

March 23, 2023

The Honorable Christopher Ward  
California State Assembly  
1021 O St.  
Ste. 8320  
Sacramento, CA 95814

**SUBJECT: AB 68 (WARD) LAND USE: STREAMLINED HOUSING APPROVALS: DENSITY, SUBDIVISION, AND UTILITY APPROVALS SCHEDULED FOR HEARING – TBD OPPOSE/JOB KILLER – AS AMENDED MARCH 16, 2023**

Dear Assemblymember Ward:

The California Chamber of Commerce and California Building Industry Association respectfully **OPPOSE** your **AB 68**, which the CalChamber has labeled as a **JOB KILLER** and CBIA has labeled a **HOUSING KILLER**, because the bill proposes to strip local governments of their land-use authority by permanently prohibiting *all* new housing construction in counties that the bill claims are not “climate smart parcels,” despite the California Air Resources Board’s (CARB) recognition to the contrary. **AB 68** is a gift to NIMBYs everywhere: it will worsen California’s existing housing crisis by preventing local governments from permitting new housing units in most of their jurisdictions and eliminating construction jobs associated with that new housing. CalChamber encourages streamlining the unnecessarily difficult process to construct housing in California, but *not* at the expense of other critically needed housing. This bill in effect mandates exclusionary land use policies, which will further restrict housing supply, raise costs and prices of homes, further inequality, undermine employers’ ability to recruit for jobs, and disproportionately hurt rural California. **AB 68** is *not* the solution to California’s housing crisis – in fact it would make it worse.

### **Prohibiting Housing Defies Commonsense**

If the objective is to increase California’s housing supply and lower housing costs, **AB 68** misses the mark. The bill defies commonsense housing policy by proposing to streamline multi-family housing on the most expensive land in the state and excluding housing on cheaper available land.<sup>1</sup> Since the single largest cost to construct housing is often the underlying land value, and urban areas tend to be much more expensive (often as much as 10x) given its more limited supply,<sup>2</sup> California should not be prohibiting local governments from increasing housing where localities find it is most affordable to do so. Instead, California must take a multi-faceted approach to increasing the supply and lowering the costs to build new units throughout all of California.

Land available in California is already limited. According to the California Air Resources Board, 6% of the state is developed including urban, suburban and rural areas, as well as transportation and supporting infrastructure.<sup>3</sup> Of California’s 100 million acres, 48% is owned by the federal government, the state, or are Tribal Lands. Of the remaining private lands, 16 million acres are protected by the Williamson Act, 8.5 million acres are designated as critical habitat under the federal Endangered Species Act, and 30 million

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<sup>1</sup> Most expensive cities in the U.S.”, January 19, 2023; available at: [https://www.consumeraffairs.com/finance/most-expensive-cities-in-the-us.html#:~:text=The%20most%20expensive%20city%20in,\)%20and%20San%20Diego%20\(No](https://www.consumeraffairs.com/finance/most-expensive-cities-in-the-us.html#:~:text=The%20most%20expensive%20city%20in,)%20and%20San%20Diego%20(No)

<sup>2</sup> <https://www.dailynews.com/2019/04/03/land-use-regulations-are-obstacles-to-the-california-dream/#:~:text=Land%20in%20California's%20major%20urban,to%20be%20ten%20times%20greater.>

<sup>3</sup> CARB 2022 Scoping Plan, p. 258, available at: <https://ww2.arb.ca.gov/sites/default/files/2022-12/2022-sp.pdf>.

acres are targeted for conservation by Governor Newsom's efforts to conserve 30 million acres of California by 2030 (22 million are already being conserved).

### **AB 68 Will Increase Housing Prices Throughout California**

In addition to forcing all new housing construction into the most expensive areas to build in the state, **AB 68** also increases housing costs through its proposed adoption of a new statutory method for calculating "vehicle miles travelled" (VMT) requiring combined averaging of cities/unincorporated county's VMT. Existing VMT in-lieu fees pursuant to CEQA have already on average added \$50,000 per unit to the cost of housing and have even shut down previously approved/planned new housing. Accordingly, **AB 68** would further suppress housing in lower density existing communities and make re-use of underutilized retail, commercial, school and other sites likely infeasible for future housing by further increasing the cost of VMT policies on new housing in these areas.

Significant research shows a correlation between limited land availability and higher housing prices. And urban growth boundaries do more than increase housing prices; they slow the entire regional economy, often leading to significant net migration from high-cost to low-cost metro areas.<sup>4</sup> In this way, land use policies have a major impact on housing prices. Leading economists find that the reason house prices vary among countries from three to 15 times the annual incomes of urban residents depends mainly on the extent to which governments have permitted conversion of land from rural to urban uses.

