

City Attorneys Spring Conference

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**Climate Change and
Regional [Transportation and Housing] Planning
SB 375 (Steinberg) – Chapter 728 2008 Statutes**

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SB 375 (Steinberg)¹

Chapter 728 2008 Statutes

Spring 2009 Update

This paper was originally prepared for the one-day CLE City Attorney's seminar in Anaheim in February 2009. This Spring 2009 Update is being written in the beginning of April 2009 and will summarize legislative and state agency actions relating to SB 375 (Steinberg). If you have not previously reviewed this paper, then it would be advisable to read the paper, beginning with "The Historical Context of SB 375," before reading this Spring 2009 Update.

- SB 575 (Steinberg): This bill has been introduced as the "clean-up" vehicle for SB 375. As this paper is being written, Senator Steinberg's office is gathering suggestions from various interest groups (local governments, housing advocates, and environmental groups) for amendments to SB 375 to "clean-up" unintentional errors or confusion. The following amendments have been proposed by the League of California Cities:

1. Section 65080(b)(2)(B)(iii): delete "pursuant to Section 65584" and add in its place: "determined pursuant to Section 65584.01."

2. Section 65080(b)(2)(H)(ii) and (iv): Section 65080(b)(2)(H) says that the MPO "shall prepare an alternative planning strategy to the sustainable communities strategy showing how those greenhouse gas emission targets would be achieved through alternative development patterns, infrastructure, or additional transportation measures or policies." But then (H)(iv) says that the MPO "may" include an alternative development pattern for the region." The first reference seems to require the alternative development pattern. The second reference seems to make it permissive. I think we've always talked about the APS including an alternative development pattern. So I suggest deleting (ii) in its entirety (or replacing with language described in #3 below).

3. Section 65080(b)(2)(H)(ii): In addition to the problem noted in #2, the reference to "subparagraphs (B) to (F), inclusive" in (H)(ii) is confusing. Only subsection (iii) of Subparagraph (B) applies to the APS. Subparagraph (C) provides that in the SCAG region, a subregional council of governments and the county transportation commission may work together to prepare the SCS. Subparagraphs (D) and (E) are about public participation and Subparagraph (F) is about considering spheres of influence. So I would suggest replacing 65080(b)(2)(H)(ii) with:

¹ SB 375 (Steinberg) makes changes to regional transportation planning, housing element law, and CEQA. Please see the paper prepared by Whit Manley on the changes to CEQA for this Spring Conference 2009. Please see the paper prepared by Barbara Kautz on changes to the housing element law prepared for the February 2009 CLE seminar.

(ii) Subsection (iii) of Subparagraph B and subparagraphs (C) to (E), inclusive shall apply to the development of an alternative planning strategy.

4. Section 65080(b)(2)(H)(iii): delete "most" before "practicable."

5. Section 65080(b)(2)(H)(v): At the end of the sentence, change "whether a project may have an environmental effect" to "whether a project may have a significant adverse impact on the environment."

6. Section 65080(b)(2)(I)(ii): Delete the last sentence and replace with the following:

"The state board shall accept or reject the metropolitan planning organization's determination within 60 days of the date the metropolitan planning organization submitted the sustainable communities strategy or an alternative planning strategy to the board for review."

7. Section 65080(b)(2)(J): In the first sentence, add "for the review" before "as provided by subparagraph (I)" and add "review" before "state approval."

8. Section 65588(b): HCD has interpreted the 120 day time limit to apply to the 4th housing element revision (see "SB 375 Due Dates for Housing Element Update" dated October 24, 2008).

This interpretation contradicts 65588(e)(7) which is an exception to the applicability of the 120 day penalty. I'm not sure that legislation is required but we need to clarify up HCD's interpretation of this requirement.

9. Section 65588(f): This is the definition of "planning period." It works for most of the housing element law but does not work for Section 65584 – regional need determination. Proposal: change "planning period" in Section 65584 to "projection period."

10. Section 65583(c)(1)(B): SB 375 added the last sentence: "The identification of sites shall include all components specified in subdivision (b) of Section 65583.2." The local government community objective to this sentence and carried on a dialogue with the housing advocates about changing it. The changes did not make it into the bill. Based upon Julie Snyder's email of August 28, 2008, we suggest that the sentence be amended to read:

"The identification of sites shall include the components specified in paragraphs (1) to (3) inclusive of subdivision (b) of Section 65583.2."

