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IMT comment on Building Energy Performance Strategy Report

Additional submitted attachment is included below.

Institute for Market Transformation
Cliff Majersik
Comments on the Draft California Building Energy Performance Strategy Report
Docket No. 24-BPS-01
August 21, 2026

The Institute for Market Transformation (IMT) appreciates the opportunity to comment on the California Energy Commission's Draft California Building Energy Performance Strategy Report.

IMT commends CEC and its staff for an excellent draft report!

The draft incorporates several recommendations from IMT's May 21, 2026 technical comments, including a trajectory-based policy structure, five-year compliance cycles, complementary site energy use intensity and site greenhouse gas emissions intensity metrics, and flexibility mechanisms for buildings facing barriers to standard compliance.

IMT incorporates by reference the May 21 comments from a coalition which included IMT. These supplemental comments focus on areas where the recommendations in Chapter 5 do not fully reflect the report's analysis or where additional specificity would strengthen the proposed statewide building performance standards framework.

Equity and Protecting Tenants

IMT salutes Sen. Becker and the legislature for centering equity and tenant protection in Senate Bill 48 and CEC for thoughtfully centering equity and tenants in the draft report. Most importantly, IMT credits community-based organizations (CBOs), tenant advocates, and other equity advocates for movement building and lifting up the need for a just transition. IMT agrees with these advocates that the report should go farther in calling for California law to be strengthened to provide robust tenant protections, agencies to be adequately resourced to implement tenant protections, and the legislature to hold agencies accountable for implementing laws to protect tenants. See Tenants at the Center.[1]

The report should call for a whole-of-government approach to addressing the overlapping housing affordability and climate crises by investing in equitable efficient decarbonization of affordable housing, enabling affordable housing to comply with a BPS, and assuring that low-income tenants are not left behind as California's building stock is as decarbonized and modernized.

IMT agrees with the Renoviction Coalition that at a minimum, the final report should state that:

[1] Tenants at the Center: https://www.saje.net/wp-content/uploads/2025/03/Tenants-at-the-Center-Equitable-Decarbonization-Report-2025.pdf

- Existing state law governing substantial remodels presents a significant risk of displacement in the context of building performance standards.
- An explicit recommendation to the Legislature to prevent renovictions by removing "substantial remodel" as a basis for eviction in the Tenant Protection Act.

IMT agrees with SAJE[2] that the state should contract with community-based organizations (CBOs) to lead outreach and education around BPS and related tenant rights. CBOs are better positioned to conduct in-person engagement, provide information in multiple languages, and build trust, especially with small commercial tenants. They can also create space for tenants to share their needs and concerns throughout the process.

Private-market "affordable" housing is not equivalent to deed-restricted affordable housing. The two have different ownership, missions, priorities, and challenges. CEC should work with community-based organizations, affordable housing operators, tenant advocates, and other equity advocates to define both types of affordable housing and develop programs, investments, policies, rules, and protections appropriate to their different circumstances.

The final report should also recommend a whole-of-government implementation approach involving CEC, the California Department of Housing and Community Development, the California Public Utilities Commission (CPUC), California Utilities, the California Independent System Operator, the California Air Resources Board, and other relevant agencies. This coordination will be necessary to align tenant protections, affordable housing programs, utility incentives, building performance requirements, and enforcement. The state should invest in improving the performance of affordable housing, ensure that affordable housing can comply with a BPS, and prevent low-income tenants from being left behind.

Using BPS to improve indoor environmental quality

IMT agrees with SAJE:

> The report deserves credit for recognizing "building occupant impacts" as one of the three categories of metrics that could inform a Building Performance Standard. This represents an important conceptual advancement because building performance policies have historically focused almost exclusively on owners and building systems rather than the people who live in these buildings.
>
> However, despite acknowledging that energy and environmental metrics can produce unintended consequences for occupants–including higher housing costs and displacement–the report ultimately declines to include occupant impacts as part of the recommended BPS framework. This is a missed opportunity. If occupant impacts are important enough to evaluate, they should also inform the design of the standard itself. A statewide BPS should measure

[2] https://www.saje.net/

success not only by emissions reductions and energy performance, but also by whether the standard is making homes more comfortable, affordable, and climate-resilient for the people who live in them.

