# COMMUNITIES TACKLE GLOBAL WARMING

## *A Guide to California's SB 375 (Steinberg, 2008)*

*Cutting Global Warming Pollution with New Transportation and Land Use Planning*

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NRDC
THE EARTH'S BEST DEFENSE

The New York Times

**October 7, 2008** **EDITORIAL**

## Cut the Sprawl, Cut the Warming

For years, while Washington slept, most of the serious work on climate change has occurred in the states, and no state has worked harder than California. The latest example of California's originality is a new law — the nation's first — intended to reduce greenhouse gas emissions by curbing urban sprawl and cutting back the time people have to spend in their automobiles.

Passenger vehicles are the biggest single source of carbon dioxide in California, producing nearly one-third of the total. Meanwhile, the number of miles driven in California has increased 50 percent faster than the rate of population growth, largely because people have to drive greater distances in their daily lives.

The new law has many moving parts, but the basic sequence is straightforward. The state's Air Resources Board will determine the level of emissions produced by cars and light trucks, including S.U.V.'s, in each of California's 17 metropolitan planning areas. Emissions-reduction goals for 2020 and 2035 would be assigned to each area. Local governments would then devise strategies for housing development, road-building and other land uses to shorten travel distances, reduce driving and meet the new targets.

One obvious solution would be to change zoning laws so developers can build new housing closer to where people work. Another is to improve mass transit — in woefully short supply in California — so commuters don't have to rely so much on cars.

The bill contains significant incentives, including the promise of substantial federal and state money to regions whose plans pass muster. In addition, and with the consent of the environmental community, the state will relax various environmental rules to allow "infill" — higher-density land use in or near cities and towns.

The bill's architect, State Senator Darrell Steinberg, worked closely with developers and environmental groups like the Natural Resources Defense Council. The measure is the latest in a string of initiatives from the California Legislature, including a 2002 law that would greatly reduce carbon emissions from automobiles, and a 2006 law requiring that one-fifth of California's energy come from wind and other renewable sources.

Given California's size, these and other initiatives will help reduce global greenhouse gas emissions. Even more progress would be made if others follow. New York and 15 other states have already said they will adopt California's automobile emissions standards when the federal government gives them the green light — which the Bush administration has stubbornly refused to do.

There is, of course, no substitute for federal action or for American global leadership on climate change, both of which the next president will have to deliver.

# SB 375
## *The Sustainable Communities and Climate Protection Act*[1]

**INTRODUCTION**

Where we live, how we get to work, take our kids to school and go about our daily business, matters, maybe more than we think - a lot more. We can affect the fight against global warming: household transportation in California is the single largest and the fastest growing source of global warming pollution. Locating housing closer to jobs and transportation choices can reduce commute times and cut millions of tons of greenhouse gas pollution. If the development patterns between now and 2020 emphasized more compact single family, attached housing and multi-family housing and if new developments were served by good, reliable transit, California could reduce climate pollution by 30% or more just from reduced fuel use.[2]

Better land use patterns can accomplish even more. SB 375, *the nation's first bill to link transportation and land use planning with global warming*, is intended to foster development patterns that will reduce the need to drive. And there are multiple benefits beyond climate that the successful implementation of SB 375 can achieve.

It can reduce air pollution; 50% of air pollution comes from car exhaust.[3] It can conserve billions of gallons of petroleum per year by 2020. It can conserve water; compact development patterns can save 20% more water.[4] It can protect farmland and habitat, saving over 360 square miles of open space from development in the Sacramento region alone.[5]

**The high cost of sprawl.** The recession we are in now really kicked in to gear when gasoline hit $4 a gallon in the summer of 2008. It is notable that the recession hit far flung sprawl communities the first and the hardest. For example, transportation

**The Recession Hits the Exurbs First and Hardest**

In August of 2008, 75% of the existing home sales in Merced County were of foreclosed properties. By October, 2008 the average home prices in the Central Valley towns of Manteca and Los Banos had fallen 50% and 66% respectively. Both communities are far—upwards of 75 miles—from the job centers in the San Francisco Bay Area; but, incredibly enough they had become sites of commuter subdivisions. By November, 2008, 90% of the houses in the huge commuter subdivision in western San Joaquin County, Mountain House, were worth less than the mortgages on them. By the time of this writing (April, 2009), defaults, foreclosures and price declines are more widespread. Nevertheless, the effects in the urbanized core of the San Francisco Bay Area, for example, are much more muted than in the distant exurbs.

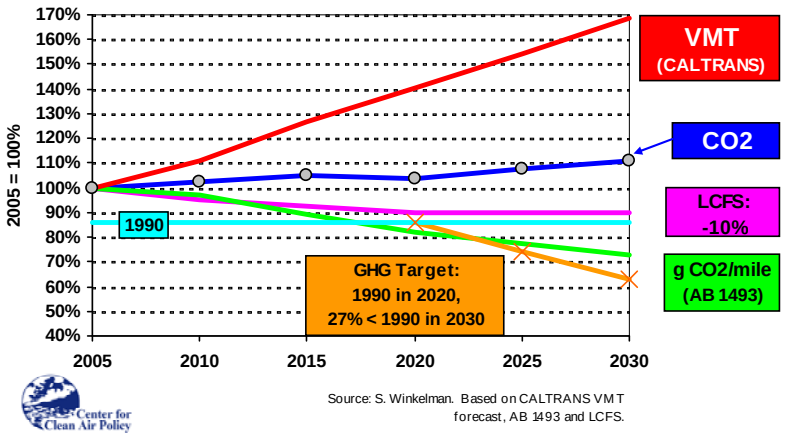
[1] Authored by California Senate Pro Tem Darrell Steinberg and cosponsored by the California League of Conservation Voters (CLCV) and the Natural Resources Defense Council (NRDC). Signed in to law by Governor Arnold Schwarzenegger September 30, 2008.
[2] Ewing, Barthlomew, Winkelman, Walters & Chen, "Growing Cooler" September, 2007.
[3] California Air Resources Board.
[4] http://www.epa.gov/dced/pdf/growing_water_use_efficiency.pdf.
[5] "Preferred Blueprint Alternative" Sacramento Area Council of Governments, June 2007.

costs for families living in sprawl locations in the Sacramento region rose to 25% of the family budget. We now also know that many families had purchased housing with irresponsible, even predatory, financing. The combination was explosively destructive. Mortgage defaults and then mortgage foreclosures climbed rapidly, especially in the outlying suburbs.

SB 375 holds the promise of a more sustainable prosperity. Commute times can be reduced and overall mobility increased while at the same time the costs of infrastructure to support our urbanized areas can be lowered, potentially saving taxpayers $16 billion in the Sacramento region and $48 billion in the Southern California region.[6] Compact development patterns better reflect changing demographics and create more of a mix of housing choices than currently provided. Reductions in fuel, infrastructure, energy and water costs could save the average family four or five thousand dollars per year.[7] The average cost to own, maintain and operate a private auto is $8,670 per year; households that can reduce their need to drive can realize substantial savings.[8]

We also know that the consumption of petroleum based energy is not just an environmental problem. It is also a critical national security problem. Yet cars and trucks account for 70% of petroleum consumption in California.

**The benefits of a new approach.** The multiple benefits of successfully implementing SB 375 cannot be overlooked. Hopefully those benefits will help public officials make good decisions. However, the central purpose of SB 375 is to address the crisis from global warming. Household transportation causes 30% of all greenhouse gas emissions in California. As the graph below shows, even with much greater fuel efficiency and even with low carbon fuels, California will not be able to achieve its climate goals unless it can reduce the rate of growth in vehicle miles traveled (VMT). Because of the growth in VMT, CO2 emissions never drop to 1990 levels and resume rising after 2020.