10. We are interested in affording the CEQA streamlining provided in Public Resources Code 21596 to a project that is consistent with a general plan that is consistent with the SCS/APS. However, we will not ask for this amendment unless other parties suggest substantive amendments to the CEQA provisions of SB 375.

The first hearing on the bill is expected on April 21, 2009.

- RTP Guidelines: The California Transportation Commission is required to maintain guidelines for travel demand models used in the development of regional transportation plans by MPOs. The guidelines must include a variety of subjects including "the relationship between land use

density and household vehicle ownership and vehicle miles traveled in a way that is consistent with statistical research.”² The RTP Guidelines were most recently amended in 2007. The California Transportation Commission has announced that the process to update the Guidelines to account for changes made to the law by SB 375, will begin in the summer of 2009. The law requires the CTC to convene an advisory panel comprised of a wide range of interest groups, including the local government community. The current version of the RTP Guidelines can be found at: http://www.catc.ca.gov/programs/rtp/2007_RTP_Guidelines.pdf The addendum can be found at: http://www.catc.ca.gov/programs/rtp/Adopted_Addendum_2007_RTP_Guidelines.pdf

- **RTAC:** SB 375 established the Regional Targets Advisory Committee (RTAC) and charged it with recommending factors to be considered and methodologies to be used for setting greenhouse gas emission reduction targets for the affected region. The RTAC is required to submit the report with its recommendations to the Air Resources Board by September 30, 2009. The ARB must release draft targets for each region no later than June 30, 2010. The RTAC began meeting in January 2009 and continues to meet. The diverse group of RTAC members is having some difficulty in agreeing the factors to be considered and methodologies to be used. Additional information about the work of the RTAC can be found at: <http://www.arb.ca.gov/cc/sb375/rtac/rtac.htm>
- **RHNA and SCS:** SB 375 requires each region’s regional housing allocation plan to be consistent with the MPO’s SCS. The Department of Housing and Community Development is concerned that additional changes need to be made to the housing element law to fully coordinate regional transportation planning and housing planning. In addition, there is some indication that the timelines included in SB 375 are not appropriate for the SANDAG region. Changes will be required to correct the scheduling of the SANDAG SCS and regional housing allocation plan. These changes will probably be included in SB 575 (Steinberg).
- **Housing Element Annual Report:** Government Section 65400 requires each local government to submit an annual report to OPR and HCD that summarizes the status of the general plan and progress in its implementation; and the progress in meeting its share of the regional housing needs determined pursuant to Section 65584 and local efforts to remove governmental constraints to the maintenance, improvement, and development of housing pursuant to paragraph (3) of subdivision (c) of Section 65583. The housing element portion of the report is required to be prepared through the use of forms and definitions adopted by HCD. SB 375 added language to this section to require a section in the annual report that describes the actions taken by the local government towards completion of the programs and status of the local government’s compliance with the deadlines in its housing element.

² Government Code 14522.1

HCD has distributed a draft of the “forms and definitions” that a local government is required to use to submit the housing element portion of the annual report. The League of California Cities took strong exception to the draft asserting that the “Guidelines” went far beyond the authority given to HCD to adopt “forms and definitions;” and objecting to requirements to submit information that is not within the control or knowledge of local governments. It is not clear at the time this paper is being updated when HCD will distribute a second draft of the “forms and definitions.”

- Climate change and housing element programs: In February 2009, HCD adopted a document entitled “Housing Element Programs and Policies Addressing Climate Change.” The intent of the document is to suggest strategies and programs that benefit housing supply, affordability, and energy and climate objectives. The document can be found at:
http://hcd.ca.gov/hpd/HE_PoliciesProgramsAddressingClimateChange.pdf

The Historical Context of SB 375

The Global Warming Solutions Act of 2006 (“AB 32”)³ requires the State of California to reduce greenhouse gas (GHG) emissions to 1990 levels no later than 2020. AB 32 gave the California Air Resources Board (ARB) the authority to monitor and regulate sources of greenhouse gases in order to reach this goal.⁴ More specifically, the ARB has the authority to reduce GHG emissions from automobiles and light trucks by adopting regulations making the connection between land use development patterns, proximity to transit, vehicles miles traveled, and GHG emissions. Automobiles and light trucks contribute 30% of the GHG emissions in California. In 1990, GHG emissions from automobiles and light trucks were 108 million metric tons. By 2004, these emissions had increased to 135 million metric tons. GHG emissions from automobiles and light trucks will be substantially reduced by new vehicle technology and by the increased use of low carbon fuel.

