Communities Tackle Global Warming

A Guide to California's SB 375

June 2009

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Communities Tackle Global Warming

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

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"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."

– New York Times editorial, October 7, 2008

"If California is going to get serious about fighting global warming, it must confront the fact that its land-use patterns have been dooming us to long commutes and dependence on the automobile for simple daily tasks. Passage of SB375 would represent a significant step toward identifying and addressing a major source of greenhouse gas emissions."

– San Francisco Chronicle editorial, August 7, 2008

"The No. 1 example [of good legislation] was Sen. Darrell Steinberg's steering into law his sweeping "smart growth" proposal to control suburban sprawl, build homes closer to downtown and reduce commuter driving, thus decreasing climate-changing greenhouse gas emissions...There'll be incentives for communities and developers to compress growth. Communities will get first dibs on government transportation money. Residential home-builders will be granted relief from environmental red tape."

– Los Angeles Times, October 5, 2008

URBAN ADVANTAGE

This photo simulation shows how the streets of Barrio Logan, a San Diego neighborhood, could come alive after mixed-use development and improved street design bring pedestrian activity into the area.

Executive Summary

California's Sustainable Communities and Climate Protection Act, or SB 375, is the nation's first legislation to link transportation and land use planning with global warming.[1] SB 375 is an important step toward a cleaner, healthier, and more prosperous California. This groundbreaking measure shows us that where we live and how we get to work, go about our daily business, and take our kids to school matters a great deal in the fight against climate change. In fact, household transportation in California is the single-largest and the fastest-growing source of global warming pollution in the state. Locating housing closer to jobs and transportation choices and creating walkable communities can reduce commute times and cut millions of tons of global warming pollution, while improving quality of life.

SB 375 Creates Livable Neighborhoods

The bill is intended to foster development patterns that will reduce the need to drive. California households could reduce their transportation-related climate pollution by 30 percent or more from reduced fuel use alone if development patterns between now and 2020, both inside and outside the urban core, were more efficient.[2] This means additional compact single-family detached housing, apartments, condominiums, townhouses, and new developments that are served by good, reliable transit.

Successful implementation of SB 375 could also produce many benefits beyond reducing greenhouse gas pollution:

- **Taxpayer savings:** The costs of infrastructure to support our urbanized areas can be lowered, potentially saving taxpayers $16 billion in the Sacramento region, for example, and $48 billion in Southern California.[3]
- **Household savings:** Reductions in fuel, infrastructure, energy, and water costs could save the average family $3,000 to $4,000 per year.[4] The average cost to own, maintain, and operate a private auto is $8,670 per year; households that reduce their need to drive can realize substantial savings.[5]
- **Reduced air pollution:** 50 percent of air pollution comes from motor vehicles.[6] Compact development could reduce air pollution by 84,000 tons every year.[7]
- **National security:** Better land use patterns could conserve 1 billion gallons of petroleum per year by 2020, and more than double that amount annually by 2050. Cars and trucks currently account for 70 percent of petroleum consumption in California.

- **Water conservation**: Compact development patterns could reduce water consumption up to 20 percent. Saving water also reduces greenhouse gas emissions.[8]
- **Farmland and habitat protection**: SB 375 could save more than 1,500 square miles of land from development by 2020.[9]
- **Quality of life improvements**: SB 375 could reduce commute times while increasing overall mobility. And compact development patterns better reflect changing demographics and create more of a mix of housing choices than are currently provided.
- **Improved public health**: Walkable communities improve residents' physical fitness and reduce obesity.

Left unchecked, global warming will have a serious effect on our health, our economy, and our communities. In California, SB 375 holds the promise of a more sustainable prosperity. By creating more livable communities and more transportation choices, SB 375 can reduce the miles we travel in our cars—one of the largest sources of the greenhouse gases that cause global warming. Realizing the promise of SB 375 through successful implementation and incentives will once again make California a model for reducing global warming pollution throughout the nation. SB 375 relies primarily on process and incentives rather than 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 political leadership, market demand, and public opinion will fill the sails of the process—that is the promise of SB 375.

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The Crossings community of Mountain View, California, allows easy access to transit and offers plenty of opportunities for walking and biking.

