



June 24, 2022

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RE: Draft 2022 Scoping Plan

Chair Randolph:

We appreciate the opportunity to comment on the Draft 2022 Scoping Plan. By way of background, the Building Industry Legal Defense Foundation (BILD) provides legal support, research and litigation services dedicated to increasing the production of housing 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 urge elimination of the Scoping Plan's exceptionally potent Housing-Killer land-use development and Vehicle Miles Traveled (VMT) measures. As drafted, the proposed Scoping Plan is the single most anti-housing state agency proposal promulgated during Governor Newsom's tenure. Enactment of this language will crush RHNA targets and force Californians to move to high polluting states.

The Legislature and Governor have long recognized the urgency and scale of California's housing crisis. In response they have enacted scores of new laws to compel approval of millions of new homes in all California communities as part of the Sixth Cycle of the Regional Housing Needs Assessment ("RHNA") process. RHNA requires each city and county to promptly approve General Plan Housing Elements to accommodate assigned housing production targets for all household income levels.

State agencies, including the Housing and Community Development agency and the Attorney General's Office, are then charged with assuring that these city and county Housing Elements comply with applicable housing laws. Enforcement includes requirements to disperse new housing throughout existing communities to achieve equity mandates like Affirmatively Furthering Fair Housing Act laws, state density bonus laws (to incentivize otherwise infeasible affordable housing development), and to preclude local governments from denying or imposing economically impossible conditions of approval on new housing.

The Draft Scoping Plan directly contradicts the aforementioned requirements created by the California State Legislature. It further undermines locally-approved General Plan Housing Elements, regional Sustainable Communities Strategies, and projects that have already received at least one agency approval. This is accomplished through the Scoping Plan's radical expansion of CEQA liabilities that serve to effectuate land use controls and undermine existing structures of governance.

#### Anti-Housing Greenhouse Gas Reduction Mandate

CARB, which is not a housing agency, has for the second time (the first was the 2017 Scoping Plan) used the Scoping Plan to impose a top-down, one-size-fits-all housing mandate through the California Environmental Quality Act ("CEQA"). Specifically, (with the exception of 100% affordable housing), the Scoping Plan identifies only two types of housing that do not result in significant adverse GHG impacts requiring mitigation under CEQA:

1. Housing at 20 dwelling units/acre (2-3 stories), with 20% deed restricted affordable requirements for low-income residents, in neighborhoods located within a ½ mile of high frequency fixed-route public transit. Even pre-pandemic, public transit ridership was falling despite billions of dollars in transit service expansions. The vast majority of California (i.e. housing located 0.51 miles or further away from (mostly) bus stops) does not have the required transit frequency, or buyers/renters with the financial capacity to subsidize in perpetuity 20% of the required low-income units.
2. "Net Zero GHG" housing, for which the Scoping Plan describes two large master planned community projects that include a fully balanced mix of new housing, employment, institutional (schools, fire stations and parks) over thousands of acres designed and entitled on previously-undeveloped land.

**Neither of CARB's less-than-significant-GHG-impact housing paradigms apply to the overwhelming majority of RHNA-required, HCD-approved Housing Elements in California's cities and counties.** Although the Scoping Plan acknowledges that housing is a major target of CEQA lawsuits, (and two-thirds of such lawsuits allege deficient GHG or VMT analysis or mitigation), CARB's housing prescription is either directly at odds with the local reality of absent and ineffective high frequency bus service, or (in the case of the Net Zero GHG projects) runs afoul of the other major anti-housing elements of the Scoping Plan as described below.

It must be noted that the Scoping Plan's GHG significance thresholds for housing will create even more anti-housing CEQA lawsuits that will directly nullify the effectiveness of a decade of Legislation designed to spur more housing production designed to be distributed equitably among and within California's cities and counties.

#### Anti-Housing Urban Limit Line Mandate

The Scoping Plan's new "Natural and Working Lands" chapter effectively demands the end of housing constructed on previously-undeveloped land, even when such land is within incorporated cities, accommodating desperately-needed workforce housing. This mandate equates to an urban limit line - a mandate repeatedly rejected by the Legislature - which has repeatedly been shown to increase housing prices and decrease housing supplies.