For the moment, SB 375 takes the place of ARB regulations.⁵ The legislation is based upon the premise that “it will be necessary to achieve significant additional greenhouse gas reductions from changed land use patterns and improved transportation. Without improved land use and transportation policy, California will not be able to achieve the goals of AB 32.”⁶

Summary of SB 375 – Transportation and Land Use Policy Connection

SB 375 uses regional transportation plans developed by metropolitan planning organizations (MPO) to “improve land use and transportation policy.” Under the new law, ARB will develop GHG emissions reductions targets for each region covered by a metropolitan planning organization. Each metropolitan

³ Health & Safety Code 38500 et seq.

⁴ Health & Safety Code 38500.

⁵ SB 375 does not reduce the authority of the ARB under AB 32 to adopt regulations that require local land use decisions to reduce greenhouse gas emissions by a certain targeted amounts.

⁶ Chapter 728 2008 Statutes Section 1(c) [uncodified]

planning organization is required to adopt a “sustainable communities strategy” (SCS) which seeks to achieve those targets. Streamlined CEQA processing is provided for development projects (approved by cities and counties) that are consistent with the SCS. The Council of Government’s (COG) regional housing allocation plan must be consistent with the SCS. Consistency between city and county general plans and the SCS is not required.

Metropolitan Planning Organizations (MPO)

Transportation planning in California is an interesting combination of Federal and State law. Federal transportation law requires that a metropolitan planning organization be created in each urbanized area. In California, there are 17 metropolitan planning organizations covering 37 counties representing 97.7% of the statewide population. The four largest MPOs are:

- The Southern California Association of Governments (SCAG) (Los Angeles, Ventura, San Bernardino and Riverside Counties);
- The San Diego Association of Governments (SANDAG) (San Diego County);
- The Sacramento Association of Governments (SACOG) (Sacramento); and
- The Metropolitan Transportation Commission (MTC) (the nine San Francisco Bay Area Counties).⁷

An MPO is “the policy board of an organization created and designated to carry out metropolitan transportation planning.”⁸ It is a regional organization governed by locally elected officials that is a creature of federal law: it is the policy of the Federal Highway Administration Act (FHA) that an MPO be designated for each urbanized area to carry out a continuing, cooperative, and comprehensive multimodal transportation planning process. The process must include the development of a regional transportation plan (RTP) and a transportation improvement program (TIP) that “encourages and promotes the safe and efficient development, management and operation of surface transportation systems....”⁹ An MPO is the conduit for federal and state funds for region-wide transportation projects.¹⁰ While taking into consideration the federal law, the state law identifies what must be included in the regional transportation plan (RTP).¹¹ SB 375 added the SCS to the list of what must be included in the RTP.

The Regional Transportation Plan

Two requirements of federal law significantly impact the contents of the RTP:

- The FHA requires that transportation improvements that included in a RTP must be “fiscally constrained; and
- The Clean Air Act requires the MPO to make a “conformity” determination when it adopts the RTP.

⁷ With the exception of MTC, each of the other major MPOs is also the Councils of Governments for its region. In the Bay Area, duties are split between ABAG (the COG) and MTC (the MPO).

⁸ 23 U.S.C. 134; 28 CFR 450.104

⁹ 23 CFR 450.300

¹⁰ 23 CFR 450.308

¹¹ Government Code 65080.

“Fiscally constrained....”

The federal law requires that the metropolitan planning process include the development of a transportation plan addressing no less than a 20-year planning horizon. The plan is required to include transportation improvement projects (TIP) for the region and both long-range and short-range strategies/actions that lead to the development of an integrated multimodal transportation system.¹² A TIP is a prioritized listing of transportation projects covering a period of four years that is developed and formally adopted by an MPO as part of the planning process.¹³ It is required for projects to be eligible for federal and state funds. The TIP may include a project only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project. The transportation improvement projects must be “financially constrained.” This restriction means that the plan and the TIP includes sufficient financial information for demonstrating that projects in the Plan and in the TIP can be implemented using committed, available, or reasonably available revenue sources. Additionally, projects in air quality nonattainment and maintenance areas can be included in the first two years of the TIP only if funds are “available” or “committed.”¹⁴

“Conformity determination...”

