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November 20, 2008

The Honorable Mary Nichols
Chair, California Air Resources Board
1001 I Street
Sacramento, CA 95812

VIA Online Submission and Regular Mail

RE: AB 32 Scoping Plan/Appendices/Economic Analysis Comments

Dear Chair Nichols:

The National Association of Industrial and Office Properties (NAIOP) is the nation's leading trade association for developers, owners, investors, asset managers and other professionals in industrial, office and mixed-use commercial real estate.


Founded in 1967, NAIOP comprises 16,000+ members in 55 North American chapters. It provides networking opportunities, educational programs, research on trends and innovations and strong legislative representation.

The Inland Empire chapter of NAIOP includes San Bernardino and Riverside counties. It's one of the fastest growing chapters in the nation. The chapter is dedicated to its role as the definitive resource for the real estate industry in the Inland Empire. Members are provided a unique level of proactive communication regarding education or legislative issues through a chapter newsletter, chapter website and legislative alerts.

NAIOP Inland Empire Chapter is a very active member and strong supporter of the California Business Properties Association (CBPA).

Our local legislative committee and industry leaders have participated in the comments provided by CBPA regarding AB 32. NAIOP Inland Empire supports the comments provided by CBPA. (CBPA comment letter attached)

Sincerely,



Robert Evans
Executive Director



CALIFORNIA BUSINESS PROPERTIES ASSOCIATION

1121 L Street, Suite 809 · Sacramento, CA 95814 · Phone (916) 443-4676 · Fax (916) 443-0938 · www.cbpa.com

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September 29, 2008

The Honorable Mary Nichols
Chair, California Air Resources Board
1001 I Street
Sacramento, CA 95812

Via Online Submission and Regular U.S. Mail

Re: AB 32 Scoping Plan/Appendices/Economic Analysis Comments

Dear Chair Nichols:

The California Business Properties Association (CBPA) is pleased to have this opportunity to comment on the California Air Resources Board's (ARB) Draft Scoping Plan, Appendices, and Economic Analysis for implementing AB 32.

These comments build on CBPA's initial comments to the Draft Scoping Plan, previously submitted online and in writing. As indicated then, we congratulate ARB on its tremendous effort pulling together such complex and diverse information to make this draft Scoping Plan a reality. However, we hope that ARB will not and provide correction in several major areas that will better allow our industry to fully comply with the regulations and reduce the total amount of GHG's produced in this state.

Primary areas we hope to see addressed is providing a market based program, such as **Green Building Carbon Credits** (plan submitted under separate cover), to incentivize energy efficiency in existing buildings.

We look forward to working with ARB staff to provide ideas on how the non-residential real estate industry can contribute to achieving AB 32's goals, as well as our insights into how proposed strategies might work in the marketplace.

PROMOTING GREATER ENERGY EFFICIENCY IN BUILDINGS AND RENEWABLES

The Draft Scoping Plan recognizes the residential and non-residential real estate sector as an essential source of energy efficiency improvements and associated indirect GHG reductions, given that activity in buildings (homes, offices, hospitals, schools, retail establishments, etc.) accounts for and estimated 70% of all electricity consumption.

We anticipated that the Appendices would identify a few specific strategies ARB proposes to increase building energy efficiency. Instead, the plan merely identifies proposed targets for total electricity savings in terms of gigawatt hours and zero net energy buildings without illuminating the strategies by which ARB intends to achieve them or discussion about the impacts that reaching such

targets would have on the overall economy and specifically on individual companies. Finally, there is no discussion whether or not reaching such targets is even technologically feasible.

The Final Scoping Plan should articulate the specific strategies and incentives ARB contemplates for the real estate sector.

The Appendices anticipate imposing various mandates on commercial building owners to make them utilize cleaner energy sources and become more resource efficient. Commercial buildings, especially older existing ones, are frequently owned by individuals, families and small businesses that lack the capital necessary to implement unreimbursed, mandatory improvements. Before implementing any mandates, we urge ARB to consider their effect on these small business owners and to address and ameliorate the disparate impact such mandates will have on such property owners.

California's building codes are the most environmentally progressive building codes in the nation. Adopted in 1978, these codes are regularly updated and are the model program for the rest of the nation. California also recently became the first state in the nation to adopt statewide standards for green construction with an adoption in energy efficiency standards and indoor water use by 20%.