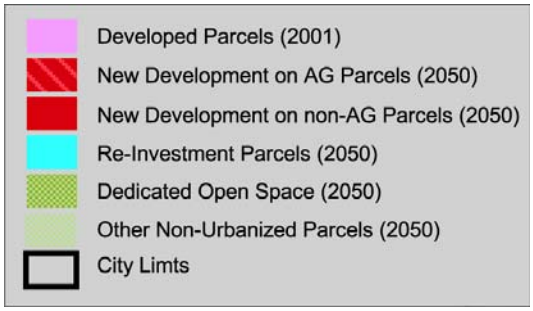


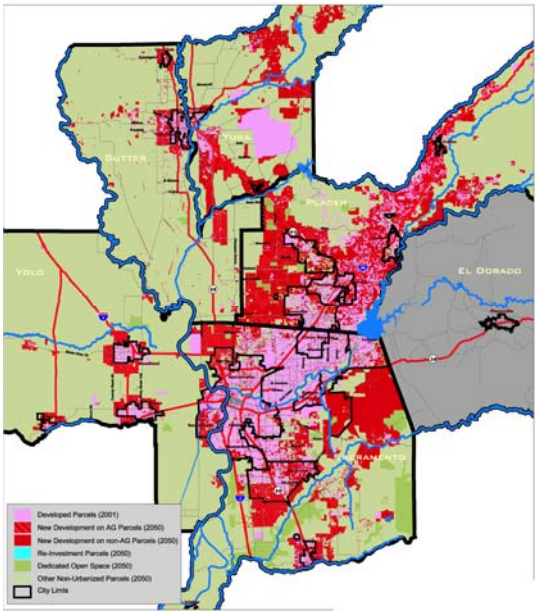

[6] Sacramento Area Council of Governments. Southern California Council of Governments.
[7] Calthorpe Associates, 2009
[8] http://www.apta.com/media/releases/090408_transit_report.cfm

Innovative techniques to help people picture what new growth patterns would look like are increasingly available. Here's a link to a new tool developed by NRDC and Urban Advantage. See for yourself how communities in California and across the country can revitalize neighborhoods and build vibrant new streetscapes: http://www.nrdc.org/smartGrowth/visions/default.asp.

SB 375 builds upon the leadership of the Sacramento Region. With extensive public participation, the Sacramento Area Council of Governments (SACOG) designed a regional blueprint that provided the same number of housing units, the same number of jobs, and served the same population as did the business as usual scenario yet with a much smaller urban footprint.

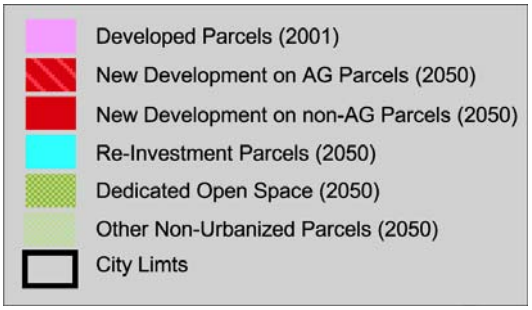
The map below shows the business as usual urban footprint forecasted for 2050:

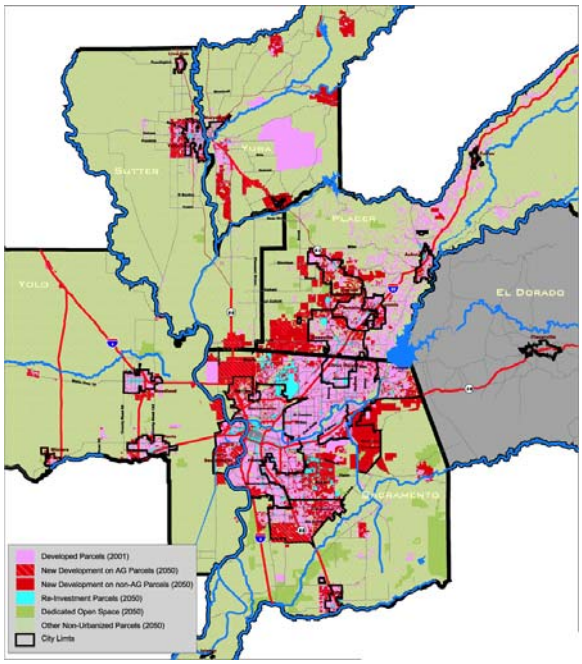



Source: Sacramento Area Council of Governments.

In contrast, the map below shows the smaller urban footprint of the new scenario. It serves the same population; but it occupies 360 square miles less land:



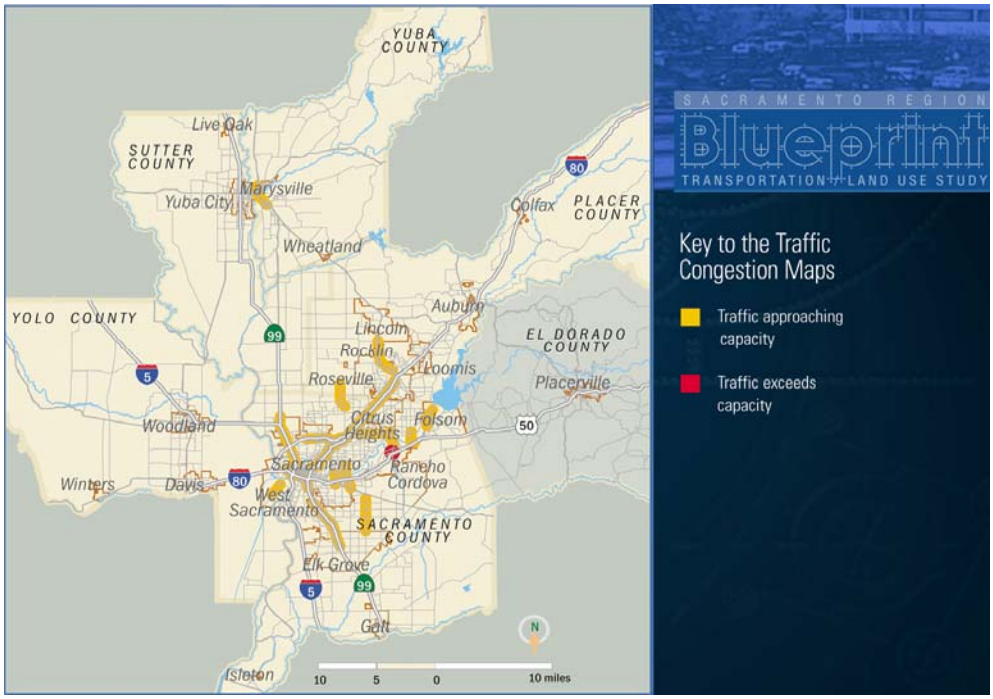




Source: Sacramento Area Council of Governments.

Not only does the preferred scenario occupy much less land, but because of a much better (and cheaper) transportation network, it also reduces congestion. The map below shows the congestion resulting from the business as usual scenario:


Source: Sacramento Area Council of Governments.

This map shows reduced congestion resulting from better planning:



Source: Sacramento Area Council of Governments.

**Putting the pieces together.** Getting to a better, more sustainable future is no easy matter. In developing SB 375 we had to confront several serious barriers. First, it was essential to create the link between global warming, transportation and land use. Second, we had to align several major programs that were pushing the state's growth patterns in inconsistent ways. Finally, if growth patterns were going to be designed that would locate housing closer to employment centers, closer to transportation opportunities and away from resource lands, it was essential to move planning to a regional scale.

**Making the global warming link.** SB 375 links land use and transportation patterns to greenhouse gas emissions by adding a new element to existing regional transportation plans, the sustainable communities strategy (SCS). The California Air Resources Board (Air Board) is authorized to set regional greenhouse gas emission reduction targets to be achieved from the household transportation sector (cars and light trucks) for each of the metropolitan planning regions in California. The regions are then obligated to design an integrated land use and transportation network within the regional transportation plan that achieves the targets if there is a feasible way to do so

**Creating the right incentives for action.** SB 375 aligns three major programs that address growth patterns in California: regional transportation plans, the regional housing allocations, and the California Environmental Quality Act. State law now requires that housing be allocated to local governments in a pattern that is consistent with the sustainable communities element of the regional transportation plan, and it has adjusted the timetables for adoption of housing elements so that the housing allocations occur over the same time frame and on a consistent calendar with the adoption of the regional transportation plan. It also contains several new provisions in the California Environmental Quality Act (CEQA) which improve the environmental review of projects that will assist California in attaining its major, strategic environmental goals.

**The paradox of perspective.** An emphasis on planning at the regional scale is essential, and this might be one of the signature achievements of the bill. It is not feasible to do planning on a city by city basis to locate housing close to employment centers or to transportation choices. This can only be accomplished when the patterns of the region as a whole are examined.

**The Impossible Coalition**

SB 375 was sponsored by environmental groups and gained the support of local governments, builders, affordable housing advocates, major employers, and labor unions. This coalition was not easily assembled. That it came together at all is due to the political leadership of the bill's author, Senator Darrell Steinberg. It also came about because parties were willing to face new realities. AB 32 had been passed and the state was poised to enact far reaching policies to reduce greenhouse gas emissions. The present land use system was broken and in need of reform. By focusing SB 375 on an open process and incentives rather than complex mandates, it all the interests were able to realize gains: The Air Board was given a role to set targets for land-use transportation planning. The funding incentives embedded in the regional transportation plan were employed. Adjustments to CEQA were made. The housing element process was placed on a longer schedule to coincide with transportation planning and made more enforceable. SB 375 enjoyed a process of principled compromise that can produce more widespread success in the legislative arena. Reaching agreement on complex, large scale, controversial issues is the strongest path for durable achievements.

