California Building Industry Association

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September 15, 2010

Mary D. Nichols
Chairperson, California Air Resources Board
1001 I Street
P.O. Box 2815
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RE: SB 375 Greenhouse Gas Emission Reduction Targets

Dear Chairperson Nichols:

On behalf of the California Major Builders Council (CMBC) and the California Building Industry Association (CBIA), we are writing to ask you to reject the 2035 MPO GHG planning targets recommended by staff and, alter the 2020 targets recommended by staff for several regions. CMBC and CBIA were instrumental in negotiating SB 375 and ultimately supported passage of the bill. California homebuilders participated actively in the Regional Targets Advisory Committee (RTAC) Process in order to provide stakeholder input, and were pleased with the collaboration that helped to inform the target levels. But something went terribly wrong between the conclusion of the RTAC process and the release of the California Air Resources Board (CARB) staff's recommended target levels in their August 9th, 2010 staff report: Regional Greenhouse Gas Emissions Reduction Targets for Automobiles and Light Trucks Pursuant to Senate Bill 375. Ultimately the proposed targets disregarded the methodologies presented publicly at the workshops, did not assess the economic or job impacts of such targets, made fanciful assumptions about state and federal transportation funding and new taxing authority and ultimately disregarded the provisions of SB 375 itself.

The good news is the CARB has an opportunity to re-set the course of SB 375 implementation on a path towards success. The targets must be reasonable and achievable to be effective. This is not a situation that involves a technology requirement; this is a planning process that requires the cooperation of communities. SB 375 will only yield the anticipated greenhouse gas (GHG) benefits if the targets set by CARB allow the Metropolitan Planning Organizations (MPOs) to adopt Sustainability Community Strategies (SCS). Why is that the case? Because SB 375 only requires uniform transportation and land use planning assumptions if the GHG targets can be implemented in an SCS.

CARB should reject the 2020 and 2035 targets for SCAG, MTC and the San Joaquin Valley for the following reasons:

- The process for setting the targets was flawed, arbitrary and not subject to public scrutiny – in the words of the Executive Director of the Metropolitan Transportation Commission (MTC): "we dreamed them up" (Steve Heminger, speaking at MTC Planning Committee, Sept. 10, 2010;http://www.mtc.ca.gov/meetings/archive/index.htm)
- The targets are unachievable under any plausible scenario.
- The targets could never be achieved through an SCS because of transportation planning requirements under state and federal law, Housing Element law and because they are infeasible;
- Targets that are infeasible must be prepared through an Alternative Planning Strategy (APS) that legally can be disregarded and ignored making any GHG benefits illusory and undermining the very purpose of the statute.
- The targets exceed any reasonable amount of GHG reductions that can legally be required from land use and transportation measures under SB 375 or AB 32.

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- There was no consideration of the negative economic impacts of the targets and the impacts on job reduction.
- CARB completely fails to make even a good faith effort to investigate potential environmental impacts of the targets and provides no meaningful environmental analysis in its shockingly brief two-page consideration of environmental impacts. This blatantly fails to satisfy the agency's obligations under the California Environmental Quality Act.
- Given the overwhelming opposition from the employers and unions, the unachievable target levels send the wrong signal to employers considering whether to locate workers or facilities in California.

In summary, the CARB Board must reject the 2020 and 2035 targets for SCAG, MTC and the San Joaquin Valley. It must create a new transparent process with meaningful public input so that the targets are reasonable and achievable through an SCS.

THE GHG TARGET SETTING PROCESS – "WE DREAMED THEM UP"

Over the course of approximately one-month, GHG targets that were labeled unachievable by MPO staff analysis were suddenly re-positioned as the proposed target levels. Without informing the public of how the targets could suddenly be achievable, and without conducting a new stakeholder process to vet the higher target levels, CARB staff pressed forward with recommending extreme and unrealistic goals for 2020 and 2035. There is no clear explanation for how and why this happened. But it is clear that the bar moved radically in 30 days while the world stayed the same. High speed rail was not built, there was no major infusion of cash to fund local governments and their transportation programs, the state is still without a budget, and we are still mired in the same economic recession. Clearly, these high targets are just as unachievable today as they were in the spring of this year.

