

June 10, 2011

Orange County Council of Governments
Orange County Transportation Authority
Joint SCS Working Group
550 S. Main Street, Orange, CA 92863

Attn: David Simpson, OC SCS Project Manager

Comments of Building Industry Association of Southern California, Inc. and its Orange County Chapter Concerning the Draft Sub-Regional Orange County Sustainable Communities Strategy.

Ladies and Gentlemen:

Both the Building Industry Association of Southern California, Inc. (“BIASC”) and its Orange County Chapter welcome this opportunity to comment on the above-referenced draft sub-regional Orange County Sustainable Communities Strategy (the “OC SCS”). BIASC has a great interest in the implementation of SB 375, as the trade association that represents more than 1,000 member companies who participate in the building of new communities and homes throughout Southern California. Naturally, the Orange County Chapter of BIASC is keenly interested in the OC SCS, in light of the Chapter’s close relationship with all of the jurisdictions within Orange County concerning issues affecting housing production and housing supply.

BIASC applauds the fact that the Orange County stakeholders took advantage of the opportunity to prepare its own sub-regional SCS. BIASC recognizes that all of the local governments within Orange County have very strong community planning efforts; and – as a whole – Orange County is a model county. It makes great sense, therefore, that the Orange County stakeholders would wish to assure that the eventual regional SCS for the entire six-county region covered by the Southern California Association of Governments (“SCAG”) reflects the Orange County stakeholders’ vision of their own future.

We also understand that the OC SCS is a faithful reflection of the current general plans of the Orange County jurisdictions, albeit updated where appropriate to reflect the jurisdictions’ most current outlooks and visions. BIASC views this, as well, to be basically good, given our view that local governments have the best grasps of how they should adapt and improve over time. However, we also have concerns about the OC SCS, most of which relate to how SB 375 will seemingly operate after adoption of any regional SCS, and – in particular – the potential unintended consequences of SB 375 in terms of its impacts in conjunction with operations of the California Environmental Quality Act (“CEQA”).



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We understand that the OC SCS incorporates by reference the details (e.g., underlying land use designations and densities) from existing general plans; and it therefore reflects a very high level of prescription of designated land uses, densities and building intensities. Our understanding is that the level of high prescription in the OC SCS was intended to assure that ultimately the pending regional SCS will mirror the Orange County local jurisdictions' current planning outlooks.

Although this desire – to have a level of prescription in the eventual regional SCS which mirrors today's local outlooks – is understandable, we believe that having too high a level of prescription in the ultimate SCS is neither (i) advantageous to the local jurisdictions, nor (i) necessary to protect local governments' land use prerogatives.

Specifically, we appreciate that the local jurisdictions in Orange County would not want to contradict or frustrate their current land use plans. Insistence upon a regional SCS that precisely reflects current local plans would, if it is faithfully incorporated into a regional SCS, preclude the regional SCS from contradicting or frustration current planning outlooks.

As noted, however, we believe that too much prescription in the eventual regional SCS would not be advantageous. We believe this because there appears to be no ready way to amend an SCS more frequently than once every four years. (As written and on the books, SB 375 affords the California Air Resources Board the power to approve an SCS no more frequently than that.) Therefore, if and to the extent that any of the Orange County local governments may want to amend their own current plans for any reason in the several years following approval of an SCS, then having too high a level of prescription in the SCS will – at that time – work to frustrate and contradict the wishes of local government. Therefore, too much prescription in the SCS works against the local governments' prerogatives, particularly their prerogative to amend general plans from time to time in response to meritorious proposals that are not yet in view.

Any inconsistency between a local general plan and an approved SCS has its greatest consequence not to local governments, but instead to project proponents. In other words, too much prescription in an SCS will mostly impact projects applicants – like the BIASC's members who seek to enhance communities consistent with local approvals. Specifically, SB 375 put in place California Public Resources Code § 21159.28, which provides a differential CEQA benefit to all residential and mixed-use residential projects that are consistent with an approved SCS. Necessarily, therefore, § 21159.28 imposes a relative CEQA detriment upon all residential and mixed use projects that are inconsistent with an approved SCS (again, in terms of land use designation, density, building intensities or any other related policies).