Quick Guide to Key Elements of SB 375

SB 375 Changes California Planning and Transportation Law in Four Basic Ways:

1. It adds a sustainable communities strategy that links climate policy with transportation and land use planning to the regional transportation plan (RTP)
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 encourage 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 Greenhouse Gas Emissions Targets:

- The Air Resources Board, after an interactive process with the regions, sets greenhouse gas emissions reduction targets for each region from the car and light truck sector
- The Air Board must take into account other strategies for reducing greenhouse gas emissions, such as fuel efficiency standards and low-carbon fuels

Contents of the Sustainable Communities Strategy:

- Identifies areas for housing and development for all of the region's population
- Identifies and considers significant resource areas and farmland
- Sets forth an integrated development pattern and transportation network that will achieve the greenhouse gas emissions reduction targets, if there is a feasible way to do so
- Provides for an alternative planning strategy if it is not possible to achieve the targets within the sustainable communities strategy
- Complies with the federal clean air and transportation laws

Aligning the Regional Distribution of Housing With the Sustainable Communities Strategy:

- Provides that councils of government allocate housing within a region to be consistent with the sustainable communities strategy
- Establishes that housing elements will be updated every eight years, instead of five
- Provides that allocations of housing units by the Department of Housing and Community Development to regions must be consistent, to the extent feasible, with the jobs-housing balance per the regional transportation plan
- Mandates that local governments must complete housing elements within 18 months after receiving their housing allocation
- States that local governments have three years to complete rezoning of sites to be consistent with the designations in the housing element
- Determines that a court can compel local governments to complete the rezoning if the statutory deadline is not met; if the rezoning is not completed, there are new restrictions on its power to deny or condition affordable housing projects

Aligning the California Environmental Quality Act With the Sustainable Communities Strategy:

- Provides a new exemption for transit priority residential and mixed-use residential projects that qualify as sustainable communities projects
- Includes a new sustainable communities environmental assessment process for transit priority projects if the environmental impacts of the project can be fully mitigated
- Authorizes a focused environmental impact report (EIR) process for transit priority projects if there are environmental impacts; findings of overriding consideration must be considered
- Elevates traffic mitigation for transit priority projects to a policy decision instead of a project-by-project determination
- States that 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

CHAPTER 1

Introduction: SB 375 Offers a Path to Sustainable Prosperity

The current recession kicked into gear when gasoline hit $4 a gallon in the summer of 2008. It is notable that the recession hit far-flung sprawl communities first and hardest. For example, transportation costs for families living in sprawl locations in the Sacramento region rose to 25 percent of the family budget. Many families had purchased housing with irresponsible, even predatory, financing. The combination was destructive. Mortgage defaults and then mortgage foreclosures climbed rapidly, especially in the outlying suburbs.

The market is helping reduce sprawl development. The *Wall Street Journal* reports that in 2007, 25 percent of the new homes constructed in the Denver area were in the central city, as opposed to 5 percent in the early 1990s. In Chicago, it had increased to 40 percent from 7 percent.[10]

In California from 1998 through 2004, compact development (attached units plus small lot detached) constituted 40 percent of the market. In 2008, attached units alone accounted for almost 50 percent of the units developed.[11] The total market share of compact development in 2008 would be an even larger number.

These market shifts are not due simply to the financial crisis. They are also the result of long-term demographic changes that are driving housing demand. In the 1960s, 48 percent of households consisted of couples with at least one child; today that number is 33 percent. By 2030, 73 percent of households will consist of single adults or couples without children.[12]