A statewide BPS should measure success not only through energy and emissions outcomes, but also through whether buildings provide healthy, safe, and comfortable conditions for their occupants. IMT recommends that the report call for a ventilation BPS metric[3] as included in the IMT Model BPS[4] as well as active cooling protections for certain tenants and for further study on including other indoor environmental quality protections for occupants. See the May 2026 comments from the coalition which included IMT.

Add BPS Performance Metrics for Water and Coincident Peak Demand

IMT recommends that the report call for a water efficiency BPS performance metric and a coincident peak demand BPS performance metric as included in the IMT Model BPS. See the May 2026 comments from the coalition which included IMT.

In order to lay the groundwork for a implementation of a coincident peak demand metric, the final report should call for CEC, California Independent System Operator, and CPUC to work together to require and guide California utilities in providing the infrastructure to support such implementation. Examples of needed infrastructure include:

- Smart meter deployment with enabled capabilities for account holders to receive data directly from the meters that serve them and for account holders to easily, automatically, and electronically share that data with third parties of their choice
- week-ahead, day-ahead, hour-ahead, and real-time peak-demand alerts to electricity users
- Grid-side communication infrastructure to enable owners to set their building management systems to receive price and peak-demand signals and automatically shift building electricity usage to reduce coincident peak demand
- Utilities should improve the accuracy and user friendliness of their provision of aggregated utility data (including utility data) provided pursuant to AB802 and add aggregated cost, peak and coincident peak demand so as to enable owners to track the impact of their actions, more easily coordinate with tenants, and comply with BPS.

The final report should recommend that the same law that authorizes CEC to create a BEPS also build on AB 802 by adapting the IMT-RAP Model Utility Data Access Law[5] to California's unique needs. Illinois recently enacted a law based on this model.

[3] https://imt.org/resources/building-performance-standard-module-ventilation-and-indoor-air-quality
[4] https://imt.org/resources/short-building-performance-standard-model-law
[5] https://imt.org/resources/model-utility-data-access-law/

Preserve a Pathway for Equivalent or Stronger Local Programs with State Guardrails to Assure Harmonization Across BPS

While IMT appreciates the considerable standardization benefits of a single statewide BPS for all large buildings and the fact that CEC's implementation resources dwarf the resources of each locality, IMT recommends revising Chapter 5's statement that local BPS policies should apply only to buildings not covered by the state program. Consistent with Public Resources Code Section 25402.16(c)(8), the state should establish a process for certifying local BPS that achieve substantially equivalent or better energy-efficiency and greenhouse-gas outcomes and substantially equivalent or stronger tenant protections and that meet harmonization requirements. A statewide BPS should establish a strong floor while preserving local governments' ability to pursue more ambitious or locally-tailored approaches. CEC should establish guardrails to require harmonization among state and local BPS in order to minimize duplicative requirements and to reduce the workload for owners of buildings subject to BPS in multiple localities and the workload for agencies administering BPS. CEC should establish common data standards, reporting and compliance platforms, coordinated reporting, a clear equivalency process, and require that local BPS use a common set of terminology and procedures. CEC should specify several potential BPS performance metrics without specifying the values for those metrics. Localities should be preempted from enforcing BPS outside of CEC guardrails. Building owners complying with local BPS certified by CEC should be automatically deemed compliant with the statewide BPS.

Alternative Compliance Pathways

We support CEC's recommendations that a BPS include alternative compliance pathways to ensure building owners have flexibility when facing circumstances that prevent them from meeting standard BPS targets. This is especially important to allow buildings to align needed upgrades with existing capital improvement schedules and provide additional time for capital- or capacity-constrained buildings.

However, we do recommend a different set of alternative compliance pathways compared to what is recommended in the CEC report. These recommendations build on lessons learned from other jurisdictions and discussion over several months with a working group of experts and seven jurisdictions currently implementing BPS.

