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Via Electronic Submittal: <https://ww2.arb.ca.gov/applications/public-comments>

Clerks' Office
California Air Resources Board
1001 I Street
Sacramento, California 95814

RE: Draft 2022 Scoping Plan - AB 197 Violations

Dear Madame or Sir:

This is one of several separate comment letters submitted on behalf of our civil rights client, The Two Hundred for Homeownership. In 2016, the Legislature entrusted CARB with extraordinary authority to collect billions of dollars in tax revenues from a Cap and Trade tax assessed on designated emission sources of greenhouse gas emissions ("GHG"), and thereafter to disburse collected funds without further Legislative budget review or approval to achieve "the maximum technologically feasible and cost-effective greenhouse gas reductions" to reduce GHG emissions on a prescribed schedule with prescribed targets.

SB 197 also imposed an express requirement, however, that CARB's "actions to reduce greenhouse gas emissions must be done in a manner that is transparent and accountable to the public and the Legislature." The required transparency and analysis is "essential to ensuring the state's actions are done in an equitable fashion that is protective and mindful of the effects on the state's most disadvantaged communities."

The Draft Scoping Plan is a flagrant mockery of these 197 standards. Specifically:

1. The Draft Scoping Plan includes scores of "Measures" and "Actions" which collectively comprise the Scoping Plan, each and all of which are expressly acknowledged to be the discretionary agency action by CARB that comprises the whole of the Scoping Plan "project" required to be evaluated under the California Environmental Quality Act.
2. Section 28562.7 of the Health and Safety Code, added by AB 197, then expressly requires that the Scoping Plan "shall identify for **each** emission reduction measure . . . the following information:"
 - The range of projected greenhouse gas emissions that result from the measure

- The range of projected air pollution reductions that result from the measure
- The **cost-effectiveness, including avoided social costs**, of the measure." (Emphasis added.)

Health and Safety Code section 28562.7 was not enacted in a political or policy vacuum, but arose out of an abundance of evidence demonstrating that both the cost and the effectiveness of CARB's climate policies theretofore remained a black box - *i.e.*, the fact that California's electricity prices were rising more than five times higher than the national average, that California's gas prices were routinely higher than other states, that California housing and other living costs had forced nearly 9 million people into poverty and made hundreds of thousands homeless.

In 2018, for example, the non-partisan, independent Legislative Analyst's Office issued a report on CARB's transportation climate policies which noted that climate regulatory costs "are ultimately borne by households" which means that "consumers have less money to spend on other goods and services."¹ In 2021, the non-partisan, independent Auditor for the State of California issued an audit of CARB required by the bi-partisan Joint Legislative Audit Committee, which among other findings concluded that "CARB has not done enough to measure the GHG emissions reductions its individual transportation programs achieve," and "CARB has done little to measure the extent to which its programs lead to emission reductions" and "[a]s a result, CARB has overstated the GHG emissions" of the transportation measures evaluated by the state auditor. Further, CARB has "not consistently collected or analyzed data" to evaluate whether CARB's predicted socioeconomic benefits, job-creation, and specific benefits to disadvantaged and low income communities are actually being achieved.²

Well after the 2016 Legislative mandate under SB 197, the LAO and Auditor both concluded that CARB was continuously and consistently failing to measure, disclose, or analyze either the GHG reduction effects or the cost-benefit and disadvantaged community effects of its climate change activities.

3. Transportation Measures. The Draft Scoping Plan Appendix C is titled an "SB 197 Analysis" but should be more accurately titled a "We Refuse to Be Transparent" Appendix.

For example, the Scoping Plan requires that Vehicle Miles Travelled ("VMT") be reduced 22% (actually revealed in Appendix C and other documents as 30%), even though CARB also mandates the transition to electric passenger vehicles (among other measures). The Scoping Plan acknowledges that all prior VMT reduction measures have failed (including the 2017 Scoping Plan's 15% reduction mandate, and VMT reduction targets established under SB 375 in regional transportation plans and sustainable communities strategies). The Scoping Plan further acknowledges that VMT continued to increase until the pandemic and has since largely

¹ California Legislative Analyst Office, *Assessing California's Climate Policies - An Overview* (2018) <https://lao.ca.gov/Publications/Report/3911#Conclusion>

