August 17, 2026

To: California Energy Commission
715 P Street
Sacramento, California 95814
Email: docket@energy.ca.gov

From: California Building Properties Assn
American Hotel & Lodging Assn
Bay Area Council
BOMA International
BOMA California
California Apartment Assn
California Building Industry Assn
California Business Roundtable
California Hotel and Lodging Assn
California Farm Bureau
California Manufacturers and Technology Assn
California Retailers Assn
California Self Storage Assn
Commercial Real Estate Development Assn
CREDA California Council
ICSC
IREM California Council
Inland Empire Economic Partnership
NAREIT
Los Angeles Area Chamber of Commerce
San Diego Regional Chamber of Commerce
The Real Estate Roundtable

RE: ***Docket No. 24-BPS-01; CA Building Energy Performance Strategy Report***

Dear Commissioner McAllister:

The coalition cited above, representing a diverse group of real estate and business organizations, appreciates the CEC's work on the draft California Building Energy Performance Strategy Report required by SB 48 (Becker), which builds on California's AB 802 benchmarking framework. This letter has two parts: three alternative compliance pathways the CEC should include in any future statewide Building Performance Standard, and specific comments on the draft report.

THREE ALTERNATIVE COMPLIANCE PATHWAYS SHOULD BE ADOPTED

California's building stock varies widely by age, use, ownership, tenant mix, lease structure, utility capacity, capital planning cycle, and operational intensity. A workable Building Performance Strategy (BPS) must account for these variations. Alternative compliance pathways should be built into the program design from the start, not added later as a narrow hardship exception. At a minimum, the CEC should include the following three pathways.

Site Energy Use Intensity (EUI) Improvement Compliance Pathway

Much of California's existing building stock is low-performing or inefficient. Mandating immediate compliance with ASHRAE 100 or an IMT-style trajectory is unrealistic for many buildings and will be perceived as punitive rather than constructive. Meaningful improvements in high-consumption, inefficient buildings, particularly during peak load, will likely deliver greater energy and climate benefits than marginal gains from already-efficient buildings.

The CEC should adopt a pathway modeled after the U.S. Department of Energy's Better Buildings Challenge, allowing compliance through demonstrated reductions in Site Energy Use Intensity (EUI). This would require the responsible party to:

- Reduce Site EUI by at least 20 percent over 10 years.
- Benchmark and measure progress using ENERGY STAR Portfolio Manager.
- Publicly report and disclose Site EUI improvement results.
- Submit a transparent compliance plan that outlines how EUI reduction will be achieved through capital improvements, operational changes, efficiency measures, demand-side management, and other building-specific strategies.

This pathway rewards measurable improvement without requiring all buildings to reach the same endpoint on the same schedule.

Efficient High-Performance Compliance Pathway

Buildings already performing well need a streamlined process that avoids excessive paperwork, consultant reports, and certification costs. A building should qualify if it meets the following three criteria:

- **Superior Energy Performance:** Top quartile among like-kind assets, as demonstrated by ENERGY STAR certification or by an analogous standard using California benchmarking data, particularly where ENERGY STAR scores are unavailable for that asset type.
- **Direct Emissions Target:** Onsite direct emissions at or below a greenhouse gas (GHG) intensity target, normalized by asset type and climate.
- **Clean Energy Use: At least 30 percent of total energy consumed must come** from non-emission sources. If electricity accounts for less than 30% of the site's total energy consumption, then 100% of the electricity must be from non-emission sources.

This standardizes compliance and reduces the regulatory burden compared with IMT's Trajectory Approach or ASHRAE 100. It also provides owners of efficient buildings with a clear path forward, avoiding duplicative studies or certification.

The CEC doesn't need to start from scratch. The library of white papers, FAQs, and guidance developed for ENERGY STAR NextGen certification, with input from industry stakeholders and NGOs, provides a strong foundation for adapting to this pathway.

Housing Affordability Compliance Pathway

The CEC should provide exemptions, deadline extensions, or relaxed BPS requirements for affordable housing, including deed-restricted low-income housing and workforce housing that serves essential workers such as teachers, first responders, government staff, health care workers, and retail workers.

The CEC should adopt the Community Reinvestment Act income framework (12 CFR § 345.12), which defines middle-income households as those earning 80–120 percent of Area Median Income. The CRA's purpose of ensuring that banks serve the credit needs of entire communities, regardless of income, reflects the same principle: a BPS should not unintentionally increase costs for housing that serves these households.