Inconsistency with an approved SCS is thus harmful to project applicants and to the economics of otherwise meritorious and locally-desired projects. A problem arises when a project applicant and a local lead agency agree upon the need for a general plan amendment – however small or substantial – which would result in the project being inconsistent with the

approved SCS. In such a situation, the effects of SB 375 and Public Resources Code § 21159.28 would make the project less feasible and could render desired residential and mixed-use residential projects infeasible and thus abandoned. Given the need to revitalize our ailing economy, virtually every marginal burden is too harmful.

This brings us to BIASC's opinion that a very high level of definition and prescription in the SCS is not only disadvantageous; it is also unnecessary. Local jurisdictions are *not* required to amend their general plans to conform to an approved SCS if the SCS departs from their general plans. Therefore, if and to the extent that an SCS were to diverge from the prescriptions of a given local jurisdiction's general plan, the local jurisdiction could simply adhere to the level of prescription in its general plan (i.e., notwithstanding that the SCS differs). As a consequence, each local jurisdiction maintains control of the development within it.

What is needed to provide the greatest advantage to local government and builders, therefore, is to make sure that the SCS is significantly *more* flexible and accommodating than the local governments' *current* general plans and outlooks. This is needed because the SCS – which apparently cannot be readily amended but every four years – can accommodate not only the local governments' current general plans and outlooks, but also the kinds of general plan amendments that, foreseeably, might become desirable in the near-term. Accordingly, BIASC believes that ***the SCS should be less prescriptive and more accommodating than current local general plans and any presently foreseeable changes.***

The following very simplified example may help to illustrate BIASC's concern:

Assume that a city's general plan has a density designation of 8-12 net units per acre for a particular area of the city. If the OC SCS incorporates this density range by reference (so that the OC SCS has the same high level of prescription for the same area), then a residential or mixed use residential project could receive the CEQA benefits provided pursuant to Public Resources Code § 21159.28 only if the project were approved and constructed within that range of 8-12 units per acre.

If, however, the SCS had a somewhat *broader* range of density potential for the same region (assume 5-15 net units per acre), then the city could *choose* to amend its general plan to fall anywhere within such a larger range without creating an inconsistency between (i) the general plan amendment and the project approved pursuant thereto, and (ii) the SCS, which must remain in place for four years. Having relatively greater breadth and leeway in the SCS therefore would both permit local governments to control their community development and afford local governments the flexibility to amend their plans without creating a CEQA detriment.

BIASC believes that all of the local governments in Orange County should share BIASC's concerns. Of course, it is impossible, given the fast-moving SCS process, for the OC SCS to be reshaped following a detailed re-analysis of the underlying general plans that are

incorporated by reference into the proposed OC SCS. Therefore, BIASC recommends that the basic concern might be addressed more conceptually and perhaps through narrative.

In addition, BIASC continues to monitor the ongoing work of SCAG as SCAG undertakes the difficult task of assembling the regional SCS for proposal to the California Air Resources Board. BIASC will continue to provide appropriate comment to SCAG as its work and work products unfold. BIASC and its Orange County Chapter would welcome the cooperation of all of the Orange County stakeholders as the regional SCS is pulled together. To that end, we respectfully ask the OC SCS Technical Advisory Committee to consider helping BIASC to assure that the regional SCS will ultimately be flexible enough to accommodate the range of likely general plan amendments that might foreseeably be possible. Specifically, we seek your help in assuring that the ultimate regional SCS will be somewhat more flexible than the current land use plans that are incorporated by reference into the OC SCS.

Thank you for your consideration of these comments. BIASC and its Orange County Chapter look forward to working with all stakeholders on the challenges ahead.

Very truly yours,



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