The Recession Hits the Exurbs First and Hardest

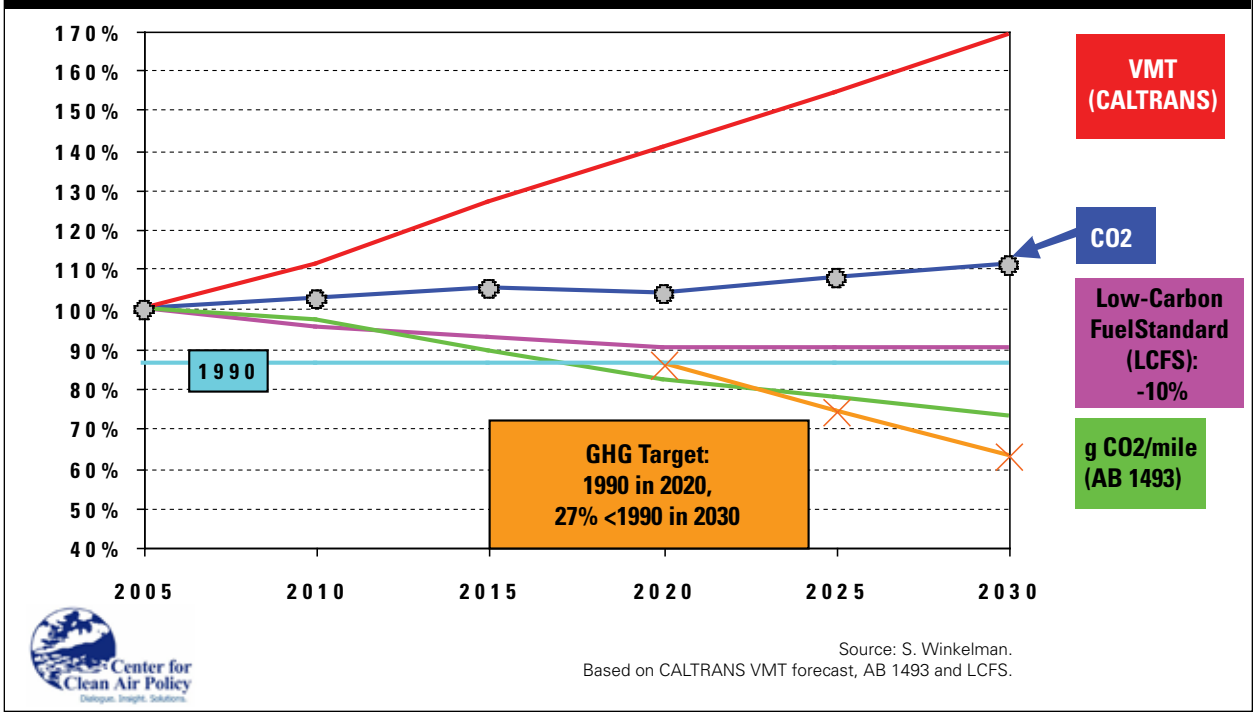
In August 2008, 75 percent of the existing home sales in Merced County were of foreclosed properties. By October 2008, the average home prices in the Central Valley towns of Manteca and Los Banos had fallen 50 percent and 66 percent, respectively. Both communities are far—upward of 75 miles—from the job centers in the San Francisco Bay Area, but, incredibly enough, they had become sites of commuter subdivisions. By November 2008, 90 percent of the houses in Mountain House, a huge commuter subdivision in western San Joaquin County, 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.

The Benefits of a New Approach

The multiple benefits of successfully implementing SB 375 cannot be overlooked. The central purpose of SB 375 is to address the crisis of global warming, but these additional benefits may help public officials

make good decisions. Household transportation causes 30 percent of all greenhouse gas emissions in California. As the graph below shows, even with much greater fuel efficiency and 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, CO_2 emissions never drop to 1990 levels and resume rising after 2020.

Figure 1: Increasing VMT Threatens to Overwhelm Greenhouse Gas Savings From Cleaner Fuels and Vehicles



Source: S. Winkelman.
Based on CALTRANS VMT forecast, AB 1493 and LCFS.

A Tool for Reducing Vehicle Miles Traveled (VMT) and Revitalizing Neighborhoods

Compact urban form and other neighborhood design characteristics can play an important role in reducing VMT while also ensuring the vibrancy and functionality of communities. Innovative techniques to help people picture what new growth patterns would look like are increasingly available. The Natural Resources Defense Council and Urban Advantage have developed a new tool to show how communities in California and across the country can revitalize neighborhoods and build vibrant new streetscapes. This tool can be accessed at: ***www.nrdc.org/smartGrowth/visions/default.asp***. This website lets readers see what our neighborhoods and landscapes could look like in an SB 375 future. Some examples are also included on pages 4 and 23 of this report.

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 and jobs, and served the same population as did the business-as-usual scenario, yet with a much smaller urban footprint.

Figure 2: Business-as-Usual Urban Footprint Forecast for 2050

Source: Sacramento Area Council of Governments.

Figure 3: Urban Footprint Under Preferred Blueprint Scenario

Source: Sacramento Area Council of Governments.

In contrast, the map in Figure 3 shows the smaller urban footprint of the new scenario. It serves the same population but occupies 360 square miles less land.

