

AGENDA

Meeting of the Senate Bill 375
Regional Targets Advisory Committee

Time:

Tuesday, February 3, 2009
10:00 am – 3:00 pm, Pacific Time

Location:

Byron Sher Auditorium
Cal/EPA Headquarters Building
1001 I Street
Sacramento, CA 95814

Webcast: <http://www.calepa.ca.gov/Broadcast/?BDO=1>

1. Welcome and Introductions
2. Committee Housekeeping
3. Overview of Scoping Plan and SB 375
4. RTAC Objectives
5. Committee Discussion
6. Public Comment and Discussion
7. Next Steps and Closing

SUGGESTED KEY QUESTIONS FOR THE RTAC TO ADDRESS

California's strategy for reducing greenhouse gas emission from passenger cars includes three elements: vehicle technologies, low-carbon fuel technologies, and reduced vehicle use through changed land use patterns and improved transportation. In the target setting process spelled out in SB 375, ARB is to consider greenhouse gas emission reduction strategies underway to implement AB 32. Since ARB adopts the State's vehicle and fuel technologies regulations, it currently has the tools and methods for considering these strategies in the target-setting process. Therefore, apart from those, ARB needs the RTAC's recommendations on the factors and methodologies for setting targets that relate directly to passenger vehicle use. The following six questions form a suggested framework for the RTAC to focus its efforts on vehicle-use related factors and methodologies.

1. What are the key factors that influence passenger vehicle use, including land use, the transportation system, the price of travel, and others?
2. What are the factors that affect the magnitude of the change in passenger vehicle use that is achievable? This includes ones that cities, counties, and MPOs can control, such as land use decisions, transportation investment, and pricing and other transportation strategies, and those they cannot, such as demographic trends, consumer housing preferences, market economics for development products, the price of gas, and others.
3. What are acceptable standards for data quality and modeling tools for implementing various methodologies for processing the factors into targets? How fast can regions with current data and modeling limitations improve their tools? What is the cost to make those improvements? Can any of these improvements be made in time to meet the first round of targets? In the interim, what ancillary tools can be brought to bear?
4. How should passenger vehicle trips and goods movement trips that cross regional boundaries be incorporated into targets?
5. What metric(s) should be used to express regional targets? For example, should the metric(s) be per capita or total VMT for a region? Should they be changes from current conditions or from future year baselines? How should the metric(s) account for differences between regions, e.g. growth rates, incomes, current jobs-housing balance? Is it important that the metric(s) represent real and permanent reductions?
6. How can the various methods be evaluated to see if they meet the goal of setting the most ambitious achievable targets?



Linda S. Adams
Secretary for
Environmental Protection

Air Resources Board

Mary D. Nichols, Chairman
1001 I Street • P.O. Box 2815
Sacramento, California 95812 • www.arb.ca.gov



Arnold Schwarzenegger
Governor

January 23, 2009

FIRST MEETING OF THE REGIONAL TARGETS ADVISORY COMMITTEE

The California Air Resources Board's (ARB) Regional Targets Advisory Committee (RTAC) will hold its first public meeting on February 3, 2009. At this initial organizing meeting, the RTAC will discuss a work plan for delivering recommendations related to ARB's establishment of regional targets for the purpose of reducing greenhouse gases from passenger vehicles.

Date/Time

February 3, 2009
10:00 a.m. –
3:00 p.m.

Public Workshop Location

Cal/EPA Headquarters Building, Byron Sher Auditorium
1001 I Street
Sacramento, CA 95814

Webcast: <http://www.calepa.ca.gov/Broadcast/?BDO=1>

Agenda: <http://www.arb.ca.gov/cc/rtac/meetings/meetings.htm>

Background. Senate Bill 375 (SB 375), signed by the Governor last year requires the California Air Resources Board (ARB) to set regional targets for the purpose of reducing greenhouse gas emissions from passenger vehicles, for 2020 and 2035. On January 23, 2009, ARB appointed members to the RTAC created by the bill. RTAC is required to recommend factors to be considered and methodologies to be used for setting regional greenhouse gas reduction targets. The committee's recommendations are due to ARB by no later than September 30, 2009.

If you have special accommodation or language needs, please contact ARB's Disability Coordinator at (916) 323-4916 by voice or through the California Relay Service by calling 711, to place your request for disability services. If you are a person with limited English and would like to request interpreter services, please contact ARB's Bilingual Manager at (916) 323-7053.

For any questions regarding this meeting, please contact Lezlie Kimura of the State Implementation Plan and Local Government Strategies Section, at lkimura@arb.ca.gov or call (916) 322-1504.

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website: <http://www.arb.ca.gov>.

California Environmental Protection Agency

January 23, 2009

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Meetings of this Committee are subject to the Bagley-Keene Open Meeting Act and will include opportunities for public testimony. Comments will be taken and may be limited to ensure adequate time for committee business.

To receive electronic notices for SB 375 events and information, please sign up for the SB 375 email listserv through the following link:

http://www.arb.ca.gov/listserv/listserv_grp.php?listtype=C0

Sincerely,

/s/

Kurt Karperos
Branch Chief
Planning and Technical Support Division

California Regional Targets Advisory Committee for SB 375 (January 2009)

Scope of Responsibility

California state law (SB 375, Statutes of 2008) requires the Air Resources Board to set regional targets for the purpose of reducing greenhouse gas emissions from passenger vehicles, for 2020 and 2035. If regions develop integrated land use, housing, and transportation plans that meet the SB 375 targets, new projects can be relieved of certain review requirements of the California Environmental Quality Act. The Board must appoint a Regional Targets Advisory Committee to provide recommendations on factors to be considered and methodologies to be used in the target setting process. The Committee may consider the following, and any other relevant issues:

- Modeling techniques
- Growth forecasts
- Jobs-housing balance
- Interregional trips
- Economic trends
- Demographic trends
- Benefits of land use and transportation strategies
- Methods to describe regional targets
- Methods to monitor performance in meeting targets

The Committee is required to provide recommendations in a report to the Air Resources Board by September 30, 2009. ARB must propose draft targets by June 10, 2010 and take action to set the targets by September 30, 2010.

Committee Process

All meetings are open to the public. ARB staff will work closely with the Committee to set meeting agendas, identify critical issues for Committee consideration, provide informational reports and technical support, and coordinate public input. ARB staff will provide an update to the Board on Committee activities prior to completion of the Committee report. The results of the Committee's work and its report will be presented to the ARB at a public meeting.

Committee Members

State law requires that the Committee include representatives of metropolitan planning organizations, local transportation agencies, air districts, the League of California Cities, the California State Association of Counties, and other organizations involved with planning, the environment, environmental justice, and affordable housing. The Committee consists of individuals with a mix of expertise and experience selected to work together to develop recommendations that will assist the ARB in the target setting process.

Regional Targets Advisory Committee (RTAC)
Board Appointed Members
January 23, 2009

Andrew Chesley, Executive Director, San Joaquin Council of Governments

Stuart Cohen, Executive Director, TransForm

Greg Devereaux, City Manager, City of Ontario

Roger Dickinson, Supervisor, County of Sacramento

Stephen Doyle, President, Brookfield San Diego Builders, Inc.

Amanda Eaken, Policy Analyst, Natural Resources Defense Council

Gary Gallegos, Executive Director, San Diego Association of Governments

Steve Heminger, Executive Director, Bay Area Metropolitan Transportation
Commission

Richard Katz, Board Member, Los Angeles County Metropolitan Transportation
Authority

Arthur Leahy, Chief Executive Officer, Orange County Transportation Authority

Shari Libicki, Principal, Environ Environmental Consultants

Mike McKeever, Executive Director, Sacramento Area Council of Governments

Pete Parkinson, Vice President of Policy and Legislation, American Planning
Association, California Chapter

Linda Parks, Supervisor, County of Ventura and SCAG Regional Council
Member

Manuel Pastor Jr., Professor of Geography and American Studies and Ethnicity,
University of Southern California

Mike Rawson, Co-Director, Public Interest Law Project

Barry Wallerstein, Executive Officer, South Coast Air Quality Management
District

Jerry Walters, Principal, Fehr & Peers Transportation Consultants

Carol Whiteside, Founder and President Emeritus, Great Valley Center

Michael Woo, Los Angeles City Planning Commissioner

Jim Wunderman, President and Chief Executive Officer, Bay Area Council

RTAC Membership Bios

Andrew Chesley is Executive Director of the San Joaquin Council of Governments in Stockton, California and has 29 years of experience in regional transportation planning. Mr. Chesley is the past chair of the San Joaquin Valley Regional Planning Agencies' Executive Directors Committee, and past chair of the Councils of Governments Director's Association of California. He is a member of the Governor's Partnership for the San Joaquin Valley and an officer in California's Self Help Counties' Coalition. He has authored two successful transportation sales tax measures (Measure K), a regional transportation impact fee and manages the Habitat Conservation Program for San Joaquin County.

Stuart Cohen is co-founder and Executive Director of TransForm (formerly TALC, the Transportation and Land Use Coalition). TransForm's campaigns on transportation sales taxes and other funding measures helped raise over \$6 billion for sustainable and socially-just transportation. Mr. Cohen spearheaded a number of these efforts, as well as the successful effort to initiate the Bay Area's Regional Smart Growth Strategy. He is the primary author of eight TransForm reports, including the 120-page *World Class Transit for the Bay Area*. In 2005, he helped conceive and launch the Great Communities Collaborative. This partnership of five non-profits, three community foundations, and 24 community partners is engaging communities around the Bay Area in planning for sustainable, equitable development near transit. He is also the co-founder and chair of ClimatePlan, a statewide network that promotes smart land use and transportation as critical components of California's climate strategy. Previously, Mr. Cohen worked with ICLEI - Local Governments for Sustainability as a researcher on the climate impacts of alternative transportation policies and fuels. He received a Master's Degree in Public Policy (MPP) from the Goldman School of Public Policy at U.C. Berkeley.

Greg Devereaux is City Manager for the City of Ontario. Mr. Devereaux has been in state and local government for over 30 years, serving in various capacities including Acting Director of Parks and Recreation for the City of Long Beach; Director of Community Development for the City of Garden Grove; and, from 1993 to 1997, he was the City Manager of Fontana. During his tenure he stabilized the City's finances, increased infrastructure maintenance, and restored community programs. Mr. Devereaux became City Manager for the City of Ontario in September 1997. Working closely with the Mayor and City Council, the City embarked on an aggressive program to grow the City's economy and restructure the City's staff to better serve its residents and the business community. Each of the past 10 years resulted in substantial surpluses allowing the City to build reserves, fund unfunded liabilities and undertake the most aggressive investment in community facilities in the City's history. He is a current board member and Past President of the California Redevelopment Association and is active in the League of California Cities.

Roger Dickinson is a Supervisor on the Sacramento County Board of Supervisors. He was elected to the Board in a special election in January 1994, and was subsequently

re-elected to four four-year terms, serving through 2010. He is Vice-Chair of the Board of Supervisors, chairs the Sacramento First 5 Commission and is a member of the Sacramento Air Quality Management District Board. He serves on the Sacramento Regional Transit Board, the Sacramento Flood Control Agency Board, the Sacramento Public Library Authority Board, the Capitol Corridor Joint Powers Authority Board, the Board of the Sacramento Area Council of Governments, and various other boards and commissions. Additionally, Roger serves as chair of the Human Services & Education Steering Committee and as a member of the Large Urban Counties Caucus Steering Committee of the National Association of Counties (NACo), is a member of the board and executive committee of the California State Association of Counties (CSAC), and is a board member of the Urban Counties Caucus of CSAC.

Stephen Doyle is a president of Brookfield San Diego Builders. He joined Brookfield homes in 1993 and was named president of the San Diego and Riverside division of Brookfield Davidson Homes in January 1996, the position he holds to date. Mr. Doyle earned a Bachelor's degree in engineering from San Diego State University in 1980 and a J.D. in 1984 from the University of San Diego, School of Law. He is a Registered Civil Engineer and is a member of both the California State and Federal Bar. Mr. Doyle was elected president of the San Diego Building Industry Association in 2001. He served as president for the California Building Industry Association, in 2005. He served as a board member for the Greater San Diego Chamber of Commerce and continues to serve on the Civil Engineering Advisory Board and the College of Engineering Advisory Board at SDSU. Mr. Doyle joined the University of San Diego School of Law Board of Visitors in 2007. Recently, the San Diego Building Industry Hall of Fame announced that Steve was selected for induction in February 2009.

Amanda Eaken is a Policy Analyst with the Natural Resources Defense Council's (NRDC) energy program. Ms. Eaken's primary focus is reducing transportation sector greenhouse gas emissions through improved land use and transportation planning and policy. Her recent work focuses on implementing California's landmark Global Warming Solutions Act through research, analysis, and advocacy. Aiming to create a model for state involvement in land use planning, Ms. Eaken was actively involved in the passage of Senate Bill 375. Prior to joining NRDC, Ms. Eaken managed the construction of affordable housing projects with a non-profit developer in San Francisco. Ms. Eaken received her Master's degree in Transportation and Land Use Planning from U.C. Berkeley's College of Environmental Design, and her B.A. in Environmental and Evolutionary Biology from Dartmouth College.

Gary Gallegos is Executive Director of the San Diego Association of Governments (SANDAG). He is a nationally recognized expert in the areas of transportation, land use, regional public policy making, and bi-national planning and diplomacy. Mr. Gallegos leads a staff of nearly 200 professionals who collaborate to develop public policy initiatives for elected officials on numerous issues encompassing population growth, transportation, environmental management, economic development, municipal finance, bi-national coordination, and public safety. Under his direction, the agency crafted an innovative \$42 billion Regional Transportation Plan to address transportation needs. Mr.

Gallegos also served as the catalyst for SANDAG to create and implement, through its member governments, the first-ever Regional Comprehensive Plan — a regional planning blueprint that balances population, housing, and employment growth with habitat preservation, agriculture, open space, and infrastructure needs.

Steve Heminger is Executive Director of the Metropolitan Transportation Commission (MTC). MTC is the regional transportation planning and finance agency for the nine-county San Francisco Bay Area region. Mr. Heminger was appointed by House Speaker Nancy Pelosi to serve on the National Surface Transportation Policy and Revenue Study Commission, which will help chart the future course for the federal transportation program. In addition, he is a member of the Board of Trustees for the Mineta Transportation Institute and the Board of Directors for the Association of Metropolitan Planning Organizations and International Bridge, Tunnel and Turnpike Association. Prior to joining MTC in 1993, Mr. Heminger was Vice President of Transportation for the Bay Area Council, a business-sponsored public policy group. He also served as a staff assistant in the California State Legislature and the U.S. Congress. Mr. Heminger received his Master of Arts degree from the University of Chicago and a Bachelor of Arts degree from Georgetown University.

Richard Katz is a Board Member for the Los Angeles County Metropolitan Transportation Authority (L.A. Metro). He was appointed to the Board by Los Angeles Mayor Villaraigosa. Mr. Katz has a long history of public service, having served on California's State Water Resources Control Board from 2001 to 2006. He was also Governor Gray Davis's senior advisor on energy and water; and he led negotiations on the landmark Colorado River Agreement with the U.S. government, California water agencies and the six other basin states. He served for 16 years in the state legislature beginning in 1980. For 10 years, he chaired the Assembly Transportation Committee; he authored Proposition 111, raising more money for mass transit/highways than any previous effort. He created the Congestion Management Plan, requiring cities/counties to mitigate land use decisions. Mr. Katz owns a private consulting practice. He also serves on the boards of the Economic Alliance of the San Fernando Valley, the Los Angeles Children's Museum, the Children's Community School, Valley Presbyterian Hospital and Heal the Bay.

Arthur Leahy is Chief Executive Officer of the Orange County Transportation Authority (OCTA). Under direction of the OCTA Board, he is responsible for planning, financing and coordinating Orange County's freeway, street and rail development, as well as managing bus services, commuter rail services, paratransit van service for people with disabilities and a host of other transportation programs. He has served in the position since January 2001. Prior to joining OCTA, he most recently served as the General Manager of Metro Transit in Minneapolis-St. Paul, Minnesota. From 1971 to 1996, he served at the Los Angeles County Metropolitan Transportation Authority (L.A. Metro), including Executive Officer of Operations, where he directed the efforts to start rail service with the opening of the Metro Blue, Red and Green lines and the operation of the Metro's bus system. In 1998, Mr. Leahy was named the "Transit Professional of the Year" by the Minnesota Public Transit Association.

Shari Libicki, Ph.D., is a Principal at ENVIRON International Corporation and their Global Air Quality Practice Area Leader. She has more than 20 years of experience in chemical fate and transport as applied to estimating air emissions and dispersion from chemical processes, hazardous waste sites and emergency releases, and managing greenhouse gas emissions. Dr. Libicki is on the faculty in the Chemical Engineering Department at Stanford University. She has a breadth of experience, including assisting with compliance issues and evaluating greenhouse gas emissions from a variety of processes and assisted in developing greenhouse gas minimization programs. Her experience also includes the evaluation of air quality and climate change impacts of new projects under CEQA and NEPA.

Mike McKeever is Executive Director of the Sacramento Area Council of Governments. Previously, Mr. McKeever, was project manager of the Blueprint Project at SACOG. Over his 20-year career specializing in the field of planning, he has owned and managed two private businesses that specialized in working with local governments on innovative multi-jurisdictional projects. He has been instrumental in developing cutting-edge planning techniques to integrate land use and transportation planning. Mr. McKeever was the founder and President of McKeever/Morris for 13 years and then a Senior Supervising Planner for Parsons Brinckerhoff, before joining SACOG as Blueprint Project Manager in 2001. More recently, Mr. McKeever was the principal creator of PLACE3S planning method and software, designed to help professional and citizen planners to understand the connections between land use, transportation, and air quality issues. He has authored several manuals and guidebooks on various aspects of local government collaboration, and taught Stretching Community Dollars seminars throughout California for the City, County, Schools Partnership to help these units of government find creative ways to work together.

Pete Parkinson is the Director of the Sonoma County Permit and Resource Management Department (PRMD). With a full time staff of about 150, PRMD is a consolidated land use agency responsible for all aspects of permitting and land use planning in unincorporated Sonoma County. He has been a professional planner for 20 years and came to Sonoma County in 1996. Prior to that time, he was the Environmental Coordinator and Principal Planner for Santa Cruz County. He is a graduate of the University of California, Santa Cruz, with majors in Environmental Studies and American History. Mr. Parkinson is a northern California native. He is a member of the American Institute of Certified Planners and is the Vice President for Policy and Legislation with the American Planning Association – California.

Linda Parks is a Supervisor on the Ventura County Board of Supervisors. Ms. Parks previously served as a Planning Commissioner, City Council member, and Mayor for the City of Thousand Oaks, California. While on the Council she wrote the City's first campaign reform law, and initiated the annual Thousand Oaks Earth Day/Arbor Day Celebration with the planting of a thousand oak trees. In addition to setting policy on the Board of Supervisors, Ms. Parks also serves on the Executive Committee and Regional Council of the Southern California Association of Governments (SCAG), the

Santa Monica Mountains Conservancy, the Local Agency Formation Commission (LAFCO), the Air Pollution Control District, the Ventura Council of Governments, the California State University at Channel Islands Site Authority, the Mental Health Services Act Community Leadership Council, and the Ventura County Transportation Commission. Ms. Parks has a Master's degree in Urban Planning. She is a conservationist whose sixteen-year grassroots effort to preserve Ahmanson Ranch culminated in the Ranch's purchase as a State Park. As a citizen, Ms. Parks spearheaded the Parks Initiative that protects parks and open space in Thousand Oaks, and the SOAR (Save Open space and Agricultural Resources) initiatives that protect Ventura County's open space and farmland.

Manuel Pastor, Ph.D., is on leave from his position as Professor of Latin American and Latino Studies at the University of California, Santa Cruz and is currently a Professor of Geography and American Studies & Ethnicity at the University of Southern California where he directs the Program for Environmental and Regional Equity (PERE). He has received grants and fellowships from the Irvine Foundation, the Rockefeller Foundation, the Ford Foundation, the National Science Foundation, the Hewlett Foundation, the Kellogg Foundation, the MacArthur Foundation, and many others. Dr. Pastor speaks frequently on issues of demographic change, economic inequality, and community empowerment and has contributed opinion pieces to such outlets as the Los Angeles Times, the San Jose Mercury News, and the Christian Science Monitor. He served as a member of the Commission on Regions appointed by California's Speaker of the State Assembly, and in January 2002 was awarded a Civic Entrepreneur of the Year award from the California Center for Regional Leadership.

Michael Rawson is the director of the nonprofit California Affordable Housing Law Project and co-director of its parent organization, the Public Interest Law Project, a state support center for California legal services programs. Mr. Rawson founded PILP in 1996 after a 16 year career as managing and senior attorney for the Legal Aid Society of Alameda County. For 28 years, he has represented lower income persons in need of affordable housing in state and federal courts and in the state legislature. He focuses on land use, community redevelopment and fair housing. He has litigated many housing related cases with legal services programs, including suits addressing the adequacy of local housing elements, displacement of lower income households and discrimination against persons protected by the fair housing laws. He has authored articles, book chapters and manuals on these issues. Since the adoption of California's Housing Element Law in 1980, Mr. Rawson has played a major role in drafting the numerous amendments to the law, and he was integral to the drafting of the affordable housing related provisions of SB 375.

Barry Wallerstein, D. Env., is Executive Officer of the South Coast Air Quality Management District. Dr. Wallerstein is a longtime Southern California resident who holds a Doctorate in environmental science and engineering from the University of California at Los Angeles, School of Public Health, and M.S. and B.S. degrees in biological science from the University of Southern California. He has more than two decades of experience in urban planning and environmental studies, with an emphasis

in air pollution control and public policy development. He has been AQMD's Executive Officer since August 1997, having served the agency in increasingly responsible positions since 1984. Previously, he held the position of an Environmental Control Administrator at Northrop Corporation and was a member of the rule development staff at the California Air Resources Board. As Executive Officer, he serves as chief of staff to implement environmental protection policies as approved by the agency's 13-member Governing Board, working proactively with state and federal regulatory officials, local governments, regulated businesses, and community stakeholders.

Jerry Walters is a Principal and Chief Technical Officer of Fehr & Peers, a transportation consulting firm with offices throughout California. He has over thirty years experience in transportation planning and engineering, and has participated on committees responsible for defining best practices for integrated land use, transportation and climate change methods for the California Transportation Commission, California Department of Housing and Community Development, Caltrans, and the American Public Transit Association. Mr. Walters is a co-author of the 2008 book *Growing Cooler – the Evidence on Urban Development and Climate Change* published by the Urban Land Institute. He also developed project evaluation methods and metrics for the US EPA Smart Growth INDEX and is project manager for the ongoing US EPA study *“Mixed-use Development and Vehicle Trips: Improving the Standard Estimation Methodology”*. He also led development of smart growth travel analysis methods for Sacramento Regional Blueprint study, San Joaquin Valley Growth Response study, and smart growth planning for the San Diego and San Luis Obispo regions, and sustainable development plans throughout the US. He served on the advisory committee for Caltrans' 2007 *“Assessment of Local Models and Tools for Analyzing Smart-Growth Strategies”*, and on the California Department of Housing and Community Development assessment *“The Effect of Housing Near Transit Stations on Vehicle Trip Rates and Transit Trip Generation”*, as well as on the California CTC working group on travel modeling guidelines for Regional Transportation Plans under AB32.

