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September 28, 2016

California Air Resources Board  
Sacramento, California  
Submitted electronically to scoplan2030trnspt-ws

Governor's Office of Planning and Research  
Sacramento, California  
Submitted electronically to ca.50m@opr.ca.gov

Re: Comments Concerning the Eight-Agency Draft "Vibrant Communities and  
Landscapes" Document

To whom it may concern:

On behalf of the Southern California Leadership Council and the undersigned group of partner organizations, we thank you for the opportunity to review and comment on the draft "Vibrant Communities and Landscapes" ("Vibrant Communities") document that was released by the California Air Resources Board (ARB) and seven other state agencies. Our group is comprised of leading Southern California business and industry organizations. Each of our organizations appreciates the regulatory challenges faced by the California Air Resources Board (ARB), Governor's Office of Planning and Research (OPR) and the other agencies involved. As we bring the issues set forth below to your attention for consideration, we look forward to being helpfully involved going forward.

Our organizations are particularly focused on assuring that steady progress is made toward achieving reasonable regulatory goals while avoiding unnecessary negative economic and societal impacts. In particular, we share the aim for air quality attainment and greenhouse gases (GHG) reductions; but we do so in light of the ongoing need to more fully and successfully provide employment and housing for the Southern California region's growing population. Our organizations will continue to work with the agencies and other stakeholders to assure that sound science and economic analyses are met with equally sound regulatory policies as we pursue our shared aims.

Given this backdrop, we respectfully submit the following comments at this time:

- I. The Vibrant Communities document, if approved and put into effect, would constitute a radical departure from existing policies concerning land use – and, as such, should not be considered without a far more robust stakeholder and public input process and – given the legislative policy and constitutional implications – the direct involvement of the State Legislature itself.**

First, we object to the quiet release of such a significant policy document in which the public is given only two weeks to respond. The proposals that are presented in this document constitute radical and profound policy shifts that are unprecedented. None of the concepts have been tested in practice, and there is no evidence to support the effectiveness or practicality of the proposals. The ideas are presented as settled fact, without even any mention of more acceptable alternatives or contradictory studies and views, of which there are many. By providing only a two-week comment period, the state agencies involved leave the impression that they are not interested in conducting a meaningful public input process around this proposal.

The policy proposal set forth in the Vibrant Communities document conflicts with and undermines many longstanding legislative policies, including most especially the Legislature's respect for the prerogatives of local government concerning land use planning and approvals. We feel strongly that – concerning a matter of this magnitude – the executive branch agencies involved need to defer to the Legislature, whose fundamental role it is to determine the policy direction for our state.

- II. The proposed use of VMT constriction as the “be all and end all” regulatory goal wrongly assumes that vehicular mobility is – in and of itself – a significant environmental impact. Instead, VMT is a measurement of *mobility*, which is a highly beneficial human activity, and one that can and should be fostered and appreciated, with its incidental impacts reasonably mitigated.**

The Vibrant Communities proposal expressly aims to curtail vehicular mobility, measured as vehicle miles traveled, or “VMT.” Simply put, VMT is not a measure of an ill to be cured. It is instead a measure of a beneficial human activity and accomplishment. Mobility, much like “utility” or even freedom, is a good thing, not an evil or a wrong – and certainly not an environmental impact in and of itself.

Mobility is also critical to a strong economy. The ability to quickly and efficiently move goods to market, raw materials to manufacturers, products and containers to ports, students to

schools, and people to their jobs are all examples of important and needed activities in a vibrant economy.

That vehicular mobility is a good thing, not a bad thing, should also be obvious to everyone who appreciates the privilege of driving where they wish (or urgently need) to travel, and the freedom and great utility that mobility brings. This is not to say that vehicular mobility must be accommodated everywhere or without evenhanded regulation, or that vehicular mobility does not need to be well planned, managed and reasonably mitigated. Of course, it should be. Especially where populations are growing, tempering the centrifugal growth of per capita VMT is a worthy societal goal.

That said, the Vibrant Communities document ignores the fact that vehicular mobility is indeed beneficial in nature. *The proposal conflates mobility with its incidental externalities while overlooking the clear fact that strides are already being made to curtail the environmental impacts of each vehicle mile traveled.* In particular, GHG emissions have been dropping steadily on a per-vehicle-mile-traveled basis due to ongoing and promising changes in vehicle fleet efficiency and fuels. Plug-in hybrid, electric, natural gas and other new and rapidly improving technologies promise to increase vehicle efficiency severalfold in the years ahead, with concomitant reductions in GHG emissions. Indeed, whereas the Vibrant Communities proposal assails VMT in and of itself, steady fleet and fuel changes – undertaken gradually and over a reasonable time frame – should allow our society to accommodate moderate increases in annual aggregate VMT given projected population growth and needed economic vitality and growth.<sup>1</sup>

