

From: Jennifer.Hernandez@hklaw.com
To: [ARB Sustainable Communities](#)
Subject: SB 375 Draft 2022 Progress Report and new SB 150 Data Dashboard
Date: Thursday, July 14, 2022 7:02:40 PM
Attachments: [image003.png](#)
[Breakthrough Journal Summer Issue 14 2021 Hernandez v1.pdf](#)

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On behalf of our clients The Two Hundred for Homeownership, we are formally submitting as comments to the Draft 2022 Progress Report and new SB 150 Data Dashboard each of the letters, with attachments, previously submitted to CARB to the Draft 2022 Scoping Plan.

The VMT reduction goals have not, and cannot, be feasibly attained – and each and every VMT reduction target has failed for more than a decade. The transit ridership expectations, as confirmed by CARB’s own Expert Board member at the CARB hearing on the Draft Scoping Plan, have likewise failed for more than a decade, even pre-COVID, and even as transit investments were substantially expanded.

Your own progress report shows that transit ridership commutes take almost twice as long as auto trips, and insistence on mass increases in transit ridership, literally steals irreplaceable time away from families, wellness, continuing education, and all other tasks – and places a massive and racially disparate burden on single parents and households with two or even more jobs per household. Your progress report likewise completely ignores the far higher cost of building housing in existing, transit-served urbanized neighborhoods, and the fact that these neighborhoods comprise far less than 1% of the 6% of California that is already developed. We formally request disclosure and an assessment of the “major transit stops,” and the other locations within ½ mile of a fixed route bus that includes at least four trips per weekday and at least two trips per weekend day (collectively, “transit areas”). These mapped transit locations then need to be compared to the General Plan and most recent (Fifth Cycle, or draft/final Sixth Cycle) Housing Element, for each City and unincorporated County area. For many communities, CARB’s SB 375 regime means no new housing (even ADUs) since adding more people adds more VMT and thereby undermines compliance with CARB’s VMT metric. Then map the demographic (racial and income) of those transit areas, which are in fact transit areas because they already have ridership levels – and as shown by SCAG and described in “Green Jim Crow” (attached for ease of reference) – and also already have higher density, lower income, less White residents at greatest risk of gentrification and displacement. In short, this Progress Report must disclose how CARB’s policy interpretations and mandates under SB 375 undermine existing state housing laws, and also further weaponized CEQA by increasing CEQA compliance processing time, mitigation obligations (assuming “all feasible” mitigation is required pursuant to the OPR VMT Guidance document, inclusive of transit fees, to qualify for a less than significant VMT finding under CEQA), and litigation risks. For example, even the Draft 2022 Scoping Plan admits that two-thirds of anti-housing CEQA lawsuits allege that VMT and/or GHG violations. CARB has GHG, and has made VMT, its jurisdictional priorities under SB 375. CARB’s failure to adopt clear, unambiguous, feasible GHG (with or without VMT) targets under SB 375 is a violation of the Administrative Procedures Act (among other statutes): own that failure, and revise the Progress Report (and Draft 2022 Scoping Plan) to harmonize SB 375 compliance with implementation of RHNA-compliant Housing Elements to address the housing crisis! CARB’s insistence on this unlawful VMT reduction SB 375 compliance metric, which was neither authorized by statute or regulation but was instead unilaterally implemented by CARB after being

buried in a methodology guidance document, is the bureaucratic (and racist) equivalent to the redlining maps promulgated by the Home Owners' Loan Corporation in the 1930s.

CARB's insistence on this VMT metric, which was expressly rejected by the Legislature in both SB 375 and in several subsequent legislative proposals, is also unlawful under longstanding (state and federal Fair Housing Acts, and Constitutional equal protection) and new (state Affirmatively Furthering Fair Housing Act, Regional Housing Needs Assessment laws including housing financial feasibility for all income levels) civil rights laws. The climate emergency is not, and never has been, an excuse for throwing civil rights of our community of color clients under the bus – especially when the California Legislature already decided that providing undocumented immigrants with Drivers' Licenses and placing significant restrictions and due process protections against rescinding Drivers' Licenses.

Finally, having failed – repeatedly and hugely – to secure the unaffordable high density anti-homeownership transit neighborhood transformations in anywhere but a handful of locations in the entire state, and having continuously accepted Sustainable Communities Strategies built on fundamentally racist VMT distribution models that aim almost all new housing at the poorest communities of color while promoting racially exclusionary housing in “high VMT” – aka neighborhoods wealthy enough to have and rely on longer distance auto trips, CARB staff has chosen to not only blame others for this financially infeasible, anti-homeownership, anti-family, and foundationally racist policy choice – but to demand that CARB be placed in charge of land use and housing approvals statewide, acting by and through regional transit authorities. The SB 375 Progress report is an “F” for failure, but the failure is of CARB's own making: converting the compliance metric from GHG to VMT has failed, and serious efforts to tailor GHG reduction strategies to unique regional and local attributes in compliance with housing and civil rights laws hasn't even been attempted.

Please note that each of the above are comments requiring substantive responses: if you disagree that SCAG's Traffic Analysis Zone housing allocations under SB 375 are racist violations of Constitutional and statutory housing laws, explain why in your response to these comments. The catch-all “comment is the opinion of the drafter and noted for the record” is not just disrespectful and dismissive of our clients' civil rights, it is also a violation of your legal and moral obligations to our communities of color.

The remainder of the comments previously submitted to the Draft 2022 Scoping Plan and hereby re-submitted as comments to the Draft 2022 Progress Report and Data Dashboard.

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From: ARB Clerk of the Board <cotb@arb.ca.gov>

Sent: Wednesday, June 29, 2022 3:23 PM

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Subject: RE: Immediate Request re Scoping Plan Comments

[External email]

Hello again, Emily.

The additional attachments should all be posted now. Please double check and let us know if you see any discrepancies. Direct links are below:

[#240](#)

[#614](#)

[#632](#)

Thanks for your patience.

CARB logo



Lindsay Garcia
Board Clerk
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