A typical new commercial building in California already uses about half the energy and emits about half the greenhouse gases as the national average, though the modeling does not account for these efficiencies, defaulting instead to generic national figures.

Although reference is made to building standards and the State's new Green Building Standards Code for new construction, there is no quantification showing how those ever increasing standards will contribute toward achieving the State's energy reduction targets.

For existing buildings, the Appendices mention performance testing under AB 1103 (mandatory benchmarking) and the generic notion of retrofit incentives, but there is no explanation regarding the types of incentives ARB is contemplating. The mandatory benchmarking law is already running into implementation issues which may

We believe the Appendices rely excessively on command-and-control style mandates and request that more attention and discussion be given to incentives and/or market based programs, particularly for buildings that exceed state or local green building standards.

Additionally, most of the State's current efficiency programs are administered by the utilities. These current strategies are our starting point. But as the Appendices correctly note, "[a]chieving new levels of energy efficiency would require novel approaches that go beyond building and appliance standards and beyond utility efficiency programs." Yet ARB is largely relegating these critical issues to the Investor Owned Utilities (IOUs) forthcoming Strategic Plan for Energy Efficiency and Demand Side Management for the period from 2009-2020, which the Appendices indicate will be focused on achieving the CPUC's zero net energy targets.

We think there are serious economic and technical challenges that may make the goal of Zero Net Energy unachievable in any significant way and unfortunately the plan is way overestimating the amount of savings that will result.



Zero Net Energy (ZNE). Our members have serious concerns about the feasibility of the 2030 ZNE target for new commercial buildings. The CPUC definition would require each individual project to provide onsite renewable energy generation that “nets out” all outside energy purchases (electricity and natural gas) from the grid. Photovoltaics are presently the only foreseeable, feasible technology for the 2030 target. Advancements in combined heat and power (CHP) *could* possibly become available for smaller-scale commercial buildings, but we query whether such disparate, distributed generation sources would be as clean or efficient as centralized energy production sourced through the grid. Moreover, CHP relies on an external fuel source, so at best, it would merely decrease a building’s energy purchases. The same is true of fuel cells, because they rely on some external source for hydrogen fuel. Regardless of how it is generated, ZNE will require changing existing law so that building owners can sell their renewable power generation to tenants without becoming subject to regulation as a public utility.

Consequently, ZNE is essentially a mandate for increased photovoltaics. These require substantial amounts of flat roof area to generate the power necessary to achieve a ZNE commercial building. Few mid-rise and high-rise office buildings have adequate roof space. These are precisely the types of building designs the State should be encouraging to promote density and reduce vehicle miles traveled. But ZNE would discourage these designs in favor of low-rise structures having the broader footprint necessary to provide adequate roof space for photovoltaics. And because urban land is expensive with little available open space, this would encourage development in peripheral areas, increasing sprawl.

We recognize the State perceives ZNE as a technology-forcing mechanism to promote development of more cost effective renewable, but submit this policy is unrealistic, uneconomical, technologically impossible for many building types, and could actually result in fewer new highly energy efficient buildings to be built and replace older buildings, thereby creating a net increase in the number of GHG’s being created through longer use of existing, less energy efficient buildings.

In order to meet the ZNE mandate, every new non-residential building will have to become a “mini-utility” and begin to generate most of their power on-site. On-site power generation is very expensive and has technological and physical application issues that may not allow it to produce the quantity of electricity needed in many buildings due to building size and activity. Additionally, in multi-tenant mixed-use and commercial buildings there is very little a building owner can do to reduce tenant power usage. It is estimated that the “plug-load” of such a building can reach as high as 40%. This mandate provides no incentives or tools to reduce the energy usage of people and activity in the buildings.

There are also major technological impediments to implementing the on-site power generation requirements mandated by this measure. According to a recent University of California study, even a highly evolved and advanced PV system simply will not be able to provide the required amount of power needed for a large commercial or multi-tenant building, no matter how efficient the building is.

From the pragmatic viewpoint, this policy would be much harder to accomplish in certain building types, uses, and climate zones, yet the plan relies on a “one-size fits all” mandate. It mandates on-site energy generation on a mixed-use project in the same way it regulates an industrial complex or retail facility. A solar array on top of a 30 story urban building may well have to extend beyond the roofline in manner that is physically impossible, would probably shade neighboring buildings from their needed sunlight, and violate local building, fire, and safety codes.



