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Make it Work:
Implementing Senate Bill 375

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Executive Summary

California passed Senate Bill 375 in 2008, landmark legislation calling on the state's urban regions to develop plans for more efficient land use and development, in order to reduce the greenhouse gases that contribute to global warming. While SB 375 is ambitious in its goals, it is modest in its means. The SB 375 process relies on existing organizations for implementation and leaves most fundamental aspects of state and local planning processes intact.

This report, by a research team from the Center for a Sustainable California at UC Berkeley, identifies state and regional policies and programs that could support the objectives of SB 375. It assesses the policy context in which SB 375 emerged and currently operates, concluding that without stronger support from the state government, the SB 375 process may prove incapable of achieving its goals.

SB 375 relies on existing regional planning agencies for implementation, namely Metropolitan Planning Organizations (MPOs), which are responsible for developing federally mandated long-range regional transportation investment plans. Under SB 375, the state's eighteen MPOs must develop "Sustainable Communities Strategies" (SCSs) to achieve quantifiable targets, set by the state, for reducing greenhouse gas emissions through more efficient development and better coordination. SB 375's major procedural change is to require that the existing MPO planning process be more closely aligned with another regional process which coordinates long-range local plans for accommodating new housing development. In addition, SB 375 eases environmental review for certain new development projects located near transit stations.

Relying on MPOs for planning coordination makes sense because these agencies have been recent innovators in strategic growth planning in California. In particular, SB 375 explicitly recognizes the regional "blueprint" planning innovation, developed by California MPOs during the past decade, to produce collaborative regional/local plans that achieve preferred scenarios for future regional development.

However, MPO governance also has some inherent weaknesses, which can be expected to persist under SB 375. MPOs act as an interface between local governments and state and federal programs and have no independent authority as such. In relation to land use, COG/MPOs have no actual authority over the decisions made by local governments. The voluntary collaborative MPO governance structure has long made it difficult to develop plans and programs with a strong regional systems focus; the governing structure works to deter controversial policies that could create winners and losers among local government members. The MPO role is further constrained by state funding formulas that tend to reinforce the county role in transportation programming.

The collaborative approach enshrined in SB 375 requires strong state support to work effectively. While the law depends fundamentally on local government participation in developing SCSs, it is the state government that sets the framework of fiscal and regulatory policies in which local governments make development choices. If state policies work to support SB 375, then its collaborative governance model can work as a means for coordinating state and local priorities and preferences. However, if state programs and policies do not provide sufficient support or

counteract SB 375 objectives, then there is little reason to expect local governments to develop ambitious SCSs through the MPO framework.

Some state policies and programs do currently work to promote SB 375 objectives. One example is a set of new programs funded through Proposition 1C, a 2006 state housing bond, to support development of infrastructure and transit-oriented housing in infill areas. However, many other state programs send a different message. For example, state transportation funding favors roadways over transit. Recent state budget cuts to transit programs worsen the problem.

Without further support by the state, the incentives under SB 375 for local government participation in SCS development may be too weak to induce substantial changes in behavior. SB 375 provides no additional resources, in the form of state funds, to cover planning costs or to reward localities that choose to adopt policies with regional benefits but local costs. Those costs, which can be substantial, include funding for building infrastructure to support infill development, addressing service needs of new residents, and addressing localized impacts such as increased traffic congestion.

To ensure successful implementation of SB 375, a stronger framework of supportive policies and programs is needed. This should begin with the translation of SB 375's goals into clear, operational objectives for land use, housing, and transportation policy – performance objectives which the state and regions can then use as a basis for allocating funds and other assistance. The state also should adopt a stronger coordination and monitoring role of programs and performance related to SB 375.

In addition, this report describes ten concrete priority actions that the state and regions can pursue to address the challenges of implementing SB 375. The recommendations are based on research into policy options advanced and/or implemented in California and elsewhere, and interviews with stakeholders. The actions are intended to bring about the following outcomes:

- Support the "three legs" of SB 375

  The policy actions are intended to strengthen a "three-legged" stool supporting SB 375, namely to support efficient use of transportation and land use, housing affordability, and protection and management of natural resource areas. Each of these legs must be strong and sturdy for SB 375 to succeed. The recommended policy actions would work to ensure this in a variety of ways, starting with the state government identifying standards, programs, and policies for directing its own resources toward these ends. The policies would also empower regions and localities to accomplish SB 375 themselves. In particular, they would expand regional and local financing tools for achieving SB 375-related objectives.