Carol Whiteside is the Founder and President Emeritus of the Great Valley Center, a nonprofit organization she began in August of 1997 to support organizations and activities that promote the economic, social and environmental well-being of California's Central Valley. Prior to that she held positions on the staff of Governor Pete Wilson, first as Assistant Secretary of the California Resources Agency where she specialized in land use, conservation and growth management, and then as Director of Intergovernmental Affairs, focusing on community and economic development. She currently serves on numerous boards, including the Lincoln Institute of Land Policy, the Public Policy Institute of California, the California Emerging Technology Fund and the Sierra Health Foundation, and in 2004 she was appointed to Governor Arnold Schwarzenegger's Sierra Nevada Conservancy. She also served as an elected Mayor of Modesto, as well as on the Modesto City School Board and City Council. Carol is a recipient of the Dale Prize for collaborative planning by Cal Poly Pomona in 2006, and under her leadership, the Great Valley Center was awarded the Olmsted Medal by the

American Society of Landscape Architects in 2007. Ms. Whiteside is a graduate of the University of California at Davis.

Michael Woo is a Planning Commissioner for the City of Los Angeles. As a planning commissioner, former city councilman, and an adjunct professor in the USC School of Policy, Planning, and Development, Michael Woo brings a wealth of policy expertise and political acumen to his role as a Southern California consultant for ClimatePlan. He has been a key figure in major planning efforts in Southern California, authoring the Hollywood Redevelopment Plan and helping plan the route of the MetroRail Red Line. He also is chairman of the national board of Smart Growth America and the nonprofit group which runs the Hollywood Farmers Market.

Jim Wunderman is President and Chief Executive Officer of the Bay Area Council, a business-backed public policy organization in the San Francisco-Oakland-Silicon Valley Bay Area. Led by its CEO members, the Bay Area Council is the strong, united voice of more than 275 of the largest Bay Area employers, representing more than 500,000 workers, or one of every six private sector employees. Since becoming CEO in 2004, Wunderman has led the 64-year-old public policy organization to become one of the most influential, effective institutions of its kind. Under Wunderman's leadership, the Council has grown significantly in membership, revenue and profile, and has developed a global competitiveness strategy for the Bay Area that serves as a model for other regions. Some of the core elements of the global competitiveness strategy are to develop world-class infrastructure, a second-to-none education system, and to enact a smart growth plan that will stand in an era of climate change and economic pressures. Wunderman has also helped the Council develop deep and collaborative relationships with leaders in Washington, D.C. and Sacramento.

Senate Bill No. 375

CHAPTER 728

An act to amend Sections 65080, 65400, 65583, 65584.01, 65584.02, 65584.04, 65587, and 65588 of, and to add Sections 14522.1, 14522.2, and 65080.01 to, the Government Code, and to amend Section 21061.3 of, to add Section 21159.28 to, and to add Chapter 4.2 (commencing with Section 21155) to Division 13 of, the Public Resources Code, relating to environmental quality.

[Approved by Governor September 30, 2008. Filed with
Secretary of State September 30, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

SB 375, Steinberg. Transportation planning: travel demand models: sustainable communities strategy: environmental review.

(1) Existing law requires certain transportation planning activities by the Department of Transportation and by designated regional transportation planning agencies, including development of a regional transportation plan. Certain of these agencies are designated under federal law as metropolitan planning organizations. Existing law authorizes the California Transportation Commission, in cooperation with the regional agencies, to prescribe study areas for analysis and evaluation.

This bill would require the commission to maintain guidelines, as specified, for travel demand models used in the development of regional transportation plans by metropolitan planning organizations. The bill would require the commission to consult with various agencies in this regard, and to form an advisory committee and to hold workshops before amending the guidelines.

This bill would also require the regional transportation plan for regions of the state with a metropolitan planning organization to adopt a sustainable communities strategy, as part of its regional transportation plan, as specified, designed to achieve certain goals for the reduction of greenhouse gas emissions from automobiles and light trucks in a region. The bill would require the State Air Resources Board, working in consultation with the metropolitan planning organizations, to provide each affected region with greenhouse gas emission reduction targets for the automobile and light truck sector for 2020 and 2035 by September 30, 2010, to appoint a Regional Targets Advisory Committee to recommend factors and methodologies for setting those targets, and to update those targets every 8 years. The bill would require certain transportation planning and programming activities by the metropolitan planning organizations to be consistent with the sustainable communities strategy contained in the regional transportation plan, but would state that certain transportation projects programmed for

funding on or before December 31, 2011, are not required to be consistent with the sustainable communities strategy process. To the extent the sustainable communities strategy is unable to achieve the greenhouse gas emission reduction targets, the bill would require affected metropolitan planning organizations to prepare an alternative planning strategy to the sustainable communities strategy showing how the targets would be achieved through alternative development patterns, infrastructure, or additional transportation measures or policies. The bill would require the State Air Resources Board to review each metropolitan planning organization's sustainable communities strategy and alternative planning strategy to determine whether the strategy, if implemented, would achieve the greenhouse gas emission reduction targets. The bill would require a strategy that is found to be insufficient by the state board to be revised by the metropolitan planning organization, with a minimum requirement that the metropolitan planning organization must obtain state board acceptance that an alternative planning strategy, if implemented, would achieve the targets. The bill would state that the adopted strategies do not regulate the use of land and are not subject to state approval, and that city or county land use policies, including the general plan, are not required to be consistent with the regional transportation plan, which would include the sustainable growth strategy, or the alternative planning strategy. The bill would also require the metropolitan planning organization to hold specified informational meetings in this regard with local elected officials and would require a public participation program with workshops and public hearings for the public, among other things. The bill would enact other related provisions.

Because the bill would impose additional duties on local agencies, it would impose a state-mandated local program.

(2) The Planning and Zoning Law requires each city, county, or city and county to prepare and adopt a general plan for its jurisdiction that contains certain mandatory elements, including a housing element. Existing law requires the housing element to identify the existing and projected housing needs of all economic segments of the community.

Existing law requires the housing element, among other things, to contain a program which sets forth a 5-year schedule of actions of the local government to implement the goals and objectives of the housing element. Existing law requires the program to identify actions that will be undertaken to make sites available to accommodate various housing needs, including, in certain cases, the rezoning of sites to accommodate 100% of the need for housing for very low and low-income households.

This bill would instead require the program to set forth a schedule of actions during the planning period, as defined, and require each action to have a timetable for implementation. The bill would generally require rezoning of certain sites to accommodate certain housing needs within specified times, with an opportunity for an extension time in certain cases, and would require the local government to hold a noticed public hearing within 30 days after the deadline for compliance expires. The bill would, under certain conditions, prohibit a local government that fails to complete

a required rezoning within the timeframe required from disapproving a housing development project, as defined, or from taking various other actions that would render the project infeasible, and would allow the project applicant or any interested person to bring an action to enforce these provisions. The bill would also allow a court to compel a local government to complete the rezoning within specified times and to impose sanctions on the local government if the court order or judgment is not carried out, and would provide that in certain cases the local government shall bear the burden of proof relative to actions brought to compel compliance with specified deadlines and requirements.

Existing law requires each local government to review and revise its housing element as frequently as appropriate, but not less than every 5 years.

This bill would extend that time period to 8 years for those local governments that are located within a region covered by a metropolitan planning organization in a nonattainment region or by a metropolitan planning organization or regional transportation planning agency that meets certain requirements. The bill would also provide that, in certain cases, the time period would be reduced to 4 years or other periods, as specified.

The bill would enact other related provisions. Because the bill would impose additional duties on local governments relative to the housing element of the general plan, it would thereby impose a state-mandated local program.

(3) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

This bill would exempt from CEQA a transit priority project, as defined, that meets certain requirements and that is declared by the legislative body of a local jurisdiction to be a sustainable communities project. The transit priority project would need to be consistent with a metropolitan planning organization's sustainable communities strategy or an alternative planning strategy that has been determined by the State Air Resources Board to achieve the greenhouse gas emission reductions targets. The bill would provide for limited CEQA review of various other transit priority projects.

The bill, with respect to other residential or mixed-use residential projects meeting certain requirements, would exempt the environmental documents for those projects from being required to include certain information regarding growth inducing impacts or impacts from certain vehicle trips.

The bill would also authorize the legislative body of a local jurisdiction to adopt traffic mitigation measures for transit priority projects. The bill would exempt a transit priority project seeking a land use approval from

compliance with additional measures for traffic impacts, if the local jurisdiction has adopted those traffic mitigation measures.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The transportation sector contributes over 40 percent of the greenhouse gas emissions in the State of California; automobiles and light trucks alone contribute almost 30 percent. The transportation sector is the single largest contributor of greenhouse gases of any sector.

(b) In 2006, the Legislature passed and the Governor signed Assembly Bill 32 (Chapter 488 of the Statutes of 2006; hereafter AB 32), which requires the State of California to reduce its greenhouse gas emissions to 1990 levels no later than 2020. According to the State Air Resources Board, in 1990 greenhouse gas emissions from automobiles and light trucks were 108 million metric tons, but by 2004 these emissions had increased to 135 million metric tons.

(c) Greenhouse gas emissions from automobiles and light trucks can be substantially reduced by new vehicle technology and by the increased use of low carbon fuel. However, even taking these measures into account, it will be necessary to achieve significant additional greenhouse gas reductions from changed land use patterns and improved transportation. Without improved land use and transportation policy, California will not be able to achieve the goals of AB 32.

(d) In addition, automobiles and light trucks account for 50 percent of air pollution in California and 70 percent of its consumption of petroleum. Changes in land use and transportation policy, based upon established modeling methodology, will provide significant assistance to California's goals to implement the federal and state Clean Air Acts and to reduce its dependence on petroleum.

(e) Current federal law requires regional transportation planning agencies to include a land use allocation in the regional transportation plan. Some regions have engaged in a regional "blueprint" process to prepare the land use allocation. This process has been open and transparent. The Legislature intends, by this act, to build upon that successful process by requiring metropolitan planning organizations to develop and incorporate a sustainable communities strategy which will be the land use allocation in the regional transportation plan.

(f) The California Environmental Quality Act (CEQA) is California's premier environmental statute. New provisions of CEQA should be enacted

so that the statute encourages developers to submit applications and local governments to make land use decisions that will help the state achieve its climate goals under AB 32, assist in the achievement of state and federal air quality standards, and increase petroleum conservation.

(g) Current planning models and analytical techniques used for making transportation infrastructure decisions and for air quality planning should be able to assess the effects of policy choices, such as residential development patterns, expanded transit service and accessibility, the walkability of communities, and the use of economic incentives and disincentives.

(h) The California Transportation Commission has developed guidelines for travel demand models used in the development of regional transportation plans. This act assures the commission's continued oversight of the guidelines, as the commission may update them as needed from time to time.

(i) California local governments need a sustainable source of funding to be able to accommodate patterns of growth consistent with the state's climate, air quality, and energy conservation goals.

SEC. 2. Section 14522.1 is added to the Government Code, to read:

14522.1. (a) (1) The commission, in consultation with the department and the State Air Resources Board, shall maintain guidelines for travel demand models used in the development of regional transportation plans by federally designated metropolitan planning organizations.

(2) Any revision of the guidelines shall include the formation of an advisory committee that shall include representatives of the metropolitan planning organizations, the department, organizations knowledgeable in the creation and use of travel demand models, local governments, and organizations concerned with the impacts of transportation investments on communities and the environment. Before amending the guidelines, the commission shall hold two workshops on the guidelines, one in northern California and one in southern California. The workshops shall be incorporated into regular commission meetings.

(b) The guidelines shall, at a minimum and to the extent practicable, taking into account such factors as the size and available resources of the metropolitan planning organization, account for all of the following:

(1) The relationship between land use density and household vehicle ownership and vehicle miles traveled in a way that is consistent with statistical research.

(2) The impact of enhanced transit service levels on household vehicle ownership and vehicle miles traveled.

(3) Changes in travel and land development likely to result from highway or passenger rail expansion.

(4) Mode splitting that allocates trips between automobile, transit, carpool, and bicycle and pedestrian trips. If a travel demand model is unable to forecast bicycle and pedestrian trips, another means may be used to estimate those trips.

(5) Speed and frequency, days, and hours of operation of transit service.

SEC. 3. Section 14522.2 is added to the Government Code, to read:

14522.2. (a) A metropolitan planning organization shall disseminate the methodology, results, and key assumptions of whichever travel demand models it uses in a way that would be useable and understandable to the public.

(b) Transportation planning agencies other than those identified in paragraph (1) of subdivision (a) of Section 14522.1, cities, and counties are encouraged, but not required, to utilize travel demand models that are consistent with the guidelines in the development of their regional transportation plans.

SEC. 4. Section 65080 of the Government Code is amended to read:

65080. (a) Each transportation planning agency designated under Section 29532 or 29532.1 shall prepare and adopt a regional transportation plan directed at achieving a coordinated and balanced regional transportation system, including, but not limited to, mass transportation, highway, railroad, maritime, bicycle, pedestrian, goods movement, and aviation facilities and services. The plan shall be action-oriented and pragmatic, considering both the short-term and long-term future, and shall present clear, concise policy guidance to local and state officials. The regional transportation plan shall consider factors specified in Section 134 of Title 23 of the United States Code. Each transportation planning agency shall consider and incorporate, as appropriate, the transportation plans of cities, counties, districts, private organizations, and state and federal agencies.

(b) The regional transportation plan shall be an internally consistent document and shall include all of the following:

(1) A policy element that describes the transportation issues in the region, identifies and quantifies regional needs, and describes the desired short-range and long-range transportation goals, and pragmatic objective and policy statements. The objective and policy statements shall be consistent with the funding estimates of the financial element. The policy element of transportation planning agencies with populations that exceed 200,000 persons may quantify a set of indicators including, but not limited to, all of the following:

(A) Measures of mobility and traffic congestion, including, but not limited to, daily vehicle hours of delay per capita and vehicle miles traveled per capita.

(B) Measures of road and bridge maintenance and rehabilitation needs, including, but not limited to, roadway pavement and bridge conditions.

(C) Measures of means of travel, including, but not limited to, percentage share of all trips (work and nonwork) made by all of the following:

- (i) Single occupant vehicle.
- (ii) Multiple occupant vehicle or carpool.
- (iii) Public transit including commuter rail and intercity rail.
- (iv) Walking.
- (v) Bicycling.

(D) Measures of safety and security, including, but not limited to, total injuries and fatalities assigned to each of the modes set forth in subparagraph (C).

(E) Measures of equity and accessibility, including, but not limited to, percentage of the population served by frequent and reliable public transit, with a breakdown by income bracket, and percentage of all jobs accessible by frequent and reliable public transit service, with a breakdown by income bracket.

(F) The requirements of this section may be met utilizing existing sources of information. No additional traffic counts, household surveys, or other sources of data shall be required.

(2) A sustainable communities strategy prepared by each metropolitan planning organization as follows:

(A) No later than September 30, 2010, the State Air Resources Board shall provide each affected region with greenhouse gas emission reduction targets for the automobile and light truck sector for 2020 and 2035, respectively.

(i) No later than January 31, 2009, the state board shall appoint a Regional Targets Advisory Committee to recommend factors to be considered and methodologies to be used for setting greenhouse gas emission reduction targets for the affected regions. The committee shall be composed of representatives of the metropolitan planning organizations, affected air districts, the League of California Cities, the California State Association of Counties, local transportation agencies, and members of the public, including homebuilders, environmental organizations, planning organizations, environmental justice organizations, affordable housing organizations, and others. The advisory committee shall transmit a report with its recommendations to the state board no later than September 30, 2009. In recommending factors to be considered and methodologies to be used, the advisory committee may consider any relevant issues, including, but not limited to, data needs, modeling techniques, growth forecasts, the impacts of regional jobs-housing balance on interregional travel and greenhouse gas emissions, economic and demographic trends, the magnitude of greenhouse gas reduction benefits from a variety of land use and transportation strategies, and appropriate methods to describe regional targets and to monitor performance in attaining those targets. The state board shall consider the report prior to setting the targets.

(ii) Prior to setting the targets for a region, the state board shall exchange technical information with the metropolitan planning organization and the affected air district. The metropolitan planning organization may recommend a target for the region. The metropolitan planning organization shall hold at least one public workshop within the region after receipt of the report from the advisory committee. The state board shall release draft targets for each region no later than June 30, 2010.

(iii) In establishing these 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, and prospective measures the state board plans to adopt to reduce greenhouse gas emissions from other greenhouse gas emission sources as that term is defined in subdivision (i) of Section 38505 of the Health and Safety Code and consistent with the regulations promulgated pursuant to the California Global Warming Solutions Act of 2006 (Division 12.5 (commencing with Section 38500) of the Health and Safety Code).

(iv) The state board shall update the regional greenhouse gas emission reduction targets every eight years consistent with each metropolitan planning organization's timeframe for updating its regional transportation plan under federal law until 2050. The state board may revise the targets every four years based on changes in the factors considered under clause (iii) above. The state board shall exchange technical information with the Department of Transportation, metropolitan planning organizations, local governments, and affected air districts and engage in a consultative process with public and private stakeholders prior to updating these targets.

(v) The greenhouse gas emission reduction targets may be expressed in gross tons, tons per capita, tons per household, or in any other metric deemed appropriate by the state board.

(B) Each metropolitan planning organization shall prepare a sustainable communities strategy, subject to the requirements of Part 450 of Title 23 of, and Part 93 of Title 40 of, the Code of Federal Regulations, including the requirement to utilize the most recent planning assumptions considering local general plans and other factors. The sustainable communities strategy shall (i) identify the general location of uses, residential densities, and building intensities within the region; (ii) identify areas within the region sufficient to house all the population of the region, including all economic segments of the population, over the course of the planning period of the regional transportation plan taking into account net migration into the region, population growth, household formation and employment growth; (iii) identify areas within the region sufficient to house an eight-year projection of the regional housing need for the region pursuant to Section 65584; (iv) identify a transportation network to service the transportation needs of the region; (v) gather and consider the best practically available scientific information regarding resource areas and farmland in the region as defined in subdivisions (a) and (b) of Section 65080.01; (vi) consider the state housing goals specified in Sections 65580 and 65581; (vii) set forth a forecasted development pattern for the region, which, when integrated with the transportation network, and other transportation measures and policies, will reduce the greenhouse gas emissions from automobiles and light trucks to achieve, if there is a feasible way to do so, the greenhouse gas emission reduction targets approved by the state board; and (viii) allow the regional transportation plan to comply with Section 176 of the federal Clean Air Act (42 U.S.C. Sec. 7506). Within the jurisdiction of the Metropolitan Transportation Commission, as defined by Section 66502, the Association of Bay Area Governments shall be responsible for clauses (i), (ii), (iii), (v), and (vi), the Metropolitan Transportation Commission shall be responsible

for clauses (iv) and (viii); and the Association of Bay Area Governments and the Metropolitan Transportation Commission shall jointly be responsible for clause (vii).

(C) In the region served by the multicounty transportation planning agency described in Section 130004 of the Public Utilities Code, a subregional council of governments and the county transportation commission may work together to propose the sustainable communities strategy and an alternative planning strategy, if one is prepared pursuant to subparagraph (H), for that subregional area. The metropolitan planning organization may adopt a framework for a subregional sustainable communities strategy or a subregional alternative planning strategy to address the intraregional land use, transportation, economic, air quality, and climate policy relationships. The metropolitan planning organization shall include the subregional sustainable communities strategy for that subregion in the regional sustainable communities strategy to the extent consistent with this section and federal law and approve the subregional alternative planning strategy, if one is prepared pursuant to subparagraph (H), for that subregional area to the extent consistent with this section. The metropolitan planning organization shall develop overall guidelines, create public participation plans pursuant to subparagraph (E), ensure coordination, resolve conflicts, make sure that the overall plan complies with applicable legal requirements, and adopt the plan for the region.

(D) The metropolitan planning organization shall conduct at least two informational meetings in each county within the region for members of the board of supervisors and city councils on the sustainable communities strategy and alternative planning strategy, if any. The metropolitan planning organization may conduct only one informational meeting if it is attended by representatives of the county board of supervisors and city council members representing a majority of the cities representing a majority of the population in the incorporated areas of that county. Notice of the meeting shall be sent to the clerk of the board of supervisors and to each city clerk. The purpose of the meeting shall be to present a draft of the sustainable communities strategy to the members of the board of supervisors and the city council members in that county and to solicit and consider their input and recommendations.

(E) Each metropolitan planning organization shall adopt a public participation plan, for development of the sustainable communities strategy and an alternative planning strategy, if any, that includes all of the following:

(i) Outreach efforts to encourage the active participation of a broad range of stakeholder groups in the planning process, consistent with the agency's adopted Federal Public Participation Plan, including, but not limited to, affordable housing advocates, transportation advocates, neighborhood and community groups, environmental advocates, home builder representatives, broad-based business organizations, landowners, commercial property interests, and homeowner associations.

(ii) Consultation with congestion management agencies, transportation agencies, and transportation commissions.

(iii) Workshops throughout the region to provide the public with the information and tools necessary to provide a clear understanding of the issues and policy choices. At least one workshop shall be held in each county in the region. For counties with a population greater than 500,000, at least three workshops shall be held. Each workshop, to the extent practicable, shall include urban simulation computer modeling to create visual representations of the sustainable communities strategy and the alternative planning strategy.

(iv) Preparation and circulation of a draft sustainable communities strategy and an alternative planning strategy, if one is prepared, not less than 55 days before adoption of a final regional transportation plan.

(v) At least three public hearings on the draft sustainable communities strategy in the regional transportation plan and alternative planning strategy, if one is prepared. If the metropolitan transportation organization consists of a single county, at least two public hearings shall be held. To the maximum extent feasible, the hearings shall be in different parts of the region to maximize the opportunity for participation by members of the public throughout the region.

(vi) A process for enabling members of the public to provide a single request to receive notices, information, and updates.

(F) In preparing a sustainable communities strategy, the metropolitan planning organization shall consider spheres of influence that have been adopted by the local agency formation commissions within its region.

(G) Prior to adopting a sustainable communities strategy, the metropolitan planning organization shall quantify the reduction in greenhouse gas emissions projected to be achieved by the sustainable communities strategy and set forth the difference, if any, between the amount of that reduction and the target for the region established by the state board.

(H) If the sustainable communities strategy, prepared in compliance with subparagraph (B) or (C), is unable to reduce greenhouse gas emissions to achieve the greenhouse gas emission reduction targets established by the state board, the metropolitan planning organization shall prepare an alternative planning strategy to the sustainable communities strategy showing how those greenhouse gas emission targets would be achieved through alternative development patterns, infrastructure, or additional transportation measures or policies. The alternative planning strategy shall be a separate document from the regional transportation plan, but it may be adopted concurrently with the regional transportation plan. In preparing the alternative planning strategy, the metropolitan planning organization:

(i) Shall identify the principal impediments to achieving the targets within the sustainable communities strategy.

(ii) May include an alternative development pattern for the region pursuant to subparagraphs (B) to (F), inclusive.

(iii) Shall describe how the greenhouse gas emission reduction targets would be achieved by the alternative planning strategy, and why the development pattern, measures, and policies in the alternative planning

strategy are the most practicable choices for achievement of the greenhouse gas emission reduction targets.