Not only does the preferred scenario occupy much less land, but because of a much better (and cheaper) transportation network, it also reduces congestion. Figure 4 shows the congestion resulting from the business-as-usual scenario, and Figure 5 shows how this congestion could be reduced.

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, on the one hand, and transportation and land use, on the other. 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 and transportation opportunities and away from resource lands, it was essential to emphasize planning on a regional scale.

Figure 4: Traffic Congestion From Business-as-Usual Transportation

Source: Sacramento Area Council of Governments.

Figure 5: Better Planning Can Lead to Reduced Congestion

Source: Sacramento Area Council of Governments.

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 a tribute 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, all the interests were able to realize gains: The Air Board was given a role to set targets for land use and transportation planning. The funding incentives embedded in the regional transportation plan were employed. Adjustments to the California Environmental Quality Act (CEQA) were made. The housing element process was placed on a longer schedule to coincide with transportation planning and was 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, and controversial issues is the strongest path for durable achievements.

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, known as the sustainable communities strategy (SCS). The California Air Resources Board (Air Board) is authorized to set regional greenhouse gas emissions 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.

Aligning Programs for Action

SB 375 aligns three major programs that address growth patterns in California: regional transportation plans, regional housing allocations, and the California Environmental Quality Act (CEQA). State law now requires that housing be allocated to local governments in a pattern consistent with the sustainable communities element of the regional transportation plan. SB 375 also adjusts 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 CEQA that improve the environmental review of projects that will assist California in attaining its major strategic environmental goals.

More Planning on a Regional Scale

An emphasis on planning at the regional level is essential, and this might be one of the signature achievements of SB 375. It is not feasible to do planning on a city-by-city basis to locate housing close to employment centers or transportation choices. This can be accomplished only when the patterns of the region as a whole are examined.

The shift to the regional scale is needed in part because of the paradox of perspective. At the regional level, it can be quickly seen that locating more housing in an urban center near employment opportunities will reduce VMT, greenhouse gas emissions, air pollution, and gasoline consumption as compared with locating that housing on the urban fringe. Yet, when the local government analyzes that same housing in the urban core, it will estimate the number trips generated as a result of a specific development 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 on the regional scale.

Balancing Regional Planning and Local Authority

In California, local governments are essentially the only entities with land use authority. Development occurs only when and where local government approves it. Implementation of SB 375 ultimately depends on the land use approvals of local governments. Striking a balance between local authority and regional planning is crucial.

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 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.

PHOTO BY: HELLER MANUS ARCHITECTS

PHOTO BY: HELLER MANUS ARCHITECTS AND TANG LI, TANG DESIGN STUDIO, RENDERER.

Emeryville Marketplace is the first LEED for Neighborhood Development (LEED-ND) platinum certified development in California. The photograph on the left shows the parking lot before development; the image on the right illustrates the mixed-use, environmentally sensitive design of the new community. LEED-ND certification is independent verification that buildings and developers meet high levels of environmentally responsible, sustainable development. LEED-ND is a collaboration among the U.S. Green Building Council, the Congress for the New Urbanism, and the Natural Resources Defense Council.

SB 375 does not create a mandate that the Sustainable Communities Strategy (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 and transportation policies on the one hand, and greenhouse gas reduction targets on the other.

In addition to addressing climate, SB 375 will achieve multiple benefits:

- Increased household budget savings
- More housing choices
- More 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

Changing Public Opinion

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

A 2007 poll by the National Association of Realtors shows strong public support for growth, land use, and transportation issues:[13]

- **71 percent** are very concerned about the impact of development on climate pollution.
- **57 percent** agree that "business and homes should be built closer together" so stores and shops are within walking distance.
- **61 percent** agree that new home construction should be limited in outlying areas and encouraged in very urban areas.
- **81 percent** want to redevelop older areas rather than building new ones.
- **83 percent** support "building communities where people can walk places and use their cars less."
- **88 percent** support more public transportation.

CHAPTER 2

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" (Government Code §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 with one another.

Setting Regional Greenhouse Gas Emissions Reduction Targets

SB 375 creates a link between global warming policies and land use and transportation planning through regional greenhouse gas reduction targets that 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 emissions 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.

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 sponsored by 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 (Government Code §65080[b][2][A][iii]).