- Get the "prices right" for efficient transportation and land use

  Many of the recommended policy actions would work together to ensure that governments and individual consumers face prices that more accurately reflect the full social and environmental costs of development, housing, and transportation choices.

- Promote the development of vibrant “transit villages” and “transit corridors.”

  Many of the report’s recommendations would help enable regions and localities to develop “transit villages” and “transit corridors” as vibrant, livable neighborhoods that provide not only efficient housing and transport options, but also public amenities such as schools, libraries, and parks. Some recommended policies would provide financing options for localities to “capture value” from the potential profits that transit villages and corridors can provide. Other measures would direct more state and regional resources and regulatory relief to support transit expansion and supportive land uses.

The ten recommended top-priority actions described in detail in this report are:

Transportation

1. Direct state and regional transportation funds to regions, priority development areas, and localities that achieve “smart mobility” performance targets and provide transit-supportive land uses.

2. Provide greater state and regional revenue-raising authority for transportation, contingent on those funds being used for SB 375 objectives.

3. Encourage parking strategies that promote efficient use of land and transportation.

Housing, Land Use, and Local Infrastructure

4. Provide more funding options to support infrastructure and infill development.

5. Enforce Regional Housing Needs Assessment (RHNA) requirements and redesign RHNA into a performance-based approach.

6. Modify state property tax laws that encourage localities to base land use decisions on potential revenues that can be generated (a.k.a. “fiscalization of land use”).

Natural Resources and Environment

7. Provide additional California Environmental Quality Act (CEQA) streamlining for projects within priority development areas designated in SCSs, and also provide funding mechanisms to assist local governments in conducting plan-level CEQA documentation.

8. Implement an Indirect Source Review program within regional air quality management districts to reduce vehicle miles traveled.

9. Strengthen priority regional development areas and priority conservation areas with a regional transfer of development rights program.

10. Develop and fund state and regional open space and conservation plans and programs.

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I. Introduction

California passed its landmark climate change legislation, Assembly Bill (AB) 32, in 2006, ushering in a new era in state policymaking. Faced with a challenging new environmental mandate to reduce greenhouse gas emissions, state policymakers grappled with how to comply. One result was the passage of another piece of landmark legislation in the state – Senate Bill (SB) 375 – in 2008.

SB 375 aims to achieve greenhouse gas reductions from land use and transportation through better coordination of local and regional development plans. The law requires that regions (through regional planning organizations, in cooperation with local governments) develop "Sustainable Communities Strategies" to achieve more efficient land use and transportation by aligning some planning processes that traditionally had been disconnected. However, SB 375 does not require that local governments comply with the Sustainable Communities Strategies nor does it redirect or create new funding sources to support sustainable planning practices or projects.

This report identifies state and regional policies and programs that could support the objectives of SB 375. The Center for a Sustainable California (CSC) research team first evaluated the policy context surrounding SB 375. Secondly, the team identified policies (proposed and existing) from California and elsewhere that contribute to accomplishing climate policy goals by linking land use and transportation. In addition, the team interviewed a number of stakeholders, representing various organizational perspectives, to ask for their views on a range of potential state and regional policy actions aimed at strengthening SB 375 implementation. Finally, the team developed this report, to present cumulative research findings on policy challenges that threaten to undermine effective SB 375 implementation and to recommend a set of priority actions to address these challenges.

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II. Background: Why SB 375 Was Passed

SB 375 is the nation's first law to control greenhouse gas emissions by curbing sprawl, according to California's Governor Arnold Schwarzenegger. By passing SB 375, California became the first state to legislatively link predefined greenhouse gas (GHG) emission reduction goals to physical growth patterns in metropolitan regions. In the process, SB 375 also established for California a variant of state-administered growth management similar to the systems adopted in recent decades in states such as Maryland, Florida, New Jersey, Oregon, and Washington to coordinate growth policy.

While SB 375 is ambitious in its goals, it is modest in its means. Rather than imposing a top-down, state-controlled planning system, SB 375 establishes a regional coordinating process for transportation investment and land use plans. The law's major procedural change is a requirement that existing planning processes be more closely aligned. The SB 375 process relies on existing organizations and leaves most fundamental aspects of state and local planning processes intact.