The MPO must review and update the transportation plan at least every four years in air quality nonattainment and maintenance areas and at least every 5 years in attainment areas.¹⁵ The required contents of the plan are set forth in detail in the federal law.¹⁶ When an MPO in a non-attainment area adopts the Plan, it must make a “conformity determination” in accordance with the Clean Air Act and the EPA transportation conformity regulations.¹⁷ The purpose of the “conformity determination” is to ensure that federal funding and approval are given to transportation plans, programs, and projects that are consistent with the air quality goals established by a State Implementation Plan. “Conformity” means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of air quality goals.¹⁸

A conformity determination must be based upon “the most recent planning assumptions”¹⁹ in force at the time the conformity analysis begins. The determination must satisfy the requirements of the law using the planning assumptions available at the time the conformity analysis begins. Assumptions must be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO.²⁰ In addition, the transportation plan must “protect and enhance

¹² 23 CFR 450.322

¹³ 23 CFR 450.324

¹⁴ 23 CFR 450.104.

¹⁵ 23 CFR 450.322. A “non-attainment area” means any geographic region of the United States that has been designated by the EPA as a nonattainment area under section 107 of the Clean Air Act for any pollutants for which NAAQS exists [23 CFR 450.104].

¹⁶ 23 U.S.C. 134(h); 23 CFR 450.322(f)

¹⁷ 23 CFR 450.322(l); 40 CFR 93.104

¹⁸ 23 CFR 450.104

¹⁹ See, also, Government Code 65080(b)(2)(B).

²⁰ 23 CFR 93.110. .

the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns.”²¹

I. SB 375 and the RTP

Each of the 17 MPOs must develop a regional strategy to reduce greenhouse gas emissions from automobiles and light trucks. If the strategy is part of the RTP, it is called a sustainable communities strategy (SCS). If the strategy is not part of the RTP, it is called an alternative planning strategy (APS). The SCS/APS is at the intersection of land use and transportation planning.

GHG Emission Reduction Targets

By September 30, 2010, the ARB must provide each region covered by a metropolitan planning organization with greenhouse gas emission reduction targets for the automobile and light truck sector for 2020 and 2035. Establishing a regional target requires compliance with the following procedure:

- By January 31, 2009: ARB appoints a Regional Targets Advisory Committee (RTAC) to recommend factors to be considered and methodologies to be used for setting reduction targets. The Committee is comprised of representatives of a wide variety of private and public sector organizations.²² The RTAC’s report is due to the ARB no later than September 30, 2009.
- Prior to setting the targets for a region, the ARB is required to exchange technical information with the MPO and the affected air district. The MPO may recommend a target for the region. The ARB must hold at least one public workshop within the region after receipt of the report from the RTAC.
- By June 30, 2010: ARB releases draft targets for each region.²³

Achieving the Targets: The Sustainable Communities Strategy

Each MPO must prepare a sustainable communities strategy as part of its regional transportation plan. A regional transportation plan is directed at “achieving a coordinated and balanced regional transportation system.” It must be an “internally consistent” document which includes a policy element; an action element; and a financial element.²⁴ The “policy element” describes the types of projects and programs that will be encouraged and funded over the life of the plan. The “action element” is a more specific listing of those projects. The “financial element” describes the funding available for the specific transportation projects in the region.

²¹ 23 U.S.C. 134(h)(1)(E).

²² Membership on the RTAC:

²³ The ARB is required to update the targets every 8 years and may revise its targets every 4 years (Government Code 65080(b)(2)(A)(iv).

²⁴ Government Code 65080

SB 375 added the SCS to this list of mandatory elements. Since the RTP must be internally consistent, the projects receiving transportation funding pursuant to the RTP must be consistent with the SCS. Therefore, although a local general plan need not be consistent with the SCS, transportation funding will only be available for those projects which are consistent with the SCS, including the land use pattern and housing allocation found in the SCS.