The shift to the regional scale is needed in part because of the paradox of perspective. At the regional level, it could be quickly seen that locating more housing in an urban center near employment opportunities will reduce VMT, reduce greenhouse gas emissions, reduce air pollution, and reduce gasoline consumption as compared with locating that housing on the urban fringe.

Yet, when that same housing in the urban core is analyzed by the local government, it will estimate the number trips generated as a result of the project. From the local government's perspective it will appear that reducing the density of that project will reduce the number of trips and hence reduce climate emissions, air pollution, and

gasoline consumption. The exact opposite of the conclusion reached by an analysis at the regional scale.

**Balancing regional and local authority.** In California local governments are essentially the only entities with land use authority. Development will only occur when and where it is approved by local government. Implementation of SB 375 ultimately depends on the land use approvals of local governments. Striking a balance between local authority and regional planning is essential.

SB 375 starts with the existing regional transportation planning process, which is conducted by representatives of local governments within the region. The bill is also explicit: metropolitan planning organizations do not have land use authority, only local governments do. The role of the regional transportation plan will be what it has always been: transportation projects are eligible for funding only if they are contained in the regional transportation plan.

Local governments have long recognized the importance of the regional transportation plan. They obviously want transportation infrastructure for the land use developments they approve. They already have an incentive to approve developments that will be eligible for transportation infrastructure funding. SB 375 does not change either the role of the regional transportation plan or the role of local governments. What SB 375 does do is make the regional transportation planning process much more robust. Now it must include specific steps to address the global warming impacts of land use and transportation planning.

**Making process work.** SB 375 does not create a mandate that the SCS achieve greenhouse gas reduction targets. Instead it is designed to achieve its goals through a process in which regions are required to examine the relationship between land-use transportation policy on the one hand, and greenhouse gas reduction targets on the other.

There are many reasons to believe that SB 375 will achieve its goals. There is strong bipartisan support for addressing global warming pollution. There are also the multiple other benefits to be gained:

- Savings to household budgets.
- More housing choice.
- Housing closer to work.
- Cheaper transportation infrastructure.
- Shorter commutes.
- Greater mobility.
- More walkable commercial and civic amenities.
- Better air quality.

- More energy conservation.
- More water conservation.
- More farmland conserved.
- More habitat preserved.

Under SB 375, decision-makers will for the first time have to consider explicitly the impact of transportation and land use policies on climate pollution. This consideration will have to occur in a transparent process before the advocates of a new more sustainable prosperity, a cleaner environment and a cooler planet.

**Changing public opinion.** The public clearly supports change, and it may be ahead of many elected officials. In November, 2008 voters in Los Angeles, Marin-Sonoma, and Santa Clara counties voted by more than two-thirds, in the midst of a terrible recession, to increase their taxes in order to fund transit. Statewide voters also approved issuing bonds for high speed rail.

A 2007 poll by the National Association of Realtors[9] shows how dramatically public opinion is shifting on growth, land use and transportation issues:

- 71% are very concerned about the impact of development on climate pollution.

- 57% agree that "business and homes should be built closer together" so stores and shops are within walking distance.

- 61% agree that new home construction should be limited in outlying areas and encouraged in very urban areas.

- 81% want to redevelop older areas rather than building new.

- 83% support "building communities where people can walk places and use their cars less."

- 88% support more public transportation.

SB 375 primarily employs process and incentives over mandates, with the expectation that in the complex, controversial universe of land use and transportation planning, process and incentives will produce faster and more enduring outcomes than mandates. Changes in public opinion will fill the sails of the process. That is the bet of SB 375.

[9]http://www.realtor.org/smart_growth.nsf/docfiles/transportationSurveyFall2007.pdf/$FILE/transportationSurveyFall2007.pdf

# SNAPSHOT OF SB 375

## SB 375 changes California planning and transportation law in four basic ways:

1. It adds new state content to the Regional Transportation Plan (RTP) – a sustainable communities strategy – linking climate policy with transportation/land use planning.

2. It aligns the program for the regional distribution of housing to be consistent with the sustainable communities strategy.

3. It adds new provisions to the California Environmental Quality Act to assist land use decisions that implement the sustainable communities strategy.

4. It adds new modeling provisions to accurately account for the transportation impacts of land use decisions.

## The Sustainable Communities Strategy - Regional GHG Targets:

- The Air Resources Board, after an interactive process with the regions, sets greenhouse gas (GHG) emission reduction targets for each region from the car and light truck sector.

- The Air Board must take into account other strategies for reducing GHG emissions such as fuel efficiency standards and low carbon fuels.

## The Sustainable Communities Strategy – Contents:

- Identify areas for housing and development for all of the region's population.

- Identify and consider significant resource areas and farmland.

- Set forth an integrated development pattern and transportation network that will achieve the GHG reduction targets if there is a feasible way to do so.

- If it is not feasible to achieve the targets within the SCS, prepare an Alternative Planning Strategy showing the most practicable way to achieve the targets if, for example, more funding for transit was available.

- Comply with the federal clean air and transportation laws.

## Aligning the Regional Distribution of Housing with the Sustainable Communities Strategy:

- Councils of Governments must allocate housing within a region to be consistent with the sustainable communities strategy.

- Housing elements will now be updated every 8 years, instead of 5, consistent with every other adoption of the RTP.

- Allocations of housing units by the Department of Housing and Community Development to regions must be consistent with jobs housing balance per the Regional Transportation Plan.

- Local governments must complete housing elements within 18 months after receiving their housing allocation.

- Local governments have three years to complete rezoning of sites to be consistent with the designations in the housing element.

- A court can compel local governments to complete the rezoning if statutory deadline not complied with.

- If a local government has not completed the rezoning by the deadline, there are new restrictions on its power to deny or condition affordable housing projects.

## The California Environmental Quality Act is aligned with the Sustainable Communities Strategy:

- A new exemption for transit priority residential and mixed use residential projects that qualify as a sustainable communities project.

- A new sustainable communities environmental assessment process for Transit Priority Projects if the environmental impacts of the project can be fully mitigated.

- A focused EIR process for transit priority projects if there are environmental impacts and findings of overriding consideration must be considered.

- New provisions to elevate traffic mitigation for transit priority projects to a policy decision instead of a project by project determination.

- Residential and mixed use residential projects that would implement Air Board regional targets do not need to do project level EIR analysis of certain climate impacts, growth inducing impacts and impacts on the regional transportation network.

# ELEMENTS OF SB 375

## 1. THE SUSTAINABLE COMMUNITIES STRATEGY

The sustainable communities strategy is the heart of SB 375. Prior to SB 375, the regional transportation plan consisted of three elements: a policy element, an action element and a financial element. SB 375 added a new element to the plan, a sustainable communities strategy. SB 375 makes it explicitly clear that the regional transportation plan "shall be an internally consistent document." (§65080(b)). Thus the list of projects in the action element, the funding for transportation projects, and the sustainable communities strategy will have to be consistent one with the other.

### *A.* ***Setting Regional Greenhouse Gas Emission Reduction Targets.***

SB 375 creates a link between global warming policy and land use – transportation planning through regional greenhouse gas reduction targets which become a design parameter for the regional transportation plan. Setting these targets is the responsibility of the Air Board, which is the lead agency for the implementation of AB 32, California's landmark Global Warming Solutions Act of 2006.

The Air Board is required to provide each of California's 18 federally designated metropolitan planning regions with greenhouse gas emission reduction targets for 2020 and 2035 by September 30, 2010. These targets are aimed at reducing greenhouse gas emissions from cars and light trucks only. Greenhouse gas emissions associated with other sectors such as industrial and energy production are beyond the scope of SB 375 and will be addressed by the Air Board under the provisions of AB 32.

**Other vehicle emission reduction strategies.** SB 375 is not the exclusive strategy for addressing the emissions from cars and light trucks. The Air Board has already approved standards to increase vehicle efficiency under AB 1493, the landmark bill by (now) Senator Fran Pavley. The Air Board has also adopted rules to reduce the carbon content of fuels. However, as noted earlier, fuel efficiency and better fuels will not by themselves be enough. Unless other measures are taken to reduce the growth in VMT, California will be unable to achieve its climate goals. In setting the targets for the regions, the Air Board is required to consider how much can be achieved through fuel efficiency, better fuels and other possible strategies (§65080(b)(2)(A)(iii).

**Target setting process.** Giving the Air Board a role, any role at all, in land use and transportation planning is one of the innovations of SB 375, and understandably it

raised concerns. To address those concerns, the bill includes very substantial process provisions. During development of the bill, these provisions were colloquially referred to as creating an "iterative process." In other words, the process does not consist of parties simply presenting their concerns to the Air Board. Instead, there are a series of steps so that there is an interaction between the Air Board and interested parties in a variety of ways.