Because SB 375 relies heavily on current planning practices, its strengths and weaknesses also flow from these arrangements. To understand SB 375 and its prospects, it is therefore useful to consider briefly the recent history of these planning practices and why SB 375 emerged. This chapter first describes the main provisions of SB 375 and then considers why it was established. Then, the chapter considers strengths and weaknesses of the SB 375 planning system in the current policy context, and evaluates implementation challenges.

Major Provisions of SB 375

SB 375 directs regional and local transportation and land use planning to meet a challenging new performance target, namely to reduce greenhouse gas emissions. Existing regional planning agencies, Metropolitan Planning Organizations (MPOs) specifically, are directed to take responsibility for implementing SB 375. MPOs are regional transportation planning agencies, designated under federal law as responsible for developing federally mandated long-range regional transportation investment plans (RTPs). In most of the state's metropolitan areas, MPOs coincide with Councils of Governments (COGs), composed of representatives of local governments.

SB 375 requires that the state's eighteen MPOs achieve targets, set by the state, for reducing greenhouse gas emissions through more efficient development and better coordination. To accomplish this, MPOs must develop and implement "Sustainable Communities Strategies" (SCSs). An SCS is an enhanced land use projection for the region, intended to set forth a forecasted development pattern that will reduce greenhouse gas emissions from automobiles and light trucks, if there is a feasible way to do so. The SCS must identify the expected location of land uses and residential densities, and identify areas in the region sufficient to house all the population, including all socio-economic segments, during the planning period. The SCS also must be consistent with the region's long-range transportation investment plan (RTP). Under federal law, the RTP must be "financially constrained," that is, based on reasonably expected funding sources and levels. Also, the RTP must reflect "current planning assumptions" for land

uses, which means an SCS cannot veer very far from the current plans and policies of local government. Nothing in SB 375 requires local governments, which control most land use decisions, to alter their local plans and policies to conform to an SCS.

If a region is unable to meet its prescribed emissions reduction target through an SCS, then the region must also complete an "Alternative Planning Strategy" (APS). Unlike an SCS, an APS is not constrained to match "current planning assumptions." An APS can function like a hypothetical development plan, providing an estimate of the resources and policy changes that would be needed for the region to actually achieve its greenhouse gas reduction target.

To achieve better planning coordination in developing SCSs or APSs, SB 375 aligns three long-standing planning processes in the state more closely:

1) The regional transportation plan (RTP) process, controlled by MPOs and overseen by the state and federal governments;
2) The Regional Housing Needs Assessment (RHNA), a state-mandated process for allocating to local governments their "fair share" requirements for accommodating adequate housing, at all income levels, for each region's projected population growth. The RHNA process is also managed by MPO/COGs, in coordination with the state Department of Housing and Community Development;
3) The environmental review process under the California Environmental Quality Act (CEQA), which requires that development permitting agencies conduct environmental review and mitigation, where feasible, of negative impacts of proposed development projects. SB 375 provides for regulatory streamlining under CEQA to help achieve its objectives.

SB 375 Emerged to Address Climate Policy Goals

SB 375 emerged as a way to help meet greenhouse gas reduction goals under California's landmark Global Warming Solutions Act (AB 32, Nunez, 2006). AB 32 creates a tough performance-oriented environmental policy target for California which will affect nearly every economic sector and area in the state. The law calls for reducing greenhouse gas emissions to 1990 levels by 2020. In addition, Governor Schwarzenegger signed Executive Order S-3-05 in 2005, calling for even larger emissions reductions by 2050, to 80 percent below 1990 levels. Achieving this reduction means cutting approximately 30 percent from business-as-usual emission levels projected for 2020, or about 15 percent from current emission levels (CARB, 2008).[1]

AB 32 charges the California Air Resources Board (CARB) with developing and implementing the regulations needed to reduce emissions. In December, 2008, the CARB Board adopted a Scoping Plan outlining policy measures to implement AB 32. CARB must adopt enforceable regulations by January 1, 2011 to implement the measures.

[1] In December 2007, the California Air Resources Board ARB approved a greenhouse gas emissions target for 2020 equivalent to the state's calculated greenhouse gas emissions level in 1990. The 2020 target of 427 million metric tons of carbon equivalent (MMTCO2E) requires the reduction of 169 MMTCO2E, or approximately 30 percent, from the state's projected 2020 emissions of 596 MMTCO2E (business-as-usual) and the reduction of 42 MMTCO2E, or almost 10 percent, from 2002-2004 average emissions.