For affordable and workforce housing below 120 percent of AMI, the CEC should offer extended deadlines, adjusted interim targets, modified performance requirements, expanded access to incentives and technical assistance, and alternative compliance plans aligned with capital needs, rehabilitation schedules, and preservation of affordability.

Closing Comments on the Three Alternative Compliance Pathways

These three pathways provide the CEC with a BPS framework that drives real improvement where it's needed, streamlines compliance for high performers, and safeguards housing affordability.
The remainder of this letter addresses specific comments on the draft report.

With those three pathways in mind, the Industry offers the following comments on specific sections of the draft report.

SPECIFIC COMMENTS ON THE DRAFT CA BPS REPORT

CEC Draft BPS Strategy Report Recommendations: Industry Comments

1. ***Apply to commercial and residential buildings greater than 50,000 square feet that are subject to California's existing Building Energy Benchmarking Program. Aligning a BPS with the benchmarking program makes engagement with building owners simpler and allows building owners to submit the necessary data to track compliance.***

COMMENTS

Support and Suggestion: Streamlining Compliance Documentation:

- *Industry strongly supports this recommendation for the reasons cited by CEC Staff.*
- *At several CEC meetings with the Industry, there was unanimous support for the CEC's desire to streamline compliance documentation. This is a valuable goal, and the Industry strongly supports*

efforts to achieve it. The Industry urges the CEC to use the proposed BPS Technical Advisory Committee to provide input on how best to simplify compliance reporting as the program evolves.

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2. ***Encourage, or authorize, local jurisdictions to implement their own BPS policies, if those programs apply to buildings not covered by the state program, but apply a single statewide standard to all large buildings.***

COMMENTS

Support: Prohibit Local Ordinances that Apply to Buildings Covered by CEC BPS

- *Industry strongly agrees with the CEC that local jurisdictions should not be permitted to adopt BPS ordinances that apply to buildings covered by the CEC's state BPS program.*
- *Regarding the need for the Legislature to authorize local jurisdictions to adopt a local BPS ordinance for buildings not covered by the CEC BPS program, that authority may already exist under Public Resources Code §25402.1(h)(2) and Health & Safety Code §§17958, 17958.5, and 18941.5.*

Concern: Strengthen Statewide Consistency and Avoid Patchwork of Differing Local Policies

- *Local adoption of BPS ordinances for buildings not covered by the CEC's state BPS program should complement, not conflict with, state requirements. To that end, local jurisdictions should be required to use program specifications, compliance verification, and other administrative elements that are the same as or very similar to those of the CEC's state BPS program. This helps provide the business sector with much-needed statewide consistency and "prevents the complexity of a patchwork of local policies" (pg. 98) that the CEC said it wants to avoid. In addition, it enables the collection of additional, compatible field data on buildings not covered by the CEC's BPS, which will be valuable to the CEC over the long term.*

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3. ***Consider cost-effectiveness during the development of a BPS, supported by a comprehensive analysis of the costs and benefits of compliance, to guide decisions on performance targets, implementation timelines, compliance pathways, and penalties for noncompliance.***

COMMENTS

Support: BPS Must be Cost-Effective and Supported by Field Data

- *Industry agrees that cost-effectiveness must be a critical consideration during the program's development and during subsequent upgrades.*
- *Gathering real-world cost-effectiveness data should be one of the BPS Technical Advisory Group's primary tasks, alongside recommendations on program flexibility (discussed later). To this end, the Advisory Group should consult financial industry experts on commercial building "hold" periods and loan maturity horizons, which indicate that CEC should evaluate the payback of BPS energy and emissions investments within 10 years or less.*
- *To build stakeholders' trust and understanding of any eventual BPS law, a key element of cost-effectiveness analyses should be to explain the immediate cost impacts on consumers and businesses.*

- *For example, a February memo from the New York State Energy Research and Development Authority (NYSERDA) concluded that fully implementing the state's clean energy and decarbonization law to meet 2020 targets would "yield high costs for New York households and businesses":*
    - *Increased gasoline prices by as much as $2.23 per gallon, on top of current levels.*
    - *Increases household utility bills by as much as $4,000 per year.*
- *The CEC should be just as plain and straightforward in its cost-effectiveness analysis of a statewide BPS in California. Families and businesses should understand what to expect in terms of any increases in energy expenses over the 10 years following enactment.*
- *CEC should not rely solely or primarily on abstract "social costs of carbon" metrics or on lifecycle cost analyses spanning decades, as these approaches understate the upfront cost impacts of decarbonization and the immediate effects that strain families' budgets and businesses' balance sheets.*
- *Link to 2/26/26 NYSERDA Memo:* Climate law mandates could cost New Yorkers $4,000 in higher energy bills, state analysis shows - City & State New York