The State's ZNE goals will begin changing behavior among planning officials and developers relatively soon. We encourage ARB (and CPUC) to consider these unintended, negative consequences.

At a minimum, the ZNE definition should be changed so that single projects can offset their excess energy purchases by financing offsite renewable energy installations. This would help alleviate the perverse incentive toward sprawl. It would also make the program far more cost effective by helping finance large, utility scale photovoltaic installations to serve as ZNE banking operations, similar to wetlands mitigation banking under the federal Clean Water Act, which provides a funding mechanism for preserving larger, intact wetlands than would otherwise occur under the status quo. Economies of scale would provide these larger systems a much lower cost per watt than the alternative of innumerable, small rooftop systems.

Renewables. Closely related to ZNE is the need to remove current regulatory barriers impairing increased deployment of renewables. Economies of scale are an important driver in the cost of renewables. Current net metering limitations perversely discourage larger systems, because the system owner cannot sell excess energy to their utility or others. In addition to allowing property owners to sell this power to tenants, utilities (both investor-owned and public) should be required to purchase all excess power at pre-determined, favorable rates (i.e. feed-in tariffs) to remove this artificial barrier. CBPA believes this well-known deficiency should be corrected prior to any direct or indirect mandates for distributed generation in any form.

ARB should also evaluate whether current incentives will generate the volume of photovoltaic installations assumed in the Appendices for achieving AB 32. Rebate levels were established based on the assumption of federal tax credits, which expire at the end of 2008. Despite several legislative efforts, the federal government has been unwilling to renew these tax credits, and depending on the outcome of the upcoming Presidential election, federal support for solar power may well disappear again as it did in the 1980s.

Combined Heat and Power (CHP). The Appendices state that ARB could "mandate CHP for certain types of new or existing industrial, commercial and institutional facilities." It is difficult for CBPA to comment on this proposal until more specifics are provided. However, as noted above, any such mandate would be cost prohibitive unless property owners are permitted to sell power to their tenants and/or utility at economically viable rates without becoming subject to regulation as a public utility. Additional financial incentives would also be necessary to help defray capital costs.

Solar Hot Water. We support ARB's efforts to promote solar hot water heating. Given ARB's analysis that these systems cost twice as much to install in existing buildings as compared to new construction, we encourage ARB to prioritize new buildings. Any associated financial incentives should be made equally available to both residential and commercial real estate.

Lagging Performance of POU's. As ARB notes, publicly-owned utilities lag far behind investor-owned utilities in terms of investment and related support for energy efficiency, renewables and distributed generation. This distinction can be erased only through a level playing field that requires POU's to achieve specified targets and play by the same rules as IOU's in this area. We support ARB proceeding in this direction.

Financing and Incentives. ARB correctly observes that the marketplace does not view most energy efficiency improvements as cost-effective. CBPA strongly supports ARB's efforts to increase incentives and promote financing conditions that encourage green building, building retrofits, and efficiency management of existing buildings. We encourage the State to use its influence in the appraising industry, including its control



of licensing and continuing education requirements, to expand understanding of the appraisal industry and financial institutions to factor green building benefits into their valuation methodologies. Such changes could transform real estate valuation throughout the nation because of the sheer size of the California real estate market.

Modernized real estate valuation methodologies will largely aid new construction. The added expense of green building, especially in retrofitting existing buildings, requires direct financial incentives to defray upfront capital costs. California has a long history of providing such incentives and the Appendices note the need to expand them, but no specific incentive programs are discussed. Green building incentives should be implemented co-extensively with the green building codes, not only to aid compliance, but more importantly, to reward those who proactively move beyond business-as-usual.

We believe that green building incentives are a vital strategy for encouraging maximum energy and resource efficiency in new and existing commercial and residential structures. Rebates and other upfront payments / discounts are proven tools to increase market adoption of green building practices, and we encourage ARB to expand these offerings for the commercial real estate sector. We likewise support on-bill financing and other mechanisms that simplify and reduce the cost of capital to support voluntary green building improvements to new and existing buildings. We would welcome the opportunity to share our expertise to help ARB design these programs to maximize adoption in the marketplace.