² Auditor of the State of California, *California Air Resources Board: Improved Program Measurement Would Help California Work More Strategically to Meet Its Climate Change Goals* (2021) <http://auditor.ca.gov/pdfs/reports/2020-114.pdf>

rebounded to pre-pandemic levels. Although VMT reduction mandates had failed and, as the Scoping Plan also acknowledges, VMT deficiencies are a potent anti-housing tool used in two-thirds of anti-housing CEQA lawsuits, and despite the fact that CARB's files are replete with VMT mitigation fee schemes imposed under CEQA to add tens of thousands to more than a million dollars in fees for each new home or apartment located more than 0.5 miles away from a high frequency bus stop or train station, the Scoping Plan nevertheless doubles the mandated statewide VMT reduction measure from 15% to 30%. As required by AB 197, how much GHG would this reduce, or at what cost? CARB won't tell. Instead:

- Table C-1 lists 9 measures to "Deploy ZEVs and reduce driving demand," only one of which relates to the VMT 30% below 2019 VMT levels by 2035 measure. The remaining 8 measures address fuel changes (primarily to electric vehicles) to various categories of vehicles. Table C-3 then estimates reduced GHG (and 3 other emission categories) from the combination of all 9 measures, without identifying the quantity of GHG reductions that will result from each measure: a blatant violation of AB 197.
- Table C-8 continues to group all 9 "Deploy ZEVs and reduce driving demand" measures and estimates a GHG reduction outcome ranging from 32 to 67 million metric tons of GHG (MMTCO₂). How much of this GHG reduction comes from EVs and how much from reduced VMT is not disclosed, notwithstanding AB 197's express requirement to disclose the GHG reductions from "each measure."
- The most egregious violation of AB 197 for this 9-measure combo is the absence of a cost-effectiveness analysis. Instead, CARB provides only an "Estimated Social Cost (Avoided Economic Damages) of Measures" in Tables C-15 through C-17, and then the cost per metric ton of reduced GHG "relative to the Reference Scenario" in Table C-21. Neither Table discloses the actual estimated cost-effectiveness, or cost-effectiveness, of either of the two measures that have the greatest adverse consequences for disadvantaged communities, which also include a high percentage of car-dependent essential workers and households. AB 197 requires an assessment of "the cost-effectiveness, including avoided social costs, of the measure." (H&S Code § 38562.7(c)) This analysis is for each measure, not groups of measures. The disclosure of "cost-effectiveness" is clearly required by law, but is entirely omitted by CARB: how much can each household, consumer or business expect to have to spend on each measure?
 - For example, what will it cost to reduce 30% per capita VMT for the overwhelming majority of households who do not take the bus to work, and can and do access 55 times more jobs in a 30-minute car commute than a transit commute even in transit served counties like Los Angeles? Does CARB assume lost jobs, missed school, avoided medical appointments, and abandoned elder relatives?? Or does CARB assume Uber/Lyft rides, where VMT is attributed to a company instead of household, with rapidly-escalating ride costs? The "effectiveness" part of the required cost-effective calculation also cannot be calculated without knowing how much of the 32 to 67 million MMTCO₂ reduction will be achieved by each of the 8 EV-hydrogen vehicular fuel transition measures in relation to the VMT measure.

- Similarly, what it will cost hard working households in communities of color to lose access to an ongoing source of used internal combustion cars and pickup trucks that cost \$3,000 and instead have the non-option of paying \$30,000 or more for a new EV or an ever-depleting old battery used EV. Millions of households cannot afford new cars at all, rely on the car or pickup truck to get to one or two jobs, and transport kids and relatives and equipment. As documented by United Way of California,³ these 3.5 million households - 33% of our state's population, and 52% of Latinos - cannot afford even an unexpected expense without risking eviction, hunger, or forgone medical care. CARB's purported replacement for car ownership and use: high density housing and expanded public transit. A recent study from the UCLA Institute of Transportation Studies, however, documents the precipitous fall in public transit ridership by low income workers, and explains that it occurred notwithstanding massive public investments in transit systems, significantly expanded transit service, and no significant transit fare increase.⁴ Ridership loss was most significant for lower income households that acquired cars. The study confirmed that 55 times more jobs could be accessed by car in a 30 minute commute than could be accessed in a 30 minute transit ride, and also noted that the overwhelming share of transit ridership was confined to limited portions of Los Angeles county and not the remainder of the five-county region. For example, the report notes that "LA Metro, which serves Los Angeles, carries over 70% of the region's trips, many of them on its 20 busiest routes." Further, "LA Metro ridership is sufficiently concentrated that from 2011 to 2016 losses along a dozen of its routes accounted for 38% of all lost ridership in California."⁵ The report explains that, although Los Angeles has high population density,⁶ both the LA County and the Southern California regions lack a prewar (pre-car) downtown core that would otherwise encourage larger swaths of the population to take transit. This report explains that, since much of LA is auto-oriented, "transit use is confined largely to the poor," and thus renders all but a handful of public transit routes more of a social service safety net for the poor than a meaningful transportation mode choice. The study confirms the transportation realities for Californians, and CARB's Scoping Plan fails to account for the GHG reduction effectiveness, or cost-effectiveness for today's households, of depriving Californians affordable transportation to actual job opportunities (including the over 1 million undocumented immigrants who obtained a California Drivers' License when elected Legislators who were committed to civil

