



September 21, 2010

Via Electronic Mail

Mary Nichols, Chair
California Air Resources Board
1001 "I" Street
Sacramento, California 95814
<http://www.arb.ca.gov/cc/sb375/comments.htm>

**Re: Proposed Regional Greenhouse Gas Emission Reduction Targets for
Automobiles and Light Trucks Pursuant to SB 375**

Dear Chairman Nichols:

The Center for Biological Diversity ("Center") submits these comments on the proposed Regional Greenhouse Gas Emission Reduction Targets for Automobiles and Light Trucks Pursuant to SB 375 ("Proposed Targets"). We appreciate the efforts of the Air Resources Board ("ARB") to develop targets under SB 375. However, as expressed in our July 23rd comments on the Draft Regional Targets, the Center continues to be concerned that the Proposed Targets are insufficient to meet California's near and long-term emission reduction objectives. We therefore strongly urge ARB to fulfill its statutory mandate under SB 375 and adopt stronger targets than proposed by ARB staff.

In addition, calls to weaken the targets proposed by ARB staff must be rejected as contrary to SB 375's statutory scheme, sound policy and otherwise wholly without merit. Were ARB to lower the Proposed Targets based on the fallacious rationales put forward by the Building Industry and others, ARB would be in violation of SB 375 and the lowered targets subject to legal challenge. Flaws in arguments to lower the Proposed Targets are discussed below.

The Building Industry Association and others disingenuously assert that the Proposed Targets must be lowered because they will have "a chilling effect on new economic projects and developments."¹ As a practical matter, because SB 375 is structured only to provide incentives, robust targets will not result in economic harm nor have a chilling effect on new development. Under SB 375, local governments are free to approve projects that are inconsistent with a sustainable communities strategy (SCS) or alternative planning strategy (APS) with the only consequence being full CEQA review

¹ Letter from California Building Industry Ass'n et al to Air Resources Board re: Proposed SB 375 Targets, dated Sept. 14, 2010.

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for these projects as already required under existing law.² Moreover, contrary to the Building Industry's claims, development consistent with strong targets and regional plans will result in significant economic and public health benefits, such as decreased commute times, more walkable communities and significant savings in infrastructure costs.

In addition, the target setting process under SB 375 is exclusively concerned with ensuring targets are consistent with California's near and long-term emission reduction objectives.³ To fulfill this statutory purpose, SB 375 directs ARB to establish regional greenhouse gas reduction targets that "take into account" reductions achieved through improved fuel economy and other regulations promulgated under AB 32.⁴ Because purported economic concerns are not articulated as a factor in target setting, they may not be used as a legitimate basis to lower the Proposed Targets.

SCAG and other have asserted that the Proposed Targets should be significantly lowered based on current financial constraints and uncertainties. As a policy matter, it is entirely inappropriate to set targets 10-25 years in the future based on transient fiscal concerns. In passing SB 375, the Legislature intend ARB to lay out a vision of meaningful sustainable growth over the next 25 years that represents a significant shift from business as usual and puts California on a path to meet its 2050 emission reduction objectives. Were targets perpetually mutable and subject to the vicissitudes inherent in economic cycles, they would not function to provide the stable and aspirational vision of future growth envisioned under the statute.

Finally, in direct contravention of SB 375's purpose, the SJVAPCD has called for targets lower than those proposed by ARB staff with the apparent aim of facilitating additional sprawl development. SJVAPCD's recommendation, which appears to have been made at the request of Kern COG, is based on the desire to accommodate significant amounts of greenfield development and limit critically needed shifts toward infill development.⁵ Were ARB to accept SJVAPCD's request for lower targets and reward SJVAPCD's flawed modeling assumptions and lack of commitment and ambition, it would send the wrong signal to those MPOs that have done the hard work of crafting forward-thinking scenarios that would significantly reduce VMT in their region. Consistent with SB 375, ARB must set targets that reward excellence, not capitulate to mediocrity.

² Gov't Code § 65080(b)(2)(J) ("[n]either the sustainable communities strategy nor an alternative planning strategy regulates the use of land."); Gov't Code § 65080(b)(2)(H)(v) (inconsistency with an SCS/APS cannot be considered in determining whether a project has an environmental effect under CEQA.).

³ Senate Bill No. 375 (2008) § 1(c) (absent "significant additional greenhouse gas reductions from changed land use patterns and improved transportation . . . California will not be able to achieve the goals of AB 32.").

⁴ Gov't Code §§ 65080(b)(2)(A), (b)(2)(A)(iii). Similarly, subsection (iv) allows ARB to revise the targets every four years based on factors in subsection (iii) (improved fuel consumption, changes in fuel composition etc).

⁵ In their April 23, 2010 target proposal to ARB, Kern explains that the baseline land use assumptions were altered in response to requests from Kern County Planning Department to incorporate Tejon Mountain Village, and also "after much discussion," in response to a letter from an attorney representing another expansive sprawl development proposal, San Emidio Ranch, which would create a 9000+ acre new town 35 miles from Bakersfield.

For the reasons set forth above, we urge ARB to adopt stronger targets and reject calls to weaken targets below that proposed by ARB staff.

Thank you for considering these comments. If you have any questions, please contact Matt Vespa at mvespa@biologicaldiversity.org or (415) 436-9682 x309.

Sincerely,

A handwritten signature in black ink that reads "Matthew Vespa". The signature is written in a cursive style with a large, stylized "V" at the end.

Matthew Vespa
Senior Attorney