



Comments On:

**Vibrant Communities and Landscapes – A Vision for California in 2050
- and -**

**Potential State-Level Strategies to Advance Sustainable, Equitable
Communities and Reduce Vehicle Miles of Travel (VMT) – for Discussion**



Comments on behalf of:

- California Building Industry Association
- California Association of Realtors
- California Business Properties Association
- California Business Roundtable
- California Chamber of Commerce
- Associated General Contractors of California
- Apartment Association of Greater Los Angeles
- Santa Barbara Rental Properties Association
- San Diego County Apartment Association

September 28, 2016

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"We can work together to break down rules that stand in the way of building new housing and that keep families from moving to growing, dynamic cities." – Barack Obama, President of the United States – remarks to the U.S. Conference of Mayors, January 21, 2016.

"Excessive barriers to housing development result in increasing drag on national economic growth and exacerbate income inequality." -- Housing Development Toolkit, The White House, September 2016.

"California has a serious housing shortage. California's housing costs, consequently, have been rising rapidly for decades. These high housing costs make it difficult for many Californians to find housing that is affordable and that meets their needs ..."

"... we suggest policy makers primarily focus on expanding efforts to encourage private housing development. Doing so will require policymakers to revisit long-standing policies on local governance and environmental protection ..." – Perspectives on Helping Low-Income Californians Afford Housing. California Legislative Analyst, February 9, 2016.

"We live in a regulatory state with ... thousands of new regulations annually. Most regulations ... are like a boulder in a strong-flowing river. Throw in one and the river finds ways around it. But throw in a thousand boulders and the river's flow slows considerably." – Can U.S. Presidents Much Affect the U.S. Economy? David Henderson, Library of Economics & Liberty, September 2016.

In the closing days of the 2016 legislative session, AB 197 a companion measure to SB 32 was approved creating the *Joint Legislative Committee on Climate Policies* with the stated purpose of increasing transparency and legislative oversight of state regulators. Fifteen days later, with the Legislature adjourned for the year, eight state agencies with little notice posted a "Land Use White Paper" on the ARB website, held a workshop the following day and subsequently allowed a short thirteen days for public comment. Thirteen days is hardly sufficient comment time for such sweeping proposals. Concurrently, a companion "discussion" document on vehicle miles travelled (VMT) was released with no identified agency or author noted --- also subject to the thirteen day comment deadline.

Collectively, the aforementioned documents fail to provide a clear picture of exactly what regulatory force the "visions," "sets of action," or "strategies" carry or what authority a state agency would have to implement them or whether they will be required to follow standard

rulemaking processes. The *Foreward* [sic] to the Vibrant Communities document notes that eight state agencies collaborated in a shared desire to "better consider" land use in achieving the state's climate change goals and to influence actions at all levels of government. Clearly, with these new regulations the intent is for the state to advance even more land use and transportation policies to fortify what are already acknowledged as the most aggressive and far-reaching climate change policies anywhere.

With this in mind we offer the following comments:

Vibrant Communities - Visions

Land is protected, managed, and developed in a manner that maximizes resilient carbon storage, food security, and other ecological, economic, and health objectives.

Envisioning communities and landscapes through any single filter in a state as large and diverse as California is both unwise and dangerous. The vision needs to demonstrate appropriate balance by acknowledging and committing to provide for the fiscal resiliency of cities and counties; to plan realistically for future growth; to fully meet the state's short and long-term housing needs; to provide a full-range of transportation options; and to avoid throwing unnecessary new regulatory boulders in the path of a growing population.

New development and infrastructure are built primarily in locations with existing infrastructure, services, and amenities (i.e., previously-developed locations), rather than greenfield locations.

Depending upon how the state intends to implement this vision, it appears to run up against a century-plus of constitutionally-protected "home rule" authority of cities and counties to make laws and control matters involving their municipal affairs. It also appears to be in conflict with SB 375 which specifically acknowledges that cities and counties maintain their existing authority over local planning and land-use decisions. State action that intrudes on local authority to accomplish the above vision is unwise and potentially polarizing because one-size-does-not-fit-all and would likely produce even greater levels of displacement and adverse environmental impacts. SB 375's Sustainable Communities Strategy (SCS) requires that the SCS must accommodate the full-range of housing needs by identifying sites throughout the diversity of the region over an eight year regional housing needs assessment (RHNA). Restricting new development to "infill only" in previously-developed locations is tantamount to favoring alternative planning scenarios that are uniformly acknowledged to adversely impact existing communities, restrict local land use authority, and impede job and population growth.¹ An "infill only" approach presents conflicts with other vision goals (for example - healthy communities, social equity, affordable housing, and outdoor recreational activities) and infill sites are typically the unhealthiest due to proximity to toxic air contaminants and toxic soils. It