Concern: The Need to Avoid Significant Cost Impact

- *In addition to cost-effectiveness, the Industry urges the CEC to consider the cost of compliance with the BPS and to take steps to ensure that significant cost impacts are avoided, consistent with the requirements the legislature has set for embodied carbon reduction standards for building materials [Health & Safety Code §38561.3(e)(1) & (2)].*

Concern: Consideration of Who Pays and Who Benefits

- One of the directives SB 48 issued to the CEC is to develop recommendations for a BPS program that, among other things, avoids actions that increase rents for tenants of apartments and small commercial buildings. At the same time, SB 48 urges the CEC to develop recommendations for a program that ensures compliance measures are cost-effective and avoid significant cost impacts on building owners. Not an easy task, as these directives can conflict with one another.
- In the absence of significant monetary incentives, building owners will most often be the source of funding for these capital improvements, while tenants will often be the recipients of the economic benefits from these improvements through reduced utility bills.
- Great consideration should be given to resolving the inherent conflict in which the CEC's BPS program avoids increasing tenant costs while providing building owners with a way to address the capital needed to fund these investments.

Concern: Rent Control Limits Apartment Owners' Ability to Recoup BPS Compliance Costs:

- *The 2019 legislation, AB 1482, created the California Tenant Protection Act, which caps rent increases at 5% (plus cost-of-living) or a maximum of 10% per year, whichever is lower. Some California cities impose even stricter rent controls. These restrictions directly limit rental income – and thus may significantly affect the timing, financing, and payment methods for the enhanced investments necessary for BPS compliance. At a minimum, longer compliance periods and reduced penalties should be available to multifamily owners who demonstrate that limited income streams due to rent controls that inhibit their ability to make the building investments mandated by BPS targets.*

Concern: Penalties Should Not be Part of the Initial BPS Program

- *Industry strongly suggests that the CEC consider delaying penalties during the program's initial rollout. Implementing a comprehensive, statewide BPS program is an enormous, technically complex undertaking. The CEC should acknowledge up front that there will be a significant "learning curve" during the program's initial rollout. To allow for this, the CEC should first focus on "carrots" rather than "sticks."*

Concern: California's Ever-Changing Rate Structure

- *One of the biggest hurdles to the long-term success of the BPS program is the ever-changing utility rate structure in the state. Specifically, the economic benefit (utility bill savings) provided to businesses and apartment buildings for installing on-site solar and/or energy storage should reflect actual time-of-use savings. The same applies to the benefits these buildings receive when they participate in financing community solar paired with energy storage. Pairing renewable energy with energy storage is an effective way to address grid management during peak loads, but it also requires substantial upfront financing. If the State expects the private sector to significantly increase the use of renewable energy paired with energy storage, the State must revisit its utility rate structure. At present, this is one of the biggest hurdles to implementing GHG policy in the existing building stock.*
- *Industry strongly suggests that the CEC urge the Legislature to require the PUC to establish a rate structure that ensures the cost-effective application of the BPS program by providing appropriate rate benefits for on-site energy storage and for on-site or community solar installations. At present, the PUC is doing the exact opposite.*

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4. ***Follow a trajectory policy structure that sets final performance targets for every building based on property type and interim performance targets based on the starting level of performance for the building, or baseline. A trajectory approach combines long- and short-term performance requirements, providing building owners with both regulatory certainty and maximum compliance flexibility.***

<u>COMMENTS</u>

Support: Maximum Compliance Flexibility is a Critical Component

- *The industry strongly agrees with CEC staff that building owners should be provided with a maximum level of compliance flexibility. These were significant issues we raised with CEC staff during our one-on-one sessions.*

Concern: The Need for Alternate Methods of Compliance

- *As noted in the first section of our submittal, we want to reemphasize the critical need to adopt alternative compliance methods.*
- *California's building stock varies widely in age, use, ownership, tenant mix, lease structure, utility capacity, capital planning cycle, and operational intensity. This variation clearly shows that one-size-fits-all does not work. A workable BPS must account for this variation. Alternative compliance pathways should be built into the program design from the start, not added later as a narrow hardship exception. At a minimum, the CEC should include the following three pathways.*
    - ***Site Energy Use Intensity Improvement Compliance Pathway***
    - ***Efficient High-Performance Compliance Pathway***