Removing Regulatory Barriers. One of the most immediate and cost effective actions the State could take is to systematically remove local and state barriers preventing greater building energy and water efficiency. State and local building codes preclude or hinder various green building measures, like waterless urinals, grey water systems, rainwater harvesting and the use of innovative building products. Even when certain systems are permitted, the building owner faces additional delay and expense getting them approved by permitting officials who lack understanding of these systems and recent code changes. The State should convene a stakeholder taskforce of property owners, green building professionals and others to identify these barriers and propose solutions. Correcting all local building codes would be cumbersome and time consuming, so the State could evaluate preemptive state code language to assure these barriers are permanently removed. Similarly, the State should require and fund regular training for local building officials to increase their understanding of these important issues.

The Appendices correctly note that land use and permitting authority resides primarily with local government. Certain local efforts have been very successful, like San Francisco's priority permitting program for certain green buildings. However, the intended time value benefit has been eroded by success, because so many new projects have enrolled that City permit staff have been overextended. The State should support such efforts by providing funding for local government to hire additional staff to support such programs. This and other local incentives like density bonuses provide strong inducement to voluntary action at relatively little governmental expense.

Greening the State's Real Estate Portfolio. CBPA applauds the recommendation for the State to lead by example by greening its new and existing portfolio of owned and leased buildings. Such activity serves also to build expertise among California's design and construction community, which will help bring down the cost of such services for the private sector. We encourage the State to closely monitor, evaluate and publish resulting cost savings so that the private sector can better learn from the State's experience.



The Draft Scoping Plan discusses using the State's power as an institutional investor to spur green building investment; however, the Appendices do not discuss this strategy. CalPERS and CalSTRS are influential players in the institutional investor community, and their investment in green buildings will spur other investors to follow suit, which collectively will shift development practices toward greater sustainability. We encourage the State to direct its investment opportunities to grow the investment market for green buildings.

GREEN BUILDING CARBON CREDIT

The Appendices correctly note that “[a]chieving new levels of energy efficiency would require novel approaches that go beyond building and appliance standards and beyond utility efficiency programs. Yet the Appendices identify nothing beyond the current, utility-administered incentive programs. These programs have not achieved the level of energy savings possible or desired, in part because they depend on a single entity (utilities) to deliver a service (energy savings) that is the exact opposite of their core expertise (selling energy). Decoupling and shareholder incentives help motivate utilities, but they do not incent the market to create the broad savings that are possible and necessary. Mandates are difficult to implement equitably and will spur political action to blunt their impact. Competing demands for State funds make incentives only a partial solution. California must innovate its program offerings to capture the power of the market if it ever wishes to achieve anything approaching what is possible.

We highly recommend that the State establish a green building carbon credit as an emission reduction credit / offset that can be sold into the cap and trade compliance market. The Demand Side Abatement program of the Australian State of New South Wales provides a model for California to follow. By adopting a similar program, California would set a powerful precedent for the rest of the nation and world to follow by providing a market-based strategy to improve energy efficiency in the built environment in a far more comprehensive way than is currently possible under the monopolistic structure of utility-based programs.

Under separate cover, CBPA is filing a short white paper prepared by its special legal counsel, Donald Simon that describes the rationale and proposed structures for this carbon credit in further detail. Mr. Simon briefed ARB staff and others on this concept during the September 2, 2008 meeting of the Green Building Climate Action Team Advisory Committee, and he subsequently forwarded this white paper to ARB and DGS staff that were in attendance. Among other things, this white paper provides a solution a solution to the double-counting problem underlying ARB's statements in the Draft Scoping Plan advising that green building measures are not counted as additional GHG reductions because they reduce emissions from the electricity sector. In short, the solution is to reduce the electricity sector cap by an amount equivalent to the number of green building carbon credits awarded. The New South Wales program uses this approach.

The green building carbon credit would rely on a protocol to verify that reductions are real, additional and verifiable. This protocol should be developed through a consensus process that enables the relevant stakeholders to offer real world comments to help ensure viability and adoption in the marketplace. If properly constructed to measure *actual* energy savings (rather than relying exclusively on default abatement factors), then the credit would promote conservation among building occupants by providing them additional monetary incentive to reduce energy use. No other current or proposed programs provide such potential to address both efficiency and conservation. We would welcome the opportunity to discuss this concept and associated white paper with staff.