¹ In the 9-County Bay Area, a recent analysis by the Metropolitan Transportation Commission (MTC) shows that without major state level CEQA reform, local government finance, excessive development fees and exactions, and local planning and zoning entitlement reform only 70% of the roughly 615,000 new units planned for the region's density-driven Priority Development Areas (PDAs) will be feasible during the 2040 planning period. Even with the reforms (noted above) the maximum feasibility figure gets to 87%. (<http://mtc.ca.gov/sites/default/files/PDA%20Update%20Final.pdf>)

also works against efforts to combat the urban heat island effects of climate change as well as efforts to mitigate those effects like urban forest initiatives.

Increasing density does not necessarily translate into lower costs for housing production. Costs go up exponentially as heights increase above two stories. For example, an eight-story housing project can cost 5-7 times that of a two-story home because taller buildings require more expensive engineering, building materials and labor.²

The value of ecosystem services conferred by natural systems are accounted for and included in State, local and regional planning and investment decisions, resulting in protection of these services and California's globally significant biodiversity.

"Ecosystem services" is a scholastic notion envisioning a taxation scheme requiring payments to support public and private "natural systems" in exchange for the privilege of occupying urbanized and agricultural areas. The closest California has come to this is the voluntary Williamson Act land conservation program that saw state subventions effectively eliminated in the 2010-11 budget.

Vibrant Communities - Actions

Establish land conservation targets: The state will develop quantitative and achievable goals to protect and limit the conversion of the State's most productive farmland, rangeland, and forests, as well as the natural and working lands most critical to preserving California's biodiversity and the ability for Californians to adapt to climate impacts.

This appears to pose a potential conflict with the local land use authority of cities and counties as well as their land use planning and governance rights and responsibilities under SB 375. According to the law, statewide land conservation "targets" would need either specific legislative, statutory authority or direct voter approval. We also note that for decades California has failed to meet its housing targets. Better to focus on meeting existing targets before taking on new, additional ones.

Of California's 101 million acres, only about 5 percent or 5.3 million acres are occupied by our existing population. Fifty (50) million acres are in federal, state or tribal ownership and are not readily available for private use. Agriculture accounts for 25.5 million acres.⁵

Update regional greenhouse gas reduction targets to achieve 2030 and 2050 greenhouse gas emission reduction targets: The State will work with local and regional governments

² Bay Area Housing Cost Comparison (May 8, 2015 presentation to MTC Planning Committee/ABAG Administrative Committee by J. Fearrn, D. Pinkston, N. Arenson).

³ Additionally, under the Federal Endangered Species Act, 20,040,250 acres are currently designated as critical habitat (no development) in California. Excluding overlapping designations, over 17 million acres, or approximately 17 percent of the land total of California is designated as critical habitat for one or more species. The actual area impacted by the designations is much larger and extends to at least 25 percent or more of the total land area of the state. These designations apply to 113 species. There are over 320 listed species in California. It is apparent that if critical habitat is designated for all listed species in the state, much of California itself could be designated as critical habitat.

to develop stronger GhG emission reduction targets for regional sustainable community strategies under SB 375 and identify opportunities to strengthen implementation success.

SB 32 establishes a statutory reduction limit for 2030. There is no statutory mandate for 2050 as it was expressly rejected by the Legislature in the negotiations involving SB 32. A key reason for the rejection is there is no existing plan, pathway or credible analysis of how the 2050 limitation target can be feasibly achieved given the existing state of research and development or technology and innovation -- and cost. Notably, SB 375 does not reference or authorize implementation of non-statutory GhG reduction mandates. Although executive orders establish goals beyond 2030, the authority of an executive order does not extend to the private sector. This is an issue the Joint Legislative Committee on Climate Change Policies should look into immediately.

Explore and develop financing, regulatory, and other tools to support more efficient and more equitable development.

