Via Online Submission and Regular U.S. Mail

July 29, 2008

Mary Nichols, Chair

California Air Resources Board

1001 I Street

P.O. Box 2815

Sacramento, CA 95812

RE: Comments on the ARB Draft Scoping Plan for AB 32 Implementation

Dear Chair Nichols:

California Business Properties Association (“CBPA”) is pleased to have this opportunity to comment on the California Air Resources Board’s (“ARB”) Draft Scoping Plan (the “Plan”). CBPA serves as the legislative and regulatory advocate for individual companies, as well as the International Council of Shopping Centers (ICSC), the National Association of Industrial and Office Properties (NAIOP) California chapters, Building Owners and Managers Association of California (BOMA California), Institute of Real Estate Managers (IREM), California Downtown Association (CDA), Retail Industry Leaders Association (RILA), and CCIM of Northern California, making CBPA the recognized voice of the commercial, industrial, and retail real estate industry in California representing over 12,000 companies.

We first would like to commend ARB staff for this unprecedented regulatory effort. We recognize the long hours staff have contributed to this Herculean task, and we are generally pleased with the strategies proposed. We look forward to working with ARB staff to provide ideas on how the commercial real estate industry can contribute to achieving AB 32’s goals, as well as our insights into how proposed strategies might actually work in the marketplace.

**Promoting Greater Energy Efficiency in Buildings**

Californians consume a substantial part of their electricity through the buildings where they live, work and play. Those buildings have become increasingly energy efficient over the years and enabled California’s per capita energy consumption to remain flat, while the rest of the nation has increased 80%. The Plan rightfully emphasis the goal of improving the efficiency of California’s built environment and proposes ambitious targets for further demand reductions. However, the Plan suggests no additional strategies beyond the State’s long-standing delegation of such responsibilities to California utilities. CBPA questions whether any single entity, tasked with monopolistic responsibility for delivering such critical and challenging results as energy efficiency, can meet these ambitious targets. We encourage the ARB to consider more innovative strategies that enable building owners to monetize energy efficiency improvements directly.

Comments on the ARB Draft Scoping Plan

Page Two

Alternative Strategies. One such strategy involves creating a green building carbon credit and associated protocol, whereby building owners are paid for verified GHG reductions resulting from improvements beyond a determined baseline. Funding could be provided by allowing the sale of verified reductions into the cap and trade compliance market as an emission reduction credit / offset. Double-counting concerns (which as the Plan notes, are common to all energy efficiency efforts) could be resolved by reducing the electricity sector cap by an amount equal to the number of credits issued, similar to the Demand Side Abatement program developed by New South Wales in Australia under its Climate Change law.

Funding could alternatively be provided from cap and trade auction revenues or carbon taxes, similar to the carbon trust concept proposed by the ETAAC. However, because there will be many competing demands for these funds, we believe participation in the compliance market would be far more effective. We look forward to working with ARB and providing further details on this concept following our review of the more detailed program design information supplied in the Scoping Plan Appendices.

Solar Hot Water; CH&P. CBPA supports expanding renewable energy rebate and incentive programs to include solar hot water systems for both commercial and residential buildings. Similarly, CBPA supports the Plan’s proposal to encourage combined heat and power.

Financing Solutions. The most fundamental problem for these and other energy efficiency strategies is cost. As the Plan notes, all improvements have the potential to pay for themselves over time through reduced utility expenses. Financing is therefore a key barrier preventing market forces from driving greater efficiency improvements. CBPA strongly supports ARB’s exploration of innovative funding mechanisms that would help building owners spread the cost of such improvements over a sufficient period of time enabling monthly energy and water operational cost savings to pay the monthly carrying cost of financing.

Greening the State’s Real Estate Portfolio. CBPA has long supported the State’s efforts to lead by example in the field of green building, and we encourage the State to raise its bar even higher. As an owner-occupier of many buildings, the State does not face the split incentive problem faced by many private landlords. And by demanding greater energy performance as a tenant, the State promotes information dissemination and competition in the private sector around these issues. Strong State demand for green building products and services helps expand the market by growing professional expertise and economies of scale that reduce price and make these options more affordable for the private sector. For these reasons, CBPA supports SB 1670 (Kehoe), which would provide bond financing to support retrofits of existing state buildings. The State can also play a powerful role as an institutional investor, by directing CalPERS and CalSTRS investments toward green real estate.

Comments on the ARB Draft Scoping Plan

Page Three

**Time of Sale Retrofit Requirements for Commercial Real Estate**

Existing buildings present challenges, because retrofits are often cost-prohibitive. CBPA supports voluntary programs to promote retrofits, such as financial incentives, design assistance and general education. But the proposal to require building owners to retrofit their buildings at the time of sale is highly problematic for various reasons.

Cities and counties depend on transfer taxes generated from the sale of commercial (and residential) buildings to fund local government. That dependency has increased in recent decades, as the volume of transactions has increased. Local government is already feeling the pinch as recent turbulence in financial and real estate markets have decreased sales activity and transfer tax revenue. Time of sale retrofit requirements would cause further damage by imposing substantial costs and delays that would discourage building owners from selling their buildings.

Retrofit requirements also have the potential to disproportionately affect commercial landlords 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]](#footnote-2) Leases are long-term agreements. Therefore, ARB should provide several years advance notice before implementing time of sale requirements so that building owners and tenants have sufficient time to address these unforeseen costs during lease negotiations.

CBPA believes point of sale retrofit requirements would be a Draconian first step for addressing the challenge of existing buildings. We instead encourage the ARB to pursue a strategy of empowering the market. Assembly Bill 1103 (adopted last year) requires benchmarking of existing commercial buildings through the Energy Star process, which tenants, lenders and purchasers can then use to evaluate relative energy performance. This will help make energy efficiency a competitive issue. ARB can empower the market further 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. ARB could then evaluate the effectiveness of such voluntary actions and revisit the issue of mandatory retrofits in later Scoping Plan updates.

**Water Efficiency**

CBPA supports the Plan’s proposal to promote water efficiency through financial incentives funded through a public goods charge, provided that the cost burden is equitably allocated among all water users, rather than any particular user group. This model has successfully funded energy efficiency improvements and renewable energy installations for many years. In addition to reducing GHG emissions, water efficiency provides an important and cost-effective adaptation strategy, as warming temperatures reduce Sierra snowpack and available water supplies.

Comments on the ARB Draft Scoping Plan

Page Four

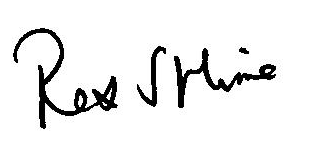
This becomes more critical given the current political stalemate surrounding the construction of additional reservoir capacity.

Significant opportunities for increasing water efficiency exist in the real estate sector, especially in existing buildings. Unfortunately, most strategies (like fixture replacement) are not cost effective. Financial incentives can make such voluntary action more economically feasible.

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 and providing additional comments on the Appendices.

Sincerely,



Rex S. Hime

President and CEO

Cc: Paul Cunha, Chairman of the Board, CBPA

Board Members, CBPA

Rob Cord, President BOMA California

Jim Camp, President NAIOP California State Council

Aquiles Suarez, National Association of Industrial and Office Properties

Betsy Laird, International Council of Shopping Centers

1. The utility cost savings noted in the Plan’s Executive Summary would flow to the tenant, rather than the landlord who would be obligated to pay for the retrofit that makes those savings possible. This is the split incentive issue referenced in the Plan at p. 13. [↑](#footnote-ref-2)