- ***Housing Affordability Compliance Pathway***

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5. ***Include mandatory compliance periods of five years and establish final performance targets in 2045 for each property type. All buildings subject to the BPS should have the same compliance deadlines, except for buildings with unique considerations that may be approved for alternate deadlines.***

<u>COMMENTS</u>

Support: Clearly Defined Goals and Objectives

- *We agree that establishing clearly defined goals, objectives, and milestones will be an important step in enabling the CEC to measure and evaluate BPS effectiveness.*

Concern: A Strict Compliance Period Should be Reconsidered for Some Cases

- *As the CEC correctly notes, more than 50,000 residential and commercial buildings in California are currently covered by the CEC's benchmarking program. A strict five-year compliance period directly conflicts with the CEC's recommendation to:*

  > *"Provide building owners with compliance pathways that allow flexibility to account for capital planning cycles, building life cycles, and leasing cycles, which will be different for each building. These pathways may include, but are not limited to, standard target adjustments, portfolio-level compliance, timeline adjustments, and baseline adjustments."*

- *Establishing strict compliance periods seems directly at odds with the CEC's priority goal of focusing on cost-effectiveness and, most importantly, limiting the negative economic impact on building tenants (including low-income renters).*
- *It implies that, at some point in the future (in 5 years), the CEC's BPS program will require retrofits regardless of whether equipment has reached its end of life.*

Concern: California Continues to Face an Enduring Supply Chain Issue

- *The CEC should also take into account the persistent supply chain issues facing the industry, which are further exacerbated by utility companies' inability to meet the capacity requirements for these building upgrades in a timely manner, if at all.*
- *For example, waiting for switchgear is a very real problem. In 2023 (before the tariffs), the wait time was 48-52 weeks. The local utility must approve the switchgear before ordering, so the entire process takes 15 months.*

Concern: The BPS Should Consider Physical Constraints

- *There are also serious physical constraints to consider. For example, many smaller buildings will require significant modifications to accommodate an upgrade to the existing switchgear, which is typically located on the first floor. The electrical rooms were designed to fit the existing switchgear, particularly in older buildings. Increasing the room size typically requires modifying corridors, which also serve as ADA paths of travel to restrooms and as the building's egress in a fire. It may also involve modifying an existing tenant footprint, and leases typically do not allow this, even if it is government-mandated.*

Concern: The BPS Should Consider Local Utility Capacity Issues

- *Making matters worse, local utility company rules make it very difficult to increase the electrical capacity needed by individual tenants or the building itself to accommodate the anticipated upgrades the BPS program will initially encourage and ultimately require. The Draft Report recognizes the "grid capacity" issue but does not seem to offer a plan to address it. The Industry suggests that the CEC provide a limited exception, exemption, and/or alternative compliance pathway for cases where the local utility lacks the capacity required for specific projects. For example, the Building Standards Commission (BSC) and the Department of Housing and Community Development (HCD) offer limited exceptions to the EV-Charging requirements contained in the California Green Building Standards for instances where the local utility has capacity issues and cannot adequately accommodate the specific project (CCR Title 24, Part 11, §4.106.4 and §5.106.5.3).*

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6. ***Include two primary building performance metrics: the energy used by the building and the greenhouse gas emissions emitted directly from the building.***

COMMENTS

Support: The Industry supports the proposed use of Site-EUI and Site-GHGi (with some exceptions) as metrics and the Use of Portfolio Manager as the BPS Data Reporting Tool

- *As stated in the Draft BPS Strategy Report (pg. 100);*
  "Given the existing use of Portfolio Manager for the statewide energy benchmarking program, the CEC recommends Portfolio Manager as the main data reporting tool for a BPS program."
- *The real estate industry's standard way to measure Site EUI and other building-related sustainability metrics is through Portfolio Manager, the U.S. EPA's free online software. "Nearly 25% of U.S. commercial building space" actively uses Portfolio Manager to gauge climate-related performance. Portfolio Manager is the platform for BPS compliance and uses widely accepted Site EUI target categories that correspond to different real estate asset classes.*

Suggestion: The CEC may consider using "Site EUI" efficiency targets that are normalized across a wide range of building types, operational characteristics, and weather conditions