Because the RTP is a creature of federal law, the SCS is subject to several requirements of federal law.²⁵ An SCS will:

- Identify the general location of uses, residential densities, and building intensities within the region;²⁶
- Identify areas within the region sufficient to house all the population of the region over the course of the twenty-year planning period;
- Identify areas within the region sufficient to house an eight-year projection of the regional housing need for the region;²⁷
- Identify a transportation network to service the transportation needs of the region;
- Gather and consider the best practically available scientific information regarding resource areas and farmland in the region;²⁸ and
- Set forth a forecasted development pattern for the region, which, when integrated with the transportation network, and other transportation measures and policies, will reduce GHG emissions from automobiles and light trucks to achieve, if feasible,²⁹ the GHG emission reductions target approved by the ARB.

The two provisions of federal law discussed above may make it difficult for an SCS to achieve the regional targets : (1) The Clean Air Act's "conformity determination" requires that the RTP is based upon "current planning assumptions." "Current planning assumptions" must be based upon the most "recent planning assumptions." In most cases, recent planning assumptions will be found in local city and county general plans. This means that an MPO may not be able to adopt an SCS which calls for high density development in urbanized areas near public transportation if that type of development is not "assumed" by local general plans. However, the SCS must also include a plan to achieve the region's 8-year housing goals under the housing element law. Local agencies' "planning assumptions" will change as they adopt housing elements to plan for their share of the regional housing need. (2) The FHA's "financial constraint" requirement restricts the "the transportation network" in the SCS. This means

²⁵ See discussion of these requirements *infra*.

²⁶ A SCS/APS do not regulate the use of land. Government Code 65080(b)(2)(J).

²⁷ A MPO is required to consider adopted spheres of influence when preparing an SCS. Government Code 65080(b)(2)(F).

²⁸ See definitions of "resource areas" and "farmland" in Section 65080.01.

²⁹ "Feasible" is defined in Section 65080.01(c).

that an SCS cannot include a transportation network that plans for public transportation for which funding is not available.

When the MPO adopts the SCS, it must make a finding quantifying the reduction in GHG emissions projected to be achieved by the SCS. If the SCS does not achieve the targeted reductions in GHG emissions then the MPO must set forth the difference between the amount that the SCS would reduce GHG emissions and the target for the region.

Achieving the Targets: The Alternative Planning Strategy

If an SCS is unable to achieve GHG emissions reductions target,³⁰ an MPO must prepare an Alternative Planning Strategy (APS) which demonstrates how the GHG emissions target would be achieved through alternative development patterns, infrastructure, or additional transportation measures or policies.³¹ The APS is not part of the RTP. This means that neither the “conformity determination” nor the “fiscal constraint” requirements of federal law apply to the APS. In addition, the contents do not need to be “internally consistent” with the other elements of the RTP. The federal law applicable to regional transportation plans continues to apply “except to the extent that compliance will prevent achievement of the GHG emission reduction targets.”³² The APS must identify the principal impediments to achieving the targets within the SCS. It may include an alternative development pattern for the region that includes each of the components required to be included in the SCS. Finally, the APS must describe how the development pattern, measures and policies in the APS are the most “practicable” choices for achievement of the targets.³³

Developing the SCS/APS: Local Government Participation

In an attempt to avoid some of the problems that have occurred during the RHNA allocation process, SB 375 requires an MPO to conduct at least two informational meetings in each county within the region for members of boards of supervisors and city councils on the SCS and APS. One informational meeting in each county will suffice if it is attended by representatives of the county board of supervisors and the city council members representing a majority of the cities representing a majority of the population in the incorporated areas of that county. At the meeting the MPO is directed to present a draft of the SCS (or APS) and solicit and consider the input and recommendations of the locally elected officials.³⁴

Developing the SCS/APS: Public Participation

An MPO must adopt a public participation plan for development of the SCS or APS that includes: (1) outreach efforts to encourage active participation by a broad range of stakeholder groups; (2) consultation with congestion management agencies, transportation agencies, and transportation

³⁰ Note that an MPO is not required to adopt an SCS if it is clear that the SCS will not achieve the regional GHG emission reduction targets. In such a case, the MPO can begin with the APS.

³¹ Government Code 65080(b)(2)(H).

