California Independent Petroleum Association
Blair Knox, Director of Regional Affairs
1200 Discovery Drive, Suite 100
Bakersfield, CA 93309
Phone: (661) 395-5287
E-Mail: blair@cipa.org

August 14, 2014

Via email: ceqa@sbcapcd.org

Attn: Molly Pearson
Santa Barbara County Air Pollution Control District
260 N. San Antonio Rd, Ste. A,
Santa Barbara, CA 93110

RE: Industry Comments on SBCAPCD Greenhouse Gas (GHG) Policy Recommendation

Dear Ms. Pearson,

Thank you for the opportunity to comment on the SBCAPCD Greenhouse Gas Policy Recommendation. This letter is being submitted on behalf of both the California Independent Petroleum Association (CIPA) members and the Santa Barbara County Onshore Oil and Gas Operators Group (aka. the Coastal Operators Group or COG), which includes many of our members in addition to the majority of companies producing oil and gas onshore Santa Barbara County. CIPA is a non-profit, non-partisan trade organization representing over 170 oil and gas producers throughout the state and a total membership north of 550, including a wide variety of people and companies that make up the petroleum economy in California. The Santa Barbara Onshore Oil and Gas Operators Group is a coalition of onshore oil and gas operators that works to address regulatory issues in the local industry.

This letter provides our recommendations on the appropriate significance threshold for the Santa Barbara County Air Pollution Control District's ("District") greenhouse gas (GHG) impact evaluation for projects subject to the California Environmental Quality Act (CEQA). Our recommendations coincide with policy options presented and identified under "Option Four" by the District at the recent May 6th and May 8th workshops.

Specifically, we support a "hybrid" policy approach to evaluating GHG impacts in CEQA documents. The hybrid approach would first establish a bright line (quantitative) value CEQA significance screening level ***and*** second, evaluate potential emission reduction requirements for compliance with the adopted statewide GHG reduction plan, California's Global Warming Solutions Act of 2006 ("AB 32") Climate Change Scoping Plan ("Scoping Plan"). The Scoping Plan is California's approved plan for reducing GHG emissions in the state in a cost effective manner that reduces carbon and retains California businesses.

We recommend the District set a ***10,000 metric tons CO2e significance screening level*** to avoid causing unnecessary review of projects with limited emissions. For projects with emissions that exceed the screening level, the lead agency would then evaluate the project's emission reductions to determine whether those reductions comply with specific provisions of the Scoping Plan or are consistent with its performance standards. The methodological steps for this hybrid approach are the following:

- **Step No. 1:** If the project's *total new emissions* (projected emissions from the new project after taking into account any baseline emissions) are below the 10,000 metric tons CO2e significance screening level, then the impact is deemed insignificant and no further GHG CEQA analysis or mitigation is necessary.

- **Step No. 2:** If the project's *total new emissions* are above the 10,000 metric tons CO2e significance screening level, the lead agency would then evaluate whether the project meets one of the following metrics resulting in a finding of insignificance:

  Step 2 (a): Does the project comply with an approved GHG emission reduction plan or GHG mitigation program (e.g. Cap-and-Trade Program)? If yes, then no further GHG CEQA analysis is necessary. The project is deemed as less than significant for the GHG CEQA review. If no, then proceed to Step 3.
  Or:

  Step 2 (b): Does the project achieve the most recent target percentage emission reduction level as determined by the California Air Resources Board (CARB) in the Scoping Plan "BAU -" (percent reduction from business as usual case) to comply with California's GHG reduction goals set by AB 32 or future legislation setting goals beyond 2020? If yes, then no further GHG CEQA analysis is necessary. The project is deemed as less than significant for the GHG CEQA review. If no, then proceed to Step 3.

  The current AB 32 Scoping Plan target reduction is BAU - 15.3 %. For purposes of this analysis, the percentage reduction is measured against total stationary source emissions from the project.

