local land use agency. In the instance that the identified measure is not acceptable by the local land use agency, the applicant is responsible for notifying the District and the on-site emission reduction checklist and emissions modeling will be revised to reflect the project at that time.

In addition, the rule and staff report will be revised to provide more interaction with the public agency and the District. See Response to Comment #8 for more information.

82. **COMMENT:** How do public agencies determine compliance with the rule, especially if the District's approval can occur after the approval by the public agency?

RESPONSE: The District will revise the ISR process to be concurrent with or prior to the approval process at the public agency. See Response to Comment #8 for more information. Specifically, the District will provide letters notifying the public agency of the Determination of Completeness, AIA Approval and Final Compliance, as well as providing a letter of compliance status to the public agency upon request.

83. **COMMENT:** What exactly is meant by 'parks' in the applicability section?

RESPONSE: Active recreation parks – parks that attract motor vehicles. It is not the intent of the rule to assess passive recreation parks. Parks will be assessed based on emissions the same as other land uses,

84. **COMMENT:** The City of Ceres suggests the District alter the application process to make it prior to the final public agency approval, perhaps by tying it to the application to the public agency. In addition, the City suggests the District include a predevelopment process. The City of Ceres has a predevelopment process that aids in the application process.

RESPONSE: The District will amend the rule language and the staff report to make the application to the ISR program concurrent with or prior to the final discretionary approval application to the public agency See Response to Comment #8 for more information. The District does not currently have a plan for formal pre-application consultations. However, the District will be available for consultations any time prior to actual application and encourages applicants to meet with District staff to clarify issues when needed.

Fresno

Kathryn Phillips – Environmental Defense

85. **COMMENT:** Concerning the view that land use does not have an impact on air quality (see comment #34) – that is a minority view. Most have realized that land use does have an impact on air quality.

RESPONSE: Comment Noted.

86. **COMMENT:** Concerning the issue of self-selection (see comment #36), the choice of good design should be available.

RESPONSE: Comment Noted.

87. **COMMENT:** The URBEMIS model is imperfect, but it is appropriate for this rule.

RESPONSE: The District concurs. The District is aware that there is not a 'perfect' model available, nor is there likely to be one in the future. However, the URBEMIS model is best available method for quantifying project emissions and benefits from on-site measures.

88. **COMMENT:** Rule 9510 section 2.1.8 has one threshold for recreation, but the definition includes movies. 'Movie theaters' are more commercial in nature, and should be moved to commercial. In addition, 'parks' should be defined.

RESPONSE: Comment Noted. 'Movie theaters' will be removed from recreation to commercial.

89. **COMMENT:** A 2-ton exclusion level (Rule 9510 section 4.2) is too generous. This level should be reduced.

RESPONSE: See Response to Comment #180.

90. **COMMENT:** Rule 9510 section 2.2 discusses transportation projects that have two tons or more of NOx and PM10 combined. How large of a project would fit this description? How large would a project be to be subject to the rule – a pothole or an interstate exchange?

RESPONSE: Small maintenance projects would not exceed the threshold. Construction of a one-half mile arterial road segment would exceed the threshold. The road project must also be subject to a discretionary approval to be brought into the ISR process.

91. **COMMENT:** Rule 9510 section 3.5 defines 'Baseline Emissions'. This section should be clarified. Where exactly is the baseline?

RESPONSE: The definition will be changed to the following:
Baseline Emissions: the unmitigated estimated NOx and PM10 emissions, output calculated by the APCO-approved model, in the units of tons per year.

In addition, the following will be added to the definition section of the rule to clarify the issue of baseline:

Construction Baseline: the sum of unmitigated NOx or exhaust PM10 for the duration of construction activities for a project or any phase thereof.

Operational Baseline: the entirety of NOx or PM10 emissions, including area source and mobile emissions, calculated by the APCO-approved model, for the first year of buildout for that project, or any phase thereof.

A development would have two construction baselines (one NOx, one PM10) and two operational baselines (one NOx and one PM10), if it does not have phase. For the purposes of this discussion, the four baselines will be referred to as a 'baseline set'. For projects with phases, each phase will have one baseline set. According to the off-site fee formulas, the equations are used for each baseline set.

As and example, one project has three phases. The rule contains four fee formulas: an operational NOx, an operational PM10, a construction NOx, and a construction PM10. Each of the four calculations are performed three times, once for each phase or 'baseline set'.

The operational baseline is calculated at the date of expected buildout, the construction baseline is calculated at the date(s) of expected construction.

92. **COMMENT:** Rule 9510 section 4.1.5 needs clarification of what federal, state and local funds for low income housing are applicable.

RESPONSE: Based on the District's internal analysis of applicability and impacts, the exemption for low-income housing has been removed. It has been determined that the Rule should apply to all new residential development that meets the applicability section of the Rule.

93. **COMMENT:** Rule 9510 section 5.3.2 discusses the application for the AIA. The District should list out what information will be in the application.

RESPONSE: The District will expand that section to include more specific information of what will, at a minimum, be included in the AIA application.

94. **COMMENT:** Environmental Defense recommends including ROG in the rule for emissions reductions.

RESPONSE: See Response to Comment #57 and #65.

95. **COMMENT:** Rule 9510 section 6.1.1.1 and 6.1.1.2 discusses the reductions required from construction emissions. The 45% reduction requirement for PM10 is too low. Applicants can get much higher results with existing technology. The 20% NOx reduction requirement may similarly be too low. In addition, Environmental Defense recommends requiring emission reductions by vehicle and suggests that the District talk to CARB about their in-use construction equipment regulations.

RESPONSE: See Response to Comment #57 and #65.

96. **COMMENT:** Rule 9510 section 10.2 (APCO administration of funds) does not contain the term 'permanent'. The District should aim for permanent reductions.

RESPONSE: Many of the projects funded by the District will meet the strict interpretation of permanent reductions. In some cases, the projects are expected to be permanent but the user of the clean equipment is only obligated to operate it during the contract period. After the contract period ends, it is highly likely that any replacement equipment will be as clean or cleaner than that funded by the District due to lower emission standards and improving technology over time for nearly all source categories.

97. **COMMENT:** The funding of projects with fees received from this rule is implied to be application-based. The rule should state if it is application based.

RESPONSE: Although current District programs are primarily open application based for as long as funding is available, for some source categories it may be more appropriate to have requests for proposals with deadlines and project ranking. Therefore, the rule language should remain the same.

98. **COMMENT:** The economic analysis and other supporting documents don't include health impacts and those costs. This information should be included to keep the purpose and goals of these actions in perspective.

RESPONSE: It is not feasible to assign a dollar amount to the health effects that will be avoided or lessened by the implementation of this rule. However, the District will include health-impacts information from the PM10 and ozone attainment plans in the staff report.

Kristine Foster – Asthma Coalition, Respiratory Therapist, Asthma Educator and CAC member.

99. COMMENT: Land use planning is important and the District needs to include education for the public.

RESPONSE: The District concurs with both of the commenter's points. The District currently believes that Rule 9510 will provide incentives for development that creates fewer impacts and will bring greater awareness of this issue to the public.

Bakersfield

Mike Kelley – Vector Environmental

100. COMMENT: Does the rule apply to the fraction of PM greater than 10 microns?

RESPONSE: No. The rule applies to PM10, the fraction of PM 10 microns or less in diameter.

Chambers of Commerce – Public/Private Organizations

The Greater Merced Chamber of Commerce

Date: September 14, 2005

101. **COMMENT:** The Greater Merced Chamber of Commerce urges the district to reevaluate the impacts of rules 9510 and 3180 will cause to the Central Valley. The District has no organized plan for the fees that will be charged and when asked, the district indicates grant money for clean air vehicles and other measures to reduce the pollution. Before these rules should be brought to the board for approval, a complete plan should be developed.

RESPONSE: The District has a history of funding more than $100 million in emission reduction projects. These existing programs are underway and the system is in place for processing projects funded by Rule 9510. The District has provided additional information on the types of projects available for the program in Appendix E. The District has identified more than $400 million in projects available at a cost-effectiveness that will allow the District to achieve plan commitments. As technology advances, even more opportunities for retrofit and replacement programs are expected.

102. **COMMENT:** These rules will make the housing costs rise to a level that will make housing in Merced more unaffordable and will hamper industrial and commercial development in the greater Merced area. A comprehensive study needs to be completed on the effect the rules will have on economic development and jobs in the valley. The valley leads the nation in unemployment figures and the need for jobs through out the Valley is extremely important. These rules ill affect new job creation.

The costs of these new rules will slow down growth that will be coming to the Valley. Without a clear economic study, these rules should not be approved. Growth will happen and proper planning is needed to make sure the growth is well-planned and well-implemented. These rules will create more problems than they will solve.

The Greater Merced Chamber requests more studies and a better economic plan be developed before the rules go forward to the board for approval. Thank you for your consideration of our concerns.

RESPONSE: According the Merced County Association of Realtors, the median home price in Merced County is $330,000. The proposed fee amounts not considering the potential for reductions due to project design are between $800 and $1800 per unit in the first 3 years of program operation. In percentage terms this ranges from .24% to .54% added cost to the median home. The funds

collected from the developers are used for air pollution projects in the area that will benefit the local economy.

Stanislaus Economic Development and Workforce Alliance (Alliance)
Date: September 13, 2005

I am the CEO of the Stanislaus Economic Development and Workforce Alliance. The Alliance is a public private organization comprised of representatives of Stanislaus County, all cities in the county and dozens of private business investors. It is the designated agency for all economic development and workforce activities in the county.

I attended the video conference of an APCD staff presentation at a public \meeting on September 1 in Modesto. I am very concerned about several aspects of that presentation and therefore the consequences of Rule 9510 and Rule 3180 proposed for implementation by the APCD.

My concerns are as follows:

103. **COMMENT:** Regarding the exemption for projects whose primary source of emissions that come from stationary sources, how is **primary** determined?

RESPONSE: The District has completed a review of industries permitted by the District. This analysis details the amount of rules that apply to each industry and the amount of pollutants regulated by these rules. The intent is to remove the ambiguity of "primary" emissions and detail which industries will be exempt from the rule. In addition, industries with stationary sources may petition the APCO for ISR exemption.

104. **COMMENT:** Regarding the submittal of applications no later than 30 days **after** last discretionary approval, what kinds of delays to projects will be experienced while APCD reviews the mitigation plans and does their calculations and assessments. My experience tells me the current workload precludes timely processing or even a return of phone calls regarding ATC requests and other permitting. Staffing is either insufficient or incompetent or both. What steps are contemplated to alleviate the existing gridlock and avoid additional bottlenecks in the future?

RESPONSE: See Response to Comment #8 for the ISR application changes. It should be noted that the ISR process is not a permit, nor is it a discretionary action (See Response to Comment #187). The District is working on producing a streamlined approval process that has clear information requirements and timelines (as listed in the rule). The Planning Department will be responsible for ISR project review and approval. The Planning Department, as well as all affected departments (Compliance, Emission Reduction Incentive Program – ERIP, and Administration), has produced a staffing analysis for implementation

of the ISR program. The Planning Department identified the steps in review and approval, the time associated with those steps, and in this process identified steps that could be merged or simplified. The staffing requests are listed in the Board Memo, and the District will provide a more detailed staffing request before the Board adoption hearing. However, the staffing analysis is for ISR adoption only, and does not address staffing for existing programs.

105. COMMENT: The APCD has not yet created an emissions calculator.

RESPONSE: URBEMIS will be used for Operations, District is working to determine if a modification to URBEMIS or a separate calculator will be needed for construction. However, methodology for construction is known. Take vehicle type, hours of operation and compare to emissions from the state-wide average. URBEMIS can come up with default fleet numbers, we are working about refining them.

106. COMMENT: Developers and business with the same degree of concern on this issue that the APCD exhibits, albeit with a different perspective, have expressed serious reservations about the integrity of URBEMIS. Are these concerns dismissed out of hand with no attempt to verify the soundness beyond your belief that it must be okay because you are using it.

RESPONSE: The Staff Report contains a detailed discussion of why URBEMIS is appropriate for this rule, and why it was chosen over other models. The District has completed extensive research, including hiring a consultant to review existing models to determine the most appropriate, comparisons of models, and detailed model research and has determined that URBEMIS is the most appropriate model for the rule. See Response to Comments # 157.

107. COMMENT: The socioeconomic impact predictions for Rules 9510 and 3180 were calculated using dated methodology (1995) that does not factor in the impact of the meteoric increases in valuations and costs and burden of stagnant incomes regarding affordability.

RESPONSE: The Socioeconomic impact report uses median price data up to 2005. Most data was no older than 2003. The methodology is standard for the air pollution rule development process and is not dated.

108. COMMENT: The financial windfall that will occur if these rules are implemented could total tens of millions of dollars per year in the valley. What accountability is associated with the “mitigation accounts”? Who determines and what is the definition of quantifiable and enforceable mitigation projects?” Is there an audit of these accounts and by whom? How were the fee levels determined? Are they equitable?

RESPONSE:

1. Accountability – The District has successfully managed over $100 million in grant money over the last decade. The District has an outside auditing company to provide assurance to the Governing Board and the public that funds are appropriately managed. The California Air Resources Board has also audited the District.
   Definition of quantifiable – The project to be funded must have emission factors, process rates, and use data, necessary to calculate baseline emissions and emission reductions after the project is implemented.3.
   Enforceable – The project must have a mechanism that ensures that the project will be implemented and that emission reductions will be achieved during the specified timeframe.
2. Fee level determination – The fee levels are based on the average cost of reductions projected for each year for each pollutant. See also Response to Comment #114.
3. The fees are equitable because they are based on emissions generated by the project and each project's emissions are quantified using the same well-accepted models and factors.

109. COMMENT: APCD's goal over the next ten years to reduce the ozone and PM10 emissions targets new development only. If the housing bubble bursts and the corresponding emissions from new growth cease, will the burden shift to commercial, industrial and/or existing housing in order to meet the goals?

RESPONSE: The emission reduction targets for ISR in the PM10 and ozone plan are based on the *predicted* growth in emissions from new development. ISR reduces, through on-site and/or off-site measures, emissions generated by new growth. If that growth does not occur as predicted, for example in a 'bubble burst' scenario, then the emissions from new development will be less than predicted. If the emissions do not occur, they would not have to be reduced through the ISR program. In this situation, ISR does not have to adjust the emission reduction 'burden', or assess additional emission reductions.

110. COMMENT: There seems to be confusion about the degree of compatibility of these rules with the CEQA process, adding additional burden for businesses in meeting timelines and development schedules.

RESPONSE: See Response to Comment #8 and the Staff Report, Section IV.C.

111. COMMENT: Those of us who are tasked with promoting and marketing the valley for business locations and as a quality place to live and work are very concerned about the air quality issues that we fact. Certainly the air quality is a factor in decisions made by individuals and businesses alike when determining the suitability of the valley for their purposes. The major challenge is to address

those issues in a fair and balanced way with techniques and plans that are based on sound logic and a strong scientific basis.

RESPONSE: The District concurs with the author's statement.

Business, Industry & Government Coalition of the South San Joaquin Valley
Date: August 30, 2005

112. **COMMENT:** Our organization and its members share a deep commitment to improving air quality in the South Valley and applaud all reasonable efforts to attain Federal and State mandates. Draft Rule 9510, as we are coming to understand it, is the program that will be employed by the San Joaquin Valley Unified Air Pollution Control District to involve indirect sources, those land uses that attract or generate motor vehicle trips, in the mitigation of air emissions. The required reviews of the draft rule are delineated, however, the fees associated with the draft rule are not easily understood.

The presentation on Draft Rule 9510 – DESIGN (Decreasing Emissions' Significant Impact from Growth and New Development) gave several members of our organization cause for alarm after the initial public meeting was held. While there were references to fee schedules and proposed costs for building permits, the method describing the establishment of fees was not clearly reviewed. The Building Industry members of our organization are well aware of Public Facility Fees, Govt. Code 66000. Using that base of reference, the description about fee collection and fee usage was not congruent with their experience with Public Facility Fees. Upon further review after the meeting, the fees established through the Health & Safety Codes of California are the references for the Air Board's proposed fees. These fees are "news" to our members and additional information would be very helpful.

RESPONSE: See Response to Comment #6 and the Staff Report Section I(B) for a discussion on District authority for the rule.

113. **COMMENT:** For the next public meeting, scheduled September 1, 2005, our request is to have staff provide information about the process establishing the fee each year and how the fees are used for programs and projects under the authority of the Air Board. We want to know about the programs and the proposed costs for programs that will be instituted pursuant to Health & Safety Code 42311 (g). Our read of the statute indicates these fees are set annually based on estimated costs of air pollution control programs that will be conducted in the following year. In the event all funds are not expended, the fee revenue will carry over to the next year and will, then, reduce the fees for the subsequent year. What is the reporting mechanism and public process for these fees? While there are specific requirements outlined in the statute, none of our membership

was aware of actual dates for the public hearings and none were aware of what projects are in process for this year or their related cost(s).

RESPONSE: The fee amount is based on the anticipated cost of reductions in each year. Staff performed an analysis of historical project funding costs from our existing grant programs that have successfully contracted over $100 million and examined the potential for projects in the future based on the emission inventory and population of project candidates, the technologies available to reduce emissions from the source, whether the reductions will be surplus in the future based on proposed and adopted regulations on the potential project candidates, and the feasibility the project. Based on these factors, the District made percentage funding estimates for each type of project for each year. This information allows the District to calculate a projected average cost-effectiveness for each year. To further verify these numbers, staff prepared project mix spreadsheets based on available projects and funding for each year to demonstrate that the cost-effectiveness averages are achievable. This information has been added to Appendix E of the staff report.

114. COMMENT: In concert with the fees proposed through H&S Code 42311(g) are the fees outlined in Draft Rule 3180. Those fees are cost recovery based – cost recovery for administering Rule 9510. We ask for clarification on how that rate is developed and how applicants will be billed for the actual hours of staff time to evaluate and review proposed projects. We also ask to be informed if the weighted average labor rate will be reviewed in a public meeting or public hearing prior to annual establishment. The Health and Safety Code reference for the cost recovery fees appears to be in section 40604. The draft report of Staff indicates that section 40604 was codified as a result of legislation SB709, Florez, from the past fiscal year. Section 40604 is devoid of explanation about the fee structure other than to indicate there will be a schedule of fees and the fee schedule "shall be designed to yield a sum not exceeding the estimated cost of the administration of this chapter and mitigation of emissions and the filing of applications". How will this fee be published and through what public process? The project fees allow for annual rollover; how will the administrative fees be managed? If estimated costs are higher than annual costs, how will notification occur and what mechanism will be used to refund overpayment? We are hoping that the public meeting on September 1st will provide answers to this fee.

RESPONSE: The District will use the same average weighted labor rate method that it has used for many years in processing stationary source permits. It is based on labor and overhead rates used to develop the District's budget that is adopted in a public hearing each June. The project review fees are based on the hours predicted for a relatively simple project. Projects proposing standard on-site measures and having air quality impact assessments that use standard factors and default changes that have been agreed to in advance are expected to be covered by the fee amount. Complex projects are expected to require

additional staff analysis and review time that would result in costs that exceed the application fee. The District will be using a project management and billing system to track hours for the project. An applicant can request the status of labor charges at any time. The amounts accumulated to date can be obtained from the database and provided to the applicant. When the District staff completes its review and determines the off-site fee amount, they will generate an invoice that itemizes charges for review and the proposed off-site fee amount.

115. COMMENT: We are concerned that implementation of additional fees (Rules 9510 and 3180) associated with new construction will adversely affect the addition of sorely needed housing stock to the South Valley. Our region of the state is expected to take the brunt of the projected population growth, and we are already woefully under stocked. Our coalition believes that inadequate attention has been placed on studying the socio-economic implications of implementing the proposed fees.

Reducing PM10 and NOX emissions from indirect sources is a commitment thrust upon everyone in the Central Valley. Adding additional reviews and controls during the planning phase of construction is workable as long as all steps in the review process are clearly communicated and upheld. Compounding the issue of added reviews are the added fees for air pollution control and emission reduction projects that are not well known to members of our organization. As requested, providing more information about the type of projects, costs for current year and the process for the annual review of these fees would be most beneficial. Added study and discussion about the factors that influence the socio-economic status of the Central Valley are desired before these draft rules are presented to the Board of Directors for their consideration and vote.

Thank you for your attention to our concerns and we ask that this letter be read into the public record during the meeting on September 1, 2005.

RESPONSE: The District recognizes that the rule may add a relatively small cost to development; however, the rule is structured to maximize benefits for designs and features incorporated into the project that will reduce the fees and add value to the development. It is possible to significantly reduce the fee with measures now commonly included in projects. The District is committed to streamlining the review process wherever possible and strives to minimize costs and delays. The analysis will be accomplished with URBEMIS for most projects. URBEMIS is very easy to use and can be operated using information typically required by local agencies during the CEQA review process.

INDUSTRY

The Construction Industry Air Quality Coalition (CIAQC)

Date: September 15, 2005

The Construction Industry Air Quality Coalition (CIAQC) is composed of the Southern California Contractors Association and the Southern California chapters of the Associated General Contractors Association, Building Industries Association, Engineering Contractors Association and Rock Products Association. Its membership includes 3,500 construction/development companies.

116. **COMMENT:** 2.0 Applicability: The potential emissions from constructing 2,000 square feet of commercial space, 9,000 square feet of educational space and 10,000 square feet of government space appear too small when compared to emissions from constructing 50 residential units, 39,000 square feet of general office space and 25,000 square feet of industrial space.

RESPONSE: The difference is due to different trip rates for different land uses. Commercial space generates many trips per 1000 square feet compared to other land uses.

117. **COMMENT:** While the rules do not have an effective date, the District should consider the economic impact on small contractors with a high percentage of Tier 0 engines of setting relatively small development project baselines in 2006. An annually decreasing baseline from, say, 200 residential units, 10,000 square feet of commercial space, etc., in 2006 would allow small contractors more time to upgrade their fleets and compete in the bidding process.

RESPONSE: The current approach in the rule using the baseline for each year construction occurs and emission based thresholds provides more incentive to purchase or rent the cleanest equipment at the earliest date. Once in use, the cleaner equipment is available for all future projects subject to the rule. Although small contractors may have an older fleet, those are the equipment and vehicles that are in need of upgrade.

118. **COMMENT:** 3.0 Definitions: The use of computer modeling to estimate construction emissions from potential land uses would eliminate many small contractors unless they can seek advice from the District on how to employ these models. Also, CARB should offer assistance in identifying a diesel emission control device that has been verified for typical diesel engines as well as instruction on the use of the construction emission calculator. Ideally, the contractor or developer could submit to the District the number and types of machines he proposes to use on a project and the number of hours he proposes to run them, and the District would estimate his emissions.

RESPONSE: The District will provide assistance on the use of models to calculate construction emissions and staff can run the models for the applicants on a time and materials basis.

119. COMMENT: 4.1.5 Housing projects directly assisted by government housing funds: Why is government assisted housing exempt from mitigation?

RESPONSE: Based on comments received, the District has removed this exemption so that sources are treated based solely on their emissions.

120. COMMENT: 5.0 The draft rule implies in 5.3 that the APCO is willing to produce an AIA from information supplied by the developer. Is that correct?

RESPONSE: The District will prepare air quality impact assessments if the applicant provides the information needed as inputs in the model.

121. COMMENT: 6.0 A developer should be given emission reduction credit for mitigating windblown dust (PM10) as a result of constructing buildings and landscaping an area.

RESPONSE: The developer is already required to mitigate windblown emissions to comply with District Regulation VIII – Fugitive Dust Rules, therefore, the reductions would not be considered surplus.

122. COMMENT: 7.0 Off-site Mitigation Calculations and Fee Schedules for Construction Activities: In order to be reasonably contemporaneous with emission increases, off-site mitigation should be designated and purchased by the District no later than six months after the payment of the funds by the developer.

RESPONSE: The District commits to spend any funds received as quickly as possible. The programs envisioned require an applicant to come to the District to request funds for qualifying projects, so there may be times when funds take longer than six months to expend.

California Building Industry Association (CBIA)
Date: September 15, 2005

California homebuilders, represented by the California Building Industry Association (CBIA) and its five affiliated Building Industry Associations (BIAs) located in the San Joaquin Valley, are respectfully submitting comments on the Draft Rules, 9510 and 3180 ("proposed rules") of the San Joaquin Valley Air Pollution Control District ("the District").

123. **COMMENT:** CBIA continues to be troubled by what it sees as several fundamental flaws in the District's plan to assess new "air quality mitigation" obligations on new development in the Central Valley:

1) The District has failed to show a nexus between the impacts of new development on air quality in the region and the massive amount of new fees it proposes charging for this purported impact;
2) The District is using flawed scientific modeling to justify charging massive new fees on housing and economic development;
3) The district singles out new development to bear the burden of its new mitigation scheme which contains highly questionable calculations and a woefully deficient cost-benefit analysis.
4) The District has failed to adequately explain what it intends to do with these new fees (taxes) – somewhere between $300 million and $450 million over the next five years – and how charging them will improve the region's air quality; and
5) The District has failed to acknowledge and account for the impacts of these new fees on the region's economy or on housing affordability.

RESPONSE: See Response to Comments #124 through #142 below.

124. **COMMENT:** For these and other reasons, CBIA remains strongly opposed to the adoption of the proposed rules and urges the District to withdraw them and, working with citizens and other stakeholders in the region, begin the work of developing a more responsible, equitable and scientifically grounded plan for improving air quality in the central valley.

In the pages that follow CBIA will enunciate in detail both its fundamental concerns as well as other defects in the proposed rules.

RESPONSE: Opposition noted. See Response to Comment #17 for additional information on the development of these rules.

125. **COMMENT:** The District has failed to demonstrate the required legal nexus for imposing its proposed fees. This has been an ongoing concern of CBIA's and thus far the responses to it given by the District have only caused to make that concern grow. Indeed, the sheer weight of the mitigation fees being proposed by the District for new housing, alone – somewhere between $300 million and $450 million over the next five years – demands a clear description as to what the impacts are that justify the District's fee plans and how the level of fees to be charged are supported by anticipated costs.

RESPONSE: Although the District is not subject to the Mitigation Fee Act (See Response to Comment #52), the District's legal counsel has prepared an analysis of nexus requirements. The analysis identifies if a nexus is required, and discusses the following:

The applicability of the 5th amendment of the US Constitution.

- The analysis finds that the fees resultant from the rule are subject to the "reasonable relationship" test established by *San Remo Hotel LP v. City and County of San Francisco*[2].
- Therefore, if the fee is collected from a development because of the expected air pollution from that development, and the fee is used to offset the type and amount of pollution caused by that development – the fee will likely pass under the reasonable relationship test.

California Mitigation Fee Act

- The analysis finds that the Mitigation Fee Act may not apply to the ISR rules, for the reasons cited from the District in the text of Comment # 126, and in the Response to Comment #52.

California Proposition 13

- The analysis finds that Proposition 13 does not apply to the ISR rules.

California Proposition 218

- The analysis finds that Proposition 218 does not apply to the ISR rules.

California Subdivision Map Act

- The analysis finds that the SMA does not preempt the District from assessing fees on a subdivision.

126. COMMENT: Remarkably, however, the District denies there is a problem. To summarize the District's position, the Mitigation Fee Act (AB 1600) does not apply to these types of fees because (1) the District has no approval authority over development projects, is not imposing the fee as a condition of approval of a development project, and the fee is purely regulatory in nature, (2) AB 1600 only applies to fees for "public facilities" and mitigation measures such as diesel retrofit programs are not "facilities," and (3) even if AB 1600 doesn't apply, the district has met the nexus standard under the Act as well as any other legal standard.

This analysis contains multiple flaws. Government Code Section 66000(b) defines a fee as a monetary exaction other than a tax or special assessment, whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project. The proposed rules are applicable to a broad range of projects. Likewise, the proposed project-level analysis of on-site

[2] *San Remo Hotel, L.P. v. City and County of San Francisco*, (2002) 27 Cal.4th 643, 669-670.

mitigation constitutes an ad hoc, project-specific review. Both types of analyses therefore apply to the proposed rules.

RESPONSE: See Response to Comment #52.

127. COMMENT: Indeed, the District is a local agency subject to the Mitigation Fee Act. Government Code Section 66000 (c) defines "Local agency" as “a county, city, whether general law or chartered, city and county, school district, special district, authority, agency, any other municipal public corporation or district, or other political subdivision of the state.” Certainly the District qualifies as a special district, agency, or other political subdivision of the state.

RESPONSE: The District is considered a local agency, but this distinction is not relevant. The Mitigation Fee Act does not apply to the ISR rules. See Response to Comment #52 for more information.

128. COMMENT: The attempt to limit the application of this statute to public facilities is also incorrect. Government Code Section 66000(d) includes within the definition of "Public Facilities" “public improvements, public services and community amenities.” Cleaning up the air is a service provided by government and, as such, provides a benefit to the community.

Comment 64 states that the District does not have the authority to impose conditions of approval and contemplates that any project review will occur after the local agency has completed its approval of the project. The developer will be “allowed” to either include on site mitigation measures or pay a fee. Regardless of the choice of words, it is impossible to characterize this requirement as anything other than a fee or exaction on new development. If this is not enforceable as an exaction, then it is voluntary and the District cannot take credit for it as a control measure for purposes of demonstrating compliance with the SIP goals and the Federal Clean Air Act requirement to demonstrate reasonable further progress.

RESPONSE: The District does agree that the ISR program may require a fee from new development. However, the District disagrees with this interpretation of air emission reductions as a public service under GC 66000(d). In addition, the Mitigation Fee Act does not apply to the ISR rules. See Response to Comment #52 for more information.

129. COMMENT: The District’s attempt to define itself out of the Constitutional requirement that nexus be demonstrated is highly questionable. As noted in Government Code Section 66005(c): “It is the intent of the Legislature in adding this section to codify existing constitutional and decisional law with respect to the imposition of development fees and monetary exactions on developments by local agencies. This section is declaratory of existing law and shall not be

construed or interpreted as creating new law or as modifying or changing existing law."

RESPONSE: See Response to Comment #125 for the findings of the District's analysis of nexus requirements. See also Response to Comment #52.

130. COMMENT: It is important to examine that larger body of existing law. The constitutional standards for legislatively enacted development fees of general applicability, such as the proposed indirect source fee on new development, are less stringent than are the standards for fees imposed on specific developments on an individual and discretionary basis (see *Ehrlich v. City of Culver City* 12 Cal. 4th 854, 50 Cal. Rptr. 2d 242; 1996). Where a development fee is imposed generally on a broad class of property owners, it need only bear a reasonable relationship to the impacts of the development project (Id. at 875-876, 50 Cal. Rptr. 2d at 256,257). In adopting the fee, the city must make the "nexus" findings set forth in Government Code section 66001.

RESPONSE: Although the Mitigation Fee Act does not apply to the ISR rules (see Response to Comment #52), the rule has been designed to meet this test. The District analysis contained in the staff report for the rule provides supporting information to draw this conclusion.

131. COMMENT: The District uses a flawed analysis to produce huge sums to be collected as fees on new housing and new businesses. According to an analysis conducted by Sierra Research (see attached letter) using the numeric emission reduction goals in the District's approved SIP Measures for NOx and PM-10, as well as the assumptions set forth in Section 7.2 of Draft Rule 9510, including the stated ton-per-year mitigations costs, the District will require a total of $38,844,869 to meet the SIP's emission reduction goals for calendar years 2006 through 2010. Assuming the District's "worst case" fee scenario of $856 per unit in 2006, rising to $2841 per unit in 2010, the District could collect as much as $292,719,600. The disparity between the cost of the service and the fee charged is 754%. Even at a lowered standard of review of "reasonableness," a disparity of that magnitude will not survive judicial scrutiny.

RESPONSE: The District has addressed the analysis that Sierra Research provided in Response to Comments #143 to #162. In these responses, the District details which parts of the analysis provided by Sierra Research are flawed and/or inaccurate.

132. COMMENT: Again, the proposed rules are in direct conflict with California law as they are proposing to collect fees well in excess of what might be justified under a nexus test. State law is clear about what burden is on local agencies which propose to impose new fees on development. Government Code Section 66005(a) says "When a local agency imposes any fee or exaction as a condition

of approval of a proposed development … or development project, those fees or exactions shall not exceed the estimated reasonable cost of providing the service or facility for which the fee or exaction is imposed."

RESPONSE: As stated in Response to Comment #52, the Mitigation Fee Act does not apply to the ISR rules. The author points out a significant reason why. Section 66005(a) clearly states "as a condition of approval". The District cannot place conditions of approval on development projects through the ISR program, as it is a ministerial action. In addition, the fees are designed to mitigate only a fraction of project emissions and there is nearly zero potential for over mitigating. The fees are tonnage based (what is required to buy one ton of reduction for a particular pollutant) and are charged on a tonnage base. For example, if a project is required to mitigate 2 tons of NOx, then the price per ton is multiplied by 2 to obtain the off-site emission reduction fee.