³ United Way of California, *Real Cost Measure in California 2021* <https://www.unitedwaysca.org/realcost>

⁴ *Id.* This research expands on a prior paper documenting the fall in ridership from 2000 to 2016. See M. Manville, B.D. Taylor, & E. Blumenberg, (2018). *Falling Transit Ridership: California and Southern California*. UCLA: Institute of Transportation Studies, January 2018, available at <https://escholarship.org/uc/item/0455c754>.

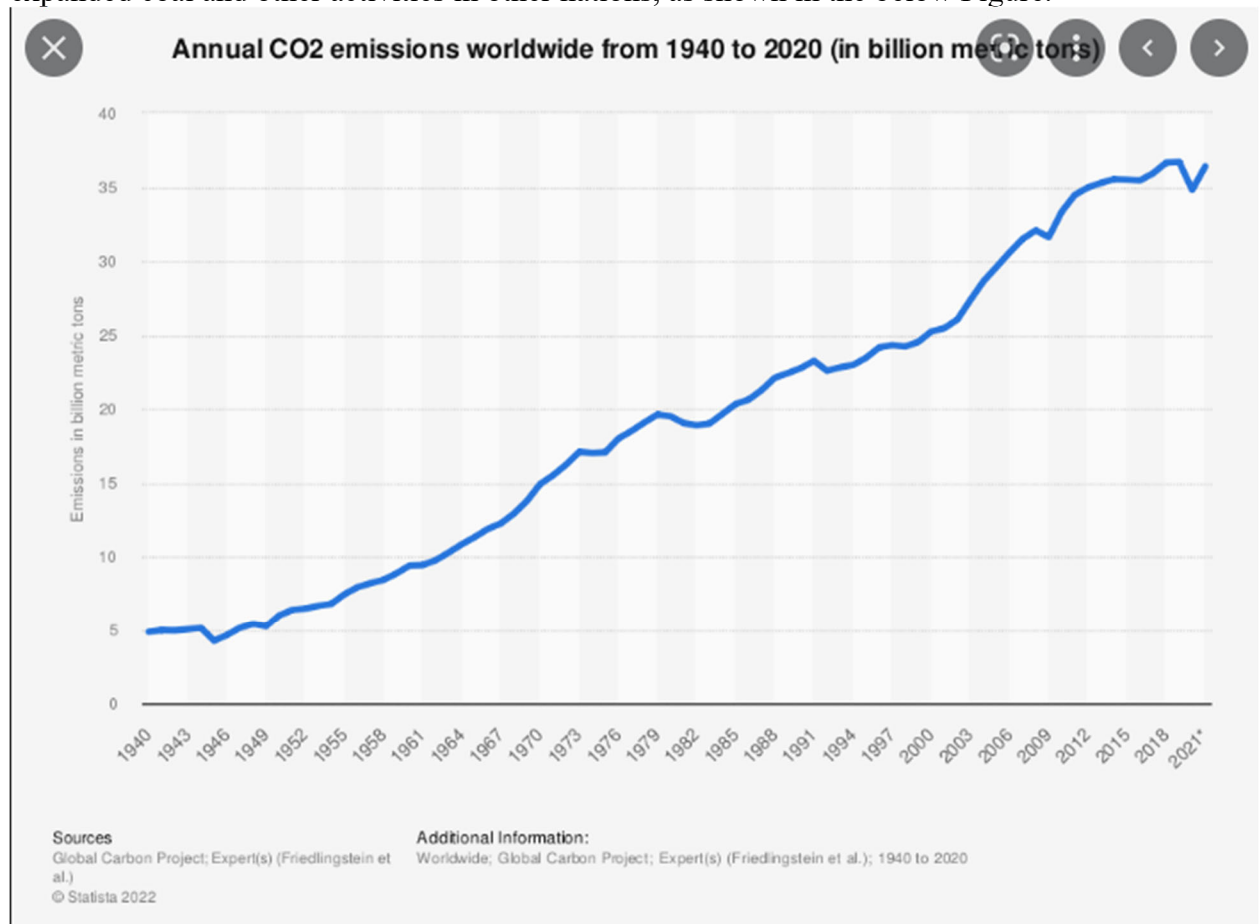
⁵ *Id.* (emphasis in original).