With transportation-related emissions the largest single source of greenhouse gas emissions in the state, at 38%, many of the Scoping Plan's proposed measures address transportation (CARB, 2008).[2] To address these emissions, CARB has adopted a three-pronged strategy – reducing greenhouse gas emissions from vehicles, reducing the carbon content of the fuel these vehicles burn, and reducing the miles these vehicles travel (VMT). SB 375 addresses the third of CARB's strategies – reducing VMT. Most of the transportation-related emissions reductions that CARB proposes to achieve in the Scoping Plan come from the first two strategies – accounting together for 27% of all targeted GHG emissions reductions by 2020 (CARB, 2008, p. 17). By contrast, "regional transportation-related greenhouse gas emissions reductions targets," which are to come from SB 375-related activities, are projected to reduce emissions by 5 million metric tons of carbon equivalent, or 3% of all GHG emission reductions in the Scoping Plan.

Why does the Scoping Plan emphasize the two technology-related strategies rather than SB 375-related measures for reducing emissions? To some degree, this imbalance reflects the time frame of the Scoping Plan, which extends to 2020. Changes to land use and transportation infrastructure such as envisioned in SB 375 take a long time to implement. The technology-related strategies are expected to produce more immediate effects. However, CARB also recognizes that over the long run, the SB 375 component will be increasingly important for achieving emissions reductions. The Scoping Plan notes that,

> In order to achieve the deep cuts in greenhouse gas emissions we will need beyond 2020 it will be necessary to significantly change California's current land use and transportation planning policies. Although these changes will take time, getting started now will help put California on course to cut statewide greenhouse gas emissions by 80 percent in 2050 as called for by Governor Schwarzenegger (CARB, 2008, p. ES-12).

The importance of "getting started now" on reducing VMT was emphasized in research by the California Energy Commission (CEC, 2007). The CEC projects that over the long run, continuing increases in per capita VMT in the state will erode the GHG emissions reductions that can be achieved through technology alone. The CEC estimates that fuel and vehicle efficiency standards implemented to comply with AB 32 will result in GHG emissions from transportation that are 15% above the required level in 2030 instead of substantially below, as needed in order to reach the levels mandated by 2050 (CEC, 2007). These long-term consequences make SB 375 especially critical in helping California achieve post-AB 32 reductions, past 2020.

SB 375 Evolved from Regional Blueprint Planning

If the catalyst for passage of SB 375 was to meet AB 32 goals, then the vehicle for reaching the goals was regional blueprint planning. The planning process outlined in SB 375 was not created from a blank slate; instead it evolved directly from the blueprint process.

[2] Carbon dioxide accounts for most (88 percent) of the state's greenhouse gas emissions (California Air Resources Board, *1990-2004 inventory by economic sector - Full Detail.xls*, from http://www.arb.ca.gov/cc/inventory/data/data.htm). Most (96 percent) of the state's carbon dioxide emissions come from fossil fuels (Gerry Bemis, *Inventory of California Greenhouse Gas Emissions and Sinks: 1990 to 2004*, California Energy Commission, December 2006).

Blueprint planning emerged in the late 1990s, in the state's four largest metropolitan regions (the Los Angeles, San Francisco Bay, San Diego, and Sacramento areas). It was a new approach to developing land use projections for RTPs, linked more closely to local land use planning. By 2004, the regions' MPOs had each adopted a blueprint (Barbour and Teitz 2006). Blueprint planning utilizes a coordinated outreach process—called a visioning process—to develop a regional consensus on a preferred course of future development. This preferred scenario is chosen through a coordinated series of workshops held around the region for public officials, various other stakeholders, and the public. At the workshops, hands-on techniques, including computer modeling, are used to consider alternative land use and transportation scenarios for localities and the region. The visioning process culminates in adoption of a "preferred scenario" for future development – a scenario which has generally included more compact development than under *status quo* local plans and policies.

Why did California's MPOs develop the blueprint approach by the late 1990s? They had little choice. Activists and community leaders were pressuring the COG/MPOs to address growth-related problems. Meanwhile, during the same period, federal and state reforms had devolved authority and responsibility for transportation planning to the regional level, while also strengthening air quality mandates.[3] The reforms provided the COG/MPOs with a huge new carrot—the authority to "program" billions of dollars in transportation investments—but also a big stick as regional transportation plans were now required to conform to regional air quality plans.