**Regional Targets Advisory Committee (RTAC).** As a first step, the Air Board appoints the Regional Targets Advisory Committee which must consist of specified parties, including local governments, homebuilders, environmental groups, affordable housing organizations, local transportation agencies and others. The RTAC is tasked with recommending "factors to be considered and methodologies to be used" for setting the targets and must present its report to the Air Board by September 30, 2009 (§65080(b)(2)(A)(i)).[10]

Setting the regional targets involves a host of complicated issues. Not only must the Air Board establish a target to be achieved in total by the MPOs; but it must then allocate that total out among the regions. The Air Board will no doubt consider the projected growth rates of the various regions along with how to handle the knotty issue of interregional travel. In the San Francisco Bay Area in particular, there are a large number of commuters who live outside the region but drive to one of many employment sites within the region. To a lesser extent that problem also affects the other three major metropolitan regions, Southern California, San Diego, and Sacramento. The RTAC will offer advice on these issues; and the Air Board must "consider" its advice (§65080(b)(2)(A)(i).

**Regional consultation.** In addition to creating the Regional Targets Advisory Committee, SB 375 provides that the Air Board shall "exchange" information with each affected Metropolitan Planning Organization (MPO) and air district. Each MPO can recommend what its target should be. The bill intentionally did not include this provision within the ambit of the Regional Targets Advisory Committee because of its very substantial workload and the relatively short calendar for its report, among other reasons.

The MPO must hold at least one public workshop within its region after receipt of the report from the Advisory Committee. The Air Board is also required to release draft targets for each region by June 30, 2010. This will give each region and interested parties a reasonable time frame to see the direction the Air Board is intending to go in order to prepare comments to the Board prior to the final adoption of targets by September 30, 2010.

[10] The RTAC proceedings are on the Air Board's website: http://www.AirBoard.ca.gov/cc/sb375/rtac/rtac.htm.

**Target adjustment.** Finally, the bill recognizes that adjustments may be needed to these targets. Every 4 years the Board can adjust the targets because of changes in the fuel efficiency of vehicles, changes in fuel composition, or other policies that will reduce greenhouse gas emissions. Every 8 years, the Board can also adjust the targets to make sure that the region is on schedule to achieve its goals for 2050, at which time California is supposed to have reduced statewide greenhouse gas emissions to a level that is 80% below the 1990 levels (Executive Order S-3-05).

### *B. **Developing a Sustainable Communities Strategy***

**The RTP - federal land use and transportation planning requirements.** Existing federal law already requires regional transportation plans to include a land use component. These plans must have a minimum 20 year planning horizon during all parts of their useful life (23 USC §134(g)(2)). It is simply impossible to do responsible transportation planning, especially for such a long time period, without understanding how and where a region is growing. Further these plans must consider how to "protect and enhance the environment" and "promote energy conservation" (23 USC §134(f)). Federal regulations require that the RTP:

> Reflect, to the extent that they exist, consideration of: the area's comprehensive long-range land use plan and metropolitan development objectives; national, State, and local housing goals and strategies, community development and employment plans and strategies, and *environmental resource plans*; local, State, and national goals and objectives such as linking low income households with employment opportunities; and the area's overall social, economic, *environmental, and energy conservation goals and objectives*[11] (23 CFR §450.322(b)(9))(emphasis added).

Under existing federal regulations, the plan must also explicitly consider and analyze:

> The likely effect of transportation policy decisions on land use and development and the consistency of transportation plans and programs with the provisions of all applicable short- and long-term land use and development plans (the analysis should include projections of metropolitan planning area economic, demographic, *environmental protection*, growth management, and land use activities consistent with metropolitan and local/central city development goals (community,

[11] These references to environmental and energy conservation goals and objectives are sufficiently broad that a region with the political will to do so might have been able to incorporate greenhouse gas reduction goals in the RTP even without SB 375.

> economic, housing, etc.), and projections of potential transportation demands based on the interrelated level of activity in these areas) (23 CFR §450.316(a)(4))(emphasis added).

Under the federal Clean Air Act, regions whose air emissions do meet the federal standards must show that the regional transportation plans meet an air quality conformity test. The federal air quality conformity regulations for regional transportation plans have a series of similar provisions in order to assure that the conformity analysis is based upon a realistic set of planning assumptions. They provide that:

> Assumptions must be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO or other agency authorized to make such estimates and approved by the MPO. The conformity determination must also be based on the latest assumptions about current and future background concentrations (40 CFR§93.110(b)).

Federal air quality conformity regulations also require in regions with more than 200,000 persons that, for each horizon year:

> The transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including land use forecasts, in accordance with implementation plan provisions and the consultation requirements specified by Sec. 93.105 (40 CFR §93.106(a)(2)(i)).

Taken together these federal regulations contain a set of significant land use planning provisions.

**Local land use authority – permits and planning.** Local land use authority has to play a crucial role. Local governments in California have the authority to approve or disapprove general plans, subdivision maps, zoning ordinances and to issue building permits for private development. Land uses in a regional transportation plan cannot be effectuated unless they are ultimately approved by a local government. Local land use decisions are a *sine qua non* of land use development. Others can make plans; but only local governments can *approve development permits.*

However, it a common misconception is that the most accurate way to prepare the land use component of a regional transportation plan is to assume that all of the local government plans and zoning ordinances should be treated as though they were frozen in place for the entire planning horizon of the RTP. This is definitely not a realistic planning assumption. Those plans will be changed many times over the 20+ years of an

RTP, sometimes on a community-wide basis, sometimes in response to an individual development application.

It is also essential to recognize the limitations of local land use *planning*. Funding for comprehensive planning has been almost non-existent since the passage of Prop 13 in 1978. Not surprisingly, many local governments struggle to keep their general plans up to date. According to the 2009 Planners Book of Lists published by the Governor's Office of Planning and Research, 55% of general plans have at least one mandatory element that is more than 10 years out of date. The plans that do exist are often unrealistic. For example, they include far more tax revenue generating land uses (hotels, auto dealerships, regional shopping centers) than the market will support and frequently do not identify enough land to meet medium and long term housing demand.

**Federal and local rules work together.** The balance struck in the federal regulations is that existing local planning must be *considered*, but along with local, state and national goals *linking low income households with employment opportunities* and *overall social, economic, environmental, and energy conservation goals and objectives.* Federal regulations provide that planning assumptions *must be derived from the estimates of current and future population, employment, travel, and congestion* either most recently developed *by the MPO* or, if by another agency, *approved by the MPO*. Out of date local plans or plans that have no realistic market basis would presumably not qualify under this language.

SB 375 creates a vital opportunity for local governments, the MPOs, and multiple stakeholders to take a realistic look at the future of their region. This should include an examination of changing demographics over the planning horizon and the consequences of those changes on housing demand. These changes could be dramatic. The Wall Street Journal reports that in 2007, 25% of the homes in the Denver area were in the central city as opposed to 5% in the early 1990s. In Chicago, it had increased to 40% from 5%.[12]

In the 1960's 48% of households consisted of couples with at least one child, today that number is 33%. By 2030, 73% of households will consist of single adults or couples without at least one child.[13]

SB 375 doesn't mandate how any particular sustainable communities plan should look. That is left to the region and the local governments to decide. The regional process will identify the locations for growth that will help achieve our vitally important climate goals. Local governments will design the communities.

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[12] "Oil Industry Braces for Drop in U.S. Thirst for Gasoline" Wall Street Journal, April 13, 2009, Page 1,12. http://online.wsj.com/services/article/SB123957686061311925.

[13] "Preparing for the Next Building Boom" Arthur C. Nelson, Ph.D. FAICP. February 2007. http://www.mi.vt.edu/uploads/Nelson%20Smart%20Growth%20Conf%202-9-07.ppt#290,1,Preparing for the Next Building Boom.

Sustainable Communities Strategy tasks:

1. **Map.** *Identify the general location of uses, residential densities, and building intensities within the region.* Presumably this will be done in the form of a land use map. SB 375 does not require parcel specific maps. Only the "general" locations need be identified.

2. **Housing for all.** *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.* This provision is not atypical for growth projections; but SB 375 makes two significant changes. First, the SCS must accommodate all the population growth of the region *within the region*.[14] Shipping residential growth to adjacent regions is no longer allowed. Second, the population growth projections must include the increased housing demand caused by employment growth. These provisions recognize the crucial linkage between a regional scale jobs-housing balance and reduced VMT. The housing projects in the first horizon year of the plan (presumably 8 years out) must be consistent with the regional housing need identified in the RHNA program. This provision is part of the effort to align these programs.