⁶ The Los Angeles/Long Beach Metropolitan Statistical Area ("MSA") is the most dense in the nation according to the most recent US Census data; New York City's MSA is second. San Francisco, San Jose, and other California MSAs also rank as more dense than cities traditionally considered more dense such as Chicago and Boston. US Census Data, available at <http://www.usa.com/rank/us--population-density--metro-area-rank.htm>.

rights, rather than bureaucrats committed to single-mission unlegislated mandates, served as California's policy leaders).

- The SB 197 analysis also omits the required equity impact analysis to low income communities and communities of color. Numerous studies have shown that depriving low income households to car ownership and use has devastating economic and social impacts, and even with billions of new transit investments and stable fares it is low income workers who have abandoned the century-old fixed route public transit policy prescriptions.
- Finally as to these vehicular AB 197 violations, the statute allows that the "social cost" of carbon "may" be included in the required cost-effectiveness analysis, but this does not excuse CARB from disclosing the cost-effectiveness of its measures to today's Californians - including disadvantaged communities and even median income households of all races who are staggering under California's high cost of living. Instead, "social cost" is at best an additional and optional disclosure requirement. AB 197 defines "social cost" as an estimate of "economic damages" of future climate change, including changes in agricultural productivity, impacts to public health, cost of climate adaption such as flood protection, and changes in energy system costs, which may ultimately occur based on global climate change - which is then discounted to achieve a "net present value" based on the avoidance of all such global climate change impacts that may occur over time. Even CARB acknowledges that California's anthropomorphic GHG is less than 1% to global GHG, and all evidence is that global GHG continues to increase based on

expanded coal and other activities in other nations, as shown in the below Figure.



There is, in short, no present evidence that California families will not continue to bear the cost of coping with climate change based on *global* GHG pollutants, so assuming "avoided social costs" to calculate today's "cost-effectiveness" in furtherance of the AB 197 mandate, including the disparate costs and burdens borne by disadvantaged community, is just the continuation of CARB's longstanding culture of opposition to transparency and effectiveness metrics.

4. Electricity Generation Measures. The Scoping Plan's AB 197 analysis also fails to disclose the economic costs and racially disparate consequences of its "Generate Clean Energy" measure, which also unlawfully aggregates multiple measures identified in the Scoping Plan. Reprinted below are the known-to-CARB but not disclosed in the Scoping Plan economic and equity impacts of electrifying the grid to the least environmentally impactful of the several siting scenarios for the "High Electrification Scenario" ("HES") considered by The Nature Conservancy and the expert energy firm E3, as assembled from existing reports commissioned by or accepted by CARB with its energy partners at the California Energy Commission and California Public Utilities Commission. This report of CARB's own expert documentation was prepared by ERM, an expert consultant firm with extensive California experience with energy projects and CEQA, and with environmental, economic and equity analysis. The full report is included in our comments to CARB, with

each subsection of the Report submitted as a separate comment - a response to the Report as a whole is unlawful.