As noted in a recent LAO report,⁴ housing in California is so expensive because the private markets are producing less than the growing population base, household formation, and job creation demand. Just this week, the New York Times reported that more jobs have been created in Los Angeles than new housing, forcing many out of the city as rents are now unaffordable for even the upper middle-class.⁵ Key factors that limit supply are the high cost and (un)availability of land with suitable zoning, the absence of financing for necessary infrastructure and services, labor shortages, the risk associated with environmental litigation and CEQA lawsuits, a higher incidence of construction defect litigation, and the high cost of the regulatory and land use entitlement processes. We know this for a fact and have known it for quite some time. Unfortunately, the "actions" specified in the document, e.g., *exploring, evaluating and developing* tools while well-meaning are simply peradventure in nature. They talk around the issues but fail to get to the point.

Vehicle Miles Traveled (VMT)

The VMT discussion paper postulates that "California must reduce vehicle miles traveled" and that "strategies to reduce VMT are essential to ensuring both environmental quality and a high quality of life for the future of California." With this as background the draft identifies strategies for the state to pursue to achieve further VMT reductions.

We offer the following comments:

We begin with what is not stated in the document. Missing is any state agency acknowledgement, support or strategy to improve our system of highways, streets and roads, and transit operations. Missing is an acknowledgement of the need to implement congestion relief and goods movement projects across California that have been approved by voters, are consistent with federal, state, regional and local plans and programs, and that comply with the

⁴ *California's High Housing Costs and Consequences*, California Legislative Analyst, March 17, 2015, <http://www.lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.odf>

⁵ California Today: "Sticker shock" in Los Angeles Housing, New York Times, September 27, 2016.

state's legislatively-enacted GhG reduction targets. The Los Angeles region, for example, has some of the worst congestion in the country. Reducing congestion there is a critical component of the region's transportation and air quality plan. A significant part of the LA regional economy is dependent on the movement of goods and represents a (dwindling) middle-class-income employment opportunity. Clearly, state strategies should balance economic and congestion-relief with VMT reduction. The draft should acknowledge this fact and provide that necessary balance.

Efficient & Equitable Development Tools

The “tools” to increase infill development and achieve land use changes necessary for longer-term VMT reduction include, among others:

- Promotion of urban growth boundaries (UGBs);
- Transfer of development rights from natural and working lands;
- Establishing transit corridor financing districts;
- Promotion of reduced parking;
- Creative financing mechanisms to enhance the viability of infill development;

A number of these ideas, though well-meaning, tend to be shapeless and speculative and difficult to comment on. Some, however, like urban growth boundaries are better documented and understood.⁶

Promote and strengthen Urban Growth Boundaries to promote infill development and conserve natural and working lands ... by defining and limiting developable land within a metropolitan area according to projected growth needs.

Intended or not, a broad-adoption of urban growth boundaries (UGBs) would significantly and negatively affect the ability of the state and its municipalities to accommodate projected future housing development. Moreover, UGBs increase housing costs inside the boundary pricing many people out which in turn *increases VMT and GhG emissions.*⁷ At its core, a decision to implement an UGB is arbitrary.

It is not based on the physical capabilities of the land to support development but rather on a set of political decisions and capricious accommodations about growth. In describing the UGB scheme adopted in Ventura County, a commenter recently noted:

In practice, this {UGB} has made the kingdom a mighty fortress. Those sprawling suburban housing developments that fill up the San Fernando Valley to the east and the Santa Clarita

⁶ These proposals are essentially land use strategies and as such the document should, as noted in the foreword to the Vibrant Communities and Landscapes document, recognize that they are the domain of local governments and that this document does not suggest that they be removed from local government authority.

⁷ “Faced with expensive housing options, workers in California’s coastal communities commute 10 percent further each day than commuters elsewhere.” *California’s High Housing Costs and Consequences*, California Legislative Analyst, March 17, 2015. See also, *A Line In the Land: Urban Growth Boundaries, Smart Growth and Housing Affordability*. Staley, et al. See also *Property Values 11 Times Higher Across Portland’s Urban Growth Boundary*. Wendell Cox, 2010.

*Valley to the North? They stop at the county's edge. It's almost as if Ventura County has built a wall against growth along its border – and made neighboring Los Angeles pay for it.*⁸

The notion that California's future housing needs can be met through infill development within artificially-drawn UGBs is a fantasy.

According to well-documented sources,⁹ California needs to build 3.5 million housing units by the year 2025, but current construction rates will only produce 1 million units --- leaving a 2.5 million unit supply gap. This raises the question: Can dense infill alone accommodate anticipated future housing needs?