133. COMMENT: Discretionary, site specific fees, the kind that the District proposes to impose on individual development projects after a project-specific analysis of all on-site mitigation measures, are subject to the stricter "essential nexus" and "rough proportionality" requirements of *Nollan v. California Coastal Commission,* 483 U.S. 825, 107 S. Ct. 3141 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374,114 S. Ct. (1994); see discussion in *Ehrlich* at 12 Cal. 4th 876, 50 Cal. Rptr. 2d at 256,257; *City of Monterey v. Del Monte Dunes at Monterey Ltd*., 526 U.S. 687, 119 S. Ct. 1624, 1635, 143 L. Ed. 2d 882 (1999).

RESPONSE: Although the District will not be making discretionary actions, the Rule has been designed to meet this test. The District has prepared an analysis of nexus requirements. See Response to Comment #125 for the findings of the analysis.

134. COMMENT: In spite of repeated requests from various local agencies and members of the public, the District has not made available any calculations of the amount of emissions credits that will be awarded for on-site mitigation measures. For reasons explored in greater detail in Sierra Research's comment letter, the URBEMIS model was not designed to, and is incapable of, accurately calculating the amount of emissions reductions from most of the design or location-based indirect source mitigation measures included in the District's proposed mitigation checklist. The unknown cost of the deferred mitigation (achieved after the fact through a grant program) makes an accurate analysis of proportionality even more difficult. For this reason, any project-specific fee calculation will be suspect, and subject to the higher standard of review.

RESPONSE: The onsite emission reduction measures are calculated using the URBEMIS v8.7 mitigation component. The model is available for free at urbemis.com. The author's statement that URBEMIS is, "was not designed to, and is incapable of, accurately calculating the amount of emissions reductions

from most of the design or location-based indirect source mitigation measures included in the District's proposed mitigation checklist," is inaccurate at best, and misleading at worst.

The URBEMIS model is maintained by a state-wide working group that includes representatives from air districts throughout California, state agency representatives (such as CalTrans). Proposed changes to the model are vetted through peer review. The last model update, sponsored by the District, was changes to the Area Source module, specifically overhauling and quantifying the mitigation section.

The model components and methodologies are available to the public in the URBEMIS User's Guide, available at South Coast Air Quality Management District's website http://www.aqmd.gov/ceqa/urbemis.html, and will be made available at the District's website. In addition, the details of the model and the recent update are available in the Staff Report and as Appendix D-Recommended Changes to URBEMIS.For more information on URBEMIS components, see Response to Comment #9.

The author's second main point is that, "the unknown cost of the deferred mitigation (achieved after the fact through a grant program) makes an accurate analysis of proportionality even more difficult." The cost of 'deferred mitigation' is exactly that of the off-site emission reduction fee. The applicant is assessed a fee based on the calculations provided in the rule. The per-ton fee is also provided in the rule. The applicant is assessed an administrative fee, stated in Rule 3180 as 4% of the off-site fee. The applicant is also assessed time and materials for the AIA review in excess of that covered by the application fee, detailed in Rule 3180. This is the full extent of fees. The 'deferred mitigation' fee is expressly stated in the rules.

135. COMMENT: The District has failed to explain its calculations in determining a massive revenue-raising plan or the cost-benefit of the plan. According to the proposed rules, the District plans to raise between $300 million and $450 million in fees between 2006 and 2010 from housing alone. Similar fees will be collected from new schools, hospitals, government facilities, transportation projects, retail, office, and industrial development. The use of these funds, presumably, is to cut NOx emissions by 4.1 tons per day and PM-10 emissions by 5.2 tons per day. Yet, the District's own estimates show that NOx will cost an estimated $4,650 per ton in 2006, rising to $13,250 per ton in 2010 and that PM-10 reductions will cost $2,907 per ton, climbing to $13,850 per ton in 2010. These totals are far less than the fee revenue the District intends to raise during the same period.

RESPONSE: The rule's emission calculations are designed to identify a level of reductions from new development that will meet the SIP targets at the cost per ton predicted each year for each pollutant. The $300-450 million for residential

development severely overstates the fee potential and is based on an erroneous analysis of the rule requirements and incorrect calculations. For a detailed analysis of the cost effectiveness calculations, please review Appendix E – Cost Effectiveness Analysis for Rule 9510 ISR. For a detailed analysis of the emission reductions, please review Appendix B – Emissions Reductions Analysis for Rule 9510 ISR.

136. COMMENT: The District has failed to lay out a coherent plan for using its mitigation plan to actually clean the air and to account for it. How the District intends to spend the massive amounts of money it is proposing to raise remains unclear. This in light of the recent concerns expressed by the District's Governing board that the District has not expended its existing motor-vehicle surcharge fees – representing over $50 million in taxpayer dollars – on mitigation measures in a timely and effective manner. In addition, in advancing these proposed rules – again, raising hundreds of millions of dollars over the next five years – the District has failed to present a clear and specific program to insure timely expenditures for measures that reduce emissions proportionately in the areas contributing fees.

RESPONSE: The District will provide additional information to clarify the proposed plan for expending any fees collected and has amended Appendix E – Cost Effectiveness Analysis for Rule 9510 ISR accordingly. The District has successfully contracted over $100 million in funds for air quality projects.

137. COMMENT: Finally, the District has failed to adequately recognize or account for the impact of the proposed rules on housing affordability and the region's economy. The Socioeconomic Analysis examines narrowly examines housing impacts in terms of homebuilder profits without any similar analysis of housing cost and affordability impacts. This overlooks some important facts. Fees have a direct impact on homebuyers. According to a national study, every $1,000 added to the price of a home, locks more than 23,000 California families out of the housing market. Further, $1,000 to $4,000 added to the purchase price of a home escalates dramatically when it is financed with a typical 30 year mortgage. What this does to housing affordability in the region is completely ignored. In addition, the Analysis overlooks the impact of higher housing costs on the regional economy. First, more money spent on housing means less money spent on other goods and services. Second, higher housing costs discourage new business development as housing costs are viewed by executives as having the biggest impact on labor costs. Finally, fewer buyers mean fewer homes to be built which means fewer construction jobs and the profound ripple effects on the regional economy. Right now, home construction represents more than $7 billion in annual economic output in the Central Valley and is responsible for creating nearly 70,000 new jobs every year.

RESPONSE: First, the August 24, 2005 Socioeconomic Analysis provided at the September 1st workshop contains an analysis of housing costs and affordability impacts in Section 6.3 – Impacts on Affected Industries. Section 6.3 ¶1 states, "In addition to impacts on homebuilders, the section analyzes how changes in price affect prospective homebuyers and renters," and contains *Affordable Housing for Low-and Moderate Income Households* as a subsection. The analysis found:

> *…that while the residential fee that the typical residential development would pay under Draft Rule 9510 and 3180 can increase the amount of household income required to finance the purchase of a new home, the estimated increase represents a small fraction of the original household income required to finance a new home the event no air quality fees were in place. The affect of the fees on rents is similarly small.* Page 1 Executive Summary

Second, 100 percent of all off-site funds collected will be spent on emission reduction projects in the San Joaquin Valley. This will create economic activity and jobs. Many of these projects involve the construction industry; for example, road paving to control PM10. The District recognizes that all off-site fees have an impact on the cost of development; however, the emission reductions obtained from the rule will benefit all residents of the San Joaquin Valley.

Finally, refer to Response to Comment #53 for additional information.

138. COMMENT: In addition to the impacts on housing, those on businesses and public service activities have not been fully analyzed. Half of the vehicle trips addressed by the proposed rules are assumed to come from non-residential uses, but it remains unclear how much non-residential uses are going to pay their mitigation obligations (fees). The Socioeconomic Analysis fails to mention fees for new schools, medical facilities or public facilities such as government offices, roads and libraries. The Socioeconomic Analysis concludes that the impact on commercial and industrial development will be significant, but fails to identify Valley-wide costs based on the full range of non-residential uses, or the ripple effect on public agencies, business start-ups and expansions, job generation and the cost of goods and services.

RESPONSE: The District is unsure where the author is referencing the assumptions on vehicle trips. The cost to any sector is proportional to the emissions caused by indirect, area, and construction emissions generated by the project. The potential cost to any development can be calculated using the URBEMIS model to calculate emissions and the cost of reductions for the year of development and fee formula from the rule. The fee formula and cost of reductions applies to all development subject to the rule equally.

Valley-wide impacts would be speculative. As stated in the Socioeconomic Analysis (p. 42), "It is not clear how the development will adjust to the additional costs." Although the analysis states that, "a typical commercial or industrial development could absorb air quality fees in 2006 or 2010," developers may choose to pass on the cost to the buyer or renter. This aspect is unknown, and any projected valley-wide impacts as a result would be speculative and non-quantifiable.

139. COMMENT: The proposed rules 9510 lack effectiveness estimates for on-site mitigation that lead to uncertainty and inaccurate fees. Appendix C contains a 12-page checklist of mitigation measures that developers must consider for their project. Project applicants are instructed to justify why they did not apply a particular mitigation measure if they decided not to use it. However, the checklist provides no control efficiencies for the measures, making it impossible for project developers to reach an informed decision about the most cost-effective methods. Of greatest concern, a large number of mitigation measures are not included in URBEMIS, and their effectiveness must be negotiated between the project applicant and the District. These off-model mitigation decisions inject great uncertainty and potential inaccuracy into determining the amount of mitigation provided and fees exacted.

RESPONSE: The effectiveness of on-site measures varies depending on the design of the project and the land uses and transportation systems supporting the project. A single percentage number for each on-site measure is not appropriate. Please see Response to Comments #7 and #9 on URBEMIS quantification of measures. It should be noted that URBEMIS is free, available to the public, and user-friendly.

140. COMMENT: The proposed rules will create an expansive new bureaucracy to perform duties that duplicate and conflict with existing local planning processes. Local jurisdictions already have the ability to address and mitigate construction and operational emissions of new development through environmental reviews – pursuant to the California Environmental Quality Act (CEQA). The most recent draft of the proposed rules actually appears to dismiss this likelihood for greater conflict and overlap with CEQA by eliminating previously published schedules for District staff's performance of project reviews, mitigation analyses and fee calculations. Indeed, at a recent District-sponsored workshop regarding the proposed rules, District staff essentially said that their measures were separate from those identical ones mandated by CEQA. Indeed, the failure of the District to clarify its role as a "responsible agency" within the meaning of CEQA will foster conflicts with local governments, result in conflicting mitigation standards and requirements and fuel legal challenges – with direct and negative implications for job-generating business projects, affordable housing, schools, roads, and medical and public facilities urgently needed in the area.

RESPONSE: The rule will be revised to make the District's timeline more closely match CEQA timelines. An applicant may come to the District prior to or concurrent with the local agency discretionary application. This is similar current District consultation in its role as a commenting agency. Once the applicant has settled on a project design and scope and on-site measures that will be used for reducing air impacts, the District or the applicant can prepare an air quality impact assessment to determine project baseline emissions, mitigated emissions, and a off-site fee, if any is required. There will be no conflict with local agency mitigation standards since all on-site measures will be sent to the agency for voluntary review and the District will not accept conflicting measures. In addition, it is the responsibility of the applicant to ensure that measures selected are approvable by the public agency. If a selected measure is not approvable, the District will remove the selection and re-assess the project's air impacts. Although more projects will be subject to analysis under this rule, air quality is a critical concern in the San Joaquin Valley and should be receiving this additional attention.

141. COMMENT: The proposed rules lack essential information on construction emission reduction requirements. The latest draft rule requires new development to reduce construction emissions, but does not provide any details on how emission reduction requirements will be calculated. At the September 1st rule workshop, District staff was unable to confirm that a construction emissions "calculator" would be available during the public comment period, or indeed prior to Board consideration of the rule. The homebuilding industry will be directly affected by this provision of the rule, but we cannot gauge the impact of the requirement without information on the assumptions and methods for calculating project emissions. It's requested that this information be provided with time for public review period or eliminate construction emission requirements from the proposed rules.

RESPONSE: URBEMIS V 8.7 is available to quantify construction emissions. The District is working on enhancements to the default values in the model and will be considering a spreadsheet based calculator if it is more appropriate. This will be completed at least 30 days prior to program implementation.

142. COMMENT: For these reasons, as well as reasons previously placed on the record, we request that the District withdraw these proposals as inequitable and unworkable and unenforceable. Continuing down this path is a waste of public resources, which could be better put to use in developing alternative control measures well-designed and well-calculated to achieve compliance with the emission reduction goals set forth in the SIP.

RESPONSE:

- The District considers the ISR Rules to be equitable
  Fees and assessment are emissions based and same for all land-uses.

- The District considers the ISR rules to be workable.
  The rules set a clear path of what is required and how to achieve that. The URBEMIS model is used statewide by air districts and public agencies for project-specific air impacts.
- The District considers the ISR rules to be enforceable.
  The District is granted the authority to promulgate and enforce the rules through the following:
  The Clean Air Act Sec. 110 (5)(C) and 110 (5)(D)

Sierra Research
Date: September 15, 2005

On behalf of the California Building Industry Association (CBIA), Sierra Research (Sierra) is pleased to submit the following comments on the revised draft Indirect Source Rules (ISR) 9510 and 3180 released by the San Joaquin Valley Unified Air Pollution Control District (the District) in late August.

Our comments in this letter expand upon those presented before the District at the September 1st workshop. As directed by CBIA, our comments focus on, but are not limited to, technical and modeling issues related to the use of the URBEMIS model under the proposed rules based on our independent review of the model and its underlying assumptions. In this review we were assisted by Dowling Associates, Inc. (Dowling), a transportation planning firm with extensive travel demand modeling experience supporting a number of the San Joaquin Valley Transportation Planning Agencies (TPAs).

Our comments are summarized briefly blow. Detailed explanations of each comment follow in attachment A.

143. COMMENT: Summary
Our overarching concerns with the draft ISR rules stem from their use of the URBEMIS model to calculate pollutant emission impacts from development projects and the fact that URBEMIS broadly overstates vehicular emission impacts from residential projects. Our analysis of typical single-family residential projects indicates that URBEMIS overstates vehicle emissions of both NOx and PM_{10} (the two pollutants targeted by these ISR rules) by over 70%. Since the mitigation fees that developers would pay under the proposed rules are directly related to the emission impacts calculated by URBEMIS, this model also substantially inflates the fees developers should be required to pay by roughly the same percentage. Our key concerns are summarized below.

RESPONSE: Sierra Research's conclusions are based on erroneous information. URBEMIS is designed to estimate all emissions related to a development project and counts all trips going to and coming from the development as is appropriate for a project level analysis. This accounts for the

higher emission numbers. By using trip counts using both ends of the trip, URBEMIS can credit developers who design their projects to generate less trips with reductions for both ends of the trips that were reduced. To avoid charging a fee on emissions that may be attributable to another new or existing indirect source, the fee formula is based on 50% of the baseline emissions after mitigation is applied onsite. The regional transportation model used as a comparison with URBEMIS is flawed when used for a project level analysis. The fees are not inflated compared to the impact. Sierra incorrectly calculated the potential fees.

144. **COMMENT:** URBEMIS Defaults Are Biased High – Most but not all of our concerns with the URBEMIS model result from its heavy reliance on detailed default assumptions that are not likely to be well understood by project applicants required to use the model under the proposed rules. As our analysis shows, a number of these default assumptions substantially overestimate residential project emissions in the following areas:

- by about 20% for NOx due to over-represented heavy-duty vehicles in the fleet mix;
- by over 20% for NOx, ROG and PM_{10} because of older age distribution assumptions; and
- by roughly 50% for PM_{10} due to incorrect silt loading factors; and
- by 20-30% for all pollutants from overstated average vehicle trip lengths in the San Joaquin Valley.

RESPONSE: The District will provide revised defaults accounting for land use specific fleet mix information, a Valley specific silt loading factor, and updated trip length data prior to rule implementation. The District will consider an age correction factor; however, more evidence of the validity of this approach is needed.

145. **COMMENT:** URBEMIS Is Inconsistent With SIP Methodology – Region-wide pollutant emissions calculated under State Implementation Plans (SIPs) use a more rigorous set of models to determine motor vehicle travel impacts and resulting emission impacts than represented in URBEMIS. During the ISR rule development, the District has provided no clear evidence that URBEMIS is capable of calculating emissions from development projects in a manner that is consistent with SIP-level emissions and has simply asserted its appropriateness for use under these rules.

To test the District's assertion, Sierra and Dowling performed an equivalent, side-by-side analysis of travel and emissions impacts of a typical hypothetical

"suburban fringe" residential project using both URBEMIS and the Fresno County regional travel demand model (one of several county-level travel demand models used to calculate vehicle travel under the SIP). (As in URBEMIS, emission impacts were calculated using the Air Resources Board's EMFAC2002 vehicle emission factor model.) Our analysis found that URBEMIS estimates over 60% higher vehicle miles traveled (VMT) and over 50% higher emissions for all pollutants than the travel model/SIP-based approach. Moreover, this discrepancy cannot apparently be corrected by using "better" URBEMIS inputs than the default assumptions built into the model. Thus, these findings cast doubt on the validity of broadly applying URBEMIS under the ISR rule as URBEMIS clearly does not produce SIP-consistent emission impacts.

RESPONSE: Prior to implementation, the District will provide updated default values to provide the most accurate emission estimates possible. Regional travel demand models are not practical for project level analysis. The rule requires 50 percent of baseline emissions to be mitigated. The 50 percent more than accounts for emissions due to counting both ends of the trips related to the project. URBEMIS counts two way trips to account for the total impact of the project. When used in analyze a single project, this is appropriate measure of impact. When looking at regional impacts, only half of the trips should be counted since if every project, new and existing were examined at once it would exactly double count the trips. Using URBEMIS will result in consistent analysis from project to project. Emission reductions achieved by the rule from offsite measures will be calculated using emission factors and methods consistent with the SIP. Onsite measures will be credited in accordance with EPA Voluntary and Emerging Emission Measures Policy.

146. COMMENT: Residential Fees Appear Understated in Socioeconomic Report – In addition to the comments summarized above on the URBEMIS model, we also have concerns with the fee estimates for typical residential developments contained in the District's socioeconomic analysis of the ISR rules. Table 16 of the socioeconomic report cites "worst-case" fee estimates ranging from $856 per unit in 2006 to $2,841 per unit in 2010. The supporting text offers no explanation of how these estimates were developed.

Its fundamental flaws notwithstanding, Sierra independently estimated residential fees using URBEMIS, and the fee formulas and cost reduction ratios contained in the August drafts of Rule 9510 and 3180. Our analysis found fees were twice as high ($1,607-$7,971 per unit) over the same period for a single-family residential development, assuming a default housing density of 3 units/acre. When the housing density was doubled (to 6 units/acre), per unit fees were still over 50% higher ($1,295-$5,556 per unit) than those cited (without explanation) In the socioeconomic report. . We also calculated fees assuming a 93% vs. 7% split between single and multi-family units, based on the average number of new single- and multi-family housing units permitted in the San Joaquin Valley in

2002 obtained from the California Department of Finance (http://countingcalifornia.cdlib.org/title/castat.html). Even under these mixed use assumptions, our fee estimates ranged from $1,550-$7,702 per unit, still nearly twice as high as those in the socioeconomic report.

Thus, we question how the estimates in that report were developed. Our analysis suggests that the worst case residential fees are substantially higher than those employed in the socioeconomic analysis. If this is correct, then the impacts quantified in the study are understated and would need to be revised.

RESPONSE: Sierra incorrectly calculated the construction emission reductions. This accounts for the differences between the District's numbers in the socio-economic impact report and Sierra's inflated numbers.

147. COMMENT: Revenue From Residential Fees Will Dramatically Exceed the Cost of Purchasing Mitigation Needed to Meet ISR SIP Commitments – Using information developed by the District for this rulemaking, Sierra prepared estimates of the funds that will be generated from residential fees and spent purchasing mitigation between 2006 and 2010. We found incoming fee revenue exceeded outgoing mitigation expenses by $146 to $728 million depending on the level of the fee assumed (the percent difference ranges from 377% to 1,873%). The magnitude of these differences indicates that the rule is seriously flawed. There are two primary reasons for the discrepancy between fee revenue and mitigation expenses. First, as noted above, URBEMIS default assumptions include biases that lead to significant overestimates of project emissions, which in turn lead to overpayment of mitigation fees. Second, there is a fundamental flaw in the fee formulas developed for the rule that overstates the cost of purchasing mitigation.

The fee formulas are designed to advance to the District a monetary sum necessary to mitigate excess emissions not mitigated onsite for a period of ten years. Assuming no onsite mitigation, the operational NOx formula requires payment for 2.5 times and the operational PM_{10} formula requires payment for 5 times the estimated base year emissions. The important point is that developers would be required to pay mitigation fees that offset several years of project emissions. Mitigation expenses, however, are not denominated in years. Instead they represent a single one-time purchase that continues to provide emission reductions for multiple years. According to the staff report the average project life for NOx mitigation is 7 years and for PM_{10} it is 12 years.

Thus, assuming no onsite mitigation, a project applicant can expect to pay for 17.5 years of mitigation for the base year NOx emissions of the project (i.e., 2.5 × 7) and 60 years of mitigation for the base year PM_{10} emissions of the project (i.e., 5 × 12). This bias is extreme and comes on top of the significant default biases incorporated into URBEMIS. Collectively, they explain the huge absolute

and percentage difference between incoming fees and outgoing mitigation expenses. Since the residential fees in this analysis are used to purchase all of the ISR SIP mitigation commitments, the inclusion of both residential and non-residential (e.g., industrial) development fees would only worsen the already enormous inconsistency between ISR revenue and expenses.

RESPONSE: The fee formula does not include a project life multiplier of 7 or 12 years. Any funds collected will be used on projects with average project lives of 7 for NOx or 12 years for PM10, so the mitigation is effective for that long on average. The fee formula calculates an amount of emissions in tons that must be mitigated at the cost of reductions for each year. For most projects funded, the reductions may be considered permanent since at the end of the project life new engines/devices will be purchased that achieve reductions that are equivalent or better.

148. COMMENT: Conclusions.
The draft ISR rules have serious and fundamental flaws related to their reliance on URBEMIS and its extreme overstatement of residential project emissions. Moreover, our analysis of incoming and outgoing revenue streams indicates that the ISR fee formulas dramatically overstate the amount of revenue needed to buy emission reduction offsets for NOx and PM_{10} at "market" prices estimated by the District.

RESPONSE: The District strongly disagrees with this conclusion. Sierra based its conclusions on erroneous calculations and comparisons.

SIERRA RESEARCH
ATTACHMENT A
DETAILED COMMENTS

Our detailed comments on the ISR rules are presented below. Some of these comments were provided by Sierra to the District in July in response to the preceding versions of the draft rules. For completeness and where relevant as related to the District's response to these earlier comments, they are repeated in this letter. At the end of each of these comments, we have listed the District's response as contained in Appendix A of the August version of the ISR rule packet and provided follow-up comments to these responses.

149. COMMENT: URBEMIS Fleet Mix Overstates Residential Project Emissions – One of the most striking instances of inappropriate default data in URBEMIS is the distribution of vehicle types (e.g., passenger cars, light trucks, heavy trucks, etc.) or "fleet mix" employed in the model. Fleet mix differences can significantly impact calculated vehicle emissions because of the relative stringency imposed on different vehicle types under emission certification standards adopted and implemented by the state Air Resources Board (ARB). Generally speaking,

passenger cars must meet more stringent (i.e., lower) emission standards than larger vehicle types such as heavy-duty trucks.

The default fleet mixes in URBEMIS (which vary slightly by calendar year) are based on statewide average distributions contained in ARB's EMFAC2002 model. Those default distributions assume that roughly 3% of the vehicles are heavy-duty vehicles (trucks and buses). This is reasonable for a statewide or air basin average of a large vehicle fleet, but clearly not representative of the mix of vehicles operating in a new residential project. New residential projects are not likely to contain any heavy-duty vehicles (in the "operating" phase following construction). Thus, the use of the URBEMIS default fleet mixes that contain heavy-duty vehicles is clearly inappropriate for these projects.

Table 1 compares the results of URBEMIS runs with default and "no heavy-duty" adjusted fleet mixes. These URBEMIS runs were performed for hypothetical 100-unit residential development with single family detached housing for calendar year 2005 using default assumptions for the remaining inputs and assume no mitigation.

The upper portion of Table 1 shows the existing default fleet mix and the corrected fleet mix which was adjusted by removing all heavy-duty vehicle categories and renormalizing the remaining percentages. The lower portion compares operating emissions calculated by URBEMIS using each fleet mix. Although the emission impacts for ROG and PM_{10} are minimal, NOx emissions are some 23% lower (2.13 vs. 2.76 tpy) when representative fleet mix is used to model residential project emissions.

Table 1
Emission Impacts of Corrected Vehicle Fleet Mix
(SJV Fleet, Calendar Year 2005)

Vehicle Class	Default Mix (%)	Adjusted Mix (%)
Light Auto	56.1	58.1
Light Truck 1	15.1	15.6
Light Truck 2	15.5	16.1
Med Truck	6.8	7.0
Light-Heavy Truck 1	1.0	-
Light-Heavy Truck 2	0.3	-
Med-Heavy Truck	1.0	-
Heavy-Heavy Truck	0.8	-
Line Haul	0.0	-
Urban Bus	0.1	-
Motorcycle	1.6	1.7
School Bus	0.3	-
Motor Home	1.4	1.5
FLEET TOTALS	100.0	100.0
Heavy-Duty Pct.	3.5	0.0
Operating Emissions (tpy) for 100-Unit Residential Project:		
ROG	2.18	2.16
NOx	**2.76**	**2.13**
PM_{10}	1.99	1.98

This is a clear instance where URBEMIS default inputs are not appropriate and significantly overstate NOx emissions and resulting mitigation fees that would be calculated under the District proposed ISR rules. This finding clearly points out the need for the District to thoroughly review the default assumptions in URBEMIS and carefully consider the technical capabilities of applicants as end users of the model under these rules.

RESPONSE: The District is working to ensure that the fleet mix assumptions in URBEMIS are appropriate for each land use type. The District will provide updated land use specific fleet mix information for residential development and possibly other land uses prior to rule implementation. URBEMIS data files containing the updated fleet mix data will be available for ease of use. We will accept changes to default information such as fleet mix when supported by adequate documentation. While the fleet average may somewhat overstate emissions [from] residential developments there are heavy-duty truck emissions associated with them. These include school buses, refuse collection, package delivery and other service vehicles.

150. COMMENT: Follow-Up – Refuse collection vehicles are contained in the heavy-heavy truck (HHT) category. In 2004, ARB adopted a statewide rule for controlling emissions from solid waste collection vehicles

(http://www.arb.ca.gov/regact/dieselswcv/dieselswcv.htm). Under that effort, a solid waste collection vehicle emissions inventory was prepared which identified the statewide population of both residential and commercial refuse collection vehicles as 11,778 in calendar year 2000. According to EMFAC2002, the statewide population of all HHTs in 2000 was 158,204. Thus, residential and commercial refuse collection vehicles represent only 7% (11,778 ÷ 158,204) of the total HHT population, with residential collection vehicles less than that.

Package delivery and other service vehicles generally span the light-heavy truck (LHT) and medium-heavy truck (MHT) categories, but the vehicle populations and vehicle miles traveled for those vehicles serving residential customers is likely much less than those serving commercial customers. Thus, the EMFAC2002 fleet percentages for the LHT and MHT categories still overstate the fractions of those vehicles serving residential areas.

To address these issues, the analysis presented earlier in Table 1 was revised to include school buses and all LHTs and MHTs at the same proportions of the original EMFAC2002 fleet mix. This addresses the District concern that school buses be included and conservatively overstates the representation of residential package delivery and other service vehicles. Since residential refuse collection vehicles represent a very small fraction of all HHTs (less than 7%), the HHT residential fleet fraction was set to zero. Using this revised residential fleet mix, NOx emissions were calculated to be 2.44 tpy, which are 12% lower (2.44 vs. 2.76 tpy) than those based on URBEMIS defaults.

Thus, we believe NOx emissions for a properly determined residential fleet mix are still 12-20% lower than if URBEMIS defaults are used, depending on what assumptions are made with respect to the package delivery and other service vehicle fractions of LHTs and MHTs.

RESPONSE: EMFAC emission projections are revised periodically to account for changes from adopted motor vehicle emission regulations. The next version of EMFAC is expected to be released in 2006. The District will help fund the next upgrade to URBEMIS to utilize the new EMFAC. The District's methodology for estimating land use specific fleet mixes will be available prior to rule implementation

151. COMMENT: URBEMIS Age Distribution Overstates Residential Project Emissions – Another area where URBEMIS does not accurately reflect particular project conditions relates to the distribution of vehicle ages internally built in to the model. The vehicle age distributions contained in URBEMIS are based on statewide average vehicle registrations for the entire on-road fleet contained in the EMFAC2002 model. These distributions likely reflect a generally older vehicle fleet than exists in a new residential project. Vehicle emissions strongly depend on vehicle age due to ARB's implementation of dramatically tighter

emission standards over the last 30 years. New vehicles today are approximately 10-20 times cleaner than those introduced in the early 1970s. And this trend will continue into the future. Thus, it is necessary to accurately represent the age distribution of a fleet of vehicles when calculating their emissions.

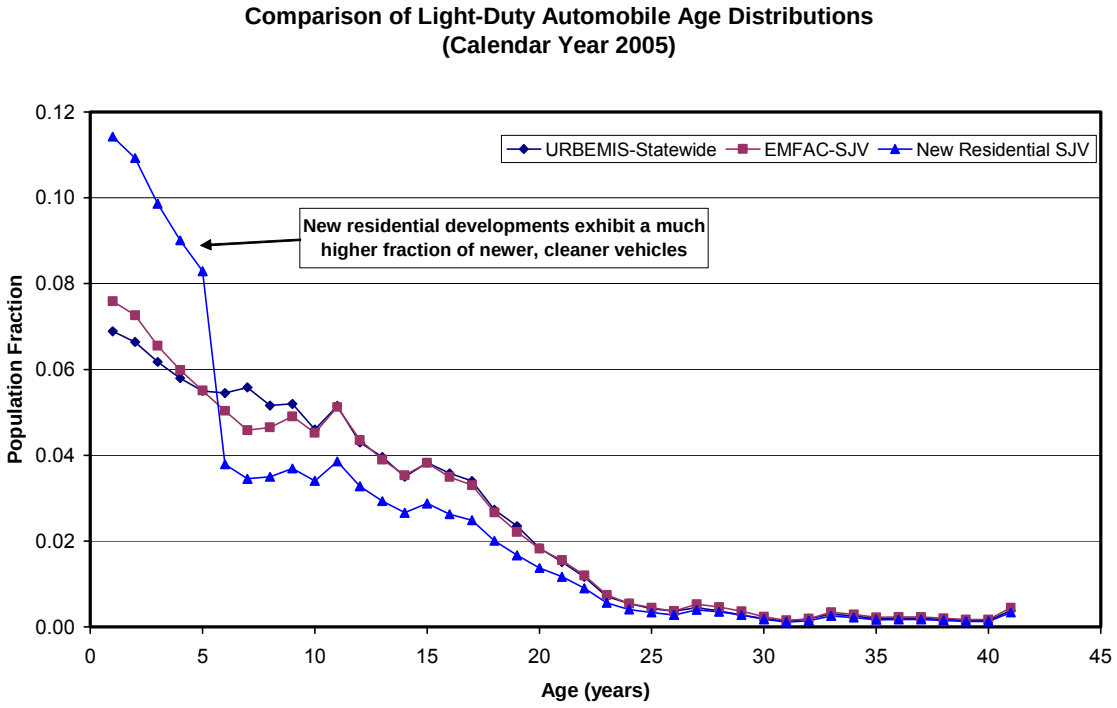
Our subcontractor Dowling has compiled statistics on housing age and vehicle fleet age from two readily available data sources: 1) the 2000 U.S. Census; and 2) the 2001 Caltrans Statewide Household Travel Survey. They compared vehicle age from households in the San Joaquin Valley in two groups:

1. "new" households defined as those that were ≤ 10 years old; and
2. "old" households defined as those older than 10 years.

Dowling found that the "new" housing areas had a 49.5% to 50.5% mix between vehicles ≤ 5 years old and vehicles > 5 years old. In the "old" household areas, the split between ≤ 5 year old vehicles and vehicles > 5 years old was 35.7% to 64.3%, indicating that new households in the San Joaquin Valley reflect a newer vehicle fleet than represented by the URBEMIS model defaults for the entire area.

Figure 1 illustrates the differences in vehicle age distributions between those in the EMFAC2002 model (upon which URBEMIS is based) and those developed for a typical new residential development based on Dowling's findings. As highlighted in Figure 1, new residential developments exhibit a much larger fraction of newer and therefore generally cleaner vehicles.

Figure 1



The emissions impact of using a younger age distribution typically found in new residential developments was determined from a series of spreadsheet calculations by individual model year using age-specific emissions factors extracted from the EMFAC2002 model.

Table 2 presents and compares resulting light-duty automobile exhaust emission factors (in grams per mile) during summer in calendar year 2005. Table 2 also shows the percentage difference in emission factors (and thus calculated project exhaust emissions) using the URBEMIS and New Residential age distributions.