- By 2050 installed capacity will need to increase by approximately 480 to 650 percent for solar and 30 to 250 percent for wind to provide necessary supply.⁷ This is a net increase of between 101.5 to 107.3 gigawatts (GW) of solar and 4.7 to 15.42 GW of wind.
- The HES assumes that, relative to 2015, per-capita VMT will decline by 12 percent by 2030 and 24 percent by 2050. However, in recent years excluding 2020, VMT has been on average only 3.6 percent below 2015 levels. If VMT does not drop as assumed, the necessary service load for the HES will be approximately 31.3 terawatt hours (TWh) or 6.1 percent higher in 2050 than currently indicated.

⁷. Various sources report different 2020 installed industrial solar and wind capacity in California. Ming et al. 2019 (“E3-CP” or “E3-Calpine”) *Long Run Resource Adequacy Under Deep Decarbonization Pathways for California* estimated that total installed capacity for 2020 was 21.2 gigawatts (GW) of industrial solar and 16.7 GW of wind. However, the CEC reports that California’s 2020 production capacity was only 15.63 GW of solar and 5.98 GW of wind.

Economic

- Documentation to date does not include all costs to implement the HES. The 2019 figure of \$116.1 billion annually⁸ is more likely to be \$221.6 to \$256.7 billion when project permitting and mitigation, land acquisition, decommissioning, equipment and infrastructure, transmission and distribution upgrades, environmental siting protections, wildlife adaptation, and optimism bias adjustment costs are included. This is a near doubling of previously reported values.
- Average annual residential electric bills are estimated to rise from \$1,226 in 2019 to \$4,941 in 2050, a change of 303 percent. Average annual commercial electric bills are estimated to rise from \$11,104 in 2019 to \$44,764 in 2050.
- Residential gas rates are estimated to increase 80 percent by 2030 and 480 percent by 2050 as fixed costs are spread over a smaller customer base. For customers who remain on the gas system, total energy bills (electric plus gas) are estimated to increase 327% compared to 2019.
- Though residential customers who switch to electric face lower or no gas bills, their combined energy bills are estimated to rise up to 150% compared to 2019.
- The assumed 86 percent decline in petroleum demand in 2050 may lead to up to 179,000 job losses, including over 7,000 jobs in the San Joaquin Valley specifically.
- Labor income for the oil and gas industry could decline by \$13.4 billion (57 percent), with a \$34.1 billion decline in GDP (63 percent). Total output may decrease by \$100 billion (69 percent), decreasing state and local tax revenue by \$14.2 billion.
- If the current state renewable energy property tax incentive continues, development of solar and wind facilities will cost California counties more than \$300 million in annual property tax revenue by 2050. San Joaquin Valley counties would forego about \$150 million, almost half of the total impact to the state, and the largest impact would be in Kern County, which could lose \$59 million in property taxes. If the renewable energy tax incentive is discontinued, then the annual revenue requirements for electricity generation may increase by \$300 million, further increasing future electricity rates.

Equity⁹

- Total annual residential energy costs would increase statewide by approximately \$79 billion or \$3,800 per household.
- In 2050, the 1.7 million households in California below the poverty level would see their energy costs increase from 16 to 46 percent of their annual income, an additional \$3,100 per year.

⁸. Ming et al. 2019. (“E3-CP” or “E3-Calpine”) *Long Run Resource Adequacy Under Deep Decarbonization Pathways for California* (Figure 22). Adjusted from 2016 to 2019 dollars using the Consumer Price Index.

⁹. The equity analysis is based on residential energy bill data from the American Community Survey, which differs from the residential bill data used in the HES; however, the magnitude of the impacts are comparable. The equity analysis uses the mid-point of the range of the 2x optimism bias and the 3x optimism bias adjustments or 50.4 cents per kwh.

- In 2050, the approximately 10.8 million households in California below the living wage would see their energy costs increase from 4 to 11 percent of income, an additional \$3,400 per year.
- These energy costs would nearly triple the number of households living in energy poverty, from 1.7 to 6.3 million, and would cause an additional 300,000 households to fall below the living wage.
- If assistance to low-income households remains at the same rates in 2050, then 4.6 million households will receive a total of \$7.3 billion offsetting 38 percent of the \$19.1 billion increase in their energy bills. However, all other rate payers, including middle-class families, will see an additional \$2.6 billion increase in energy costs.
- Disadvantaged communities may face particular hardships as counties where at least 25 percent of the population lives in disadvantaged communities are anticipated to see an increase of \$4,000 per year in energy costs, and these counties are in warmer parts of the state, where households face larger heating and cooling costs in general.
- Households in the Central Valley (with a much higher population of disadvantaged communities) may see an annual change in energy costs of \$4,844, as compared to households in the Central Coast (with a very low population of disadvantaged communities), where household costs are anticipated to increase by \$2,773.