(iv) An alternative development pattern set forth in the alternative planning strategy shall comply with Part 450 of Title 23 of, and Part 93 of Title 40 of, the Code of Federal Regulations, except to the extent that compliance will prevent achievement of the greenhouse gas emission reduction targets approved by the state board.

(v) For purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), an alternative planning strategy shall not constitute a land use plan, policy, or regulation, and the inconsistency of a project with an alternative planning strategy shall not be a consideration in determining whether a project may have an environmental effect.

(I) (i) Prior to starting the public participation process adopted pursuant to subparagraph (E) of paragraph (2) of subdivision (b) of Section 65080, the metropolitan planning organization shall submit a description to the state board of the technical methodology it intends to use to estimate the greenhouse gas emissions from its sustainable communities strategy and, if appropriate, its alternative planning strategy. The state board shall respond to the metropolitan planning organization in a timely manner with written comments about the technical methodology, including specifically describing any aspects of that methodology it concludes will not yield accurate estimates of greenhouse gas emissions, and suggested remedies. The metropolitan planning organization is encouraged to work with the state board until the state board concludes that the technical methodology operates accurately.

(ii) After adoption, a metropolitan planning organization shall submit a sustainable communities strategy or an alternative planning strategy, if one has been adopted, to the state board for review, including the quantification of the greenhouse gas emission reductions the strategy would achieve and a description of the technical methodology used to obtain that result. Review by the state board shall be limited to acceptance or rejection of the metropolitan planning organization's determination that the strategy submitted would, if implemented, achieve the greenhouse gas emission reduction targets established by the state board. The state board shall complete its review within 60 days.

(iii) If the state board determines that the strategy submitted would not, if implemented, achieve the greenhouse gas emission reduction targets, the metropolitan planning organization shall revise its strategy or adopt an alternative planning strategy, if not previously adopted, and submit the strategy for review pursuant to clause (ii). At a minimum, the metropolitan planning organization must obtain state board acceptance that an alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets established for that region by the state board.

(J) Neither a sustainable communities strategy nor an alternative planning strategy regulates the use of land, nor, except as provided by subparagraph (I), shall either one be subject to any state approval. Nothing in a sustainable communities strategy shall be interpreted as superseding the exercise of the

land use authority of cities and counties within the region. Nothing in this section shall be interpreted to limit the state board's authority under any other provision of law. Nothing in this section shall be interpreted to authorize the abrogation of any vested right whether created by statute or by common law. Nothing in this section shall require a city's or county's land use policies and regulations, including its general plan, to be consistent with the regional transportation plan or an alternative planning strategy. Nothing in this section requires a metropolitan planning organization to approve a sustainable communities strategy that would be inconsistent with Part 450 of Title 23 of, or Part 93 of Title 40 of, the Code of Federal Regulations and any administrative guidance under those regulations. Nothing in this section relieves a public or private entity or any person from compliance with any other local, state, or federal law.

(K) Nothing in this section requires projects programmed for funding on or before December 31, 2011, to be subject to the provisions of this paragraph if they (i) are contained in the 2007 or 2009 Federal Statewide Transportation Improvement Program, (ii) are funded pursuant to Chapter 12.49 (commencing with Section 8879.20) of Division 1 of Title 2, or (iii) were specifically listed in a ballot measure prior to December 31, 2008, approving a sales tax increase for transportation projects. Nothing in this section shall require a transportation sales tax authority to change the funding allocations approved by the voters for categories of transportation projects in a sales tax measure adopted prior to December 31, 2010. For purposes of this subparagraph, a transportation sales tax authority is a district, as defined in Section 7252 of the Revenue and Taxation Code, that is authorized to impose a sales tax for transportation purposes.

(L) A metropolitan planning organization, or a regional transportation planning agency not within a metropolitan planning organization, that is required to adopt a regional transportation plan not less than every five years, may elect to adopt the plan not less than every four years. This election shall be made by the board of directors of the metropolitan planning organization or regional transportation planning agency no later than June 1, 2009, or thereafter 54 months prior to the statutory deadline for the adoption of housing elements for the local jurisdictions within the region, after a public hearing at which comments are accepted from members of the public and representatives of cities and counties within the region covered by the metropolitan planning organization or regional transportation planning agency. Notice of the public hearing shall be given to the general public and by mail to cities and counties within the region no later than 30 days prior to the date of the public hearing. Notice of election shall be promptly given to the Department of Housing and Community Development. The metropolitan planning organization or the regional transportation planning agency shall complete its next regional transportation plan within three years of the notice of election.

(M) Two or more of the metropolitan planning organizations for Fresno County, Kern County, Kings County, Madera County, Merced County, San Joaquin County, Stanislaus County, and Tulare County may work together

to develop and adopt multiregional goals and policies that may address interregional land use, transportation, economic, air quality, and climate relationships. The participating metropolitan planning organizations may also develop a multiregional sustainable communities strategy, to the extent consistent with federal law, or an alternative planning strategy for adoption by the metropolitan planning organizations. Each participating metropolitan planning organization shall consider any adopted multiregional goals and policies in the development of a sustainable communities strategy and, if applicable, an alternative planning strategy for its region.

(3) An action element that describes the programs and actions necessary to implement the plan and assigns implementation responsibilities. The action element may describe all transportation projects proposed for development during the 20-year or greater life of the plan. The action element shall consider congestion management programming activities carried out within the region.

(4) (A) A financial element that summarizes the cost of plan implementation constrained by a realistic projection of available revenues. The financial element shall also contain recommendations for allocation of funds. A county transportation commission created pursuant to Section 130000 of the Public Utilities Code shall be responsible for recommending projects to be funded with regional improvement funds, if the project is consistent with the regional transportation plan. The first five years of the financial element shall be based on the five-year estimate of funds developed pursuant to Section 14524. The financial element may recommend the development of specified new sources of revenue, consistent with the policy element and action element.

(B) The financial element of transportation planning agencies with populations that exceed 200,000 persons may include a project cost breakdown for all projects proposed for development during the 20-year life of the plan that includes total expenditures and related percentages of total expenditures for all of the following:

- (i) State highway expansion.
- (ii) State highway rehabilitation, maintenance, and operations.
- (iii) Local road and street expansion.
- (iv) Local road and street rehabilitation, maintenance, and operation.
- (v) Mass transit, commuter rail, and intercity rail expansion.
- (vi) Mass transit, commuter rail, and intercity rail rehabilitation, maintenance, and operations.
- (vii) Pedestrian and bicycle facilities.
- (viii) Environmental enhancements and mitigation.
- (ix) Research and planning.
- (x) Other categories.

(C) The metropolitan planning organization or county transportation agency, whichever entity is appropriate, shall consider financial incentives for cities and counties that have resource areas or farmland, as defined in Section 65080.01, for the purposes of, for example, transportation investments for the preservation and safety of the city street or county road

system and farm to market and interconnectivity transportation needs. The metropolitan planning organization or county transportation agency, whichever entity is appropriate, shall also consider financial assistance for counties to address countywide service responsibilities in counties that contribute towards the greenhouse gas emission reduction targets by implementing policies for growth to occur within their cities.

(c) Each transportation planning agency may also include other factors of local significance as an element of the regional transportation plan, including, but not limited to, issues of mobility for specific sectors of the community, including, but not limited to, senior citizens.

(d) Except as otherwise provided in this subdivision, each transportation planning agency shall adopt and submit, every four years, an updated regional transportation plan to the California Transportation Commission and the Department of Transportation. A transportation planning agency located in a federally designated air quality attainment area or that does not contain an urbanized area may at its option adopt and submit a regional transportation plan every five years. When applicable, the plan shall be consistent with federal planning and programming requirements and shall conform to the regional transportation plan guidelines adopted by the California Transportation Commission. Prior to adoption of the regional transportation plan, a public hearing shall be held after the giving of notice of the hearing by publication in the affected county or counties pursuant to Section 6061.

SEC. 5. Section 65080.01 is added to the Government Code, to read:

65080.01. The following definitions apply to terms used in Section 65080:

(a) "Resource areas" include (1) all publicly owned parks and open space; (2) open space or habitat areas protected by natural community conservation plans, habitat conservation plans, and other adopted natural resource protection plans; (3) habitat for species identified as candidate, fully protected, sensitive, or species of special status by local, state, or federal agencies or protected by the federal Endangered Species Act of 1973, the California Endangered Species Act, or the Native Plant Protection Act; (4) lands subject to conservation or agricultural easements for conservation or agricultural purposes by local governments, special districts, or nonprofit 501(c)(3) organizations, areas of the state designated by the State Mining and Geology Board as areas of statewide or regional significance pursuant to Section 2790 of the Public Resources Code, and lands under Williamson Act contracts; (5) areas designated for open-space or agricultural uses in adopted open-space elements or agricultural elements of the local general plan or by local ordinance; (6) areas containing biological resources as described in Appendix G of the CEQA Guidelines that may be significantly affected by the sustainable communities strategy or the alternative planning strategy; and (7) an area subject to flooding where a development project would not, at the time of development in the judgment of the agency, meet the requirements of the National Flood Insurance Program or where the area is subject to more protective provisions of state law or local ordinance.

(b) “Farmland” means farmland that is outside all existing city spheres of influence or city limits as of January 1, 2008, and is one of the following:

(1) Classified as prime or unique farmland or farmland of statewide importance.

(2) Farmland classified by a local agency in its general plan that meets or exceeds the standards for prime or unique farmland or farmland of statewide importance.

(c) “Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

(d) “Consistent” shall have the same meaning as that term is used in Section 134 of Title 23 of the United States Code.

(e) “Internally consistent” means that the contents of the elements of the regional transportation plan must be consistent with each other.

SEC. 6. Section 65400 of the Government Code is amended to read:

65400. (a) After the legislative body has adopted all or part of a general plan, the planning agency shall do both of the following:

(1) Investigate and make recommendations to the legislative body regarding reasonable and practical means for implementing the general plan or element of the general plan, so that it will serve as an effective guide for orderly growth and development, preservation and conservation of open-space land and natural resources, and the efficient expenditure of public funds relating to the subjects addressed in the general plan.

(2) Provide by April 1 of each year an annual report to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development that includes all of the following:

(A) The status of the plan and progress in its implementation.

(B) The progress in meeting its share of regional housing needs determined pursuant to Section 65584 and local efforts to remove governmental constraints to the maintenance, improvement, and development of housing pursuant to paragraph (3) of subdivision (c) of Section 65583.

The housing element portion of the annual report, as required by this paragraph, shall be prepared through the use of forms and definitions adopted by the Department of Housing and Community Development pursuant to the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2). Prior to and after adoption of the forms, the housing element portion of the annual report shall include a section that describes the actions taken by the local government towards completion of the programs and status of the local government’s compliance with the deadlines in its housing element. That report shall be considered at an annual public meeting before the legislative body where members of the public shall be allowed to provide oral testimony and written comments.

(C) The degree to which its approved general plan complies with the guidelines developed and adopted pursuant to Section 65040.2 and the date of the last revision to the general plan.

(b) If a court finds, upon a motion to that effect, that a city, county, or city and county failed to submit, within 60 days of the deadline established in this section, the housing element portion of the report required pursuant to subparagraph (B) of paragraph (2) of subdivision (a) that substantially complies with the requirements of this section, the court shall issue an order or judgment compelling compliance with this section within 60 days. If the city, county, or city and county fails to comply with the court's order within 60 days, the plaintiff or petitioner may move for sanctions, and the court may, upon that motion, grant appropriate sanctions. The court shall retain jurisdiction to ensure that its order or judgment is carried out. If the court determines that its order or judgment is not carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled. This subdivision applies to proceedings initiated on or after the first day of October following the adoption of forms and definitions by the Department of Housing and Community Development pursuant to paragraph (2) of subdivision (a), but no sooner than six months following that adoption.

SEC. 7. Section 65583 of the Government Code is amended to read:

65583. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, mobilehomes, and emergency shelters, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

(a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include all of the following:

(1) An analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected housing needs for all income levels, including extremely low income households, as defined in subdivision (b) of Section 50105 and Section 50106 of the Health and Safety Code. These existing and projected needs shall include the locality's share of the regional housing need in accordance with Section 65584. Local agencies shall calculate the subset of very low income households allotted under Section 65584 that qualify as extremely low income households. The local agency may either use available census data to calculate the percentage of very low income households that qualify as extremely low income households or presume that 50 percent of the very low income households qualify as extremely low income households. The number of extremely low income households and very low income households shall equal the jurisdiction's allocation of very low income households pursuant to Section 65584.

(2) An analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition.

(3) An inventory of land suitable for residential development, including vacant sites and sites having potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites.

(4) (A) The identification of a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit. The identified zone or zones shall include sufficient capacity to accommodate the need for emergency shelter identified in paragraph (7), except that each local government shall identify a zone or zones that can accommodate at least one year-round emergency shelter. If the local government cannot identify a zone or zones with sufficient capacity, the local government shall include a program to amend its zoning ordinance to meet the requirements of this paragraph within one year of the adoption of the housing element. The local government may identify additional zones where emergency shelters are permitted with a conditional use permit. The local government shall also demonstrate that existing or proposed permit processing, development, and management standards are objective and encourage and facilitate the development of, or conversion to, emergency shelters. Emergency shelters may only be subject to those development and management standards that apply to residential or commercial development within the same zone except that a local government may apply written, objective standards that include all of the following:

(i) The maximum number of beds or persons permitted to be served nightly by the facility.

(ii) Off-street parking based upon demonstrated need, provided that the standards do not require more parking for emergency shelters than for other residential or commercial uses within the same zone.

(iii) The size and location of exterior and interior onsite waiting and client intake areas.

(iv) The provision of onsite management.

(v) The proximity to other emergency shelters, provided that emergency shelters are not required to be more than 300 feet apart.

(vi) The length of stay.

(vii) Lighting.

(viii) Security during hours that the emergency shelter is in operation.

(B) The permit processing, development, and management standards applied under this paragraph shall not be deemed to be discretionary acts within the meaning of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(C) A local government that can demonstrate to the satisfaction of the department the existence of one or more emergency shelters either within its jurisdiction or pursuant to a multijurisdictional agreement that can accommodate that jurisdiction's need for emergency shelter identified in paragraph (7) may comply with the zoning requirements of subparagraph (A) by identifying a zone or zones where new emergency shelters are allowed with a conditional use permit.

(D) A local government with an existing ordinance or ordinances that comply with this paragraph shall not be required to take additional action

to identify zones for emergency shelters. The housing element must only describe how existing ordinances, policies, and standards are consistent with the requirements of this paragraph.

(5) An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584 and from meeting the need for housing for persons with disabilities, supportive housing, transitional housing, and emergency shelters identified pursuant to paragraph (7). Transitional housing and supportive housing shall be considered a residential use of property, and shall be subject only to those restrictions that apply to other residential dwellings of the same type in the same zone.

(6) An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, and the cost of construction.

(7) An analysis of any special housing needs, such as those of the elderly, persons with disabilities, large families, farmworkers, families with female heads of households, and families and persons in need of emergency shelter. The need for emergency shelter shall be assessed based on annual and seasonal need. The need for emergency shelter may be reduced by the number of supportive housing units that are identified in an adopted 10-year plan to end chronic homelessness and that are either vacant or for which funding has been identified to allow construction during the planning period.

(8) An analysis of opportunities for energy conservation with respect to residential development.

(9) An analysis of existing assisted housing developments that are eligible to change from low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use. "Assisted housing developments," for the purpose of this section, shall mean multifamily rental housing that receives governmental assistance under federal programs listed in subdivision (a) of Section 65863.10, state and local multifamily revenue bond programs, local redevelopment programs, the federal Community Development Block Grant Program, or local in-lieu fees. "Assisted housing developments" shall also include multifamily rental units that were developed pursuant to a local inclusionary housing program or used to qualify for a density bonus pursuant to Section 65916.

(A) The analysis shall include a listing of each development by project name and address, the type of governmental assistance received, the earliest possible date of change from low-income use and the total number of elderly

and nonelderly units that could be lost from the locality's low-income housing stock in each year during the 10-year period. For purposes of state and federally funded projects, the analysis required by this subparagraph need only contain information available on a statewide basis.

(B) The analysis shall estimate the total cost of producing new rental housing that is comparable in size and rent levels, to replace the units that could change from low-income use, and an estimated cost of preserving the assisted housing developments. This cost analysis for replacement housing may be done aggregately for each five-year period and does not have to contain a project-by-project cost estimate.

(C) The analysis shall identify public and private nonprofit corporations known to the local government which have legal and managerial capacity to acquire and manage these housing developments.

(D) The analysis shall identify and consider the use of all federal, state, and local financing and subsidy programs which can be used to preserve, for lower income households, the assisted housing developments, identified in this paragraph, including, but not limited to, federal Community Development Block Grant Program funds, tax increment funds received by a redevelopment agency of the community, and administrative fees received by a housing authority operating within the community. In considering the use of these financing and subsidy programs, the analysis shall identify the amounts of funds under each available program which have not been legally obligated for other purposes and which could be available for use in preserving assisted housing developments.

(b) (1) A statement of the community's goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing.

(2) It is recognized that the total housing needs identified pursuant to subdivision (a) may exceed available resources and the community's ability to satisfy this need within the content of the general plan requirements outlined in Article 5 (commencing with Section 65300). Under these circumstances, the quantified objectives need not be identical to the total housing needs. The quantified objectives shall establish the maximum number of housing units by income category, including extremely low income, that can be constructed, rehabilitated, and conserved over a five-year time period.

(c) A program which sets forth a schedule of actions during the planning period, each with a timeline for implementation, which may recognize that certain programs are ongoing, such that there will be beneficial impacts of the programs within the planning period, that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls, the provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available and the utilization of moneys in a low- and moderate-income housing fund of an agency if the locality has established a redevelopment project area pursuant to the Community

Redevelopment Law (Division 24 (commencing with Section 33000) of the Health and Safety Code). In order to make adequate provision for the housing needs of all economic segments of the community, the program shall do all of the following:

(1) Identify actions that will be taken to make sites available during the planning period of the general plan with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Section 65584.09. Sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing.

(A) Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, rezoning of those sites, including adoption of minimum density and development standards, for jurisdictions with an eight-year housing element planning period pursuant to Section 65588, shall be completed no later than three years after either the date the housing element is adopted pursuant to subdivision (f) of Section 65585 or the date that is 90 days after receipt of comments from the department pursuant to subdivision (b) of Section 65585, whichever is earlier, unless the deadline is extended pursuant to subdivision (f). Notwithstanding the foregoing, for a local government that fails to adopt a housing element within 120 days of the statutory deadline in Section 65588 for adoption of the housing element, rezoning of those sites, including adoption of minimum density and development standards, shall be completed no later than three years and 120 days from the statutory deadline in Section 65588 for adoption of the housing element.

(B) Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program shall identify sites that can be developed for housing within the planning period pursuant to subdivision (h) of Section 65583.2. The identification of sites shall include all components specified in subdivision (b) of Section 65583.2.

(C) Where the inventory of sites pursuant to paragraph (3) of subdivision (a) does not identify adequate sites to accommodate the need for farmworker housing, the program shall provide for sufficient sites to meet the need with zoning that permits farmworker housing use by right, including density and development standards that could accommodate and facilitate the feasibility of the development of farmworker housing for low- and very low income households.

(2) Assist in the development of adequate housing to meet the needs of extremely low, very low, low-, and moderate-income households.

(3) Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities.

(4) Conserve and improve the condition of the existing affordable housing stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or private action.

(5) Promote housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability.

(6) Preserve for lower income households the assisted housing developments identified pursuant to paragraph (9) of subdivision (a). The program for preservation of the assisted housing developments shall utilize, to the extent necessary, all available federal, state, and local financing and subsidy programs identified in paragraph (9) of subdivision (a), except where a community has other urgent needs for which alternative funding sources are not available. The program may include strategies that involve local regulation and technical assistance.

(7) The program shall include an identification of the agencies and officials responsible for the implementation of the various actions and the means by which consistency will be achieved with other general plan elements and community goals. The local government shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort.

(d) (1) A local government may satisfy all or part of its requirement to identify a zone or zones suitable for the development of emergency shelters pursuant to paragraph (4) of subdivision (a) by adopting and implementing a multijurisdictional agreement, with a maximum of two other adjacent communities, that requires the participating jurisdictions to develop at least one year-round emergency shelter within two years of the beginning of the planning period.

(2) The agreement shall allocate a portion of the new shelter capacity to each jurisdiction as credit towards its emergency shelter need, and each jurisdiction shall describe how the capacity was allocated as part of its housing element.

(3) Each member jurisdiction of a multijurisdictional agreement shall describe in its housing element all of the following:

(A) How the joint facility will meet the jurisdiction's emergency shelter need.

(B) The jurisdiction's contribution to the facility for both the development and ongoing operation and management of the facility.

(C) The amount and source of the funding that the jurisdiction contributes to the facility.

(4) The aggregate capacity claimed by the participating jurisdictions in their housing elements shall not exceed the actual capacity of the shelter.

(e) Except as otherwise provided in this article, amendments to this article that alter the required content of a housing element shall apply to both of the following:

(1) A housing element or housing element amendment prepared pursuant to subdivision (e) of Section 65588 or Section 65584.02, when a city, county, or city and county submits a draft to the department for review pursuant to Section 65585 more than 90 days after the effective date of the amendment to this section.

(2) Any housing element or housing element amendment prepared pursuant to subdivision (e) of Section 65588 or Section 65584.02, when the city, county, or city and county fails to submit the first draft to the department before the due date specified in Section 65588 or 65584.02.

(f) The deadline for completing required rezoning pursuant to subparagraph (A) of paragraph (1) of subdivision (c) shall be extended by one year if the local government has completed the rezoning at densities sufficient to accommodate at least 75 percent of the sites for low- and very low income households and if the legislative body at the conclusion of a public hearing determines, based upon substantial evidence, that any of the following circumstances exist:

(1) The local government has been unable to complete the rezoning because of the action or inaction beyond the control of the local government of any other state federal or local agency.

(2) The local government is unable to complete the rezoning because of infrastructure deficiencies due to fiscal or regulatory constraints.

(3) The local government must undertake a major revision to its general plan in order to accommodate the housing related policies of a sustainable communities strategy or an alternative planning strategy adopted pursuant to Section 65080.

The resolution and the findings shall be transmitted to the department together with a detailed budget and schedule for preparation and adoption of the required rezonings, including plans for citizen participation and expected interim action. The schedule shall provide for adoption of the required rezoning within one year of the adoption of the resolution.

(g) (1) If a local government fails to complete the rezoning by the deadline provided in subparagraph (A) of paragraph (1) of subdivision (c), as it may be extended pursuant to subdivision (f), except as provided in paragraph (2), a local government may not disapprove a housing development project, nor require a conditional use permit, planned unit development permit, or other locally imposed discretionary permit, or impose a condition that would render the project infeasible, if the housing development project (A) is proposed to be located on a site required to be rezoned pursuant to the program action required by that subparagraph; and (B) complies with applicable, objective general plan and zoning standards and criteria, including design review standards, described in the program action required by that subparagraph. Any subdivision of sites shall be

subject to the Subdivision Map Act. Design review shall not constitute a “project” for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code.