Table 2
Exhaust Emission Impacts of Corrected Vehicle Age Distribution
(SJV Light-Duty Auto Fleet, Calendar Year 2005, Summer)

Quantity/Age Distribution	ROG	NOx	PM_{10}
Emission Factor (grams/mile) - URBEMIS Default	0.177	0.290	0.0082
Emission Factor (grams/mile) - New Residential	0.132	0.222	0.0065
% Difference (New Residential vs. URBEMIS)	**-25.6%**	**-23.3%**	**-20.5%**

As highlighted in Table 2, exhaust emissions of light-duty automobiles were found to be over 20% lower for ROG, NOx and PM_{10} when an age distribution representative of a typical new residential neighborhood is used compared to the

existing fleet-average age distribution contained in URBEMIS. These emission impacts calculated for automobiles are likely to be similar for light-duty trucks as well, which together with automobiles account for about 90% of the vehicles in a residential project fleet.

RESPONSE: The District will consider adding an age correction factor in the fee calculation formula for residential development. The emissions for PM10 in the table appear to be from exhaust and are small compared to the entrained road dust that is not affected by the age of the vehicle.

152. COMMENT: Unlike the previous fleet mix problem which can be addressed by issuing guidance to supply a different fleet mix in one of the URBEMIS input screens, the model cannot be easily revised to properly account for a representative residential vehicle fleet age distribution. The way URBEMIS is currently designed, it internally uses a series of calendar year and season specific emission factor files developed from "upstream" runs of the EMFAC2002 model for a statewide average vehicle fleet. Although it is possible to generate air basin-specific EMFAC2002 files, URBEMIS would need to be re-programmed to utilize these air basin-specific emission factors. More importantly, fleet age distributions for an air basin as a whole are still not likely to reflect those of a typical new residential project. This can clearly be seen from the "EMFAC-SJV" and "New Residential SJV" distribution plotted earlier in Figure 1.

The EMFAC2002 model maintained by ARB is designed to produce several types of outputs under the following three modes: 1) "Burden"; 2) "Emfac"; and 3) "Calimfac". URBEMIS is currently designed to work with "Emfac" mode outputs from EMFAC2002. Although EMFAC2002 can be run with different age distributions, this feature is only available under the "Burden" output mode, not the "Emfac" mode.

Thus, we believe the District will need to completely overhaul the design of URBEMIS and its interaction with ARB's "official" EMFAC2002 emission factor model or consider another analysis method/tool to adequately address this age distribution issue for residential project analyses under the ISR rules.

RESPONSE: The District continues to believe that URBEMIS is the appropriate tool for the job. The District will consider an off model vehicle age correction if well documented. However, the District believes that the fleet average is a reasonable assumption for new development projects. There are a number of factors that impact emissions including age, vehicle class, and fleet turnover. If more specific information is available, the District would consider utilizing project specific numbers.

153. COMMENT: Follow-Up – When asked to clarify this response at the September 1 workshop, District staff indicated that their primary concern with simply using the revised age distributions presented earlier by Sierra/Dowling was that light-duty vehicle class mixes may also be different in new residential areas than represented by URBEMIS defaults. Specifically, the concern was that residential vehicle fleets contain a much higher fraction of sport utility vehicles (SUVs) and pickups than represented in a region-wide fleet.

Our original analysis of the emission impacts of corrected vehicle age distribution was conservatively applied only to passenger cars (which make up less than 60% of the residential fleet), instead of all light-duty vehicles (which comprise roughly 90% of the fleet). We revised our original analysis to include all light-duty vehicles (which include both passenger cars and the light-duty truck categories) because the household survey data upon which the revised age distributions were based included both cars and light-trucks. And to conservatively address the District's concern that a residential fleet would contain a higher fraction of SUVs and pickups than in a region-wide fleet, we doubled the existing fraction of the Light-Duty Truck 2 (LDT2) category (which contains most of the SUVs and large pickups) from roughly 16% to 32%.

Table 3 compares the results of this revised analysis, which applies the newer age distribution to all light-duty vehicles and doubles the LDT2 fleet fraction, to those based on the original URBEMIS defaults. The percentage differences shown in Table 3 are very similar to those presented earlier in Table 2. The reason for this is that although light-duty trucks (specifically LDT2s) have been historically required to meet less stringent in-use emission standards than passenger cars, this gap in stringency has narrowed in recent years and more importantly, their standards have been tightened over time much like passenger car standards. Thus, dramatically increasing the assumed light-duty truck fraction in the residential fleet has much less effect on the relative emission impact compared to URBEMIS defaults and accounting for the younger age distributions of all light-duty vehicles found in newer residential vehicle fleets.

Table 3
Exhaust Emission Impacts of Corrected Vehicle Age Distribution and Doubled LDT2 Fleet Fraction
(SJV Light-Duty Vehicle Fleet, Calendar Year 2005, Summer)

Quantity/Age Distribution	ROG	NOx	PM_{10}
Emission Factor (grams/mile) - URBEMIS Default	0.180	0.345	0.0103
Emission Factor (grams/mile) - New Residential	0.133	0.267	0.0084
% Difference (New Residential vs. URBEMIS)	**-26.1%**	**-22.5%**	**-17.9%**

Therefore, even when accounting for a higher fraction of SUVs and pickups in new residential fleets, we maintain that URBEMIS still overstates NOx and PM_{10} exhaust emissions by approximately 20% due to unrepresentative age distribution assumptions. We believe we have provided the District with ample and readily-available evidence regarding residential fleet age distributions, whose impacts overwhelm those due to what may be higher SUV and pickup fractions in new residential developments. Furthermore, even if fleet data were collected through a survey of new residential developments, the District has not answered the question of how to apply these data since they cannot be accommodated within URBEMIS.

RESPONSE: The District still believes that URBEMIS is the best model for the job and has consistently stated that it would use better data when available. The District will consider applying an age correction factor to the output to address this concern.

154. COMMENT: URBEMIS Silt Loading Factors Inconsistent with ARB Inventory, Overstates Residential Project Emissions – This is another striking example where URBEMIS default assumptions dramatically overstate actual residential project emissions; in this case, by nearly 50% of total operating PM_{10} emissions.

The default silt loading factor supplied to the user by URBEMIS for calculation of entrained (i.e., fugitive dust) PM_{10} emissions is inconsistent with those used by ARB on its emissions inventory and the District's PM_{10} SIP.

In URBEMIS and in ARB's emissions inventory, fugitive dust PM_{10} emissions are calculated for vehicle travel on paved roads using the following equation:

$$EFpaved = k \times (sL/2)^{0.65} \times (W/3)^{1.5}$$

Where:

EFpaved is the emission factor (lb per vehicle mile traveled);
k is the particle size multiplier (0.016 for PM_{10});
sL is the road surface silt loading factor (in grams per square meter);
W is the average weight of vehicle traveling on the road (4,850 lbs is default).

The default road surface silt loading factor in URBEMIS is 0.1 grams per square meter. This value is higher and does not comport with San Joaquin Valley values used by ARB in its statewide inventory for entrained road dust on paved roads, which are different for each roadway type as follows:

- 0.020 g/m^2 for freeways
- 0.035 g/m^2 for major arterials

- 0.035 g/m^2 for collectors
- 0.320 g/m^2 for urban locals
- 1.6 g/m^2 for rural locals.

Using data compiled by the Federal Highway Administration (FHWA) under the Highway Performance Monitoring System (HPMS), the San Joaquin Valley exhibits the following travel percentages by the road types listed above:

- Freeways – 33.25%
- Major Arterials – 38.97%
- Collectors - 27.59%
- Urban Locals – 0.19%
- Rural Locals – 0.01%

The weighted average silt loading factor using these travel fractions and ARB's silt factors by roadway type was calculated to be 0.031 grams per square meter, which is well below the 0.1 default values contained in URBEMIS. Using this ARB and HPMS-based weighted average silt factor for the San Joaquin Valley in the above equation results in a paved road dust emission factor that is 53.6% below that based upon the URBEMIS default silt factor. Use of the ARB-consistent silt factor will also result in a 53.6% reduction in paved road dust PM_{10} emissions computed using URBEMIS defaults.

According to emissions inventory summary data available from ARB on-line at http://www.arb.ca.gov/ei/emsmain/reportform.htm paved road dust PM_{10} emissions make up about 90% of total on-road vehicle PM_{10} emissions in the San Joaquin Valley, excluding unpaved road travel. (We exclude unpaved road dust under the assumption that operating emissions of vehicles in a new residential project exhibit little travel on unpaved roads.) Thus, use of a paved road silt loading factor consistent with ARB's inventory would translate to a 48.2% reduction on total operation PM_{10} emissions of a residential project as described below:

$$\%Reduction = PavedFrac \times (1 - \%SiltReduction) + RemainingFrac$$
$$= 90\% \times (1-53.6\%) + 10\%$$
$$= 48.2\%$$

Where *PavedFrac* is the fraction of project emissions from paved road dust, *%SiltReduction* is the relative reduction in paved road emissions using the ARB-consistent silt factor compared to URBEMIS and *RemainingFrac* is the remaining project emissions of PM_{10} (from exhaust, brake wear and tire wear).

Again, this issue and the alarmingly high overstatement of PM_{10} emissions based on model defaults points out the need to further review and provide detailed guidance for use of URBEMIS in calculating project-specific emissions under the proposed ISR rules.

RESPONSE: The District concurs with Sierra's methodology and will ensure that the correct silt loading factors are utilized in URBEMIS defaults.

155. COMMENT: Follow-Up – We appreciate the District's response to correct the existing silt load factors in URBEMIS. However, when questioned during the September 1 workshop about how and when these silt loading corrections (as well as corrections related to the earlier fleet mix and vehicle age issues) would be addressed, staff indicated that these corrections to URBEMIS defaults would not be completed and released for review prior to the District Board hearing in mid-November for adoption of the ISR rules. Moreover, staff was unclear whether these corrections would be handled by revising the URBEMIS model, or by developing written guidance for users of the model under the ISR rules instructing them how to correct the overstated model defaults when applied to residential development projects.

Given the significance of the impacts of the flawed model defaults on the costs to comply with these proposed rules, we believe these model revisions or guidance documents should be developed and publicly reviewed before ISR rules are adopted if the District intends to pursue the rules despite URBEMIS' deficiencies.

RESPONSE: The District is developing guidance for preparing the air quality impact assessment required by the rule. The guidance will include the default silt-loading factor provided by Sierra Research. The District will provide URBEMIS data files updated with changes that can be used without having to enter the new data. The next upgrade to URBEMIS will contain much of the updated information. The staff report has been updated to describe the impact of these changes on the emissions estimates and economic impacts.

156. COMMENT: URBEMIS Is Inconsistent With SIP Methodology – When a typical residential project was modeled using both URBEMIS and a SIP-based modeling URBEMIS estimates over 60% higher vehicle miles traveled (VMT) and over 50% higher emissions for all pollutants than SIP-based approach.

This is not surprising. The URBEMIS model was originally written as a "sketch-planning" tool, designed to produce intentionally conservative analyses of localized emission impacts from different land uses. For over ten years, the URBEMIS model has been used to assess development project emissions under the California Environmental Quality Act (CEQA) review process. Under CEQA, use of URBEMIS as a conservative (i.e., over-predictive) screening tool is entirely appropriate for comparing project emissions to "significance thresholds"

established under air district guidelines since CEQA requires disclosure of project impacts and significance, but not compliance with regional or state air quality plans or standards. Under this process, URBEMIS-based emission impacts can acceptably err on the side of caution or over-prediction.

RESPONSE: URBEMIS has been continuously updated to provide increased accuracy with each new version. Many of the default values that are based on statewide averages can be changed to use local information when available. The District appreciates the review conducted by Sierra Research to identify additional areas of improvement. The next version of URBEMIS will contain many of these improvements. In the interim, applicants will be instructed to enter local information that is currently available. This information will be provided in a District guidance document. Analyses prepared by the District will also use the local information. URBEMIS remains the best tool for performing project level analyses and provides reasonable estimates of project impacts.

157. COMMENT: Conversely, these ISR rules are being implemented to address specific emission reduction commitments made by the District in Ozone and PM_{10} SIPs for the San Joaquin Valley. Region-wide pollutant emissions calculated under these SIPs use a more rigorous set of models that have been validated with direct measurements to determine motor vehicle travel impacts and resulting emission impacts than represented in URBEMIS. During the ISR rule development, the District has provided no clear evidence that URBEMIS is capable of calculating emissions from development projects in a manner that is consistent with SIP-level emissions. The District has simply asserted the appropriateness of URBEMIS under these proposed ISR rules despite the fact that CEQA guidelines published by other air districts such as the Bay Area and Sacramento clearly characterize URBEMIS as a conservative sketch-planning tool.

RESPONSE: The District believes that URBEMIS has been improved beyond its characterization as a sketch planning tool. Very few of the modules of the program are overly conservative. Most modules rely on statewide averages extracted from the emission inventory which should not be considered conservative estimates. The most important module is the mobile source module that includes the same emission factors used to build the emission inventory. It does a good job of arriving at a composite emission rate needed for a project level analysis. Models can always be made more accurate by individualizing more and more input factors. The District believes that URBEMIS balances data requirements with reasonable output accuracy and ease of use. The travel demand models described by Sierra Research are extremely data intense and would be very costly to run for the approximately 1,000 projects that will be submitted to the District each year. It is uncertain whether the demand models are more accurate for project level analyses than URBEMIS with local information**.**

158. COMMENT: To test the District's assertion, Sierra and Dowling performed an equivalent, side-by-side analysis of travel and emissions impacts of a typical hypothetical "suburban fringe" residential project using both URBEMIS and the Fresno County regional travel demand model3 (one of several county-level travel demand models used to calculate vehicle travel under the SIP. (As in URBEMIS, emission impacts were calculated using the Air Resources Board's EMFAC2002 vehicle emission factor model.)

For our investigation, we considered a 500-unit single family residential project located within a 160-acre parcel in an undeveloped/lightly-developed area in Clovis northeast of downtown Fresno near the intersection of Minnewawa and Shepherd at the edge of the urban area. This was intended to represent a typical suburban project at the fringe of an urbanized area and roughly matches the default single family residential project density assumed in URBEMIS of three units per acre. We looked at travel activity and emissions during Summer 2010.

Dowling ran the Fresno COG travel demand model in 2010 for a baseline (no project) case and a "with project" case under which the 500-unit project was simulated within the affected traffic analysis zone. The detailed travel model outputs were then fed into ARB's current EMFAC2002/BURDEN model to calculate associated emission impacts with the added project. These results were then compared to an URBEMIS simulation of a 500-unit single-family residential project in the San Joaquin Valley. The URBEMIS run assumed pass-by trips were accounted for and assumed an urban land use type. Since we simulated a single land use (single family residential) in both the travel model and URBEMIS runs, there was no need to apply the "double-counting" correction within URBEMIS.

Our analysis found that URBEMIS estimated daily VMT from this project at 35,817, compared to 21,886 using the SIP-based travel model, an increase of nearly 64%. Emission impacts using URBEMIS were also higher for all pollutants and ranged above 50% compared to the SIP-based approach.

3 Regional travel models such as the Fresno County model mathematically simulate vehicle trip movements over a regional roadway network by dividing the region into demographically similar "traffic analysis zones" (TAZs) similar to census tracts. Demographic and socioeconomic data for each TAZ are used to estimate the number and types of person trips taken between each TAZ. These person trips are then translated into vehicle trips (or non-vehicle trips such as walking or bicycle trips) and loaded onto a series of roadway links that spatially approximate the actual regional roadway network.

From our analysis of the underlying elements of the two approaches, we have preliminarily concluded that the discrepancy in VMT is caused by two related factors:

1. overstated defaults trip lengths for typical suburban residential projects in the San Joaquin Valley; and

2. the inherent underreporting of short trips in household survey data upon which average trip length estimates are based.

The trip generation rates in both models were identically-matched because they both rely on the same source, trip generation rates by land use from the Institute of Transportation Engineers (ITE). The ITE Trip Generation rates are a more accurate representation of vehicle traffic at a particular land use than rates based on household travel surveys. The ITE rates are based on actual driveway traffic counts at many land uses across the United States, and do not rely on self-reporting of trips. Therefore, the use of ITE trip generation rates in URBEMIS would accurately represent total trip-making, if the characteristics of the higher numbers of trips were identical to the characteristics survey-based trips used to determine average trip lengths. However, there is evidence that this is not the case, particularly for trip lengths.

RESPONSE: The District will contact the 8 Valley transportation planning agencies to obtain new recommended trip lengths for each county. This information will be included in the guidance provided by the District for use in URBEMIS. The District is not convinced that using the Transportation Demand Model will provide more accurate results.

159. COMMENT: The 2000-2001 Caltrans travel survey included a parallel study of actual vehicle movements using GPS units. The vehicle movements from the GPS surveys were compared with the self-reported trips from the same households. Overall, the GPS surveys resulted in 29 percent more trips than the self-reported travel survey results.

A related study4 identified the characteristics of underreported trips.5 In particular, the study found that short trips were much more likely to be underreported in travel surveys. Although trips of 10 minutes or less made up 48 percent of the total sample, the short trips accounted for 71 percent of the trips that were missing in self-reported results but identified by the GPS survey. Therefore, the short trips were about 50 percent more likely to be missing from the travel survey results.

4 Joanna Zmud and Jean Wolf, "Identifying the Correlates of Trip Misreporting – Results from the California Statewide Household Travel Survey GPS Study," 10th International Conference on Travel Behaviour Research, August, 2003.

5 Joanna Zmud and Jean Wolf, "Identifying the Correlates of Trip Misreporting – Results from the California Statewide Household Travel Survey GPS Study," 10th International Conference on Travel Behaviour Research, August, 2003.

The URBEMIS model therefore overestimates vehicle-miles of travel by basing the total trip generation on the higher ITE Trip Generation rates, but basing the average trip length characteristics on a smaller survey-based subset of trips that excludes many of the shorter trips. Moreover, it may not be easy or simple to correct this discrepancy because unbiased GPS or instrumented vehicle data may not be available for the San Joaquin Valley.

RESPONSE: It seems that Sierra is attempting to discredit URBEMIS by over complicating the emission calculation process. The differences between the project modeling done by URBEMIS and the regional modeling done by transportation demand models are not a valid comparison. With minor corrections URBEMIS will produce results very close to the SIP inventory model and URBEMIS will continue to be improved with each new version.

160. COMMENT: Although our side-by-side analysis of URBEMIS against a SIP-based approach was limited to a single hypothetical case study of a suburban "fringe" residential development, this case was intentionally selected because in addition to being a common example, it also represented conditions (i.e., urban edge) where it was believed that travel impacts from both approaches would be in closest agreement. Thus, the fact that this case study showed URBEMIS overstated SIP-based travel and emissions impacts by over 60% and 50%, respectively, casts doubt on the validity of broadly applying URBEMIS under the ISR rule as URBEMIS clearly does not produce SIP-consistent emission impacts.

Under both public and private sector work performed throughout California for over twenty years, Sierra has found no precedent at any air pollution control district that employs a fundamentally inconsistent methodology in implementing, monitoring and tracking emission reductions of a district rule from that used to calculate its SIP-based commitments. Given the above findings, we believe District bears the "burden-of-proof" that URBEMIS is consistent with SIP-based methods.

RESPONSE: The District disagrees with the assertion that URBEMIS is fundamentally inconsistent with SIP commitment methodologies. Since the emission inventory is built on a regional basis, the differences in individual projects are not addressed. Benefits of on-site measures and surrounding land uses are not credited in the inventory. URBEMIS is the only tool that can quantify emissions and on-site measures at the project level using readily available emission factors and activity data consistent with other inventory models.

The SIP credit expected from the rule comes from two sources – off-site reductions purchased by the District through its grant programs, and onsite

reductions achieved through project design and infrastructure built into the project. The off-site reductions from projects such as diesel engine replacements and retrofits are quantified using engine specific emission factors and use data and enforced by legally binding contracts. These meet the most stringent SIP monitoring and tracking requirements. The onsite measures are voluntary measures selected by the project developer that are more difficult to quantify and monitor. The District will claim reductions from onsite measures in accordance with EPA's Voluntary and Emerging Measures Program. In this program, EPA recognized that many nonattainment areas will need to implement innovative measures that may not be as quantifiable as traditional SIP measures. Sierra has found no precedent for this at other Districts because the San Joaquin Valley is the first to pursue an indirect source program that will be claimed for SIP credit.

161. COMMENT: Residential Fees Appear Understated in the Socioeconomic Report – In addition to the comments summarized above on the URBEMIS model, we also have concerns with the fee estimates for typical residential developments contained in the District's socioeconomic analysis of the ISR rules. Table 16 of the socioeconomic report cites "worst-case" fee estimates ranging from $856 per unit in 2006 to $2,841 per unit in 2010. The supporting text offers no explanation of how these estimates were developed.

Its fundamental flaws notwithstanding, Sierra independently estimated residential fees using URBEMIS, and the fee formulas and cost reduction ratios contained in the August drafts of Rule 9510 and 3180. For construction emissions, project construction equipment emission factors were assumed to equal those of the statewide inventory. URBEMIS runs were generated for a 100-unit residential project in the urban San Joaquin Valley for calendar years 2006 through 2010 using model defaults except where noted below. A 4% administration fee was assumed and included in our comparisons. Attachment B provides the details of our analysis.

Our analysis found fees were twice as high ($1,607-$7,971 per unit) over the same period for a single-family residential development, assuming a default housing density of 3 units/acre. When the housing density was doubled (to 6 units/acre), per unit fees were still over 50% higher ($1,295-$5,556 per unit) than those cited (without explanation) in the socioeconomic report. We also calculated fees assuming a 93% vs. 7% split between single and multi-family units, based on the average number of new single- and multi-family housing units permitted in the San Joaquin Valley in 2002 obtained from the California Department of Finance (http://countingcalifornia.cdlib.org/title/castat.html). Even under these mixed use assumptions, our fee estimates ranged from $1,550-$7,702 per unit, still nearly twice as high as those in the socioeconomic report.

Thus, we question how the estimates in that report were developed. Our analysis suggests that the worst case residential fees are substantially higher than those employed in the socioeconomic analysis. If this is correct, then the impacts quantified in the study are understated and would need to be revised.

RESPONSE: Sierra calculated the construction emission fee incorrectly. The District-estimated costs will be lower for residential development after the analysis is revised to account for the change to the fleet mix and silt loading factor. If the trip length and vehicle age changes can be verified, they too would lower the impact of the fee.

162. COMMENT: Revenue From Residential Fees Will Dramatically Exceed the Cost of Purchasing Mitigation Needed to Meet ISR SIP Commitments – A spreadsheet was created to prepare an estimate of the revenue that would be generated from residential fees for the 2006-2010 period and the cost of purchasing the mitigation needed to supply the ISR SIP emission reduction commitments during the same time period. Key assumptions used to support the development of these estimates include:

Number of Residential Units Subject to the Rule – According to the Construction Industry Research Board, construction permits were issued for 34,000 residential units in the San Joaquin Valley in 2004. This value represents a mixture of single and multi-family homes and was held constant for the years 2006 – 2010. Since the ISR rule provides an exemption for residential projects that have less than 50 units, this value was discounted by 10% to determine the number of units that would be subject to the rule. Using this approach it was determined that a total of 153,000 units would be subject to ISR fees between 2006 and 2010.

Residential ISR Fees – As noted earlier there is considerable difference between the worst case fees employed in the District's socioeconomic analysis and those that result from the use of default assumptions employed in URBEMIS. Given the discrepancy (i.e., the fees based on default URBEMIS values exceed the District's worse case values), four scenarios were used to cover the potential range in fees:

1. One half district worst-case estimate employed in the socioeconomic analysis was used to represent the low end of potential fees;
2. District worse case fees from the socioeconomic analysis represent the only per unit fee estimate available from the District;
3. URBEMIS default values, which are based on a density of 3 homes per acre represent a true worst case fee; and
4. URBEMIS default values adjusted to represent a higher density of 6 homes per acre represents a lower cost fee.

A summary of the fees that would be required to comply with these scenarios is presented in Table 4. It shows that there are considerable differences between the worst-case District values and those produced using default assumptions from URBEMIS. The URBEMIS based values assume that developers do not supply any on-site mitigation and are required to pay the fee-based expense of mitigation. We do not know what level of on-site mitigation was included in the District's estimate.

Table 4
Per Unit Mitigation Fees ($) For Each of the Scenarios Considered

Calendar Year	One Half District Worst Case	District Worst Case	URBEMIS Default 3du/acre	URBEMIS 6du/acre
2006	468	856	1,545	1,245
2007	705	1,409	3,088	2,385
2008	1,001	2,001	4,847	3,584
2009	1,230	2,459	6,637	4,804
2010	1,421	2,841	7,665	5,343

RESPONSE: The District used 3 units per acre for single family dwelling units in the socioeconomic impact analysis and continues to arrive at the same numbers. Sierra uses a figure of 34,000 units per year for its estimates of overall potential fees. The District used 20,000 units per year based on historical data that included years when construction occurred at a much slower rate and population projections used for the District's attainment plans. We believe that it is inappropriate to base future projections on record years that many expect may be a bubble. If the growth rates do continue, that means that the impact of growth will be much greater than projected and the increased revenue from greater participation in the rule by more units would be needed to offset the additional emissions.

Residential Revenue – This value was computed by multiplying the number of units subject to the Rule times the annual fee (i.e., # of units × $/unit = $).

SIP Emission Reduction Targets – The ton/day pollutant specific reduction targets established in the SIP for NOx and PM_{10}. The same values were employed in the rule making and were documented in Appendix B of the ISR rules packet.

District-Estimated Cost of Reductions – The annual pollutant specific $/ton cost of reductions specified in the residential fee schedule for Rule 9510.

Revenue Demanded – This value was computed by multiplying the pollutant specific incremental ton per day reduction commitment established in the SIP by

the District estimated cost pollutant specific reductions by 365.25 (average days per year) by 1.05 (to account for a combination of the administrative fee of Rule 3180 and an assumed 1% application fee). A key assumption in this calculation is that developers did not provide any onsite mitigation, so the District purchased all of the reductions needed to satisfy the SIP commitment.

Attachment C presents a listing of the spreadsheet values developed for each of the above parameters for each the four mitigation fee scenarios listed above. A summary of the cumulative revenue and mitigation values computed for each scenario for the period from 2006 to 2010 is listed in Table 5. It shows that the revenue varies depending on the ISR fees established by the scenario and that the cost of mitigation is constant. Regardless of the scenario considered, incoming revenue exceeds the mitigation expense by a huge margin. As noted in the summary, we believe that this is a result of biases built into URBEMIS default assumptions and the mitigation fees established for operational emissions from residential units.

Table 5
Analysis of Residential Revenue and Mitigation Expense ($ in millions)

Fee Scenario	Revenue	Mitigation Expense	Unexpended Revenue	Relative Difference (%)
One Half District Worst Case	146.3	38.8	107.5	377%
District Worst Case	292.7	38.8	253.9	754%
URBEMIS Defaults	727.7	38.8	688.9	1,873%
URBEMIS High Density	531.2	38.8	492.4	1,368%

SIERRA RESEARCH
ATTACHMENT B
PER UNIT RESIDENTIAL FEE CALCULATIONS

URBEMIS 8.7 ANNUAL AVERAGE EMISSIONS FOR
100-UNIT SF RESIDENTIAL DEVELOPMENT PROJECT (unmitigated)
USING ALL MODEL DEFAULT VALUES

Calendar Year	Construction Emissions (tpy)		Area Source Emissions (tpy)		Operational (Vehicle) Emissions (tpy)		Area+Operational Emissions (tpy)		Total (C+A+O) Emissions (tpy)	
	NOx	PM10	NOx	PM10	NOx	PM10	NOx	PM10	NOx	PM10
2006	30.75	2.59	0.30	0.61	2.58	1.99	2.88	2.60	33.63	5.19
2007	29.38	2.48	0.30	0.61	2.42	1.99	2.72	2.60	32.10	5.08
2008	28.01	2.35	0.30	0.61	2.24	1.99	2.54	2.60	30.55	4.95
2009	26.66	2.28	0.30	0.61	2.05	1.98	2.35	2.59	29.01	4.87
2010	25.36	2.18	0.30	0.61	1.87	1.98	2.17	2.59	27.53	4.77

URBEMIS 8.7 ANNUAL AVERAGE EMISSIONS FOR
100-UNIT SF HIGH-DENSITY (6 units/ac) RESIDENTIAL DEVELOPMENT PROJECT (unmitigated)
USING ALL MODEL DEFAULT VALUES (except single family residential density)

Calendar Year	Construction Emissions (tpy)		Area Source Emissions (tpy)		Operational (Vehicle) Emissions (tpy)		Area+Operational Emissions (tpy)		Total (C+A+O) Emissions (tpy)	
	NOx	PM10	NOx	PM10	NOx	PM10	NOx	PM10	NOx	PM10
2006	26.30	1.79	0.30	0.61	2.29	1.76	2.59	2.37	28.89	4.16
2007	25.14	1.70	0.30	0.61	2.14	1.76	2.44	2.37	27.58	4.07
2008	23.98	1.59	0.30	0.61	1.98	1.76	2.28	2.37	26.26	3.96
2009	22.85	1.53	0.30	0.61	1.82	1.76	2.12	2.37	24.97	3.90
2010	21.75	1.45	0.30	0.61	1.66	1.76	1.96	2.37	23.71	3.82

URBEMIS 8.7 ANNUAL AVERAGE EMISSIONS FOR
100-UNIT SF RESIDENTIAL DEVELOPMENT PROJECT (unmitigated)
USING ALL MODEL DEFAULT VALUES

Calendar Year	Construction Emissions (tpy)		Area Source Emissions (tpy)		Operational (Vehicle) Emissions (tpy)		Area+Operational Emissions (tpy)		Total (C+A+O) Emissions (tpy)	
	NOx	PM10	NOx	PM10	NOx	PM10	NOx	PM10	NOx	PM10
2006	12.62	0.81	0.21	0.61	1.86	1.43	2.07	2.04	14.69	2.85
2007	*12.07*	*0.77*	*0.21*	*0.61*	*1.73*	*1.43*	1.94	2.04	14.02	2.81
2008	*11.53*	*0.72*	*0.21*	*0.61*	*1.61*	*1.43*	1.82	2.04	13.34	2.76
2009	*10.98*	*0.68*	*0.21*	*0.61*	*1.48*	*1.43*	1.69	2.04	12.67	2.72
2010	10.43	0.63	0.21	0.61	1.35	1.43	1.56	2.04	11.99	2.67

SIERRA RESEARCH
ATTACHMENT B
PER UNIT RESIDENTIAL FEE CALCULATIONS

SJV DRAFT RULE 9510 ISR NOx IMPACT FEE CALCULATIONS

Formula:

$$AIMF_{NOx} = \sum_{j=1}^{n} [(EBE) \times 7.5 / 3) - (EBE) \times 7.5 \times APM)] \times CNR$$

Calendar Year	Cost of NOx Red. ($/ton)
2006	$4,650
2007	$7,100
2008	$9,350
2009	$11,800
2010	$13,250
2011	$13,250
2012	$13,250
2013	$13,250
2014	$13,250
2015	$13,250

where
AIMF = Air Impact Mitigation Fee (in dollars)
j = each phase
n = last phase
EBE = Estimated Baseline Emissions of NOx as documented in the District approved air impact assessment application (in tons/year)
APM = Actual Percent Mitigation, as documented in the District approved air impact assessment application (as a fraction of one)
CNR = Cost of NOx Reductions (in dollars per ton)

$$CN\ AIMF_{NOx} = \sum_{j=1}^{n} [AEEi - (0.8 \times SEEi)] \times CNR$$

where
CN AIMF = Construction NOx Air Impact Mitigation Fee (in dollars)
j = each phase
n = last phase
AEE = Actual Estimated Equipment NOx Emissions as documented in District approved air impact assessment application (in total tons)
SEE = Statewide Average Equipment NOx Emissions as calculated by the District (in total tons)
CNR = Cost of NOx Reductions (in dollars per ton)

Calculations:

					Area + Operational Sources				Construction Sources					
	Calendar Years			Units per	Estimated Baseline Emissions	Actual Percent Mitigation	Air Impact Mitigation Fee	Area+Op Fee/Unit	Actual Equipmt Emis AEE	Assumed % AEE	State Avg Equipmt Emis SEE	Constr. Air Impact Fee	Constr. Fee/Unit	Total Fee/Unit
Scenario	Start	End	Phases	Phase	EBE (tpy)	APM (%)	AIMF ($)	($)	(total tons)	Over SEE	(total tons)	CN AIMF ($)	($)	($)
SF Resid	2006	2006	1	100	2.88	0%	$33,480	$335	102.95	0%	102.95	$95,744	$957	$1,292
SF Resid	2007	2007	1	100	2.72	0%	$48,280	$483	141.85	0%	141.85	$201,422	$2,014	$2,497
SF Resid	2008	2008	1	100	2.54	0%	$59,373	$594	166.30	0%	166.30	$310,985	$3,110	$3,704
SF Resid	2009	2009	1	100	2.35	0%	$69,325	$693	184.82	0%	184.82	$436,176	$4,362	$5,055
SF Resid	2010	2010	1	100	2.17	0%	$71,881	$719	182.29	0%	182.29	$483,071	$4,831	$5,550
HD Resid	2006	2006	1	100	2.59	0%	$30,109	$301	79.19	0%	79.19	$73,643	$736	$1,038
HD Resid	2007	2007	1	100	2.44	0%	$43,310	$433	108.88	0%	108.88	$154,612	$1,546	$1,979
HD Resid	2008	2008	1	100	2.28	0%	$53,295	$533	127.80	0%	127.80	$238,989	$2,390	$2,923
HD Resid	2009	2009	1	100	2.12	0%	$62,540	$625	142.90	0%	142.90	$337,253	$3,373	$3,998
HD Resid	2010	2010	1	100	1.96	0%	$64,925	$649	141.21	0%	141.21	$374,211	$3,742	$4,391
MF Resid	2006	2006	1	100	2.07	0%	$24,064	$241	30.37	0%	30.37	$28,243	$282	$523
MF Resid	2007	2007	1	100	1.94	0%	$34,479	$345	41.63	0%	41.63	$59,108	$591	$936
MF Resid	2008	2008	1	100	1.82	0%	$42,426	$424	48.90	0%	48.90	$91,435	$914	$1,339
MF Resid	2009	2009	1	100	1.69	0%	$49,781	$498	54.65	0%	54.65	$128,968	$1,290	$1,787
MF Resid	2010	2010	1	100	1.56	0%	$51,675	$517	53.90	0%	53.90	$142,827	$1,428	$1,945

SIERRA RESEARCH
ATTACHMENT B
PER UNIT RESIDENTIAL FEE CALCULATIONS

SJV DRAFT RULE 9510 ISR PM10 IMPACT FEE CALCULATIONS

Formula:

$$AIMF_{pm10} = \sum_{i=1}^{n} [(MBE - 0.5\,EBE) \times 10\,MCE)] \times CR$$

Calendar Year	Cost of PM10 Red ($/ton)
2006	$2,907
2007	$5,594
2008	$9,011
2009	$11,308
2010	$13,850
2011	$13,850
2012	$13,850
2013	$13,850
2014	$13,850
2015	$13,850

where

- AIMF = Air Impact Mitigation Fee (in dollars)
- i = each phase
- n = last phase
- EBE = Estimated Baseline Emissions of PM10 as documented in the District approved air impact assessment application (in tons/year)
- MBE = Mitigated Baseline Emissions, as documented in the District approved air impact assessment apllication (in tons/year)
- MCE = Mitigated Construction Emissions, as documented in the District approved air impact assessment application (as total tons)
- CR = Cost of Reductions (in dollars per ton)

$$AIMF_{pm10} = \sum_{i=1}^{n} [(MBE - 0.5\,EBE) \times 10\,MCE)] \times CR$$

$$CN\ AIMF_{pm10} = \sum_{i=1}^{n} [AEE - (0.8 \times SEE)] \times CNR$$

where

- CN AIMF = Construction PM10 Air Impact Mitigation Fee (in dollars)
- i = each phase
- n = last phase
- AEE = Actual Estimated Equipment PM10 Emissions as documented in District approved air impact assessment application (in total tons)
- SEE = Statewide Average Equipment PM10 Emissions as calculated by the District (in total tons)
- CNR = Cost of PM10 Reductions (in dollars per ton)

Calculations:

					Area + Operational Sources				Construction Sources					
	Calendar Years			Units per	Estimated Baseline Emissions	Actual Percent Mitigation	Air Impact Fee	Area+Op Fee/Unit	Actual Equipmt Emis AEE	Assumed % AEE	State Avg Equipmt Emis SEE	Constr. Air Impact Fee	Constr. Fee/Unit	Total Fee/Unit
Scenario	Start	End	Phases	Phase	EBE (tpy)	APM (%)	AIMF ($)	($)	(total tons)	Over SEE	(total tons)	CN AIMF ($)	($)	($)
SF Resid	2006	2006	1	100	2.60	0%	$18,896	$189	4.89	0%	4.89	$6,802	$64	$253
SF Resid	2007	2006	1	100	2.60	0%	$36,361	$364	9.82	0%	9.82	$22,700	$227	$591
SF Resid	2008	2006	1	100	2.60	0%	$58,572	$586	13.76	0%	13.76	$55,814	$558	$1,144
SF Resid	2009	2006	1	100	2.59	0%	$73,219	$732	16.69	0%	16.69	$84,949	$849	$1,582
SF Resid	2010	2006	1	100	2.59	0%	$89,679	$897	19.55	0%	19.55	$121,845	$1,218	$2,115
HD Resid	2006	2006	1	100	2.59	0%	$18,823	$188	3.37	0%	3.37	$1,959	$20	$208
HD Resid	2007	2007	1	100	2.44	0%	$34,123	$341	5.80	0%	5.80	$6,490	$65	$406
HD Resid	2008	2008	1	100	2.28	0%	$51,363	$514	8.17	0%	8.17	$14,718	$147	$661
HD Resid	2009	2009	1	100	2.12	0%	$59,932	$599	9.17	0%	9.17	$20,738	$207	$807
HD Resid	2010	2010	1	100	1.96	0%	$67,865	$679	9.84	0%	9.84	$27,258	$273	$951
MF Resid	2006	2006	1	100	2.04	0%	$14,826	$148	1.20	0%	1.20	$1,571	$16	$164
MF Resid	2007	2006	1	100	2.04	0%	$28,529	$285	2.18	0%	2.18	$5,494	$55	$340
MF Resid	2008	2006	1	100	2.04	0%	$45,956	$460	3.31	0%	3.31	$13,417	$134	$594
MF Resid	2009	2006	1	100	2.04	0%	$57,671	$577	3.89	0%	3.89	$19,809	$198	$775
MF Resid	2010	2006	1	100	2.04	0%	$70,635	$706	4.45	0%	4.45	$27,735	$277	$984

SIERRA RESEARCH
ATTACHMENT B
PER UNIT RESIDENTIAL FEE CALCULATIONS

SJV DRAFT ISR RULE FEE CALCULATIONS FOR TYPICAL RESIDENTIAL PROJECTS

Scenario	Calendar Year	Construction Emis %AEE Over SEE NOx	Construction Emis %AEE Over SEE PM10	Rule 3180 Admin Fee (%)	Per Unit NOx Fees Area+Op	Per Unit NOx Fees Constr	Per Unit PM10 Fees Area+Op	Per Unit PM10 Fees Constr	Total Fees Per Unit Area+Op	Total Fees Per Unit Constr	Total Fees Per Unit Admin	Total	Total Less Admin
100-Unit SF Res	2006	0%	0%	4%	$335	$957	$189	$64	$524	$1,021	$62	$1,607	$1,545
100-Unit SF Res	2007	0%	0%	4%	$483	$2,014	$364	$227	$846	$2,241	$124	$3,211	$3,088
100-Unit SF Res	2008	0%	0%	4%	$594	$3,110	$586	$558	$1,179	$3,668	$194	$5,041	$4,847
100-Unit SF Res	2009	0%	0%	4%	$693	$4,362	$732	$849	$1,425	$5,211	$265	$6,902	$6,637
100-Unit SF Res	2010	0%	0%	4%	$719	$4,831	$897	$1,218	$1,616	$6,049	$307	$7,971	$7,665
100-Unit HD SF Res	2006	0%	0%	4%	$301	$736	$188	$20	$489	$756	$50	$1,295	$1,245
100-Unit HD SF Res	2007	0%	0%	4%	$433	$1,546	$341	$65	$774	$1,611	$95	$2,481	$2,385
100-Unit HD SF Res	2008	0%	0%	4%	$533	$2,390	$514	$187	$1,047	$2,537	$143	$3,727	$3,584
100-Unit HD SF Res	2009	0%	0%	4%	$625	$3,373	$599	$207	$1,225	$3,580	$192	$4,997	$4,805
100-Unit HD SF Res	2010	0%	0%	4%	$649	$3,742	$679	$273	$1,328	$4,015	$214	$5,556	$5,343
100-Unit MF Res	2006	0%	0%	4%	$241	$282	$148	$64	$389	$346	$29	$765	$735
100-Unit MF Res	2007	0%	0%	4%	$345	$591	$285	$227	$630	$818	$58	$1,506	$1,448
100-Unit MF Res	2008	0%	0%	4%	$424	$914	$460	$558	$884	$1,472	$94	$2,451	$2,356
100-Unit MF Res	2009	0%	0%	4%	$498	$1,290	$577	$849	$1,075	$2,139	$129	$3,342	$3,214
100-Unit MF Res	2010	0%	0%	4%	$517	$1,428	$706	$1,218	$1,223	$2,647	$155	$4,025	$3,870
Resid Mix - 93% SF, 7% MF	2006	0%	0%	4%	$328	$911	$186	$64	$515	$975	$60	$1,550	$1,490
Resid Mix - 93% SF, 7% MF	2007	0%	0%	4%	$473	$1,917	$358	$227	$832	$2,144	$119	$3,095	$2,976
Resid Mix - 93% SF, 7% MF	2008	0%	0%	4%	$582	$2,960	$577	$558	$1,159	$3,518	$187	$4,864	$4,677
Resid Mix - 93% SF, 7% MF	2009	0%	0%	4%	$680	$4,152	$722	$849	$1,401	$5,001	$256	$6,659	$6,403
Resid Mix - 93% SF, 7% MF	2010	0%	0%	4%	$705	$4,598	$884	$1,218	$1,589	$5,817	$296	$7,702	$7,406

Calendar Year	Worst-Case Socio Report Resid Fees Res Fees ($/Unit)	One-Half Worst-Case Res Feed ($/Unit)
2006	$856	$428
2007	$1,409	$705
2008	$2,001	$1,001
2009	$2,459	$1,230
2010	$2,841	$1,421

SIERRA RESEARCH
ATTACHMENT B
PER UNIT RESIDENTIAL FEE CALCULATIONS

ANALYSIS OF ISR REVENUE SUPPLIED VS. DEMANDED FROM SIP

Assumptions:

34,000 residential units per year in SJV (Source: Construction Industry Research Board, CY2004 Permits)
10% of residential units exempted from ISR rules under the 50-unit project threshold
SocioHalf source of estimated residential fees (SocioWC = SE report/worst-case, SocioHalf = SE report/one half worst-case, URBDflt = URBEMIS Defaults, URBHD = URBEMIS High Density)

	SJV ISR Residential Revenue				**SJV ISR Revenue Needed to Achieve SIP Targets**				
Calendar Year	Est. New Residential Units*	Residential ISR Fee ($/Unit)	**Residential Revenue ($/year)**	Calendar Year	SIP Emission Reduction Targets (tons/day) NOx	PM10	District-Estimated Cost of Reductions ($/ton) NOx	PM10	**Revenue** Demanded ($/year)**
2006	30,600	$428	**$13,096,800**	2006	0.0	1.2	$4,650	$2,907	**$1,337,845**
2007	30,600	$705	**$21,557,700**	2007	2.8	2.4	$7,100	$5,594	**$10,198,671**
2008	30,600	$1,001	**$30,615,300**	2008	4.0	3.5	$9,350	$9,011	**$8,104,425**
2009	30,600	$1,230	**$37,622,700**	2009	5.0	4.6	$11,800	$11,308	**$9,295,883**
2010	30,600	$1,421	**$43,467,300**	2010	5.8	5.7	$13,250	$13,850	**$9,908,045**
Cumulative Totals 2006 to 2010:			**$146,359,800**						**$38,844,869**
Relative Difference in Revenue: (Supplied vs. Demanded)						**377%**			

* Discounted to reflect 10% of residential project units exempted under the 50-unit threshold
** Includes 5% "overhead" fee: 4% admin fee per Rule 3180, plus assumed 1% application fee

RESPONSE: The table provided above fails to include the average project life of the emission reduction projects that will be funded by the revenue collected. This results in severely understating the revenue required to purchase emission reductions. NOx projects have an average life of 7 years. PM10 projects have an average life of 12 years. The $/ton number in the fee formula is based on annualized cost divided by annual reductions. This allows for comparison of projects with different project lives. To arrive at the funding needed to achieve the SIP emission reduction commitment, multiply the annual reductions required times the cost per ton of each pollutant.

The District considers it inappropriate to base housing projections on 34,000 units per year. The SIP growth projections are derived from population projections provided by the Valley transportation planning agencies. If these record growth rates continue until 2010, the SIP emission budgets will need to be increased and additional reductions would be needed to achieve attainment on schedule. Rule 9510 would provide some of these additional reductions if growth exceeds predictions.

SIERRA RESEARCH
ATTACHMENT B
PER UNIT RESIDENTIAL FEE CALCULATIONS

ANALYSIS OF ISR REVENUE SUPPLIED VS. DEMANDED FROM SIP

Assumptions:

34,000 residential units per year in SJV (Source: Construction Industry Research Board, CY2004 Permits)
10% of residential units exempted from ISR rules under the 50-unit project threshold
SocioWC source of estimated residential fees (SocioWC = SE report/worst-case, SocioHalf = SE report/one half worst-case, URBDflt = URBEMIS Defaults, URBHD = URBEMIS High Density)

	SJV ISR Residential Revenue				**SJV ISR Revenue Needed to Achieve SIP Targets**				
Calendar Year	Est. New Residential Units*	Residential ISR Fee ($/Unit)	**Residential Revenue ($/year)**	Calendar Year	SIP Emission Reduction Targets (tons/day) NOx	PM10	District-Estimated Cost of Reductions ($/ton) NOx	PM10	**Revenue** Demanded ($/year)**
2006	30,600	$856	**$26,193,600**	2006	0.0	1.2	$4,650	$2,907	**$1,337,845**
2007	30,600	$1,409	**$43,115,400**	2007	2.8	2.4	$7,100	$5,594	**$10,198,671**
2008	30,600	$2,001	**$61,230,600**	2008	4.0	3.5	$9,350	$9,011	**$8,104,425**
2009	30,600	$2,459	**$75,245,400**	2009	5.0	4.6	$11,800	$11,308	**$9,295,883**
2010	30,600	$2,841	**$86,934,600**	2010	5.8	5.7	$13,250	$13,850	**$9,908,045**
Cumulative Totals 2006 to 2010:			**$292,719,600**						**$38,844,869**
Relative Difference in Revenue: (Supplied vs. Demanded)						**754%**			

* Discounted to reflect 10% of residential project units exempted under the 50-unit threshold
** Includes 5% "overhead" fee: 4% admin fee per Rule 3180, plus assumed 1% application fee

SIERRA RESEARCH
ATTACHMENT B
PER UNIT RESIDENTIAL FEE CALCULATIONS

ANALYSIS OF ISR REVENUE SUPPLIED VS. DEMANDED FROM SIP

Assumptions:

34,000 residential units per year in SJV (Source: Construction Industry Research Board, CY2004 Permits)
10% of residential units exempted from ISR rules under the 50-unit project threshold
URBDflt source of estimated residential fees (SocioWC = SE report/worst-case, SocioHalf = SE report/one half worst-case, URBDflt = URBEMIS Defaults, URBHD = URBEMIS High Density)

	SJV ISR Residential Revenue				**SJV ISR Revenue Needed to Achieve SIP Targets**				
	Est. New	Residential	**Residential**		SIP Emission Reduction		District-Estimated Cost		**Revenue****
Calendar	Residential	ISR Fee	**Revenue**	Calendar	Targets (tons/day)		of Reductions ($/ton)		**Demanded**
Year	Units*	($/Unit)	**($/year)**	Year	NOx	PM10	NOx	PM10	**($/year)**
2006	30,600	$1,545	**$47,283,711**	2006	0.0	1.2	$4,650	$2,907	**$1,337,845**
2007	30,600	$3,088	**$94,481,494**	2007	2.8	2.4	$7,100	$5,594	**$10,198,671**
2008	30,600	$4,847	**$148,331,356**	2008	4.0	3.5	$9,350	$9,011	**$8,104,425**
2009	30,600	$6,637	**$203,082,914**	2009	5.0	4.6	$11,800	$11,308	**$9,295,883**
2010	30,600	$7,665	**$234,541,633**	2010	5.8	5.7	$13,250	$13,850	**$9,908,045**
Cumulative Totals 2006 to 2010:			**$727,721,108**						**$38,844,869**
Relative Difference in Revenue: (Supplied vs. Demanded)						**1873%**			

* Discounted to reflect 10% of residential project units exempted under the 50-unit threshold
** Includes 5% "overhead" fee: 4% admin fee per Rule 3180, plus assumed 1% application fee

SIERRA RESEARCH
ATTACHMENT B
PER UNIT RESIDENTIAL FEE CALCULATIONS

ANALYSIS OF ISR REVENUE SUPPLIED VS. DEMANDED FROM SIP

Assumptions:

34,000 residential units per year in SJV (Source: Construction Industry Research Board, CY2004 Permits)
10% of residential units exempted from ISR rules under the 50-unit project threshold
URBHD source of estimated residential fees (SocioWC = SE report/worst-case, SocioHalf = SE report/one half worst-case, URBDft = URBEMIS Defaults, URBHD = URBEMIS High Density)

	SJV ISR Residential Revenue				**SJV ISR Revenue Needed to Achieve SIP Targets**				
Calendar Year	Est. New Residential Units*	Residential ISR Fee ($/Unit)	**Residential Revenue ($/year)**	Calendar Year	SIP Emission Reduction Targets (tons/day) NOx	PM10	District-Estimated Cost of Reductions ($/ton) NOx	PM10	**Revenue** Demanded ($/year)**
2006	30,600	$1,245	**$38,107,242**	2006	0.0	1.2	$4,650	$2,907	**$1,337,845**
2007	30,600	$2,385	**$72,991,721**	2007	2.8	2.4	$7,100	$5,594	**$10,198,671**
2008	30,600	$3,584	**$109,659,478**	2008	4.0	3.5	$9,350	$9,011	**$8,104,425**
2009	30,600	$4,805	**$147,021,892**	2009	5.0	4.6	$11,800	$11,308	**$9,295,883**
2010	30,600	$5,343	**$163,483,390**	2010	5.8	5.7	$13,250	$13,850	**$9,908,045**
Cumulative Totals 2006 to 2010:			**$531,263,724**						**$38,844,869**
Relative Difference in Revenue: (Supplied vs. Demanded)						**1368%**			

* Discounted to reflect 10% of residential project units exempted under the 50-unit threshold
** Includes 5% "overhead" fee: 4% admin fee per Rule 3180, plus assumed 1% application fee

RESPONSE: The tables provided above are based on erroneous information and so should be disregarded.

PETROtech Environmental Solutions
Date: September 19, 2005

Good morning. It was good to see you at the Chamber of Commerce Meeting on Friday.

163. **COMMENT:** My comment regarding SJVUAPCD Rule 9510 is as follows: I would like to see Exemption Section 4.1.4 changed to read as follows:

"Oil EXPLORATION, Production and Processing"

The way the exemption reads now, only Production and Processing would be covered.

RESPONSE: The Rule will be amended to read "Oil Exploration, Production and Processing.**"**

164. **COMMENT:** I also have a comment regarding Air Quality Guidelines for General Plans. Seyed, until about 5-7 years ago, residential development was ongoing, but it was a fraction of what it is today. I will bet that very few folds from Bakersfield paid attention to them when they were drafted. If PETROtech hadn't started doing Air Quality Impact Assessments, I would have never thought about Rule 9510. But the concern that folds have is based on their fears that sometimes Guidelines, or suggested control measures become part of the requirements.

RESPONSE: Comment Noted.

The California League of Food Processors (CLFP)

Date: September 15, 2005

165. COMMENT: CLFP's primary concern is that it is not entirely clear how some of the provisions of Rule 9510 will apply to a range of manufacturing applications, and the potential compliance costs. Based on a review of the draft CLFP suggests that the District amend the proposed rule as follows:

1. Expand the list of exemptions to include food processing facilities. These facilities should be exempted for the following reasons:
    - A large portion of NOx emissions at most food processing plants can be attributed to stationary sources such as boilers or dryers, and most of this equipment is, or soon will be, subject to new emissions reduction regulations.
    - Forklifts, one of the most common vehicles used at processing facilities, will soon be subject to new emissions control regulations.
    - Unlike many manufacturing and commercial operations, most food processors operate on a seasonal basis, and some only operate for a few months per year. This significantly limits the total amount of employee and product delivery vehicle traffic on the site.
    - A number of the emissions mitigation options suggested by the District are not viable for many food processing facilities. Most processing plants are located in rural areas near where the crops are grown. Charging workers for parking or providing free bus passes to encourage the use of mass transit won't be effective if there is no mass transit available. Cannery workers cannot telecommute or teleconference to conduct their duties, and few may want to ride a bicycle home after working a shift in a factory. Options for creating mixed use facilities may be quite limited. In the case of food processors and many other manufacturers, locating new facilities based on reducing worker travel will imply hauling the raw product further, generating longer trips and additional diesel emissions. The economic viability of investing in some energy savings devices may be limited by the seasonal nature of the business. So, there may be a narrow range of cost effective mitigation measures available to food processors.

RESPONSE: The District will expand the definition to include food manufacturing.

166. COMMENT: 2. The District should clarify how baseline emissions will be calculated for manufacturing and industrial facilities.

RESPONSE: Manufacturing and industrial facilities whose primary function is regulated by the District will be exempt. For those industries subject to the rule such as warehouse distribution centers, only indirect and area source emissions

are used for the baseline calculation. A proposed new facility going through the CEQA process would prepare an air quality impact assessment. The assessment would include an URBEMIS run to quantify area source and mobile source emissions. The facility would concurrently apply to the District for an Authority to Construct for any stationary source equipment/devices subject to permitting. District staff would then estimate stationary emissions.

167. **COMMENT:** 3. The District should consider the impact of cumulative regulatory costs on industry. Many firms located in the San Joaquin Valley are currently expending substantial funds to comply with an array of new air and water quality environmental regulations. Rule 9510 will place an additional cost burden on industry which will have a direct effect on competitiveness in the global marketplace.

RESPONSE: The District recognizes the cumulative impact of air regulations on industry and the major investments made in stationary source emission controls in compliance with District rules and regulations and has provided exemptions for sources whose primary function is permitted by the District.

Manufacturers Council of the Central Valley
Date: September 15, 2005

On behalf of the Manufacturers Council of the Central Valley, I want to thank you for the opportunity to provide comments on the draft rule 9510 (Decreasing Emissions' Significant Impact from Growth and New Development – DESIGN) and Draft Rule 3180 of the San Joaquin Valley Unified Air Pollution Control District's Rule 4309. The Council represents a number of food processing and related companies in the San Joaquin Valley including several who will be impacted by this rule – some quite significantly and others, quite unexpectedly, unless there are major modifications prior to its adoption by the Governing Board later this year.

These comments are intended to augment those submitted earlier by Rob Neenan of the California League of Food Processors and which we fully support, but will not, in the interest of time, duplicate.

168. **COMMENT:** As I have communicated to you in a telephone conversation and at the public workshop, the MCCV is particularly concerned with the lack of clarity provided in section 4.1.4 concerning development projects whose primary source of emissions are from stationary sources which are subject to rule 2201 or Rule 2010. At the minimum we would like to see the list of industries expanded to include food processing related companies (including snack foods, candy, milk and cheese), corrugated box manufacturers, can manufacturers, and wineries.

However, even this is insufficient to adequately address the concerns unless a categorical exemption is provided for these industries because the first question

that will be asked is what is the definition of primary? And the subsequent question is how will this be determined? For new developments, this will be somewhat straightforward:

A) If stationary source emissions are projected to be greater than 50 percent of the construction emissions (as calculated by the yet undeveloped emissions calculator) plus the indirect emissions (as calculated by URBEMIS) then project is EXEMPT
B) If less than 50 percent then project is NOT EXEMPT

However, if the development project is an expansion of an existing facility in a jurisdiction which requires discretionary approval, due to its particular ordinance, how will the district review the project and calculate the emissions? What will be the baseline? Will only that portion of the project that is being expanded be subject to the rule? Or will that revert to the policy of the jurisdiction? There are a number of questions that arise and this just touches the surface.

RESPONSE: The rule has been revised to clarify the sources that will be exempt from the rule.

Western States Petroleum Association (WSPA)
Date: September 16, 2005

The Western States Petroleum Association (WSPA[1]) would like to take advantage of the brief opportunity made available by District staff for industry to provide comment on the June 30, 2005 draft of the proposed Rule 9510 (Decreasing Emissions' Significant Impact from Growth and New Development – DESIGN). Our comments on critical development issues related to the rule are attached. We look forward to discussing these issues with the District during future workshop sessions and if necessary providing additional comments should it prove necessary. Preparation of such comments is a crucial aspect of the Rule development process and as such, should be afforded sufficient time for a thorough review of the draft District document and preparation of meaningful comments.

169. COMMENT: I. Indirect Source Review and the SIP
In our July 22, 2005 comments, the Western States Petroleum Association (WSPA) requested that the District designate requirements derived from the proposed regulation as "not federally enforceable". WSPA cited the Federal Clean Air Act at Section 110(a)(5)(A)(i) and the California Health and Safety Code at Section 39602, which we believe support our request.

The Clean Air Act (CAA) at section 110(a)(5)(A)(i) states the following:

1 WSPA is a non-profit trade association representing a full spectrum of companies which explore for, produce, refine, transport, and market petroleum and petroleum products in the Western United States.

"Any state may include in a state implementation plan, but the administrator may not require as a condition of approval of such a plan under this section, any indirect source review program. The administrator may review and enforce as part of an applicable implementation plan an indirect source review program which a state chooses to adopt and submit as part of its plan."

The California Health and Safety Code at Section 39602 states the following:

"…the state implementation plan shall only include those provisions necessary to meet the requirements of the Clean Air Act."

We believe that these sections of the Federal Clean Air Act (CAA) and the California Health and Safety Code when considered together clearly preempt inclusion of indirect source review programs in the California state implementation plan.

The District's response to our comment is contained in Appendix-A of September 1, 2005 draft of the proposed regulation. The District contends that indirect source review programs are required by the CAA, since emission reductions are required to attain ambient air quality standards.

WSPA disagrees. The indirect source review program proposed by the District would be enforceable as a "state only" requirement. Emission reductions from the program would still occur and would reduce ambient concentrations to the same extent. The designation of indirect source review requirements as "federally enforceable" or "non-federally enforceable" has no effect on the attainment of air quality standards.

In California, inclusion of indirect source review programs in state implementation plan is prohibited by H&SC Section 39602 and the CAA section 110(a)(5)(A)(i). Consequently, WSPA requests the proposed regulation include a statement that Rule 9510 is a "state only" regulation.

We believe this to be a critical issue since federal requirements contained in applicable implementation plans must be included in Title V operating permits for major sources. Therefore, under the proposed regulation, mitigation contracts entered into by major stationary sources would require approval (or veto) by the U.S. EPA.

RESPONSE: The District disagrees with the interpretation of CAA sections cited in the comment. The intent of the section was to prohibit EPA from requiring indirect source programs as a Federal Implementation Plan (FIP) measure. Since the District requires the reductions for Rule 9510 to meet commitments in the PM10 Plan, the rule must be enforceable. The enforcement approach we

are proposing is not traditional since this program breaks new ground. The emission reduction projects are enforceable by the District through contract legal actions, but not EPA. If the reductions from the rule and its measures are not achieved, EPA enforcement should require the District to take corrective action to make up for the reductions in accordance with CAA milestone requirements. Since EPA is precluded from requiring the program, they would need to use alternative strategies in the event that a FIP were promulgated.

170. COMMENT: II Rule Applicability

A. Applicability Trigger Date.

In our July 22, 2005 comments WSPA proposed that applications for development projects filed prior to the rule adoption date be reviewed under existing regulations. We continue to believe these development projects should be reviewed under existing regulations. Under existing regulations, projects with significant environmental effects must include all feasible mitigation. The District is provided with notice and an opportunity for commenting on all such projects that are conducted within the San Joaquin Valley. Consequently, the District either has had or will have an opportunity to comment on these projects and to propose mitigation for indirect source and area source emissions. WSPA sees no reason why these projects should have to undergo a second round of regulatory review.

B. Indirect Source Review

As pointed out in our prior comments, Health and Safety Code Section 40717.5 sets forth guidelines and procedures that must be followed by any air district that proposes to adopt or amend a rule or regulation pursuant to Section 40716 or Section 40717.

The requirements contained in Section 40717.5(a) through 40717.5(c) are designed to ensure that emissions from indirect sources are properly allocated to projects that cause an increase in vehicular activity and to ensure that indirect source review requirements are not duplicative of other requirements imposed by the District or other agencies.

The draft version of District Rule does not comply with H&SC Section 40717.5(a)(1) which limits the applicability of indirect source review to those activities that contribute to, "…air pollution by generating vehicle trips that would otherwise not occur".

The District response to WSPA comments (Appendix-A, comment #24, #29) and to similar comments submitted by other was that:

"by their nature new development projects ultimately result in new trips which would not otherwise occur".

The District does not provide any information in support of this generalization and has not made any attempt to determine which types of activities result in an increase in indirect source emissions. In response to other comments the District acknowledges that the proposed rule is intended to control growth induced emissions from indirect sources and new construction (Appendix-A, comment #2, #8, #16). Not all development projects result in growth.

In our July 22, 2005 comments WSPA requested that Rule 9510 be revised to limit rule applicability to indirect source and area source emissions increases. We continue to believe that indirect source review programs established under authority at H&SC Section 40717 and Section 40715.5 are limited to regulation of growth induced indirect source and area source emissions.

WSPA believes that indirect source emissions and area source emissions that are already occurring, or area included in an application for a development project filed before the rule adoption date, should be considered existing emissions and only emissions increase above existing emissions should be subject to Rule 9510 applicability.

RESPONSE: The rule does not target *all* new development, but that development that results in the generation of at least 2 tons per year of NOx or PM10. Certain development, such as an expansion of a manufacturing facility, would be exempt if it does not result in and *increase* of at least 2 tons per year of NOx or PM10 through area and mobile emissions. Therefore, the rule accounts for the *increase* in pollution generation from development projects, and does not place requirements on those developments that do not result in the increase stated above. It is the District's position that projects that result in an increase in pollution emissions are a part of growth. It would be impractical to determine on a case-by-case basis if a project subject to the rule that emits emissions above the applicability threshold is or is not a project resulting from growth in the region.

In regards to projects that have filed for City/County permits *prior* to implementation of the rule, the rule language will be revised to limit the applicability to projects that have applied for a discretionary permit prior to implementation date but have not yet received approval.

171. COMMENT: C Proposed Revision to Applicability
In light of the guidelines specified in the California H&SC at Section 40717.5, and District response to comments, WSPA requests that the following subsection of the Rule Applicability Section 2.0, be revised as follows:

Subsection 2.1

2.1 This rule shall only apply to those elements of a project that require discretionary approval and only if those elements are determined to be part of a development project that meets the following conditions

a. The application for the development project is filed on or after the effective date of this rule.
b. The development project results in an increase in emissions of a pollutant for which the area is designated as nonattainment for either the California, primary ambient air quality standards (CAAQS) or the national, primary ambient air quality standards (NAAQS), for ozone or PM10.
c. The development project results in an increase in indirect source or area source emissions above previously approved existing emissions.

RESPONSE: Comment noted.

172. COMMENT: Subsection 2.1.3

Section 2.1.3 specifies an applicability threshold level of 25,000 square feet for the industrial space category. In our prior comments WSPA requested that the industrial space category be separated into "light Industrial" space and "heavy industrial" space since the vehicle trip ends (VTE) generated by these land use categories differ significantly. For example, according to the institute of Transportation Engineers, "Trip Generation Manual (7^{th} Edition)" the light industrial land use category generates 6.97 VTE per 1,000 square feet. The "heavy industrial" land use category generates 1.5 VTE per 1,000 square feet. The District response to our prior comment was that:

"Most heavy industrial projects would be exempt from this rule, so distinguishing between the different types of industrial would not be productive." (sic)

The District fails to explain why heavy industrial sources would be exempt from the rule's requirements. Furthermore, the District is now proposing to apply the rule to uncategorized discretionary projects involving more than 9,000 square feet. WSPA is again requesting that the "industrial use" category be separated into "light industrial" and "heavy industrial" categories and that the applicability thresholds for these land use categories be established at 25,000ft^2 and 100,000ft^2 respectively.

RESPONSE: Comment noted. The applicability section of the draft rule will be revised to include 25,000 square feet of light industrial, and 100,000 square feet of heavy industrial.

173. COMMENT: Subsection 2.1.9

Delete subsection 2.1.9. The District has not documented why any discretionary project, not otherwise included in a section 2.1 land use category and that is

greater than 9,000 square feet (~1.4 acre) is automatically presumed to have significant indirect source or area source emissions.