³² Government Code 65080(b)(2)(H)(iv).

³³ Government Code 65080(b)(2)(H)(iii).

³⁴ Government Code 65080(b)(2)(D).

commissions; (3) one workshop in each county; three workshops in counties with a population of 500,000 or larger; to provide the public with a clear understanding of the issues and policy choices; (4) preparation and circulation of a draft SCS/APS not less than 55 days before adoption of a final RTP; (5) at least three public hearings on the draft SCS/APS. (A single-county MPO need only hold two public hearings); and (6) a process for enabling members of the public to request receipt of notices, information, and updates.

Air Resources Board Review of SCS and APS

The ARB is given limited review authority over the SCS and APS. After adoption, the MPO must submit the SCS/APS to the ARB for review, including the quantification of the GHG emissions reduction the strategy would achieve and the technical methodology used to obtain that result. Review by the ARB is limited to “acceptance or rejection of the...determination that the strategy submitted would, if implemented, achieve the greenhouse gas emission reduction targets established by the state board.”³⁵ The Board determines that the strategy submitted would not achieve the targets, then the MPO must revise its Strategy or adopt an APS and submit/re-submit the Strategy. To be in compliance with SB 375, the MPO must receive acceptance of its determination in either the SCS or the APS.³⁶

Giving the ARB limited review was an attempt to avoid the difficulties inherent in the housing element review process.³⁷ Prior to starting the public participation process, the MPO is required to submit a description to the ARB of the technical methodology it intends to use to estimate the GHG emissions from its SCS/APS. The ARB is required to respond to the MPO in a timely manner. The response must include a specific description of any aspects of the methodology it concludes will not yield accurate estimates of GHG emissions and suggest remedies. If an MPO can work together with ARB to come up with an acceptable technical methodology, there is less likelihood that the ARB will not accept the MPO’s ultimate conclusion.³⁸

Timing of Adoption

An MPO in a non-attainment region is required to adopt its RTP every four years. The SCS will be adopted as part of its RTP. An MPO that is not in a non-attainment region is required to adopt its RTP not less than every five years. SB 375 allows such an MPO to elect to adopt the RTP every four years. The purpose of such an election would be to take advantage of the provisions of SB 375 that allow for an 8-year planning period for a housing element.³⁹

³⁵ Government Code 65080(b)(2)(l)(ii).

³⁶ Government Code 65080(b)(2)(l)(iii).

³⁷ Note that SB 375 specifically states: “Neither a sustainable communities strategy nor an alternative planning strategy...be subject to state approval.” Government Code 65080(b)(2)(j).

³⁸ Government Code 65080(b)(2)(l)(i).

³⁹ Government Code 65080(b)(2)(L).

Financial Provisions

Because an RTP must be internally consistent, the SCS must be consistent with the financial element and the program element which list projects and their eligibility for funding. These projects must be consistent with the SCS. SB 375 provides for some exceptions to that general rule: Projects programmed for funding on or before December 31, 2011 that (1) are contained in the 2007 or 2009 Federal STIP; (2) are funded pursuant to Proposition 1B; (3) were specifically listed in a ballot measure prior to December 31, 2008 approving a sales tax increase for the project.

An MPO is directed to consider financial incentives for cities and counties that have resource areas or farmland as defined in Section 65080.01. The MPO is required to consider financial assistance for counties to address countywide service responsibilities in counties that contribute towards the targets by implementing policies for growth to occur within cities⁴⁰.

Interesting Legal and Strategic Issues

This section summarizes provisions of SB 375 which may have special interest to city attorneys and their city councils:

Although SB 375 clearly states that neither the SCS nor the APS “regulates the use of land,” the landscape is actually not quite that clear. The first four points address this issue.