To understand just how flawed the target setting process was, perhaps a quote from MTC Executive Director Steve Heminger sums it up best. At a September 10 MTC Planning Committee and ABAG Administrative Committee, Heminger responded to how MTC divined the targets:

I think we tried to emphasize to you when we showed you those very broad planning scenarios about land use changes and road pricing and transportation demand management that they were just that – they were planning scenarios. **They had no more constituency than me and Doug. That was it. We dreamed them up**. We put them on the table. We were trying to just inform your process of picking a target and Commissioner you're right. **I think everybody is looking at targets without really knowing how we are going to get there.**

Dreams are not the stuff on which good policy decisions are made. SB 375 was about integrating land use and transportation planning in a meaningful way to get more efficiency. It was not supposed to sacrifice the rigors of planning for real housing needs and using realistic transportation budget scenarios to sync with the anticipated land use patterns. **The social, economic and jobs impacts of such a draconian policy path are neither acknowledged nor analyzed by MTC or CARB**. It is one thing to make informed, reasonable predictions about future funding, transportation and tax policies, and housing needs. It is quite another to adopt targets based on assumptions that we know from the outset are at best unfounded and at worst pure fantasy.

As of May 17, 2010 MTC modeled various GHG reduction scenarios and provided them to CARB. In that document MTC made some wildly unrealistic assumptions about new sources of funding, relied on land use and transportation pricing assumptions that presume dramatic changes in law at the state and federal level, required the relocation of 200,000

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people from outlying areas to San Francisco (a direct violation of current Housing Element law), assumed significant new sources of federal and state transit funding, etc. This "when pigs fly" scenario is impossible to plan for in an SCS under SB 375--undermining from the very start the purpose of the SB 375 statute. Even so, on May 17 these unrealistic assumptions supposedly yielded 7% reduction by 2020 and a 9% reduction by 2035. This scenario and unsupported analysis was reiterated by MTC in public presentations on SB 375 through July. Magically, by August 9, 2010 the MTC 2035 target using the "when pigs fly" scenario went up to 15%.

In short, targets of 7% and 9% required draconian changes in lifestyle-- new taxes, unprecedented levels of transportation funding, new funding for bikes and sidewalks, forced relocation of major populations, and an eradication of Housing Element Law. As of May 17 MTC had not even modeled a 15% 2035 scenario. MTC's arbitrary "dream" scenario is really more of a nightmare scenario for California citizens in the Bay Area. If the current targets are adopted the new reality will be less jobs, more taxes and continued economic recession. And the reality of achieving "aggressive" GHG reductions is undermined as local communities realize they will fail before they even begin.

The arbitrariness of CARB's proposed targets is further reinforced by the presentation SCAG staff made at the last CARB public workshop on July 23 in Ventura County. Prior to this workshop SCAG held over 100 outreach meetings in local communities and modeled various transportation and land use scenarios. After doing so the staff concluded:

- The highest ambitious and achievable numbers in 2020 was 8%
- The highest ambitious and achievable number in 2035 was 6%
- A target of 9% or higher was unachievable in 2020
- A target of 10% or higher was unachievable in 2035

Yet when CARB set the SCAG targets on August 9, 2010, a little over two weeks later, the targets were 8% for 2020 and 13% for 2035. **This turn of events is even more bizarre considering SCAG had not even modeled the 13% target as of the July 23 workshop**. That is how unrealistic the 2035 scenario seemed just a mere two weeks prior. Moreover, the CARB staff report of June 30 said that 13% was out of the range modeled. At a recent meeting, the SCAG Board voted to reject the arbitrary targets CARB staff recommended and adopt more realistic yet still ambitious targets of 6% for 2020 and 8% for 2035.

Similarly, the San Joaquin Valley MPOs have indicated that CARB's 2020 and 2035 targets as unachievable.

UNACHIEVABLE TARGETS WILL FORCE AN APS PROCESS AND ELIMINATE THE BENEFITS OF SB 375

In our discussions with Chairperson Nichols, CARB staff and other interested stakeholders, it has been clear that the targets were intended to be achievable through an SCS. Unfortunately, the existing targets can not be adopted through an SCS. Not only was the target setting process arbitrary and dreamlike, but it also failed to take into account the basic requirements of SB 375. Having negotiated many of its key provisions and fought for its passage, CMBC and CBIA believe it is critical for the CARB to understand the mechanics of target setting and the policy ramifications and unintended consequences of establishing unachievable targets.