RESPONSE: The District prepared emission estimates for all projects listed in the section to determine if they would exceed 2 tons per year of either PM10 or NOx. These projects would be required to prepare an air quality assessment based on their actual design, on-site measures, and characteristics, so in some cases the assessment would determine that no off-site fee is required.

174. COMMENT: Subsection 2.3.2

Delete Subsection 2.3.2. With the exception of the applicability threshold established for "50 residential units", Subsection 2.3.2 supersedes and essentially eliminates the other land use category size thresholds. It can be easily argued that any land use involving nonresidential development, (e.g. commercial, industrial, medial, etc) could accommodate development projects that emit more than 2.0 tons per year of NOx or PM10 (~11ld/day or 0.5 lb/hr).

The District is also proposing that the amount of required mitigation be based on the ability of the property to accommodate future development, whether or not such future development is planned or included as part of the development project responsible for triggering review under this rule.

WSPA believes that developers should not have to provide mitigation for unplanned projects solely because the property has the potential for future development. Future discretionary projects might or might not result in an increase in emissions of air contaminants. Consequently, we request that Subsection 2.3.2 be deleted.

RESPONSE: The rule requires the applicant to come to the District at the last discretionary approval for the project. For industrial and commercial projects this may be a conditional use permit or site plan review. If the use is not known, the general trip rate for the expected use is used to calculate the proposed fee amount. Then, the applicant can use a fee deferral schedule to allow time to identify the actual use. If there were no increase in actual emissions based on the use, the applicant could revise the air assessment and the off-site fee would be not need to be paid.

175. COMMENT: III Definitions

WSPA requests that the following revisions be made to the definitions. We believe the proposed changes will ensure that the definitions are consistent with the stated purpose and applicability of the proposed rule, and will help clarify rule requirements.

Subsection 3.7

In our July 22, 2005 comments WSPA requested that the definition of a development project be revised to exclude projects that require discretionary approval but are required solely to comply with a rule regulation or order of a public agency.

For example, District prohibitory rules frequently require that source operators install control equipment on emission units such as tanks, steam generators, turbines, etc. Installation of the control equipment requires the issuance of an Authority to Construct (ATC) permit which typically involves discretionary approval of an "emission control plan" and control equipment. Depending on the control measure, a source operator could be required to retrofit literally hundreds of individual emission units. The District response to our concerns is summarized below:

> *"The current definition of a development project adequately addresses projects that have ancillary discretionary approvals relating to the project. The applicability of the rule includes not only discretionary approvals but, minimum sizes of projects that must comply with the rule."*

WSPA is confused by the meaning of the first sentence. WSPA requests that the District provide additional explanation of how the current definition of a development project addresses "ancillary discretionary approvals relating to the project".

WSPA assumes that the language contained in the second sentence of the District response means that the District believes that equipment retrofit projects (e.g. steam generators, vapor control systems, etc) are too small to trigger rule applicability. In some cases this may be true. In other cases the size of the control system or facility equipment could easily exceed size threshold specified for industrial sources.

The existing New Source Review Rule (Rule 2201) and many of the prohibitory rules adopted by the District recognize the difference between projects initiated for development and projects undertaken to comply with regulatory requirements. Consequently, WSPA is again requesting that the definition of a development project be revised as follows;

3.7 Development Project: any project, or portion thereof , that is subject to a discretionary approval by a public agency, and will ultimately result in the construction or reconstruction of a building, facility or structure. The Discretionary approval of a project undertaken solely to comply with a rule regulation or order of a public agency shall not be considered a development project.

WSPA also requests that the District staff report clarify the meaning of the word "facility". The use of the word units current context is consistent with the logical meaning of the word and implies that the word "facility" means *"something that is installed or erected to serve a particular purpose".*

RESPONSE: The definition of a development project, in combination with the baseline definition ("area source and operational emissions") effectively eliminates the type of projects the author is commenting about. Permitted equipment emissions are *not* included in the calculations. It is the District's position that all applicable projects that have a baseline above two tons per year of NOx or PM10 from the combination of area and mobile sources should be subject to the emission reduction requirements of the rule, excepting for stated exemptions, regardless of the reason for the project.

176. COMMENT: IV Exemptions

WSPA requests that the exemption section of the rule be revised to include the following changes:

Section 4.1.4

The District has proposed an exemption for a, "development project, whose primary source of emissions are from stationary sources subject to Rule 2201 (New and Modified Stationary Source Review Rule) or Rule 2010 (permits required…". WSPA supports the proposed exemption. However, WSPA requests that the District clarify several items related to the exemption.

First, in response to questions raised by stakeholders during the September 1, 2005 workshop, District staff stated that they though the phrase "primary source of emissions: meant 51% or more of the emissions. Second, in our reading of the proposed exemption we interpret the phrase "stationary sources" to mean air pollutant emitting activities, other than indirect sources and area sources; and not "stationary source" as defined by District Rule 2201.

Assuming our interpretation is correct, then the proposed exemption would be available to development projects where operational emissions from activities other than indirect sources or area sources, comprise 51% or more of the total operating emissions from the development project.

WSPA requests that the District address these issues in their staff report and either confirm our understanding of how the exemption will be applied or provide additional guidance on how subsection 4.1.1 is to be interpreted.

RESPONSE: The District has clarified the exemption section to provide more specifics on the applicable sources that qualify.

177. COMMENT: V Application Requirements

WSPA continues to believe that applications for development projects be submitted to public agencies prior to the effective date of the proposed rule should continue to be processed under the regulations in effect at the time of application submittal. Consequently, we have requested revisions to the applicability section of the rule to be revised accordingly.

Subsection 5.5.5

Delete Subsection 5.5.5. This subsection requires that mitigation, monitoring and reporting programs (MMRP) include provisions for failure to comply, such as stop work authority, permit revocation, civil enforcement, and or administrative appeal. WSPA believes that this subsection should be deleted. The District already has authority to enforce compliance with rules and regulations adopted by the District.

RESPONSE: The District will revise the section to refer to Response to Comment 180, which states the District's authority to enforce provisions of the rule.

178. COMMENT: VI Mitigation

WSPA continues to believe that H&SC Section 477.16 and 47717.5 limit indirect source review programs to control growth induced emissions from indirect sources and area sources. Mitigation should only be required to the extent that a development project causes an increase in indirect emissions or an increase in area source emissions that would not otherwise occur. As we discussed in our prior (July 22, 2005) comments on Rule 9510, WSPA supports the District proposal to allow developers to use a combination of onsite mitigations and offsite mitigation. Developers should also be able to use offsite mitigation resulting from voluntary control of operational emissions from existing development projects upon showing that the emission reductions are surplus and enforceable.

In our July 22, 2005 comments WSPA requested that the District provide a mechanism to enable developers to receive credit for surplus mitigation. We also requested that developers be allowed to provide offsite mitigation by controlling emissions from existing sources through enforceable offsite mitigation programs. Our prior comments are summarized below.

1. For construction emissions, if a developer employs an offsite mitigation strategy, the emission reductions continue to exist after construction is completed. These reductions should be credited to the developer and the developer should be allowed to use the reductions for mitigating construction emissions from future development projects.
2. For operational emissions, developers should receive credit for offsite emission reductions created through voluntary mitigation activities applied ot

previously approved projects. For example, a developer could revegetate or reclaim disturbed surfaces in order to reduce fugitive dust. The developer could then commit these reductions to construction or operational emissions from proposed development projects.

The District response to our comments was:

"The District will consider offsite mitigation proposed by a developer on a case by case basis.".

Based on the District's response, WSPA requests that he District revise Subsection 6.3 as follows:

Subsection 6.3

The requirements listed in Section 6.1 and Section 6.2 above can be met through any combination of onsite or offsite mitigation. Developers may also satisfy the requirements of Section 6.1 and 6.2 by providing mitigation made available by reducing emissions from offsite activities. "the District will consider offsite mitigation proposed by a developer on a case by case basis."

RESPONSE: The District has partially addressed the authors concerns in the September 1, 2005 draft Rule 9510 version in section 7.4.

7.4 The developer shall receive credit for any off-site mitigation measures that have been completed and/or paid for, prior to the adoption of this rule, if the following conditions have been met:

7.4.1 The prior off-site mitigation measures were part of an air quality mitigation agreement with the APCO; or

7.4.2 The developer demonstrates to the satisfaction of the APCO that the off-site emission reduction measures result in real and surplus reduction in emissions**.**

The District will be implementing an off-site emission reduction program that uses fees from the rule to achieve the tonnage reduction required. The District believes that this is the most efficient and effective way to acquire, achieve and track off-site emission reductions. Off-site emission reduction projects that have been coordinated and approved through the District by means of an Air Quality Mitigation Agreement have been thoroughly analyzed and will be administered by the District. Therefore, emission reductions from Air Quality Mitigation Agreements are appropriate to use in the ISR program. However, although a project applicant may be able to find and fund off-site emission reduction projects, it is undesirable to have an applicant administer off-site emission reduction projects to be reviewed by the District on a case-by-case basis. For the purposes of consistency, efficiency, and enforceability, it is most appropriate for off-site emission reduction projects to be administered under the same program.

Applicants and the general public may propose projects for funding through the District's off-site emission reduction program, and the program will have annual review and reporting available to the public.

PUBLIC:

Ann M. Gallon
Date: September 6, 2005

I attended the Sept. 1 Workshop in Bakersfield. This was my first involvement with the Air Pollution Control District. I planned to address you as a private citizen, but all the developers with lengthy statements were a bit intimidating – especially their off screen head nodding and grimacing. They obviously were distressed to have any "controls" of their development projects come under discussion and regulation.

179. **COMMENT:** What I would have said is that I applaud your plans to contain pollution in our Valley, and I would urge you to stick to your guns – or even tighten up on some rules. As an aside, my stepson once sued the EPA on behalf of the Canadian people for not enforcing their own regulations and causing acid rain which drifted over Canada. The Canadian government prevailed in calling the EPA into action.

RESPONSE: Comment Noted.

180. **COMMENT:** Applicability to developers of 50-plus residential homes gives them wiggle room to design multiple projects so they could fall under that 50-unit threshold. Another concern of mine is that developers of fewer than 50 units may be less sophisticated in the industry and may create more pollution than you will prevent in the larger developments. I urge you to consider dropping the applicability to 25 units.

RESPONSE: The 50-unit applicability for residential units was specifically chosen for the following reasons:

1. Based on the District's data on the number and units of development occurring in the valley, a threshold of 50 units would capture the majority of the pollution generation from new developments while keeping the number of projects for District assessment at a practical level.
2. Modeling shows with no on-site measures, 50 units may generate approximately 2 tons per year of NOx in 2006
3. This threshold, with the associated 'penetration' of the rule, achieves the emission reductions committed to in the PM10 and ozone plans.

The District will be vigilant to prevent 'piecemealing' of projects to evade compliance with the rule. Rule 9510 §2.3.1 and §2.3.2 specifically address the issue of contiguous or adjacent properties. In addition, District Rule 1110 (Circumvention) states:

A person shall not build, erect, install, or use any source operation, the use of which, without resulting in a reduction in the total release of air

contaminants to the atmosphere, reduces, dilutes or **conceals an emission which would otherwise constitute a violation** of Division 26 of the Health and Safety Code of the State of California or **of these Rules and Regulations**. This rule shall not apply to cases in which the only violation involved is of Section 41700 of the Health and Safety Code of the State of California or of Rule 4102 (Nuisance of these Rules and Regulations. **Violation of this rule is a misdemeanor pursuant to the provisions of Section 42400 of the Health and Safety Code of the State of California**.
(Sections are bolded for emphasis)

181. COMMENT: To give you an example of development traffic, in July we endured seven days of 8am-4pm diesel truck traffic past our home. Trucks were hauling fill dirt to one large residential lot around the corner from us. The whole week we had to remember to close our front windows against the diesel fumes, noise, and dust clouds rising from dirt shoulders.

Mind you, this was a HOT July and we were trying to use just our evaporative cooler (needs open windows to vent) to save money. When the truck traffic continued into the next week I finally called our Supervisor's office to complain and ask if the trucks could travel on the arterial roads instead of on our residential street. I wrote down the following IN and OUT times one morning for 30 minutes:

IN	OUT
	9:35
9:39	9:41
9:44	9:48
9:51	10:01
9:58	10:09
10:05	

By Wednesday, when Supervisor Watson's field rep, Trice Harvey, arrived at our house to look into our complaint, wouldn't you know it – the truck traffic was over. And he said he couldn't tell trucks which roads to take to a construction site. We were going to be pretty much stuck with traffic when there is building going on in our area.

RESPONSE: The author's comments on truck traffic is noted. In addition, the District's Regulation VIII (Fugitive PM10 Prohibitions) contain prohibitions concerning the emissions of dust from construction sites, bulk materials hauling and carryout/trackout. Although these are requirements, certain developments on occasion do not comply with the rule. The District is responsible for enforcing compliance with the rules and employs field inspectors for these issues; however, it is not always possible to catch violations as they occur at the widely disbursed construction sites within the Valley. The District maintains a complaint

hotline for the public to call when they see a violation of the District's rules, including violations of Regulation VIII and Rule 4102 (Nuisance).

County of Residence	**Toll Free Number**
San Joaquin, Stanislaus, Merced	**(800) 281-7003**
Madera, Fresno, Kings	**(800) 870-1037**
Tulare, Valley portion of Kern	**(800) 926-5550**

182. **COMMENT:** So… please stand firm with the building industry – and with Cal Trans who seemed to think they were exempt from air pollution regs – and let's ask everyone to take their share of the responsibility for cleaning up OUR AIR.

RESPONSE: Comment Noted.

183. **COMMENT:** PS That argument of one man about mitigation fees of $2000 pricing thousands of people out of homes in California was statistical but not logical. If they can *only* qualify for a $300,000 home and the $2,000 fee is going to put them "out of the market," then they can just drop their expectations and builder options and by a home for $295,000. Also, it is bad financial planning to try to buy the most expensive house you can qualify for.

RESPONSE: Comment Noted.

ENVIRONMENTAL

Clean Water & Air Matter (CWAM)
Date: September 15, 2005

Thank you for the opportunity to comment on the above mentioned draft rules as proposed for the District. In addition to my verbal comments made during the September 1, 2005 workshop, I wanted to touch on the following topics.

184. COMMENT: No net gain does not equal a loss. When we begin to mitigate more pollution than we create while adding new pollutants, we will finally begin to achieve reductions in total pollutant levels. Until this happens, we are still adding to the pollutant total without ever actually subtracting anything.

RESPONSE: The author's comment does not hold when applied to mobile emissions. Emissions from mobile sources are reducing over time due to regulations on new vehicles. For example, no net increase in the number of vehicles would result in lower future emissions from vehicle turnover to cleaner fleets. The District takes this and other factors into account in the PM10 and Ozone attainment plans. The plans identify growth and reductions in source categories. The plans quantify the reduction from current District rules and proposed rules as well as state and federal regulations, and then model future emissions to determine if the District may reach attainment for applicable pollutants. For development projects, the 'subtracting' occurs through on-site and off-site emission reductions *and* mobile emission reductions over time. The PM10 and Ozone plans have determined that the ISR rule, in addition to existing and future rules and conditions, will help the Valley clean the air and reach attainment.

185. COMMENT: The Californian Environmental Quality Act (CEQA) is very clear when it comes to mitigation measures and how they must be available for public review before the decision makers (who also must have them for review) vote on the project. In reference to Section 5.0 Application Requirements it is imperative that the mitigation measures not be deferred until after project approval.

In Sundstrom v. County of Mendocino (1st Dist. 1988) 202 Cal. App. 3d 296 [248 Cal Rptr. 352] the court ruled that the deferral of an environmental assessment (in this case a hydrological study) until after the project approval violated CEQA's policy that impacts must be identified before project momentum reduces or eliminates the agency's flexibility to subsequently change it course of action. In addition, because the permit authorized the applicant himself, subject to planning staff approval, to conduct the required analysis, the county had violated CEQA's requirement that an agency's decisionmaking body must ultimately review and vouch for all environmental analysis mandated by CEQA. (202 Cal.App.3d at 306-308]

RESPONSE: Rule 9510 §5.0 has been revised to make application and review of ISR projects concurrent with or prior to the CEQA process a project would undertake with the local land use agency. It should be noted that the ISR program does not involve discretionary approval and therefore not itself a CEQA process. Additionally, compliance with District Rules is a *requirement,* not mitigation.

186. COMMENT: Furthermore, local agencies are instructed to integrate the CEQA review process into the other planning and environmental review procedures they are legally or otherwise obligated to conduct. To the maximum extent feasible, CEQA procedures and other procedures should run concurrently, rather than consecutively. (Pubic Resources Code Section 21003 subd. (a).) Regarding Comment #50- CEQA is a state law and does not vary by jurisdiction. This comment should be changed.

RESPONSE: Concerning timing of application to the ISR program, see the response to comment above. Although CEQA itself does not vary by jurisdiction, the implementation of the time requirements does. CEQA provides the master timeline in the framework of minimum and maximum times for various activities. Each jurisdiction has the authority to implement CEQA with procedures that reduce a particular activity's time to far below the maximum time allowed under CEQA. Therefore, each jurisdiction may have a different timeline for project review and approval based on individual procedures that comply with CEQA. The District will not change response to comment #49 from the June 30, 2005 workshop.

187. COMMENT: While there are exceptions, contextually, the agency is creating a broad, sweeping plan to cover many projects, including but not limited to, commercial, industrial and residential. Consideration of public involvement in the process would facilitate information regarding mitigation at the beginning of the process, rather than after the project has been approved.

This issue, when addressed early in the application process can carry over to all levels of approval, rather than have the public or decision makers continually have to request effective, enforceable mitigation as part of the project not only with the lead agency, but the responsible agency as well.

RESPONSE: While the District concurs that public involvement is important, and will amend the rule and staff report to include mechanisms for public involvement, the ISR program is *not* a CEQA process. ISR is a ministerial action not subject to CEQA, per PRC §21080 *Division Application to Discretionary*

Projects; Nonapplication; Negative Declarations; Environmental Impact Report Preparation (b)(1):

(b) This division does not apply to any of the following activities:
(1) Ministerial projects proposed to be carried out or approved by public agencies.

188. COMMENT: There should be some method for the dispersal of funds to account for project area pollutants and either the on-site or near-by mitigation funded by said project. Money going into the big pot in Fresno and ending up who knows where, by some group that has asked, will not address source point pollution.

RESPONSE: The District will track the location, by City and County, of the projects funded through the off-site emission reduction fund. The District will also complete annual reporting of how much, where and what tons of reductions occurred, which will be made available to the public. The District is unsure of the author's intent with the comment on point source pollution. This rule does not attempt to address emissions from source points. However, if an off-site emission reduction project is a point source, that information will be available in the District's annual reporting, and upon request.

189. COMMENT: Regarding the pollution prevention proposals, it would a be beneficial to have some long-term pollution reduction by means of phyto-remediation. Trees are known, quantifiable and effective pollution reduction technique. The use of trees should be encouraged to help cleanse the valley air. This mitigation could be achieved with tree farms using mitigation banking credits for a controlled system of distribution.

RESPONSE: The District is aware of the air quality benefits of trees. Specifically, trees reduce ambient temperature (reducing formation of ozone), cool housing and AC units (reduce energy consumption), cool cars and paving in parking lots (reduced evaporation of volatiles[6]). It is also known that some of these benefits are quantifiable. The District would entertain a tree program as an off-site project if it meets the requirements set forth in the rule, including cost effectiveness.

190. COMMENT: Enforcement of air quality mitigation measures is the responsibility of the District. I mention again in these comments a critical issue: Currently the district is notified of a project's start when there is a complaint filed by a member of the public. While this is not always the case, this type of complaint based enforcement system is inefficient as best and at worst, a heavy burden on the public to be responsible to see that the approved mitigation measures are actually followed or the best possible attempt to prevent more air pollution

6 McPherson, E. Gregory. Sacramento's parking lot shading ordinance: environmental and economic costs of compliance. Landscape and Urban Planning 57 (2001) 105-123

RESPONSE: The District is notified of the start of a project through several means. The CEQA process allows an opportunity for the District to review and comment on development projects within the Valley. The District also receives Dust Control Plans (DCP) and Notifications from project developers as a *requirement* of Regulation VIII (Fugitive PM10 Prohibitions). It should be noted that District rules are *requirements* and not mitigation, and the District has the authority to take enforcement action for non-compliant projects. The District is notified of Regulation VIII non-compliance through mandatory self-reporting (DCPs, etc.)

191. COMMENT: Additionally, it would be beneficial to both the public and all decision makers reviewing environmental air quality assessment to have the inputs for the baseline for the modeling runs at the beginning of the reports and if the report is quoted in the document, in the text of the document as well.

RESPONSE: The preparation of environmental CEQA documents is the responsibility of the lead agency. The District will make project specific information available to the lead agency and the public (See Response to Comments #8 and #59), but the District cannot prescribe a format that lead agencies must follow.

Kern-Kaweah Chapter of the Sierra Club
Date: September 15, 2005

Here are the comments of the Kern-Kaweah Chapter of the Sierra Club. Our chapter has 1,600 members and there are a few thousand other Sierra Club members in the San Joaquin Valley.

My copy of the September 1 draft is post marked August 26. Does the Air District Staff believe in summer vacation and Labor Day Weekend?

Instead of including our July 15, 2005 letter by reference, we put chunks of it in this letter and put the rest at the end of this letter.

GENERAL REMARKS ON THE RULE

192. **COMMENT:** At the September 1 workshop I learned that air quality regulations forbid the development industry from sheltering those of us with low or even moderate incomes. At previous workshops I learned that air quality regulations prevent farmers from feeding us and prevent various industries from affording to employ us. Perhaps the best plan is for residents to continue to suffer asthma and for those who die prematurely of heart or lung disease to be eulogized as "heroes of the economy".

RESPONSE: Comment Noted.

193. **COMMENT:** Our previous comments applauded 6.1 "The developer shall mitigate 100% of the construction emissions associated with its development project." Construction emissions do not last as long as operational emissions, but exposure to pollution is the same whether the pollution is from construction or from operation; thus, mitigation for construction emissions should be briefer and equally vigorous as construction from operation.

RESPONSE: The draft rule does not require 100% mitigation from construction. Rule 9510 Section 6.1.1 states that exhaust emissions must be reduced from the statewide average by 20% for NOx and by 45% for PM10.

194. **COMMENT:** We object to having developers choose consultants to prepare an Air Impact Assessment; we think consultants will not be chosen by developers unless they make findings as favorable to the developer as possible. The air impact assessment must be produced by the District or by a consultant of the District's choosing. Developers shall pay for the air impact assessment.

RESPONSE: The District will require all inputs and assumptions for the Air Impact Assessment, per the requirements of the rule. This information is contained in the application. The District will review the inputs, assumptions and modeling for accuracy, and will require additional information and/or revision for items that are inaccurate, inconsistent or unjustified. The modeling must be replicable and reasonable, and the emission reduction measures selected must be incorporated into the project and enforced through either other public agency requirements or by a District Monitoring and Reporting Schedule.

195. **COMMENT:** I did not find anything about mitigation by replacing inefficient equipment. Our July 18, 2005 letter said: "If existing equipment is replaced because it is worn out, no mitigation credits must be given unless the new equipment is better than other equipment that could be used. The mitigation credit must be limited to the difference in cost between the cheapest equipment that could have been obtained and the lower emitting equipment that was obtained."

RESPONSE: It is unclear if this comment pertains to on-site emission reduction or off-site emission reductions. For on-site emission reductions from construction, no justification is necessary to achieve credit for cleaner engines. For off-site emission reductions, the reductions will be achieved through the ISR off-site funding program, which will follow criteria and established emission reduction calculations. For programs that replace existing engines with new engines, the old engine must be operational and have a remaining useful life that is the basis of the emission reductions. How those emission reductions are calculated depends on the type of project and the specific components of the project. See the Staff Report and Appendix E – Cost Effectiveness Analysis for additional information on off-site emission reduction projects.

GENERAL REMARKS ON THE NOx REDUCTION OF THE RULE

196. COMMENT: Rule 9510 sets the goal of reducing emissions from projects that produce more than two tons per year of NOx by half. There is no justification for mitigating only 50% of emissions. Reducing NOx by half, rather than complete reduction, would be acceptable if all trips to or from the regulated development projects were to other projects that also reduced their NOx emissions by half. For the most part, rule 9510 regulates new development projects on the edge of town; most of the trips associated with those projects will be to or from long established business, recreational or work sites that have never paid any air quality mitigation fee and have no on site mitigation. If the trip to those sites had been made from an older development nearer the established sites, air emissions would be less. That is why the goal should be complete mitigation for all polluting emissions from all sources including Area Sources.

RESPONSE: The goal of the rule is to achieve an emission reduction from growth that was identified in the PM10 and ozone plans. The District calculated the level of reduction needed on a per-project basis that would achieve the emission reduction committed to in the PM10 and ozone attainment plans. The rule sets levels that are in compliance with state law regarding indirect source regulations and are feasible to achieve. Charging a fee for trips that are the responsibility of another new source or an existing indirect source would not equitably distribute responsibility for existing and new vehicle trips as required by H&S 40717.5. The 33% accounts for declining mobile emissions over a ten year period – see the fee formula.

197. COMMENT: How much NOx will future vehicles make? When will increased gasoline prices cause us to use fewer light trucks and more efficient sedans? The staff report, bottom of page 3, says cars are predicted to decrease pollution between 1994 and 2003. Has this occurred?

RESPONSE: NOx emissions were reduced substantially between 1994 and 2003; however, certain heavy-duty diesel vehicles showed an increase during that period due to use of computer controls that enabled the vehicles to meet emission tests but emit at higher levels during actual operation. This problem has now been corrected. The amount of future NOx is identified in Attachment 2 of Appendix B – Emissions Reduction Analysis for Rule 9510 (ISR). Studies of the effects of gasoline prices indicate that very large price increases would be needed to significantly change travel behavior.

198. COMMENT: Here are examples where rule 9510 may cause someone to pay more than their share to mitigate air quality. Someone might move to a newly built home in order to take a job near that home; they would create emissions only when they drove to established business, recreational sites not I their new neighborhood or visited persons living a distance from their new home. A retired person who moved to a newly built home in order to be near the people they most often visit would generate fewer emissions than most of those who move to a newly built home. These exceptional cases do not seem to justify making this rule weaker or more complex.

RESPONSE: The District recognizes that there are a variety of factors that affect emissions from new projects. It is infeasible to model or account for all this variation at the development stage. In addition, there is no guarantee that those cases of less-emissions, same-house would occur over the ten years assessed by the rule, let alone the life of the project. The District considers the URBEMIS model to be the most accurate model available that meets the needs of the ISR rules. More information on URBEMIS may be found in the Staff Report and in Appendix D – Recommended Changes to URBEMIS.

APPENDIX A: RESPONSE TO COMMENTS

Industry and Public:

199. COMMENT: Comment 1 Each individual development must be held responsible for all the travel it generates. When persons move to the edge of town from a site closer to the center of town, their old home is occupied; the emissions of their old home do not change. The emissions of their new home must all be mitigated. Consider a mitigation fee for those who move into an existing home that is further from the center of the City than their previous home.

RESPONSE: The District agrees that each individual development should be responsible for the trips it generates, but also must consider that the reductions required must be fair and feasible. The District may consider a future rule revision or other program to address existing indirect sources.

200. **COMMENT:** Comment 7 If the emissions of a structure continue beyond ten years, so should the mitigations. Can the air district prove that cleaner cars will allow us to attain PM 10 and ozone standards in ten years and prevent increased emissions thereafter? What if attainment in does not permanently occur?

RESPONSE: The mobile source regulations currently in place and scheduled to go into effect in the next few years provide for a cleaner car and truck fleet well into the future even when accounting for projected growth in trips and vehicle miles traveled. Continued diligence will be required to ensure maintenance of the standards. This is accomplished through a maintenance plan that will provide the reductions needed to keep emissions from increasing due to growth.

201. **COMMENT:** Comments 11 and 18 Response 11 correctly anticipates new standards. Response 18 implies that PM 2.5 is not likely to be one of those new standards because attaining PM 10 standards will control PM 2.5. So far it looks like a lot of PM 10 is geologic particulates that are not as harmful as the smaller particles included in PM 10. The smaller particles, PM 2.5, are products of combustion or are a combination of ammonia and NOx. If so, decreasing PM 10 will not decrease PM 2.5.

RESPONSE: The rule is designed to reduce both fugitive dust PM10 and combustion PM10. Most engine replacement and retrofit projects provide NOx and PM10 benefits. Most of the combustion PM10 is comprised of the fine fraction less than 2.5 micrometers in diameter. The PM10 standard cannot be achieved without fugitive PM10 reductions and so must be part of this rule.

202. **COMMENT:** Comment 25 Some recreational space reduces motor vehicle use, such as a park that many persons can easily access on foot or by bicycle. Some recreational space increases motor vehicle use, such as a motocross facility or any facility that attracts visitors from a distance.

RESPONSE: Recreational uses that attract vehicle trips and exceed the operational threshold of 2 tons/year of NOx or PM10 will be subject to the rule. Uses that attract pedestrians or bicyclists would not trigger the rule.

203. **COMMENT:** Comments 67 and 70 The Socioeconomic impact of these rules must include the decrease in the cost of illness and death that this rule will cause. The cost of illness includes pain, suffering, premature loss of income, absence from school, absence from work and loss of companionship. To estimate the incidence of these events, please consult physicians who have reported such figures to CARB; for example, there are 106,695 workdays lost in Kern County due to PM10.

RESPONSE: See Response to Comment #98.

204. **COMMENT:** Comment 87 I do not bicycle on very hot days and most folks stay indoors those days. When I do bicycle on days of elevated ozone levels, I expose myself to ozone rather than use my car to raise ozone levels for everyone else. There are, or would be if bike paths are constructed, many persons as virtuous as I.

RESPONSE: Comment Noted.

205. **COMMENT:** Comment 96 Mitigating air pollution as close as reasonably possible to the source of the pollution may be more acceptable to the public than distant mitigation; however, insistence on mitigating in the immediate area can be used as a way to make mitigation more difficult.

RESPONSE: See Response to Comment #188.

206. **COMMENT:** Comment 98 Limiting mitigations to those that match the source of the mitigations can be used as a way to make mitigation more difficult. A ton of NOx generated by Valley traffic is the same as a ton of NOx mitigated by reducing Valley generation of electricity from fossil fuel.

RESPONSE: See Response to Comments #188.

207. **COMMENT:** Comment 102 As inflation and the completion of the most cost effective measures occur, how will mitigation fees be increased?

RESPONSE: Off-site fees are dictated by the amount it would take to offset a ton of the applicable pollutant. The District has included the fee schedules for 2006 through 2008. If an adjustment is required, for example, if during implementation the District finds that there aren't enough off-site projects achieve the set cost-effectiveness, the District can amend the cost-effectiveness schedule in the rule through a rule amendment. Rule amendment procedures are standard, and must be adopted by the Board.

EPA

208. **COMMENT:** Comment 7 p. A 25 Is EPA completely satisfied with this response to their thoughtful comment?

RESPONSE: See Response to Comment #5 for additional comments to the issue of surplus mitigation.

209. **COMMENT:** Comment 18 p. A 28 A high density residential project far from jobs, shopping, schools and other services does not decrease emissions except for trips between residents. A high density project that enables residents to

access jobs, shopping, schools and other services on foot, bus or bicycle decreases emissions and should get credit for on site mitigation.

RESPONSE: See Response to Comments #7 and #9 for discussion on URBEMIS on-site measure quantifications.

210. COMMENT: Comment 36 p. A 30 We are pleased that low-income housing is not exempt from the rule. Low-income housing often has elderly residents whose diseased lungs and hearts are especially susceptible to air pollution. Government can help pay the small cost of clean air for poor people if the voters wish.

RESPONSE: Comment noted.

Remarks On The Wording Of The Rule

211. COMMENT: 1.1
Does the reference to "particulate matter" include PM 2.5 and the smaller particles such as PM 0.1 that can be inhaled from ambient air into the blood stream? Comments 11 and 18 apply: Response 11 correctly anticipates new standards. Response 18 implies that PM 2.5 is not likely to be one of those new standards because attaining PM 10 standards will control PM 2.5. So far it looks like a lot of PM 10 is geologic particulates that are not as harmful as the smaller particles included in PM 10. The smaller particles, PM 2.5, are products of combustion or are a combination of ammonia and NOx. If so, decreasing PM 10 will not decrease PM 2.5.

RESPONSE: See Response to Comments #57 and #65 for the Districts response to which pollutants, and how much reduction was chosen.

212. COMMENT:2.1.8
Comment 25 applies: Some recreational space reduces motor vehicle use, such as a park that many persons can easily access on foot or by bicycle. Some recreational space increases motor vehicle use, such as a motocross facility or any facility that attracts visitors from a distance.

RESPONSE: The Air Quality Impact Assessment uses URBEMIS to calculate mobile source emissions from each project. URBEMIS uses trip generation rates for each type of use and allows for different trip rates to be used for different types of recreational facilities. This will allow for an accurate differentiation between the uses mentioned in the comment.