  Step 3: Where the project's *total new emissions* are above the 10,000 metric tons CO2e significance screening level, but not compliant with Step 2(a) or (b), then emissions are deemed significant and mitigation is necessary. Or, the lead agency can approve the project by adopting findings of overriding consideration for the approval of the project.

The CEQA Guidelines encourage CEQA lead agencies to develop significance thresholds. The significance thresholds need to be supported by substantial evidence. CEQA Guidelines Section 15064.7 states:

> (a) Each public agency is encouraged to develop and publish thresholds of significance of environmental effects . . . compliance with which means the effect normally will be determined to be less than significant.

> (b) Thresholds of significance . . .must be adopted by ordinance, resolution, rule, or regulations, and developed through a public review process and be supported by substantial evidence.
>
> (c) When adopting thresholds of significance, a lead agency may consider thresholds of significance previously adopted or recommended by other public agencies or recommended by experts, provided the decision of the lead agency to adopt such thresholds is supported by substantial evidence.

Your current process allows the District to gather the information needed to support setting a standard of significance for GHG emissions increases. Our recommendations for the hybrid approach are solidly grounded in the regulatory framework of both AB 32, California's solution to the problem of global climate change and also, CEQA, California's landmark act requiring analysis and disclosure of potential environmental impacts to the public and decision makers prior to approval of a project. Thus, the discussion below first provides key aspects of AB 32 relevant to and in support of the district's consideration of the hybrid GHG compliance policy. Next, the discussion provides CEQA based support for our recommendation that compliance with AB 32 is compliance with CEQA.

AB 32: Charting California's Path to GHG Reductions

AB 32 is California's solution to the problem of global climate change. Essentially, AB 32 mandates a return to 1990 GHG (CO2e) emissions levels by 2020. To achieve this mandated goal, AB 32 directs CARB to take a variety of actions to reduce California's GHG emissions. Of primary concern to the specific policy we recommend is that CARB "**shall prepare and approve a *scoping plan* for achieving the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions from sources or categories of sources of greenhouse gases by 2020 (Health and Safety Code (HSC) §38561).**"

The Scoping Plan, approved by CARB Board December 12, 2008, specifies the actions CARB found necessary to reduce GHG emissions in California to meet the mandated reductions in AB 32. The approved Scoping Plan indicates how these emission reductions will be achieved from "significant" GHG sources via regulations, market mechanisms and other actions. The Scoping Plan was initially adopted by the CARB in 2008. The Scoping Plan must be updated every five years to ensure California remains on track to reach the mandated GHG emission reduction goals of AB 32. Pursuant to the update requirement, CARB adopted the First Update to the Climate Change Scoping Plan in May 2014.

Business as Usual Reductions

In order to determine the amount of reductions required to meet the 2020 goal, CARB created a business as usual (BAU) case to predict the amount of GHG emissions the state would produce in 2020 without implementing any specific controls. Then, CARB calculated the percentage reduction from this BAU case that would be required to meet 1990 emissions levels in 2020. CARB has continued to refine the percentage reduction based upon the actual statewide GHG emissions. Initially, CARB calculated California needed to reduce emissions by 29% from BAU to meet the 2020 goal. In 2011 CARB reduced the percent reduction needed to 16% to reach the 2020 goal because the State's emissions have been lower than forecast.

Scoping Plan Command and Control Measures

The Scoping Plan contains several command and control measures, including:

- Regulation of landfills and certain commercial refrigerant operations
- Pavley I automobile standards
- Regional transportation measures
- Energy efficiency
- Renewables portfolio standard

Cap-and-Trade Market Based Measure

CARB also adopted a market based approach, cap-and-trade, to reduce emissions from most of the California economy. Projects subject to AB 32's cap-and-trade program are required to decrease or offset emissions to meet AB 32's GHG reduction goals in 2020 and beyond. The cap-and-trade reductions are adaptive, in that they become more stringent as longer term GHG reduction goals may require. The cap is also subject to adjustment as CARB calculates the reductions from command and control measures such that cap-and-trade picks up any reductions not achieved through command and control measures. Furthermore, cap-and-trade applies to all capped sources regardless of whether they are existing or new sources ensuring that all capped sources participate in achieving California's GHG reduction goals. Currently, only phase 1 of the program is in effect, which includes all major industrial sources and electric utilities. Phase 2 will start in 2015, and will encompass distributors of transportation fuels, natural gas and other fuels.