Establishing an Iterative 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

As a first step, the Air Board appoints the regional targets advisory committee (RTAC), 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 (Government Code §65080[b][2][A][i]).

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 metropolitan planning organizations (MPOs), but also it must allocate that total 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 of Southern California, San Diego, and Sacramento. The RTAC will offer advice on these issues, and the Air Board must "consider" its advice (Government Code §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 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 RTAC because of the committee's 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 RTAC. 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 period to see the direction the Air Board is intending to go, and will allow enough time to prepare comments prior to the final adoption of targets by September 30, 2010.[14]

Target Adjustment

Finally, the bill recognizes that adjustments to the targets may be needed. Every four years, the Air 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 eight years, the Air 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 percent below the 1990 levels (Executive Order S-3-05).

Developing a Sustainable Communities Strategy

Existing federal law already requires regional transportation plans (RTPs) 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. Furthermore, 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* (23 CFR §450.322[b][9]; emphasis added).[15]
>
> 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, 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. The regulations 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 constitute a set of significant land use planning provisions.

The Role of the Local Land Use Authority

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, and zoning ordinances and to issue building permits for private development. Land uses in a regional transportation plan cannot be effectuated unless a local government approves them. 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 is a common misconception 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 assumption. Those local government plans will be changed many times over the 20+ years of an RTP, sometimes on a community-wide basis or perhaps 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 severely constrained since the passage of Proposition 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 percent 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.

The balance struck in the federal regulations is that existing local planning must be "considered" along with local, state, and national goals that "link 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" most recently developed "by the MPO" or, if by another agency, "approved by the MPO." Out-of-date local plans or plans with no realistic market would presumably not qualify under this language.

SB 375 creates a vital opportunity for local governments, 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. As noted earlier in this report, these demographic shifts could lead to dramatic changes in housing demand.

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.

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 sufficient to house all the population of the region, including all economic segments, 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.[16] 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 eight years out) must be consistent with the regional housing need identified in the regional housing needs allocation (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.[17]

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 emissions reduction targets approved by the state board. This final step is obviously the crux of the SCS. The plan must contain a forecasted 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 (Government Code §65080.01[c]).

Alternative Planning Strategy

If an MPO cannot feasibly achieve the targets within its sustainable communities strategy, it must show how it would do so in another document called an alternative planning strategy (APS) (Government Code §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; as such, it 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 (Government Code §65080[b][2][H][iii]).[18]

SCS or APS Review Process

The determination of whether 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. The Air Board, with its substantial modeling expertise, will review the regional modeling.

There was concern, however, that the Air Board might require specific changes in land use or transportation policy in order to achieve the climate targets. Therefore, SB 375 attempts to create an open, interactive process with the Air Board. Prior to developing an SCS, a region must submit to the Air Board its technical methodology for estimating the effects of its strategy on greenhouse gas reductions. The Air Board must respond to this submittal in writing with its specific concerns and suggested remedies. As a result of this exchange, presumably the Air Board's technical concerns can be addressed long before a strategy is formally submitted.

Once a strategy is submitted, the Air Board can only accept or reject the MPO's determination whether the strategy would, if implemented, achieve the GHG target for that region. Nothing in SB 375 gives the Air Board authority to revise any land use or transportation plan. 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 Air Board.

Public Participation

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 multicounty.

Funding Incentives

Since an 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 be consistent with the regional transportation plan (23 USC §134[h][3][C];

LOIS FISHER, FISHER TOWN DESIGN

LOIS FISHER, CNU

The town of Windsor, California, has implemented plans and policies that reduce sprawl, preserve farmland, and revitalize the downtown area.

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 smallest land use projects.

In fact, in recognition of the role played by regional planning, nearly a third (157 out 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 blueprint plan.[19] 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 available only for residential and mixed-use residential projects consistent with a strategy that achieves the regional targets. If the SCS does not 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.

Special Circumstances

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 percent of the state's population, including some of its poorest as well as richest neighborhoods.[20] There are significant interregional relationships among many of the entities within SCAG. No region is more complex, and the creation of a single SCS for this enormous area will be the most challenging.

SB 375 contains a special provision for the SCAG area (Government Code §65080[b][2][C]) that allows for the initial development of the SCS and APS to be done by the subregional council of governments (COGs) within the region. There are 14 subregional COGs.[21] 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 in preparing an SCS or an APS, it must do so in conjunction with the county transportation commission. SCAG must include any prepared subregional SCS or APS in the appropriate regional strategy, provided that it is consistent with federal law and the requirements of §65080.