1. Although SB 375 clearly states that neither the SCS nor the APS “regulates the use of land;” and although SB 375 does not require local general plans to be consistent with the SCS or APS; there’s nothing in SB 375 that would prevent the Air Resources Board to adopt regulations which would require, for example, consistency between a general plan and the SCS, under the authority granted in AB 32. Therefore, it is very important for locally elected officials and their staff to participate actively in the development of the SCS/APS that applies to their region. Although a city or county may not think it needs to pay attention to the development of the SCS/APS because it will not have a direct impact on it, future regulatory or legislative activity may not give the city or county a choice. Early drafts of SB 375 required consistency between local general plans and the SCS.
2. An RTP must be based upon “current planning assumptions” under both the Clean Air Act and the state law. This requirement is cited to support the position that local general plans need not conform to the SCS. However, it should be noted that the SCS must also include a plan for the region’s housing needs. And the regional housing allocation plan must conform to the SCS. Local agencies’ housing elements and conforming zoning adopted to plan for their RHNA may be the way that local general plans are required, de facto, to be consistent with the SCS.
3. Transportation funding decisions in an RTP must be consistent with the SCS. A city’s construction of some transportation improvements may need to be consistent with its general plan. Therefore, in order for a city to receive funding from the MPO, it may need to bring its

⁴⁰ Government Code 65080(b)(4)(C)

general plan into conformity with the SCS. Note that this does not apply to an APS because it is not adopted as part of the RTP (which is required to be internally consistent).

4. SB 732(Steinberg) was also adopted in the 2008 legislative session. SB 732 establishes the Strategic Growth Council. The Council consists of the Director of OPR; the Secretary of the Resources Agency; the Secretary of Business, Transportation and Housing; the Secretary of Health & Human Services and one member of the public to be appointed by the Governor.⁴¹ \$500,000 has been appropriated to the Council which will be used in part to “provide, fund, and distribute data and information to local governments that will assist in developing and planning sustainable communities.”⁴² The funding source is Proposition B bonds. In order to be eligible for the money, the local government’s project or plan must “reduce on a permanent basis that is feasible, greenhouse gas emissions consistent with...any applicable regional plan.”⁴³ This means that a local government’s general plan must be consistent with the SCS/APS to be eligible for the funding. In addition, the State Attorney General acting independently of this legislation to enforce the reduction of greenhouse gas emissions through general plan policies.⁴⁴
5. The SCS seeks to achieve the ARB’s regional targets for the reduction of greenhouse gas emissions from cars and light trucks for the region covered by the SCS. The MPO may recommend to the ARB a target for the region (65080(b)(2)(A)(ii)). Locally elected officials that are on the board of the MPO should seriously consider making such a recommendation in order to make sure that the target is reasonable.
6. Before the ARB establishes a target for the region, the state board is required to take into account greenhouse gas emission reductions that will be achieved by improved vehicle emission standards, changes in fuel composition, and other measures it has approved to reduce greenhouse gas emissions in the region; and prospective measures the state board plans to adopt to reduce greenhouse gas emissions from “sources” in the region (Health & Safety Code 38505(i)). This provision of SB 375 was added at the request of the local government community to make it more likely that the target for the region would be reasonable. MPO representatives should pay attention to the ARB process when adopting targets to make sure this section of SB 375 is followed (65080(b)(2)(A)(iii)).
7. A SCS is subject to “the requirements of Part 450 of Title 23 of, and Part 93 of Title 40 of, the Code of Federal Regulations. In particular, attention should be paid to (a) 23 CFR 450.104 (definitions); (b) 23 CFR 450.308 (MPOs and transportation funding); (c) 23 CFR 450.322 (development and content of metropolitan transportation plan); (d) 23 CFR 450.324 (development and content of the transportation improvement program – TIP); (e) 40 CFR 93.100 (implementation of Clean Air Act in federal actions); (f) 40 CFR 93.110 (making Clean Air

⁴¹ Government Code 75121.

⁴² Government Code 75125(c)

⁴³ Government Code 75126(b)(2).

⁴⁴ See, for example, Memorandum of Agreement between the City of Stockton and the People of the State of California dated September 10, 2008.

conformity determination in federal actions). It is this last reference that is the source for the language in SB 375 which says that a SCS is “subject to [federal law], including the requirement to utilize the most recent planning assumptions considering local general plans and other factors” (65080(b)(2)(B)). The Clean Air Act requires that the conformity requirement be based upon “current planning assumptions.” A conformity finding is unacceptable if it is based upon planning assumptions which would keep the air clean but which will never occur because they are dependent upon, for example, the extension of public transit. It is important to be aware that the SCS development pattern must be based upon “current planning assumptions” *only* because of the requirement that the Clean Air Act imposes on the adoption of a regional transportation plan. It is federal, not state law. It relates to maintaining air quality; not local land use principles derived from the police power. It is not based upon local land use autonomy. The APS, which is not a part of the RTP, is not required to be based on “current planning assumptions.”

