CALIFORNIA ASSOCIATION OF REALTORS®

October 23, 2012

California Energy Commission
Dockets Office, MS-4
RE: Docket No. 12-EBP-1
1516 9th Street
Sacramento, CA 95814-5512

RE: Comprehensive Energy Efficiency Program for Existing Buildings (AB 758) Scoping Report Staff Workshop

Dear Commissioner McAllister:

Thank you for the opportunity to provide comments on the Comprehensive Energy Efficiency Program for Existing Buildings (AB 758) Scoping Report and Staff Workshop. Both the report and workshop were extremely informative. The CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.) seeks to be valuable stakeholder in the development of regulations and policies related to improving energy efficiency in the existing building stock. C.A.R. looks forward to collaborating with the California Energy Commission and other key stakeholders to develop a comprehensive statewide program to improve energy efficiency in ***all*** California homes by encouraging cost effective audits and improvements. Below, we have set out some important concerns and policy development strategies that we believe must be considered for the appropriate creation of the CEC's Energy Efficiency Action Plan.

The purchase of a home is one of the largest investments a person will make in their lifetime. Generally, purchasers buy as much house as they can afford, and must not only prioritize what is most important to them in a home, but they must also come to terms with what they can afford that will satisfy their needs. Purchasers are provided with disclosures, inspections and reports on issues material to their decision. It is only with a willing buyer and a willing seller that a transaction can occur. In the final analysis, if conservation improvements do not increase a property's "bottom line" value (such as by decreasing the net operating costs of the home), their cost can only come out of the property's equity which is to the detriment of not only the seller, but to energy efficiency audit and improvement programs throughout the state. Indeed, in about half of our transactions today, there is no equity in the property.

MANDATING AUDITS/RETROFITS UPON RESALE FAILS TO MEET THE STATES GOALS.

While C.A.R. supports voluntary, systematic and efficient programs to encourage energy efficiency improvements and audits in the existing housing stock, C.A.R. adamantly opposes any proposal that would require the completion of energy audits and/or retrofits as a condition of completing the sale. Time-of-sale strategies are doomed to fail and will not achieve timely and comprehensive results. With 13.7 million single-family and multifamily residential units in California, the vast majority of them built before energy efficiency standards, waiting for a home/structure to sell in order to make energy efficiency improvements will not achieve the state's goal to reduce energy consumption by 2020.

980 Ninth Street, Suite 1430, Sacramento, CA 95814 Tel 916.444.2045 Fax 916.444.2033 www.car.org

Even worse, time-of-sale strategies create burdensome and costly transaction delays and exacerbate difficulties in housing affordability. Every $1,000 increase to the purchase price and transaction cost of a median price home disqualifies over 19,000 California households from achieving home ownership. Housing affordability in California is still low. Thus, forcing another $600 - $25,000 on every transaction will only serve to derail the recovery of an already fragile real estate market. Finally, only 35% of homes built prior to 1978 are expected to change ownership by 2050. Enforcing retrofits upon resale will ultimately fail to reach the targeted housing stock within a meaningful timeframe. Only a broad-based approach to entire communities will yield results.

ALTERNATIVES THAT WILL REACH THE STATES CONSERVATION GOALS.
C.A.R. would consider supporting thoughtful strategies that use the transfer of property to a "start a clock" for energy efficiency compliance, provided that property owners are given a sufficient opportunity, outside the transaction process, to complete necessary improvements, which are cost effective and consider market mechanisms. Again, it is imperative that efficiency disclosure and upgrade strategies explore approaches to reach ALL housing and not just those transferring ownership.

Other alternatives to time-of-sale mandates, include: on-bill financing/repayment, low-interest financing for homeowners seeking to make efficiency improvements (i.e. Energy Efficiency Mortgages (EEM) and 203k loans), education and incentive programs, and community-wide comprehensive approaches for energy efficiency . Community-wide comprehensive approaches would include mandating improvements and audits by a date certain or at specific trigger points during the home's life cycle, including: requiring property owners to obtain an energy audit based on the age of the home or on a periodic community by community staggered approach every 5-7 years. We would suggest other appropriate trigger points for audits and improvements would include time of renovation or utility rate tier increase.

DEFINITION OF "COST EFFECTIVE" MUST NOT INCLUDE UNQUANTIFIABLE NON-ENERGY BENEFITS.
It is imperative that any mandate requiring energy audits and retrofits on existing housing be cost effective and must not include subjective, non-energy benefits in its "effectiveness" calculation. Programs that do not result in a net savings, or which utilize use non energy benefits in their calculations to justify imposition will not motivate property owners to action and only lead to consumer dissatisfaction, resistance and evasion.