### **III. The Vibrant Communities document's singular focus on VMT undercuts the constitutional right to travel and mobility.**

The Vibrant Communities proposal reflects an attitude toward mobility and VMT that is impossible to square against our nation's and the state's longstanding appreciation of individuals' freedom to travel and indeed roam about, which is a fundamental aspect of liberty. The Supreme

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<sup>1</sup> See K. Leotta & C. Burbank, *One Percent [Annual] VMT Growth or Less to Meet Greenhouse Gas Emissions Reduction Goals* (2009). Their study concludes that an ambitious 2050 GHG emissions reduction goals can be achieved consistent with a moderate one percent annual increase in aggregate VMT – specifically if emissions per VMT can be decreased on average by roughly 72 percent over the 45-year projection period (2005-2050). Notably, the combination of California's standards aggressively rigorous for automobile emissions and the accelerating adoption of electric vehicles, natural gas and plug-in electric hybrid vehicles suggest that California is certainly well on the way to achieving such an outcome by greatly reducing GHG emissions per vehicle mile traveled.

Court of the United States (SCOTUS) and California's courts have long recognized the freedom of movement to be a constitutionally-protect individual right. Longer than a century ago and ever since, SCOTUS has recognized each individual's constitutional right to travel and roam about the states and nation. California's courts have similarly recognized both a federal and state constitutional right for individual citizens to move at will within, about and through California. Federal and State judicial pronouncements make it clear that the freedom to move about, the right to travel and roam, and mobility itself all comprise important rights of all Californians and all of our nation's citizens. Accordingly, the executive branch agencies should not be mandating that California's citizenry and all of its local governments must substantially constrict and contract mobility and VMT by arbitrary degrees, certainly not if the state's legitimate interests like those concerning GHG emissions goal can be accommodated in other, less offensive ways.

**IV. The Vibrant Communities document's emphasis on VMT restrictions in land use decision-making undercuts the constitutionally recognized role and primacy of local governments in determining land uses.**

The Vibrant Communities proposal overlooks the fact that our nation's history, our customs, and the California Constitution all work to protect the powers of local governments to control the land uses within their respective jurisdictions. All across the nation, the courts have long appreciated the vital importance of local control of land use. As SCOTUS justices have opined:

Without stable neighborhoods, both residential and commercial, large sections of a modern city quickly can deteriorate into an urban jungle with tragic consequences to social, environmental, and economic values. .... [I]t also is undeniable that zoning ... is perhaps "the most essential function performed by local government, for it is one of the primary means by which we protect that sometimes difficult to define concept of quality of life."<sup>2</sup>

Moreover, all state regulatory agencies are statutorily directed to conform their work to the principle that local governments are the primary decision makers concerning local land uses. See Cal. Government Code § 65030.1 ("[D]ecisions involving future growth of the state, most of which are made and will continue to be made at the local level, should be guided by an effective planning process, including the local general plan....").

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<sup>2</sup> *Young v. American Mini Theatres, Inc.*, 427 U.S. 50, 80 (1976) (Powell, J., concurring), quoting *Village of Belle Terre v. Boraas*, 416 U.S. 1, 13 (1974) (Marshall, J., dissenting).

The California Supreme Court has recognized clearly that local governments should control the uses of land within their respective jurisdictions pursuant to Article XI, Section 7 of the California Constitution, and ruled that the courts should read all state statutes as consistent with this principle unless the Legislature has departed from it in very clear terms. As the California Supreme Court recently opined in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, 56 Cal.4<sup>th</sup> 729, 737 (2013) (internal citations and quotations omitted):

[A] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws. (Cal. Constitution, art. XI, § 7.) Land use regulation in California historically has been a function of local government under the grant of police power contained in article XI, section 7. We have recognized that a city's or county's power to control its own land use decisions derives from this inherent police power, not from the delegation of authority by the state. Consistent with this principle, when local government regulates in an area over which it traditionally has exercised control, such as the location of particular land uses, California courts will presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is *not* preempted by state statute.

The Vibrant Communities proposal simply ignores these legal principles by championing positions that radically impinge on local control of land uses. Certainly, if the Legislature were to intend to alter land use and transportation planning throughout the entire state so drastically as to render local control of land use essentially fictional, then the Legislature would do so in very clear and carefully considered terms.