The Central Valley

Another set of special circumstances exists in the Central Valley. The California Department of Transportation (Caltrans) and the Governor's Office of Planning and Research (OPR) made a significant effort to encourage the valley's eight counties to design a common blueprint for growth.[22] The effort was important, albeit with mixed results. During the real estate boom these counties had high growth rates, although the total population numbers are not large relative to the population of 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 patchwork—each of the counties is a federally designated MPO. If they wish to do so, SB 375 provides an opportunity for these counties 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.

Regions in Attainment With the Federal Clean Air Act

Under federal law, regions that are designated as nonattainment under the federal Clean Air Act must prepare a regional transportation plan at intervals no longer than four 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 five years. SB 375 gives attainment regions the option to participate in the eight-year housing planning cycle by electing to adopt the RTP at intervals of no longer than four years. This election must be made no later than June 1, 2009, or 54 months prior to the deadline for adoption of housing elements by local governments within the region.

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 (CTC) when 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 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 percent 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 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 on climate of all the projects, including the exemptions referenced above. 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 the benefits of the regional target process.

Resource Areas and Farmland

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 farmland 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 emissions reductions by implementing policies that encourage growth in cities.

Savings Clauses

SB 375 contains several important savings clauses. It provides that neither an SCS nor an APS regulates the use of land and that 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 an SCS or an 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.

Modeling

Travel Demand Models

As California's 18 federally designated MPOs develop their sustainable communities strategies to reduce greenhouse gas emissions, each will run its 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 and at which times of day; where congestion will occur; and 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 will be selected, and how much pollution will be emitted during the trips. 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 when making transportation investment decisions. If a region faces traffic congestion that worsens air quality, impedes economic growth, and frustrates residents, the models can be used in an effort 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 development 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 (RTPs)—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's 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 its guidelines to provide clearer direction to MPOs on the models they use to make investment decisions.

Revisions Needed

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 fall short in their ability 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 artery or extend a freeway through this piece of land, the developer is more likely to develop it. Most models have historically failed to account for this phenomenon, called induced growth or induced development. It is important for models to be able to capture induced growth and use it to predict changes in VMT.

SB 375 Modeling Provisions

Land use and transportation decisions last for decades. Because 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 its 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 relationship between land use density and household vehicle ownership and vehicle miles traveled in a way that is consistent with statistical research.
- The impact of enhanced transit service levels on household vehicle ownership and vehicle miles traveled.
- Induced travel and land development likely to result from highway or passenger rail expansion.
- Mode splitting that allocates trips among 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.
- Speed, frequency, days, and hours of operation of transit service.
- 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

The ability of transportation models to accurately predict VMT is receiving much attention—even on a national scale. In March 2009, Representative Matsui (D-Calif.) 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 (D-Del.) and Specter (D-Pa.) and Representatives Blumenauer (D-Ore.) and Tauscher (D-Calif.) introduced CLEAN-TEA to allocate 10 percent 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.

URBAN ADVANTAGE

On the left, an underutilized stretch of road in the Dana Point section of Orange County, California. The photo simulation on the right indicates how improved sidewalks, street trees, and mixed-use development could revitalize the area and invite community events.

CHAPTER 3

The 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.

Limitations of CEQA

Since enactment of the California Global Warming Solutions Act of 2006 (AB 32), it is 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 mitigation 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 on a 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.

SB 375 gives people a tool to act locally while thinking globally when it comes to transportation and land use planning.

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 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 itself does not have the authority to 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 government's 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

As noted earlier, a region is not mandated by SB 375 to achieve the regional greenhouse gas emissions reduction targets in the sustainable communities strategy. If the region is unable to 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 are discussed below.

Residential Vehicle Trip Analysis

Residential and mixed-use residential projects[22] 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 the 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. CEQA will still require analysis of other global warming issues associated with the project, such as building efficiency, water consumption, electricity consumption, and others.

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. This provision also prevents 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 choices on congestion mitigation that were different from the choices made in the regional transportation plan. SB 375 does not affect analysis under CEQA of a project's impact on local streets and roads.