CARB has stated unequivocally that the cap and trade program will put the state, including the industrial sector, on a path to satisfy emission reduction goals through 2050 (See CCARB AB32 Scoping Plan, at 15, December 2008). Furthermore, the First Update to the Climate Change Scoping Plan states, "The Cap-and-Trade Program will continue to be a vital component in achieving California's longer-term climate change goals." (At 87.)

CARB's implementation of the Scoping Plan is working. "The State's progress on measures included in the Scoping Plan and other complementary activities have put California on the path to achieve the statewide GHG emission limit of 1990 levels by 2020, and to achieve the maximum technologically feasible and cost-effective reductions over the long-term." (First Update to Climate Change Scoping Plan at 88.) California is on a downward trend on both overall emissions and emissions per person. (*Id.* At 90.) CARB has designed the system such that the cap-and-trade program's cap adjusts, picking up any lost reductions to ensure California meets the 2020 goals. (*Id. At 93.)*

In addition, CARB is looking to the future by identifying the next steps toward further reductions in GHG emissions. CARB not only continues reductions from the sectors identified in the initial Scoping Plan but is also including many additional sectors in its efforts to further reduce GHG emissions beyond 2020. For the energy sector, CARB plans to work with State energy agencies to develop by the end of 2016 a comprehensive and enforceable GHG emission reduction requirements for electric and energy utilities to achieve near-zero GHG emissions by

2050. (First Update to the Climate Change Scoping Plan at 45, 2014.) For the transportation sector CARB plans to reduce transportation GHG emissions by addressing all of the following:

- Adopt vehicle standards to achieve five percent emission reductions per year through at least 2030.
- Strengthen and extend the low carbon fuel standard
- Continue to develop resources for electric and hydrogen vehicles
- If needed, expand regional targets for emission reductions under SB 375
- Build and expand high speed rail and other transit options
- Complete the sustainable freight strategy, and
- Leverage public money to scale-up clean technology markets.

(*Id.* At 55.) CARB also plans to create midterm and 2050 targets for GHG reductions from the agriculture sector. (*Id.* At 61.) CARB will continue efforts toward water and energy conservation programs to reduce water use and energy used to move and treat water. (*Id.* At 65.) For the waste sector, CARB is looking to eliminate disposal or organic materials and control methane at landfills, increase composting and anaerobic digestion, and further increase recycling. (*Id.* At 69.) For natural and working lands, CARB is working toward developing forest carbon plans and further understand the carbon life cycle in wood products. (*Id.* At 76.) CARB plans to develop a comprehensive strategy for mitigation of short-lived climate pollutants by 2015 with a focus on reducing smog-forming pollutants by 90% by 2032 to meet ozone standards. (*Id.* At 81.) CARB also plans to expand upon green building programs for new construction, existing building retrofits, and operations and maintenance. (*Id.* At 85.) Finally, CARB plan to continue using cap-and-trade to further reduce emissions beyond 2020. (*Id.* At 87.)

Thus, CARB's comprehensive and statewide program to reduce GHG emissions is California's program for addressing global climate change. Compliance with CARB's programs and emission reduction metrics provide a solid foundation for a defensible GHG significance threshold.

Mitigating Cumulative Impacts under CEQA: Everyone's "Fair Share"

CEQA recognizes climate change is a global problem wherein the concern is not about an individual project on its own but about a project's contribution to the cumulative problem of climate change. Thus, for GHG impacts a lead agency is evaluating whether a project's impacts could exacerbate this global impact through its incremental contribution combined with the cumulative impacts of all other sources of GHGs. In order to determine whether a project's incremental contribution to global climate change is significant under CEQA, we recommend the District rely upon programs established by and percent reductions found by CARB in the Scoping Plan and First Update to the Climate Change Scoping Plan to meet California's GHG emission reduction goals.

