



July 14, 2022

Liane M. Randolph  
Chair  
California Air Resources Board  
1001 I Street, Sacramento  
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RE: Draft 2022 Progress Report to the Legislature on Sustainable Communities Strategy (SCS) Implementation

Chair Randolph:

We appreciate the opportunity to comment on the Draft 2022 Progress Report. By way of background, the Building Industry Legal Defense Foundation (BILD) provides legal support, research and litigation services dedicated to increasing production in response to the State's overwhelming underproduction of housing. The Building Industry Association of Southern California (BIASC) is the leading voice for thousands of building industry leaders who are committed to a better future for California by building communities, creating jobs and ensuring housing opportunities for everyone.

We take this opportunity to highlight that a majority of recommendations offered in the Draft Progress report will make California, the United States and the Planet worse off environmentally and socially. Per the Executive Summary, although SB 375 was adopted in 2008 and we are now in our third SCS implementation round, the legacy of each iteration is summarized by CARB as moving the state "in the wrong direction, away from advancing climate goals and showing worsening inequality."

This continues in the current Progress Report. The draft takes zero responsibility for its housing cost escalators, its anti-housing production measures, and doesn't acknowledge the pre-COVID transit ridership losses that came as a direct result of policy choices made by CARB under SB 375. For example:

- For decades, the Legislature has repeatedly rejected proposals that strip local governments of land use control and replace it with top-down state authority. The Draft Progress Report, and the Draft 2022 Scoping Plan (Scoping Plan), demands that the Legislature put CARB and the region's transportation agencies in charge of land use and housing decisions. Under CARB's watch with SB 375, California's housing prices - along with homelessness and poverty rates - exploded. It is confounding that the Progress Report and Scoping Plan plead

for more power to be given to an agency that has shown no ability to exercise the power it already has to solve the housing crisis.

- The Progress Report shows no understanding of the fiscal consequences, and inherent unaffordability, of limiting the development of new homes. The Scoping Plan calls for higher densities with 20% inclusionary housing near high frequency, fixed route, public transit. This CARB policy prescription ignores the Legislature's own finding that any inclusionary requirement above 15% is suspect, and it certainly flies in the face of the lived experience of housing producers that have halted or been forced into dramatic production reductions even when lower inclusionary requirements are foisted upon them. CARB's siting criteria also rejects housing legislation requiring the dispersal of new housing and the creation of accessory dwelling units in all neighborhoods, not just rapidly-gentrifying transit-dependent neighborhoods that exist in only a handful of jurisdictions.
- The Legislature has likewise clearly rejected CARB's Vehicle Mile Traveled (VMT) reduction mandates. These mandates were unilaterally superimposed on SB 375 after the first SCS by CARB's non-regulatory, methodological determination. The Legislature has repeatedly rejected a VMT reduction mandate as unworkable, inequitable, and particularly harmful in the vast majority communities. The Progress Report confirms that CARB's insistence on VMT reductions is a failed approach, thereby confirming the accuracy of the Legislature's findings. Instead of pivoting, CARB doubles down in the Draft 2022 Scoping Plan by calling for an increase to 30% reduction in passenger vehicle VMT, even as the vehicle fleet is increasingly comprised of electric vehicles. If CARB had any regard for facts and science, including the factual conclusions of its own transportation expert Board member Dr. Stirling, CARB would acknowledge changes to vehicular technologies, (as well as remote work and broadband-enabled health, educational and other services), as SCS policy priorities and rescind its VMT-only SB 375 calculation methodology.
- The Legislature has also repeatedly rejected CARB's demand for urban growth limit lines and spent nearly a decade carefully revamping housing laws to achieve the state's housing goals. Based on CARB's housing policies and preferences, in this Draft Progress Report and in the Draft 2022 Scoping Plan, 20% inclusionary housing is necessary to avoid a "significant impact" finding under CEQA. This unilateral CARB determination is easily used by anti-housing activists to litigate against categorical exemptions and negative declarations for housing that complies with 1) a CARB-approved SCS, 2) Housing and Community Development (HCD)-approved Housing Elements, and 3) General Plans, zoning codes and Specific Plans. The 2022 Scoping Plan itself acknowledges that two-thirds of anti-housing CEQA lawsuits allege non-compliance with GHG and VMT impact analysis and/or mitigation requirements. This is a CEQA morass created by CARB itself to thwart the Legislature's own SB 375 CEQA streamlining pathway.
- CARB has itself acknowledged that Californians live on only 6% of the state's 100+ million acres. CARB has declined to disclose, however, that California's urban densities are already the highest in the nation. Other states with large populations occupy far more land than what is experienced in California (New Jersey is 35% developed; most large states are approximately 10% developed). The idea that global climate change requires the state to

build over 3 million new homes in parking lots is entirely unproven by science and is contrary to law: it is simply CARB dogma.

- The Progress Report demonstrates that CARB's most unexamined but fiercely demanded policies - 1) massive expansions of fixed route public transit, 2) massive increases in density of rental apartments in a select few neighborhoods of a few select jurisdictions at prices that are unaffordable to median income households, 3) restrictions on for-sale homes that build intergenerational wealth, that are affordable to median income households, and 4) "protection" of every acre of the 94% of undeveloped land in California thereby ensuring these acres will forever be inaccessible to affordable housing - are infeasible, contrary to law, and fail to achieve either equity or economic prosperity to California residents.
- CARB's policies and surreptitious methodology decisions (like counting only VMT reductions as GHG reductions under SB 375) actually measure, and thereby reward, decreasing California's population and jobs. CARB's methodology counts miles *not* driven to work or home, by California residents and businesses who leave the state because they can't afford to stay. This approach leaves the state without essential workers and deprives us of the innovation economy that has been the state's economic engine. Housing is where jobs go to sleep, and CARB's policies result in an acute and worsening housing crisis that has caused a diaspora of our young and mid-career families.

In short, the proposed recommendations within this draft largely double down on the failed SB 375 legacy created by CARB's own policy decisions and expand harms to the hardest working communities of this state.

Sincerely,



Jeff Montejano  
BIASC CEO



Adam Wood  
BILD Administrator