



1400 K Street, Suite 400 • Sacramento, California 95814  
Phone: 916.658.8200 Fax: 916.658.8240  
www.cacities.org

VIA E-MAIL

December 5, 2008

Mary Nichols  
Chair, California Air Resources Board  
1001 I Street  
P.O. Box 2815  
Sacramento, CA 95814

**RE: League of California Cities Supplemental Comments on Scoping Plan  
Regarding Transportation Related Emission Targets**

Dear Chair Nichols:

Thank you again for the opportunity to comment on the California Air Resources Board's (CARB) proposed Scoping Plan. We appreciate the opportunity to work with you and your staff over the last year and particularly appreciate your willingness to listen to and work with all parties on these issues.

This letter is a supplement to our letter dated November 14, 2008 and focuses on the issue of transportation related emission targets. The League's Board of Directors<sup>1</sup> voted on November 21 to endorse the provisions in the current Scoping Plan that estimate the target for this sector at 5 million metric tons (MMT), but recognize that the actual number will be developed through the regional target setting process included in SB 375. This letter provides further detail the basis for the League's position.

#### **I. Retaining the Integrity of the SB 375 Process Must Be a Priority**

The stakeholders that formed what Senator Darrell Steinberg called the "coalition of the impossible" to support SB 375 specifically agreed to the regional target setting process as a way of developing realistic targets for the 18 affected regions. In short, we had a deal. As a result, the League and its membership is fully committed to the SB 375 process.

The SB 375 process relies on realistic target setting—whatever those targets turn out to be. We acknowledge that its quite possible that the sum of the regional targets will exceed 5 MMTs. But the SB 375 process is the best guarantee that the ultimate targets will be grounded on sound analysis of the capabilities of local infrastructure and

---

<sup>1</sup> To eliminate any confusion, this letter represents the official position of the League of California Cities. Some comments have been submitted by individual officials that have included titles within the League's leadership and policy making organizational structure. One comment letter in particular includes inaccurate titles and mistakenly includes a reference to one of the League's policy committees. We are a broad-tent organization that has room for a wide variety of views. But only the League's Board, either by itself or through a formal delegation, may speak on behalf of the League of California Cities.

transportation networks. The Scoping Plan provides appropriate deference to SB 375 in using the 5 MMT estimate while acknowledging that the actual number will “ultimately be determined during the SB 375 process.”

If, however, the 5 MMT estimate is subsequently increased, the trust that built Senator Steinberg’s coalition would be severely undermined. Such an action would send a signal that the economic feasibility requirements of AB 32 were discounted at a time of economic crisis. We continue to hear among local officials who have a high regard for the environment questions about how they are going to achieve these goals when they are facing severe budget shortfalls and possible furloughs for key employees.

In addition, we fear that a severe backlash could arise amongst many who are still uncertain about the implementation of SB 375. Unfortunately, such a result could upset the implementation of AB 32 far beyond whatever benefit might be achieved by signaling that land use is some kind of priority within the context of the Scoping Plan. One only needs to look to Oregon’s Measure 37, and our own state’s Proposition 90 and Proposition 98, to see the potential consequences of reaching too far.

We believe that this is the moment when real leadership is needed to keep the coalition that supported SB 375 together. The 10 month process of the Regional Targets Advisory Committee, to be followed by target-setting for the individual regions, provides a means to focus on the critical issues that will assure that the ultimate targets are feasible, reasonable, achievable, and meet the 2020 (and 2035) targets.

## **II. No Feasibility Analysis of Constitutionally-Imposed Limits to Funding Compact Development**

We are unclear how any increase in the transportation related target may be considered without conducting a thorough fiscal feasibility analysis. Section 38561(a) of the Global Warming Solution Act states that the CARB must approve a scoping plan for achieving the “maximum technologically feasible and cost-effective reductions in greenhouse gas emissions from sources or categories of sources of greenhouse gases by 2020 ....”

There has been a great deal of discussion about what type of reductions could be achieved from more compact development patterns. Unfortunately, there has been little discussion of the constitutionally-imposed fiscal constraints on developing the infill infrastructure necessary to serve this type of development.

Here is the problem in the nutshell. Compact development in existing urban areas needs improved infrastructure, whether it be larger sewer lines, fire trucks that can make multi-story rescues, storm-water systems that can meet new stringent federal requirements, improved schools, and so on. When cities approve development in “green fields,” much of these costs can be captured through development fees because the new infrastructure will only serve the new development. The fees therefore meet the proportionality requirement of the Takings Clause of the federal and state constitutions.

This natural proportionality does not exist in urbanized areas. Any new infrastructure must serve old and new resident alike. But the proportionality requirement limits the

amount that cities can charge developers; new development can only pay its fair share. Cities are specifically prohibited from charging fees on new development to fix deficiencies in existing infrastructure. See Cal. Gov't Code § 66001(g).

Thus, local governments must turn to other revenue sources. But here, they run into another constitutional limitation, the two-thirds voting requirement of Propositions 13 and 218 on property taxes and assessments. This places cities in the untenable position of asking two-thirds of existing residents to support higher taxes and assessments to fund infrastructure that will allow more density to be built in their neighborhoods.

If CARB were to increase the 5 MMT estimate, the Scoping Plan must be amended to acknowledge these very real constraints. This estimate should not be increased any farther (it has already been increased from 2 MMT) unless it can be demonstrated that achieving the increase is “technologically feasible and cost-effective.” This will certainly be part of the analysis and the discussion related to setting regional targets through the SB 375 process. But without this kind of a discussion, any unilateral action to increase the 5 MMT estimate will not be grounded in reality.