Higher housing costs result in the production of fewer new homes. According to the Construction Industry Research Bureau, in 1963, when California's population was 17.5 million people, 322,000 new housing permits were issued. In 2022, with 40 million Californians, approximately 120,000 new housing permits were issued in a housing market already short millions of units to meet demand. For every additional \$1,000 of cost added to a home, it will price out 7,243 households from the housing market.<sup>5</sup> **AB 68** will erode middle-class housing, creating a bizarre marketplace where the remaining housing choices will be either for the wealthy or for those qualifying for subsidized housing. This policy is exclusionary for a very large class of Californians already facing \$735,000 median home prices.<sup>6</sup>

### **Disparages and Ignores Innovation in Housing Sector to Fully Mitigate for GHGs**

The intent behind **AB 68** implies that approving housing projects in unincorporated areas of a county is bad for the climate. Yet, CARB has recognized 2 master-planned communities for achieving net-zero GHG emissions that collectively add more than 5,600 affordable units to the market.<sup>7</sup> If **AB 68** were law, neither project would be possible. Mitigation measures employed by these developers include, but are not limited to, the requirement of on-site solar photovoltaic energy systems on residential and commercial properties; the installation of almost 30,000 EV chargers within and outside the plan area; funding incentives for the purchase of 10,500 passenger EVs and electric school buses and trucks; and procuring and retiring carbon offset credits from the voluntary market. Moreover, CEQA requires *all* projects to analyze and mitigate their greenhouse gas emissions impact and mitigate them to less than significant levels. **AB 68** ignores the innovation and dedication to mitigation strategies in the housing sector and existing law under CEQA.

### **AB 68 Eliminates Thousands of Jobs Associated with Housing Construction**

**AB 68** jeopardizes hundreds of thousands of proposed and future housing units on land outside of these "climate smart parcels." Tens of thousands of construction jobs and housing suppliers would be immediately

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<sup>4</sup> The Economic Problems of Constrained Urban Growth, Phil Hayward. Reason Foundation May 2018. Available at: <https://reason.org/wp-content/uploads/2018/05/economics-of-urban-growth-boundaries.pdf>; citations referenced internally include Staley, Sam, Jefferson Edgens and Gerard C. S. Mildner. A Line in the Land: Urban Growth Boundaries, Smart Growth and Housing Affordability. Policy Study No. 263. Los Angeles: Reason Foundation, 1999. 6-10. Print.

<sup>5</sup> NAHB Priced-Out Estimates for 2023.

<sup>6</sup> <https://www.carb.ca.gov/aboutus/mediacenter/newsreleases/2023-News-Releases/february2023sales>

<sup>7</sup> CARB 2022 Scoping Plan, Appendices.

and negatively impacted by **AB 68**. Employers will continue to lose workers to other states as rising housing costs and further suppression of housing outside of urban areas drives emigration from California.<sup>8</sup> No amount of streamlining in “climate smart parcels” will overcome the loss of these critically needed housing units, the good paying jobs that come with them and the hundreds of thousands of California employees fleeing high cost of living.

### **AB 68 is Exclusionary to the Middle Class**

**AB 68** pre-determines that only a small fraction of available land in California is suitable for housing and that the vast majority of remaining California land is off limits, no matter how sustainable your housing project or thorough your CEQA review. **AB 68** is arguably a form of exclusionary Not-In-My-Back-Yard (NIMBY) housing policies dictating where local governments can and – mostly – cannot permit new housing.

### **AB 68 Likely Violates Fifth Amendment of U.S. Constitution & Article I, Section 19 of the California Constitution**

**AB 68** unequivocally prohibits local governments from approving any new housing in their jurisdictions outside of “climate smart parcels,” with very limited exceptions. Accordingly, the bill strips California landowners of their ability to develop privately owned land without just compensation. This likely violates the Fifth Amendment to the United States Constitution—known as the “takings” clause—and the even broader Article I, Section 19 of the California Constitution. As the United States Supreme Court held in *First Lutheran Church v. Los Angeles County* (1987) 482 U.S. 304, 321, “where the government’s activities have already worked a taking of all use of property, no subsequent action by the government can relieve it of the duty to provide compensation for the period during which a taking was effective.” The bill would invite billions of dollars in liability for the state.

California is deeply mired in a housing crisis in terms of both affordability and supply. The Department of Housing and Community Development estimates that the state needs upwards of two hundred thousand housing units per year just to meet current demands. Far more is needed to reduce the back log of up to 2.5 million needed units. It is imperative that the Legislature bring more housing into the market at all levels, in all communities, of all types. Unfortunately, **AB 68** is a poorly conceived housing policy that will reduce supply, raise housing costs, and reduce opportunities for residents to work and raise their families in California.

For all of these reasons, the California Chamber of Commerce and California Building Industry Association **Oppose** your **AB 68**.

Sincerely,



Adam J. Regele  
California Chamber of Commerce

cc: Legislative Affairs, Office of the Governor

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<sup>8</sup> According to the latest population estimates from the U.S. Census Bureau, California’s total population declined by more than 500,000 between April 2020 and July 2022, available at: <https://calmatters.org/newsletters/whatmatters/2023/02/california-population-exodus-housing/>