**V. The Vibrant Communities proposal's focus on the 2050 GHG goal has no Legislative authorization, and conflicts with prerogatives that the Legislature has deliberately exercised.**

There is no legislative authority for the Vibrant Communities proposal specifically as it relates imposing an 80% reduction in statewide GHG emissions from 1990 levels by the year 2050. The California Legislature deliberately declined to codify such 80% GHG emissions reduction for 2050 in the recently enacted SB 32 (Pavley). Notwithstanding the Legislature's forbearance, the agencies that are proposing the Vibrant Communities proposal have made the 2050 target the underlying premise and central goal of the entire proposal. Here again, the executive branch agencies should not be sweepingly upsetting and resetting state Legislative policies on their own. To do so seems clearly defiant of the discretion just exercised by the Legislature.

**VI. The Vibrant Communities proposal does not consider the economic implications of its proposed policies.**

The Vibrant Communities proposal contains no mention or analysis of competing state policies and priorities such as implications for affordable housing, job creation/retention, or actual, necessary mobility – which the proposal aims to significantly reduce. For example, the policy of deliberate, overly centripetal “densification” in urban centers – as reflected in this document – will limit new housing construction and redevelopment to only the most expensive of all options. There is no reason to impose such costs and restrictions in a state that already has the costliest housing in the nation.

Although the Vibrant Communities document states on several occasions that its strategies will help the state achieve a multitude of goals, including its economic goals, it provides little evidence of how its approach to future land use planning will help achieve economic growth, job creation and/or housing affordability. Given the potential socio-economic impacts of this proposal upon our state, we would expect that greater care would be put toward proper analysis of these implications before moving forward with a proposal of this magnitude.

**VII. The Vibrant Communities proposal reflects no respect for existing short, medium and long-range plans for infrastructure or hard-fought land use visions.**

Finally, the Vibrant Communities document appears to be an attempt to undermine already enacted, voter-approved transportation projects in favor of state approved projects that will limit vehicle mobility and instead strongly favor – if not exclusively permit – bicycle, bus and transit options on future transportation plans. Voters throughout the state have already voted to tax themselves to support highway expansion in addition to bicycle, bus and transit improvements. The Vibrant Communities proposal should not be used as a vehicle to overturn those voter-approved plans.

Likewise, our state's Metropolitan Planning Organizations (MPOs) such as the Southern California Association of Governments (SCAG), the San Diego Association of Governments (SANDAG) and others have devoted years of effort and thousands of hours of stakeholder engagement in the development of their Regional Transportation Plans and Sustainable Communities Strategy (RTP/SCS). As you know, these long-range plans contain a twenty-plus year vision of integrated land use planning and are statutorily required under SB 375 and updated every four years. Here too, the Vibrant Communities proposal should not be used as a vehicle to

undercut these MPO adopted plans which so carefully reflect the specific needs and priorities of their constituents and their region.

### **Conclusion**

In consideration of our above comments, we respectfully request that ARB, OPR and the other signatory agencies:

- Immediately withdraw the policies proposed in the Vibrant Communities and Landscape document.
- Commit to obtaining Legislative authorization prior to taking any agency action in furtherance of the non-statutory 80% GHG reduction target in any sector.
- Commit to engage in formal rulemaking prior to proposing or adopting any plan, policy, or regulation that modifies existing regional GHG reduction targets established under SB 375 in the land use and transportation sectors.
- Commit to use all available state resources and authority to assure the timely completion of transportation and infrastructure improvement projects approved by California voters, as well as transportation and land use plans and policies approved by local and regional agencies, that are consistent with the state's approved SB 375 GHG reduction targets and Sustainable Communities Strategies.
- Refrain from applying any new state policy, plan or regulation that would increase costs or increase regulatory obligations, burdens or risks to voter-approved and SB 375 compliant transportation and infrastructure projects.
- A commitment to fully disclose and analyze the social, equity, economic, employment, and global (not just California) GHG consequences, to complete a comprehensive environmental impact report under CEQA, and to seek express Legislative authorization, prior to taking any action to modify any regional SB 375 targets or otherwise adopting any policy, plan or regulation that would increase the compliance costs, litigation risk, or cause any further delay, in the implementation of SB 375-plan compliant projects, policies and plans.

As is made clear in this comment letter, the organizations that are signatories here to have great concern with the Vibrant Communities document. With that in mind, we respectfully ask for your sincere consideration of our comments, recommendations and requests. We welcome the opportunity to meet with you and further discuss these issues and we look forward to continuing to work with you for the betterment of our state and region.

Respectfully submitted,



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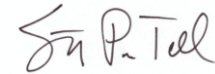
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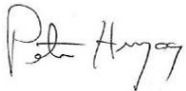
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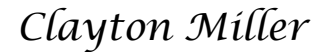
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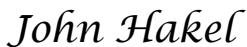
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California Air Resources Board  
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