213. COMMENT: 2.3.1 & 2.3.2
We wish to thank whoever brought to your attention that the draft of 9510 dated June 30, 2005 did not address cumulative impact of adjacent development.

These paragraphs at least call our attention to this failing. As I understand 2.3.1 & 2.3.2, if I had one piece of land big enough to build 147 units, I could build 49 residential units that rule 9510 would not apply to. Then, in lieu of inheritance I could give each of my two children land so that they each build 49 residential units. We would thus build 147 residential units without having to comply with rule 9510. No one would ever know if I benefited financially from my children's property.

RESPONSE: See Response to Comment #214.

214. COMMENT: The only way I can write rule 9510 to avoid this problem and avoid high administrative cost is to say that even one house will be subject to this rule but that small tracts can pay a mitigation fee, rather than have their emissions determined and mitigated.

Our comments of July 18, 2005 on 2.2 and 4.2 of rule 9510 are included here:

The rule should apply to even the smallest projects so that developers do not piece meal. Building many little developments can have a major cumulative effect; CEQA has cumulative impact concerns. Among the 6 30 05 comments that supported not omitting projects that make only two tons of NOx and only two tons of PM 10 per year was one by a City of Clovis employee who forecast developments of 49 houses. Dr. Nipp has commented on over a dozen housing developments that somehow had just under ten tons per year of NOx and just under ten tons per year of ROG. Several years ago several natural gas 48 or 49 MW cogeneration power plants were built in Kern County; 50 MW plants had to be reviewed by the California Energy Commission.

These exemptions could also increase administrative costs and give some developers an advantage over others. What happens if soon after a new 20,000 square feet store is occupied, it fails or for some other reason becomes general office space? The store has paid a fee that it would not have paid if it had been built as general office space.

Please disregard our next paragraph of July 18, 2005; it is in error. It read: The rule could say that if a project is small, and no developer has enough land at the site to develop any other source of emissions small projects could be exempted.

RESPONSE: The District added rule language that prohibits piecemealing of projects to evade the applicability threshold. In addition, the District will implement procedures for identifying non-compliant projects and will have staff assigned to ensure compliance with the rule.

215. COMMENT: 3.22 & 3.23
In view of the decrease in emissions that will result from replacing some of our private auto travel with public transit, we might need to mitigate emissions form public transit construction less stringently than emissions from other construction. Since building new roads leads to more car and truck use, and therefore more pollution, road building emissions must be strictly mitigated.

RESPONSE: The District has determined that transit projects involving construction in excess of 2 tons total of NOx and PM10 combined should remain subject to the rule.

216. COMMENT: 4.1.4
Agriculture should be among these exemptions provided it is regulated under other rules as provided in the SB 700 series of bills.

RESPONSE: See Response to Comment #45.

217. COMMENT: 4.3
Transportation Projects should not be exempt from the requirements of the rule. If more roads, as opposed to mass transit, are made available, more people will use the roads rather than mass transit. This is called induced traffic. If bicycle paths and mass transit become available, some of us will choose to use them.

RESPONSE: The District specifically exempted transportation projects from the 'operational emission reduction requirements of the rule. Transportation projects are subject to the construction emission reduction requirements of the rule. Although not part of this rule, the District may consider including operational and area requirements in a future rule or rule amendment.

218. COMMENT: 5.0
CEQA provides that information such as provided by an AIA be available to the public and to decision makers before any discretionary action is approved. Please change the first sentence of 5.0 so that if complies with the CEQA.

RESPONSE: The District intends to submit air quality impact assessments to local agencies so that they may use them in their CEQA documents prepared for the land use approval. Although the rule provides analysis and emission reductions that will be useful in the CEQA process, the main focus of the rule is attainment of PM10 and ozone standards. (See Response to Comments #8 and #59). Also keep in mind, the ISR program is not discretionary approval and therefore *not* a CEQA process (See Response to Comment #187).

219. COMMENT: 5.1
Any consultant involved by any developer must be identified.

RESPONSE: The District will amend the rule language to include the above.

220. COMMENT: 5.4.1.1
Does this say that any mitigation required by laws existing before a development occurs can not be counted as an indirect source mitigation under rule 9510? We hope the answer to this question is "yes". The Air District intends to obtain agreed upon mitigations, as 5.5.6 shows.

RESPONSE: Any on-site measure that is quantifiable through the APCO approved model shall be counted towards on-site emission reduction. Only measures that do not have an enforcement mechanism through city/county or other requirements will be required to complete a monitoring and reporting schedule with the District.

221. COMMENT: 6.1.1
Are a 20% reduction in NOx emissions and a 45% reduction in PM10 emissions all developers are reasonably capable of, or is it just enough to attain a CAA standard deadline? Why does the Federal Clean Air Act allow areas like Bakersfield, that fail to attain daily 8 hour ozone standards on more days than any other place in the USA, to employ RACM, not BACM?

Does the Air District intend to wait for 2007 to complete a plan to attain federal 8-hour ozone standards? If so, how do you justify this to children who can not play outdoors when there is too much ozone in the air?

RESPONSE: The emission reduction requirements were based on the availability of new technology that can achieve the results allowing for a reasonable period of time for equipment owners to phase in the cleaner equipment considering the high cost of large construction equipment and its long useful life.

The District is working as rapidly as it can on 8-hour ozone planning. We are currently working with a Northern California 8-hour State Implementation Plan Working Group to coordinate the modeling and other efforts to get the plans out on time. The atmospheric modeling now beginning is needed to identify the reductions required. The District continually works to identify control measures that can be adopted to achieve reductions as early as possible. The District's goal is to complete the 8-hr plan in the spring of 2007.

Appendix C: On-Site Mitigation Checklist

222. **COMMENT:** Except for push mowers, this is identical to our July 18, 2005 letter. Local office holders must be tested on various parts of appendix C and recalled if they fail.

RESPONSE: Comment Noted.

223. **COMMENT:** 1 Bicycle Infrastructure:
Class II bike lanes on arterial/collector streets are more dangerous than class I.

RESPONSE: Comment noted. The corresponding URBEMIS mitigation component states "Percent of Arterials/Collectors with Bike Lanes: Or Where Suitable, Direct Parallel Routes Exist." 'Bike Lane' is the Class II category. 'Bike Path' is the more desirable Class I category. In addition, the District believes appropriate "complete street" planning adequately addresses the issue of safety.

224. **COMMENT:** 7 Pedestrian Oriented Infrastructure:
Place store entrances just off the sidewalk. Folks dislike walking across busy, un-shaded parking lots.

RESPONSE: The District will add the above to the items listed under "Pedestrian Oriented Infrastructure"

225. **COMMENT:** 16 Parking
Some employers offer employees about $40/month in lieu of free parking; employees who accept are left to choose among transit, bicycle, car pool, walking etc.

RESPONSE: This type of measure is appropriate for projects where the building tenant is known at the time the project review is accomplished. It could be included as an employer Transportation Demand Management Program. The emission reductions will depend on individual measures that the employer will implement and the pedestrian, bicycle, and transit service at the project site.

226. **COMMENT:** 25 Energy Efficiency
Provide space for outdoor passive solar clothes dryers, once known as wash lines and space for portable indoor drying racks.
Shaded, reflective or white roofs are not as good as the items you mention, but they are better than dark, unshaded roofs. Roof overhangs that shade windows in summer decrease heating costs.
Water heater should be located in most sinks so that a central hot water heater does not need to be turned on just to get hot water in one sink.
Provide fluorescent lighting, including compact bulbs.

If air conditioners, rather than swamp coolers, are insisted upon, they should be placed on the ground, north of the building, in the shade.

RESPONSE: The items listed above relate to the individual components that may increase energy efficiency. The On-Site Emission Reduction List contains the following measure:

> *Increase the building energy efficiency rating above what is required by Title 24 requirements. This can be accomplished by any combination of the following (this list should not be considered comprehensive):*

The list mentioned is an 'idea list' to inform the applicant of the variety of components that are available. The District will amend the list as additional energy-saving components are identified.

227. COMMENT: 47 Landscaping
At least let folks know push mowers are available at stores and they lower body weight.

RESPONSE: The District has a Public Information Department that has an excellent track record in getting the word out on the many options available for individuals to reduce their air impacts.

Appendix F: Socioeconomic Analysis

228. COMMENT: We agree that the affect of rule 9510 on home prices and rents will be small if the assumptions of the study by "Applied Development Economics" are made. We think that in general and in the Valley's housing market, supply and demand have a much greater effect on price than costs do; therefore we think the rule will have negligible effect on prices.

Our remarks on comments 67 and 70 above apply.

RESPONSE: Comment Noted.

229. COMMENT: If rule 9510 results in increased use of public transit, it will decreases the amount of money spent on gasoline. Sixty per cent of America's crude oil is imported. If residents divert money from partly imported gasoline to local products and to paying the wages of those employed by public transit, it will increase the gross domestic product of the Valley except for a decrease in money going to local oil drilling and refining. Would the net of this have a significant effect on Valley incomes? What if we decrease crude imports without decreasing local crude oil production?

RESPONSE: The District believes that although the implementation of Rule 9510 will have some economic impacts, it also will have a potentially significant beneficial economic effect on the San Joaquin Valley's economy through funding

off-site emission reduction projects. For example, a PM10 project may be paving unpaved roadways. This could result in an increase in jobs. However, the District does not speculate on the rule's potential secondary impact on the petroleum industry due to increase or decrease in fuel use.

230. COMMENT: If society desires a certain rate of home ownership among those with lower income, or otherwise wishes to increase the standard of living for those with lower income society can subsidize their mortgage payments, pay more for their work or tax them less and tax others more.

RESPONSE: Comment Noted.

Environmental Defense
Association of Irritated Residents
Steven and Michele Kirsch Foundation
Union of Concerned Scientists
Latino Issues Forum
Relational Culture Institute
Center for Energy Efficiency and Renewable Technologies
Fresno Metro Ministry
Natural Resources Defense Council
Merced/Mariposa County Asthma Coalition
Earthjustice
Date: September 14, 2005

We represent national, regional and local environmental, public health, and community organizations that are actively engaged in finding solutions to the San Joaquin Valley's air pollution. We have been closely following the district's development of DESIGN (Rule 9510) and the accompanying air impact assessment application fee (Rule 3180). We believe that together these rules have great potential for reducing and mitigating air pollution that accompanies growth in the Valley.

As noted in the comment letter many of us signed regarding the June 30 version of the draft rules, we believe the two rules have great potential for improving the quality of life for everyone in the Valley, and not just through the direct benefit of cleaner air. The two rules can increase opportunities and incentives for affordable housing located near jobs; reduce the climb in daily vehicle miles traveled; reduce traffic congestion and encourage viable transportation choices; protect agricultural lands from encroachment; and be the first words in a regional conversation about how to best accommodate growth without increasing pollution.

We believe that the September 1 version of the draft rule is an improvement over the June 30 draft. We are pleased that the latest draft has more detail. We also appreciate the district's effort to prevent gaming of the rule by ensuring that projects on contiguous

or adjacent property under common ownership of a single entity will be treated as one project. However, we believe that overall, the current version still falls short of ensuring that the DESIGN program meets its full potential to reduce air pollution.

We urge the district to consider the following comments and make appropriate changes to the September 1 draft rule before submitting it to the board for approval.

231. COMMENT: Section 2.0 Applicability. The thresholds for the size of developments covered by the rule are too high. The thresholds appear to be set to cover developments that would be expected to produce two or more tons per year of pollution. Neither the staff report nor the draft rule provides any strong logic for ignoring developments that produce less than 2 tons but at least 1 ton per year. Leaving tons on the table unnecessarily reduces the rule's effectiveness and eliminates cost-effective opportunities to protect public health. The thresholds should be set to cover developments that produce 1 ton or more per year.

RESPONSE: See Response to Comments #57 and #180 for the District's determination of the applicability level.

232. COMMENT: Section 3.5 Definition of Baseline Emissions. The wording for this definition needs to be clearer. The current wording leaves it unclear whether the first year of the project or any phase of the project is included in the baseline emissions. Additionally, as we discuss below, the emissions covered should include reactive organic gases.

RESPONSE: See Response to Comment #91.

233. COMMENT: Section 3.14.7 Definition of Recreational. The definition is too inclusive. It should be refined to ensure that facilities within this category generate similar levels of pollution. A community park, for instance, does not generate the same amount of pollution as a movie theater. Movie theaters and fitness clubs are probably more appropriately included in commercial categories.

RESPONSE: See Response to Comment #88.

234. COMMENT: Section 4.1.5 Housing Projects Exemption. This definition needs to be clearer. It appears that the district is interested in exempting housing that would qualify as affordable housing and that is receiving public funding to ensure its status as affordable housing. However, the definition as it now stands could be interpreted as offering a much broader exemption, and including any housing that receives federal- or state-backed loans. The definition should be more clearly and narrowly stated to reflect the district's intent.

RESPONSE: The District has eliminated this exemption in the proposed rule.

235. COMMENT: Section 5.3 Air Impact Assessment (AIA), Section 5.4 On-site Mitigation Checklist, Section 5.5 Mitigation Monitoring and Reporting Program (MMRP), and Section 5.6 Air Impact Mitigation Fee Deferral Schedule (FDS). The rule should overtly guarantee public access to documents and information required by these sections. While state law would allow public access, to ensure that access is available in a timely fashion, and not subject to delays resulting from the need to file public records act requests, the rule should specifically note that the district will make available to the public the application and information described in sections 5.3, 5.4, 5.5 and 5.6 within two weeks of the district's receipt and review of these documents.

RESPONSE: The ISR program will not be a discretionary program, and thus is not subject to the public review requirements of CEQA (See Response to Comment #187). The District will be including mechanisms for public agency and public review of certain ISR documents. See Response to Comment #8 for Public Agency access. See Response to Comment #59 for public access. See Response to Comments #178 and #188 for public access to the Off-Site Program.

236. COMMENT: Section 6.1 Construction Equipment Emissions. Construction equipment emissions reduction goals should be set as a minimum standard for individual vehicles, not as a fleet average. We applaud the district's inclusion in this draft of a section specifically requiring reductions in construction vehicle tailpipe pollution. Uncontrolled construction equipment represents some of the dirtiest and most health-threatening mobile emissions. However, the fleet average approach suggested in the draft rule fails to protect those working and living closest to, and therefore at most risk from, the emissions from individual pieces of the dirtiest uncontrolled equipment. We recommend requiring a minimum level of control for all construction equipment that limits emissions to those achieved by Tier 1 controlled construction equipment, in combination with a fleet average as described in the rule.

RESPONSE: The District does not have the authority to set emission standards for mobile sources. Please see Response to Comment # 6 for additional information.

237. COMMENT: Section 6.2 Operational and Area Source Emissions. The rule should fully mitigate the most health-threatening indirect source pollutants. We are pleased that the district has clarified that PM 2.5 will be included in the emissions controlled. However, we continue to believe that, like the June 30th version, the September 1 draft rule does not provide the level of health protection warranted. The rule addresses only oxides of nitrogen (NOx) and coarse and fine particulate matter (PM 10 and PM 2.5). It should also require mitigation of reactive organic gases (ROG), a precursor that leads to the

formation of ground-level ozone. Mobile sources account for almost 40% of ROG emissions in the San Joaquin Valley.

Additionally, the draft rule continues to call for reducing just a third of the NOx emissions and half of the operational PM 10 emissions over a ten-year period. This approach leaves the majority of pollutants produced by a new development unmitigated. The district staff has arrived at these discounts short of 100 percent mitigation to avoid double counting. It has thus assumed that every vehicle traveling to or from a new development is starting or ending the trip at another new development also covered by the rule. This is an unreasonable expectation.

At the very least, if the district believes it must discount mitigation levels to avoid double counting, it should arrive at the proposed discount in a logical, defensible fashion. The district should engage the URBEMIS update advisory group, composed of professional air regulators familiar with the model and the literature on land use and transportation, to define a reasonable and defensible default number for discounting trips to avoid double counting.

RESPONSE: See Response to Comments #57 and #65 for the District's response on the amount, pollutant type, and calculations for emission reductions. By ensuring that the program does not mitigate more than half the trips generated by the project, the District is ensuring compliance with the H&S Code that requires indirect source programs to differentiate between new and existing trips. URBEMIS accounts for all trips related to a development but does not differentiate between new and existing trips. When analyzing a project in an area that is planned but not built out, some of the trips will be going to new development that will also be subject to the rule in the future and other trips will be going to existing development not subject to the rule. Both types of trips should not be charged to the project being analyzed so that impacts are fairly allocated among all uses

238. COMMENT: Additionally, the mitigation requirement should extend beyond ten years. One need not look very far in California to see that most buildings continue to attract pollution-emitting traffic for much longer than ten years. The DESIGN rule should more faithfully reflect the real life of—and real life of emissions from—the development project. We suggest a minimum of 30 years, which assumes a development will last at least as long as a standard mortgage.

The rule should also recognize that developments have variations in emissions over their lives. This change reflects the changing demographics in housing developments over time, and the changing uses of buildings, including commercial and industrial buildings. The rule should include that variation in emissions modeling and the district should require a review of actual emissions from projects at least once every five years to ensure that the match between emissions and required mitigation is strong.

RESPONSE: See Response to Comment #198 for the District's response on variations.

239. COMMENT: Section 10.2 Administration of Mitigation Funds. Mitigation measures should be permanent. The district, in Section 10.2, the draft rule indicates that it will use mitigation fees to fund quantifiable, enforceable and surplus NOx and PM10 emissions from off-site mitigation projects. All mitigation, whether on-site or off-site, should be permanent as well.

Some mitigation measures, such as the incremental improvement from retrofitting a diesel truck engine, are not permanent. The incremental improvements last only as long as that retrofitted or replaced engine is in operation and go away once a newer, cleaner engine replaces that older engine. Yet the pollution those measures intend to mitigate do not change. Therefore, short-term mitigation measures should be sequenced with other mitigation measures, to ensure that mitigation lasts as long as the mitigated pollution does.

RESPONSE: The District disagrees with this commenter's characterization of permanent reductions. The key is that all equipment and vehicles wear out and must be replaced over time. If the old equipment is replaced at the end of its useful life with new equipment that is as clean or cleaner than the old equipment then the emissions continue at the same or lower rate and the reductions should be considered permanent. If the equipment were replaced with dirtier equipment at the end of its useful life, the reduction would not be permanent. The District uses project life estimates from the Carl Moyer program that are very conservative. For example, ag IC engines are allowed a project life of 7 years, but our experience in the grant program has shown that many engines are operated for 20 to 30 years.

240. COMMENT: The District Should Develop Long-Term Measures with Mitigation Funds, and Invite the Public to Participate.

The September 1 draft, like the earlier drafts, is vague and uncertain about how monies will be spent and leaves critical decision-making about spending the funds up to the air district. The district should use the Carl Moyer program as a model. Broad areas for expenditure are outlined in the statute establishing the Moyer program, and then the lead regulatory agency, after public workshops and hearings, adopts guidelines about the specifics of how the Moyer funds will be spent.

Mitigation funds collected from developers for off-site mitigation should help create and fund long-term air pollution mitigation measures. Improving transportation choices by investing in vanpool systems and providing incentives for affordable housing located near existing job sites are examples of just two

long-term measures. The district needs to engage the public, local government and other agencies to identify the best uses of mitigation funds to get these long-term emissions reductions. The rule should establish development of a public process and guidelines for determining the best uses of the mitigation funds.

RESPONSE: Long-term measures as described in the comment may be funded if they can meet the reductions are quantifiable and enforceable. There will be opportunities to add programs once the rule is adopted.

241. COMMENT: Include Discussion of Health Costs of Air Pollution**.**
In the staff draft report, in the draft rules, and in the socioeconomic analysis, there is no indication that air pollution costs money. There is no indication that the main purpose for this and every other rule adopted by the air district is to make the air healthier to breath. The air district staff, and by extension the air district board, does itself and the cause of clean air a disservice by continually ignoring this critical issue. Dirty air is costly. It impairs health and costs residents in time lost at work, in lost productivity, in lost days at school, in direct health care costs. It also costs crop damage and materials damage. More than a decade ago, researchers established that not meeting federal ambient air quality standards in the Los Angeles air basin costs that region at least $9 billion a year.

We continue to be disappointed by the district staff's refusal to note in its rule reports and socioeconomic analyses that air pollution has costs, especially health costs. We urge the district to use this rulemaking opportunity to bring to the public's attention the very real health costs associated with air pollution. Ample information is available from the California Air Resources Board and other state and national environmental agencies to help district staff provide sound information about the costs of air pollution.

RESPONSE: See Response to Comment #98.

242. COMMENT: Finally, we applaud the district for its decision to develop rules 9510 and 3180, and we appreciate the district staff's hard work on this rule. We hope to see another draft that incorporates the changes we have recommended. We also look forward to further discussions with the district about the rule as it moves forward.

RESPONSE: Comment Noted.

Yokuts Group, Sierra Club
Date: September 1, 2005

243. COMMENT: While I think several of the commentators today made the point, I, as a long-time low-income person, would like to tell your socioeconomic that, yes, a $100 increase in rent or mortgage, DOES make a difference. Obviously

he has never been in the position of not having enough money to pay all of his bills.

I'm not qualified to comment on the rest of the presentation, but that I do know about.

RESPONSE: The author's comment on the impacts of pricing on low income persons is well taken. It is important to point out that the rule exempts housing of less than 50 units; and it applies to only *new* housing developments. In addition, the impacts discussed in the Socioeconomic Analysis are the unlikely 'worst-case' scenario where all developments contain no sidewalks, all residential is built at 3-units per acre, there are no transit services, bike racks or any other measure that reduces emissions. The District believes that the exemptions and applicability stated above as well as the more likely, less-fee scenario reduce the impacts on housing affordability beyond that stated in the Socioeconomic Analysis.

244. COMMENT: And I would agree with Kathryn that the cost of *not* doing anything about pollution has to be spelled out. All too often only the costs of rectifying our past neglect are all we look at. That, actually is only relevant when comparing the benefits of several alternatives for cleaning our air.

RESPONSE: The District believes that rule by rule analysis of the health benefits of individual rules is not appropriate; however, the cumulative benefit of the District's attainment strategy on health is extremely important. The District will be revising the Staff Report to include discussion on health impacts as addressed in the PM10 and Ozone plans.

Late Comments

City of Manteca
October 7, 2005

245. COMMENT: The Manteca City Council recently adopted the attached Resolution opposing the adoption of Draft Rules 9510 and 3180. We are aware that we live in a non-attainment area. We are also in favor of lowering the amount of PM-10 and NOx emissions. However, before the assessment of additional fees occurs, a program needs to be presented that will show how the funds collected will be used to lower the emissions.

We will be happy to reconsider our actions when a positive plan has been presented.

RESPONSE: The District has provided a clear and positive plan for use of fees in Appendix E – Cost Effectiveness Analysis for Rule 9510. Detailed program guidance for new programs will be developed once the rule is adopted.

Resolution No R2005-446
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANTECA OPPOSITION THE SAN JOAQUIN AIR POLLUTION CONTROL DISTRICT DRAFT RULES 9510 AND 3180

246. COMMENT: WHEREAS, the San Joaquin Valley Air Pollution Control District has proposed two potentially costly draft rules (9510 and 3180) that will impose new taxes and fees on every new office building, home, retail store, restaurant and other private development in the counties of Fresno, Madera, Merced, Kern, Kings, San Joaquin, Stanislaus and Tulare; and

RESPONSE: The Draft Rules 9510 and 3180 do not apply to all new development, nor does it place fees on all development. Please refer to Response to Comment #170. See also Response to Comments #46, #51, and #78, and #175.

247. COMMENT: WHEREAS, every Central Valley Resident will pay for these new air district taxes and fees, as business pass along their new costs through increased prices on goods and services; and

RESPONSE: Please refer to Response to Comments #89, #138, and #180.

248. **COMMENT: WHEREAS,** adding tens of millions in new taxes and fees every year will hamper the Valley's economic development and job-growth in a region that has among the highest unemployment rates in California; and

RESPONSE: Please refer to Response to Comment #137. See also Response to Comment #55 and #102.

249. **COMMENT: WHEREAS,** the air district taxes and fees will exacerbate the housing affordability problem in the Central Valley by adding more than $50 million in new costs each year to the construction of homes and apartments, driving up the cost of mortgages and rents and pricing thousands of families out of homes they can no longer afford; and

RESPONSE: Please refer to Response to Comment #137.

250. **COMMENT: WHEREAS,** the air district taxes and fees would fund the expansion of a bureaucracy that lacks accountability or any specific plan to improve air quality. The air district has failed to present a plan of what improvements to the region's air quality it will make with its new taxes and fees; and

RESPONSE: Please refer to Response to Comments #101, #104, #108, #113, #114, #115 and #137, and #188. Also refer to Rule 9510 Section 10.

251. **COMMENT: WHEREAS,** the air district has failed to provide scientific evidence to support the new taxes and fees it is proposing; and

RESPONSE: Please refer to Response to Comments #135. In addition, considerable study and analysis went into the District's PM10 and ozone attainment plans, which identified reductions from Indirect Sources as a requirement for attainment of the PM10 and ozone standards.

252. **COMMENT: WHEREAS,** the air district taxes and fees will interfere and conflict with local government land use authority by creating a new and competing review process, that will erode local control over land-use decision making; and

RESPONSE: Please refer to Response to Comments #8, #81, #133, and #140. . In addition, please refer to the Staff Report Section (B) *District Authority and Limitations*, and Section (D) *State Environmental Review – CEQA*

253. **COMMENT: WHEREAS,** the air district land-use power is redundant and conflicts with existing environmental rules and safeguards, such as the California Environmental Quality Act and existing air quality and environmental reviews.

RESPONSE: The District does not have land-use power, nor does it desire to usurp the local land-use authorities discretion on land use power. Please refer to Response to Comments #8, #81, #133 and #140. In addition, please refer to the Staff Report Section (B) *District Authority and Limitations*, and Section (D) *State Environmental Review – CEQA*

254. COMMENT: ***NOW, THEREFORE, BE IT RESOLVED*** that the City Council of the City of Manteca opposes the San Joaquin Valley Air Pollution Control District Draft Rules 9510 and 3180

RESPONSE: Opposition noted. The District notes that the substance of the letter is unsupported - see Response to Comments #245 to #253.

STOP the AIR BOARD TAX – We'll All Pay! (Coalition)

A.L. Gilbert Company.
African American Chamber of Commerce of San Joaquin County
Building Industry Association of Central California
Building Industry Association of the Delta
Building Industry Association of Kern County
Building Industry Association of San Joaquin Valley
Building Industry Association of Tulare and Kings Counties
Business, Industry & Government (BIG) Coalition of the South San Joaquin Valley
Cal Bennett's
California Black Chamber of Commerce
California Building Industry Association
California Business Properties Association
California Manufacturers & Technology Association
California Mexican American Chamber of Commerce
California Restaurant Association
California Retailers Association
California Senior Advocates League
California Taxpayers' Association
Central California Hispanic Chamber of Commerce
Constructing Industry Air Quality Coalition
Consulting Engineers and Land Surveyors of California
Consumers First, Inc
City of Avenal
City of Clovis
City of Escalon
City of Lodi
Coalinga Area Chamber of Commerce
Greater Bakersfield Chamber of Commerce

Greater Merced Chamber of Commerce
Howard Jarvis Taxpayers Association
J.F. Shea Co., Inc
KRC Safety
Kern County Farm Bureau
Kern County Hispanic Chamber of Commerce
Kern County Taxpayers Association
International Council of Shopping Centers
Lemke Construction
Lodi Association of REALTORS, Inc
Lodi Chamber of Commerce
Madera Hispanic Chamber of Commerce
Matthews Homes
National Association of Industrial and Office Properties – California Chapters
National Coalition of Hispanic Organizations
National Tax Limitation Committee
Orange Belt Board Realtors
Raymus Homes
Rainscape
Reason Foundation
San Joaquin Valley Black Chamber of Commerce
San Joaquin Chamber of Commerce
Scolari Tile & Co., Inc
Self-Help Enterprises
Sharp Insurance & Bonding
Small business Action Committee
The Hispanic Chamber of Commerce of Stanislaus County
Tulare and Kings Counties Builders Exchange
The Tulare/Kings Hispanic Chamber of Commerce
Tulare Chamber of Commerce
Tulare County Association of REALTORS
Tulare County Farm Bureau
Valley Taxpayer's Coalition
Valley Outdoor Advertising
Visalia Chamber of Commerce

255. **COMMENT:** On behalf of small business, labor, taxpayer, local government, community and other diverse organizations, we strongly oppose draft Rules 9510 and 3180. These measures will impose new taxes and fees on Central Valley residents, hurting our economic development and job-growth but offering no accountability and no guarantees of cleaner air.

RESPONSE: New Taxes: The Draft Rules 9510 and 3180 do not apply to all new development, nor does it place fees on all development. Please refer to

Response to Comment #170. See also Response to Comments #46, #51, and #78, and #175.

Hurt Economy: Thee is no factual evidence that implementation of the rules will hurt the economy. Please See the Staff Report and Appendix F – Socio Economic Impact Analysis for more information. Please refer to Response to Comment #137. See also Response to Comment #55 and #102.

Accountability: The authors' statement is untrue. Accountability is built into the rule. Refer to Rule 9510 Section 10. See also Response to Comments #101, #104, #108, #113, #114, #115 and #137, and #188.

256. COMMENT: The proposed rules will impose a slew of new taxes and fees that will apply to every newly constructed property – offices, homes, retail stores, restaurants and small or large businesses. Combined, these taxes and fees are expected to cost hundreds of millions of dollars over the next five years. This fee will price tens of thousands of families out of housing they can afford and worsen the housing crisis in the Central Valley.

RESPONSE: New Taxes: The Draft Rules 9510 and 3180 do not apply to all new development, nor does it place fees on all development. Please refer to Response to Comment #170. See also Response to Comments #46, #51, and #78, and #175.

Costs of Rule: The District analyzed the calculations that the BIA provided via Sierra Research, and concluded that the analysis was flawed and inaccurate. Please see Response to Comments #161 and #162.

Housing Impact: The Socioeconomic Impact Analysis did not find a significant impact to housing builders or housing buyers/renters. See the Staff Report and Appendix F for more information. In addition, please see Response to Comments #137, #41, and #53.

257. COMMENT: By imposing similar costs on new businesses, these measures will hamper the Valley's economic development and job-growth which will be particularly disastrous in a region that has among the highest unemployment rates in California.

Ultimately, these additional costs will be passed along to consumers, meaning we all pay.

RESPONSE: The District disagrees that the rule will hamper economic development in the Valley. Please see Response to Comment #55.

258. **COMMENT:** Most troubling is the fact that there are no accountability mechanisms built into the draft Rules and no guarantees that the funds will actually improve the air quality. The Air Board has failed to present a detailed list of the specific air-quality-improvement activities it intends to pursue and has failed to provide credible scientific support for the proposed rules.

RESPONSE: Accountability: The authors' statement is incorrect. Accountability is built into the rule. Refer to Rule 9510 Section 10. See also Response to Comments #101, #104, #108, #113, #114, #115 and #137, and #188.

Credible Scientific Support: Again, the authors' statement is not valid. The District has been developing the rule over several years, involving extensive research and documentation. Please refer to Response to Comments #135, the Staff Report, and associated Appendixes. In addition, considerable study and analysis went into the District's PM10 and ozone attainment plans, which identified reductions from Indirect Sources as a requirement for attainment of the PM10 and ozone standards.

259. **COMMENT:** Lastly, the new bureaucracy will interfere with local government land use decision-making by creating a new and unworkable process that erodes local control over land-use planning. This will stall much-needed new housing, businesses and other economic growth in our communities. For example, the draft Rules are redundant and even conflict with existing environmental rules and safeguards, such as the California Environmental quality Act and Existing air quality and environmental reviews

RESPONSE: First, 100% of off-site fees will be used for off-site emission reduction programs only. None of the off-site fees will be used for District administration or other uses. Second, the rules are not redundant, conflicting, unworkable, or otherwise interfere with the environmental review process, existing laws, or the land-use agencies' discretionary land use authority.

The District does not have land-use power, nor does it desire to usurp the local land-use authorities discretion on land use power. Please refer to Response to Comments #8, #81, #133 and #140. In addition, please refer to the Staff Report Section (B) *District Authority and Limitations*, and Section (D) *State Environmental Review – CEQA*

260. **COMMENT:** Draft Rules 9510 and 3180 are misguided solutions that will hurt every Central Valley Resident, potential new homeowners and renters and the

economic climate in the Central Valley. For these reasons we the undersigned oppose draft Rules 9510 and 3180 and urge your opposition as well.

RESPONSE: Opposition Noted. The District notes that the substance of the letter is unsupported – See Response to Comments #255 to #259 above.