Growth-Inducing Impacts

Additionally, CEQA relieves residential and mixed-use residential 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 important climate decisions. However, it is worth noting that this relief applies only 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.

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, 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.[24]

Benefits for Transit Priority Projects

There are four new benefits for transit priority projects under SB 375, including a CEQA exemption, a provision for a sustainable communities environmental assessment, provisions for environmental impact reports on these projects, and 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. These benefits are discussed in more detail below.

The transit priority CEQA exemption—The new CEQA exemption (Government Code §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 (Government Code §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.[25] First, there is no requirement that a community-level environmental impact report must have been completed within the last five years. This requirement is now unnecessary because there will be an EIR done on the regional transportation plan every four years. 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. It is not clear that the inclusionary housing requirement of the existing urban infill exemption was effective in increasing the supply of affordable housing. On an overall basis, SB 375 improves opportunities for affordable housing by strengthening the housing element process and increasing the minimum density requirements. The transit priority exemption can apply to projects that are only 50 percent residential; the urban infill exemption instead requires that the projects be 85 percent residential.

Perhaps most importantly the current urban infill exemption is a "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 (Government Code §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 applied properly, SB 375 imposes a requirement not found in the urban infill exemption, namely that the transit priority exemption can be approved only 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.

The sustainable communities environmental assessment—SB 375 creates a new CEQA document, the sustainable communities environmental assessment (Government Code §21155.2). It generally parallels the process for a mitigated negative declaration. Thus it applies only to projects that are able to mitigate their environmental impacts to a level of insignificance. The new environmental assessment is subject to a longer public comment period (30 days instead of 20). 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. A reduced fee makes it 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, a more rigorous standard. This means that transit priority projects that are able to mitigate 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 if the project is a transit priority project, they will have to make a greater showing in order to succeed.

The transit priority project environmental impact report—In the event the project cannot mitigate all its impacts, an environmental impact report (EIR) 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 (Government Code §21155.2[c][1] and [2]).

THE OLSON COMPANY

Depot Walk, in Orange, California, is the first LEED for Neighborhood Development certified project to be completed in Southern California. Depot Walk won its LEED-ND certification for its infill location, green building features, and transit proximity – it is one block from the Orange Metrolink station.

Traffic impacts—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; infill developers face the uncertainty 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 that comply with those policies cannot be required to do additional traffic mitigation as a result of the CEQA process (Government Code §21155.3[b]). The traffic mitigation measures can be adopted only after a public hearing and must be reconsidered 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.

CHAPTER 4

The 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 the population's housing needs. 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 the local governments. 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 complex and has been very controversial. Despite the efforts of the program, and partially for reasons beyond its control, California does not provide the zoning capacity—especially affordable housing units in the locations called for—to meet the housing needs of California.

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 while claiming 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. HCD bases 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 does not explicitly take into account the housing demand generated by employment growth within a region. SB 375 addresses this by requiring that HCD 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 (Government Code §65584.01[d][1]).

Aligning Housing Forecasts

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.

Distributing Housing Needs

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 (Government Code §65584.04[i][3]). This alignment means that transportation investments will now be consistent with the obligations of local governments to enact zoning.

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 nonattainment 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 these 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 (Government Code §65584.05[a]). The deadline for revision of the housing element was at the end of the 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 (Government Code §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 (Government Code §65588[c][7]).[26]

Providing Affordable Housing

SB 375 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 (Government Code §65583[c][1][A]). A local government may receive a one-year extension if it can show that it has made specified progress (Government Code §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 (Government Code §65400[B]).

Enforcing the Law

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 that local government's ability to disapprove or condition a housing development project if at least 49 percent 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 (Government Code §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 (Government Code §65587[c]).

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San Diego communities offer walkability and transportation choices. Clockwise from top left: Mission Hills Commons includes multi-family housing and mixed-use development (photo 1); Downtown Encinitas boasts a Main street atmosphere with retail, pedestrians, and a lively streetscape located near transit (photos 2 and 3); conveniently located transit reduces car traffic and shortens commutes (photo 4).