8. The MPO’s quantification of the difference, if any, between the regional target and the reduction achieved by the SCS, if implemented, must be based on substantial evidence in the record. Likewise, the ARB’s review of the SCS to approve or disapprove that determination must be based on substantial evidence.
9. An SCS must set forth a forecasted development pattern which, when integrated with the transportation network, and other transportation measures and policies, will reduce the GHG emissions from automobiles and light trucks to achieve, if there is a “feasible” way to do so, the target established by the ARB. “Feasible” is defined in SB 375 almost identically to the definition of “feasible” in CEQA: means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors (65080.01(c)). It is this requirement of feasibility that makes many MPO/COG directors anticipate that an SCS will not be able to achieve the ARB target. This is one of the differences between an SCS and an APS: The APS must describe how the GHG emission reduction targets would be achieved by the alternative planning strategy, and why the development pattern, measures, and policies in the alternative planning strategy are the most “practicable” choices for achievement of the targets (65080(b)(2)(H)(iv)). A much lower bar.
10. The authority and powers of the regional air quality control districts are worth reviewing. Under existing authority, for example, an Air District may consider an indirect source rule (ISR) that regulates the construction and long-term transportation impacts of land development and requires mitigation or payments in lieu for development which does not meet established standards. Of particular concern could be development which is deemed to increase automobile travel and hence vehicle emissions. An air district may also seek to limit development in certain areas so as to reduce exposure to noxious particulate matter and other localized air toxins.
11. Neither a COG nor an MPO is eligible to be reimbursed by the State pursuant to Article XIII B, section 6 of the State Constitution. This means that although SB 375 clearly imposes a

“mandate” on the MPO, the State will not reimburse the MPO for its costs in developing these plans. In all likelihood, an MPO will look to its member cities and counties to fund the effort through the assessment of a fee. The State and some MPOs argue that cities and counties should not object to such a fee because it can be passed on to developers pursuant to Government Code 65041 which allows a planning agency to impose fees to recoup the cost of preparing planning documents. Thought should be given to whether (1) this authority would be applicable in this case; and (2) if applicable, a reasonable means for establishing the amount of the fee.

Conclusion

Reduction of greenhouse gas emissions in an effort to combat global warming is one of the highest priorities of the State. There are many in Sacramento who support consistency between local general plans and SB 375. This may be the time to recommend that amendments to local general plans be adopted which ensure that your city or county is doing its part in this statewide effort. The more progress that is made locally, the less likely the State will be to mandate action.

California Metropolitan Planning Organizations⁴⁵

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

⁴⁵ This chart is taken from the paper prepared by the California State Association of Counties entitled “SB 375 (Steinberg): Addressing Greenhouse Gas Emissions from the Transportation Sector via Regional Transportation Plans.”

KEY: *TWO OR MORE OF THESE COUNTIES MAY WORK TOGETHER TO DEVELOP REGIONAL GOALS AND/OR MULTIREGIONAL SUSTAINABLE COMMUNITIES STRATEGY OR ALTERNATIVE PLANNING STRATEGY. IF GOALS ARE ADOPTED, THEN INDIVIDUAL SCS MUST BE CONSISTENT WITH GOALS. SECTION 65080(B)(2)(M)

**IN THE BAY AREA, THE RESPONSIBILITY FOR THE SCS/APS IS SPLIT BETWEEN ABAG AND MTC. ABAG'S RESPONSIBILITIES ARE LISTED AT SECTION 65080(B)(2)(A)(I), (II), (III), (V), (VI). MTC'S RESPONSIBILITIES ARE LISTED AT SECTION 65080(B)(2)(A)(VIII). JOINT RESPONSIBILITY IS SHARED FOR THE TASK DESCRIBED AT SECTION 65080(B)(2)(A)(VII).

***IN THE SCAG REGION, SUB-REGIONS MAY ADOPT AN SCS FOR INCLUSION IN THE SCS ADOPTED BY SCAG. SECTION 65080(B)(2)(C).

TIMELINE FOR THE IMPLEMENTATION OF SB 375

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

ACRONYMS

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