Blueprint processes helped COG/MPOs meet their new responsibilities by attaining air quality conformity more easily and also enabling more efficient transportation investments. To accomplish this, blueprint planning inverted the traditional relationship between local land use and regional transportation planning. In the traditional planning model, local land use choices were taken as a given, and then transportation investments were identified to improve mobility. By contrast, blueprint planning considers local land use choices in a regional context, and even re-orients them to support efficient transportation investments.

SB 375 Emerged to Link Disconnected Planning Processes

By the mid-2000s, blueprint planning was gaining attention at the state level as a promising approach for addressing various growth-related issues, including a housing affordability crisis and overtaxed infrastructure facilities. Blueprint planning gained credibility as a venue for helping address these concerns through better planning coordination and as a politically palatable approach in a state where "top-down" growth management policies often meet resistance. After AB 32 was passed, state lawmakers looked to the blueprint process as a useful vehicle for helping achieve climate policy goals.

[3] The federal Intermodal Surface Transportation Efficiency Act (ISTEA), passed in 1991, required MPOs to take the lead in developing RTPs. In 1997 the state completed its own form of devolution through passage of Senate Bill 45, which provided regional transportation planning agencies with authority to program state capital investment funds for transportation allocated for metropolitan areas—75 percent of all such funds statewide.

Strengthening the Connection between RTPs and RHNA

SB 375 links local housing policy more directly to RTPs, by aligning RTP and RHNA schedules in each region[4] and requiring that they be consistent. Furthermore, RHNA requirements are also tougher under SB 375; each COG/MPO must identify, in its SCS, areas within the region sufficient to house the entire projected workforce over the planning period, without allowing any of the needed housing to "spill over" to surrounding areas.[5] Enforcement mechanisms are also stiffer under SB 375 than in the past.[6]

What do these provisions mean for the interaction of housing and transportation policy? A legal advisor to the League of California Cities notes that, "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" (Strauss, 2009, p. 8). In other words, the RHNA provisions are among the strongest elements in SB 375 that connect the SCS to the RTP and to local general plans.

A potential casualty in this new process is the state's traditional approach to "fair share" housing allocations to promote the goal of income desegregation. Through the RHNA process, COG/MPOs allocate to each locality its "fair share" of the region's projected housing need, broken down by affordability categories. Local governments are then required to update General Plans and zoning to accommodate their target. Under SB 375, some jurisdictions may be asked to take on more housing than they would have in the past, and others less. Some low-density, wealthier, outlying suburban communities may receive smaller portions of the region's housing target. This issue is addressed in more detail in this report's recommendations section.

Creating a Stronger Link between CEQA and Regional Plans

In the larger framework of policies that guide growth management, environmental policy has traditionally been regarded as a largely "top-down" function, governed by mandates from the federal and state levels (Mazmanian and Kraft, 2009). Many prescriptive environmental mandates have significantly affected local land use and transportation planning, such as the air quality conformity mandates described above. However, one state environmental law—the California Environmental Quality Act (CEQA)—forms an exception to this general approach. CEQA has very substantial effects on land use decisions, but its effects come from "the bottom up" more than the "top down." Because of the close connection of CEQA to land use decision-making, SB 375 includes provisions to orient CEQA to help achieve its goals.

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[4] The RHNA timeline is extended to match the RTP cycle (it is extended from five years to eight years in air quality non-attainment areas; MPOs complete RTPs on a four-year cycle in these areas).

[5] In the past, blueprints in a few of the state's metro areas exported some of their projected housing need; a share of new housing to accommodate projected employment growth was assumed to be developed in surrounding areas (Barbour and Teitz, 2006).

[6] Local governments have 18 months after the adoption of a RHNA/RTP to complete a new housing element and associated zoning changes. If the housing element does not identify adequate sites for housing for all income levels, local governments are required to rezone to provide adequate sites within three years of the adoption of the new housing element. If a local government does not complete the rezoning as required, significant restrictions are placed on that local government's ability to disapprove or condition a housing project that contains at least 49 percent of the units for lower-income households, and legal sanctions are permitted.