SB 375 established two potential mechanisms for meeting the regional GHG reduction targets set by CARB. The first scenario is the adoption by an MPO of an SCS. Under the SCS scenario, the targets are adopted as part of a Regional Transportation Plan (RTP). The adoption of an SCS ensures that the demographic assumptions used for transportation

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planning and the Regional Housing Needs Assessment (REHNA) is the same. It also ensures that transportation infrastructure investment and housing allocations are in sync. This efficiency yields much of the GHG benefits envisioned in SB 375.

If the SB 375 targets are unachievable, then an MPO must adopt an Alternative Planning Scenario (APS). The APS has no impact on transportation spending and no impact on regional housing allocations. It means the document will be disregarded by local land use decision makers and assures that the status quo continues. If the SB 375 targets are set at an unreasonable level then an APS will be the only option, and an APS does not have the power to achieve the changes and environmental benefits envisioned with the passage of SB 375. This process also guarantees regional infighting and litigation.

An SCS Must be Consistent with the Goals of Housing Element Law

Under the provisions of SB 375, an SCS "shall" consider the state housing goals set forth in 65580 and 65581 and identify areas within the region sufficient to house projections of the regional housing need for the region pursuant to Section 65584. These provisions reflect the underlying goals of Housing Element Law that require each jurisdiction to accommodate its fair share of housing, including affordable housing. MTC and SCAG assumptions about significant relocation of existing populations, clearly is at odds with the aforementioned goals and could run afoul of fair housing laws and policies. For example, Section 65584 specifies that a primary objective of the regional housing need process is to increase the housing supply and mix of housing types, tenure and affordability in all cities and counties within the region in an equitable manner which shall result in *each* jurisdiction receiving an allocation of units for low- and very low income households.

Targets which result in an SCS over concentrating most of the growth to a few urbanized areas could not only violate state housing law **but exacerbate segregation contrary to federal fair housing and civil rights laws and practice**. The social and policy implications are profound and have been completely ignored by CARB staff and the MPOs.

An SCS must be Consistent with Federal and State Transportation Planning Requirements

SB 375, section 65080(b) (2) (B), requires that an SCS shall "allow the regional transportation plan to comply with Section 176 of the federal Clean Air Act (42 U.S.C. Sec. 7506)." This provision encompasses the federal requirements for regional transportation plans. Section 65080(d) requires that "the plan shall be consistent with federal planning and programming requirements and shall conform to the regional transportation guidelines adopted by the California Transportation Commission." Thus, for an SCS to be adopted it must be consistent with current federal and state transportation planning requirements.

To meet existing state and federal requirements, an SCS must be achievable and **cannot be fiscally constrained**. Under the CTC Guidelines fiscal constraint is defined as follows:

Fiscal constraint is the demonstration of sufficient funding (Federal, State, local and private) to operate and maintain transportation facilities and services and to implement planned and programmed transportation system improvements. Fiscal constraint can also be thought of as the description of fully funded projects in the RTP based on the projected available revenues during the 20 plus year planning horizon.

Title 23 CFR Part 450.104 provides the following definition of fiscal constraint or fiscally constrained:

It means that the metropolitan transportation plan, TIP, and STIP includes sufficient financial information for demonstrating that projects in the metropolitan transportation

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plan, TIP and STIP can be implemented using committed, available or reasonably available revenue sources, with reasonable assurance that the federally supported transportation system is being adequately operated and maintained. For the TIP and the STIP, financial constraint/fiscal constraint applies to each programming year. Additionally, projects in air quality no attainment and maintenance areas can be included in the first two years of the TIP or STIP only if funds are 'available' or 'committed'."

Additionally, EPA's transportation conformity regulations specify that an air quality conformity determination can only be made on a fiscally constrained RTP and FTIP (Title 40 CFR Part 93.108). Therefore, nonattainment and maintenance areas may not rely on proposed new taxes or other new revenue sources for the first two years of the FTIP. New funding for RTP projects from a proposed gas tax increase, a proposed regional sales tax, or a major funding increase still under debate would not qualify as "available or committed" until it has been enacted by legislation or referendum i.e. the period of time between the sunset date of the current regional sales tax and before the next legislative or referendum action to restore or increase funding.