Merced County Economic Development Corporation (MCEDCO)
Dated September 13, 2005
Received September 19, 2005

261. COMMENT: On behalf of the Merced County Economic Development Corporation (MCEDCO) we urge members of the San Joaquin Valley Air Pollution Control District (Air Board) to oppose draft Rules 9510 and 3180. The draft Rules will impose hundreds of millions in new fees on residential, commercial and business developments, discourage investments and job growth throughout the Central Valley and hinder affordable housing without any guarantee that they will directly improve the situation

RESPONSE: The factual evidence supports the District's position that the Draft Rules will have a less-than-significant effect on the housing market in the Valley, and a minimal effect on other land use projects. In addition, there is no supporting evidence that the rules would 'discourage investments and job growth'. Finally, there is solid scientific evidence that the rules will benefit the air quality of the valley. The District has been developing the rule over several years, involving extensive research and documentation. Please refer to Response to Comments #135, the Staff Report, and associated Appendixes. Accountability is built into the rule as draft Rule 9510 Section 10. In addition, considerable study and analysis went into the District's PM10 and ozone attainment plans, which identified reductions from Indirect Sources as a requirement for attainment of the PM10 and ozone standards. See also Response to Comment #55.

262. COMMENT: MCEDCO is a private/public nonprofit 501c4 organization that offers economic development expertise to the incorporated cities and unincorporated communities within Merced County. MCEDCO's primary mission is to promote and facilitate net, new employment growth, encourage increased corporate investment and assist in the diversification of the Merced County economy. MCEDCO focuses on retention and expansion of existing businesses, small business start-up, and recruitment of new enterprises

MCEDCO's efforts serve the entire community by encouraging new jobs opportunities for residents, increased sales and improved productivity for local business and new tax and fee revenues to support programs and services

offered by the cities and county. Without new business investment, employment growth is not realized and subsequently residential growth falters.

California is already recognized as a costly business location. Businesses frequently cite high fees and development expenses as a disincentive to new investment. The rising cost of property in tandem with additional fees and high operating costs jeopardizes potential wealth generation opportunities.

Environmental issues, in particular clean air for the Valley, are important matters to prospective business investors. However, MCEDCO is concerned that the draft Rules may not directly improve the situation and may deter residential and other construction that is often considered a primary trigger to economic development.

RESPONSE: The District recognizes the author's concerns. However, the District has provided detailed calculations of the emission reductions predicted by the rule as well as potential off-site emission reduction projects available, Appendix B and E respectively. In addition, considerable study and analysis went into the District's PM10 and ozone attainment plans, which identified reductions from Indirect Sources as a requirement for attainment of the PM10 and ozone standards. See also Response to Comment #55.

263. COMMENT: The draft Rules may also thwart affordable housing, a top priority in the Merced area given our ranking as the least affordable community in the nation. Balancing environmental concerns with affordable housing and new employment is a daunting challenge, not likely to be furthered by the draft Rules. Efforts to improve air quality are supported by the MCEDCO provided that said activities reflect a balanced approach with a clear plan for improvements.

RESPONSE: The District feels that it has met the criteria stated by the author. The draft ISR rules are part of a larger plan, the PM10 and ozone attainment plans, that identified emissions inventories for various activities and land uses, looked at the predicted growth, identified controls, modeled future air quality and determined a mix of actions that would reduce air pollutant emissions to bring the valley into attainment for PM10 and ozone. Part of this plan (also mandated by state law – SB 709) is to reduce emissions from indirect and area sources. As stated in Response to Comment # 17, the ISR development process has taken several years, multiple workshops, as well as working with the state-wide URBEMIS working group, careful analysis of existing regulations and programs. For more information, please see the Staff Report and associated Appendixes.

SUMMARY OF COMMENTS AND RESPONSES FROM THE PUBLIC WORKSHOP HELD ON JUNE 30, 2005

EPA: No comment received.

ARB: No comment received.

Industry and Public:

General Comments

1. **COMMENT:** The rule does not address the increase in trip length or vehicle trips resulting within the region from existing development.

RESPONSE: The purpose of the rule is to mitigate the emissions that result directly from new development. While the growth in the footprint of the region can result in increased travel, it is not practical to assign that growth to an individual development.

2. **COMMENT:** With new housing growing the housing inventory by at most 3% a year, we are therefore ignoring 97% of the homes and cars that create pollution. Our legislators have a responsibility to address the issue head on and not hide behind the pretense that burdening 3% of the households can mitigate the pollution of the other 97%.

RESPONSE: The District agrees that Rule 9510 does not address the emissions associated with existing residential, commercial, and industrial development. Given the requirements of the Health and Safety Code Section 40717.5, the District is precluded from regulating emissions resulting from existing trips associated with existing development. The purpose of the rule is to mitigate growth which is occurring at a rate of about 3% per year. In 10 years, the cumulative growth will constitute 30 percent of emissions. In other words, without growth at the projected rate, emissions would be 30 percent lower in 10 years.

3. **COMMENT:** Stakeholders are gravely concerned about the District's ability to take on these complex new tasks accordant workload.

RESPONSE: The District has a long history of analyzing the impact from new developments and suggesting appropriate mitigation. Additionally, the District has extensive experience operating incentive program to purchase off-site emissions reductions. In conjunction with the rule adoption the District will provide an assessment of workload and an appropriate staffing recommendation.

4. **COMMENT:** There needs to be protections built into the program for speedy processing of air quality assessments.

RESPONSE: The draft rule contains timelines for the District process applications. The District received a number of comments concerning how those timelines relate to the land-use approval process. The District will make every effort to ensure that the timelines in the rule do not unduly delay the land-use approval process. The rule allows developers to submit applications prior to beginning the CEQA process. For projects where the project description is not expected to change, all analysis and preliminary emissions estimates can be accomplished prior to the CEQA document being released for public review.

5. **COMMENT:** Why are only NOx and PM10 being addressed when CEQA requires all pollutants to be quantified and mitigated to the extent that they exceed thresholds?

RESPONSE: Rule 9510 is being developed to meet commitments that the District has made in the PM10 and Ozone attainment demonstration plans. The District has not committed to reductions of other pollutants in this rule. While the mitigation contained in the rule will help applicants comply with CEQA that is not the primary purpose of the rule. The revision to the GAMAQI document will outline how this rule will work under CEQA.

6. **COMMENT:** Not all of the classes of development projects identified in Section 2.2 are defined in Section 3.11.

RESPONSE: The District will make the appropriate changes ensure that there are no internal discrepancies in the rule.

7. **COMMENT:** Most buildings in the SJVAB last longer than ten years. The ten-year period should be expanded to at least thirty years, since that is the term of the standard mortgage.

RESPONSE: The District selected ten years based upon a number of factors. First, since the rule has been committed to attain the federal ozone and PM10 standards in 2010 the ten-year time frame is sufficient to get past the attainment deadlines and ensure that they last into the maintenance period. Also, utilizing a thirty-year time period would have a significant financial impact on the region.

8. **COMMENT:** What would happen if a change of use occurs and the previous use required fees that were already paid, and the actual use did not?

RESPONSE: The District is not proposing to re-assess a project at change of use. The program will only deal with new construction.

9. **COMMENT:** Better clarification of the definition of "baseline emissions" is needed.

RESPONSE: The District will ensure that the definition is clear.

10. **COMMENT:** Consultants should either be chosen by the District or the District itself should performed the Air Impact Assessment, so that consultants will be less likely to manipulate numbers.

RESPONSE: The District can ensure that air impact assessments are properly performed. This can be achieved with the District performing the analysis or with private consultants performing an analysis that is reviewed by the District.

11. **COMMENT:** Projected NOx emissions reductions exceed the 2010 SIP commitment. The reductions should stay in line with SIP commitments.

RESPONSE: The District has utilized the plan commitment as a guideline for rule development but the final emissions reductions will be governed by developing an effective rule. Final reductions from the rule will be within range of the SIP commitment. It is also important to achieve as many reductions as feasibly possible, since there are numerous new standards that the District will need to meet.

12. **COMMENT:** The inclusion of the proposed rule in the SIP is prohibited by the Health and Safety Code since this is voluntary compliance with the Clean Air Act and not required.

RESPONSE: The emissions reductions associated with the rule are required to achieve attainment of the federal ozone and PM10 standards and are therefore federally required and are commitments in two federally enforceable plans.

13. **COMMENT:** All requirements pertaining to indirect source review or derived there from should be designated as "not federally enforceable."

RESPONSE: See previous response.

14. **COMMENT:** The inclusion of the proposed rule in the SIP is prohibited by the Health and Safety Code since the authority for this rule is to attain a state, not federal, ambient air quality standard.

RESPONSE: The District is not aware of any such prohibitions since the emissions reductions associated with the rule are needed to attain the applicable National Ambient Air Quality Standards.

15. **COMMENT:** The definition of a development project should include the following additional language: The issuance of a permit for construction or reconstruction, where such permit is required solely to comply with a rule, regulation or order of a local agency shall not be considered to be a development project. The issuance of an operating permit shall not be considered a development project.

RESPONSE: The current definition of a development project adequately addresses projects that have ancillary discretionary approvals relating to the project. The applicability of the rule includes not only discretionary approvals, but also minimum sizes of projects that must comply with the rule.

16. **COMMENT:** It appears that the mitigation measure resulting from this rule are to be used to comply with mandates of attainment plans for ameliorating existing air pollution problems in the Valley. That is, the rule is not primarily intended to prevent new pollution from occurring, they are intended to address pollution that has occurred/is occurring from existing development. Case law in this area would indicate that new development should not be expected to remedy impacts created by previously approved and existing development.

RESPONSE: The purpose of the rule is to reduce the emissions impact from projected development in the San Joaquin Valley not existing development. The emissions inventory in the relevant PM10 and ozone plans contain estimates of emissions totals that include the growth in emissions. The emissions reductions commitment for this rule does not exceed the emissions projected for growth, and therefore only addresses the impact of new development.

17. **COMMENT:** It is unclear how the District will track the various developments and the various iterations of each approval.

RESPONSE: The District will work with local government agencies to ensure that appropriate tracking mechanisms are in place.

18. **COMMENT:** PM2.5 should be included as well.

RESPONSE: The definition for PM10 includes particulates less than 10 microns in size. By definition this would include PM2.5 emissions.

19. **COMMENT:** The rule should require that all NOx and PM emissions be mitigated.

RESPONSE: There are specific previsions of the Health and Safety Code that make it difficult to mitigate 100 percent of projects emissions without violating state law. Additionally, the District has committed to specific emissions reduction levels in the applicable ozone and PM10 plans. The District can achieve these reductions without requiring 100 percent mitigation from projects.

20. **COMMENT:** Discounting the trips at 50% is not defensible. The District should engage the URBEMIS group, composed of professional air regulators to define a reasonable and defensible default number for discounting trips.

RESPONSE: The purpose of discounting the trips by 50% is to ensure that the district does not charge fees on both ends of a trip. If the District did not discount the trips by 50% there is a very real possibility of charging both residential and commercial projects for the same trips, which could result in double counting.

21. **COMMENT:** The rule should recognize the variation in emissions over the life of the development. Therefore, the rule should include a review of actual emissions every five years to ensure that the match between the emissions and the required mitigation is strong.

RESPONSE: The URBEMIS model contains average assumptions for types of development projects. While there is some variation from project to project, and over the life of a project, the assumptions in the model are adequate when applied over a large number of projects.

Applicability

22. **COMMENT:** What was the basis for establishing the project build-out thresholds?

RESPONSE: The project build-out thresholds are based upon the emissions associated with those types of projects. The thresholds reflect 2 tons per year. By setting project build-out thresholds, the District can address the maximum amount of the emissions associated with new development while minimizing the administrative burden on small projects.

23. **COMMENT:** The rule should be set to cover developments that upon build-out create 1 ton or more per year of any pollutant. The size associated with each development project listed in section 2.2 would then be cut in half.

RESPONSE: See previous response.

24. **COMMENT:** The applicability section should include the following language: The increase in emissions from the development project result from an increase in vehicular activity that would not otherwise occur, or the increase in emissions from the development project results from new area sources, not previously authorized.

RESPONSE: By their nature new development projects ultimately result in new trips that would not otherwise occur.

25. **COMMENT:** Other land use categories should be added, such as recreational space and military bases, since these activities generate a significant number of vehicular trip ends.

RESPONSE: The District will add these categories.

26. **COMMENT:** The industrial space threshold should be replaced with light industrial space at 25,000 square feet and heavy industrial space at 100,000 square feet, since trip generation from these types of land use differ significantly.

RESPONSE: Most heavy industrial projects would be exempt from this rule, so distinguishing between the different types of industrial would not be productive.

29. **COMMENT:** The proposed rule does not comply with H&SC Section 40717.5(a)(1) which limits the applicability to activities that contribute to "…air pollution by generating vehicle trips that would not otherwise occur."

RESPONSE: By their nature new developments ultimately result in new trips that would not have otherwise occurred.

30. **COMMENT:** Under the proposed rule, the installation of equipment, wherein such installation requires a public agency "exercise judgment" in approving the permit, would make the project discretionary and subject to Rule 9510 even though the project might not result in vehicular activity.

RESPONSE: These projects would not be subject to the rule since the size of the equipment would be lower than the applicability thresholds of the rule.

31. **COMMENT:** 55,000 square feet of general office space is excessive.

RESPONSE: Comment noted.

32. **COMMENT:** The rule should not retroactively apply to permit applications filed prior to the effective date of the rule. This appears to defer or circumvent CEQA

analysis. The seriousness of the pollution problem in the SJVAB makes all information on air pollution and its mitigation extremely pertinent and necessary to consideration of development projects prior to project approval.

RESPONSE: The rule is not intended to replace the CEQA review for projects. The mitigation developed for a project through the CEQA process can be credited to the requirements of the rule.

33. COMMENT: The applicable square footage thresholds in section 2.2 are discriminatory in that "government space" thresholds are considerably less than non-government identified spaces.

RESPONSE: The applicable square footage thresholds are based upon emissions estimates for different land-use types. These estimates are influenced by a number of factors including trip generation rates that are specific to each land-use type. Government spaces tend to have higher trip rates, so a lower threshold for those spaces are warranted.

34. COMMENT: Will the rule as it relates to urban residential development be applicable to development proposed in the unincorporated areas of the county?

RESPONSE: The rule will apply to new development projects in the entire San Joaquin Valley Air Basin.

35. COMMENT: The definition of "discretionary" projects would be applied inconsistently throughout the SJVAB since different jurisdictions handle them differently. By defaulting to the jurisdictions' interpretation of the term, the District is allowing for the rule to be applied inconsistently.

RESPONSE: The District does not have the authority to change the local government process. Therefore the District is defaulting to the jurisdictions' interpretation, so as not to interfere with the local jurisdictions' land use authority.

36. COMMENT: A simplified and flexible approach should apply to all projects smaller than the exemption thresholds. Smaller projects should be exempt from the detailed analysis, but should still be required to implement all feasible onsite mitigation strategies and make a contribution to offsite mitigation.

RESPONSE: Projects that go through CEQA and have a significant impact are required to implement all feasible mitigation.

Exemptions

37. **COMMENT:** There should be a new exemption section added, section 4.3, which should include the following: Any project subject to federal Section 7 or Section 10 consultations with the United States Fish and Wildlife Services (USFWS) or a 2081 consultation with California Department of Fish and Game (CDFG), since these projects will require life of project mitigation.

RESPONSE: It is not understood how a project that is required to mitigate the life of the project for Fish and Wildlife, would mitigate their air impact. Therefore, this exemption will not be added.

38. **COMMENT:** Section 4.1.4 should read as follows: A development project where the emissions primarily result from direct sources or from emissions units as defined by Rule 2201 (New and Modified Stationary Source Review Rule); or projects subject to Rule 2010 (Permits Required). Examples of exempt sources can be expanded to include: Oil Production and Natural Gas Production, Refineries and Natural Gas Processing Plants, Waste Disposal and Waste Management Facilities, Mineral Extraction and Processing Plants.

RESPONSE: Comment noted, with the exception of waste facilities and mineral facilities. These types of facilities may include a significant traffic component, therefore they should be subject to the rule. The stationary source emissions associated with all facilities will not be included.

39. **COMMENT:** Section 4.1.4 needs to be modified to include gas plants, bulk loading terminals, and gas liquid processing plants.

RESPONSE: See previous response.

40. **COMMENT:** The 50 unit exemption is bound to result in “gaming” or several tract maps coming in at 49 units.

RESPONSE: The District will modify the rule to minimize the potential for circumventing the requirements of the rule.

41. **COMMENT:** The exemption for the applicability should be extended to the reconstruction of owner occupied low-income housing.

RESPONSE: Reconstruction of a single unit would be below the thresholds for rule applicability.

42. **COMMENT:** What is the rationale for exempting transit and transportation projects?

RESPONSE: The exemptions for transit and transportation projects were intended to be from the operational emissions portion of the rule. Since these

projects do not generate or attract trips it would not be appropriate to include these projects operational emission. There are significant emissions from the construction of these projects. The rule will be modified so that the construction requirements apply to transportation projects. Transit projects will continue to be exempt, since they are ultimately considered mitigation.

43. **COMMENT:** This rule is akin to the local conformity rule, Rule 9110 and overlaps with US EPA's General Conformity requirements of 40 CFR 51. In fact, the conformity rules are more stringent that this proposed rule. Sources subject to general conformity should be exempt from the rule.

RESPONSE: In some cases the general conformity rule is more stringent than the DESIGN rule. In those cases federal sources will be given credit for the efforts to meets conformity requirements. In other cases, federal sources are not required to mitigate their emissions if they are already included in the SIP. In those cases the DESIGN rule would be more stringent than the general conformity provisions.

44. **COMMENT:** The definition of projects subject to the rule does not address whether general, regional, community, or specific plan adoption would be considered "discretionary" projects subject to the rule. These plans and subsequent information for URBEMIS inputs are too general to furnish precise estimates of pollution as a result of those plans. Therefore, the consideration and adoption of specific plans should be exempt from the rule, unless the adopting land jurisdiction does, in fact, intend to issue development/construction permits pursuant to a specific plan without subsequent environmental analysis.

RESPONSE: As long as the general, regional, community, or specific plan are not the last discretionary approval of a project or portion of that project, the rule would not be applied to these approvals, but rather to the later more specific discretionary action for the project. If these plans were the last discretionary approval, perhaps the plan or CEQA document could contain a condition of approval or mitigation measure requiring the developer to provide an analysis to the District once the project design is finalized and prior to final ministerial site plan review or subdivision map or issuance of the building permit.

CEQA

45. **COMMENT:** The proposed rule does nothing to protect against CEQA lawsuits with respect to air quality mitigation.

RESPONSE: Due to limitations in state law, the District is unable to develop a rule that provides the same level of mitigation that some communities are seeking through the CEQA process. The District has established a program

through which project proponents can work with the District to fully mitigate their projects through CEQA.

46. **COMMENT:** There is a disconnect between the levels of significance in the Guidelines for Assessing and Mitigating Air Quality Impacts (GAMAQI) and the proposed rule.

RESPONSE: The purpose of the rule is to assist the District in attaining clean air standards. The rule is not intended to satisfy the requirements of CEQA. However, the GAMAQI will be revised to describe how compliance with this rule would affect CEQA.

47. **COMMENT:** What is the basis for the exemption of projects that have a mitigated baseline below two tons per year? Is this basis evidence that 10 projects in the same area producing less than two tons per year each are not cumulatively considerable under CEQA?

RESPONSE: The threshold was in part determined by selecting a level where reductions achieved would meet the commitments outlined in the PM10 and ozone plans. The revisions to the GAMAQI will outline the issue of cumulative impacts, in relation to this rule.

48. **COMMENT:** The District should include in this rulemaking, clear direction from the Governing Board to amend the GAMAQI, through a public hearing process, to formally adopt the concept of NOx mitigation over ten years in Air Quality Assessment methodology for CEQA documents. This would provide clear direction for the connection of this rule to CEQA and provide support for the Lead Agency in the current challenges to Air Assessment methodology in CEQA documents.

RESPONSE: The District will continue to improve its CEQA process to insure that appropriate analysis and mitigation are included for projects. Pending Governing Board adoption of this rule, the GAMAQI will be revised through a public process.

49. **COMMENT:** Please clarify why the District is not committed to amending the GAMAQI to define the exact role that this rule will have in the CEQA process, which would clearly provide relief for local government in CEQA litigation in a matter, air impacts, for which the District is the recognized expert.

RESPONSE: As was mentioned previously, the purpose of the rule is to achieve the emissions reductions necessary to attain the federal PM10 and ozone standards. The primary purpose of the rule is not CEQA compliance. However, the GAMAQI will be revised, and will provide clarification on how this rule works under CEQA.

50. **COMMENT:** The appropriate time for District analysis of projects under the rule would be during the early consultation process, before the overall environmental analysis of a project is completed and before the mitigation measures are approved for the project.

RESPONSE: Since the timelines for land use approval and CEQA vary greatly from jurisdiction to jurisdiction, the District cannot prescribe a timeline that will fit all jurisdictions. To that end, it is up to the developer to determine when would be the best time to approach the District. It is the District's preference that it is as early in the process as practicable so that the analysis and impact assessement could be completed prior to circulation of the CEQA document.

Regulatory Process

51. **COMMENT:** The best time to analyze and mitigate environmental impacts is at the comprehensive higher plan level. However, this rule discourages master planning in favor of piecemeal, small projects due to the liabilities stated for changes in design.

RESPONSE: The applicability of the rule at the last discretionary approval stage does not provide a disincentive to planning at a higher plan level. In fact, the opposite is true. Building in mitigation at the comprehensive plan level will assist in complying with the requirements of the rule.

52. **COMMENT:** The proposed rule creates a major burden for project applicants by imposing new requirements for preparation of detailed air quality studies.

RESPONSE: Many projects are already doing comprehensive analysis during the CEQA process. It is intended that the analyses and work for this rule provide a foundation for and/or complement the analyses required under CEQA. The District will work to provide tools and training to streamline the analysis process.

53. **COMMENT:** The mitigation agreement is wholly duplicative of the mitigation procedures set forth in CEQA, and will create chaos and confusion.

RESPONSE: Given that mitigation is consistent with the CEQA process it should not create chaos or confusion. The mitigation should in most cases be included as a mitigation measure in the CEQA document. Measures provided by the developer after the CEQA process is complete will require an agreement to ensure compliance.

54. **COMMENT:** The requirement for a new assessment based on changes to the construction schedule approaches absurdity with a master-planned community. How can one accurately predetermine market forces over a 20-year period?

RESPONSE: The fact that the rule is applied at the last discretionary approval of a project will mitigate the need to reanalyze projects. If a project is phased over an extremely long period of time it is appropriate to re-analyze the project if the schedule is significantly altered.

55. **COMMENT:** There is a conflict when the review of the Air Impact Assessment Application is to be done and when the review and assessment of the EIR must be accomplished.

RESPONSE: The District will not prescribe when the application is required. Therefore, it is likely that the same analysis could be used for both purposes.

56. **COMMENT:** The developer, who might be expected to pay for the mitigation fees in order to get land entitlements, may not be the same entity that purchases the project to eventually build the development. So if the latter decides to terminate the project and not build, there would be an administrative headache in terms of refunds.

RESPONSE: The District has offered the option for a fee deferral agreement that could defer the fees for projects that have an uncertain future.

57. **COMMENT:** The 30 day review process, plus the time necessary to process an application will significantly add to the development review time for a project's approval.

RESPONSE: The District has altered the timeframes in the rule to ensure that the rule will not result in unnecessary delays in the development process.

58. **COMMENT:** How would the rule apply to Master Plan Communities/Developments? Would each project in that plan need to be evaluated or just the plan? The difference in administration of the two options would be enormous.

RESPONSE: The rule requires the review at the last discretionary approval for a project.

59. **COMMENT:** The approval of the Air Impact Assessment should be done prior to CEQA hearings, and the details of the calculations should be made available to the public prior to those hearings.

RESPONSE: It is the District's intent to have the Air Impact Assessment available prior to the adoption of the project.

60. **COMMENT:** We request that the 30 day review period for determining an application complete be shortened to 10 days, since that is more in line with the 10 day review period for Initial Study consultation comments, and since URBEMIS analyses can be done within a matter of minutes, with the exception of EIRs since those can have a 30 day response time.

RESPONSE: Comment noted.

61. **COMMENT:** We request that the District forward a copy of the URBEMIS findings to the local jurisdictions for incorporation in their CEQA documentation prepared for projects.

RESPONSE: The District is willing to share information with local jurisdictions and in fact regularly comments on CEQA documents.

62. **COMMENT:** The rule proposes that cities and counties withhold building permits pending satisfaction of the District requirements.

RESPONSE: The rule does not include this provision.

63. **COMMENT:** The District should ensure timely public access to information used to calculate emissions. This would include publishing the information.

RESPONSE: The District will make all appropriate information available to the public.

Mitigation Fee Act

64. **COMMENT:** The draft rule fails to comply with the nexus test required by AB1600.

RESPONSE: The District has determined that this rule is not subject to AB 1600 (the Mitigation Fee Act) for two reasons. First, the District has no approval authority over development projects and, therefore, is not imposing a fee as a "condition of approval of a development project." Any fee will be assessed as a separate regulatory fee after the project has been approved by the local land use agency. Second, the Mitigation Fee Act applies only to fees assessed for the purpose of defraying the cost of "public facilities." The District does not believe that air pollution mitigation projects such as diesel engine retrofits are public facilities. However, notwithstanding the above, the District has met the "nexus" test under the Mitigation Fee Act or any other legal standard. New developments subject to the rule attract pollution caused by construction activities and vehicle traffic. The rule seeks to mitigate such pollution by allowing the developer to (1) include on-site mitigation measures in the design of the development that mitigate the types of air pollution caused; and/or (2) pay a fee

that will be used to fund emissions reduction projects, such as engine retrofits, that will mitigate the types of air pollution caused. Thus, the purpose of the fee and its uses are clear. In addition, there is clearly a reasonable relationship between new development and a fee imposed to mitigate the air pollution it causes. Finally, the fees will be reasonable in amount in that they will be directly tied to the cost of reducing the emissions caused by the development. The fee is established on a site-specific basis through URBEMIS modeling designed to determine the amounts and types of excess emissions caused by the development and then calculating the cost of reducing those emissions. URBEMIS is currently the best tool in existence for quantifying such emissions and has been used in similar contexts in the past. Thus, the fee meets all nexus requirements outlined in AB 1600.

65. **COMMENT:** The draft rule does not distinguish between the two-prong analytical paths in AB1600.

RESPONSE: See previous response.

66. **COMMENT:** The District has not circulated any documentation reflecting a nexus study.

RESPONSE: See previous response.

Socioeconomic Impact Analysis

67. **COMMENT:** The District has not released a socioeconomic impact analysis as required by the Health and Safety Code.

RESPONSE: The District will be distributing the socioeconomic impact analysis in conjunction with this draft of the rule.

68. **COMMENT:** The socioeconomic Impact analysis should demonstrate the impacts on the following: housing costs, rents, low-income families.

RESPONSE: Comment noted.

69. **COMMENT:** The socioeconomic Impact analysis should demonstrate the impacts of the processing, fee and mitigation proposals on new businesses.

RESPONSE: Comment noted.

70. **COMMENT:** The socioeconomic analysis should make a note of the overall costs to the public of air pollution.

RESPONSE: The District will include a general discussion of the impacts of air pollution on public health in the socioeconomic analysis.

URBEMIS

71. **COMMENT:** URBEMIS is a useful tool for calculating emissions only at the "sketch planning" level. It is not capable of evaluating specific design elements and operational measures, and accordingly, there is no way to do an accurate project-specific analysis of mitigation.

RESPONSE: The District does not agree. In fact, URBEMIS has been utilized to analyze the impact from projects through the CEQA process for years. The model has recently been updated based upon an extensive review of travel behavior studies to ensure that it provides proper credit for design features that are built into a project.

72. **COMMENT:** Please clarify how URBEMIS will be used in the process. Is the operating assumption that all discretionary development, regardless of its consistency with the general plan, is "new" for the purposes of modeling (i.e. additional development, and not replacing land uses/emissions already assumed within the model), or will the assessment be based on its placeholder land use?

RESPONSE: The analysis will be conducted at the last discretionary approval for a project regardless of whether the project is consistent with the existing general plan. If the general plan is the last discretionary approval for that particular land-use the district will analyze the land-use based upon the highest emitting use that could be built under that land-use category. The modeling would be based on approved land uses or those proposed in the case of a large plan area that contains the project being analyzed. This will enable credit to be taken for innovative community design and layout.

73. **COMMENT:** The URBEMIS fleet mix overstates residential emissions by roughly 50%. It is based on the statewide mix of vehicle types, which is comprises 3% of heavy-duty trucks.

RESPONSE: The District is working to ensure that the fleet mix assumptions in URBEMIS are appropriate for each land-use type. While the fleet average may somewhat overestimate emissions residential developments there are heavy duty truck emissions associated with them. These include school buses, refuse collection, package delivery, and other service vehicles.

74. **COMMENT:** The URBEMIS age distribution overstates residential project emissions. The defaults are based on the statewide mix of vehicle types, which are generally older than a new residential fleet. Vehicles, in new housing units that were 10 years or younger, had a 50/50% split on vehicles 5 years or

younger, and older than five years. Housing units older than 10 years had a 36/64% split. This problem cannot be easily revised within the current framework of URBEMIS.

RESPONSE: The District believes that the fleet average is a reasonable assumption for new development projects. There are a number of factors that impact emissions including age, vehicle class, and fleet turnover. If more specific information is available, the District would consider utilizing project specific numbers.

75. **COMMENT:** URBEMIS silt loading factors for entrained PM10 emissions overstate residential project emissions by nearly 50%.

RESPONSE: The District will ensure that the correct silt loading factors are utilized.

76. **COMMENT:** URBEMIS trip lengths are inconsistent with TPA model data and recent statewide travel surveys.

RESPONSE: The District will continue to update trip lengths with local data as the model is updated. Project proponents can utilize project specific information in lieu of the URBEMIS defaults.

77. **COMMENT:** URBEMIS default vehicle speed and estimated vehicle speeds vary by as much as 50-100% of survey data.

RESPONSE: The defaults for vehicle speeds may be modified if project specific information is available.

78. **COMMENT:** URBEMIS is not based on the most recent version of EMFAC in the Ozone SIP.

RESPONSE: As the URBEMIS model is updated it will be updated with the most recent version of EMFAC that is available. The District will ensure that emissions are credited to the Ozone SIP in the proper SIP currency.

79. **COMMENT:** Many commercial and industrial buildings are permitted and built, not knowing who the tenant will be in advance. How will URBEMIS estimate emissions for these types of development?

RESPONSE: In this case the analysis will assume the highest emitting use that would be allowed under the land-use designation.

Construction

80. **COMMENT:** Construction activities are not considered to be indirect sources.

RESPONSE: The purpose of the rule is to mitigate the emissions associated with new developments, not just indirect source emissions.

81. **COMMENT:** The rule overlaps and conflicts with existing District and ARB regulations that control emissions from construction activities and equipment, specifically Regulation VIII and the Dust Control Plan requirement.

RESPONSE: The District is proposing modifications to the rule that do not target dust emissions, but rather target mitigating emissions associated with the construction fleet.

82. **COMMENT:** There is no precedent in District or state regulations that require 100% mitigation of a particular source. 100% mitigation is not reasonable or feasible, as required by CEQA.

RESPONSE: Comment noted.

83. **COMMENT:** Regulation VIII should address more stringent controls on fugitive PM10 from construction activities and not an indirect source rule.

RESPONSE: Comment Noted.

84. **COMMENT:** The Regulation VIII list serve and mailing list should be notified of the rule.

RESPONSE: Comment noted.

On-site Mitigation

85. **COMMENT:** Reductions from many of the individual measures on the Mitigation Checklist are “off-model.”

RESPONSE: The rule includes the provisions that the APCO can approve alternative modeling methodologies. This would include approving appropriate “off-model” adjustments for mitigation that cannot be analyzed in URBEMIS. Many of the mitigation measures that are currently not included in URBEMIS have been removed from the checklist.

86. **COMMENT:** The Mitigation Checklist needs to be reviewed and modified with input from the development community.

RESPONSE: The District is happy to discuss the checklist with stakeholders.

87. **COMMENT:** Reduction measures such as requiring motorists to abandon vehicles in lieu of intermittent bus scheduling or biking on a 100 degree not appear capable of substantially reducing the amount of smog forming pollutants in our air.

RESPONSE: Any reduction in vehicle use would reduce emissions. URBEMIS accounts for differences in transit service and the quality of the road system to accommodate bicycling. The District is not requiring any on-site mitigation measures, but allowing them to be used. It is the discretion of the developer and the local jurisdiction to require those types of measures.

88. **COMMENT:** Most local jurisdictions are concerned about the mitigation measures being land use and urban design strategies, since these matters are not the District's province. By intending to consider and apply mitigation measures after all other analysis is done, it would appear that the rules would be positioning the District as the ultimate authority on land use and urban design.

RESPONSE: The mitigation measures in the checklist are voluntary. A developer can choose many measures, some measures, or no measures from the checklist. It is up to the local jurisdiction to approve of those measures, in regards to their land use authority. The District expects any design and infrastructure measures must comply with all local development standards and would be included in city/county approved plans and maps. The District has no authority to require that particular measures be included in the project.