CHAPTER 5

Conclusion and Recommendations: SB375 Puts California on a Path to Prosperity

By enacting SB 375, California made history again by becoming the first state in the country to tie greenhouse gas emissions to transportation funding, land use planning, and housing policy. But passage of the law is just the first step. Its successful implementation relies on the actions of many. CARB must set "ambitious achievable" GHG reduction targets for regions. Regions must weigh the benefits of various alternative planning scenarios and select the plan that achieves their greenhouse gas target while maximizing co-benefits to their region. Environmental advocates must participate in development of local and regional plans to ensure targets are achieved. Developers must take advantage of the environmental review provisions provided by SB 375 to meet the rising market demand for new neighborhoods near transit and near jobs. And local governments must update their general plans and zoning codes to reflect the current and shifting market realities in California.

The eyes of the nation are now on California as it takes up the task of implementing this landmark legislation. The timing is perfect for California's efforts to inform federal policymaking. The 111th Congress will debate and hopefully pass new federal climate legislation and reauthorize a six-year transportation spending bill. The American Clean Energy and Security Act of 2009 (ACES) includes a structure that tracks SB 375 by requiring regions to prepare GHG reduction plans in coordination with their current regional transportation plans. Members of Congress are also interested in blueprint planning. State legislators in several other states have also introduced legislation, this year, modeled on SB 375.

But the degree to which SB 375 is adopted as a model depends entirely on how successful we are in our efforts to realize the promise of this new law. Countless diverse interests have a stake in the creation of sustainable and livable communities. The incentive-based approach of SB 375 encourages citizens and local leaders to shape the sustainable future of their community through a participatory planning process. There is good reason and ample evidence to believe that this approach will be effective in delivering the expected benefits. Now, as the rest of the California story unfolds, advocates for sustainable development have a great opportunity to show that this blueprint planning process can work in virtually any community to address many interrelated challenges and advance locally preferred solutions. Changing political leadership, market demand, and public opinion mean that the time is right for a new approach to land use planning. SB 375 provides a new planning paradigm, putting California on the path to a new, more sustainable prosperity as well as a cleaner environment.

Endnotes

1 The Sustainable Communities and Climate Protection Act was 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). It was signed into law by Governor Arnold Schwarzenegger on September 30, 2008.

2 Ewing, R., Barthlomew, K., Winkelman, S., Walters, J. and Chen, D. 2009, "Growing Cooler: The Evidence on Urban Development and Climate Change," Urban Land Institute.

3 Sacramento Area Council of Governments, http://www.sacregionblueprint.org; Southern California Council of Governments, http://www.scag.ca.gov.

4 Modeling performed by Calthorpe Associates, 2009.

5 American Public Transportation Association, http://www.apta.com/media/releases/090408_transit_report.cfm.

6 California Air Resources Board: http://www.arb.ca.gov/msprog/zevprog/factsheets/driveclean.pdf.

7 Modeling performed by Calthorpe Associates, 2009.

8 U.S. EPA, http://www.epa.gov/dced/pdf/growing_water_use_efficiency.pdf.

9 Modeling performed by Calthorpe Associates, 2009.

10 Gold, R. and Campoy, A., "Oil Industry Braces for Drop in U.S. Thirst for Gasoline," *Wall Street Journal*, 13 April 2009, pp. 1,12. http://online.wsj.com/services/article/SB123957686061311925.

11 Ewing, R., University of Maryland and Nelson, A., University of Utah, 2008, "CO_2 Reductions Attributable to Smart Growth in California."

12 Nelson, A., 2007, "Preparing for the Next Building Boom," FAICP http://www.mi.vt.edu/uploads/Nelson%20Smart%20Growth%20Conf%202-9-07.

13 National Association of Realtors, http://www.realtor.org/smart_growth.nsf/docfiles/transportationSurveyFall2007.pdf/$FILE/transportationSurveyFall2007.pdf

14 The RTAC was appointed January 23, 2009, and the proceedings are on the Air Board's website: http://www.AirBoard.ca.gov/cc/sb375/rtac/rtac.htm.

15 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.

16 This must be consistent with the federal regulations.

17 See e.g., *Sundstrom v. County of Mendocino* (1988), 202 Cal. App.3d 296, 311.

18 In addition, the CEQA benefits of SB 375 are available only 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.

19 Governor's Office of Planning and Research, 2009, California Planners' Book of Lists, p. 118.

20 California Department of Finance, http://www.dof.ca.gov/research/demographic/reports/estimates/e-5_2001-06/.

21 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).

22 The eight counties are Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare.

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

24 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 it 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.

25 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.

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

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