- *Regulatory Site EUI targets must also account for methods to "normalize" a building's operations across key variables. Normalization is important because it enables "apples-to-apples" comparisons of similar building types. A major factor to consider is the building's location within the state. Our state energy-efficiency building standards vary in stringency to account for the differing heating and cooling loads associated with each of California's sixteen climate zones. Additionally, the number of workers, operating hours, and building plug loads can all increase a building's energy consumption, so normalizing for these variables is essential to put buildings on a level playing field when establishing Site EUI levels.*
  https://www.energystar.gov/sites/default/files/tools/BPS-Metrics_Recommendations_v7.pdf

Suggestion: The BPS Program Metrics or Scoping Provisions Should Reflect Building-Specific Realities.

- *The Industry supports the CEC's use of these basic metrics; however, we need a more detailed understanding of how they will be measured and calculated, and to what extent, if any, the metrics or program application rules will consider building-specific criteria.*

- *Energy use and direct emissions vary widely across California's building stock, depending on age, construction type, tenant mix, and physical constraints. Any metric or application rule that fails to account for this variation will produce inequitable and unworkable results.*
- *CEC staff note in the report that a one-size-fits-all approach will not adequately address California's incredibly diverse building stock. This leads us to believe that the significant variations (mentioned above) will most likely be addressed during the regulatory development of the program application rules, rather than in the metrics. It would be helpful for the Staff to provide more detail on this issue.*

Concern: A Direct GHG Emissions Metric Could Penalize Buildings That Cannot Electrify Feasibly

- *As mentioned in our "supporting comment above, there will need to be exceptions allowed when the use of the GHGi metric is not feasible. A "direct GHG emissions from the building" metric effectively promotes fuel switching because the most direct way to reduce on-site combustion emissions is to electrify space and water heating. For many buildings, this is not simply a cost question but also a feasibility one:*
  - *Historic and character-defining buildings, discussed elsewhere in this letter, often cannot accommodate the mechanical, electrical, and envelope changes required for full electrification without violating the Secretary of the Interior's Standards for Rehabilitation or local historic preservation ordinances.*
  - *Buildings facing utility capacity constraints, as discussed in our comments on Recommendation 5, may be unable to secure the electrical service upgrades required to fully electrify on-site systems, regardless of the owner's willingness to invest. The Industry is already experiencing this issue during the installation of EV-charging facilities in or adjacent to existing commercial and multifamily residential buildings.*
  - *In multi-tenant buildings where tenants directly control and pay for their own gas equipment, the building owner may lack legal authority to compel a tenant to replace combustion equipment, especially during the lease term.*
- *A direct emissions target or program application rules that do not adequately account for these structural barriers could penalize owners for circumstances entirely outside their control and — particularly for historic buildings — could render continued operation of the asset economically unviable, thereby accelerating the very loss of building stock that the CEC's broader decarbonization goals are meant to prevent.*

Concern: A Direct GHGi Emissions Metric Will Require Extensive Discussion and Public Comments on Agreed-Upon Emissions "Factors."

- A GHGi metric introduces additional complications for both regulators and the regulated community regarding the need to identify accepted and agreed-upon "emissions factors" for a variety of fuel sources.
- "Emissions factors" are coefficient multipliers that "attempt to relate the quantity of a pollutant to the atmosphere with an activity associated with the release of that pollutant." US-EPA, ***Basic Information of Air Emissions Factors and Quantifications.*** Because different fuel sources have different levels of GHG impacts, any potential GHGi metrics for a BPS would depend on agreed-upon, standardized emissions factors. E.g., ***US-EPA, Emissions Factors Hub***.
- Establishing standard emissions factors for electricity will be especially challenging for a statewide BPS in California. The GHG intensity of California's grid varies because the fuel mix for the state's electricity supply varies. Using an emissions metric for BPS purposes will require published lists of "location-based" emissions factors that must be frequently updated, because the emissions impacts

from a building in one corner of the state will differ from those of a like-kind building in another corner of the state.

- Moreover, buildings that are subject to contractual power purchase agreements ("PPAs") reflect arrangements to purchase electricity from specific sources. "Market-based" electricity emissions factors are typically associated with these types of procurements – and should be permissible if CEC eventually develops a BPS with an emissions metric.