(2) A local government may disapprove a housing development described in paragraph (1) if it makes written findings supported by substantial evidence on the record that both of the following conditions exist:

(A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(3) The applicant or any interested person may bring an action to enforce this subdivision. If a court finds that the local agency disapproved a project or conditioned its approval in violation of this subdivision, the court shall issue an order or judgment compelling compliance within 60 days. The court shall retain jurisdiction to ensure that its order or judgment is carried out. If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders to ensure that the purposes and policies of this subdivision are fulfilled. In any such action, the city, county, or city and county shall bear the burden of proof.

(4) For purposes of this subdivision, “housing development project” means a project to construct residential units for which the project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of at least 49 percent of the housing units for very low, low-, and moderate-income households with an affordable housing cost or affordable rent, as defined in Section 50052.5 or 50053 of the Health and Safety Code, respectively, for the period required by the applicable financing.

(h) An action to enforce the program actions of the housing element shall be brought pursuant to Section 1085 of the Code of Civil Procedure.

SEC. 8. Section 65584.01 of the Government Code is amended to read:

65584.01. (a) For the fourth and subsequent revision of the housing element pursuant to Section 65588, the department, in consultation with each council of governments, where applicable, shall determine the existing and projected need for housing for each region in the following manner:

(b) The department’s determination shall be based upon population projections produced by the Department of Finance and regional population forecasts used in preparing regional transportation plans, in consultation with each council of governments. If the total regional population forecast for the planning period, developed by the council of governments and used for the preparation of the regional transportation plan, is within a range of

3 percent of the total regional population forecast for the planning period over the same time period by the Department of Finance, then the population forecast developed by the council of governments shall be the basis from which the department determines the existing and projected need for housing in the region. If the difference between the total population growth projected by the council of governments and the total population growth projected for the region by the Department of Finance is greater than 3 percent, then the department and the council of governments shall meet to discuss variances in methodology used for population projections and seek agreement on a population projection for the region to be used as a basis for determining the existing and projected housing need for the region. If no agreement is reached, then the population projection for the region shall be the population projection for the region prepared by the Department of Finance as may be modified by the department as a result of discussions with the council of governments.

(c) (1) At least 26 months prior to the scheduled revision pursuant to Section 65588 and prior to developing the existing and projected housing need for a region, the department shall meet and consult with the council of governments regarding the assumptions and methodology to be used by the department to determine the region's housing needs. The council of governments shall provide data assumptions from the council's projections, including, if available, the following data for the region:

(A) Anticipated household growth associated with projected population increases.

(B) Household size data and trends in household size.

(C) The rate of household formation, or headship rates, based on age, gender, ethnicity, or other established demographic measures.

(D) The vacancy rates in existing housing stock, and the vacancy rates for healthy vacancy market functioning and regional mobility, as well as housing replacement needs.

(E) Other characteristics of the composition of the projected population.

(F) The relationship between jobs and housing, including any imbalance between jobs and housing.

(2) The department may accept or reject the information provided by the council of governments or modify its own assumptions or methodology based on this information. After consultation with the council of governments, the department shall make determinations in writing on the assumptions for each of the factors listed in subparagraphs (A) to (F), inclusive, of paragraph (1) and the methodology it shall use and shall provide these determinations to the council of governments.

(d) (1) After consultation with the council of governments, the department shall make a determination of the region's existing and projected housing need based upon the assumptions and methodology determined pursuant to subdivision (c). The region's existing and projected housing need shall reflect the achievement of a feasible balance between jobs and housing within the region using the regional employment projections in the applicable regional transportation plan. Within 30 days following notice of

the determination from the department, the council of governments may file an objection to the department's determination of the region's existing and projected housing need with the department.

(2) The objection shall be based on and substantiate either of the following:

(A) The department failed to base its determination on the population projection for the region established pursuant to subdivision (b), and shall identify the population projection which the council of governments believes should instead be used for the determination and explain the basis for its rationale.

(B) The regional housing need determined by the department is not a reasonable application of the methodology and assumptions determined pursuant to subdivision (c). The objection shall include a proposed alternative determination of its regional housing need based upon the determinations made in subdivision (c), including analysis of why the proposed alternative would be a more reasonable application of the methodology and assumptions determined pursuant to subdivision (c).

(3) If a council of governments files an objection pursuant to this subdivision and includes with the objection a proposed alternative determination of its regional housing need, it shall also include documentation of its basis for the alternative determination. Within 45 days of receiving an objection filed pursuant to this section, the department shall consider the objection and make a final written determination of the region's existing and projected housing need that includes an explanation of the information upon which the determination was made.

SEC. 9. Section 65584.02 of the Government Code is amended to read:

65584.02. (a) For the fourth and subsequent revisions of the housing element pursuant to Section 65588, the existing and projected need for housing may be determined for each region by the department as follows, as an alternative to the process pursuant to Section 65584.01:

(1) In a region in which at least one subregion has accepted delegated authority pursuant to Section 65584.03, the region's housing need shall be determined at least 26 months prior to the housing element update deadline pursuant to Section 65588. In a region in which no subregion has accepted delegation pursuant to Section 65584.03, the region's housing need shall be determined at least 24 months prior to the housing element deadline.

(2) At least six months prior to the department's determination of regional housing need pursuant to paragraph (1), a council of governments may request the use of population and household forecast assumptions used in the regional transportation plan. This request shall include all of the following:

(A) Proposed data and assumptions for factors contributing to housing need beyond household growth identified in the forecast. These factors shall include allowance for vacant or replacement units, and may include other adjustment factors.

(B) A proposed planning period that is not longer than the period of time covered by the regional transportation improvement plan or plans of the

region pursuant to Section 14527, but a period not less than five years, and not longer than six years.

(C) A comparison between the population and household assumptions used for the Regional Transportation Plan with population and household estimates and projections of the Department of Finance.

(b) The department shall consult with the council of governments regarding requests submitted pursuant to paragraph (2) of subdivision (a). The department may seek advice and consult with the Demographic Research Unit of the Department of Finance, the State Department of Transportation, a representative of a contiguous council of governments, and any other party as deemed necessary. The department may request that the council of governments revise data, assumptions, or methodology to be used for the determination of regional housing need, or may reject the request submitted pursuant to paragraph (2) of subdivision (a). Subsequent to consultation with the council of governments, the department will respond in writing to requests submitted pursuant to paragraph (1) of subdivision (a).

(c) If the council of governments does not submit a request pursuant to subdivision (a), or if the department rejects the request of the council of governments, the determination for the region shall be made pursuant to Sections 65584 and 65584.01.

SEC. 10. Section 65584.04 of the Government Code is amended to read:

65584.04. (a) At least two years prior to a scheduled revision required by Section 65588, each council of governments, or delegate subregion as applicable, shall develop a proposed methodology for distributing the existing and projected regional housing need to cities, counties, and cities and counties within the region or within the subregion, where applicable pursuant to this section. The methodology shall be consistent with the objectives listed in subdivision (d) of Section 65584.

(b) (1) No more than six months prior to the development of a proposed methodology for distributing the existing and projected housing need, each council of governments shall survey each of its member jurisdictions to request, at a minimum, information regarding the factors listed in subdivision (d) that will allow the development of a methodology based upon the factors established in subdivision (d).

(2) The council of governments shall seek to obtain the information in a manner and format that is comparable throughout the region and utilize readily available data to the extent possible.

(3) The information provided by a local government pursuant to this section shall be used, to the extent possible, by the council of governments, or delegate subregion as applicable, as source information for the methodology developed pursuant to this section. The survey shall state that none of the information received may be used as a basis for reducing the total housing need established for the region pursuant to Section 65584.01.

(4) If the council of governments fails to conduct a survey pursuant to this subdivision, a city, county, or city and county may submit information related to the items listed in subdivision (d) prior to the public comment period provided for in subdivision (c).

(c) Public participation and access shall be required in the development of the methodology and in the process of drafting and adoption of the allocation of the regional housing needs. Participation by organizations other than local jurisdictions and councils of governments shall be solicited in a diligent effort to achieve public participation of all economic segments of the community. The proposed methodology, along with any relevant underlying data and assumptions, and an explanation of how information about local government conditions gathered pursuant to subdivision (b) has been used to develop the proposed methodology, and how each of the factors listed in subdivision (d) is incorporated into the methodology, shall be distributed to all cities, counties, any subregions, and members of the public who have made a written request for the proposed methodology. The council of governments, or delegate subregion, as applicable, shall conduct at least one public hearing to receive oral and written comments on the proposed methodology.

(d) To the extent that sufficient data is available from local governments pursuant to subdivision (b) or other sources, each council of governments, or delegate subregion as applicable, shall include the following factors to develop the methodology that allocates regional housing needs:

(1) Each member jurisdiction's existing and projected jobs and housing relationship.

(2) The opportunities and constraints to development of additional housing in each member jurisdiction, including all of the following:

(A) Lack of capacity for sewer or water service due to federal or state laws, regulations or regulatory actions, or supply and distribution decisions made by a sewer or water service provider other than the local jurisdiction that preclude the jurisdiction from providing necessary infrastructure for additional development during the planning period.

(B) The availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development and increased residential densities. The council of governments may not limit its consideration of suitable housing sites or land suitable for urban development to existing zoning ordinances and land use restrictions of a locality, but shall consider the potential for increased residential development under alternative zoning ordinances and land use restrictions. The determination of available land suitable for urban development may exclude lands where the Federal Emergency Management Agency (FEMA) or the Department of Water Resources has determined that the flood management infrastructure designed to protect that land is not adequate to avoid the risk of flooding.

(C) Lands preserved or protected from urban development under existing federal or state programs, or both, designed to protect open space, farmland, environmental habitats, and natural resources on a long-term basis.

(D) County policies to preserve prime agricultural land, as defined pursuant to Section 56064, within an unincorporated area.

(3) The distribution of household growth assumed for purposes of a comparable period of regional transportation plans and opportunities to

maximize the use of public transportation and existing transportation infrastructure.

(4) The market demand for housing.

(5) Agreements between a county and cities in a county to direct growth toward incorporated areas of the county.

(6) The loss of units contained in assisted housing developments, as defined in paragraph (9) of subdivision (a) of Section 65583, that changed to non-low-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions.

(7) High-housing cost burdens.

(8) The housing needs of farmworkers.

(9) The housing needs generated by the presence of a private university or a campus of the California State University or the University of California within any member jurisdiction.

(10) Any other factors adopted by the council of governments.

(e) The council of governments, or delegate subregion, as applicable, shall explain in writing how each of the factors described in subdivision (d) was incorporated into the methodology and how the methodology is consistent with subdivision (d) of Section 65584. The methodology may include numerical weighting.

(f) Any ordinance, policy, voter-approved measure, or standard of a city or county that directly or indirectly limits the number of residential building permits issued by a city or county shall not be a justification for a determination or a reduction in the share of a city or county of the regional housing need.

(g) In addition to the factors identified pursuant to subdivision (d), the council of governments, or delegate subregion, as applicable, shall identify any existing local, regional, or state incentives, such as a priority for funding or other incentives available to those local governments that are willing to accept a higher share than proposed in the draft allocation to those local governments by the council of governments or delegate subregion pursuant to Section 65584.05.

(h) Following the conclusion of the 60-day public comment period described in subdivision (c) on the proposed allocation methodology, and after making any revisions deemed appropriate by the council of governments, or delegate subregion, as applicable, as a result of comments received during the public comment period, each council of governments, or delegate subregion, as applicable, shall adopt a final regional, or subregional, housing need allocation methodology and provide notice of the adoption of the methodology to the jurisdictions within the region, or delegate subregion as applicable, and to the department.

(i) (1) It is the intent of the Legislature that housing planning be coordinated and integrated with the regional transportation plan. To achieve this goal, the allocation plan shall allocate housing units within the region consistent with the development pattern included in the sustainable communities strategy.

(2) The final allocation plan shall ensure that the total regional housing need, by income category, as determined under Section 65584, is maintained, and that each jurisdiction in the region receive an allocation of units for low- and very low income households.

(3) The resolution approving the final housing need allocation plan shall demonstrate that the plan is consistent with the sustainable communities strategy in the regional transportation plan.

SEC. 11. Section 65587 of the Government Code is amended to read:

65587. (a) Each city, county, or city and county shall bring its housing element, as required by subdivision (c) of Section 65302, into conformity with the requirements of this article on or before October 1, 1981, and the deadlines set by Section 65588. Except as specifically provided in subdivision (b) of Section 65361, the Director of Planning and Research shall not grant an extension of time from these requirements.

(b) Any action brought by any interested party to review the conformity with the provisions of this article of any housing element or portion thereof or revision thereto shall be brought pursuant to Section 1085 of the Code of Civil Procedure; the court's review of compliance with the provisions of this article shall extend to whether the housing element or portion thereof or revision thereto substantially complies with the requirements of this article.

(c) If a court finds that an action of a city, county, or city and county, which is required to be consistent with its general plan, does not comply with its housing element, the city, county, or city and county shall bring its action into compliance within 60 days. However, the court shall retain jurisdiction throughout the period for compliance to enforce its decision. Upon the court's determination that the 60-day period for compliance would place an undue hardship on the city, county, or city and county, the court may extend the time period for compliance by an additional 60 days.

(d) (1) If a court finds that a city, county, or city and county failed to complete the rezoning required by subparagraph (A) of paragraph (1) of subdivision (c) of Section 65583, as that deadline may be modified by the extension provided for in subdivision (f) of that section, the court shall issue an order or judgment, after considering the equities of the circumstances presented by all parties, compelling the local government to complete the rezoning within 60 days or the earliest time consistent with public hearing notice requirements in existence at the time the action was filed. The court shall retain jurisdiction to ensure that its order or judgment is carried out. If the court determines that its order or judgment is not carried out, the court shall issue further orders to ensure that the purposes and policies of this article are fulfilled, including ordering, after considering the equities of the circumstances presented by all parties, that any rezoning required by subparagraph (A) of paragraph (1) of subdivision (c) of Section 65583 be completed within 60 days or the earliest time consistent with public hearing notice requirements in existence at the time the action was filed and may impose sanctions on the city, county, or city and county.

(2) Any interested person may bring an action to compel compliance with the deadlines and requirements of paragraphs (1), (2), and (3) of subdivision (c) of Section 65583. The action shall be brought pursuant to Section 1085 of the Code of Civil Procedure. An action may be brought pursuant to the notice and accrual provisions of subdivision (d) of Section 65009. In any such action, the city, county, or city and county shall bear the burden of proof.

SEC. 12. Section 65588 of the Government Code is amended to read:

65588. (a) Each local government shall review its housing element as frequently as appropriate to evaluate all of the following:

(1) The appropriateness of the housing goals, objectives, and policies in contributing to the attainment of the state housing goal.

(2) The effectiveness of the housing element in attainment of the community's housing goals and objectives.

(3) The progress of the city, county, or city and county in implementation of the housing element.

(b) Except as provided in paragraph (7) of subdivision (e), the housing element shall be revised as appropriate, but not less than every eight years, to reflect the results of this periodic review, by those local governments that are located within a region covered by (1) a metropolitan planning organization in a region classified as nonattainment for one or more pollutants regulated by the federal Clean Air Act or (2) a metropolitan planning organization or regional transportation planning agency that is required, or has elected pursuant to subparagraph (L) of paragraph (2) of subdivision (b) of Section 65080, to adopt a regional transportation plan not less than every four years, except that a local government that does not adopt a housing element within 120 days of the statutory deadline for adoption of the housing element shall revise its housing element as appropriate, but not less than every four years. The housing element shall be revised, as appropriate, but not less than every five years by those local governments that are located within a region covered by a metropolitan planning organization or regional transportation planning agency that is required to adopt a regional transportation plan not less than every five years, to reflect the results of this periodic review. Nothing in this section shall be construed to excuse the obligations of the local government to adopt a revised housing element no later than the date specified in this section.

(c) The review and revision of housing elements required by this section shall take into account any low- or moderate-income housing provided or required pursuant to Section 65590.

(d) The review pursuant to subdivision (c) shall include, but need not be limited to, the following:

(1) The number of new housing units approved for construction within the coastal zone after January 1, 1982.

(2) The number of housing units for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, required to be provided in new housing developments either within

the coastal zone or within three miles of the coastal zone pursuant to Section 65590.

(3) The number of existing residential dwelling units occupied by persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, that have been authorized to be demolished or converted since January 1, 1982, in the coastal zone.

(4) The number of residential dwelling units for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, that have been required for replacement or authorized to be converted or demolished as identified in paragraph (3). The location of the replacement units, either onsite, elsewhere within the locality's jurisdiction within the coastal zone, or within three miles of the coastal zone within the locality's jurisdiction, shall be designated in the review.

(e) Notwithstanding subdivision (b) or the date of adoption of the housing elements previously in existence, each city, county, and city and county shall revise its housing element according to the following schedule:

(1) Local governments within the regional jurisdiction of the Southern California Association of Governments: June 30, 2006, for the fourth revision.

(2) Local governments within the regional jurisdiction of the Association of Bay Area Governments: June 30, 2007, for the fourth revision.

(3) Local governments within the regional jurisdiction of the Council of Fresno County Governments, the Kern County Council of Governments, and the Sacramento Area Council of Governments: June 30, 2002, for the third revision, and June 30, 2008, for the fourth revision.

(4) Local governments within the regional jurisdiction of the Association of Monterey Bay Area Governments: December 31, 2002, for the third revision, and June 30, 2009, for the fourth revision.

(5) Local governments within the regional jurisdiction of the San Diego Association of Governments: June 30, 2005, for the fourth revision.

(6) All other local governments: December 31, 2003, for the third revision, and June 30, 2009, for the fourth revision.

(7) (A) All local governments within a metropolitan planning organization in a region classified as nonattainment for one or more pollutants regulated by the federal Clean Air Act (42 U.S.C. Sec. 7506), except those within the regional jurisdiction of the San Diego Association of Governments, shall adopt the fifth revision of the housing element no later than 18 months after adoption of the first regional transportation plan to be adopted after September 30, 2010.

(B) All local governments within the regional jurisdiction of the San Diego Association of Governments shall adopt their fifth revision no more than five years from the fourth revision and their sixth revision no later than 18 months after adoption of the first regional transportation plan to be adopted after the fifth revision due date.

(C) All local governments within the regional jurisdiction of a metropolitan planning organization or a regional transportation planning agency that has made an election pursuant to subparagraph (L) of paragraph

(2) of subdivision (b) of Section 65080 shall be subject to the eight-year planning period pursuant to subdivision (b) of Section 65588 and shall adopt its next housing element 18 months after adoption of the first regional transportation plan following the election.

(f) For purposes of this article, “planning period” shall be the time period for periodic revision of the housing element pursuant to this section.

SEC. 13. Section 21061.3 of the Public Resources Code is amended to read:

21061.3. “Infill site” means a site in an urbanized area that meets either of the following criteria:

(a) The site has not been previously developed for urban uses and both of the following apply:

(1) The site is immediately adjacent to parcels that are developed with qualified urban uses, or at least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses, and the remaining 25 percent of the site adjoins parcels that have previously been developed for qualified urban uses.

(2) No parcel within the site has been created within the past 10 years unless the parcel was created as a result of the plan of a redevelopment agency.

(b) The site has been previously developed for qualified urban uses.

SEC. 14. Chapter 4.2 (commencing with Section 21155) is added to Division 13 of the Public Resources Code, to read:

CHAPTER 4.2. IMPLEMENTATION OF THE SUSTAINABLE COMMUNITIES STRATEGY

21155. (a) This chapter applies only to a transit priority project that is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy, for which the State Air Resources Board, pursuant to subparagraph (H) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code, has accepted a metropolitan planning organization’s determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets.

(b) For purposes of this chapter, a transit priority project shall (1) contain at least 50 percent residential use, based on total building square footage and, if the project contains between 26 percent and 50 percent nonresidential uses, a floor area ratio of not less than 0.75; (2) provide a minimum net density of at least 20 dwelling units per acre; and (3) be within one-half mile of a major transit stop or high-quality transit corridor included in a regional transportation plan. A major transit stop is as defined in Section 21064.3, except that, for purposes of this section, it also includes major transit stops that are included in the applicable regional transportation plan. For purposes of this section, a high-quality transit corridor means a corridor

with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours. A project shall be considered to be within one-half mile of a major transit stop or high-quality transit corridor if all parcels within the project have no more than 25 percent of their area farther than one-half mile from the stop or corridor and if not more than 10 percent of the residential units or 100 units, whichever is less, in the project are farther than one-half mile from the stop or corridor.

21155.1. If the legislative body finds, after conducting a public hearing, that a transit priority project meets all of the requirements of subdivisions (a) and (b) and one of the requirements of subdivision (c), the transit priority project is declared to be a sustainable communities project and shall be exempt from this division.

(a) The transit priority project complies with all of the following environmental criteria:

(1) The transit priority project and other projects approved prior to the approval of the transit priority project but not yet built can be adequately served by existing utilities, and the transit priority project applicant has paid, or has committed to pay, all applicable in-lieu or development fees.

(2) (A) The site of the transit priority project does not contain wetlands or riparian areas and does not have significant value as a wildlife habitat, and the transit priority project does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), or the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and the project does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete.

(B) For the purposes of this paragraph, “wetlands” has the same meaning as in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(C) For the purposes of this paragraph:

(i) “Riparian areas” means those areas transitional between terrestrial and aquatic ecosystems and that are distinguished by gradients in biophysical conditions, ecological processes, and biota. A riparian area is an area through which surface and subsurface hydrology connect waterbodies with their adjacent uplands. A riparian area includes those portions of terrestrial ecosystems that significantly influence exchanges of energy and matter with aquatic ecosystems. A riparian area is adjacent to perennial, intermittent, and ephemeral streams, lakes, and estuarine-marine shorelines.

(ii) “Wildlife habitat” means the ecological communities upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.

(iii) Habitat of “significant value” includes wildlife habitat of national, statewide, regional, or local importance; habitat for species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531, et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with

Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code); habitat identified as candidate, fully protected, sensitive, or species of special status by local, state, or federal agencies; or habitat essential to the movement of resident or migratory wildlife.

(3) The site of the transit priority project is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(4) The site of the transit priority project is subject to a preliminary endangerment assessment prepared by a registered environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity.

(A) If a release of a hazardous substance is found to exist on the site, the release shall be removed or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(B) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(5) The transit priority project does not have a significant effect on historical resources pursuant to Section 21084.1.

(6) The transit priority project site is not subject to any of the following:

(A) A wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.

(B) An unusually high risk of fire or explosion from materials stored or used on nearby properties.

(C) Risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.

(D) Seismic risk as a result of being within a delineated earthquake fault zone, as determined pursuant to Section 2622, or a seismic hazard zone, as determined pursuant to Section 2696, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake fault or seismic hazard zone.

(E) Landslide hazard, flood plain, flood way, or restriction zone, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.

(7) The transit priority project site is not located on developed open space.

(A) For the purposes of this paragraph, “developed open space” means land that meets all of the following criteria:

(i) Is publicly owned, or financed in whole or in part by public funds.

(ii) Is generally open to, and available for use by, the public.

(iii) Is predominantly lacking in structural development other than structures associated with open spaces, including, but not limited to,

playgrounds, swimming pools, ballfields, enclosed child play areas, and picnic facilities.

(B) For the purposes of this paragraph, “developed open space” includes land that has been designated for acquisition by a public agency for developed open space, but does not include lands acquired with public funds dedicated to the acquisition of land for housing purposes.