Both SCAG and MTC's 2035 (and MTC's 2020 targets) are per se fiscally constrained and therefore could not be achieved through an SCS. The SCAG staff report conditioned attainment of the targets based on eleven different conditions most of which assume funding that is not currently available and never will be. The following conditions – which are unlikely to be fulfilled - outlined in a September 2 staff report demonstrate the targets would result in fiscal constraint:

- Restoration of previous levels of state funding for transportation, transit in particular.
- ARB will commit to working with the MPOs, local governments, state agencies and the Legislature to identify, pursue and secure adequate incentives and sustainable sources of funding for local and regional planning and other activities related to implementation of SB 375.
- Targeted increase in funding commitments for Transportation Demand Management, non-motorized, transportation (walk and bike), transit, transportation, redevelopment and other necessary funding from Federal, State and local agencies.
- Timely implementation of the "30-10" proposed acceleration for Measure R projects in Los Angeles County.

As discussed previously, the MTC assumptions are even more unrealistic in terms of new funding and changes in statute including new taxing authority. Thus these targets would clearly rest in fiscally constrained RTPs that would assure APS are the option under available to regions under SB 375.

An SCS Must Be Feasible

An SCS also must be "feasible" as defined under CEQA. CEQA Guideline Section 15091 defines when a mitigation measure is feasible or infeasible. Among the reasons why a mitigation measure is infeasible are due to economic, legal or social reasons.

The SCAG and MTC modeling for 2035 (and MTC for 2020) assumes levels of transportation funding for a variety of purposes that are not based in reality. None of the funding assumptions has any precedent. In the short-term, there is no prospect for increased transportation funding. In fact, the state has raided the spillover gas tax funds historically used for transit and has even looked at raiding other traditional local government funding sources. In fact, as of the date of this letter, the state still has not passed a basic state budget, let alone provided any basis for assuming the dramatic increases in state transportation funding. Embedded in MTC and SCAG's plan are a number of other measures which as previously discussed would require major social upheaval and statutory

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changes. Finally, these changes also would have a significant negative economic impact that is not recognized or analyzed. For all of these obvious reasons, the GHG reduction targets are infeasible.

THE CARB TARGETS GREATLY EXCEED REDUCTIONS FOR LAND USE & TRANSPORTATION IN THE AB 32 SCOPING PLAN

SB 375 does not allow CARB to set targets at disproportionate or arbitrary levels. When setting the targets, "the state board shall take into account greenhouse gas emission reductions that will be achieved by improved vehicle emission standards, changes in fuel composition, and other measures it has approved that will reduce greenhouse gas emissions in the affected regions, ad prospective measures from other greenhouse gas emission sources as that term is defined … ." The current CARB GHG reduction targets have no correlation to the rest of the AB 32 program.

The Scoping Plan projected that 169 MMTCO2E emission reductions need to occur to achieve the state's projected 2020 business as usual (BAU) limit. Of that, regional land use and transportation were identified as being responsible for a 5MMT reduction or approximately 3% of the total. This was based on an assumed 4% per capita vehicle miles traveled (VMT) reduction in 2020 from a 2020 BAU projection.

By our calculations, achieving even a 5% per capita reduction by 2020 spread across the four major MPO regions (approximately 85% of the state's population) equates to a cumulative 2020 reduction of approximately 20 MMTCO2E. Put another way, this is a whopping 15 MMTCO2E, 300% *increase* over what was originally anticipated for the land use and transportation sectors in the AB 32 Scoping Plan. Yet there is no analysis or explanation for why these reductions are so out of whack with the rest of the AB 32 or Scoping Plan. They appear to have been manufactured completely independent of AB 32, even though SB 375 mandates quite the opposite.

CONCLUSION

The success and effectiveness of the SB 375 program is dependent on setting achievable emission reduction targets that will allow us to harness current resources to achieve the goal of emission reduction. Setting unrealistic emission reduction targets will add costs to consumers, continue the recession and ultimately do little to achieve emission reduction.

In closing, CMBC asks that CARB sets realistic goals for 2020 and allow more time and discussion for the 2035 targets which will greatly increase the likelihood that California achieves its emission reduction goals.

Sincerely,

Richard Lyon

Richard Lyon, Vice President
California Building Industry Association

Edward P. Manning

Edward P. Manning
for California Major Builders Council

cc: Board Members, California Air Resources Board
Susan Kennedy, Chief of Staff, Office of Governor Arnold Schwarzenegger
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