5. Housing Measures. The Scoping Plan also includes dozens of measures prescribing where and what type of housing should be built in the future, ranging from (a) expert agency conclusions that translate directly into increasing the weaponization of CEQA lawsuits against housing that does not, for example, result in a minimum 30% reduction in per capita VMT to (b) outright prohibitions of housing on "natural and working lands" and costly new restrictions on producing even housing that complies with existing and approved General Plan Housing Elements, SB 375 Sustainable Communities Strategies, local Community and Specific Plans, and actual housing projects. The Scoping Plan's anti-housing measures are the subject of a pending lawsuit on the 2017 Scoping Plan filed by our clients the Two Hundred, and each paragraph of the petition filed in that lawsuit - with all factual assertions of the racially disparate harms caused by the 2017 Scoping Plan supported by hundreds of detailed citations - are all well known by CARB, but ignored in the Scoping Plan. That pending Petition is formally submitted as a comment to the Draft 2022 Scoping Plan, and constitute additional comments on the even more radical and costly new anti-housing components VMT reduction mandate and transit-dependent higher density housing prescriptions in the Draft Scoping Plan.

The absence of quantified GHG reduction estimates, cost-effectiveness analysis, and disparate impact equity analysis, of any of the Scoping Plan's multiple anti-housing measures are simply entirely ignored in the AB 197 analysis, another blatant violation of law.¹⁰

In conclusion, the Scoping Plan simply failed to comply with the AB 197 mandate for each measure. The result is another massive CARB mélange of prescriptions with uncertain GHG reduction effectiveness, undisclosed and likely unanalyzed cost-effectiveness impacts to today's

¹⁰ We do recognize and applaud CARB for abandoning the "net zero" CEQA GHG threshold and infeasible GHG reduction measures from its local climate action plan Appendix D; these now-abandoned measures constituted two of the four measures challenged in the 200 v. CARB lawsuit.

California households, and utter disregard for the disparate harms caused to low income households and communities of color.

The Scoping Plan utter disregard for express Legislative mandates, and elitist dismissal of non-partisan expert evaluations by the LAO and State Auditor, will absolutely be effective in making more Californians - especially low income and communities of color Californians - poor. It will certainly continue to propel the exodus of Californians to higher per capita GHG states, which will worsen global climate change - an outcome not endorsed by a single elected official.

The Scoping Plan needs to be revised to focus on measures that work for today's Californians, and restore upward mobility as well as attainable homeownership and other achievements for our low and median income (often union) workforce. As Jerry Brown quipped, given California's already very low contribution to global GHG, California's climate leadership will only be effective if other states and nations are inspired to follow our lead. Nobody is trying to follow our lead on poverty, homelessness, income inequality, catastrophic housing policies resulting in new housing construction costs even for "affordable" housing costing taxpayers \$1,000,000 to build per small apartment!¹¹

In CARB's last Scoping Plan, CARB unsuccessfully attempted to persuade the court that it was entirely lawful to impose racially discriminatory housing policies based on the climate emergency. That such an argument was even made is shocking but, as UC Berkeley scholars reported, the Bay Area heartland of climate activism is more racially segregated today than it was before Dr. King was assassinated.¹²

Please do not approve this Scoping Plan and again join the notorious ranks of public agencies in our state and nation who invented and exacerbated racial segregation and discrimination. True climate leadership must work equitably, and effectively, for all.

Sincerely,

HOLLAND & KNIGHT LLP



Jennifer L. Hernandez

JLH/BBB:Imp

Attachments: ERM Report
200 v. CARB lawsuit
Green Jim Crow

cc: Robert Apodaca

¹¹ Liam Dillon et al, *Affordable housing in California no routinely tops \$1 million per apartment to build*, Los Angeles Times, June 20, 2022: <https://www.latimes.com/homeless-housing/story/2022-06-20/california-affordable-housing-cost-1-million-apartment>

¹² University of California Othering & Belonging Institute, *Racial Segregation in the San Francisco Bay Area*, February 6, 2019; <https://belonging.berkeley.edu/segregationinthebay>