Suggestion: Provide BPS Program "Offramps" When Compliance Is Not Feasible

- *The Industry strongly encourages the CEC to consider BPS Program "scoping provisions" that allow project exemptions and/or limited exceptions from GHG reduction goals (and possibly other program requirements) for buildings where compliance is not feasible due to documented issues, including, but not limited to, historic preservation conflicts, utility capacity constraints, or tenant-controlled equipment. For example, as noted in our comments under Recommendation #5, both HCD and the BSC provide exemptions from the EV-Charging requirements in the California Green Building Standards when the local utility lacks the capacity to adequately accommodate a specific project's electrical demands (CCR Title 24, Part 11, §4.106.4 and §5.106.5.3).*
- *Another possibility, though more involved, is for the CEC to either (1) normalize the direct emissions metric by property type and documented feasibility constraints (as recommended earlier in this letter for the Efficient High-Performance Compliance Pathway) or (2) treat direct emissions as a longer-term trajectory target, with the Site EUI Improvement Pathway serving as the primary near-term compliance metric for buildings where electrification is not yet feasible.*

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7. ***Explore, through the regulatory process, demand management metrics, such as coincident peak demand, which signal to building owners when they should reduce electric demand to reduce strain on the electric grid.***

<u>COMMENTS</u>

Support & Suggestions: Demand-Side Management Efforts

- *The CEC, through its Building Energy Efficiency Standards (Title 24, Parts 1 and 6), and the CPUC, through its rate structure authority, can each play important roles in advancing this goal.*
- *For buildings undergoing additions, alterations, and retrofits, the CEC can adopt provisions in the energy efficiency standards that provide significant compliance benefits to existing building owners for incorporating demand-side measures, on-site storage, on-site solar, and community solar coupled with storage.*
- *To incentivize the installation of measures that reduce electric demand and ease the strain on the grid, the CPUC should be required to revisit the recently adopted rate structure's "benefits" for on-site solar and energy storage, which have (curiously) slashed the economic value of these critically needed measures. For example, the CPUC recently implemented a rate structure that eliminated all economic benefits of on-site solar in multi-tenant commercial buildings.*
- *To be blunt, certain components of the CPUC's recently adopted rate structures directly conflict with California's greenhouse gas emissions-reduction policies. We understand that the CEC has limited ability to address this issue, but these counterproductive CPUC actions must be changed for a CEC BPS program to succeed.*

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8. ***Include performance baselines for each building based on several years of benchmarking data. Availability of benchmarking data can inform how baseline years are set for buildings subject to the BPS.***

<u>COMMENTS</u>

Concern: Industrial Buildings and Goods Movement

- *AB 802 exempts certain manufacturing, industrial, and controlled-environment uses, yet the report identifies industrial buildings as a major covered property type. The approach to warehouses, logistics, cold storage, light industrial, and mixed industrial uses warrants careful review.*
- *These buildings are not typical commercial properties. They are large, operationally complex facilities that support the movement of food, medicine, consumer goods, building materials, and other essential products throughout California. They also feature tenant-controlled energy use, specialized equipment, refrigeration, automation systems, extended operating hours, truck activity, and growing EV charging demand.*
- *The state must consider the link between goods movement and housing supply. Materials needed to meet California's housing goals pass through these facilities. If BPS requirements increase costs, delay operations, or create conflicting local requirements for logistics and warehouse facilities, these impacts could raise construction costs and complicate housing production.*
- *A future BPS should include clear definitions, realistic metrics, and practical compliance pathways for goods-movement facilities. Owners should not be penalized for factors beyond their control, such as tenant operations, utility capacity limits, equipment availability, fleet electrification mandates, refrigeration and cold-chain requirements, and other essential operational needs.*

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9. ***Require new energy benchmarking data verification to support fair implementation of a statewide BPS. Data verification could be performed by a licensed professional at a cadence that aligns with key BPS evaluation years, such as the interim and final performance years.***

<u>COMMENTS</u>

Concerns and Suggestions: Verification Workforce Demand and Qualifications:

- *In the initial years of program rollout, there will be significant workforce demand to handle the expanded verification requirements that a BPS program will require, and all of this will be performed in the existing building stock. The Industry urges the CEC to consider some level of self-verifying with minimal or no requirement for compliance certification during the early years of the program. As an adequate number of qualified certified individuals becomes available statewide, the CEC and its BPS Advisory Group could revisit the mandatory inspection requirements and adjust them accordingly.*
- *There is clear potential to use existing entities in the state to perform BPS program compliance, such as the Home Energy Raters (HERs), who document compliance with the CEC's building energy efficiency requirements. The Industry would also urge the CEC to strongly consider allowing local*

building department personnel or entities with which the local jurisdiction may contract to conduct building inspections. There is also precedent for using a company's in-house staff who meet the CEC's data verification qualifications. For example, in Montgomery County, MD:

> *"Building owners can use any in-house or third-party professional who holds an active credential listed on the Acceptable Verification Credentials list. Montgomery County has no requirement that the verifier must be a third-party. "*
> https://www.montgomerycountymd.gov/department-environmental-protection/energy/energy-commercial-multifamily/data-verification

- *Lastly, a professional license, by itself, does not necessarily ensure that someone is qualified to conduct inspections to comply with the energy efficiency standards or the forthcoming BPS program. As with HERs Raters, the CEC may want to implement a similar administrative requirement to certify BPS "raters"' competency.*
- *Consistent with our comments on Recommendations #5 and #6, the CEC needs to ensure that the program's Data Verification rules appropriately account for special cases in which a building qualifies for an exemption or a limited exception because full or partial compliance with program rules is infeasible.*

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10. Potentially include penalties for non-compliance.

- ***Penalties collected should be reinvested to improve building performance, focusing on low-income and inefficient buildings.***
- ***The owners of regulated buildings should be prohibited from passing penalties on to residential and small commercial tenants.***

COMMENTS

Concern: Penalties Should Not be Part of the Initial Rollout of the BPS

- *Any penalty provisions of the CEC's BPS program should be applied only after program participants have had a reasonable period to fully understand and effectively implement the program's components.*
- *As mentioned earlier, the industry strongly recommends that the CEC delay any penalty provisions during the program's initial rollout. Implementing a comprehensive, statewide BPS program is an enormous, technically complex undertaking. The CEC should acknowledge up front that there will be a significant "learning curve" during the program's initial rollout. To allow for this, the CEC should first focus on "carrots" rather than "sticks."*

Concern: The Building Owner/Manager May Not Have Control Over Tenant Energy Consumption

- *During the July 29, 2026, CEC Workshop on the Draft BPS Strategy Report, Staff repeatedly emphasized that compliance metrics should be based on factors within an owner's control. We agree. However, there will be numerous instances in which the building owner is not in control of one or more of these factors, and the BPS regulations will need to address this issue.*
- *Tenant-controlled energy use, particularly in retail, warehouse, and distribution facilities, is largely outside the owner's control and should be addressed through alternative compliance pathways or other appropriate mechanisms. These occupancies pose unique challenges because energy use is often driven by individual tenant operations rather than by building systems under the owner's control.*

- *When considering BPS compliance verification, and especially any penalties for non-compliance, penalizing the building owner while exempting the small tenant is unreasonable and unfair when electricity consumption is controlled solely by the tenant (as in the examples just cited).*

Concern: The Funding Source of Penalty Payments Should be Reconsidered

- *Just as with the costs associated with the building upgrades, the penalties imposed by the CEC are expenses for which the building owner is obligated to pay. In many cases, the regulated building's operating revenue comes directly from the tenants. If building owners are prohibited from passing the cost of any penalties on to tenants, this will create economic hardship for the building owner, leading to potential default on financial obligations or to exiting the market to meet fiduciary responsibilities.*
- *BPS policymakers must assess whether their regulations raise compliance costs, which may push buildings over the brink of unprofitability – with cascading effects that leave assets "underwater" and banks holding loans that exceed the underlying property values.*
- *Jurisdictions should conduct a thoughtful, balanced economic analysis of their BPS laws that considers whether complex performance mandates have the unintended consequence of compelling investment to other cities with less costly regulations. Real estate companies might relocate their operations, along with retailers, property tax payments, and jobs, to markets where they can more efficiently realize returns on capital expenditures while lowering emissions and energy use in their buildings.*
- *The Washington, D.C., Department of Energy and Environment (DOEE) officially amended its BPS law to change the term "alternative compliance penalties" to "alternative compliance payments" and to grant DOEE rulemaking authority to govern the pass-through of these payments from non-residential tenants, addressing concerns about the ability to pass through penalties associated with BPS compliance.*
- *Commercial building owners have contractual relationships with tenants, and the lease determines responsibility for building expenses. Performance-based leases promoted by IMT and the DOE Green Lease Leaders program help owners meet building performance standards by including provisions that:*
    - *Set building performance standards to meet carbon-reduction goals;*
    - *Equitably allocate landlord and tenant responsibilities to meet building performance standards.*
    - *Ensure landlord-tenant transparency and accountability by tracking energy use and implementing building performance goals.*
    - *Offer continuous monitoring through periodic recommissioning studies and mitigation plans where necessary; and*
    - *Provide remedies if either party fails to meet building performance goals.*