IMT recommends that a statewide BPS includes the following alternative compliance pathways or flexibility measures:

1. **Short-term timeline extensions**: The CEC report recommends inclusion of timeline extensions but does not specifically discuss duration of the extensions. IMT recommends a simplified pathway for short-term extensions (3 years or less) that just require documentation of an eligibility criteria for approval. This streamlined extension offers an opportunity without significant administrative burden for building owners under financial distress, majority vacancy,

ongoing renovations, change in ownership or property type, construction delays outside the owner's control, historical building status, or affordable housing financing schedules.

2. **Percent reduction pathway: T**he CEC report does not include reference to this pathway – but it provides an option for owners to reduce energy use intensity by a certain percentage compared to a building's baseline energy performance. This pathway offers a solution for buildings that can reduce energy use but face constraints in reducing it enough to meet the standard target, such as buildings with high energy use intensity or high process loads. IMT recommends the use of a 20% reduction over a five-year compliance cycle and limiting use of the pathway to one or two compliance cycles for each building. This 20% aligns with some existing BPS policies, as well as with the vision for the proposed EPA certification, "Rising Star" that was well received by market and government stakeholders in 2023-2025, but was not released. The application process should be as simple as a building owner selecting this option for a five-year compliance cycle and demonstrating compliance during the regular reporting period with the applicable percent reduction. This is of particular benefit for a statewide BPS as it offers property owners with multiple buildings a uniform approach to alternative compliance across their portfolio.
3. **Building Performance Action Plan (BPAP):** We recognize that significant staff resources are required to administer a BPAP compliance path. Nevertheless, we recommend inclusion to provide maximum flexibility to building owners with exceptional circumstances, such as extreme financial hardship, technical infeasibility, or long-term lease restrictions. Provision of the above short-term extensions and percent reduction pathway should lower the number of buildings needing a BPAP. CEC should charge a submission fee for BPAP applications priced to fully cover CEC's projected costs of implementing the BPAP compliance pathway; this submission fee will have the side benefit of deterring unneeded BPAP applications. CEC should waive the submission fee for certain buildings including affordable housing and buildings owned by nonprofits with limited resources.

   As CEC is already recommending inclusion of timeline extensions and different baseline or target adjustments, offering a BPAP instead may actually streamline the process. The benefits are:

   - One-time application rather than needing to reapply for an extension or different ACP each year or compliance cycle
   - Long-term certainty to share with lenders, investors, and financial institutions showing that the building has a long-term path that will avoid any penalties
     - When underwriting loans, lenders often assume the worst-case scenario from the borrower's perspective; so, lenders assume that a building owner with a one compliance adjustment will be liable for penalties at the conclusion of the extension
   - In the process of developing a plan, building owners and their consultants usually explore multiple strategies to reduce energy use and emissions, some of which were not initially apparent. The flexibility desired at the start of the planning process may not end up being the most appropriate or cost-effective. A planning-based ACP with options for target or timeline adjustments avoids the risk that an owner gets stuck in one ACP after planning reveals a better option.

- The process for a BPAP is aligned with industry movement by USGBC[6], ASHRAE[7], and others; consultants are broadly moving towards developing long-term strategic plans that align closely with BPAP process
    - Tools like Audit Template (DOE)[8] or the Strategic Decarbonization Workbook (USGBC)[9] can be used as the standard format for BPAP submission - making it easier for both owners and the state implementer

4. Payment in lieu of performance (PLP): IMT recommends the use of a payment in lieu of performance (previously referred to as an alternative compliance payment) as an alternative compliance pathway. We recognize that CEC recommended just use of penalties. However, the PLP option can exist in addition to the penalty structure already proposed in the draft report. In many cases, commercial tenants drive a majority of energy use in a building and it is critical that commercial tenants cooperate with the landlord to improve building performance. Employing a PLP path can better align landlord and commercial tenant incentives and better incent commercial tenants to engage in such cooperation. This is because under many existing commercial leases, a landlord can pass through an appropriate portion of government-mandated "payments" to commercial tenants, but may not do so for "penalties".[10] Agencies often have more flexibility in how they can use the funds from payments as compared to funds from penalties or fines. So, using the term "payment" may assist the state as it seeks to reinvest funds in upgrades for affordable housing or other community-serving buildings. We recommend that the PLP and certain penalties be based on the magnitude of non-compliance to incent owners to make energy reductions even if they cannot fully meet the target.