Further, the Scoping Plan acknowledges that only 6% of California land has been developed for housing, employment, and infrastructure uses, and that California already has (by far) both the lowest percentage of developed land and highest population density of any comparable state in the nation. Nevertheless, the Scoping Plan concludes that significant housing opportunities (even projects that have already been approved in cities and counties, and already included in Sustainable Communities Strategies reviewed and approved by CARB), are not aligned with the Scoping Plan. This anti-housing Natural and Working Lands chapter is also an internally inconsistent measure in the Scoping Plan, given the Plan's recognition of the "Net Zero" project GHG compliance pathway.

#### Anti-Housing VMT Reduction Mandate

The Scoping Plan's radical VMT reduction mandate of 22% for all vehicles, (which the Scoping Plan then interprets as 30% statewide reduction in passenger vehicle VMT), is even more anti-housing. This VMT reduction mandate has also been consistently rejected by the Legislature, and the Scoping Plan makes clear that **since the 2017 Scoping Plan's 15% VMT reduction was approved by CARB, actual VMT has increased not decreased** (except for the pandemic) and is nearly back to its pre-pandemic level. The ongoing failure of this VMT reduction mandate is not surprising: residents of new housing have the same transportation options as their next-door neighbors and cannot drive less. High density housing within a ½ mile of frequent transit is prohibitively expensive for median income families. Future, larger, mixed-use master planned communities designed to reduce VMT are rejected by the Natural and Working Lands prohibitions discussed above. This represents the creation of a plan designed for failure.

The Scoping Plan also fails to distinguish and properly allocate the 30% passenger vehicle reduction in statewide VMT between the vast majority of existing homes (and drivers) and newly-constructed homes. In CEQA litigation, this distinction between existing homes and new home construction is critical. More than a year after approval of the 2017 Scoping Plan's 15% VMT reduction mandate, CARB issued new "guidance" demanding that the appropriate VMT reduction for newly constructed homes be closer to 17%. The Scoping Plan compounds this 2017 omission by again failing to distinguish and disclose the VMT reduction mandate for new homes, leading to still more VMT CEQA lawsuit challenges to housing.

In the rural and suburban communities (where the vast majority of Californians live), where high frequency public transit does not exist (or, if it does, it limits workers to 55-times fewer jobs in a 30-minute commute than if they had a car), applying a VMT significance criteria to new housing has been an economic, legal, and political fiasco. Using the Office of Planning & Research ("OPR") guidance on mitigating for VMT for the 2017 Scoping Plan target, San Diego County staff and experts determined that each new apartment and home located more than a ½ mile from high-frequency bus stops would need to **pay fees ranging from \$30,000 to more than \$1 million dollars**. County staff further attested that they could not assure that such fees would actually result in the required reduction of VMT to a "less than significant" level as required by CEQA.

#### Conclusion

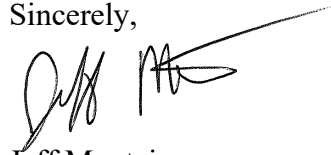
The Scoping Plan must reduce GHG to meet the Legislated target of 40% GHG reduction by 2030. CARB counts people and jobs that leave California for other states as GHG reductions, since these people and jobs no longer turn on the lights, cook food, or create anything for the betterment of California. CARB's Scoping Plan, which insists on achieving a "carbon neutral" economy by

2045, readily grants *some users* of fossil fuels special GHG offset opportunities (with the promise of carbon sequestration and capture technologies to be constructed ten or more years down the road). The Scoping Plan's prescription for the *actual People of California* is to further expand CEQA to block them from new housing in existing and new communities. The Plan even limits Californians from driving electric cars and wholly ignores the fact that people who move to Texas or Nevada, to find housing they can afford, more than double global GHG emissions.

CARB is not in the housing business, which is why CARB's own scientists recommended against including (in the original Scoping Plan) land-use mandates such as limited dense housing in only a few locations and VMT reduction requirements thereupon. **Each successive Scoping Plan adopted by CARB has resulted in less housing production, and higher housing prices.** We have already seen 7.5 million California residents move to other states because of California's housing crisis. The Scoping Plan's housing, VMT and land use development measures should be deleted in their entirety.

Our members build housing for Californians. The Scoping Plan puts a nail in our coffin, and on the homeownership aspirations and housing needs for the People of this State. Do not advance the Scoping Plan if you believe in California as a place for People to call home. Thank you for your consideration.

Sincerely,



Jeff Montejano  
BIASC CEO



Adam Wood  
BILD Administrator