We understand ARB concerns that such emission reduction credits might jeopardize the efficacy of a cap and trade system during its initial compliance periods by adding additional complexity. This same concern



underlies ARB's proposed ten percent limit on offsets. We believe this limit provides adequate protection. If ARB is still uncomfortable introducing the green building carbon credit into the compliance market, then it could alternatively establish a parallel market funded through auction revenues. This would be similar to the ETAAC's first proposed activity for the California Carbon Trust. (See ETAAC Final Report, p. 2-4, 5) This would provide ARB an opportunity to test and refine the measurement and verification protocol while still funding these additional, real and verifiable reductions at a rate comparable to the compliance market value without risk of upsetting the early compliance market. The goal should be to transition the green building carbon credit into the compliance market, thus freeing Carbon Trust resources for other activities. In this way, the California Carbon Trust could become an incubator and testing ground for innovative carbon reduction strategies for eventual introduction into the broader compliance carbon market.

The ETAAC Final Report suggests a project-by-project selection process similar to the Kyoto Protocol's Clean Development Mechanism. This methodology has been problematic because it adds significant transaction costs for both the project applicant and regulatory oversight entity which counter the financial incentive the Carbon Trust's activities seek to provide. ETAAC recognizes this weakness in its later discussion of offsets at p. 9-5, where it recommends a standards-based approach. The green building carbon credit should follow a standards-based approach by relying on an approved protocol to verify that GHG reductions are additional and real.

TIME OF SALE RETROFIT REQUIREMENTS FOR COMMERCIAL REAL ESTATE

The Appendices repeat the notion introduced in the Draft Scoping Plan that the State could tackle the challenge of existing buildings through mandatory time of sale retrofit requirements. As noted in our previous comments, CBPA has serious concerns with this proposal. First, ARB should recognize that retrofits are doubly capital intensive because they not only require investment for the cost of retrofitting, but usually halt or severely curtail a building owner's revenue stream by rendering the building unusable during retrofitting work. This fact needs to be considered when determining the amount of financial incentives necessary to facilitate action. Discussions with our members have confirmed that these retrofit requirements would discourage property owners from selling their buildings. A reduction in these transactions would adversely affect not only the commercial real estate industry but also the cities and counties who depend on the transfer taxes generated from such transactions. Such reductions in local revenue would undermine the ability of local government to implement programs that reduce sprawl and encourage energy and water efficiency.

Retrofit requirements also have the potential to disproportionately affect property owners who, under common lease structures like triple net, are often unable to pass retrofit costs onto tenants who receive the benefit of lower utility costs.¹ Leases are long-term agreements often spanning ten years or more, so any mandates should provide a long-lead time before implementation so that the issue can be taken into consideration during future lease negotiations. Even so, many existing leases would not come up for renegotiation during the implementation period. Fundamental fairness would require any that any mandate include specific authorization for property owners to pass such costs on to their tenants, notwithstanding any lease provisions to the contrary. Because this would likely require legislation, if ARB wishes to advance this concept, CBPA strongly encourages it to do so through the legislature rather than through the regulatory process.

Time of sale retrofit requirements are a blunt instrument that should be considered only as a last resort if other, more innovative strategies fail. We instead encourage the ARB to pursue a strategy of empowering the market

¹ The utility cost savings noted in the Plan's Executive Summary would flow to the tenant, rather than the property owner who would be obligated to pay for the retrofit that makes those savings possible. This is the split incentive issue referenced in the Draft Scoping Plan.



by establishing reliable funding mechanisms that provide financial incentives to overcome the cost-effectiveness hurdle existing buildings face, such as the green building carbon credit described above and to revisit the issue in subsequent scoping plan updates.

NATURAL GAS SECTOR

CBPA supports the Western Climate Initiative (WCI) recommendation establishing a distribution-level point of regulation for residential and small commercial users in the natural gas sector. Downstream regulation at the point of combustion would create onerous compliance obligations for building owners and overburden the regulatory system while producing little additional benefit. Substantial opportunities do exist for improving natural gas combustion efficiency in the real estate sector, especially in existing buildings. However, upfront costs remain a significant barrier. The State can shift this paradigm through expanded rebates and creative financing mechanisms, like on-bill financing – all of which CBPA supports.