Affordable Housing and Other Equity-Priority Buildings

It's important to consider affordable housing and other community priority buildings explicitly when designing these pathways. Depending on BPS design, these pathways may adequately address these priorities; in other cases, a specialized alternative compliance pathway for this sector may also be warranted. In particular, such a pathway may include a long-term extension to align with refinancing cycles for subsidized housing in particular. Such a pathway should require a lighter touch or more streamlined BPAP process. Affordable housing should be the state's top priority for receiving assistance with preparing and submitting any ACP applications (and for assistance more broadly).

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[6] https://www.usgbc.org/resources/usgbc-strategic-decarbonization-workbook
[7] https://forms.ashrae.org/Forms/PDFdownload_GuideToStrategicDecarbonizationPlanning
[8] https://help.buildingenergyscore.com/support/solutions/articles/8000053354-overview
[9] https://www.usgbc.org/resources/usgbc-strategic-decarbonization-workbook
[10] Separate assistance and protections should be packaged to protect small under-resourced commercial tenants that serve frontline communities. Neither "penalties" nor "payments" can be "passed through" to residential tenants. So, the choice of term does not impact residential tenants. In some situations, landlords currently face few impediments to dramatically raising residential rents without explanation or justification and with devastating impacts on tenants. We salute and emphasize the draft's call for new residential tenant protections and would like to see California go much farther. See Tenants at the Center.

Recommend against permitting portfolio-level BPS compliance

Separate from its position on portfolios, IMT supports campus-level BPS compliance, which is a best practice across many BPS.

While IMT appreciates the appeal of portfolio-level BPS compliance for portfolio owners, IMT does not recommend it for California. The first issue is defining ownership. The portfolio must create a legally coherent group of buildings that are durably linked through ownership, physical connection, or both. While this may seem straightforward, defining commercial and institutional building ownership is a difficult task. The cleanest approach is simply not to permit non-campus portfolio-level BPS compliance. Failing that, the best alternative is requiring that all buildings in the portfolio to have exactly the same common owner listed on the tax record.

In corporate real estate, many office, retail, and market-rate multifamily buildings are owned by a limited liability corporation (LLC) whose only asset is that building. Sometimes multiple entities may own portions of a single LLC, meaning there is no true single owner or decision-maker. This complex ownership also applies to Low Income Housing Tax Credit (LIHTC) properties, which are usually listed under an LLC in the tax records; the LLC consists of the limited liability partners (the investors) and the general partner (the nonprofit or developer) that manages the property. There can be multiple LIHTC properties managed by the same general partner but with different limited partners. A general partner that manages multiple LIHTC properties may want to qualify for a portfolio approach despite the fact that there are different investors in each property since the general partner is responsible for ensuring that the properties comply with state and local laws, despite not being listed in the tax records. Additionally, portfolio-level BPS compliance can create distribution and equity risks, as it may also allow owners to continue to invest heavily in commercial centers and wealthy neighborhoods while neglecting buildings in other parts of the city. This risk can be mitigated by requiring that approval of portfolios be contingent on review by a community board and submission of a plan to address equity impacts, as is required in Boston. Adding and removing buildings from a portfolio would be a continuing source of loopholes, confusion, and administrative burden over the long timeline of California's BPS.

Aligned Leasing

Finally, CEC should carry Chapter 4's discussion of green and performance-based leases into Chapter 5. When paired with appropriate tenant protections and technical assistance, these leases can clarify data-sharing, investment, cost-recovery, and benefit-sharing responsibilities between owners and commercial tenants. They should be presented as complementary implementation tools, not substitutes for mandatory tenant protections. Win-win green[11] and performance-based leases[12] aid landlords and

[11] https://greenleaseleaders.com
[12] https://imt.org/performance-based-leasing

tenants in working together to improve building performance and equitably sharing in the benefits. CEC should more broadly highlight such leases in its policy recommendations.