(8) The buildings in the transit priority project are 15 percent more energy efficient than required by Chapter 6 of Title 24 of the California Code of Regulations and the buildings and landscaping are designed to achieve 25 percent less water usage than the average household use in the region.

(b) The transit priority project meets all of the following land use criteria:

(1) The site of the transit priority project is not more than eight acres in total area.

(2) The transit priority project does not contain more than 200 residential units.

(3) The transit priority project does not result in any net loss in the number of affordable housing units within the project area.

(4) The transit priority project does not include any single level building that exceeds 75,000 square feet.

(5) Any applicable mitigation measures or performance standards or criteria set forth in the prior environmental impact reports, and adopted in findings, have been or will be incorporated into the transit priority project.

(6) The transit priority project is determined not to conflict with nearby operating industrial uses.

(7) The transit priority project is located within one-half mile of a rail transit station or a ferry terminal included in a regional transportation plan or within one-quarter mile of a high-quality transit corridor included in a regional transportation plan.

(c) The transit priority project meets at least one of the following three criteria:

(1) The transit priority project meets both of the following:

(A) At least 20 percent of the housing will be sold to families of moderate income, or not less than 10 percent of the housing will be rented to families of low income, or not less than 5 percent of the housing is rented to families of very low income.

(B) The transit priority project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for very low, low-, and moderate-income households at monthly housing costs with an affordable housing cost or affordable rent, as defined in Section 50052.5 or 50053 of the Health and Safety Code, respectively, for the period required by the applicable financing. Rental units shall be affordable for at least 55 years. Ownership units shall be subject to resale restrictions or equity sharing requirements for at least 30 years.

(2) The transit priority project developer has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the

development of an equivalent number of units that would otherwise be required pursuant to paragraph (1).

(3) The transit priority project provides public open space equal to or greater than five acres per 1,000 residents of the project.

21155.2. (a) A transit priority project that has incorporated all feasible mitigation measures, performance standards, or criteria set forth in the prior applicable environmental impact reports and adopted in findings made pursuant to Section 21081, shall be eligible for either the provisions of subdivision (b) or (c).

(b) A transit priority project that satisfies the requirements of subdivision (a) may be reviewed through a sustainable communities environmental assessment as follows:

(1) An initial study shall be prepared to identify all significant or potentially significant impacts of the transit priority project, other than those which do not need to be reviewed pursuant to Section 21159.28 based on substantial evidence in light of the whole record. The initial study shall identify any cumulative effects that have been adequately addressed and mitigated pursuant to the requirements of this division in prior applicable certified environmental impact reports. Where the lead agency determines that a cumulative effect has been adequately addressed and mitigated, that cumulative effect shall not be treated as cumulatively considerable for the purposes of this subdivision.

(2) The sustainable communities environmental assessment shall contain measures that either avoid or mitigate to a level of insignificance all potentially significant or significant effects of the project required to be identified in the initial study.

(3) A draft of the sustainable communities environmental assessment shall be circulated for public comment for a period of not less than 30 days. Notice shall be provided in the same manner as required for an environmental impact report pursuant to Section 21092.

(4) Prior to acting on the sustainable communities environmental assessment, the lead agency shall consider all comments received.

(5) A sustainable communities environmental assessment may be approved by the lead agency after conducting a public hearing, reviewing the comments received, and finding that:

(A) All potentially significant or significant effects required to be identified in the initial study have been identified and analyzed.

(B) With respect to each significant effect on the environment required to be identified in the initial study, either of the following apply:

(i) Changes or alterations have been required in or incorporated into the project that avoid or mitigate the significant effects to a level of insignificance.

(ii) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

(6) The legislative body of the lead agency shall conduct the public hearing or a planning commission may conduct the public hearing if local

ordinances allow a direct appeal of approval of a document prepared pursuant to this division to the legislative body subject to a fee not to exceed five hundred dollars (\$500).

(7) The lead agency's decision to review and approve a transit priority project with a sustainable communities environmental assessment shall be reviewed under the substantial evidence standard.

(c) A transit priority project that satisfies the requirements of subdivision (a) may be reviewed by an environmental impact report that complies with all of the following:

(1) An initial study shall be prepared to identify all significant or potentially significant effects of the transit priority project other than those that do not need to be reviewed pursuant to Section 21159.28 based upon substantial evidence in light of the whole record. The initial study shall identify any cumulative effects that have been adequately addressed and mitigated pursuant to the requirements of this division in prior applicable certified environmental impact reports. Where the lead agency determines that a cumulative effect has been adequately addressed and mitigated, that cumulative effect shall not be treated as cumulatively considerable for the purposes of this subdivision.

(2) An environmental impact report prepared pursuant to this subdivision need only address the significant or potentially significant effects of the transit priority project on the environment identified pursuant to paragraph (1). It is not required to analyze off-site alternatives to the transit priority project. It shall otherwise comply with the requirements of this division.

21155.3. (a) The legislative body of a local jurisdiction may adopt traffic mitigation measures that would apply to transit priority projects. These measures shall be adopted or amended after a public hearing and may include requirements for the installation of traffic control improvements, street or road improvements, and contributions to road improvement or transit funds, transit passes for future residents, or other measures that will avoid or mitigate the traffic impacts of those transit priority projects.

(b) (1) A transit priority project that is seeking a discretionary approval is not required to comply with any additional mitigation measures required by paragraph (1) or (2) of subdivision (a) of Section 21081, for the traffic impacts of that project on intersections, streets, highways, freeways, or mass transit, if the local jurisdiction issuing that discretionary approval has adopted traffic mitigation measures in accordance with this section.

(2) Paragraph (1) does not restrict the authority of a local jurisdiction to adopt feasible mitigation measures with respect to the effects of a project on public health or on pedestrian or bicycle safety.

(c) The legislative body shall review its traffic mitigation measures and update them as needed at least every five years.

SEC. 15. Section 21159.28 is added to the Public Resources Code, to read:

21159.28. (a) If a residential or mixed-use residential project is consistent with the use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities

strategy or an alternative planning strategy, for which the State Air Resources Board pursuant to subparagraph (I) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code has accepted the metropolitan planning organization's determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets and if the project incorporates the mitigation measures required by an applicable prior environmental document, then any findings or other determinations for an exemption, a negative declaration, a mitigated negative declaration, a sustainable communities environmental assessment, an environmental impact report, or addenda prepared or adopted for the project pursuant to this division shall not be required to reference, describe, or discuss (1) growth inducing impacts; or (2) any project specific or cumulative impacts from cars and light-duty truck trips generated by the project on global warming or the regional transportation network.

(b) Any environmental impact report prepared for a project described in subdivision (a) shall not be required to reference, describe, or discuss a reduced residential density alternative to address the effects of car and light-duty truck trips generated by the project.

(c) "Regional transportation network," for purposes of this section, means all existing and proposed transportation system improvements, including the state transportation system, that were included in the transportation and air quality conformity modeling, including congestion modeling, for the final regional transportation plan adopted by the metropolitan planning organization, but shall not include local streets and roads. Nothing in the foregoing relieves any project from a requirement to comply with any conditions, exactions, or fees for the mitigation of the project's impacts on the structure, safety, or operations of the regional transportation network or local streets and roads.

(d) A residential or mixed-use residential project is a project where at least 75 percent of the total building square footage of the project consists of residential use or a project that is a transit priority project as defined in Section 21155.

SEC. 16. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

To the Members of the California State Senate:

I am proud to sign Senate Bill 375.

This legislation constitutes the most sweeping revision of land use policies since Governor Ronald Reagan signed the California Environmental Quality Act (CEQA) nearly four decades ago, and will provide much needed guidance to local planning agencies on transportation, housing and other land-use decisions necessary to meet our greenhouse gas reduction goals under AB 32.

I commend Senator Steinberg and the sponsors of this legislation for accomplishing the difficult task of bringing together disparate and competing interests in order to create the framework for an historic state-local partnership to meet the greatest environmental challenge of our time, global warming. This bill once again puts California on the leading edge of climate change policy by instituting the nation's first policy to integrate four unsynchronized planning processes: land-use planning, transportation planning, housing development and reduction of greenhouse gas emissions. I am particularly pleased that this bill approaches the task with incentives rather than top-down regulatory mandates. If implemented as intended, this bill provides significant incentive in the form of a streamlined environmental review process under CEQA for certain residential and mixed-use housing projects that are consistent with regional plans to achieve greenhouse gas reduction targets. By addressing greenhouse gas emissions in the aggregate from transportation projects, housing of all densities and other development projects, the 'Sustainable Communities Strategy' (SCS) should also allow individual projects that are consistent with the regional plan to avoid conducting duplicative, project-specific CEQA greenhouse gas analysis and mitigation.

While I strongly support the incentives provided to residential housing in the form of streamlined CEQA permitting, I believe the failure to extend those same incentives to all projects related to transportation, infrastructure, services and employment that are consistent with the regional plan fundamentally undermines the programmatic approach to land-use planning this bill hopes to achieve. The author has committed to address some of these issues in clean-up legislation as needed. The sheer magnitude and complexity of this overhaul lends itself to drafting errors and oversights as the bill tries to integrate new, overarching regional requirements with existing local, state and federal laws and regulations. Failure to properly integrate these layers of regulatory requirements could result in litigation, additional cost and delay in completing much needed transportation and housing projects that are already underway throughout the State.

My administration will work with the author and sponsors of this legislation to ensure that clean-up legislation is drafted to address these issues in the next session. Specifically, there are four areas that must be addressed:

- Provide exemptions for voter-approved Proposition 1B Transportation Projects ' Although the clear intent of the author was to exempt all transportation projects funded through Proposition 1B, approved by the voters in 2006, ambiguous language in the bill may put at risk approximately \$5 billion in Prop 1B transportation projects throughout the state, including in Los Angeles, San Diego, Riverside, Orange and San Bernardino counties. Clean-up legislation is needed to clearly exempt all projects funded with Proposition 1B funds.
- Expand CEQA streamlining to other projects that are consistent with a Sustainable Communities Strategy. This bill wisely offers housing developers the ability to 'opt out' of certain CEQA requirements in exchange for adhering to a preapproved 'Sustainable Communities Strategy'. However, this bill only applies the benefits of compliance with an SCS to new residential construction, omitting most projects related to other infrastructure, retail and commercial development. This omission undermines the whole reason for the bill in the first place - implementing a comprehensive programmatic approach to land-use planning - and must be addressed.
- Eliminate schedule conflicts with housing element updates and Regional Transportation Plans (RTPs). While the bill is intended to synchronize updates of housing elements in local government general plans and regional transportation plans (RTP), new and conflicting schedules are established with regard to the federal transportation planning schedule, federal air quality regulations, and existing deadlines for housing element updates and regional transportation plans. Without correction, confusion and litigation are likely to result. The Department of Housing and Community Development is already reporting that the provisions of the bill could invalidate the housing element of a city's General Plan. This places the city at risk of losing access to federal and state housing funds, including funding approved by the voters in Proposition 1C. This was clearly not the intent of the author and these conflicting schedules must be addressed as quickly as possible.
- Mitigation for impacts to the State Highway System. While the author did address a request to include the State Highway System (SHS) in the definition of the regional transportation network, follow-up legislation is needed to provide clarity of the requirement that projected impacts to the SHS by previously approved a new projects are required to mitigate for SHS impacts. Apparent inconsistency between this bill and current mitigation requirements provide broad potential for litigation that will hamper project delivery and potentially drain hundreds of millions of dollars from the State Highway Account, shifting mitigation costs that are now borne by project proponents to taxpayers.

I look forward to working with the author and all stakeholders in addressing these issues so that we can ensure the successful implementation of this bill and realize our greenhouse gas emission reduction goals.

Sincerely, Arnold Schwarzenegger

California's Senate Bill 375 (Chapter 728, Statutes of 2008)

SB 375 provides incentives for integrated regional land use planning and local development while reducing greenhouse gas emissions consistent with the California Global Warming Solutions Act of 2006. It requires each metropolitan region to adopt a "sustainable communities strategy" to encourage mixed-use development and alternative modes of transportation to reduce passenger vehicle use.

The Air Resources Board (ARB) will provide each region with targets for reducing emissions to serve as one of the objectives for the regional planning processes. ARB later will determine if each region is on track to meet their targets by reviewing their region's sustainable community strategy.

Builders also will get relief from certain environmental reviews under the California Environmental Quality Act if their projects are consistent with sustainable community strategies. In addition, cities would get extra time -- eight years instead of five -- to update housing plans required by the state.

List of Acronyms

APS – Alternative Planning Strategy
ARB – Air Resources Board
CEQA – California Environmental Quality Act
CTC – California Transportation Commission
GHG – greenhouse gas
HCD – California Department of Housing and Community Development
LAFCO – Local Agency Formation Commission
MPO – Metropolitan Planning Organization
RHNA – Regional Housing Needs Allocation
RTAC – Regional Targets Advisory Committee
RTP – Regional Transportation Plan
SCS – Sustainable Communities Strategy

Setting Greenhouse Gas Passenger Vehicle Emission Reduction Targets

By January 31, 2009 ARB must appoint members to the RTAC. The committee will provide factors and methodologies for setting greenhouse gas passenger vehicle emission reduction targets for 2020 and 2035 (Targets). On January 23, 2009 ARB appointed members to the RTAC. Their final recommendations are due to ARB by September, 2009. [Government Code 65080 (b)(2)(A)(i)]

After receipt of RTAC's report MPOs must hold at least one public workshop in their region. [Government Code 65080 (b)(2)(A)(ii)]

Prior to setting targets ARB will exchange technical data with MPOs and affected local air districts. MPOs may recommend targets for their region to the Board. [Government Code 65080 (b)(2)(A)(ii)]

By June 30, 2010 ARB must provide draft targets to the state's 18 MPOs. [Government Code 65080 (b)(2)(A)(ii)]

By September 30, 2010 ARB must provide targets to the state's 18 MPOs, for 2020 and 2035. [Government Code 65080 (b)(2)(A)]

When setting targets ARB must consider other greenhouse gas emission reduction strategies underway to implement the Global Warming Solutions Act of 2006, also known as AB 32. [Government Code 65080 (b)(2)(A)(iii)]

Targets may be expressed any metric deemed appropriate by ARB. [Government Code 65080 (b)(2)(A)(v)]

ARB must update the targets every eight years, however targets may be updated after four years. [Government Code 65080 (b)(2)(A)(iv)]

Developing Regional Strategies to Meet Targets

California's MPOs are required to prepare a SCS that will serve as their RTP's land use element. The SCS must:

- Include a region's most recent planning assumptions
- Identify locations, densities, and building intensities of all land use elements within the region
- Identify areas to house a region's existing and 8-year projected population growth
- Identify existing and needed transportation networks within the region
- Forecast a development pattern that will reduce GHG emissions from passenger vehicles to meet the targets set by ARB's, if feasible
[Government Code 65080 (b)(2)(B)]

In developing a SCS, MPOs must consider spheres of influence adopted by the LAFCO in their region. [Government Code 65080 (b)(2)(F)]

An APS document is required when an MPO cannot meet its regional GHG target with its SCS. An APS is a separate document from the RTP and specifies how the region can meet its target. [Government Code (b)(2)(H)]

An APS is not considered a land use plan, policy, or regulation. Therefore if a project is inconsistent with an APS does not necessarily mean it will cause an "environmental effect", for purposes of CEQA review. [Government Code (b)(2)(H)(v)]

An APS must:

- Discuss the reasons why a region cannot meet its target with the SCS
[Government Code (b)(2)(H)(i)]
- Discuss how the region's target will be met if the APS is implemented
[Government Code (b)(2)(H)(iii)]

An APS may include an alternative development pattern from the one used in the SCS [Government Code (b)(2)(H)(ii)]

Prior to approving an SCS and/or APS, MPOs must:

- Adopt a public participation plan to encourage active participation from the community, consult with various local transportation entities, and workshop throughout the region so the public has a clear understanding of the region's plan
[Government Code (b)(2)(E)]
- Submit to ARB, prior to starting a public participation plan, a description of technical methodologies the MPO will use to estimate GHG emissions produced from measures in their SCS and, if one is under development, their APS. ARB must comment on the MPO's methodologies in a "timely manner" [Government Code (b)(2)(l)(i)]
- Hold two informational meetings in each county within their region to present a draft SCS and/or APS to community leaders and elected officials, regions may conduct one meeting under certain circumstances
[Government Code (b)(2)(D)]
- Circulate a draft SCS and/or APS 55 days prior to formally adopting their RTP and hold at least 2 public hearings on the draft plan.
[Government Code (b)(2)(E)]
- Quantify the reduction in GHG emissions projected to be achieved by the SCS and set forth the difference, if any, between the amount of that reduction and the target established by ARB [Government Code (b)(2)(G)]

After approving an SCS and/or APS, MPOs must submit the SCS and/or APS to ARB. ARB has 60 days after receiving the plan(s) to accept or reject them. If a plan is rejected an MPO must develop an APS that would meet the target and submit it to ARB, ARB then has 60 days again to accept or reject it.

[Government Code (b)(2)(l)(ii)&(iii)]

Region-Specific Measures

For the Bay Area region, SCS development is split between ABAG and MTC
[Government Code 65080 (b)(2)(B)]

For the region encompassed by the Southern California Association of Governments, sub regional SCS and/or APS may be prepared
[Government Code 65080 (b)(2)(C)]

For the 8 San Joaquin Valley MPOs, 2 or more MPOs may work together to develop SCS and/or APS documents [Government Code 65080 (b)(2)(M)]



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SB 375 (STEINBERG)
Addressing Greenhouse Gas Emissions from the Transportation Sector
via Regional Transportation Plans
CSAC Analysis (October 21, 2008)

SUMMARY

In 2006, the Legislature passed AB 32 —The Global Warming Solutions Act of 2006 — which requires the State of California to reduce greenhouse gas (GHG) emissions to 1990 levels no later than 2020. According to the California Air Resources Board (CARB), in 1990 GHG emissions from automobiles and light trucks were 108 million metric tons, but by 2004 these emissions had increased to 135 million metric tons. The transportation sector contributes over 40 percent of the GHGs throughout the state. Automobiles and light trucks alone contribute almost 30 percent. AB 32 granted CARB broad authority over any “source” of GHG emissions, including the authority to regulate the car and light truck sector.

SB 375, by Senator Darrell Steinberg, provides a means for achieving AB 32 goals from cars and light trucks. The bill is a monumental step forward in the State’s efforts to achieve the global warming goals consistent with AB 32 (Nunez, Chapter 488, Statutes of 2006). Further, the bill aligns three critical policy areas of importance to local government: (1) regional long-range transportation plans and investments; (2) regional allocation of the obligation for cities and counties to zone for housing; and (3) a process to achieve greenhouse gas emissions reductions targets for the transportation sector.

State, Regional and Local Role in Setting Targets

The new law establishes a process for CARB to develop the GHG emissions reductions targets for each region (as opposed to individual local governments or households). CARB must take certain factors into account before setting the targets, such as considering the likely reductions that will result from actions to improve the fuel efficiency of the statewide fleet and regulations related to the carbon content of fuels (low carbon fuels). CARB must also convene a Regional Targets Advisory Committee (RTAC), which includes representation from the League of California Cities (League), California State Association of Counties (CSAC), metropolitan planning organizations, developers, planning organizations and other stakeholder groups. Furthermore, before setting the targets for each region, CARB is required to exchange technical information with the MPO for that region and with the affected air district. SB 375 provides that the MPO may recommend a target for its region.

Enhanced Regional Planning Process

SB 375 relies upon regional planning processes already underway in the 18 Metropolitan Planning Organizations (MPOs) in the state to accomplish its objectives. The provisions related to GHG emissions only apply to the MPOs in the state, which includes 37 of the 58 counties. Most notably, the measure requires the MPO to prepare a Sustainable Communities Strategy (SCS) within the Regional Transportation Plan (RTP), which sets forth a vision for growth for the region taking into account the transportation, housing, environmental, and economic needs of the region. The SCS is the blueprint by which the region will meet its GHG emissions reductions target if there is a feasible way to do so.

Requires State Interagency Cooperation

SB 375 indirectly addresses another longstanding issue: single purpose state agencies. The new law will require the cooperation of CARB, the California Transportation Commission (CTC), the California Department of Transportation (Caltrans) and the State Department of Housing and Community Development (HCD). For example, SB 375 takes a first step to counter this problem by connecting the Regional Housing Needs Allocation (RHNA) to the transportation planning process. While these state agencies will be involved in setting the targets and adopting new guidelines, local governments and the MPOs will not only provide input into setting the targets, but will serve as the lead on implementation. Member cities and counties working through their MPOs are tasked with development of the new integrated regional planning and transportation strategies designed to meet the GHG targets.

Rural Sustainability Component

SB 375 does include a provision that applies to all regional transportation planning agencies in the state that recognizes the rural contribution towards reducing GHGs. More specifically, the bill requires regional transportation agencies to consider financial incentives for cities and counties that have resource areas or farmland, for the purposes of, for example, transportation investments for the preservation and safety of the city street or county road system, farm to market, and interconnectivity transportation needs. An MPO or county transportation agency shall also consider financial assistance for counties to address countywide service responsibilities in counties that contribute towards the GHG emissions reductions targets by implementing policies for growth to occur within their cities.

CEQA Incentive

Additionally, SB 375 uses California Environmental Quality Act (CEQA) streamlining as an incentive to encourage residential projects, which help achieve AB 32 goals to reduce GHG emissions. Cities and counties that find the CEQA streamlining provisions attractive have the opportunity (but not the obligation) to align their planning decisions with the decisions of the region.

Clarity for Achieving GHG Emissions Reductions from Transportation Sector

SB 375 provides more certainty for local governments and developers by framing how AB 32's reduction goal from transportation for cars and light trucks will be established. It should be noted, however, that SB 375 does not prevent CARB from adopting additional regulations under its AB 32 authority. However, based on the degree of consensus around SB 375 and early indications from CARB, such actions are not anticipated in the foreseeable future.

A more detailed analysis of SB 375 follows this brief summary.

<p>For more information regarding SB 375 and this analysis, please contact: DeAnn Baker, Legislative Representative, (916) 327-7500 ext. 509 or dbaker@counties.org Kiana Buss, Legislative Analyst, (916) 327-7500 ext. 566 or kbuss@counties.org</p>

I. ACHIEVING GHG EMISSIONS REDUCTIONS IN REGIONAL TRANSPORTATION PLANS

Regional transportation plans have long been a part of the transportation planning horizon in California. Federal law requires RTPs to include a land use allocation and requires MPOs that prepare RTPs to make a conformity finding that the RTP is consistent with the requirements of the federal Clean Air Act. The federal law requires that RTPs, among other things, work toward achieving the goals of the Clean Air Act. Some regions have also engaged in a regional “blueprint” process to prepare the land use allocation. State law requires that an RTP include “clear, concise policy guidance to local and state officials” regarding transportation planning.

One important component of the RTP for federal purposes is an estimate of a likely or realistic development pattern for the region over the next 20 to 30 years. This estimate informs the decision-making process for transportation funding. The forecasted growth pattern must be based upon “current planning assumptions” to assure that the air conformity provisions are meaningful. If the federal government determines that the projected growth development pattern is not realistic, it can withhold federal transportation funding.

