



December 14, 2022

VIA Hand and Electronic Delivery

TO: Members of the California Air Resources Board: Chair Liane M. Randolph, Vice Chair Sandra Berg,
Members Daniel Sperling, John Balms, Diane Takvorian, Dean Florez, Hector De La Torre, Davina Hurt, Barbara Riordan, Phil Serna, Nora Vargas, Tania Pacheco-Werner, Gideon Kracov, Eduardo Garcia, and John Eisenhut

CC: Hon. Steven S. Cliff, Executive Officer of CARB

RE: An Approval Vote for the 2022 Scoping Plan is an Unlawful Act of Intentional Unlawful Racial Discrimination

Dear Board Members and Mr. Cliff:

We write again as a civil rights organization committed to addressing the racial wealth gap through attainable homeownership.

We also write to provide notice, using your own words from the 2022 Scoping Plan, that your vote to approve the 2022 Scoping Plan is an unlawful and intentionally racist vote against California's communities of color, **and is knowingly and intentionally voting to make California's poor and median families poorer while making California's wealthier and whiter families more wealthy.** This is not hyperbole, it is what the Scoping Plan itself belatedly but expressly discloses to be true on pages 125-126:

"Total income for households that make less than \$100,000 per year are estimated to decline by \$5.3 billion dollars, while the total income for households that make more than \$100,000 per year will increase by \$5.3 million under the Scoping Plan Scenario."

"Because more than 60% of households in the race/ethnicity categories of Hispanic, Black alone, Native Hawaiian (HI) or Pacific Islander, American Indian or Alaskan Native, Other, and Two or More make less than \$100,000 per year, these populations generally are likely to experience reduced income."

CARB's Scoping Plan admissions directly validates our pending civil rights lawsuit arguments, and our advocacy comments about the disparate harms that CARB's climate policy choices are

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making on the nearly 40% of Californians who cannot afford to pay ordinary household expenses.

The Scoping Plan also eviscerates the dozens of bills enacted by the Legislature, and signed by the Governor, since 2017 to require California's cities and counties to plan for and actually approve enough housing, in the specific locations identified in locally-approved Sixth Cycle RHNA Housing Elements that are also approved by the state Housing and Community Development Department ("HCD"), over the next eight years. State housing laws require these new housing units to be located in diverse neighborhoods, including (as required by California's most recent housing civil rights statute, Affirmatively Furthering Fair Housing) in wealthy high opportunity neighborhoods not served by high frequency, fixed route public transit systems. The Scoping Plan itself acknowledges - belatedly - that such services are not available at all in much of California. The Scoping Plan's housing policies condemn the land use decisions of local governments, show zero deference to these HCD-approved legally mandatory Sixth Cycle Housing Elements, and goes so far as to insist that CARB and regional transportation agencies usurp land use decision-making to achieve the high density, transit-dependent housing that the Scoping Plan demands. CARB is an administrative agency, which cannot lawfully induce or cause the violation of state housing statutes. The fact that those most harmed by California's housing crisis - which has as the US Census Bureau confirmed caused California to have the highest poverty rate in the nation - are members of communities of color already victimized by past and ongoing housing discrimination - is another act of intentional racial discrimination.

The Scoping Plan also deprives hard working California families, the plurality of whom are members of communities of color, from transportation mode solutions that wealthier and whiter families take for granted, including most notably CARB's continued demand for ever more ambitious Vehicle Mile Travelled ("VMT") reduction mandates. The Legislature has repeatedly rejected VMT reduction mandates: in many parts of California, all essential workers and others who must be physically present at work to keep a job and earn an income for their families must use a private automobile to do so.

Even in communities with fixed-route transit services, transit ridership was falling before COVID and has plunged since then (except on a very few routes in a very few communities). CARB's own transportation expert, Dr. Sperling, advised this Board in May of 2023 that the then-draft Scoping Plan's VMT reduction mandates would not - could not - work. Access to affordable private car ownership isn't a personal convenience, it's a civil right - which the Legislature's Latino Caucus led the way in expanding to allow more than 1 million immigrants who lack immigration authorization to obtain Drivers' Licenses.

Finally, the Scoping Plan repeatedly asserts "the big lie" that it is a merely aspirational plan, and not an enforceable regulation. The Scoping Plan, and CARB's own made-to-order academic research, confirm this is a bald-faced lie. Immediately upon approval, the Scoping Plan is weaponized under the California Environmental Quality Act ("CEQA"). A 2022 housing report commissioned by CARB by UCB scholars, already identified and referenced in the Scoping Plan, explains that "CEQA has become a core component of California's broader efforts to reduce

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GHG emissions and mitigate climate change.” Appendix D of the Scoping Plan, on page 19, further expressly acknowledges that “approximately two-thirds [of CEQA lawsuits to block housing projects] were challenged based on claimed deficiencies in their VMT and GHG analysis” Housing projects that are not consistent with the Scoping Plan’s siting, VMT, “sparsely vegetated” and related land use prohibitions, and “net zero” GHG or 20% inclusionary housing CEQA criteria are vulnerable to CEQA lawsuits, but also lose access to CEQA streamlining and gain GHG/VMT mitigation mandates that make housing projects economically infeasible (as has occurred in San Diego County with its VMT mitigation fees).

The Scoping Plan’s stark admission that it will make poor and median income communities of color poorer, and wealthier whiter households richer, doesn’t even take into account the harms caused by the Scoping Plan VMT and GHG measures that eviscerate state-approved Sixth Cycle Housing Elements - and housing and civil rights laws on housing and transportation.

Your agency - CARB - acting through the Scoping Plan itself and not dependent on any later CARB regulation or any other action taken by any other state or local agency - has with the 2022 Scoping Plan has made an affirmative choice to adopt racially discriminatory climate policies while delivering higher incomes to wealthy, predominantly White, households.

The Scoping Plan needs to be put on pause until these shocking violations of law - and even more shocking violations of equity and civil rights principles to which CARB and most of you in your individual political appointee capacities have pledged allegiance - are excised from the Scoping Plan.

We respectfully, urgently, ask that you either postpone the Scoping Plan vote until these revisions are made – or vote to disapprove the Scoping Plan, for the same reasons that prior bureaucracies should have voted to disapprove separate but equal schooling and other blatantly racist public agency practices.

It is our fervent hope that you will vote to do the right thing: California’s climate policy leadership - and its moral and economic leadership aspirations for the country and world - cannot be based on the racist Scoping Plan.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Robert J. Apodaca", with a stylized flourish at the end.

Robert J. Apodaca

Cc: Jennifer Hernandez, Holland & Knight LLP

