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The following document was provided by Bill Higgins, of the League of California Cities, for consideration by the committee.

How Housing Equity Issues are Already Addressed in SB 375 & How the Introduction of New Methodologies may Interfere with Existing Law

One of the most significant innovations of SB 375 was that it already addressed the housing equity issue when it connected the target setting process to the Housing Element Law. The Housing Element Law has been commended by no less than the United Nations Committee on the Elimination of Racial Discrimination as an effective means of planning and addressing the needs of disadvantaged populations.

The Law requires each city and county to plan for its fair share of the regions housing needs, as well as to address specific needs of the homeless, farmworker, disabled, senior, and other special needs groups. Furthermore, as outlined in the first six points of Pete Parkinson's memo, SB 375 added several additional guarantees to the process that deepen housing equity assurances in the process.

I. SB 375 Established a Target Setting Process, Not A New Regulatory Scheme.

SB 375 integrated a GhG target setting process within the existing regional transportation plan (RTP) and Housing Element processes. It did not create a new regulatory process out of whole cloth. Thus, to the extent that issues like social equity need to be addressed, they should be done so within the context of these larger processes. For example, as made in the point below, the better place to address the equity issues raised within an RTP (in which the SCS is a part) would be the RTP Guidelines, which is the purview of the California Transportation Commission.

Moreover, SB 375 set a specific, very limited role for CARB review. CARB should focus on "specifically describing any aspects of the methodology it concludes will not yield accurate estimates of greenhouse gas emissions." Section 65080(b)(2)(I)(i). Then, once the SCS or APS is submitted, "review is limited to acceptance or rejection . . . that the strategy would, if implemented, achieve" the GhG emission target." Section 65080(b)(2)(I)(ii).

II. Federal law and the RTP Guidelines:

The regional transportation plan must be consistent with Federal planning and programming requirements and must conform to the regional transportation plan guidelines adopted by the California Transportation Commission. The Federal law requires that the RTP articulate regional land use, development, housing and employment goals and plans. [23 CFR 450.222] The regional transportation plan should, as appropriate, incorporate or consult a variety of local, regional, and state-prepared planning documents. The Policy Element of the RTP for MPOs with a population in excess of 200,000 is encouraged by the RTP Guidelines to quantify a set of indicators that include measures of equity and accessibility.

On May 29, 2008, the CTC adopted its "Addendum to the 2007 Regional Transportation Plan Guidelines." In January 2007, Senator Perata requested that the CTC use its current statutory authority to review its RTP Guidelines in order to incorporate climate change emission reduction measures. The request also stated that RTPs should use models that accurately measure the benefits of land use strategies aimed at reducing vehicle trips.

The following excerpts from the Addendum are relevant to the "social equity" question:

1. The Addendum suggests that as part of the four-year RTP process, each MPO should strive to enhance its modeling and analytical techniques in order to improve its assessment of the likely implications of key policy options. Such improvements should educate decision-makers and the public regarding how such options would potential affect trip making, choice of travel modes, VMT, major land use development decisions and quality of life issues.

2. The largest four MPOs and other COGs and RTPAs with rapid growth and established transit systems should develop tour-based travel models in the short term and activity-based travel models within a few years. They should also build formal microeconomic land use models so that they can be used to evaluate economic welfare (utility) and economic development (wages, jobs, exports). With a market-based land use model, the agency can evaluate land-pricing policies, such as infill subsidies. Economic measures from the land use model could be implemented. These measures are more complete than those from the travel model and include welfare, wages, and exports. Equity analysis could include change in welfare by household income class. Water quality, housing affordability, and fire hazard analysis are examples of the measures that such model sets can also produce. These micro-simulation models can evaluate the energy use and GHGs produced by households and workers in building space. Economic development impacts may be comprehensively evaluated with this model set.

It would be unwise to constrain an MPO's ability to comply with federal law and the RTP Guidelines by including considerations of social equity in developing the GHG reduction targets, which may conflict with these provisions of federal and state law. There are a variety of factors that the MPO must consider in seeking to achieve the target reductions for its region. In addition to those factors required by SB 375 itself, the RTP Guidelines requires that social equity be considered.

III. Overlapping & Potentially Conflicting Authorities between CARB and HCD

The Department of Housing and Community Development (HCD) is already given the task of assuring that the regional allocation, which is part of the SCS, includes adequate sites for affordable housing on an agency-by-agency basis. What would happen if the strategies emphasized by ARB to reduce GhG emissions conflicted with the comments and determinations made by HCD at the time the agency reviews individual housing element? It's not out of the question that two separate agencies, looking at the same problem from different vantage points, would develop different and potentially conflicting recommendations.

For example, CARB may want to emphasize placing sites near transit centers while HCD may review the sites and make a determination that the sites are not "adequate" (technically, HCD determines that it is infeasible to assume that the property would be developed at the designated density due to some character of the property—like ownership or size or zoning).

IV. Housing Element Law May Already Constrain Ability of Some MPOs to Achieve Target Within an SCS

Social equity considerations will be one factor (among many) that determine whether or not an SCS can actually achieve the region's targets. There may be instances when achieving a target within an SCS will be impossible because of the need to meet the requirements of the Housing Element Law. For example, the Department of Housing and Community Development determines the existing and projected need for housing for each region (Section 65584(a)). The council of governments (which in most cases, is also the MPO) then allocates to each city and county its "fair share" of the regional housing need (Section 65584(b)).

The regional needs housing allocation plan must be consistent with a prescribed set of objectives, including:

- (1) Increasing the housing supply and the mix of housing types, tenure and affordability in all cities and counties within the region in an equitable manner; and
- (2) promoting infill development and socioeconomic equity (Section 65584(d)(1) and (2)).

It's possible that in some cases the goal of greater housing mix or socioeconomic equity will run counter to the best or most cost effective means of reducing GhG emissions. The construct of SB 375 requires that the final RHNA allocation ensure that each jurisdiction receive an allocation of units for low and very low income households (65584.04(i)(1)) regardless of the effect on the ability to achieve the target. The SCS must identify areas within the region to house an eight-year projection of the regional housing need. The region's regional needs housing allocation plan must be consistent with the SCS (Section 65584.04(i)(3)).

Therefore, it will be necessary for the COG to ensure that the regional needs housing allocation plan is both consistent with the SCS and with the objectives noted above. Or, stated differently, unless the targets allow the region to accommodate the regional housing need in a manner that is consistent with the state housing element law, the target will not be achieved within the SCS (and the MPO will have to use an APS).

In addition, the SCS must consider the state housing goals specified in Section 65580 and 65581 of the Housing Element Law. This means that unless the region can achieve the targets while, at the same time, considering the state housing goals, the targets cannot be achieved. Thus, the check on ignoring social equity is written into the SCS. SB 375 contemplates that issues related to housing affordability must be addressed when developing the SCS—not at the time of setting the target.

V. CEQA and Social Equity:

Social equity issues are also analyzed as part of the CEQA process. CEQA Guidelines 15131 provides that the economic or social effects of a project may be used to determine the significance of physical changes caused by the project. For example, if the construction of a new freeway or rail line divides an existing community, the construction would be the physical change, but the social effect on the community would be the basis for determining that the effect would be significant. CEQA is a known and clearly-defined process for evaluating social equity concerns. These concerns are most appropriately evaluated locally, by the region, when it is discussing and deliberating upon the way in which the SCS proposes to meet the established targets. Evaluating social equity issues locally (rather than building the consideration of them into target setting) will allow for effective mitigation of the impacts. This will allow the region to maximize the social equity co-benefits of reducing GHG through smart land use and transportation planning.