Like the federal Clean Air Act, SB 375 requires the growth pattern in the SCS to be based upon the “most recent planning assumptions considering local general plans and other factors.” It also requires that the SCS be consistent with the federal regulations that require a realistic growth development pattern.

WHAT IS A SUSTAINABLE COMMUNITIES STRATEGY (SCS)?

An SCS is an enhanced land use element that will be developed within the RTP that sets forth a growth strategy for the region which strives towards achieving GHG emissions reductions, if it is feasible to do so, and help meet California’s climate change goals. Specifically, an SCS will:

- Identify the general location of uses, residential densities, and building intensities within the region;
- Identify areas within the region sufficient to house all the population of the region, including all economic segments of the population, over the course of the planning period of the regional transportation plan;
- Identify areas within the region sufficient to house an eight-year projection of the regional housing need for the region;
- Identify a transportation network to service the transportation needs of the region;
- Gather and consider the best practically available scientific information regarding resource areas and farmland in the region;
- Set forth a forecasted development pattern for the region, which, when integrated with the transportation network, and other transportation measures and policies, will reduce GHG emissions from automobiles and light trucks to achieve, if there is a feasible way to do so, the GHG emissions reductions target approved by the state board; and
- Quantify the reduction in GHG emissions projected to be achieved by the SCS and, if the SCS does not achieve the targeted reductions in GHG emissions, set forth the difference

between the amount that the SCS would reduce GHG emissions and the target for the region.

It is important to emphasize that this development pattern must comply with federal law, which requires that any pattern be based upon “current planning assumptions” that includes the information in local general plans and sphere of influence boundaries.

The SCS will not directly affect local land use decisions. The SCS does not in any way supersede a local general plan, local specific plan, or local zoning. SB 375 does not require that a local general plan, local specific plan, or local zoning be consistent with the SCS.

WHAT REGIONAL AGENCIES ARE REQUIRED TO DEVELOP AN SCS?

SB 375 only applies to the 18 federally designated MPOs in the State, which includes 37 counties representing 97.7% of the statewide population. The MPOs and counties are:

Metropolitan Planning Organization	Counties
Association of Monterey Bay Area Governments	Monterey, San Benito, Santa Cruz
Butte County Association of Governments	Butte
Council of Fresno County of Governments	Fresno
Kings County Association of Governments	Kings
Kern Council of Governments	Kern
Madera County Transportation Commission	Madera
Merced County Association of Governments	Merced
Metropolitan Transportation Commission/ Association of Bay Area Governments*	Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, Sonoma
Sacramento Area Council of Governments	El Dorado, Placer, Sacramento, Sutter, Yolo, Yuba
San Diego Association of Governments	San Diego
San Joaquin Council of Governments	San Joaquin
San Luis Obispo Council of Governments	San Luis Obispo
Santa Barbara County Association of Governments	Santa Barbara
Shasta County Regional Transportation Planning Agency	Shasta
Southern California Association of Governments	Imperial, Los Angeles, Orange, Riverside, San Bernardino, Ventura
Stanislaus Council of Governments	Stanislaus
Tahoe Metropolitan Planning Organization	Portions of El Dorado, Placer
Tulare County Association of Governments	Tulare

*The Association of Bay Area Governments is not the MPO however will work in conjunction with the Metropolitan Transportation Commission to accomplish the SCS and other provisions.

WHAT IS THE ALTERNATIVE PLANNING STRATEGY (APS)?

If an SCS is unable to achieve the GHG emissions reductions target set by CARB, an MPO will need to prepare an Alternative Planning Strategy (APS) to the SCS showing how the GHG emissions target would be achieved through alternative development patterns, infrastructure, or additional transportation measures or policies.

The APS is a separate document from the RTP and therefore does not automatically affect the distribution of transportation funding. However, the APS may be adopted concurrently with the RTP.

The APS must identify the principal impediments to achieving the target within the SCS. The APS must also include a number of measures—such as alternative development patterns, infrastructure, or additional transportation measures or policies—that, taken together, would achieve the regional target. Specifically, an APS would:

- Identify the principal impediments to achieving the target within the SCS;
- May include an alternative development pattern for the region; and
- Describe how the GHG emissions reductions target would be achieved by the APS, and why the development pattern, measures, and policies in the APS are the most practicable choices for achievement of the GHG emissions reductions target.

Like the SCS, the APS does not directly affect or supersede local land use decisions; nor does it require that a local general plan, local specific plan, or local zoning be consistent with the APS.

In addition, SB 375 provides that inconsistency of a project with an APS is not a consideration in determining whether a project may be deemed to have an environmental effect for purposes of the CEQA relief. General consistency with a CARB approved plan— whether it's an SCS or APS—allows projects to qualify for the CEQA streamlining provisions in the bill.

WHAT IS CARB'S ROLE IN APPROVING THE SCS OR APS?

CARB's role in reviewing the SCS or APS is very limited. It can only accept or reject an MPO's determination that the plan would, if implemented, achieve the regional GHG emissions reductions target established by CARB. CARB must complete its review within 60 days. It may not issue conditional approvals or otherwise interfere in any way with local decision-making. It should be noted that SB 375 requires an extended exchange of information between the MPO and CARB about the technical methodology that the region intends to use to estimate the GHG emissions reduction, thus should reduce the chance that CARB will find a particular plan does not achieve the regional target.

SETTING THE TARGETS & THE ROLE OF REGIONAL TARGETS ADVISORY COMMITTEE

CARB, via the Scoping Plan, will assign emissions reductions targets for the 2020 goal on a sector-by-sector basis and lay the framework for achieving that goal. Once the statewide target is set, CARB will set regional targets. SB 375 requires CARB to set regional targets by September 30, 2010 (draft targets will be released to the regions by June 30, 2010). The target may be expressed in gross tons, tons per capita, tons per household, or in any other metric deemed appropriate by CARB.

SB 375 provides for the creation of the Regional Targets Advisory Committee (RTAC) charged with recommending factors to be considered and methodologies to be used for setting GHG emissions reductions targets for the affected regions. The committee shall be composed of representatives of the MPOs, affected air districts, the League, CSAC, local transportation agencies, and members of the public, including homebuilders, environmental organizations, planning organizations, environmental justice organizations, affordable housing organizations, and others. The committee will make its report to CARB by September 30, 2009.

As mentioned above, prior to setting the target for the region, CARB must also exchange technical information with the MPO and affected air district as well as consider the GHG reductions that will be achieved from improved vehicles emission standards, changes in fuel composition, and other measures that CARB has adopted to reduce GHGs from other emissions sources.

An MPO may also recommend its own target for the region. The MPO must hold at least one public workshop within the region after receipt of the report from the RTAC.

Once set, the targets must be updated every 8 years, which is consistent with the new RHNA planning cycle and two RTP planning cycles in non-attainment areas. CARB can also, at its discretion, revise the targets every four years based on changes in fuel efficiency, use of low carbon fuels, or other factors that it takes into account in setting the targets. Before revising or updating the regional targets, CARB must engage the primary stakeholders (Department of Transportations, MPOs, air districts, and local governments) in a consultative process.

WHAT SB 375 MEANS FOR TRANSPORTATION FUNDING

SB 375 requires the RTP to be internally consistent much like the internal consistency requirement of a city or county's general plan. This means that the "action element" and the "financial element" of the RTP must be consistent with the SCS, since the SCS is part of the RTP. (The "action element" and the "financial element" of the RTP, however, do not need to be consistent with the APS, since the APS is not part of the RTP.) This means that decisions about the allocation of transportation funds must be consistent with the SCS, its land use plan, and its transportation policies. The land use plan must be based upon the most recent planning assumptions. These are taken in part from local city and county general plans. As cities and counties use the CEQA streamlining in SB 375, their planning assumptions will align more closely with those in the SCS or APS, whichever CARB agrees would achieve the region's GHG target, if implemented.

SB 375 makes explicit the authority that already exists in the law. MPOs already have authority to impose policies or condition transportation funding. The Metropolitan Transportation Commission, for example, does not fund certain types of transit projects unless they serve areas that meet minimum density standards. Even without SB 375, MPOs are taking additional steps in the direction of adopting policies related to reducing GHG emissions within their RTPs because the California Transportation Commission (CTC) recently amended its RTP Guidelines to require that MPOs consider GHG emissions as part of the RTP process.

SB 375 does not change any current transportation funding formulas, such as county minimums for the State Transportation Improvement Program (STIP).

LOCAL GOVERNMENT AND PUBLIC PARTICIPATION

SB 375 contains significant and robust processes for local government and public input into the entire process from CARB setting the targets, to the MPOs developing the plans to achieve them. Specific outreach requirements include:

- **Local Elected Official Workshops.** MPOs must conduct at least two informational meetings in each county within the region for members of the board of supervisors and city councils on the SCS and APS, if any. The MPO may conduct only one informational meeting if it is attended by representatives of the county board of supervisors and city council members representing a majority of the cities representing a majority of the population in the incorporated areas of that county.

- **General Public Participation.** Each MPO must adopt a public participation plan, for development of the SCS and APS, if any, that includes all of the following:
 - Outreach efforts to encourage the active participation of a broad range of stakeholder groups in the planning process.
 - Workshops throughout the region to provide the public with the information and tools necessary to provide a clear understanding of the issues and policy choices. At least one workshop shall be held in each county in the region. For counties with a population greater than 500,000, at least three workshops shall be held. Each workshop, to the extent practicable, shall include urban simulation computer modeling to create visual representations of the SCS and the APS.
- **Draft SCS/APS Circulation.** Preparation and circulation of a draft SCS and an APS, if one is prepared, not less than 55 days before adoption of a final RTP.
- **Public Hearings.** At least three public hearings on the draft SCS or APS. If the MPO consists of a single county, at least two public hearings shall be held. To the maximum extent feasible, the hearings shall be in different parts of the region to maximize the opportunity for participation by members of the public throughout the region.

EXEMPTION FOR CERTAIN TRANSPORTATION PROJECTS

Transportation projects funded by the MPO must be consistent with the SCS except that projects programmed for funding on or before December 31, 2011 are not required to be consistent if: (1) they are contained in the 2007 or 2009 Federal Statewide Transportation Improvement Program and they are funded pursuant to Section 8879.20 of the Government Code (Proposition 1B—Transportation Bond of 2006); or (2) were specifically listed in a ballot measure prior to December 31, 2008 approving a sales tax measure for transportation purposes. In addition, a transportation sales tax authority need not change funding allocations approved by the voters for categories of transportation projects in a sales tax measure adopted prior to December 31, 2010.

SUB-REGIONAL EXCEPTION FOR THE SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS

SB 375 provides a special set of exceptions for the development of the SCS or APS within the region of the Southern California Association of Governments (SCAG). Here, a subregional council of governments and the county transportation commission may work together to propose a SCS or APS for the subregional area. Although SCAG may still address interregional issues in the SCS or APS, SCAG must include the subregional SCS or APS to the extent that it is consistent with the requirements of an RTP and federal law. SCAG is still responsible for creating an overall public participation plan, ensuring coordination, resolving conflicts and making sure that the plan complies with all applicable legal requirements.

SPECIAL PROVISION FOR THE SAN JOAQUIN VALLEY

In order to encourage regional cooperation among the eight counties in the San Joaquin Valley, SB 375 specifically encourages two or more counties to work together to develop cooperative policies and develop a multiregional SCS or APS.

RURAL SUSTAINABILITY

SB 375 includes a rural sustainability element in which an MPO or county transportation agency must consider financial incentives for cities and counties that have resource areas or farmland, for the purposes of, for example, transportation investments for the preservation and safety of

the city street or county road system, farm to market, and interconnectivity transportation needs. An MPO or county transportation agency shall also consider financial assistance for counties to address countywide service responsibilities in counties that contribute towards the GHG emissions reductions targets by implementing policies for growth to occur within their cities.

II. ALIGNING TRANSPORTATION PLANNING AND REGIONAL HOUSING NEEDS CYCLES

Before SB 375, federal and state law ignored the fact that in most areas in California, RTPs and regional housing allocation plans are prepared by the same regional organization. Conflicting deadline policies have historically caused a disconnect between regional transportation planning and regional housing policy. SB 375 eliminates this disconnection by requiring the RTP to plan for the Regional Housing Needs Allocation (RHNA) and by requiring the RHNA allocation to be consistent with the projected development pattern used in the RTP.

SB 375 makes two significant changes in this regard. First, cities and counties in the 17 federally designated MPOs (Clean Air Act non-attainment regions) will have an 8-year planning period, which means that the housing element must be updated every 8 years rather than every 5 years.

Second, cities' and counties' RHNA will change because consistency between the regional housing needs allocation plan and the RTP means that the concept of "fair share" will change. Under existing law, the Council of Government (COG) adopts the regional housing allocation plan. The plan distributes to each city and to each county its fair share of the regional housing need. Under SB 375 the plan must be consistent with the development pattern included in the SCS (although each jurisdiction still must receive an allocation).

In trying to encourage a growth development pattern for residential housing that would reduce GHGs, SB 375 had to address the potential conflicts with the existing RHNA and housing element goals and process.

- **Establishing an Eight Year Planning Period in Non-Attainment Regions.** Local governments within a region classified as "non-attainment" under the Clean Air Act and local governments within a region that has elected to adopt an RTP every four years are required to revise their housing element every eight years (instead of the current 5 years). All other local governments remain on the five-year schedule.
- **When the Eight Year Planning Period Starts.** Local governments in non-attainment areas are required to adopt their fifth revision of the housing element no later than 18 months after the adoption of the first RTP adopted after September 30, 2010. Local governments that have elected to adopt the RTP every four years are required to adopt their next housing element 18 months after the adoption of the first RTP following the election. All local governments within San Diego Association of Governments (SANDAG) are required to adopt their fifth revision no more than 5 years from the fourth revision and their sixth revision no later than 18 months after adoption of the first RTP adopted after the fifth revision due date.
- **Timeline for RHNA Allocation and the Housing Element.** In areas where the 8-year planning period applies, the MPO will allocate the RHNA number to the individual cities and counties at approximately the same time it adopts the RTP (which includes the requirement

that the SCS must accommodate the 8 year RHNA allocation). Once the city or county receives its RHNA allocation, it has 18 months to prepare its housing element and submit it to the Department of Housing and Community Development (HCD).

All local governments within the jurisdiction of an MPO, except those within the SANDAG, shall adopt its next housing element 18 months after adoption of the first RTP that is adopted after September 30, 2010.

- **Consequence of Failing to Submit a Timely Housing Element.** Local agencies that fail to submit a housing element to HCD within the 18 month timeline fall out of the 8-year housing element cycle and must submit their housing element every four years to HCD. These agencies must still complete their zoning within three years and 120 days of the deadline for adoption of the housing element or be subject to the sanctions provision described below.
- **Timeline to Re-Zone Sites to Meet RHNA Need.** Each housing element includes an inventory that identifies sites to accommodate the jurisdiction's RHNA. Jurisdictions with an 8-year housing element must rezone sites to accommodate that portion of the RHNA not accommodated in the inventory no later than three years after the date the housing element is adopted or the date that is 90 days after receipt of the department's final comments, whichever is earlier.

Rezoning of the sites includes adoption of minimum density and development standards. A local agency that cannot meet the 3-year requirement may be eligible for a 1-year extension if it can prove that it has completed 75 percent of its zoning requirement and was unable to rezone for one of the following reasons: (1) because of an action or inaction beyond the control of the local agency; (2) because of infrastructure deficiencies due to fiscal or regulatory restraints; or (3) because it must undertake a major revision to its general plan in order to accommodate the housing related policies of an SCS or APS.

- **Scheduling Actions Required by the Housing Element Program.** Current law also requires a housing element to include a program of actions that the local agency intends to undertake during the planning period to encourage that the needs of all economic segments of the community will be met. SB 375 requires local agencies to develop a schedule and timeline for implementation as to when specific actions will have "beneficial impacts" within the planning period.
- **Public Hearing for HCD Annual Report.** Local governments must now hold a public hearing and provide an annual report on the progress made during the year on the programs within the housing element. This requirement to make this report on an official form approved by HCD has been in the law since 1995, but has not been officially applicable because HCD has not yet finalized the form under the administrative rulemaking process.
- **Extension of Anti-NIMBY for Affordable Housing Projects.** SB 375 extends a strict anti-NIMBY law protection (now called the Housing Accountability Act) for housing development projects, which are defined as projects where at least 49 percent of the units are affordable to families of lower- income households. (In most circumstances, a development that meets the 49 percent threshold is a development where 100 percent of the units are affordable to lower-income households.)

The new anti-NIMBY provision applies to an agency's failure to zone a site for low- and very low-income households within the three year time limit (four years if an agency qualifies for an extension). If an affordable project is proposed on that site and the project complies with applicable, objective general plan and zoning standards, including design review standards, then the agency may not disapprove the project, nor require a conditional use permit, planned unit development permit, or other discretionary permit, or impose a condition that would render the project infeasible, unless the project would have a specific, adverse impact upon the public health or safety and there is no feasible method to satisfactorily mitigate or avoid the adverse impact.

- **Potential “Sanctions” for Failing to Meet Zoning Timeline.** Any interested person may bring an action to compel compliance with the zoning deadline and requirements for the new 8-year housing element. If a court finds that a local agency failed to complete the rezoning, the court is required to issue an order or judgment, after considering the equities of the circumstances presented by all parties, compelling the local government to complete the rezoning within 60 days or the earliest time consistent with public hearing notice requirements in existence at the time the action was filed. The court shall retain jurisdiction to ensure that its order or judgment is carried out. If the court determines that its order or judgment is not carried out, the court is required to issue further orders to ensure compliance and may impose sanctions on the local agency, but must consider the equities presented by all affected parties before doing so.
- **Adoption or Self Certification of Housing Element Remains the Same.** Although SB 375 changed the housing element planning period from 5 years to 8 years for some jurisdictions, and added time frames for completing certain actions which must be taken during the planning period, SB 375 did not change either the way in which the housing element is adopted except to the extent that the regional housing allocation plan must be consistent with the SCS. Self-certification of the housing element remains an option (and triggers the three year requirement to zone).

III. CEQA EXEMPTIONS AND STREAMLINING

The Environmental Impact Report (EIR) prepared for a RTP will consider the impact of the Plan on global warming and the growth-inducing impacts of the Plan. SB 375's CEQA incentive eliminates the requirement to analyze the impacts of certain residential projects on global warming and the growth-inducing impacts of those projects when the projects achieve the goals of reducing GHG emissions by their proximity to transit or by their consistency with the SCS or APS.

- **Two Types of CEQA Streamlining.** SB 375 includes two types of CEQA streamlining. One is for residential projects that are consistent with the SCS (or APS) that CARB agrees is sufficient to achieve the GHG targets for the region if it was implemented. The other is for Transportation Priority Projects (which also must be consistent with the SCS/APS). Each of these is discussed in more detail below.
- **Projects consistent with the SCS/APS.** A residential or mixed-use project which is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a SCS/APS is not required to reference, describe, or discuss (1) growth-inducing impacts; or (2) project specific or cumulative impacts from cars and light-duty truck trips on global warming or the regional transportation

network if the project incorporates the mitigation measures required by an applicable prior environmental document.

In addition, an EIR prepared for this type of project is not required to reference, describe, or discuss a reduced residential density alternative to address the effects of car and light-duty truck trips generated by the project.

- **Three Types of Streamlining for Transit Priority Projects.** SB 375 amends CEQA in three ways for “transit priority projects” (TPPs). A TPP is a new type of project created by SB 375 that must meet three requirements: (1) contains at least 50% residential use (commercial use, if any, must have floor area ratio of not less than 0.75); (2) have a minimum net density of 20 units per acre; and (3) be located within one-half mile of a major transit stop or high quality transit corridor included in a RTP.
 - **Total CEQA Exemption for a Sub-Set of TPPs.** A TPP is exempt from CEQA if it complies with a long list of criteria including the following:
 - Not more than 8 acres and not more than 200 residential units,
 - Can be served by existing utilities,
 - Does not have a significant effect on historical resources,
 - Buildings are 15% more energy efficient than required and buildings and landscaping is designed to achieve 25 percent less water usage,
 - Provides EITHER a minimum of 5 acres per 1,000 residents of open space, OR 20 % housing for moderate income, or 10% housing for low income, or 5% housing for very low income (or in lieu fees sufficient to result in the development of an equivalent amount of units).
 - **TPP: Sustainable Communities Environmental Assessment.** A TPP that does not qualify for a complete exemption from CEQA may nevertheless qualify for a sustainable communities environmental assessment (SCEA) if the project incorporates all feasible mitigation measures, performance standards, or criteria from prior applicable environmental impact reports. A SCEA is similar to a negative declaration in that the lead agency must find that all potentially significant or significant effects of the project have been identified, analyzed and mitigated to a level of insignificance. There are four significant differences:
 - Cumulative effects of the project that have been addressed and mitigated in prior environmental impacts need not be treated as cumulatively considerable.
 - Growth-inducing impacts of the project are not required to be referenced, described or discussed.
 - Project specific or cumulative impacts from cars and light duty truck trips on global warming or the regional transportation network need not be referenced described or discussed.

- A SCEA is reviewed under the “substantial evidence” standard. The intent of the author was to eliminate the “fair argument” test as the standard of review for a SCEA.
- **TPPS: Traffic Mitigation Measures.** SB 375 also authorizes the adoption of traffic mitigation measures that apply to transit priority projects. These measures may include requirements for the installation of traffic control improvements, street or road improvements, transit passes for future residents, or other measures that will avoid or mitigate the traffic impacts of transit priority projects. A TPP does not need to comply with any additional mitigation measures for the traffic impacts of that project on streets, highways, intersections, or mass transit if traffic mitigation measures have been adopted.

TIMELINE FOR THE IMPLEMENTATION OF SB 375

December 31, 2008	Projects specifically listed on a local ballot measure prior to this date are exempt from the requirement to be consistent with the SCS.
January 1, 2009	CARB adopts Scoping Plan, which will include the total reduction of carbon in million metric tons from transportation planning.
January 31, 2009	CARB shall appoint a Regional Targets Advisory Committee (RTAC) to recommend factors to be considered and methodologies to be used for setting reduction targets.
June 1, 2009	MPOs in attainment areas and Regional Transportation Planning Agencies not within an MPO may elect to opt into the 8 year housing element planning cycle.
September 30, 2009	RTAC must report its recommendations to the CARB.
June 30, 2010	CARB must provide draft targets for each region to review.
September 30, 2010	CARB must provide each affected region with a GHG emissions reductions target.
October 1, 2010	Beginning this date, MPOs updating their RTP will begin 8 year housing element planning cycle that includes SCS-APS and alignment for the RHNA process.
December 31, 2010	Transportation sales tax authorities need not change allocations approved by voters for categories of projects in a sales tax measure approved by voters prior to this date.
December 31, 2011	Federal Statewide Transportation Improvement Projects programmed before this date are exempt from the requirement to be consistent with the SCS.