3. **Natural resources and farmland.** *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.* SB 375 requires that information on these impacts be gathered and considered. The information must be the "best practically available scientific information." MPOs will presumably want to make sure this effort is coordinated with their obligations under the California Environmental Quality Act. Under CEQA a lead agency can be required to do a reasonable level of research.[15]

4. **Greenhouse gas reduction development pattern.** *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.* This final step is obviously the crux of the SCS. The plan must contain a forecasted

[14] This must be consistent with the federal regulations.
[15] See e.g., *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.

development pattern. That pattern must be integrated with the transportation network and other transportation measures and polices (parking, employer shuttles, etc.). The plan must reduce GHG emissions from cars and light trucks to achieve, *if there is a feasible way to do so,* the GHG targets approved by the Air Resources Board. SB 375 does not require a region to achieve the targets if, for example, it would cause a violation of federal regulations and jeopardize federal transportation funding. "Feasible" is broadly defined, using the same definition that is currently found in CEQA (§65080.01(c)).

**Alternative planning strategy (APS).** If a MPO cannot feasibly achieve the targets within its sustainable communities strategy, it must show how it would do so in another document, an alternative planning strategy (APS) (§65080(b)(2)(H)). SB 375 specifically provides that the APS is not part of the RTP. In that way, the APS is not subject to the federal regulations. It can thus show, for example, greater levels of transit service than would be allowed under a fiscally constrained analysis.

However, the APS is not purely aspirational. First, it must be adopted by the MPO; and, as such, represents an institutional statement about how a region could achieve its climate targets. Second, it must set forth the principal impediments to achieving the climate targets within the SCS. Third it must also show why the development pattern, transportation measures and polices it presents are the "most practicable choices for achievement" of the targets (§65080(b)(2)(H)(iii)).[16]

**SCS or APS Review.** The determination of whether either an SCS or an APS actually would, if implemented, achieve the targets is not left solely to the MPO. The MPO must submit its strategy to the Air Board for review. This is a crucial step for many reasons, not the least of which is transparency. The determinations of how well a strategy works will necessarily rely on modeling. As discussed later, SB 375 reforms how state transportation models are generated to better capture the benefits of close-in development. Additionally, the Air Board, with its substantial modeling expertise, will review the regional modeling, to provide additional transparency. Still, there was concern that the Board might require specific changes in land use or transportation policy in order to achieve the climate targets.

As a result, SB 375 attempts to create an open, interactive process with the Air Board. Prior to developing a SCS, a region must submit to the Board its technical methodology for estimating the effects of its strategy on greenhouse gas reductions. The Board must respond to this submittal in writing with its specific concerns and suggested remedies.

[16] In addition, the CEQA benefits of SB 375 are only available for projects consistent with a strategy that would achieve the regional targets. See Public Resource Code §§21155, 21159.28. Even if a region adopts an APS, these CEQA provisions should create incentives for developers to proceed with projects that would help implement the APS.

As a result of this exchange, presumably the Board's technical concerns can be addressed long before a strategy is formally submitted.

Once a strategy is submitted to the Air Board, it can only accept or reject the MPOs determination whether the strategy would, if implemented, achieve the GHG targets for that region. Nothing in SB 375 gives the Air Board authority to revise any land use or transportation planning. However, if the Air Board determines that the strategy submitted would not achieve the targets, the region must revise and resubmit its strategy until it at least has an APS that has been approved by the Board.

**Public participation.** In addition, SB 375 promotes transparency through several public participation provisions for the development of both the SCS and the APS. Each MPO must conduct at least two forums specifically for local government elected officials. Additionally, a public participation plan must include outreach to a wide variety of potential stakeholders including private groups and public transportation entities. Provision is made for public workshops with urban simulation computer modeling if practicable. There must be a minimum 55 day comment period on a draft SCS or APS and at least two or three public hearings depending on whether the MPO is single-county or multi-county.

**Funding incentives.** Since a MPO does not have actual land use authority, the implementation of the SCS must be through transportation funding and other incentives. Existing federal law requires that all projects with federal funding or projects that are regionally significant must be consistent with the regional transportation plan (23 USC §134(h)(3)(C); 23 CFR §§450.324(f)(3) and (5)). By placing the SCS inside the regional transportation plan, transportation funding becomes a powerful incentive for its implementation.

While local governments remain free to make land use decisions, they presumably will be seeking funding for transportation infrastructure to support them. The availability of transportation infrastructure funding to support the development pattern in the SCS should encourage local governments to make land use decisions consistent with that plan. This would normally be expected to affect all but the smaller land use projects.

In fact, in recognition of the role played by the regional transportation plan, nearly a third (157 of 536) of California's local governments are already taking steps to align their general plans with the preferred land use pattern identified in the regional transportation plan.[17] This trend should accelerate under SB 375.

**Environmental review incentives.** It is also the case that the new CEQA benefits provided under SB 375 are only available for residential and mixed use residential projects consistent with a strategy that achieves the regional targets. If the SCS does not

[17] Office of Planning and Research, 2009 California Planners Book of Lists, p. 118.

achieve the regional targets, there may very well be several development projects that will not be eligible for the improved environmental review SB 375 allows. It is reasonable to expect that developers will want both the transportation funding and the CEQA benefits. The only way to get both is to have the development project set forth in an SCS that achieves the state assigned target. This provides a meaningful incentive for project developers to advocate on behalf of an SCS that will achieve the targets.

### *C. Special Circumstances*

#### 1. Southern California

The Southern California region is an especially large and diverse area, including the City of Los Angeles as well as Orange County and the Inland Empire. The MPO for the region is the Southern California Association of Governments (SCAG). Several of the counties in SCAG are themselves larger than most of the rest of the MPOs in California. This region contains almost 50% of the population of the state[18] including some of its poorest as well as richest neighborhoods. There are significant interregional relationships among many of the entities within SCAG. The creation of a single SCS for this enormous area is particularly challenging. No region of the state will be more challenging and no region is more complex.

SB 375 contains a special provision for the SCAG area (§65080(b)(2)(C)) which allows for the initial development of the SCS and APS to be done by the subregional Councils of Government (COGS) within the region. There are 14 subregional COGS.[19] SCAG itself would be required to adopt a framework for the subregional planning process. This framework would provide guidance for how the subregional COGS would address the intraregional land use, transportation, economic, air quality and climate policy relationships. SCAG must also develop overall guidelines, create public participation plans, ensure coordination, resolve conflicts, and make sure that the overall plan complies with applicable legal requirements. SCAG retains a significant role.

Nothing requires a subregional COG to prepare its own SCS. The option is left to the subregional COG. Some of these COGs may not have the staff or other institutional capacity to prepare their own SCS. However, if the COG elects to proceed to prepare an SCS or an APS, it must be prepared in conjunction with the county transportation commission. SCAG must include any prepared subregional SCS or APS in the

[18] http://www.dof.ca.gov/research/demographic/reports/estimates/e-5_2001-06/.

[19] Arroyo Verdugo Cities, City of Los Angeles, Coachella Valley Association of Governments (CVAG), Gateway Cities Council of Governments (GCCOG), Imperial Valley Association of Governments (IVAG), Las Virgenes Malibu Council of Governments, North Los Angeles County, Orange County Council of Governments (OCCOG), San Bernardino Associated Governments (SANBAG), San Gabriel Valley Council of Governments (SGVCOG), South Bay Cities Council of Governments (SBCCOG), Ventura Council of Governments (VCOG), Western Riverside Council of Governments (WRCOG), Westside Cities Council of Governments (WCCOG).

appropriate regional strategy provided that it is consistent with federal law and the requirements of §65080.

### 2. The Central Valley

Another set of special circumstances exists in the Central Valley. The California Department of Transportation (CalTrans) and the State Office of Planning and Research (OPR) made a significant effort to encourage the valley's 8 counties[20] to design a common blueprint for growth. The effort was an important one, though the results are mixed. During the real estate boom, these counties had high growth rates though the total population numbers are not large compared to the state as a whole. A very significant number of these housing units were for commuters who worked in another region, especially the San Francisco Bay Area.

The valley is a patch work - each of the counties there is a federally designated MPO. SB 375 provides an opportunity for these counties, if they wish to do so, to build upon the blueprint process. It authorizes, but does not require, two or more counties to prepare a multiregional SCS or APS to the extent it is consistent with federal law. Counties working together in this process would develop and adopt multiregional goals and policies to address interregional land use, transportation, economic, air quality and climate relationships.

### 3. Regions in Attainment with the Federal Clean Air Act

Under federal law, regions that are designated as non-attainment under the federal Clean Air Act must prepare a regional transportation plan at intervals no longer than 4 years. As previously noted, SB 375 aligns the regional transportation planning process and the regional housing needs allocation process by coordinating the schedules. Attainment regions are permitted to prepare RTPs at intervals no longer than 5 years. SB 375 gives attainment regions the option to participate in the 8 year housing planning cycle by electing to adopt the RTP at intervals of no longer than 4 years. This election must be made no later than June 1, 2009 or 54 months prior to deadline for adoption of housing elements by local governments within the region.