89. **COMMENT:** If mixed uses or conjunctive residential and non-residential uses are considered to be a mitigation measure, how will the timing of construction be controlled, since commercial uses tend to postpone construction until the demographics can be analyzed?

RESPONSE: The project will be credited based upon the uses that are planned to be constructed. If the planned uses were changed that would be considered in a subsequent analysis.

90. **COMMENT:** Local land use jurisdictions should be made a party to any mitigation agreements entered with the developer.

RESPONSE: Comment noted.

Off-site Mitigation

91. **COMMENT:** The District has calculated that fees will escalate rapidly and allows for APCO adjustment based on actual costs. This fails the nexus test.

RESPONSE: The District has eliminated the option for APCO discretion to change the fee amount.

92. COMMENT: The District fails to state how the fees will be used.

RESPONSE: The fees will be utilized to purchase emissions reductions through the District's incentive programs.

93. COMMENT: The sequencing of payments does not fit the reality of permitting, financing, and constructing homes.

RESPONSE: The district has provided the option of paying the fees based upon the schedule in the rule, or through a fee deferral agreement with the District. The fee deferral agreement allows the flexibility to collect the fees based upon the project's unique financing situation.

94. COMMENT: The Mitigation Fee Act states that local agencies shall not require the payment of fees until the date of final inspection or the date of certificate of occupancy.

RESPONSE: See response to #64 above.

95. COMMENT: The fee formula needs to be simplified so that there is predictability and a lack of opportunity for controversy.

RESPONSE: The District will develop templates and/or calculators that will allow applicants to easily assess their projects and have predictable outcomes.

96. COMMENT: The impact revenue should be used, first and foremost, within the immediate area of the project that the fees are collected from.

RESPONSE: Fees collected from a project will be spent to mitigate the impacts associated with the particular development project.

97. COMMENT: The district should indicate whether increased district enforcement of existing regulations would be an eligible expenditure of mitigation fees. Air quality improvement would be expected given the responses from the District that its enforcement staff is very limited when apparent violations have been reported.

RESPONSE: The District is not proposing to utilize fees to increase enforcement staff other than staff to enforce the provisions of this rule.

98. **COMMENT:** The fees collected should be used on "traceable" mitigation measures (mitigation must be traced to the activity which the agency approves) as specified in CEQA. Since the proposed rule mainly targets vehicle traffic, traffic synchronization appears to be a logical solution.

RESPONSE: The District proposes to utilize funds for cost-effective emissions reduction projects. The District will track the emissions reductions achieved through the expenditure of fees generated by the rule. If an application for grant funds for traffic synchronization were submitted, the District would assess whether or not it could be funded based on cost-effectiveness and other criteria such as whether the reductions can be verified over time.

99. **COMMENT:** The APCD should develop a Regional Intelligent Transportation Authority (RITA) responsible for regional traffic synchronization, regional transit and intermodal planning, assisting cities with TCM implementation, and integrated collaboration with Caltrans. RITA should be funded by the rule and Section 40605(b) surcharge fees.

RESPONSE: The District will continue to assess opportunities, such as this suggestion, to utilize fees to achieve cost-effective emissions reductions.

100. **COMMENT:** The emissions reduction calculations for off-site mitigation need to calculate the benefit from a new piece of equipment to a less-emitting new piece of equipment.

RESPONSE: There are a variety of incentive programs that the fees can be utilized for. In some cases it is appropriate to compare a base new piece of equipment to less-emitting new piece of equipment. In other cases, where there is useful life left in a piece of equipment, and the equipment is taken out of service, it is appropriate to provide credit for emissions that are eliminated by retiring the old equipment.

101. **COMMENT:** Developers should receive credit for offsite emission reductions created through voluntary implementation of additional mitigation measures applied to previously approved projects. For example, a developer could revegetate or reclaim disturbed surfaces in order to reduce fugitive dust. The developer could then commit these reductions to construction or operational emissions from proposed development projects.

RESPONSE: The District will consider off-site mitigation proposed by a developer on a case-by-case basis. Any mitigation must be surplus and quantifiable.

102. **COMMENT:** We opposed the unilateral authorization to adjust the cost of controls. The APCO should be allowed to adjust the cost of reductions after

providing notice and an opportunity for public comment. We strongly believe that any increase in the mitigation fees should be subject to a cost effectiveness analysis and the approval of any fee increase should be subject to approval by the Governing Board.

RESPONSE: The District has eliminated the APCO discretion to modify fees.

103. **COMMENT:** It is a concern that the District intends to use these revenues primarily to fund existing programs and activities such as scrapping old vehicles and replacing lawnmowers, rather than to partner more closely with cities and counties to make alternative transportation more accessible and useful. The best use of the money would be to expand/create mass transit systems and alternative transportation routes in the Valley, and to fund measures that reduce traffic volume and relieve traffic congestion.

RESPONSE: The District will consider programs that achieve cost-effective emissions reductions.

104. **COMMENT:** The District should ensure that the off-site mitigation measures are permanent, as opposed to the short-term benefit of replacing engines. Examples include vanpool systems, incentives for locating affordable housing close to existing job sites.

RESPONSE: While the benefits from the District's incentive programs are credited for a short period of time, the actual reductions from the projects will continue. Additionally, the District has committed a specific tonnage requirement in the short-term to attain the ozone and PM10 attainment deadline of 2010. If the reductions were stretched over an extended period of time the District would not meet its plan goals, or attain the standards. It should also be noted that vanpool systems are currently eligible projects under the REMOVE II incentive program, and would be eligible for funds collected under this rule.

105. **COMMENT:** The District needs to engage the public, local government, and other agencies to identify the best uses of the funds, and establish a public process and guidelines for determining those best uses.

RESPONSE: Any new incentive program is subject to Governing Board approval, and thus it will be subject to public review.

106. **COMMENT:** Long-term reductions strategies may appear costly at first, but they can have the largest cumulative emissions avoidance benefits, making them cost effective in the long run. Not only will initial reductions occur, but they will have a self-perpetuating ripple effect of infill and/or redevelopment.

RESPONSE: Cost-effectiveness calculations used by the Moyer Program and the District account for the project life, so long lived projects with low annual reductions may have good cost-effectiveness compared to short lived projects with higher annual reductions. The proposed rule is primarily focused on existing incentive program projects, since they are already established and can demonstrate cost-effective reductions. Upon adoption of the rule, the District will take a closer look at other types of emission reduction projects, and develop incentive program and procedures for viable and cost-effective project types.

107. COMMENT: Similar to an investment portfolio, the District needs to identify a variety of short-, mid- and long-term off-site mitigation strategies.

RESPONSE: See previous response.

Rule 3180

108. COMMENT: If the air impact Assessment Application is done at the same time as the SJVAPCD review of the air impact in a CEQA document, the rule could be a source of funding for the SJVAPCD review of EIR documents.

RESPONSE: It may be possible that some projects that would have been reviewed under CEQA, would now be subject to this rule which requires a more comprehensive look at it. To that end, the District needs to recover any time and materials spent related to this rule.

109. COMMENT: The administrative fee should be reduced initially, and there should be a sunset clause on it once the basic fund is built up to the point that the interest revenue from the funds is sufficient to cover the cost of the program.

RESPONSE: The District will amend the portions of the rule, which is subject to a public review and adoption, if the need arises.

COMMENTS FROM FOCUSED WORKSHOPS HELD ON MARCH 11, 15, 24, 31, 2004

EPA:

1. **COMMENT:** The District should ensure that a "District approved model" is identified by name in the rule and that their use is appropriate based on consultation with EPA and other federal agencies.

   RESPONSE: The rule specifies the District approved model and allows additional models to be approved by the District.

2. **COMMENT:** Section 5.3.2.3 allows the use of the Institute of Transportation Engineers Trip Generation Manual. It is unclear whether this is the same manual that was developed by the Department of Transportation (DOT). We consider the trip generation rates in the DOT manual to be appropriate.

   RESPONSE: The Institute of Transportation Engineers Trip Generation Manual is used by the California Department of Transportation (DOT).

3. **COMMENT:** More specificity is needed for sections: 5.1, 5.3.1.1, 5.3.2.2-4, 5.3.3.6, 5.4.2-3, 5.5, and 5.7.2.2-3, 5.7.3.2

   RESPONSE: Comment noted.

4. **COMMENT:** Section 3.27 defines a "vested project," however; the rule does not specify the process by which a project will be designated as "vested." The rule should indicate what minimum components are required to become a "vested project."

   RESPONSE: "Vested projects" is a relatively standard development procedure in which the developer requests the applicable agency to vest his/her project. If a project is vested, it cannot be liable for future changes in regulations for that agency. In exchange for that status, the applicable agency may require other items or actions of the developer. The procedure for vesting status varies by jurisdiction. The current version of the rule should eliminate the need to specify that process, since vested projects will be treated the same as non vested projects.

5. **COMMENT:** Section 3.25 excludes developments where streets are a portion of the project from the definition of "transportation projects." Rule 9510 should not allow sources to receive credit for road paving associated with new developments, which it appears to allow by this definition and the exemption contained in Section 4.3. The rule should also define those developments where streets are a portion of the project.

RESPONSE: The definition of transportation projects has been modified to exclude projects where the traffic surfaces are a portion of the project. It would be virtually impossible to define developments where the traffic surfaces are a portion of the project, since most developments are designed to accommodate transportation. The emissions from constructing internal roads in a project are included in the construction emissions for the land use and are not considered a transportation project.

6. **COMMENT:** Section 5.5 would be clearer if it stated that the developer shall provide the project information "Upon final local agency discretionary approval."

RESPONSE: Comment noted.

7. **COMMENT:** The District needs to ensure that the level of mitigation that is required under Section 5.1 exceeds the level of mitigation already required under other rules and programs in place, specifically Regulation VIII.

RESPONSE: URBEMIS contains district-specific emission factors, and therefore only the portion of non-regulated emissions will be counted in the estimated project baseline total. The emissions totals contained in Appendix B already have Regulation VIII control subtracted from them.

8. **COMMENT:** In order to ensure consistency between the implementation of this rule and the transportation conformity activities of the MPOs, the District may want to work with these agencies on implementation procedures or additional rule language.

RESPONSE: The District will coordinate with the MPOs.

9. **COMMENT:** Rule 9510 should distinguish the various types of agencies and the various types of permits that would be subject to the rule.

RESPONSE: Many jurisdictions handle permits and projects differently. However, writing a prescriptive rule that identified every kind of project at varying stages of planning would be extremely difficult. To that end, the wording of the current rule meets our needs. If an individual agency had a question regarding their coverage by the rule, the District could make a determination.

10. **COMMENT:** Monitoring programs in Section 5.3.3.6 should be further described for clarity.

RESPONSE: Comment noted.

ARB: No comments.

INDUSTRY/PUBLIC:

Trips

1. **COMMENT:** The proposed program should only regulate new trips and not redirected trips.

RESPONSE: The proposed program has been designed to regulate new sources of emissions.

2. **COMMENT:** Double-counting trips will lead to overestimating and overcharging.

RESPONSE: The proposed program will not be double-counting trips and appropriate modifications have been made to prevent that.

3. **COMMENT:** Trip lengths in URBEMIS are not accurate.

RESPONSE: The trip lengths in URBEMIS are based on data submitted by the local transportation planning agencies. If project specific trip lengths are available, they should be used instead of URBEMIS defaults.

4. **COMMENT:** URBEMIS double-counts reductions from existing rules.

RESPONSE: URBEMIS contains district-specific emission factors, and therefore only the portion of non-regulated emissions will be counted in the estimated project baseline total.

5. **COMMENT:** There are emissions impact from mitigation measures, such as lighting, and increased energy use.

RESPONSE: Any emissions impact from this rule will be considered under CEQA. Emissions from power generation is small in comparison to emissions reduced from vehicles and combustion equipment used at the project site due to emission controls at the power plant and higher efficiency of electrical equipment such as electric lawnmowers.

6. **COMMENT:** There should be a de minimis level of new trips.

   RESPONSE: The rule sets an applicability threshold based upon the emissions from a project.

URBEMIS/Analysis

7. **COMMENT:** URBEMIS is not reliable for establishing a fee schedule.

   RESPONSE: The district maintains that URBEMIS is the right tool for this program. URBEMIS contains district and state specific emissions factors, and is the most widely-used air emissions model in the State of California, and many courts have made decisions based on its output. URBEMIS has also been updated to reflect the state-of-the-science on air mitigation measures.

8. **COMMENT:** Future changes to URBEMIS should be a public process.

   RESPONSE: URBEMIS is owned by all the air districts in the state of California, as well as ARB. The district does not have direct control over whether or not changes to URBEMIS should be public.

9. **COMMENT:** The option of another model should be given.

   RESPONSE: Comment noted.

10. **COMMENT:** Consultants should not be conducting an analysis of the development. There is opportunity for “tweaking” the numbers. It would be more efficient and consistent if the District were to do it.

    RESPONSE: There are adequate safeguards in place to ensure that the District can verify the work of applicant or the applicant’s consultant. Each URBEMIS run creates a document that specifies any changes that were made to default values. The District can then verify any changes with the applicant or the applicant’s consultant.

11. **COMMENT:** The District should use a checklist approach instead of an analysis approach, so that the process is streamlined and there is no fee.

    RESPONSE: Emissions reductions associated with each mitigation measure is dependant upon project specific variables, and therefore cannot be streamlined to a checklist approach.

12. **COMMENT:** There needs to be clear time limits on analyses conducted by the District.

RESPONSE: Comment noted.

13. **COMMENT:** The Expedited Review option sends a mixed message, almost a pay-to-pollute message.

RESPONSE: Comment noted.

14. **COMMENT:** Construction emissions should be addressed, since some projects can take up to 10 years to fully construct.

RESPONSE: Comment noted.

15. **COMMENT:** There should be an appeals section for all analyses.

RESPONSE: Comment noted.

On-Site Mitigation

16. **COMMENT:** The proposed rule would allow the District to indirectly regulate land use at the local level through its required on-site mitigation measures.

RESPONSE: The current draft of rule 9510 gives the developer the option of how to comply with the rule. If certain on-site mitigation measures, such as mixed use development, are not allowed in a jurisdiction, then the developer cannot use that measure. On-site mitigation measures are designed to give the developer the option to reduce the emissions on-site. The developer can choose from a broad range of on-site mitigation measures. Any on-site measures that reduce emissions will reduce the amount emissions that need to be mitigated through fees. This rule does not impinge upon local agency land use authority.

17. **COMMENT:** Some mitigation measures, such as traffic signals or sidewalks, are not put in place for 5-20 years.

RESPONSE: Traffic flow improvements, such as traffic signals, will not be used as a mitigation measure under this program. Sidewalks, if used as a mitigation measure, should be constructed prior to operation of the project.

18. **COMMENT:** Credit should be given for high-density residential projects.

RESPONSE: Comment noted.

19. **COMMENT:** Some of the on-site mitigation measures lack enforceability or may not work.

RESPONSE: The mitigation measures in URBEMIS have been revised to help alleviate that problem. Also, the current version of the rule requires developer and the district will enter into a mitigation agreement that will include provisions for enforcement, in the event that the local jurisdiction does not have enforcement mechanisms in place.

20. **COMMENT:** The fees from this program will overlap with traffic mitigation fees.

RESPONSE: Fees collected for traffic mitigation are primarily aimed alleviating congestion and/or fixing roads. While those items may have an incidental, temporary air benefit, this program intends to directly mitigate emissions from projects. If an activity is conducted or developed, or a mitigation measure is included for traffic mitigation, and it benefits air quality, the assessment/URBEMIS will quantify the air quality benefits.

21. **COMMENT:** There should be a list of mitigation measures so that developers can fast track the process.

RESPONSE: Comment noted. Please see Appendix C.

22. **COMMENT:** The effectiveness of the mitigation measures is unlikely given the climate of the SJVAB.

RESPONSE: The mitigation measures included in the new mitigation component of are based on the most recent research available.

23. **COMMENT:** The district should provide the control efficiencies of the proposed mitigation measures.

RESPONSE: The control efficiencies are contained in Appendix D of this staff report.

24. **COMMENT:** The list of mitigation measures should be open-ended, to allow for new and innovative measures.

RESPONSE: While the District would like to encourage new and innovative mitigation measures, each measure needs to have substantial evidence demonstrating the emissions are in fact reduce because of that measure. The District will consider giving credit to additional mitigation measures as they are proposed.

25. **COMMENT:** The 30-day review time period is excessive given the timelines required by CEQA. It should be 10 days.

RESPONSE: The District will streamline the process where possible**.**

26. **COMMENT:** Title 24 is already being implemented.

RESPONSE: The mitigation measure seeks to take credit for emissions reductions achieved by going above and beyond Title 24.

General

27. **COMMENT:** The program should regulate existing as well as new homebuyers.

RESPONSE: The District is precluded by the Health and Safety Code from charging fees to mitigate existing trips.

28. **COMMENT:** The District should consider an annual fee approach for residential sources.

RESPONSE: Due to provisions of the Health and Safety Code, this approach would be an excessive administrative and enforcement burden.

29. **COMMENT:** Indirect regulations are not the way to go.

RESPONSE: The concept of mitigating the indirect emissions from new development has a long history of being implemented through the California Environmental Quality Act. Likewise, the purpose of this program is to mitigate the impacts of new development.

30. **COMMENT:** Area sources do not generate new vehicle trips.

RESPONSE: The applicability has been changed to reflect new emissions.

31. **COMMENT:** Why is the District focusing on the cleanest developments in the air basin?

RESPONSE: New development is not necessarily the cleanest developments. Depending upon location of the new development, it could be responsible for more vehicle miles traveled and/or trips.

32. **COMMENT:** The District should form a technical advisory committee.

RESPONSE: Comment Noted.

Applicability

33. **COMMENT:** This program should include schools, regional parks, and churches.

RESPONSE: This program will include any new development that is estimated to emit equal to or more than the threshold where indirect sources are the primary source of emissions from the project.

34. **COMMENT:** The current wording of Section 2.0 would include projects that come to the District for an Authority to Construct. Is it the District's intent to include those projects?

RESPONSE: It was not the original intent. The exemptions have been expanded to exempt projects where stationary sources of emissions from a development are the primary source of emissions.

35. **COMMENT:** The current wording of Section 2.0 would exclude State projects, because they do not have to apply for or obtain development permits.

RESPONSE: The new wording should include state projects.

Exemptions

36. **COMMENT:** Low-income housing should not be exempt because 1) residents tend to drive older, more polluting vehicles, 2) there are higher concentrations of people, and 3) those residents can benefit from alternate forms of transportation.

RESPONSE: Comment noted. There is no exemption for low-income housing in the current version of the rule.

37. **COMMENT:** If there is not an exemption for low-income housing with a broader scope, many contractors will go out of business.

RESPONSE: Comment noted.

38. **COMMENT:** Structures that are required to obtain a Permit to Operate (PTO) should be exempt from the rule.

RESPONSE: See response to comment #34.

39. **COMMENT:** Infill projects, schools, public parks, and other public facilities should be exempt.

RESPONSE: See response to comment #33.

40. **COMMENT:** General plans, specific plans, and community plans should be exempt from the rule.

RESPONSE: The rule applies to the last discretionary approval for a project.

Nexus

41. **COMMENT:** The Nexus should identify the benefits of the program.

RESPONSE: As with all District rule, an analysis of the emissions reduction associated with the rule has been developed.

Misc.

42. **COMMENT:** The rule should not distinguish between ministerial and discretionary projects.

RESPONSE: Many jurisdictions handle discretionary and ministerial differently. However, writing a prescriptive rule that identified every kind of project at varying stages of planning would extremely difficult.

43. **COMMENT:** Local agencies may use the Mitigation Agreement as a tool to hinder mitigation for projects.

RESPONSE: Local agencies may disapprove of measures in a Mitigation Agreement due to health, safety, and welfare reasons. For example, if a bus bulb was desired, but the bulb interferes with a pedestrian element, it might be a legitimate cause for disapproval.

44. **COMMENT:** How will the Bakersfield Metropolitan Project be addressed?

RESPONSE: That project will be handled separately through a “task force.”

45. **COMMENT:** How will overlap with CEQA be handled?

RESPONSE: This rule may meet many of the air-related CEQA issues for development in this air basin. The Guidelines for Assessing and Mitigating the Air Quality Impacts (GAMAQI) document will be revised and adopted prior to implementation of the program, and will explicitly define how the district interprets this program in relation to CEQA.

46. **COMMENT:** The socioeconomic analysis should look at the per unit cost differential between a home built in a large residential development and a home built on a smaller development.

RESPONSE: Comment noted.

47. **COMMENT:** The socioeconomic analysis should consider the costs of health if the program was not implemented.

RESPONSE: The socioeconomic analysis is an analysis that is mandated by the Health and Safety Code. That portion of the cost does not require a health benefit analysis. That type of analysis is better handled at the plan stage when demonstrating attainment of a health based standard.

48. **COMMENT:** There should be a clause in the rule that protects developers from later changes of the rule, similar to the Safe Harbor clause in habitat regulations.

RESPONSE: Any potential changes to District rules go through a public process. Any discussion of exemptions to rules or changes to rules should be handled through that process.

49. **COMMENT:** There should not be an administrative fee as well.

RESPONSE: An administrative fee is imperative to recover the districts costs associated with administering this program.

50. **COMMENT:** There should be a broader spectrum of stakeholders involved.

RESPONSE: Notices are distributed via newspapers in all eight counties and published on the district's website. Whether or not portions of the public choose to become involved is up to them.

51. **COMMENT:** The draft rule is silent on enforcement mechanisms. How will this be enforced?

RESPONSE: Any on-site mitigation measures included in the design of the project will be identified in a mitigation checklist. Those measures that do not have an enforcement mechanism through the local agency will be subject to a mitigation agreement between the district and the developer. That agreement will identify those measures and their enforcement.

52. **COMMENT:** The proposed certified mitigation program to be administered by local agencies is impractical.

RESPONSE: Comment noted.

Off-Site Mitigation

53. **COMMENT:** Section 5.8 should allow local jurisdictions to use the fees collected because they may know of local opportunities.

RESPONSE: The District will consider local projects when allocating any fees collected through this program.

54. **COMMENT:** Section 5.8 needs to be more specific.

RESPONSE: Comment noted.

55. **COMMENT:** There should be an appeals section for the expenditure of fees.

RESPONSE: See response to comment #15.

56. **COMMENT:** A process for fee reimbursement should be provided if emissions reductions are not achieved.

RESPONSE: Comment noted.

57. **COMMENT:** There needs to be a mechanism in place to expand off-site projects.

RESPONSE: Comment noted.

58. **COMMENT:** Fee expenditures should be located in the jurisdiction of origination.

RESPONSE: Fee expenditures will be located in a manner that will mitigate the emissions impact from the project.

59. **COMMENT:** All fleets should have the opportunity to obtain grants.

RESPONSE: The district is currently drafting a fleet grant program. Any fleet that submits a cost-effect project consistent with the District's guidelines will be eligible to receive funds.

60. **COMMENT:** There should be an appeals section for all project types, not just the Complete Analysis.

RESPONSE: See response to comment #15.

61. **COMMENT:** The grant programs should focus on diesel and smoking vehicles.

RESPONSE: The grant programs will focus on getting the most cost effective emissions reduction.

62. **COMMENT:** There should not be a limitation on spending the fees on research.

RESPONSE: The district needs to obtain immediate and quantifiable emissions reduction. Research does not meet the district objectives for this program.

63. **COMMENT:** The fees should go towards traffic congestion mitigation.

RESPONSE: The purpose of the program is to mitigate the impacts of development on air quality. While traffic congestion may be a part of the air quality problem, there are already traffic congestion fees in some jurisdictions. Also, traffic congestion mitigation is a temporary fix to the air quality problem. Studies have shown that increasing traffic flow increases capacity, and more capacity attracts more traffic.

COMMENTS FROM SCOPING MEETINGS HELD ON OCTOBER 7 - 9, 2003

EPA: None received.

ARB: None received.

INDUSTRY:

1. COMMENT: Public input and oversight should be built into the process.

RESPONSE: The District intends to provide periodic reports to the District Governing Board that will be available to the public that will enable public oversight. The development of the indirect source rules will be conducted in an open public process that allows for public input at every stage.

2. COMMENT: The fee structure implemented should be a Mello-Roos based fee requiring an annual payment by the owner of record.

RESPONSE: The DESIGN program is designed to reduce the impact that new development has on the growth in emissions. The program gives credit to projects based upon design features that are incorporated into a project to reduce emissions. Any fees charged are utilized to make up the gap between mitigation measures incorporated in the project and a 50% reduction in emissions. This type of program would not be appropriate for a Mello-Roos based program.

3. COMMENT: This program should be handled similarly to that of the school district fees.

RESPONSE: The calculation and collection of school fees is relatively simple compared to calculating air quality impacts of the project. The proposed program gives the opportunity for a project applicant to incorporate design measures that could potentially reduce emissions over the life of that project. This means that each project may need its own determination of emissions after on-site mitigation have been accounted for to calculate the appropriate fee amount.

4. COMMENT: How will the indirect source fee's impact on air pollution be measured and monitored?

RESPONSE: Projects funded with indirect source fees will have annual reporting requirements that will demonstrate that the emissions claimed are being achieved. The District will physically inspect all projects to ensure that the project is accomplished as claimed by the applicant for the funds and will credit those reductions in the appropriate attainment plans and progress reports.

5. **COMMENT:** What provisions will be made for repealing the fee if it is enacted but is not effective at reducing air pollution from automobiles?

RESPONSE: The emission reductions achieved from any fee collected will be subject to reporting and monitoring requirements. All projects that are based on retrofit or replacement of old technology with new technology must use equipment/devices that are emission certified or verified by the California Air Resource Board (ARB) and so are proven effective. The District will consider a periodic review of the entire program to ensure that the anticipated emissions reductions have in fact occurred. District staff would then present the results of the review and a recommendation to the governing board.

6. **COMMENT:** An indirect source fee will act as a disincentive for homebuyers to help clean the air by purchasing a new home.

RESPONSE: The decision to purchase a new home is influenced by a number of factors. If a subdivision incorporates on-site mitigation measures that reduce trips and area source emissions, which would lessen the fee amount and add value to the development, there may be more of an incentive to purchase a new home.

7. **COMMENT:** If fees are to be charged based on automobile usage, all development, not just new development, should be charged.

RESPONSE: The purpose of the program is to reduce the emissions associated with new development. The District prefers a preventative approach. One of the key features of the DESIGN program is to incorporate mitigation measures on-site, which will reduce emissions over the life of the development. This is possible during the design of new projects. It would not be feasible to "retrofit" existing homes and development; accordingly, they would probably pay 100% of the fee amount.

8. **COMMENT:** Infill developments with special measures incorporated into their design should receive a credit from this program.

RESPONSE: The reductions achieved by the DESIGN program are a combination of on-site design elements and off-site emissions reductions that are achieved by buying emissions reductions with fees to make up any shortfall

in on-site mitigation. In-fill projects that incorporate design features that reduce the emissions associated with the project will be given credit for those reductions and will reduce their potential fee amount.

9. **COMMENT:** Fees should be roughly proportional to the number of trips generated by that land use, as directed by the U.S. Supreme Court in the case of Nollan v. California Coastal Commission (1987) and Dolan v. City of Tigard (1994).

RESPONSE: The District expects any fee collected under this rule to meet this condition. The fee formula is based upon the emissions associated with the project.

10. **COMMENT:** The District needs to demonstrate how assessing a fee on land development will mitigate air pollution from automobiles.

RESPONSE: The purpose of the program is to mitigate the emissions associated with new development through on-site mitigations and potential fees. The District will outline the Nexus between any potential fees charged and the projects that they are mitigating.

11. **COMMENT:** Fees should be collected no earlier than at the final inspection or certificate of occupancy and paid at close of escrow, when the calculated emissions would actually begin.

RESPONSE: The fees need to be collected early enough to achieve emissions reductions prior to occupancy. Collecting the fee at occupancy would not provide adequate time to achieve the necessary emissions reductions prior to occupancy. Additionally, not all local agencies within the SJVAB have a Certificate of Occupancy permit for all uses, which would make enforcement of proposed requirements difficult. The proposed Rule 3180 may include the option for a Fee Deferral Agreement, which will operate under the capabilities of the local agency involved.

12. **COMMENT:** Fees should be collected at close of escrow, so <u>all</u> homebuyers are charged. This will lower the fee and generate funding at a much quicker rate.

RESPONSE: Please see Response #7.

13. **COMMENT:** Funds generated should be restricted for use in the jurisdiction where they were generated and should be restricted to uses that relate directly to whichever land use is paying the fee.

RESPONSE: The District will utilize any fees collected to mitigation the impact of the emissions associated with the projects that paid the fees.

14. **COMMENT:** Funds should be collected by the local agency at the building permit stage, and that local agency should utilize the funds for emission reduction activities. The local agency would then provide periodic reports to the District.

RESPONSE: The District has over 10 years of experience managing projects that reduce emissions. Providing training and oversight to all jurisdictions within the SJVAB, to ensure proper use of the funds and track emissions reductions would be time-consuming. Also, the District wants to ensure that existing local agency funds are not replaced with indirect source funds to pay for a project that would have occurred anyways. In order to utilize the funds generated in the most efficient and consistent manner, the District has proposed to manage the funds collected.

15. **COMMENT:** Consideration should be given to projects with low-cost housing or in economically depressed areas.

RESPONSE: The District will consider potential exemptions during the rule development process. On-site measures that enable people to use alternatives to the automobile for their personal transportation needs are very important in low-income areas.

16. **COMMENT:** Several jurisdictions already have fees for the purpose of reducing traffic congestion and automobile emissions that it creates. There should not be another fee that accomplishes the same purpose.

RESPONSE: The District will calculate the benefit of mitigation that is included in the project. If existing fees result in real, quantifiable, surplus emissions reductions the District will credit those reductions to the project.

17. **COMMENT:** There may be some overlap with conformity analyses. This needs to be addressed.

RESPONSE: Emission reductions from the indirect source program are reflected in the motor vehicle conformity budgets in the PM10 Plan. When budgets are set for the next ozone plan, they will also reflect emission reduction estimates. Conformity analysis done for individual transportation projects could take into account changes in trip generation rates and VMT resulting from mitigation incorporated by new development when determining if the transportation project will result in a decrease or increase in emissions. However, the transportation models may not provide the level of detail that would enable the user to provide input for individual development projects.

18. **COMMENT:** How will final build out versus phasing be addressed?

RESPONSE: That issue will be discussed at length during the Administrative Procedures focused workshop.

19. **COMMENT:** The applicant should assume the responsibility of interacting with the District.

RESPONSE: The District has incorporated this suggestion into the rule language.

20. **COMMENT:** Fees collected through this program should not fund projects that would have otherwise occurred.

RESPONSE: The District agrees that these projects not be funded. The District will take suggestions on how to prevent that.

21. **COMMENT:** The computed fee should be increased by 25% or more to fund projects that would improve our air, instead of just offsetting emissions.

RESPONSE: The DESIGN Program is being developed to ensure that any fees will meet the nexus standard. Thus, the fee cannot be set "above" the anticipated emissions.

22. **COMMENT:** Double counting should be addressed.

RESPONSE: The District is limiting the mitigation associated with the project to 50% of the projects base year emissions. This eliminates any potential double counting.

23. **COMMENT:** Funds should not be spent on public education processes or research type activities, but on projects where emissions reductions are quantifiable.

RESPONSE: It is mandatory that all projects funded will result in real and quantifiable emissions reductions. The specific policies on how the funds will be spent will be included in the draft staff report at the final workshop.

24. **COMMENT:** A grant-like program could potentially result in large amounts of fees collected with no projects being implemented. An expenditure program managed by the District and/or the Councils of Governments (COGs) should be developed.

RESPONSE: The District is currently formulating how the funds will be spent.

25. **COMMENT:** The District should clearly explain the relationship between the reductions from this program to the CEQA threshold discussions in the District's Guide to Assessing and Mitigating Air Quality Impacts (GAMAQI). The GAMAQI should be used as an implementation tool for this rulemaking project and it should be updated to provide consistent direction on the preparation of environmental documents.

RESPONSE: The District will calculate emissions for each project based on mitigation measures included in the project. If a project has agreed to mitigation measures as part of CEQA, then those measures will be reflected in the emission calculation. It is anticipated that the GAMAQI will be revised after the rules are adopted to show the relationship between the rules and CEQA.

26. **COMMENT:** Construction emissions should be included in the emissions total, and hence, subject to a fee.

RESPONSE: The District intends to include mitigation for construction emissions in the formula.

27. **COMMENT:** It is likely that mitigation fees will be used to fund the most cost-effective projects first. Thus, as time goes on, costs associated with pollution reduction projects will probably rise. The schedule of fees should be subject to upwards revisions based on this contingency.

RESPONSE: The types of projects available for funding are not static. The District has analyzed the types of projects that it anticipates will be available in the near future and has adjusted the cost-effective factor appropriately for future years.