ACRONYMS

AB 32	The Global Warming Solutions Act of 2006
APS	Alternative Planning Strategy
Caltrans	California Department of Transportation
CARB	California Air Resources Board
CEQA	California Environmental Quality Act
CSAC	California State Association of Counties
CTC	California Transportation Commissions
COG	Council of Government
EIR	Environmental Impact Report
GHG	Greenhouse Gas
HCD	California Housing and Community Development Department
League	League of California Cities
MPO	Metropolitan Planning Organization
RHNA	Regional Housing Needs Allocation
RTAC	Regional Targets Advisory Committee
RTP	Regional Transportation Plan
SANDAG	San Diego Association of Governments
SCEA	Sustainable Communities Environmental Assessment
SCS	Sustainable Communities Strategy
TPP	Transit Priority Project

CSAC AMENDMENTS

Requested Amendments to 3/24/08 Version	Outcome
Provide an exemption for those rural counties outside MPOs that are found in non-attainment due to air transport issues, dust and reasons beyond their control (currently this would apply to Amador, Calaveras, Inyo, Mariposa, Mono, Nevada and Tuolumne).	The measure now only applies to the 18 federally designated MPOs. SEC 1. (e).
Add affected air pollution control districts to the agencies that ARB must consult with when determining the regional targets.	The bill now requires CARB to exchange technical information with affected air districts in addition to the affected MPO prior to setting the regional target. SEC 4. Section 65080 of Government Code, (b)(2)(A)(ii).
Clarify that the SCS represents the land use element of the RTP.	The amendments clarify this point in the same section as amended above. SEC 4. Section 65080 of Government Code, (b)(2)(A)(ii).
Provide clarification regarding current practice by regions to comply with Federal Regulations—to ensure that the SCS is developed based on a land use scenario reasonably likely to occur considering local general plans and other factors.	The measure requires the MPO to use the most recent planning assumptions considering local general plans and other factors. SEC 4. Section 65080 of Government Code, (b)(2)(B).
Expand the countywide approach currently authorized in the bill for SCAG to all multi-county regions in the state.	SB 375 now includes significant increased outreach and workshop requirements targeted towards local elected officials, amongst other numerous public outreach requirements. Specifically, the measure includes a requirement that MPOs hold a workshop in each county to present the draft SCS plan to local elected officials to ensure that the Boards of Supervisors and City Councils are adequately consulted and solicited for input and recommendations. SEC 4. Section 65080 of Government Code, (b)(2)(D).
Include language that grandfather's the sales tax counties' projects and expenditures by category for measures adopted prior to the effective date of the bill.	The bill now provides that specific projects in sales tax measures passed prior to December 31, 2008 are not subject to the SCS. Further, no sales tax authority is required to change their funding allocations for categorical expenditures for measures passed before December 31, 2010. SEC 4. Section 65080 of Government Code, (b)(2)(L).

<p>Include a rural sustainability element to the RTP/SCS to provide incentives to cities and counties that have designated farmland and resource lands. Also support consideration of financial assistance to counties that contribute towards the SCS goal by adopting city oriented growth policies.</p>	<p>The measure requires MPOs or County Transportation Agencies to consider financial incentives, such as transportation investments for safety, preservation, farm to market and interconnectivity purposes, for cities or counties that have designated protected resource and/or farmland areas. Further, the bill requires MPOs or County Transportation Agencies to consider financial assistance for service responsibilities for the countywide residents in counties that implement policies for growth to occur within their cities. SEC 4. Section 65080 of Government Code, (b)(4)(C).</p>
<p>Provide consistency between the SCS and the actual allocation of the regional housing needs to cities and counties with particular emphasis on the designated grow areas.</p>	<p>Consistency between the RTP/SCS and RHNA is provided for in the amendments. The amendments would change the planning horizon for the housing element from 5-years to 8-years. SEC 7. Section 65583 of Government Code, beginning with (c).</p>
<p>Include local agency and public participation requirements of the MPOs and Regional Transportation Planning Agencies captured under the bill, in particular for the SCS.</p>	<p>Significant increased public participation requirements were added to the bill throughout. SEC 4. Section 65080 (b)(D)(E) contains numerous provisions.</p>



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To: California City Officials

From: Bill Higgins¹
Legislative Representative
& Sr. Staff Attorney

Date: September 19, 2008

RE: Technical Overview of SB 375 (v 1.1)²

I. Introduction

SB 375, by Senator Darrell Steinberg, builds on the existing regional transportation planning process (which is overseen by local elected officials with land use responsibilities) to connect the reduction of greenhouse gas (GhG) emissions from cars and light trucks to land use and transportation policy. In 2006, the Legislature passed AB 32—The Global Warming Solutions Act of 2006,—which requires the State of California to reduce GhG emissions to 1990 levels no later than 2020. According to the California Air Resources Board (CARB), in 1990 greenhouse gas emissions from automobiles and light trucks were 108 million metric tons, but by 2004 these emissions had increased to 135 million metric tons. SB 375 asserts that “Without improved land use and transportation policy, California will not be able to achieve the goals of AB 32.”³

AB 32 set the stage for SB 375—or at least something like it. The issue was not “if” land use and transportation policy were going to be connected to reducing greenhouse gas emissions but “how” and “when.” The issue was not “if” a governmental entity would regulate the car and light truck sector in order to reduce greenhouse gas emissions – the CARB already has that authority under AB 32 – but “how” and “when.”

¹ *Acknowledgement.* The author acknowledges and is grateful for the very significant contributions of the League’s special counsel, Betsy Strauss, in preparing this document

² *Work in Progress Disclaimer.* This memorandum is a work in progress; it is not and should not be considered legal advice. It represents our best thinking to date on the scope and major implementation issues related to SB 375. As additional information becomes available, we will update this document. Readers who are aware of issues not addressed here, identify inadvertent errors, or want to make additional comments, should contact Bill Higgins at higginsb@cacities.org or 916/658-8250)

³ See SB 375 (2008), Section 1(c) [uncodified]

Accordingly, SB 375 has three goals: (1) to use the regional transportation planning process to help achieve AB 32 goals; (2) to use CEQA streamlining as an incentive to encourage residential projects which help achieve AB 32 goals to reduce Greenhouse Gas emissions (GhGs); and (3) to coordinate the regional housing needs allocation process with the regional transportation planning process.

To be sure, the League remains fundamentally concerned about the keeping the line as bright as possible between regional planning and local land use authority. In the end, however, SB 375 answers the questions “how?” and “when?” by choosing regional agencies (controlled by cities and counties) rather than the CARB to lead the effort in this area; and by integrating RHNA with transportation planning to allow cities and counties to align existing mandatory housing element requirements with transportation funding. Those cities and counties that find the CEQA streamlining provisions attractive have the opportunity (but not the obligation) to align their planning decisions with the decisions of the region.

II. SB 375 in Context: AB 32, CARB, and Global Warming

AB 32 granted CARB broad authority over any “source” of GhG emissions.⁴ The definition of “source” includes automobiles and light trucks,⁵ which account for more than 30 percent of the state’s GhG emissions. AB 32 authorizes the CARB to require “participation” in CARB’s program to reduce greenhouse gas emissions and to “monitor compliance” with the statewide greenhouse gas emissions limit.⁶

SB 375 represents a “program” for the automobile and light truck sector.⁷ It provides a means for achieving the AB 32 goals for cars and light trucks. This is important to understanding why the agreement on SB 375 was reached: SB 375 provides more certainty for local governments and developers by framing how AB 32’s reduction goal from transportation planning for cars and light trucks will be established. It should be noted, however, that SB 375 does not prevent CARB from adopting additional regulations under its AB 32 authority.⁸ (However, given the degree of consensus that emerged on SB 375, such actions should be politically difficult for CARB at least for the foreseeable future).

SB 375 requires the CARB to establish the GhG emission reduction targets for each region (as opposed to individual cities or households) and to review the region’s

⁴ Cal. Health & Safety Code § 38560

⁵ Cal. Health & Safety Code § 38505(i)

⁶ Cal. Health & Safety Code § 38562 and following

⁷ Cal. Health & Safety Code § 38562.

⁸ This is because the scope of authority granted to CARB to regulate any “source” of GHG emissions is very broad.

determination that its plan achieves those targets. Each Metropolitan Planning Organization (MPO) must include a sustainable communities strategy (SCS) in the regional transportation plan that seeks to achieve targeted reductions in GhG emissions from cars and light trucks if there is a feasible way to do so. CARB establishes the targets for each region in accordance with the following:

- CARB must take other factors into account before setting target. Before setting a reduction target for the reduction of GhGs from cars and light trucks, CARB must first consider the likely reductions that will result from actions to improve the fuel efficiency of the statewide fleet and regulations relating the carbon content of fuels (low carbon fuels).⁹
- Targets are set regionally, not locally. SB 375 assures that the target to reduce GhGs from cars and light trucks will be regional. (CARB has received many comments and suggestions on its Scoping Plan that it should adopt targets and enforce requirement on an agency-by-agency basis).
- Committee to advise CARB. A Regional Targets Advisory Committee, which includes representation from the League of California Cities, California State Association of Counties, metropolitan planning organizations, developers, planning organizations and other stakeholder groups, will advise the Board on how to set and enforce regional targets.
- Exchange of technical information. Before setting the targets for each region, CARB is required to exchange technical information with the MPO for that region and with the affected air district. The MPO may recommend a target for the region.

The CARB's role in SB 375 is limited. Although the CARB retains its broad grant of authority to act independently under AB 32, SB 375 provides the framework for reducing greenhouse gas emissions in the car and light truck sector through the tie between land use and transportation planning.

Moreover, SB 375 indirectly addresses another longstanding issue: single purpose state agencies. The League, among others, has argued that these agencies often fail to recognize other competing state goals enforced by a different state agency. SB 375 takes a first step to counter this problem by connecting the Regional Housing Needs Allocation (RHNA) to the transportation planning process. As a result, SB 375 will require CARB to look at how new climate regulations could affect state and regional transit and housing policies; likewise, Department of Housing and Community Development (HCD) will have to consider the effects of housing policy on state and regional efforts to address climate change.

⁹ Cal. Gov't Code § 65080(b)(2)(A)(iii). Citations to language in SB 375 is to the section of the code as it proposed to be amended based on the August 22 version of SB 375 that was approved by the Assembly and concurred with by the Senate.

III. Planning for Greenhouse Gas Emission Reduction within the RTP

Regional transportation plans have long been a part of the transportation planning horizon in California. Federal law requires regional transportation plans (RTPs) to include a land use allocation and requires the metropolitan planning organizations that prepare RTPs to make a conformity finding that the Plan is consistent with the requirements of the federal Clean Air Act. Some regions have also engaged in a regional “blueprint” process to prepare the land use allocation.

1. The Sustainable Communities Strategy (SCS)

SB 375 integrates AB 32’s goal to reduce GhG emissions into transportation planning by requiring that a sustainable communities strategy (SCS) be added to the RTP. SB 375 recognizes that, because of the constraints of federal law and inadequate funding for infrastructure and public transit, an SCS may not be able to achieve the region’s targets. If the metropolitan planning organization (MPO) determines that the SCS cannot achieve the targets, then the MPO must develop an Alternative Planning Strategy (APS) (see discussion below). The biggest single difference is that the SCS is part of the RTP and the APS is not.

To fully understand what an SCS is—and is not—it’s worth taking a step back and look at what is required in existing regional transportation plans. RTPs are regulated by a conglomeration of state and federal law. State law requires that an RTP include “clear, concise policy guidance to local and state officials” regarding transportation planning.¹⁰ The federal law requires that RTPs, among other things, work toward achieving the goals of the Clean Air Act.

One important component of the RTP for federal purposes is an estimate of a likely or realistic development pattern for the region over the next 20 to 30 years. This estimate informs the decision-making process for transportation funding. The forecasted growth pattern must be based upon “current planning assumptions” to assure that the air conformity provisions are meaningful. Put another way, if the growth pattern is not realistic, then the accompanying policies to achieve air quality conformity relating to air pollutants from traffic are not likely to work. If the federal government determines that the projected growth development pattern is not realistic, it can withhold federal transportation funding.

Like the federal Clean Air Act, SB 375 requires the growth pattern in the SCS to be based upon the “most recent planning assumptions considering local general plans and other factors.”¹¹ It also requires that the SCS be consistent with the federal regulations that require a realistic growth development pattern. In addition, the SCS must consider or address several additional factors:

¹⁰ Cal. Gov’t Code § 65080(a).

¹¹ Cal. Gov’t Code § 65080(b)(2)(B).

- Consider the spheres of influence that have been adopted by the local agency formation commission (LAFCO).¹²
- Identify the general location of uses, residential densities, and building intensities within the region;
- Identify areas sufficient to house all economic segments the population of the region over the long term planning horizon of the RTP;
- Identify areas within the region sufficient to house an eight-year projection of the regional housing need for the region;
- Identify a transportation network to service the transportation needs of the region;
- Gather and consider the best practically available scientific information regarding resource areas and farmland in the region (note, there is no requirement to act on this information);
- Set a forecasted development pattern for the region, which, when integrated with the transportation network and other transportation measures and policies, will reduce the GhG emissions from automobiles and light trucks to achieve, if there is a feasible way to do so, the GhG emission reduction targets approved by the state board: and
- Quantify the reduction in GhG emissions projected to be achieved by the SCS and, if the SCS does not achieve the targeted reductions in greenhouse gas emissions, set forth the difference between the amount that the SCS would reduce GHG emissions and the target for the region.¹³

Of all these requirements, the one that has generated the most concern to date is the requirement that the RTP include a development pattern which, if implemented, would achieve the GHG emissions targets if there is a feasible way to do so. It is important to emphasize that this development pattern must comply with federal law, which requires that any pattern be based upon “current planning assumptions” that include the information in local general plans and sphere of influence boundaries. If a certain type of development pattern is unlikely to emerge from local decision-making, it will be difficult for the regional agency to say that it reflects current planning assumptions.

In addition, the SCS will not directly affect local land use decisions. The SCS does not in any way supersede a local general plan, local specific plan, or local zoning. SB 375 does

¹² Cal. Gov't Code § 65080(b)(2)(F).

¹³ Cal. Gov't Code § 65080(b)(2)(G).

not require that a local general plan, local specific plan, or local zoning be consistent with the SCS.¹⁴

2. The Alternative Planning Strategy (APS)

In the case where the SCS does not achieve the GhG emission reduction target, the MPO must develop an Alternative Planning Strategy (APS).¹⁵ The APS is a separate document from the RTP¹⁶ and therefore does not automatically affect the distribution of transportation funding. The APS must identify the principal impediments to achieving the targets within the SCS. The APS must also include a number of measures—such as alternative development patterns,¹⁷ infrastructure, or additional transportation measures or policies—that, taken together, would achieve the regional target.

The APS must describe how the GHG emission reduction targets would be achieved and why the development pattern, measures, and policies in the APS are the most practicable choices for the achievement of the GHG targets. Like the SCS the APS does not directly affect or supersede local land use decisions; nor does it require that a local general plan, local specific plan, or local zoning be consistent with the APS.¹⁸

In addition, SB 375 provides that the APS does not constitute a land use plan, policy, or regulation and that the inconsistency of a project with an APS is not a consideration in determining whether a project may be deemed to have an environmental effect for purposes of the California Environmental Quality Act (CEQA).

Some have asked about the purpose of the APS: Why should an MPO spend the time to develop an alternative planning strategy if there is no requirement to actually implement it? The answer is two-fold. First, a general consistency with a CARB approved plan—whether it's an SCS or APS—allows projects to qualify for the CEQA streamlining provisions in the bill (see Part IV, below). Second, it adds a new focus for the regional transportation planning and housing allocation: reductions in GhG emissions.

3. CARB's Role in the Approval of the SCS or APS

CARB's role in reviewing the SCS or APS is very limited. It can only accept or reject the MPO's determination that the plan would, if implemented, achieve the regional GHG

¹⁴ The CEQA changes made by the bill require residential projects to be consistent with the SCS in order to take advantage of streamlined CEQA processing.

¹⁵ Cal. Gov't Code § 65080(b)(2)(H).

¹⁶ Government Code 65080(b)(2)(H).

¹⁷ The development pattern must still comply with the provisions of the SCS that require consistency with the RHNA distribution and other factors.

¹⁸ The CEQA changes made by the bill require residential projects to be consistent with the APS in order to take advantage of streamlined CEQA processing.

emission reduction target established by CARB.¹⁹ CARB must complete its review within 60 days. It may not issue conditional approvals or otherwise interfere in any way with local decision-making.

In addition, the process is designed so that there will be an extended exchange of information between the MPO and CARB about the technical methodology that the region intends to use to estimate the GHG emissions reduction. SB 375 encourages the MPO to work with CARB until it concludes that the technical methodology it intends to use operates accurately. CARB must respond to such consultations in a timely manner. This type of communication before the actual submission should reduce the chance that CARB will find a particular plan does not achieve the regional target.

4. Setting the Regional Target for GhG Emissions

There are two questions relevant to setting the regional targets. The first is: How much of the overall AB 32-imposed reduction will be required from transportation planning for cars and light trucks statewide? This amount will be set by CARB in the AB 32 Scoping Plan, which assigns reduction targets for the 2020 goal on a sector-by-sector basis and lays the framework for achieving that goal.

In the early draft of the Scoping Plan released in June 2008, CARB called for a reduction of 2 million metric tons of GhG statewide (out of a total of 169 million metric tons needed to achieve AB 32's 2020 target).²⁰ This amounts to approximately 1.2 percent of the total reductions. This number is likely to go up in the final Scoping Plan, but should remain small in proportion to total amount of GhGs generated by cars and light trucks (at least for the 2020 target).

Once the statewide target is set, the second question is: How will it be assigned to the individual regions? SB 375 requires CARB to set regional targets by September 30, 2010 (draft targets will be released to the regions by June 30).²¹ The target may be expressed in gross tons, tons per capita, tons per household, or in any other metric deemed appropriate by the state board.

To assist in this process, the CARB's board appoints a Regional Targets Advisory Committee to recommend factors and methodologies to be used for setting these targets.²² The committee is made up of representatives from the League of California Cities, California State Association of Counties, MPOs, affected air districts, planners, homebuilders, affordable housing organizations, environmental justices organizations, and others. The committee will make its report to CARB by September 30, 2009.

¹⁹ See 65080(b)(2)(I)(ii).

²⁰ See California Air Resources Board, Climate Change Draft Scoping Plan (June 2008 Discussion Draft), pages 11 and 33.

²¹ Cal. Gov't Code § 65080(b)(2)(A).

²² Cal. Gov't Code § 65080(b)(2)(A)(i)

In addition, prior to setting the target for the region, CARB must exchange technical information with the MPO and affected air district. The MPO may also recommend its own target for the region. The MPO must hold at least one public workshop within the region after receipt of the report from the Advisory Committee. CARB shall release draft targets for each region no later than June 30, 2010. In setting these targets, CARB must first consider the GhG reductions that will be achieved from improved vehicles emission standards (overall fuel efficiency improvements), changes in fuel composition (such as low carbon fuels) and other measures that CARB has adopted to reduce GhGs from other emissions sources.²³

Once set, the targets must be updated every 8 years, which is consistent with the new RHNA planning cycle and two RTP planning cycles in non-attainment areas. The board can also, at its discretion, revise the targets every four years based on changes in fuel efficiency, use of low carbon fuels, or other factors that CARB can take into account in setting the target.²⁴ Before revising or updating the regional targets, CARB must engage the primary stakeholders (Dept. of Transportations, MPOs, air districts, and local governments) in a consultative process.

5. What SB 375 means for transportation funding

SB 375 requires the RTP to be internally consistent much like the internal consistency requirement of a city or county's general plan. This means that the "action element" and the "financial element" of the RTP must be consistent with the SCS, since the SCS is part of the RTP. (The "action element" and the "financial element" of the RTP, however, do not need to be consistent with the APS, since the APS is not part of the RTP.) This means that decisions about the allocation of transportation funds must be consistent with the SCS, its land use plan, and its transportation policies. The land use plan must be based upon the most recent planning assumptions. These are taken in part from local city and county general plans. As cities and counties use the CEQA streamlining in SB 375, their planning assumptions will align more closely with those in the SCS or APS, whichever CARB agrees would achieve the region's GhG target, if implemented.²⁵

SB 375 makes explicit the authority that already exists in the law. MPOs already have authority to impose policies or condition transportation funding. The Metropolitan Transportation Commission, for example, does not fund certain types of transit projects

²³ Cal. Gov't Code § 65080(b)(2)(A)(iii).

²⁴ 65080(b)(2)(A)(iv).

²⁵ This is because the CEQA streamlining should act to change some of the projects as they are proposed to be built by developers. Assuming that the CEQA streamlining is sufficient to motivate developers to propose projects that are consistent with the SCS or APS, this may impact the "current planning assumptions" for the region. Nothing requires local agencies to approve such proposals, but if local agencies indicate a willingness to support such proposals, the projected development pattern for the region will change accordingly.

unless they serve areas that meet minimum density standards.²⁶ Even without SB 375, MPOs were likely to take additional steps in the direction of adopting policies related to reducing GhG emissions within their RTPs planning because the California Transportation Commission recently amended its RTP Guidelines to require that MPOs consider GhG emissions as part of the RTP process.

It is worth noting that the decision-makers on the regional MPOs are made up wholly of local elected officials. Accordingly, MPOs are not likely to support measures that limit the discretion of cities and counties, particularly in those MPOs where every city and county in the region has a seat on the MPO board. Only two regions, SCAG and MTC, do not fit that model. SB 375 provides an exception for the SCAG region that allows for sub-regional development of the SCS and APS, where local representation is more broadly reflected.

6. How are Local Officials and the Public involved in Developing the SCS/APS

Once the region has its target, the question turns toward developing a regional plan to achieve GhG reductions. SB 375 requires the following public and local official participation processes before the plan can be adopted:

- *Local Elected Official Workshops.* MPOs must conduct at least two informational meetings in each county within the region for local elected officials (members of the board of supervisors and city councils) on the SCS and APS. The MPO may conduct only one informational meeting if it is attended by representatives representing the county and a majority of the cities representing a majority of the population in the incorporated areas of that county.
- *General Public Participation.* Each MPO must adopt a participation plan consistent with the requirements of the participation plan required by federal law that includes a broad range of stakeholder groups. These workshops must be sufficient to provide the public with a clear understanding of the issues and policy choices. At least one workshop shall be held in each county in the region. For counties with a population greater than 500,000, at least three workshops shall be held. Each workshop, to the extent practicable, shall include urban simulation computer modeling to create visual representations of the SCS and the alternative planning strategy. The MPO must also provide a process where members of the public can provide a single request to receive notices, information, and updates.
- *Circulation of Draft SCS/APS.* A draft of the SCS and APS must be circulated at least 55 days before the adoption of the RTP.
- *Public Hearings.* The MPO must hold at least three public hearings on the SCS and APS in multiple county regions, and two public hearings in single county regions. To the extent feasible, hearings should be in different parts of the region to maximize the opportunity for participation.

²⁶ See MTC Policy 3434 (www.mtc.ca.gov/planning/smart_growth/tod/TOD_policy.pdf)

7 Agencies and Regions Affected by SB 375

SB 375 applies to the 17 metropolitan planning organizations (MPOs) in the state. Together, these organizations cover 37 counties and represent almost 98 percent of the state's population.

These include four multiple county MPOs, including the Association of Monterey Bay Area Governments (AMBAG - Monterey, San Benito, and Santa Cruz counties), Metropolitan Transportation Commission (MTC - Alameda, Contra Costa, Solano, Marin, Napa, Sonoma, San Francisco, San Mateo, and Santa Clara counties), Sacramento Area Council of Governments (SACOG – Sacramento, Yolo, El Dorado, Placer, Yuba, and Sutter counties) and the Southern California Association of Governments (SCAG— Los Angeles, Ventura, San Bernardino, Riverside, Imperial, and Orange counties).