### 4. Transportation Projects in the Pipeline

SB 375 exempts transportation projects contained in the 2007 or 2009 Federal Statewide Transportation Improvement Program or funded under what is known as Proposition 1B or projects funded by a local sales tax approved prior to December 31, 2008 from being subject to the provisions of the sustainable communities strategy. These projects must also be "programmed" for funding on or before December 31, 2011. "Programming" is performed by the California Transportation Commission when

[20] Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus and Tulare Counties.

it commits funds for projects and schedules the expenditures of those funds. This does not require that all the funds on a project be spent prior to December 31, 2011; it merely requires that the CTC has taken the action to program those funds.

Finally, a transportation sales tax authority is not required to change the funding allocations for "categories" of transportation projects that are approved by voters before December 31, 2010. How this will work will depend, of course, on the project categories identified by the voters. Funds may be dedicated to local streets and roads, interchanges, transit, parkways or other categories. Under this provision, no individual projects are exempted from the SCS process; but if, for example, 30% of the funds raised were designated by the voters for transit, SB 375 could not require a change in that percentage. Nothing in SB 375 would prevent a transportation sales tax authority from altering the percentages dedicated to a category if the voters gave it that authority.

Overall, we do not expect these exemptions to alter significantly the ability of the SCS to meet the goals of SB 375. Since the Air Board will not have designated regional targets until September of 2010, the SCS process will commence for regional transportation plans adopted after that. Assuming that a project has not yet commenced construction but that it is programmed for funding prior to December 31, 2011, it could be included in the regional transportation plan, but not within the SCS. Presumably the climate impacts of this project would not need to be included with the SCS to determine if the SCS meets the regional targets.

However, as was pointed out by numerous transportation officials during the development of SB 375, the entire regional transportation plan is and will continue to be subject to CEQA. Under the law prior to the adoption of SB 375, the CEQA analysis will need to address the impacts of all the projects, including the SB 375 exempt projects, on climate. If the exempt projects cause the RTP to have a significant effect on climate, the region will have to examine whether there is a feasible way of mitigating that effect. All of this will have to be done in the context of CEQA and outside of the benefits of the regional target process.

### 5. Resource Areas and Farmlands

SB 375 requires increased attention to protection of natural resource lands. MPOs in California have creatively used various funds to support fundamental transportation investments, such as subsides for transit oriented development projects. SB 375 recognizes that there is another side to the same coin: decisions to keep farmlands and resource areas in open space. Financial incentives should be considered for transportation investments that encourage, for example, farm to market transportation needs. SB 375 also requires MPOs to consider financial assistance to counties that contribute to greenhouse gas emission reductions by implementing policies that encourage growth in cities.

### 6. Savings Clauses

SB 375 contains several important savings clauses. It provides that neither an SCS nor an APS regulates the use of land and neither of them supersedes the land use authority of local governments. There is no requirement for local governments to conform their land use plans to SCS or APS. Except for the specific approval role of the Air Board, neither an SCS nor an APS is subject to any state approval. Nothing in the statute authorizes the abrogation of any vested right. Nothing requires a region to approve an SCS that is inconsistent with applicable federal regulations. Nothing in SB 375 relieves any public or private entity from compliance with any other local, state or federal law. Nothing in SB 375 limits the authority of the Air Board under any other provision of law, including AB 32.

## *D. Modeling*

**Travel demand models.** As California's 18 federally designated MPOS develop their Sustainable Communities Strategies to reduce greenhouse gas emissions, they will run the SCS through some form of travel demand model to predict the impacts of its proposed growth patterns and investment decisions. These models will predict how many new trips will occur, which transportation mode is used, at which times of day, where congestion will occur, how the new plan will affect air quality, levels of greenhouse gas emissions, and traffic congestion, vehicle hours of delay and other measures of mobility.

Models are built upon certain assumptions about how many new trips will be generated by different types of development, which mode of travel people will select and how polluting the trips will be. The models must also be able to predict the impacts of different policies, such as HOV lanes, increased transit, or the imposition of fees. The models should be sensitive to different essential factors that have been demonstrated in the literature to affect VMT. Since SB 375 provides benefits to regions that develop Air Board - approved Sustainable Communities Strategies, it becomes very important that the models used to predict the impacts—particularly the greenhouse gas emissions—of proposed growth patterns be as accurate as possible.

Travel models are relied upon all the time to make transportation investment decisions. If a region is faced with traffic congestion that worsens air quality, impedes economic growth and frustrates residents, they will attempt to direct investments to reduce congestion. Certain travel models will indicate that building new road capacity will improve congestion and reduce emissions by speeding up traffic; but those models may fail to account for the increased congestion and emissions caused by induced demand. Other models are land use parcel based and sufficiently detailed to pick up the travel benefits of a mixed use, higher density develop with proximity to a transit stop. Under SB 375, the regions will be motivated to upgrade their models for greater sensitivity and

accuracy. New models will show that investment in higher density development and transit will lead to more lasting congestion relief and emissions reduction.

**Transportation Commission Guidelines.** Recognizing the importance of accurate transportation models, in January 2007, Senate President Pro Tempore Don Perata requested that the California Transportation Commission (CTC) –which maintains guidelines that MPOs use to create their regional transportation plans (RTP) -- review its RTP Guidelines in order to ensure that MPOs utilize models that accurately measure the benefits of land use strategies aimed at reducing vehicle trips.

In response to Senator Perata's request, in the fall of 2007, the CTC convened a multi-stakeholder working group to examine the CTC RTP guidelines to determine whether regions were receiving proper direction on the ability of their models. The group included representatives from Congestion Management Agencies, academic institutions, state agencies, MPOs, cities and counties, and environmental organizations. After a six month process, this stakeholder group agreed to recommend that the CTC amend their guidelines to provide clearer direction to MPOs on the models they use to make investment decisions.

**Existing models need refinement.** The CTC process concluded that many regions currently lack the capacity to accurately predict the trips generated by different types of development, and further lack the ability to model the impacts of other policies regions might use to improve air quality and reduce greenhouse gas emissions. A recent in-progress study by the MPOs under the auspices of the RTAC provides detailed confirmation of this finding.

Some of the models are insensitive to the type of land use projected for the region, and instead simply use a formula where a certain number of trips are generated for each new housing unit, regardless of location, proximity to transit, or density of surrounding uses. Clearly the shortcomings of the models are a disservice to the regions. If a region invests heavily in a new light rail system for example, its model should be able to predict whether the residents of new housing units around the stations, complemented by a pedestrian infrastructure and a mix of commercial amenities, are very likely to drive less than would the residents in a sprawl development. But in many cases the model would predict exactly the same amount of vehicle miles traveled from these two very different types of development.

The models also fell short in their inability to predict land use changes that result from certain types of transportation investments. There is no question that government transportation investments drive land use development. An owner of a parcel of land at the urban fringe may be interested in developing the land, but is unable to do so, because residents of the new development would lack transportation infrastructure. If the transportation agency chooses to build a new arterial or extend a freeway through this piece of land, the developer is more likely to develop the land. Most models have

historically failed to account for this phenomenon, labeled induced growth or induced development. It is important for models to be able to capture this phenomenon and use it to predict changes in VMT.

**SB 375 modeling provisions.** Land use and transportation decisions last for decades. Since the design of communities affects people's choice to drive and how much to drive, SB 375 seeks to help regional agencies understand accurately the impacts of their investment decisions on future residents' need to drive, and consequently, the ability of the region to reduce their greenhouse gas emissions in accordance with AB 32 and SB 375. In this regard, SB 375 reinforces the important work of the CTC stakeholder committee, and directs the CTC to maintain RTP guidelines to ensure that the models can accurately account for certain factors, including 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) Induced travel and induced land development likely to result from highway or passenger rail expansion.
(4) Mode splitting that allocates trips between automobile, transit, carpool, 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.
(6) Effect of pricing strategies on vehicle miles traveled and greenhouse gas emissions.

Models that can accurately account for these factors should have a much higher degree of predictive power over the actual outcomes of particular investment decisions.

**Federal legislative proposals on modeling.** The ability of transportation models to accurately predict VMT is receiving much attention—even on a national scale. In March 2009, Congresswoman Matsui (D-Sacramento) introduced the Smart Planning for Smart Growth Act of 2009 which specifically highlights the need for improved models that can more accurately capture the VMT reduction benefits of various land use and transportation investment decisions. Senators Carper and Specter and Reps. Blumenauer and Tauscher introduced CLEAN-TEA to allocate 10% of emissions allowances under a cap and trade program to fund better transportation planning to reduce GHG emissions. Improved data collection and modeling is specifically described as an important preliminary step to inform any future planning efforts.