Consistency with Scoping Plan Programs Satisfies CEQA's Requirement for Projects to Fund their Fair Share of the Solution to a Cumulative Problem like Global Climate Change

According to CEQA Guidelines § 15064.4(b) when assessing the significance of Greenhouse Gas impacts under CEQA,

> A lead agency should consider . . .
>
> (3) The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions.

According to the CEQA Guidelines if a project complies with California's adopted GHG plan, the Scoping Plan including programs such as cap-and-trade, the project's impacts should be found to be less than significant. A project complying with the Scoping Plan and its updates would not have a significant impact because it is already involved in a program providing the necessary reductions to meet California's goals and requirements for reducing GHG emission statewide. The project would already be contributing to the solution to global climate change.

Finding a stationary source required to comply with cap-and-trade as not causing a significant cumulative GHG impact is consistent with the CEQA Guidelines. In June of this year the San Joaquin Valley Air Pollution Control District approved a policy wherein projects subject to cap-and-trade (covered entities) are determined to have a less than significant impact on global climate change under CEQA. (APR-2030, dated June 25, 2014.) Consistent with this action by San Joaquin, the CEQA Guidelines limit allowable mitigation for cumulative impacts such that a project is only responsible for its contribution to the cumulative problem. Under CEQA a project cannot be required to mitigate the cumulative impacts of other projects. As set forth in the District's presentation and CEQA Guidelines §15130(a)(3):

> An EIR may determine that a project's contribution to a significant cumulative impact will be rendered less than cumulatively considerable and thus is not significant. A project's contribution is less than cumulatively considerable if the project is required to implement or fund its **fair share** of a mitigation measure or measures designed to alleviate the cumulative impact. The lead agency shall identify facts and analysis supporting its conclusion that the contribution will be rendered less than cumulatively considerable. (Emphasis added.)

Cumulative impacts can be mitigated to a less than cumulatively significant level by implementing its fair share of a mitigation measure or measures. The Scoping Plan contains control measures for the reduction of all California GHG emissions. Therefore, by definition, any implemented AB 32 control measure satisfies an essential (fair share) CEQA criteria for mitigation.

The South Coast Air Quality Management District (SCAQMD) recently determined that a cogeneration project, within its jurisdiction and subject to cap-and-trade, was in compliance with CEQA GHG requirements. SCAQMD did not require any additional mitigation for this project. In addition, SCAQMD's current adopted policy is if a project is subject to cap-and-trade, then that project is deemed compliant with CEQA GHG requirements by the SCAQMD. It is also our understanding that the District has confirmed with CARB that any stationary sources subject to the cap-and-trade program are in compliance with CEQA GHG requirements and require no further mitigation.

District reliance upon the programs and metrics from the Scoping Plan as a significance threshold is also consistent with constitutional limitations on exactions from development projects. Requiring project applicants to mitigate their GHG emissions beyond what is determined to be necessary by the Scoping Plan programs such as cap-and-trade or the reduction percentages discussed below would violate constitutional and "fair share" requirements. The additional mitigation would be disproportionate to the project's contribution and not tied to an evaluation of a project's actual impacts on global climate change.

The constitutional limitations on land-use related exactions are established in two well-known Supreme Court decisions. In Nollan v. California Coastal Commission ("Nollan"), the Supreme Court held that an "essential nexus" must exist between the "legitimate state interest" (in this Case, AB 32) and the permit condition exacted by the city. (Nollan v. California Coastal Commission [1987] 483 U.S. 825 at 837.) And, Nollan's companion case Dolan V. City of Tigard ([1994] 512 U.S. 374) clarified that an exaction is legitimate only if the mitigation requirement is roughly proportional to the project's impact. Thus, a project cannot be required to provide mitigation in excess of its contribution to the impact.