### **III. Neither the Scoping Plan or the Environmental Analysis Supports an Increase in the MMT Estimate for Transportation Related Emissions**

The emissions reduction number included in the Scoping Plan is based upon 2008 U.C. Berkeley study which reviewed over 20 modeling studies in California, other states and Europe. The Scoping Plan has chosen an estimate that is based upon the cited literature while at the same time acknowledges that SB 375 implementation will ultimately determine the targets. Therefore, the 5 MMT estimate should not be increased at this time since 5 MMT is based upon the cited literature, and, in any event, SB 375 will determine ultimate target.

In addition, the document that serves as the functional equivalent to the environmental analysis required under the California Environmental Quality Act (“FED”) document for the Scoping Plan does not quantify the reduction for transportation related emissions. The FED states Scoping Plan requires “the establishment of a process whereby regions integrate development patterns, transportation networks, and other transportation measures and policies in a way that achieves greenhouse gas emission reductions” (a reference to SB 375). The FED does not analyze the proposed 5 MMT estimate because the document acknowledges that whatever number is used in Scoping Plan will be superseded by regional targets set through SB 375 process.

Accordingly, the Scoping Plan must be consistent with SB 375. If Scoping Plan establishes a target that is not shown to be technologically feasible, and SB 375 establishes a lower state-wide target, CARB will be required to amend Scoping Plan to be consistent with SB 375 targets. A higher Scoping Plan target cannot influence or have an impact on SB 375 targets since the process for establishing SB 375 targets does not include reference to Scoping Plan.

#### **IV. The Scoping Plan Already Meets the Stated Objective in AB 32**

The Scoping Plan is already sufficient to meet the Legislative goal plainly stated in AB 32: to achieve 1990 emission levels by 2020. Even if increasing the 5 MMT before the SB 375 process begins made sense, it would exceed AB 32's carefully negotiated mandate unless the Scoping Plan reduced carbon emissions elsewhere. The proponents of an increased estimate, however, have failed to suggest a sector where they would allow more carbon emissions to be admitted to assure that the overall figure of 174 MMT remains intact.

Moreover, there remain several points in the process where the targets attributable to transportation may be changed if circumstances require. First, there is the SB 375 process itself, which we have already acknowledged may yield a higher (or lower) emissions number than the estimate in the plan. Second, SB 375 itself allows these targets to be reset every four years.

#### **V. Additional Comments**

Our comment letter dated November 14, 2008 included comments on the Scoping Plan as a whole. Only part of the letter addressed the why the 5 MMT for transportation related emissions was appropriate. We repeat those points here so that all of the League's reasoning on this issue is in one letter:

- ***Proportional Reduction From Cars & Light Trucks Already Established.*** Cars and light trucks account for approximately 31 percent of all GHG emissions in California. When you account for the reductions from light-duty vehicle standards (31.7 MMT), low carbon fuel standards (15 MMT), vehicle efficiency measures (4.5 MMT) and regional transportation related GHG targets (5 MMT), emissions from cars and light trucks will be proportionately reduced by 33 percent (56.2 out of the total 169 MMT reduction).
- ***Modeling Uncertainties Still Abound.*** To be sure, a great deal of data suggests that certain land use patterns correlate with smaller emission reductions. There is little to no experience in modeling these decisions on as broad as scale as will need to be implemented on the current Scoping Plan. The professional and technical expertise should be allowed to develop before making local and regional accountable for targets that will be difficult to quantify.
- ***Acknowledging Current Economic Uncertainties.*** Increasing the target will put pressure on CARB to adopt higher targets at the regional level. As a result, it will be more difficult to achieve the California Environmental Quality Act (CEQA) streamlining contained in SB 375. As demonstrated by the Governor's proposed budget recommendations, such streamlining can have an important economic effect and help stimulate the economy.
- ***Setting the Stage for 2050.*** There is a general acknowledgement that reductions from cars and light trucks will need to be proportionately greater to meet the 2050 goal. This is because the changes related to land use will be incremental: if California

builds 200,000 new housing units each year, it will take more than 60 years to match the number of current residences (over 13 million). The residences and jobs located within the existing built environment will have the same or similar traffic patterns well past 2020 regardless of the success any new development enjoys in reducing emissions. Although it is going to take time to steer the ship, the Scoping Plan lays a foundation for more substantial gains between 2021 and 2050.

- ***Better Model for Other States to Follow.*** In supporting SB 375, cities and counties are accepting their responsibility. The best thing that could happen for all is for local governments to achieve, and even greatly exceed, the established targets. AB 32 needs this kind of success rates to show the rest of the country—and the world—that such reductions are possible without a lot of pain. Set this target too high, and CARB risks changing the story; hitting such targets will seem less easy and other states are less likely to follow our lead.

## VI. Conclusion

As we stated on November 14, the League is generally supportive of the model proposed in the Scoping Plan that recognizes that regional transportation related GHG targets will be set through the process outlined in SB 375. But CARB should retain the 5 MMT figure for regional transportation-related GHG targets in the Scoping Plan and let the regional target process set out in SB 375 operate as it was intended.

All Californians have a vested interest in the success of AB 32 and this Scoping Plan. California cannot solve the global warming crisis on its own. Instead, we must lead by example and in a way in which other states and other countries will follow. In instances like the transportation related emissions estimate, CARB may achieve greater national and worldwide through the moderate in the implementation of state goals. A program that is too top-down in structure may get more actual GHG reductions in California, but not in a way the rest of the world may want to follow.

Sincerely,



Kyra Ross  
Legislative Representative  
League of California Cities



Bill Higgins  
Legislative Representative  
League of California Cities