## 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT

The California Environmental Quality Act (CEQA) is California's premier environmental disclosure statute. It requires public officials to identify and consider the environmental impacts of projects in a structured and enforceable process. CEQA has a long history of environmental achievement. Not surprisingly, it is not without controversy.

**Looking at the regional picture.** Since enactment of the California Global Warming Solutions Act of 2006 (AB 32), it is now generally acknowledged that CEQA requires consideration of a project's potential impacts on global warming. Project proponents attempt to identify a wide variety of measures to mitigate or avoid a project's contribution to global warming. CEQA now plays an important role imposing global warming mitigations prior to adoption of the final set of policies by the Air Board pursuant to AB 32. Yet, because CEQA is focused on "projects," it faces limitations, especially for achieving effective mitigation of the global warming impacts associated with VMT.

As an example, suppose that a greenhouse gas reduction strategy is devised at the regional level and that strategy includes locating 10,000 residential units in the urban core to significantly reduce VMT and avoid many tons of emissions. However, when the projects to provide those housing units come to the local government for approval, CEQA is triggered. Typically a specific analysis of the automobile trips generated by the project would be done. Those trips would generate a number of tons of greenhouse gas emissions and air pollution. When viewed from the perspective of the project alone, it would seem that reducing the density would result in fewer trips and reduced emissions. Yet that is exactly the opposite of the conclusion reached by examining VMT from the regional scale. From the regional perspective, greenhouse gas reductions are best achieved by maintaining the density of the project.

Not all projects are the same when it comes to their global warming impacts. Because CEQA is focused on projects and on mitigating the impacts of those projects, it is not suited to the type of large scale, comprehensive analysis required to effectively reduce VMT. In fact, in the hands of opponents to a high density project, CEQA could threaten the implementation of an effective greenhouse gas reduction strategy.

Even CEQA review of a citywide general plan is not sufficient. That is mainly because, even at the city level, the perspective is not broad enough to design land use and transportation policy that will effectively address global warming impacts. As discussed earlier, the principal way to reduce VMT is to locate housing closer to transportation choices and closer to employment centers, thereby reducing the need to drive. A city that is primarily a bedroom community, for example, probably doesn't have enough options to accomplish such a strategy. Challenging the environmental impact report on the city's general plan based on its analysis or proposed mitigation of the VMT

contribution is inadequate because a single city does not have sufficient mitigation tools. Petitioners can sue a sprawling city repeatedly; but that city cannot mitigate its VMT impacts by transferring density to another city's urban downtown. Even if some creative way could be found to transfer housing units between two local governments, the CEQA process lacks the comprehensive planning that is really required to identify a development pattern, integrated with a transportation network, to reduce greenhouse gas emissions.

This is why SB 375 operates within the context of the regional transportation plan. Fewer and fewer Californians live, work, shop, and recreate within the city limits of just one community. Instead, most *regions* contain an integrated economy with housing, industrial parks, office centers, commercial areas and a transportation network. Designing a development pattern that can reduce VMT requires working at that scale.

CEQA will, of course, apply to the adoption of the regional transportation plan itself; and its application there makes sense. Under CEQA, individuals will be able to comment on the proposed regional scale decisions and question whether they are the best way to achieve the climate objectives of the region. But, with respect to project level analysis, SB 375 adjusts CEQA so that it functions more effectively regarding global warming. It is important to note that the changes in SB 375 are to CEQA, not to a local governments zoning authority. It is still up to the local government to decide whether or not to approve these changes. If it does, SB 375 creates a better CEQA process to review those proposals.

**Environmental review benefits for projects consistent with regional strategy.** As noted earlier, a region is not mandated by SB 375 to achieve the regional greenhouse gas emission reduction targets in the sustainable communities strategy. If the region is unable to feasibly achieve the target in its SCS, it will prepare an alternative planning strategy to achieve the target. SB 375 provides CEQA benefits only for projects that are consistent with a strategy that the Air Board determines would actually achieve the regional targets. These review benefits include:

1. **Residential vehicle trip analysis.** Residential and mixed use residential projects[21] that are consistent with a strategy that would achieve the targets are not required to consider the impacts of passenger vehicle trips generated on global warming (§21159.28(a)). Since these trip emissions will have already been fully considered at the regional level when the EIR for the RTP is adopted, there is no need to consider these emissions again at the project level. More importantly, avoiding CEQA analysis of the trip emissions at the project level will prevent the potentially perverse consequences discussed earlier where a local decision that appears to reduce GHG emissions would actually undermine an effective regional strategy and result in increased emissions.

[21] A mixed use residential projects is defined as one where 75% of the total building square footage is residential or where the project qualifies as a transit priority project (§21159.28(d)).

CEQA will still analyze other global warming issues associated with the project such as building efficiency, water consumption, electricity consumption and others.

2. **Regional transportation network impacts.** SB 375 also relieves these projects of the obligation to discuss either project specific or cumulative impacts on the regional transportation network. Once again, this avoids duplication since these issues will have already been thoroughly analyzed in the regional transportation plan. However, this provision also avoids another set of perverse consequences. A strategy that would reduce greenhouse gas emissions will not necessarily eliminate congestion at all locations on the regional transportation network, even though it is very likely to reduce congestion overall. It will, however, locate congestion. It would be inconsistent with a VMT greenhouse gas reduction policy if CEQA forced different choices on congestion mitigation than the choices made in the regional transportation plan. Analysis under CEQA of a project's impact on local streets and roads is not affected by SB 375.

3. **Growth inducing impacts.** Additionally, CEQA relieves these residential and mixed use projects of the requirement to consider their growth inducing impacts. This analysis is not needed at the project level because a decision will have already been made at the regional level that it is important for climate policy to put growth in these locations. CEQA should not be a tool to undermine these important climate decisions. However, it is worth noting that this relief only applies to residential and mixed use residential projects. It does not apply to the construction, for example, of a sewage treatment plant or a new freeway, either of which might have very significant growth inducing impacts.

**Transit priority projects.** Increasing housing development with access to transit will be central to achieving reduced GHG emissions from vehicles. SB 375 enlists CEQA in this effort by creating special provisions for review of transit priority projects.

**Consistent with regional strategy.** A transit priority project must be consistent with a strategy adopted by the region that would, if implemented, achieve the regional targets set by the Air Board. The project must be residential or mixed use residential,[22] at a density of at least 20 units per acre, and within a half mile of a major transit stop or a high-quality transit corridor.[23]

[22] These are defined as being 50% residential based on total building square footage, a floor area ratio of no less than 0.75 (§21155(b)).

[23] A high-quality transit corridor is a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours. A transit stop has the same definition that is does under current CEQA except that it also includes stops that are included in the RTP. Since the transit stops in the RTP are subject to the "fiscally constrained analysis" requirements of federal law, these stops are not merely "planned." Funding for them has been identified and programmed.

**Four distinct benefits for Transit Priority Projects under SB 375**

There is a new CEQA exemption. There is a new provision for a sustainable communities environmental assessment. There are new provisions for environmental impact reports on these projects. Finally, there are new opportunities for addressing traffic impacts. Each of these provisions has been specifically drafted to preserve public transparency and accountability as well as protection of the environment.

***1. The Transit Priority CEQA Exemption***

The new CEQA exemption (§21155.1) is the narrowest and is available only for projects that meet a list of environmental and land use criteria and include one optional policy. The list of criteria was carefully designed to be specific and comprehensive enough to assure that these projects will not have an adverse effect on the environment.

The list of criteria is fairly long as is appropriate for a CEQA exemption. But lessons have been learned since the enactment of SB 1925 in 2002 which created the current urban infill exemption (§21159.24). The transit priority project in SB 375 will assure protection of the environment while making it applicable to more projects than would be covered by the urban infill exemption.[24] First, there is no requirement that a community level environmental impact report must have been completed within the last five years.[25] Second, it applies to larger projects: 200 residential units on eight acres as opposed to 100 units on four acres. Additionally, the project can be located along a transit corridor instead of being limited to proximity to a transit stop. Putting density along a transit corridor will create an incentive for high quality, walkable urban communities. The project is not required to include affordable housing; provision of affordable housing has been moved to the list of optional policies.[26] The transit priority exemption can apply to projects that are only 50% residential; the urban infill exemption instead requires that the projects be 85% residential.

Perhaps most importantly, the current urban infill exemption is a so-called "soft" exemption because it can be lost if there is a reasonable possibility of a project-specific effect on the environment due to unusual circumstances (§21159.24(b)). In contrast, if a project satisfies the long list of environmental and land use conditions, it qualifies for the transit priority exemption. However, in order to make sure that this exemption is

[24] It is worth noting that there are important social equity goals that will also be served by making special provision for transit priority projects. Working families are significant users of transit and this will increase their housing choices. Additionally, the minimum density requirement means that these provisions should encourage more affordable housing.