Given competing demands for energy efficiency funding, the State should promote private funding sources. It can do this by allowing verifiable, end-user natural gas efficiency improvements to qualify as a compliance offset in the cap and trade market. The Regional Greenhouse Gas Initiative Model Rules does this, and we encourage ARB to do the same.

COORDINATION WITH CEQA

The Appendices and Draft Scoping Plan do not discuss how ARB's AB 32 implementation strategies will operate in conjunction with the California Environmental Quality Act (CEQA). Environmental Impact Reports for new developments are being challenged in court based on their potential Climate Change impacts. The lack of clear guidance in this area is increasing development costs and consuming resources that could otherwise be directed toward enhanced resource efficiency. We encourage ARB to coordinate with OPR as it develops CEQA guidelines in this area to ensure the real estate sector faces consistent and efficient compliance obligations. Specifically, compliance with ARB's strategies should be explicitly recognized as mitigation measures that fully satisfy CEQA requirements, and other desirable development / construction activities should be given expedited CEQA review and considered for categorical exemption to incent voluntary action. Also, as the Legislature and Governor adopt into statute laws aimed at reducing GHG's, CARB should figure out how to incorporate such laws into the AB 32 regulatory process so projects need not go through separate/parallel processes.

WATER EFFICIENCY

Measures that improve water efficiency serve a dual role by reducing GHG emissions and mitigating the impact of a reduced Sierra snowpack and water supply that will result from Climate Change. CBPA strongly supports the creation of a public goods charge to fund ratepayer water efficiency programs, provided the charge is equitably levied on all users. Many existing commercial buildings were constructed before efficiency standards were adopted for water-consuming devices. Unfortunately, it is not currently cost-effective to retrofit these devices. Rebates funded through this public goods charge could improve retrofit economics and spur action.

We are curious about ARB's rationale for assessing the public goods charge as a flat rate per connection rather than based on a customer's water use. This seems regressive and counterproductive, because small, efficient users would pay the same as large, inefficient ones. A volume-based fee would send a pricing signal that



promotes conservation and efficiency, while improving the economics supporting retrofits. Regardless of funding mechanism, the resulting incentives will only provide partial retrofit funding, so we encourage ARB to consider on-bill financing mechanisms similar to what it has proposed for energy efficiency retrofits.

CBPA also generally supports the Appendices other recommendations to increase water use efficiency, recycling and reducing urban runoff. We encourage ARB to also consider the need to remove regulatory barriers that hinder or prevent water savings in the real estate sector. Building codes and local building officials often lag behind the market, rendering innovations like waterless urinals, greywater systems and rainwater harvesting impossible or very difficult to permit. Government must first get out of the way by removing these barriers and expanding education among local officials. Additionally, many local governments lack the infrastructure necessary to facilitate water conservation and reuse strategies. We urge ARB to consider these barriers before implementing any generic mandates on the real estate sector in this area.

LAND USE

Blueprint Process. CBPA generally supports the “Blueprint” planning process as a more efficient method of land use planning. Land use is traditionally a matter of local government control. This is sensible, because conditions differ throughout this diverse state in terms of climate, resources, population and economics. California is poorly suited for a one-size-fits-all approach. We encourage the State to respect this basic fact and focus its efforts on providing local governments common standards and tools to help them evaluate how to address GHG emissions resulting from their land use priorities.

Indirect Source Rule. The Scoping Plan should more carefully analyze usage of indirect source rules (ISR), because they are problematic for many reasons. First, each user of a new commercial building may be increasing or decreasing GHG emissions as a result of occupying the new facility, because their previous, existing facility was likely far less energy efficient than their new one. This makes it difficult to establish a baseline against which to evaluate the new project’s additional indirect GHG impact. If ISR is included in the final Scoping Plan, then ARB must provide a quantification methodology and protocol.

ISR also presents legal challenges when used in the context of GHG emissions. Because GHG emissions do not produce particularized local impacts and would not likely result in any demonstrable reduction in atmospheric GHG concentrations, ISR could amount to the collection of a “special tax” which is prohibited by the California Constitution unless approved by a two-thirds vote of the electorate. If implemented, ISR should be the exclusive mitigation measure under CEQA.