In 2006, the Department of Housing and Community Development produced a study¹⁰ concluding that, at best, only 25% of California's housing future housing need can feasibly be met on infill sites.

We hasten to add that since the release of that study the regulatory environment for infill in California has not gotten any better. In fact, it has regressed. A comprehensive analysis of CEQA lawsuits filed over the three-year period of 2010-2012¹¹ reveal that the most frequent targets of CEQA lawsuits are projects designed to advance environmental policy objectives such as residential infill development in established communities and public infrastructure transit projects.

Though some state legislative attempts have recently been made to advance modest, by-right streamlining of infill development, little success has been realized. It will take more than good intentions to make infill development more viable. Until that time, it is unrealistic to expect infill development to provide more than a fraction of the need.

A quick word on the costs of infill

High-density infill projects are costly to construct and typically require strong housing markets because of the requirement to pre-sell or rent significant percentages of the units soon after completion of construction. The presence of toxics in the soil of many infill sites and increased risk of construction defect litigation also add to the cost and delay of building infill projects. Infill sites are small and builders and local governments have recently lost a significant tool – redevelopment – to facilitate land assemblage and financing. According the state's LAO, "Housing in California has long been more expensive than most of the rest of the country. Between 1970 and 1980, California home prices went from 30 percent above U.S. levels to more than 80 percent higher. This trend has continued. Today, an average California home costs \$440,000 {note; the most recent figure from the LA Times pegs the average home price in the state at \$446,900}. Also, California's average monthly rent is about \$1,240, fifty percent higher than the rest of the country."

⁸ Joe Matthews, August 11, 2016.

⁹ US Census, Moody's Analytics, McKinsey Global Institute analysis

¹⁰ *The Future of Infill Housing in California: Opportunities, Potential, Feasibility and Demand*. University of Pennsylvania, 1-1-2006, Landis et al.

¹¹ *In The Name Of The Environment*. Holland & Knight. Hernandez, Friedman and DeHerrera (2015). Also see the 2016 update chronicling CEQA lawsuits in the Southern California Association of Governments region for the years 2013-2015. To wit: The largest targets of CEQA actions were residential projects.

Because UGBs arbitrarily limit the availability of land to accommodate projected growth needs, do not contain the entitlement streamlining measures necessary to ensure project approvals and significantly drive up the cost of housing they significantly favor higher-income buyers, exacerbate the gap between the haves and the have-nots and promote economic segregation.¹² Bottom line: They do not produce either equitable or practical outcomes.

Pricing Policies

[P]ricing strategies can present cost savings for many drivers, while helping to ensure that infrastructure is appropriately and adequately maintained and promoting use of transportation alternatives.

Using congestion pricing and market-based strategies as tools to address traffic congestion -- including mileage-based strategies as an alternative to the existing gasoline tax -- allowing the operator/consumer to manage demand and limit congestion are ideas that are well-worth exploring. In general, that those who use the transportation facilities should pay for them; negative effects should be dealt with in a cost-efficient manner; and new technologies that increase mobility at low cost should be embraced.

To the extent that cost-burdens impact low-income and disadvantaged communities, one way to address this social welfare concern is to ensure that users have several price choices accounting for a variety of service levels.

The existing housing stock in California is 14 million homes. We are adding about .007% (98,000) in new homes per year. The principle of equity should also apply to whatever VMT regime CARB comes up with so that the existing housing supply is subject to the same rules as new residents of a community. For these reasons we believe that pricing strategies are the most equitable approach and may encourage existing residents who live farther from their jobs to relocate closer in.

Conclusion

In light of the substantial impact the strategies, visions, and actions identified in the dual documents could have on the ability to meet our housing supply and affordability needs, on locally approved transportation financing measures, on the cost and delivery of transportation projects and on the balance between local control and state governance, we strongly encourage you to withdraw the Land Use White Paper and the companion VMT “discussion” document and defer all further action until the Joint Legislative Committee on Climate Change Policies has had the opportunity to be organized, fully briefed and hold Legislative oversight hearings on these proposed new policies.

Thank you for the opportunity to offer these comments.

¹² See U.S. Supreme Court ruling upholding the application of “disparate impact” under the U.S. Fair Housing Act. *Texas Department of Housing & Community Affairs v. The Inclusive Communities Project, Inc.*