We respectfully suggest also, that any such program contain science based metrics to measure its degree of successful implementation. Without real measurement and monitoring, it will be impossible to validate a program's success and to distinguish wishful thinking from cost effectiveness.

VIABLE FINANCING OPTIONS.
Financing for both voluntary and mandatory efficiency audits and improvements is one of the most difficult hurdles for homeowners to overcome and the biggest barrier to market acceptance. C.A.R. believes that in light of the difficulty that faces PACE programs, on-bill financing or repayment would provide a viable financing opportunity to property owners who lack sufficient funds to pay for the front-end costs of efficiency improvements. On-bill financing would remove this financial barrier for property improvement and provide owners with a cost-effective means for creating efficiency in their property, especially for low income residents of older homes, which use up to 50% more energy for heating and cooling than homes built today. On-bill financing should be offered very broadly, providing owners with an opportunity to make efficiency improvements throughout the life of the home.

Any suggestion that amortizing the costs of an energy efficiency upgrade over the life of a mortgage, without consideration for the energy efficiency products useful life is not a sound finance strategy. For example, amortizing light bulbs and most appliances would result in properties being over-encumbered by debt obligations exceeding the improvement in a property's current market value. It is not only C.A.R. that strongly opposes any attempt to encourage energy efficiency improvement financing that exceeds the useful life of the product, but federal lending practice won't support it either. Energy Efficient Mortgages and 203k loans offered by Government Sponsored Enterprises (such as Fannie Mae, Freddie MAC and FHA) require that total costs of energy efficiency improvements, including maintenance costs, be less than the total present value of the energy saved over the useful life of the improvement. Assuring that improvements create a reliable net combined cost savings for both energy use and loan repayment to property owners is simply good policy that will encourage participation in retrofitting properties, and utilization of energy efficiency financing mechanisms.

MULTIPLE LISTING SERVICES: NOT EQUIPPED TO PROVIDE DISCLOSURES.

The scoping report also suggests that Multiple Listing Services (MLSs) must accept and incorporate energy efficiency rating and upgrade information. The suggestion misunderstands the nature of the MLS. As a matter of general information, California MLSs are private proprietary systems governed by rules adopted by the National, State and Local Associations of REALTORS®. MLSs are NOT publicly owned databases, but are a proprietary business tool, owned and operated by local REALTOR® associations. Data contained within an MLS is reserved solely for the purpose of selling property, and are not designed to provide energy (or any other) disclosure information. Of course, this is not to say that sellers and their agents do not disclose material facts regarding the property, once in the sellers' possession a material fact is disclosed and sometimes the MLS is used to convey it. MLSs have the ability to adapt to regional market trends and incorporate information of interest to purchasers, like "green" components.

From the MLS perspective, it is vital that any input of energy rankings and/or commentary regarding upgrade measures completed in the home by listing agents be voluntary and user friendly. Neither sellers of real property, nor REALTORS® are energy experts and cannot be expected to know technical energy information, let alone represent it "correctly" in the MLS. There are always legal liability concerns triggered by representations made on the MLS, and C.A.R. would oppose any requirement that would put our members at an increased risk of liability. We also caution against asking sellers and REALTORS® to provide technical energy details in the MLS. If the fields are misunderstood and answered incorrectly, either by sellers, our members or by third party verification, it would potentially subject sellers and our members to litigation if the equipment does not perform as advertised in the MLS.

UTILITY RECORDS PROVIDE MOST EFFICIENT REPOSITORY FOR EFFICIENCY INFORMATION AND DISCLOSURES.

In fact, the most appropriate repository for information related to the efficiency of a home is the utility serving the property, not the MLS. By including HERS ratings and other necessary efficiency information related to the property on the utility bill, we could not only educate homeowners on EE, but create a far more efficient and easily accessed source of information for homeowners. By maintaining this information in utility records, we would assure that information pertinent to the energy efficiency of the home will remain tied to the meter, and accessible to future property residents, be they owners or tenants.

Finally, REALTORS® take their disclosure responsibilities seriously and they have a good track record of performance, if they have a user-friendly way to discharge their responsibility. Requiring sellers to provide buyers with a copy of their most recent utility bill during a property transaction would facilitate an easily obtained, cost effective alternative for transmitting energy related information to purchasers, and would not increase seller liability regarding the energy efficiency of their home.

Thank you for your consideration. The CALIFORNIA ASSOCIATION OF REALTORS® looks forward to working proactively with the California Energy Commission and all interested parties to develop meaningful policy that will create cost effective strategies for improving energy efficiency in ALL California homes.

Sincerely,

Jennifer C. Svec

Jennifer C. Svec
Legislative Advocate
California Association of REALTORS®