Congestion Pricing. The Appendices also mention congestion pricing as a strategy under consideration. It is not clear whether this strategy would apply to commercial trucking operations. Implicit in this strategy is the belief that drivers have the freedom to choose the times and locations they drive. This is not the case with goods transport. Many facilities operate under strict delivery restrictions imposed by local jurisdictions to mitigate community noise impacts that require deliveries during specific times. Congestion pricing could impose disproportionate impacts on goods movement beyond those strategies directly targeting this sector, unless they accompanied by other fundamental changes allowing distribution centers and warehouses to accept deliveries during night and early morning hours. ARB should take these factors into account in formulating any congestion pricing scheme.



RECYCLING AND WASTE MANAGEMENT

The Appendices propose a significant increase in recycling materials and composting to divert these materials from landfills. However, there is no discussion identifying the specific party who would carry this compliance obligation. Currently, opponents to development projects use the CEQA review process to argue that proposed projects increase GHG emissions by failing to implement sufficient features for recycling and composting. However, in many cases the reason lies beyond the project, because many communities do not provide facilities for such recycling or composting. As with all proposed mitigation measures, the party responsible for ensuring waste reduction must be clearly delineated and reside with the entity most able to control the end result.

REFRIGERANTS

Strategy H-6 proposes various strategies to minimize emissions of high GWP refrigerants through reporting, leak repair, improved servicing, and end-of-life control. These proposals are of significant concern to our members because of the extensive potential costs involved. For example, the Appendices note ARB's cost estimate of \$500,000 to replace the average commercial refrigeration unit. Regulations that have the effect of requiring such action before otherwise necessary may drive some smaller companies out of business. The Appendices note ARB's need to further analyze potential costs associated with these strategies. We encourage ARB to do so before designing any new regulations or fees. We believe these GHG reduction efforts warrant rebates and other financial incentives to ameliorate the cost of more expensive, compliant systems. Financial incentives are especially needed to abate the cost of any mandates affecting existing systems.

GOODS MOVEMENT

Manufacturing and retail sectors of the California economy are highly dependent on truck and rail shipments from California's ports to inland distribution centers, as well as other intra-state and inter-state goods movement distribution corridors. ARB should consider only limited controls on good movements, provided that they do not unduly limit fundamental business operations of commercial/industrial/retail entities. More specifically, any emissions reduction targets imposed in connection with the "System-Wide Efficiency Improvements" should consider and account for the essential need to move goods inland from the ports.

MEDIUM AND HEAVY DUTY TRUCKS

Strategy T-7 would require the hybridization of new vocational work trucks by 2015. The Appendices generate some confusion, however, because they identify the owners of these trucks as entities affected by this measure. If this means that it would be the owner's responsibility to hybridize new trucks powered by standard internal combustion engines then CBPA objects, because it would improperly place this compliance obligation on the wrong party. This compliance obligation best resides with truck manufacturers, as they are the ones best suited to implement these measures at the assembly line. Even so, this measure will increase the cost of such vehicles considerably, which will be reflected in the amount Californians pay for the services utilizing these vehicles. ARB should consider rebates or tax credits to help fund the purchase of these vehicles, similar to what California recently did to encourage individuals to purchase hybrid vehicles.

Strategy T-8 advocates improved engine efficiency for heavy-duty vehicles. ARB acknowledges that many of the technologies are not yet available and therefore the potential cost cannot yet be measured. Before implementing any such measures, ARB should conduct complete cost-benefit analysis. ARB correctly



anticipates this measure would have significant economic effects on small businesses because of associated upfront capital expenditures, and it proposes consideration of a financial assistance program. While larger businesses may be better equipped to absorb upfront expenditures, they are no less susceptible to major financial losses this would cause. ARB should consider financial incentives to all business affected by these measures, including low cost financing options that enable businesses to pay-off these capital expenditures from resulting fuel savings.

We hope ARB staff finds these comments useful as it proceeds toward developing its final recommendations to the board. CBPA thanks you for your consideration of our views and for your continued hard work on this important issue. We look forward to working with you further.

Sincerely,

California Business Properties Association



Matthew Hargrove
Sr. Vice President

Wendel, Rosen, Black & Dean, LLP

/s/

Donald S. Simon
Special Counsel