Affected single county MPOs include Butte, Fresno, Kern, Kings, Madera, San Diego, San Joaquin, San Luis Obispo, Santa Barbara, Shasta, Stanislaus, and Tulare counties.

8. Exempt transportation projects

Transportation projects funded by the MPO must be consistent with the SCS except that projects programmed for funding on or before December 31, 2011 are not required to be consistent if (1) they are contained in the 2007 or 2009 Federal Statewide Transportation Improvement Program; and (2) they are funded pursuant to Section 8879.20 of the Government Code; or (3) were specifically listed in a ballot measure prior to December 31, 2008 approving a sales tax measure for transportation purposes. In addition, a transportation sales tax authority need not change funding allocations approved by the voters for categories of transportation projects in a sales tax measure adopted prior to December 31 2010.

10. Exceptions for the SCAG region

SB 375 provides a special set of exceptions for the development of the SCS/APS within the region of the Southern California Association of Governments (SCAG)²⁷. Here, a subregional council of governments and the county transportation commission may work together to propose a SCS or APS for the subregional area. Although SCAG may still address interregional issues in the SCS/APS, SCAG must include the subregional SCS or APS to the extent that it is consistent with the requirements of a regional transportation plan and federal law. SCAG is still responsible for creating an overall public participation plan, ensuring coordination, resolving conflicts and making sure that the plan complies with all applicable legal requirements.

²⁷ Cal. Gov't Code § 65080(b)(2)(C).

11. Special Provision for the Eight San Joaquin Valley MPOs

In order to encourage regional cooperation among the 8 counties in the San Joaquin Valley, SB 375 specifically encourages two or more counties to work together to develop cooperative policies and develop a multiregional SCS or APS.

12. MPOs in Attainment Areas and RTPAs Not Within an MPO

There are a few counties in the state that are actually in “attainment” for air quality purposes. Federal law requires that these regions update their RTPs at least every five years instead of every four years (the requirement for non-attainment MPOs). In addition, there are a number of other counties that are not included within an MPO at all. Given that SB 375 is based on an eight year cycle that includes one RHNA planning period and two RTP planning periods, the five year requirement would place attainment MPOs out of sync with the non-attainment MPOs.

SB 375 solves this by allowing attainment MPOs, or a regional transportation planning agency (RTPA) not within an MPO, to opt into an 8 year planning cycle.²⁸ In other words, they may maintain their status quo with a five-year RHNA planning cycle that may or may not be aligned with their RTP planning cycle. Or they may opt into the 8-year cycle upon meeting the following conditions:

- Opting to adopt a plan not less than every four years
- This election must be made prior to June 1, 2009 or at least 54 months prior to the deadline for the adoption of housing elements for jurisdictions within the region (in order to afford HCD with sufficient time to develop and distribute an 8 year number).
- Public hearing

13. RURAL SUSTAINABILITY

MPO or county transportation agency must consider financial incentives for cities and counties that have resource areas or farmland. The idea is that to the extent that SB 375 drives more transportation investments to existing urban areas, some consideration should be given to rural areas that nevertheless help address the emissions targets by not building. An MPO or county transportation agency shall also consider financial assistance for counties to address countywide service responsibilities in counties that contribute towards the GhG emissions reductions targets by implementing policies for growth to occur within their cities.

²⁸ Cal. Gov't Code § 65080(b)(2)(L).

IV. NEW CEQA EXEMPTIONS AND STREAMLINING

The EIR prepared for a RTP will consider the impact of the Plan on global warming and the growth-inducing impacts of the Plan. SB 375's CEQA incentive eliminates the requirement to analyze the impacts of certain residential projects on global warming and the growth-inducing impacts of those projects when the projects achieve the goals of reducing greenhouse gas emissions by their proximity to transit or by their consistency with the SCS or APS.

1. Two Types of CEQA Streamlining

SB 375 includes two types of CEQA streamlining. One is for residential projects that are consistent with the SCS (or APS) that CARB agrees is sufficient to achieve the GhG targets for the region if it was implemented.²⁹ The other is for Transportation Priority Projects (which also must be consistent with the SCS/APS). Each of these is discussed in more detail below.

2. Projects consistent with the SCS/APS

A residential or mixed-use project which is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a SCS/APS is not required to reference, describe, or discuss (1) growth-inducing impacts; or (2) project specific or cumulative impacts from cars and light-duty truck trips on global warming or the regional transportation network if the project incorporates the mitigation measures required by an applicable prior environmental document.

In addition, an environmental impact report prepared for this type of project is not required to reference, describe, or discuss a reduced residential density alternative to address the effects of car and light-duty truck trips generated by the project.

3. Three Types of Streamlining for Transit Priority Projects

SB 375 amends CEQA in three ways for “transit priority projects” (or TPPs). A TPP is a new type of project created by SB 375 that must meet the three requirements: (1) contains at least 50% residential use; commercial use, if any, must have floor area ratio (FAR) of not less than 0.75; (2) have a minimum net density of 20 units per acre; and (3) be located within one-half mile of a major transit stop or high quality transit corridor included in a RTP.³⁰

- Total CEQA Exemption for a Sub-Set of TPPs. A TPP is exempt from CEQA if it complies with a long list of criteria including the following:
 - Not more than 8 acres and not more than 200 residential units

²⁹ Cal. Gov't Code § 65080(b)(2)(I)

³⁰ “Major transit stop” is defined at Section 21064.3 of Public Resources Code and in SB 375 in Section 21155(b). “High quality transit corridor is defined in SB 375 in Section 21155(b).

- Can be served by existing utilities
 - Does not have a significant effect on historical resources
 - Buildings are 15% more energy efficient than required and buildings and landscaping is designed to achieve 25 percent less water usage
 - Provides EITHER a minimum of 5 acres per 1,000 residents of open space, OR 20 % housing for moderate income, or 10% housing for low income, or 5% housing for very low income (or in lieu fees sufficient to result in the development of an equivalent amount of units).³¹
- TPP: Sustainable Communities Environmental Assessment. A TPP that does not qualify for a complete exemption from CEQA may nevertheless qualify for a sustainable communities environmental assessment (SCEA) if the project incorporates all feasible mitigation measures, performance standards, or criteria from prior applicable environmental impact reports. A SCEA is similar to a negative declaration in that the lead agency must find that all potentially significant or significant effects of the project have been identified, analyzed and mitigated to a level of insignificance. There are four significant differences:
 - Cumulative effects of the project that have been addressed and mitigated in prior environmental impacts need not be treated as cumulatively considerable.
 - Growth-inducing impacts of the project are not required to be referenced, described or discussed.
 - Project specific or cumulative impacts from cars and light duty truck trips on global warming or the regional transportation network need not be referenced described or discussed.
- A SCEA is reviewed under the “substantial evidence” standard. The intent of the author was to eliminate the “fair argument” test as the standard of review for a sustainable communities environmental assessment.
- Transit Priority Projects – Traffic Mitigation Measures. SB 375 also authorizes the adoption of traffic mitigation measures that apply to transit priority projects. These measures may include requirements for the installation of traffic control improvements, street or road improvements, transit passes for future residents, or other measures that will avoid or mitigate the traffic impacts of transit priority projects. A TPP does not need to comply with any additional mitigation measures for the traffic impacts of that project on streets, highways, intersections, or mass transit if traffic mitigation measures have been adopted.

³¹ This is a partial listing of the criteria.

V. Changes to the Housing Element Law

Before SB 375, federal and state law ignored the fact that in most areas in California, regional transportation plans and regional housing allocation plans are prepared by the same regional organization. Conflicting deadlines policies have historically caused a disconnect between regional transportation planning and regional housing policy. SB 375 eliminate this disconnection by requiring the RTP to plan for the RHNA and by requiring the RHNA plan to be consistent with the projected development pattern used in the RTP.

This will make two significant changes in this regard. First, cities and counties in Clean Air Act non-attainment regions will have an 8-year planning period,³² which means that the housing element must be updated every 8 years rather than every 5 years.

Second, cities' and counties' RHNA will change because consistency between the regional housing needs allocation plan and the RTP means that the concept of "fair share" will change. Under existing law, the COG adopts the regional housing allocation plan. The plan distributes to each city and to each county its fair share of the regional housing need.³³ Under SB 375 the plan must be consistent with the development pattern included in the SCS (although each jurisdiction still must receive an allocation).³⁴ In trying to encourage a growth development pattern for residential housing that would reduce GhGs, SB 375 had to address the potential conflicts with the existing RHNA and housing element goals and process.

1. Establishing an Eight Year Planning Period in Non-Attainment Regions

Local governments within a region classified as "non-attainment" under the Clean Air Act and local governments within a region that has elected³⁵ to adopt a regional transportation plan every four years are required to revise their housing element every eight years (instead of the current 5 years).³⁶ All other local governments remain on the five-year schedule (see "12. MPOs in Attainment Areas and RTPAs Not Within an MPO" on page 11).

³² SB 375 allows attainment regions to elect to prepare an RTP every four years which will then mean that cities and counties in that region to have an 8-year planning period.

³³ SB 375 changes the methodology that HCD uses to calculate the existing and projected regional need. This number must now reflect "the achievement of a feasible balance between jobs and housing within the region using the regional employment projects in the applicable regional transportation plan" Cal. Gov't Code § 65584.01(d).

³⁴ See Cal. Gov't Code § 65584.04(i)..

³⁵ Cal. Gov't Code § 65080(b)(2)(L).

³⁶ See Cal. Gov't Code §§ 65588(b). and (e)(7)

2. When the Eight Year Planning Period Starts

Local governments in non-attainment areas are required to adopt their fifth revision of the housing element no later than 18 months after the adoption of the first RTP adopted after September 30, 2010. Local governments that have elected to adopt the RTP every four years are required to adopt their next housing element 18 months after the adoption of the first regional transportation plan following the election. All local governments within SANDAG are required to adopt their fifth revision no more than 5 years from the fourth revision and their sixth revision no later than 18 months after adoption of the first RTP adopted after the fifth revision due date.

3. Timeline for RHNA Allocation and the Housing Element

In areas where the 8-year planning period applies, the MPO will allocate the RHNA number to the individual cities and counties at approximately the same time it adopts the RTP (which includes the requirement that the SCS must accommodate the 8 year RHNA allocation). Once the city receives its RHNA allocation, it has 18 months to prepare its housing element and submit it to the Department of Housing and Community Development (HCD).

All local governments within the jurisdiction of an MPO, except those within the San Diego Association of Governments, shall adopt its next housing element 18 months after adoption of the first RTP that is adopted after September 30, 2010.

4. Consequence of Failing to Submit a Timely Housing Element

Local agencies that fail to submit a housing element to HCD within the 18 month timeline fall out of the 8 year housing element cycle and must submit their housing element every four years to HCD.³⁷ These agencies must still complete their zoning within three years and 120 days of the deadline for adoption of the housing element or be subject to the sanctions provision described below.³⁸

5. Timeline to Re-Zone Sites to Meet RHNA Need

Each housing element includes an inventory that identifies sites to accommodate the jurisdiction's RHNA. Jurisdictions with an eight-year housing element must rezone sites to accommodate that portion of the RHNA not accommodated in the inventory no later than three years after the date the housing element is adopted or the date that is 90 days after receipt of the department's final comments, whichever is earlier.³⁹

Rezoning of the sites includes adoption of minimum density and development standards. A local agency that cannot meet the 3-year requirement may be eligible for a 1-year

³⁷ Cal. Gov't Code § 65588(b)

³⁸ Cal. Gov't Code § 65583(c)(1)(A)

³⁹ Cal. Gov't Code § 65583(c)(1)(A).

extension if it can prove that it has completed 75 percent of its zoning requirement and was unable to rezone for one of the following reasons: (1) because of an action or inaction beyond the control of the local agency, (2) because of infrastructure deficiencies due to fiscal or regulatory restraints, (3) because it must undertake a major revision to its general plan in order to accommodate the housing related policies of an SCS or APS.⁴⁰

6. Scheduling Actions Required by the Housing Element Program

Current law also requires a housing element to include a program of actions that the local agency intends to undertake during the planning period to encourage that the needs of all economic segments of the community will be met. SB 375 requires local agencies to develop a schedule and timeline for implementation as to when specific actions will have “beneficial impacts” within the planning period.⁴¹

7. Public Hearing for HCD Annual Report.

Local governments must now hold a public hearing and provide a annual report on the progress made during the year on the programs within the housing element. This requirement to make this report on an official form approved by HCD has been in the law since 1995, but has not been officially applicable because HCD has not yet finalized the form under the administrative rulemaking process⁴².

8. Extension of Anti-NIMBY for Affordable Housing Projects

SB 375 extends a strict anti-NIMBY law protection (now called the Housing Accountability Act) for housing development projects, which are defined as projects where at least 49 percent of the units are affordable to families of lower- income households.⁴³ (In most circumstances, a development that meets the 49 percent threshold is a development where 100 percent of the units are affordable to lower-income households.),

The new anti-NIMBY provision applies to an agency’s failure to zone a site for low- and very low-income households within the three year time limit (four years if an agency qualifies for an extension). If an affordable project is proposed on that site and the project complies with applicable, objective general plan and zoning standards, including design review standards, then the agency may not disapprove the project, nor require a conditional use permit, planned unit development permit, or other discretionary permit, or impose a condition that would render the project infeasible, unless the project would have a specific, adverse impact upon the public health or safety and there is no feasible method to satisfactorily mitigate or avoid the adverse impact.

⁴⁰ Cal. Gov’t Code § 65583(f).

⁴¹ Cal. Gov’t Code § 65583(c);

⁴² Cal. Gov’t Code § 65400(a)(2)(B).

⁴³ Cal. Gov’t Code § 65583(g)

9. Potential “Sanctions” for Failing to Meet Zoning Timeline

Any interested person may bring an action to compel compliance with the zoning deadline and requirements for the new 8-year housing element.⁴⁴ If a court finds that a local agency failed to complete the rezoning, the court is required to issue an order or judgment, after considering the equities of the circumstances presented by all parties, compelling the local government to complete the rezoning within 60 days or the earliest time consistent with public hearing notice requirements in existence at the time the action was filed. The court shall retain jurisdiction to ensure that its order or judgment is carried out. If the court determines that its order or judgment is not carried out, the court is required to issue further orders to ensure compliance and may impose sanctions on the local agency⁴⁵, but must consider the equities presented by all affected parties before doing so.

10. Adoption or Self Certification of Housing Element Remains the Same.

Although SB 375 changed the housing element planning period from 5 years to 8 years for some jurisdictions, and added time frames for completing certain actions which must be taken during the planning period, SB 375 did not change either the way in which the housing element is adopted except to the extent that the regional housing allocation plan must be consistent with the SCS. The RHNA process remains itself. Self-certification of the housing element remains an option (and triggers the three year requirement to zone).—SB 375 did nothing to alleviate the struggle that some cities and counties face in trying to plan for their entire RHNA except that HCD review of the housing element will occur less frequently for jurisdictions that move to an 8 year planning period.

⁴⁴ Cal. Gov't Code § 65587.

⁴⁵ This provision is similar to the requirement to file an annual housing element report on form approved through the state rulemaking process. See Cal. Gov't Code § 65400(a)(2)(B). A local agency that fails to file such a report is subject to sanctions. Most agencies are not familiar with this provision, however, because HCD has not yet formally adopted the forms that would trigger this requirement (though a draft of such a form is posted on the HCD website—it has not yet been formally approved).

KEY DATES IN THE IMPLEMENTATION OF SB 375

December 31, 2008*	Projects specifically listed on a local ballot measure prior to this date are exempt from the requirement to be consistent with the SCS
January 1, 2009	CARB adopts Scoping Plan, which will include the total reduction of carbon in million metric tons from transportation planning
January 31, 2009	CARB shall appoint a Regional Targets Advisory Committee (RTAC) to recommend factors to be considered and methodologies to be used for setting reduction targets
June 1, 2009	MPOs in attainment areas and Regional Transportation Planning Agencies not within an MPO may elect to opt into the 8 year planning cycle.
September 30, 2009	RTAC must report its recommendations to the CARB
June 30, 2010	CARB must provide draft targets for each region to review
September 30, 2010	CARB must provide each affected region with a GHG emissions reductions target.
October 1, 2010	Beginning this date, MPOs updating their RTP will begin 8 year planning cycle that includes SCS-APS and alignment for the RHNA process.
December 31, 2010*	Transportation sales tax authorities need not change allocations approved by voters for categories of projects in a sales tax measure approved by voters prior to this date.
December 31, 2011	Federal Statewide Transportation Improvement Projects programmed before this date are exempt from the requirement to be consistent with the SCS

* A project category is different from a specifically listed project insofar as a local initiative may authorize funding for a certain type of improvement without specifying a specific location.

NEW RTP – RHA PLANNING CYCLE

(Highlighted, underlined provisions indicates new law. Plain text represents current law).

RHNA PROCESS	YEAR	RTP PROCESS
<ul style="list-style-type: none"> ▪ HCD consults with COG regarding assumptions and methodology to be used to determine housing needs ▪ COG Develops Regional Growth Forecast ▪ COG conducts survey of its member jurisdictions ▪ HCD gives regional housing number to COGs ▪ COG develops methodology for distributing RHNA consistent with development pattern in SCS 	<p>-2 to -1</p>	<ul style="list-style-type: none"> ▪ MPO begins forecast process for RTP including involvement of broad stakeholder groups ▪ MPO holds informational meetings for local elected officials ▪ MPO circulates a draft SCS, and possibly a draft APS if needed, at least 55 days prior to final adoption ▪ MPO quantifies the reduced GhG emissions from SCS or APS ▪ MPO holds public hearings ▪ <u>SCS is approved by MPO; APS may also be approved</u> ▪ <u>CARB agrees or disagrees with MPO's assessment that SCS or APS would, if implemented, achieve the GhG target</u>
<ul style="list-style-type: none"> ▪ <u>COG distributes draft RHNA allocation consistent with SCS; every agency must within SCS must get some of the housing allocation.</u> 	<p>0</p>	<ul style="list-style-type: none"> ▪ MPO adopts RTP that includes the SCS
<ul style="list-style-type: none"> ▪ First six months, agencies may request COG reconsider allocation and file subsequent appeal ▪ Local agency starts drafting housing element ▪ Final RHNA allocation adopted by COG at 6 months ▪ <u>Housing element due to HCD 18 months after local agency receives RHNA allocation (one year after final RHNA)</u> ▪ <u>Local agency must adopt housing element 120 days after statutory deadline to HCD to avoid a 4 year cycle;</u> ▪ <u>90 days after receiving final comments on housing element from HCD, or date housing element adopted by local agency, 3 year time period to complete zoning of sites not within inventory begins</u> ▪ <u>Annual housing report with hearing to discuss</u> 	<p>1 to 3</p>	<ul style="list-style-type: none"> ▪ Transportation investments are consistent with forecasted development pattern in SCS ▪ Projects that are consistent with the CARB approved APS/SCS are eligible for CEQA exemption and streamlining provisions ▪ MPO reviews and updates forecasts and assumptions in RTP (including SCS) for second RTP cycle
<ul style="list-style-type: none"> ▪ <u>Deadline to complete zoning of sites not within inventory if no extension applies; Failure to meet timeline can trigger court-imposed sanctions and new anti-NIMBY remedy</u> ▪ <u>New Anti-NIMBY provision applies to affordable housing projects on sites designated in the element program to be zoned at densities consistent with affordable housing (the "Mullin densities") but not yet zoned.</u> 	<p>4</p>	<ul style="list-style-type: none"> ▪ MPO submits RTP that is consistent with the RHNA allocation four years earlier..
<ul style="list-style-type: none"> ▪ <u>Local agencies that did not file a timely housing element in year one must file another housing element that covers Years 5 through 8 of the planning period</u> ▪ <u>Local agencies that qualified for a one year extension are required to complete their zoning of sites not in inventory</u> 	<p>5</p>	
<ul style="list-style-type: none"> ▪ <u>HCD provides MPO with regional number for next 8 year cycle; COG begins process of developing next SCS/APS</u> 	<p>6</p>	<ul style="list-style-type: none"> ▪ COGs begins forecast for next RTP planning cycle
<ul style="list-style-type: none"> ▪ If agency has not zoned adequate sites in previous planning period, zone or rezone in 1st year of planning period unaccommodated portion of RHNA from previous period 	<p>8</p>	<ul style="list-style-type: none"> ▪ Possible "Analysis Year" – Fed regs require MPOs to include "analysis years" within RTP forecast period to take a hard look at its assumptions. The first analysis year is 5 to 10 years out. The 8 year RHNA cycle makes the 8th year a good analysis year for the fed regs.
Repeat Process		Repeat Process

KEY LEAGUE AMENDMENTS TO SB 375

Over the course of the SB 375 negotiations, the League identified a number of key amendments it required in order for the board to consider supporting it. This table summarizes many of those issues and explains the resulting outcome of the negotiations.

Issues	SB 375 March 24, 2008 Version	SB 375 Final Version
Restrictions on Transportation Funding?	Transportation investments within the RTP were based upon a set of assumptions about resource lands that did not necessarily reflect the content of local general plans.	The requirement for the SCS to identify resource lands is gone. Local officials on MPO boards retain discretion over the funding within RTP. If the SCS cannot achieve the regional GhG target, the region must create an APS that could achieve the GhG target. But the APS is not part of the RTP. Funding for projects must be consistent with the SCS, but not necessarily the APS.
Meaningful CEQA Relief?	CEQA provisions had several preconditions that made it unlikely that they would broadly applied	Contains two forms of CEQA relief. The first exempts residential projects from reviewing the impacts related to cars and light trucks on projects that are consistent with a plan to reduce GhGs from that source. The second is for defined infill projects near transit choices.
Mandatory Growth Allocations in SCS of Regional Transportation Plan?	Required MPOs to do mandatory and heavily prescribed growth management within the regional transportation plan (RTP), which came to be known as “concentric circle” planning	Mandatory growth management has been removed and the requirement in earlier drafts that a region “identify resource lands” has been changed to “gather and consider the best practically available scientific information about resource lands.”
Sweeping Resource Land Definitions?	Resource definitions included new ambiguous terms.	The ambiguous environmental land definitions have been clarified to be consistent with current law.
Role for local officials in developing SCS?	None	MPO must adopt an outreach process that includes workshops for local elected officials in each county.
Local Participation Setting Regional GhG Reduction Targets?	Called for a top-down process for setting GHG targets that was unacceptable	Bill now contains a fair process for setting regional targets that includes a statewide advisory committee with League representation. CARB must hold workshops requirements in each region.
Confusion between existing federal laws and SB 375?	It was unclear how the new “Supplement,” (now the APS) and the existing federal RTP requirements were related to each other.	Connection between the “Supplement” (now called the “Alternative Planning Strategy or APS)” which is required when a region’s RTP cannot meet the regional targets) and the RTP; i.e., the land use pattern in the Alternative Planning Strategy will <u>not</u> affect or be part of the RTP or its funding.
RHNA Consistency and Extension?	The new goal of encouraging infill through transportation investments and the RTP (4 year cycle) directly conflicted with existing RHNA fair share goals (5-year cycle).	The bill achieves a three-year extension of the RHNA process (from 5 – 8 years), making it consistent with the RTP process of two four-year cycles. This achieves a major League goal.