[25] This requirement is unnecessary because there will be an EIR done on the regional transportation plan every 4 years.

[26] As noted below, SB 375 strengthened the housing element process to improve the opportunities for affordable housing. As noted above, the minimum density requirement should serve as a rough proxy for affordability. It is not clear that the inclusionary housing requirement of the existing urban infill exemption was effective in serving the goal of increasing the supply of affordable housing.

applied properly SB 375 imposes a requirement not found in the urban infill exemption, namely that the transit priority exemption can only be approved at a public hearing.

There are also other provisions in the transit priority exemption that are more rigorous than the current infill exemption. The transit priority project must be at least 20 units to the acre. In addition, the buildings must achieve energy efficiency and water conservation standards. The natural resource protection provisions have been reworded to reflect current terminology.

### *2. The Sustainable Communities Environmental Assessment*

SB 375 creates a new CEQA document, the sustainable communities environmental assessment (§21155.2)). It generally parallels the process for a mitigated negative declaration. Thus it only applies to projects that are able to completely mitigate their environmental impacts. The new environmental assessment is subject to a longer public comment period (30 days instead of 20 days). It also requires that the assessment be considered at a public hearing. There is a $500 limit on the fee that can be charged for an appeal to the local legislative body. Currently appeal fees can be thousands of dollars. By reducing the fee, it is more likely that these issues will be heard by elected and politically accountable leaders.

However, the major change is in the standard of review on a challenge to approval. In the case of the mitigated negative declaration, the standard of review is the fair argument standard. In contrast, the standard of review for a sustainable communities environmental assessment is the substantial evidence standard. This means that transit priority projects that are able to mitigate all their environmental impacts will be subject to the same standard of review as is a full environmental impact report. Project opponents will still be able to sue; but the suit will be more like a challenge to a full environmental impact report.

### *3. The Transit Priority Project Environmental Impact Report*

In the event the project cannot mitigate all its impacts, an environmental impact report will have to be prepared so that the lead agency can decide whether there are overriding considerations that justify approving the project despite its significant effect on the environment.

In the case of a transit priority project, SB 375 recognizes the value of projects with good transit proximity and relieves these projects of analyzing any off-site alternatives to the project. These projects also do not have to consider cumulative impacts that were addressed and mitigated in a prior EIR (§21155.2(c)(1) and (2)).

### *4. Traffic*

Traffic is often the single most contentious issue for urban infill projects. The traffic impacts of these projects are real and need to be addressed. Yet the costs of traffic mitigation can be substantial; and infill developers face the uncertainly that traffic mitigation costs may not be established in advance and may only be discovered at the end of a lengthy public process.

SB 375 provides local communities with the option of making traffic mitigation a matter of legislative policy instead of a project by project fight. Local governments are authorized but not required to set traffic mitigation policies in advance. Transit priority projects which comply with those policies cannot be required to do additional traffic mitigation as a result of the CEQA process (21155.3(b). The traffic mitigation measures can only be adopted after a public hearing and they must be re-considered every five years.

SB 375 authorizes local governments to require project developers to provide street or road improvements, traffic control improvements, transit contributions, transit passes or other measures. SB 375 does not limit the authority of a local government to determine what mitigation measures are appropriate for different types of transit priority projects.

## 3. REGIONAL HOUSING NEEDS ALLOCATION

California's Regional Housing Needs Allocation (RHNA) program is intended to make sure that the State's local governments are approving enough housing for the full range of housing needs of our population. In a very general sense, every five years the California Department of Housing and Community Development (HCD) provides each of the State's regions with the projected housing needs of that region. The council of governments for the region then distributes those housing units among each of local governments in the region. The local governments are then supposed to adopt amendments to the housing elements of their general plans to provide for the amount of housing the state says is needed. This program is very complex and has been very controversial. The RHNA program has failed to provide the zoning capacity for as many housing units—especially affordable housing units, in the locations called for—to meet the housing needs of California. It is a very complex program, imposed by the state and by the regions. The local governments believe it fails to account for many differences in local situations.

**Aligning RHNA and regional transportation planning.** SB 375 aligns RHNA housing projections with the regional transportation planning process. The RHNA program essentially functions as a growth forecast by identifying the number of housing units allocated to regions and local governments. Yet it is not explicitly tied to the growth

forecast of the regional transportation plan. Thus without aligning the two programs, it would have been possible for the RHNA program to require local governments to approve housing under one growth forecast and to fund transportation infrastructure under a different growth forecast. Even worse, there was concern that this system was being gamed. Local governments could project significant population gains in order to get more transportation funding; but claim they could not support larger populations when it came to receiving an allocation of housing units. These competing forecasts needed to be aligned. SB 375 aims to adjust this system for the purpose of aligning the regional transportation and regional housing allocation programs.

**Linking housing and employment.** First, there is an elaborate process for determining the number of housing units to be assigned to a region, including information exchange between the region and HCD. However, if that process does not result in an agreed upon number, HCD assigns a number to the region anyway. HCD based that number on Department of Finance projections, which are—somewhat problematically—basically trend lines developed from past growth patterns. In particular the Department of Finance methodology did not explicitly take into account the housing demand generated by employment growth within a region. SB 375 addresses this by requiring HCD to assign the regional housing need to achieve a jobs housing balance within a region to the extent feasible using the employment projections contained in the regional transportation plans (§65584.01(d)(1)).

**Aligning the housing forecasts in the regional transportation plan.** As noted earlier, SB 375 requires the housing forecast for the first horizon year of the RTP to be consistent with the housing need identified through the RHNA process.

**Aligning the distribution of housing within a region with the regional transportation plan.** There is a complex process for the regions to distribute housing needs to the local governments. Numerous factors including infrastructure availability and environmental issues must be considered. Prior to SB 375 there was no specific requirement that the housing units be distributed to be consistent with the development pattern in the regional transportation plan. SB 375 changes that by requiring the region to demonstrate that the final housing need allocation plan is consistent with the sustainable communities strategy in the regional transportation plan (§65584.04(i)(3)).

**Aligning planning schedules.** There was also no coordination in the schedule for adoption of the regional housing need allocation and the regional transportation plan. The housing need allocation was done every five years on a schedule that varied according to region. For regions that are in federal clean air act non-attainment areas, the regional transportation plan must be updated not less than every four years. The regions around the state are all on different four year RTP schedules. For attainment areas, the plan must be updated not less than every five years. SB 375 makes several changes to adjust there schedules. It changes the schedule for housing need allocations so that they are made every eight years instead of every five years. It also adjusts all the

housing need allocations so that they occur on a calendar consistent with the updates of the regional transportation plans.

Previously, the regions distributed a proposed housing allocation to the local governments, which had an 18 month period to appeal that allocation (§65584.05(a)). The deadline for revision of the housing element was at the end of that 18 month period. SB 375 adjusts that so the regions distribute the housing allocations to the local governments at the time that every other regional transportation plan is adopted. Since most regional transportation plans are adopted every four years, this effectively puts the housing allocation program on an eight year schedule (§65588(b)). The local governments then have 18 months after the adoption of every other RTP to appeal the allocation and to complete their new housing element (§65588(c)(7)).[27]

**Providing affordable housing.** SB 375 also includes several additional provisions to improve consideration of affordable housing needs and development. It requires local governments to make their zoning ordinances consistent with amendments to the housing element. If the inventory of sites in the housing element does not identify adequate sites for housing for *all* income levels, local governments must, in general, complete the rezoning within three years of the adoption of the new housing element (§65583(c)(1)(A)). A local government may receive a one year extension if it can show that it has made specified progress (§65583(f)).

Local governments are also required to prepare an annual report describing the actions taken to comply with housing element requirements and to consider this report at a public meeting where members of the public have a chance to comment (§65400(B)).

**Enforcement.** SB 375 adds two new enforcement provisions to the law. First, if a local government has not completed the rezoning as required by SB 375, there are significant restrictions on a local government's ability to disapprove or condition a housing development project if at least 49% of the units are for very low, low, and moderate income households. If the local government does disapprove or condition the project in violation of these provisions, the applicant or any interested person may sue. A court may issue an order requiring compliance (§65583(g)).

Second, any interested person may bring an action to require a local government to complete the rezoning within the deadlines required by SB 375. A court may require a local government to complete the rezoning within 60 days or the earliest time consistent with public hearing notice requirements. The court is authorized to impose sanctions on a local government after consideration of the equities of the circumstances (§65587(c)).

[27] A special provision had to be made for those regions that are in attainment areas and under a 5 year RTP schedule. Those regions are authorized, but not required, to convert their RTP schedule to a 4-year time frame. If they make the conversion, they can then avail themselves of the 8 year housing element schedule. If not, they stay on the 5-year schedule under existing law (§65588(b)).