Concern: Rent Control Directly Limits Apartment Owners' Ability to Recoup Costs of BPS Compliance Penalties:

- *See the comment on Recommendation #3 regarding the impact of AB 1842, the 2019 legislation that created the California Tenant Protection Act, and of existing, more stringent rent control laws, which will significantly hinder apartment building owners' ability to recoup BPS compliance costs.*

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11. Provide building owners with compliance pathways that allow flexibility to account for capital planning cycles, building life cycles, and leasing cycles, which will be different for each building. These pathways may include, but are not limited to, standard target adjustments, portfolio-level compliance, timeline adjustments, and baseline adjustments.

COMMENTS

Support and Suggestion: Compliance Flexibility is a Critical BPS Feature

- *Industry strongly supports this recommendation and urges the CEC to make it a priority during the development and initial rollout of the state BPS program. To support this effort, Industry commits to working with CEC staff to provide the necessary information and field examples to implement this critical component of the CEC's BPS program.*
- *As highlighted in several of our meetings with staff, there is already an excellent publication we believe the CEC should use to inform its regulatory development process: "Lessons Learned to Shape Fair and Reasonable Building Performance Standards (BPS) – A 20-Point Policy Guide" by The Real Estate Roundtable, October 2024. This 45-page document offers a well-reasoned, balanced list of issues that should be addressed before implementing a building performance standard, including energy efficiency, emissions deadlines, targets, metrics, enforcement, and the need for realistic incentives and compliance options.*

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12. Complement and align with incentive programs to support necessary energy upgrades to reduce the costs for building owners and improve energy affordability.

COMMENTS

Support and Suggestion: Monetary Incentives

- *The industry strongly agrees with this recommendation and its intended purpose.*
- *The CEC's highly successful New Solar Home Partnership (NSHP) program was perhaps the single most important factor in transitioning California's new residential construction to incorporate a renewable energy component across all new housing. The same approach should be used during the initial 5-10 years of the CEC's BPS program. NOTE: The NSHP program provided the residential industry with a reasonable 10+ year ramp-up period between the incentive program's launch and the solar mandate's effective date in 2020.*
- *Regarding incentive program funding, the State Legislature and the Administration must recognize that finally focusing on the enormous GHG emissions from the existing building stock is essential to meeting their GHG reduction goals. Put bluntly, we can't get there from here if the existing building stock isn't addressed with the same thoughtfulness as residential solar. To that end, a robust incentive program in the early years of implementation will yield substantial environmental benefits for the state while minimizing the economic impact on businesses, apartment owners, and tenants.*
- *The Industry would welcome the opportunity to work with the CEC to form a broad coalition (private-sector companies, environmental organizations, etc.) to provide legislative support for the much-needed funding of the BPS incentives.*

Support and Suggestion: Non-Monetary Incentives

- *For buildings undergoing additions, alterations, and retrofits, the CEC should consider adopting provisions in the energy efficiency standards that offer significant compliance benefits for existing building owners by incorporating demand-side measures, on-site storage, on-site solar, and community solar paired with storage. These measures promote GHG reductions and provide much-needed grid management during peak load periods.*

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13. ***Include a resource hub that serves as a centralized location where all stakeholders can access BPS information, guidance, technical assistance, and available incentives.***

COMMENTS

Support: Creation of an Advisory Body

- *The Industry strongly supports the CEC's recommendation to establish a BPS Advisory Group to advise the commission on the development and updating of the regulations, as well as on ongoing implementation issues, including compliance documentation, education, resource needs, and incentive funding, as they arise.*
- *Consistent with the direction in SB 48, the group should be carefully balanced to represent diverse building stakeholders and energy-efficiency experts. See the DC BPS Task Force Requirements for including owners of market-rate residential and commercial buildings: https://code.dccouncil.gov/us/dc/council/code/sections/6-1451.09*

Support and Suggestion: BPS Resource Hub

- *Industry strongly supports this recommendation, and, as CEC Staff noted, it will be a critical component of a successful rollout of the state BPS program, especially in the first 5-6 years of implementation.*

END OF COMMENTS###