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January 5, 2022

California Air Resources Board  
1001 I Street  
Sacramento, CA 95814

SUBMITTED ONLINE VIA:

[https://www.arb.ca.gov/lispub/comm2/bcsubform.php?listname=nwl-2021-scen-  
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Re: 2022 Scoping Plan Update – Natural and Working Lands Scenarios

Dear Members of the California Air Resources Board:

The California Building Industry Association (“CBIA”) is grateful for the opportunity to provide these comments on the Natural and Working Lands Scenarios (“Scenarios”).

CBIA is comprised of approximately 3,000 member companies employing more than 100,000 people who are dedicated to meet California’s housing needs. As Governor Newsom has repeatedly recognized, we have housing needs for all income levels of Californians that are far above our current production levels.

California homebuilders provide housing that has the lowest carbon footprint in the country. California’s building codes result in a new home that is more than 70% more energy efficient than a home built 20 years ago and 50% more efficient than homes built in other states. In addition, new California homes come with solar roofs and electric vehicle ready charging capabilities. Our water efficiency measures, both within and outside of homes also help reduce energy consumption as well as save water. The application of the California Environmental Quality Act results in new home projects that exceed all federal, state, regional and local environmental regulations. California’s new residential projects are more protective of the environment than anywhere else in the country. Moreover, our new master-planned communities have also produced projects that have net zero greenhouse gas emissions and have been proven to provide greater protection from wildfires than existing homes in the built environment.

CBIA generally agrees with the goal of using some of California’s natural and working lands to be managed to sequester carbon, provided that the proposal works through the voluntary permission of landowners, without intruding on local governments’ land use authority and that there is robust monitoring of the management activities. However, we are concerned that there is language used in the Scenarios for almost all the NWL Type Categories that appear to prohibit all or almost all land conversion.

According to the Natural and Working Lands Climate Smart Strategy, more than 93% of California is considered Natural and Working Lands. This comprises all of California that is not already developed. Some of that land will need to be used for new home communities.

California is comprised of approximately 100 million acres of land.<sup>1</sup> The amount of federal land in California is at least 45.5 million acres.<sup>2</sup> This figure understates total federal land, since they

<sup>1</sup> Total acreage in California is 100,206,720. Federal Land Ownership: Overview and Data, Updated February 21, 2020, p. 7. Congressional Research Service.

<sup>2</sup> *Ibid.*

do not include lands administered by federal agencies other than the Bureau of Land Management, the Forest Service, the Fish and Wildlife Service, the National Parks Service and the Department of Defense.<sup>3</sup> The State of California owns more than 2.2 million acres and more than 500,000 acres of California are Tribal Lands.<sup>4</sup> In total, publicly owned lands amount to at least 48.3 million acres or approximately 48% of California.

When it comes to agricultural production, 30 million acres are devoted to agricultural uses, of which more than 16 million acres are protected under the Williamson Act.<sup>5</sup> This represents another 30% of California.

Habitat for protected species also presents a constraint on land use. 17 million acres are designated as critical habitat under the federal Endangered Species Act and as such are off limits to development. Approximately half of this area (8.5 million acres) is located on privately-owned land. These designations apply to only 113 species. There are over 320 listed species in California. It is apparent that if critical habitat is designated for all listed species in California, much of the remaining area of California will be transformed into no-build zones. This takes another 8.5% of privately-owned land in California off the table for human habitation bringing the total thus far to 86% of California.

Conservation efforts established by Governor Newsom's EO N-82-20 would establish a scheme to conserve 30% (approximately 30 million acres) of California by 2030. This is expected to impose new conservation easements on at least another 8 million acres of California.

There are many other constraints on residential land use beyond those already mentioned but a partial list would include earthquakes zones, displacement and gentrification limits, Toxic Air Contaminant Hot Spots, floods, fire-prone areas, steep topography, wetlands, sea level rise, contaminated soils, vapor intrusion, water supply, urban growth boundaries, lack of infrastructure, high fees, affordable housing mandates, vehicle miles traveled mitigation, and the use of the California Environmental Quality Act by those who already have a home and the political unwillingness to address the abuse of California's landmark environmental law. The bottom line: there is no perfect place to build in California.

CBIA exists to meet the diversity of housing desires of all Californians. For those who want to live in high-density infill to those who want to live in an ex-urban master-planned community. **Clearly, to meet our housing needs, we will need to produce more of both.**

In 2005, the Department of Housing and Community Development produced a study, *The Future of Infill Housing in California: Opportunities, Potential, Feasibility and Demand*. It concluded that only 25% of California's housing needs can be met on infill sites. Most of the sites are refill, currently occupied, and provide housing to low-income residents. Development of these sites incurs relocation expenses for existing residents and raises gentrification issues. Very often, their current owners are not interested in selling. Many of these sites are in older

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<sup>3</sup> *Ibid.* Lands are administered by other agencies such as the Bureau of Reclamation and the Department of Energy.

<sup>4</sup> <https://www.nrcm.org/documents/publiclandownership.pdf> and <https://www.fs.fed.us/people/tribal/tribexd.pdf>

<sup>5</sup> California Department of Conservation, [https://www.conservation.ca.gov/dlrp/wa/Pages/LCA\\_QandA.aspx#:~:text=The%20California%20Land%20Conservation%20Act,protected%20under%20the%20Williamson%20Act.](https://www.conservation.ca.gov/dlrp/wa/Pages/LCA_QandA.aspx#:~:text=The%20California%20Land%20Conservation%20Act,protected%20under%20the%20Williamson%20Act.)

communities and existing infrastructure does not have sufficient capacity or the regulatory reforms in place to achieve this objective. Moreover, since the publication of this study, conditions have become worse through the loss of redevelopment agencies, the cost of general liability insurance is either unavailable or stratospherically expensive.

While this is not a complete list of all the obstacles to infill development (there are also obstacles to ex-urban projects), we felt it necessary to point out these obstacles to infill because the Scenarios give the impression that they intend to result in an infill-only approach to housing. This impression is fueled by prohibiting or limiting land conversion of areas that are not “settled”.

Accordingly, we respectfully request the following:

1. Please acknowledge that new residential or mixed-use projects (and associated uses) will be permitted in every category type;
2. Prioritize Natural and Working Lands (NWL) actions in the following order: federally owned land; state-owned land; critical habitat; agricultural land temporarily protected by a Williamson Act contract;
3. NWL actions (whether by acquisition, the imposition of conservation easements or other methods) on privately-owned land should always be carried out with the voluntary cooperation of the landowner;
4. NWL actions should be consistent with local land use plans and not impede the attainment of local governments’ housing needs;
5. Mitigate for the impact of increasing vehicle miles traveled caused by the preservation of the NWL actions that result in commuters driving around or through preserved areas; and
6. Monitor the NWL actions to ascertain whether they have achieved the carbon sequestration expected.

CBIA is grateful for the work of the Air Resources Board in helping California lead the way to carbon neutrality. California homebuilders have certainly demonstrated their commitment through master-planned communities, solar roofs, energy efficient homes, electric vehicle ready capabilities, water conservation measures and many other features incorporated into a new home. We look forward to continuing to work together on our common goal.

Thank you for your consideration.

Sincerely,

/s/

Nick Cammarota

Senior Vice President and General Counsel