Meeting CARB's BAU Reduction Percentage Means the Project has Contributed its Fair Share to the Solution to the Cumulative Problem of Climate Change and Does Not Create a Significant Cumulative GHG Impact

As shown above, CARB has calculated the percent reduction from BAU needed to meet California's established requirements for GHG reductions statewide. If a project reduces its GHG emissions by this same percentage, the project should also be considered to have contributed its fair share contribution to this global problem. Project GHG emission reductions consistent with BAU levels would thus, not create a significant cumulative impact. Note that the Santa Barbara County Energy and Climate Action Plan states the County emission goals can be met by a 15% below BAU criteria. Furthermore, the CEQA Guidelines Section 15064.4(a)(2) support using performance standards to determine significance of GHG emissions:

> The determination of the significance of greenhouse gas emissions calls for a careful judgment by the lead agency consistent with the provisions in section 15064. A lead agency should make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project. A lead agency shall have the discretion to determine, in the context of a particular project, whether to:
>
> (2) Rely on a qualitative analysis or **performance based standards**. (Emphasis added.)

The approach of using a reduction from BAU to address cumulative GHG impacts has been supported by the courts in a published appellate court decision in CREED v. City of Chula Vista (197 Cal. App. 4th 327 2011). In August 2013, the Third District Court of Appeal affirmed the holding in CREED, and held that a city properly used consistency with AB 32 goals as a threshold of significance for a retail store expansion. (See Friends of Oroville v. City of Oroville et al.

[2013] 219 Cal.App.4th 832.) In Friends of Oroville, the agency selected consistency with AB 32 as a significance threshold. The court expressly affirmed that the decision in CREED "exemplifies the model, showing us a proper way to apply the Assembly Bill 32 threshold-of-significance standard." (Id., slip op. at 8.) The Friends of Oroville court explained the methodology used in CREED, and explained how the EIR in that case applied a percentage below BAU approach to conclude that the project would achieve reductions of 29% below BAU. The court held that such a project would, therefore, be consistent with AB 32. (Id.; CREED, 197 Cal.App.4th at 336-337.)

This approach has also been used by all of the following jurisdictions: San Diego County, City of Los Angeles, Port of Los Angeles, Santa Cruz County, Fresno County, San Bernardino County, City of Shasta, Napa County, City of Carlsbad, City of Corona, Merced County, San Joaquin Valley Air Pollution Control District (SJVAPCD), Eastern Kern Air Pollution Control District, City of Temple City. As an example, the SJVAPCD program deems a project to be not significant for GHG emissions if it meets any of the following criteria:

- Complies with equipment-specific SJVAPCD GHG Best Performance Standards (BPS); or
- Projected project emissions would be 29% or more below the emissions expected under the BAU criteria; or
- The stationary source complies with any California AB 32 Scoping Plan control measure, including but not limited to compliance with the Cap and Trade Program.

The District Should Adopt the Hybrid Approach for Determining the Significance of GHG Emissions

Thus, we recommend the District adopt a hybrid CEQA GHG significance threshold wherein the District would set an initial screening level of 10,000 MT CO2e. Projects with emissions exceeding the threshold must show either: A) compliance with a program included in the Scoping Plan as updated, or (b) reductions consistent with the current reduction level required to meet statewide reduction requirements. If the project complies with a program or meets the reduction percentage, the project's GHG emissions would be less than significant. Projects that do not meet these requirements would be required to provide additional mitigation to be found to have a less than significant impact on global climate change. This hybrid significance standard would ensure projects contribute their fair share to the reducing GHG emissions and meet the constitutional requirements of rough proportionality of the mitigation to the impacts.

Thank you in advance for your consideration of our comments. Please feel free to contact me should you have any questions.

Sincerely,

Blair Knox
CIPA Director of Regional Affairs