A strong state version of the National Environmental Policy Act (NEPA), since 1976, CEQA has required that all government regulatory actions affecting development be subject to environmental review, and to mitigation by project applicants of identified significant adverse environmental impacts "where feasible." Similar to many California planning laws, CEQA establishes mainly procedural requirements and allows local governments to retain broad authority and discretion over implementation and objectives. Although CEQA requires that localities evaluate and discuss adverse impacts and possible alternatives and mitigation measures, in the end localities may issue "Statements of Overriding Consideration" that allow a project to be approved regardless of its adverse effects.

Developers have long argued that CEQA is used as a "NIMBY" tool to resist development, as neighborhood project opponents sometimes raise complaints under CEQA which stall or modify projects. Whether or not CEQA is used as a NIMBY tool, some research indicates that the most common challenges raised under CEQA, and the most common mitigation measures adopted, do not relate directly to "traditional" environmental issues (such as water/air quality or endangered species) but rather to quality-of-life concerns about infrastructure and service deficiencies caused by projects, such as traffic, noise, and school service shortages (Johnston and McCartney 1991; Barbour and Teitz 2006). Such concerns might better be addressed through local or regional growth planning processes.

Another long-standing complaint about CEQA is that it tends to encourage incremental, project-by-project analysis and meshes poorly with long-range, comprehensive planning processes (Olshansky, 1996). Application of CEQA is often piecemeal and can result in actions detrimental to environmental quality (Landis et al. 1995). For example, lowering a residential project's density can help mitigate traffic congestion or open space problems at the local scale, but when viewed regionally, this action might only compound the problems if development is pushed to outlying areas. If, instead of being displaced, the development fails to occur, then the so-called mitigation may compound housing shortages. Considering such effects, some critics have charged that CEQA's project-level focus is "the antithesis of sustainability on the scale of the metropolitan region and the State" (Sargent et al. 2004, p. 3).

To address concerns about incremental, project-level analysis, reforms were introduced during the 1980s and early 1990s to encourage tiering, that is, "front-loading" environmental review as much as possible at the scale of long-range community plans.[7] These plans can then serve as a framework for subsequent review of individual projects that were outlined in them. For example, in 1993, the legislature authorized use of Master Environmental Impact Reports (MEIRs), which allow lead agencies to review environmental consequences of broad policies or programs at the

[7] Reforms from 1979 to 1985 introduced general provisions and specific mechanisms to promote tiering, defined as the coverage of environmental effects in an EIR prepared for a policy, plan, program, or ordinance, followed by narrower or site-specific EIRs that incorporate by reference the prior EIRs. Tiering may be used for a later project when the lead agency determines that it is consistent with the program, plan, or ordinance for which the prior EIR was planned or certified, is consistent with applicable local land use plans and zoning, and is not subject to conditions requiring a subsequent EIR (such as if the later project may cause significant effects not examined in the prior EIR). The later project EIR need not examine those effects that were previously mitigated or avoided or examined sufficiently so as to be capable of being avoided by site-specific revisions or conditions for approval.

planning stage, leaving more detailed examination of specific environmental impacts of subsequent projects to project-level review.[8]

However, in spite of the introduction of tiering provisions, the bridging of project and plan level review has been difficult in practice. For example, by 2002, less than one quarter of cities and counties had taken advantage of the MEIR option (OPR, 2003). Practitioners have noted various obstacles to widespread use of tiering, including legal, procedural, planning, and fiscal issues.[9] Such critiques suggest that widespread adoption of tiering cannot occur without incentives to support it – incentives that enable localities to front-load costs, procedural requirements, and legal vulnerability of project-level review and impacts.

As another method for overcoming CEQA obstacles to infill development, the state adopted a series of measures during the past decade to exempt infill projects from CEQA review.[10] However, research conducted in 2005 and 2006 suggested that few developers and localities were taking advantage of the exemptions (Elkind and Stone, 2006).[11] The research determined that the slow take-up rate for infill exemptions could be attributed to various factors including narrowness of the exemptions, fear of legal liability, inconsistency of many proposed projects with local General Plans, reluctance by developers to arouse "NIMBY" sentiment, and resulting preference by developers to use sites already cleared for development through local plans (ibid).

By the mid-2000s, CEQA reform had become a hotly debated topic at the state capitol, linked to discussions about growth management reform. Governor Schwarzenegger's administration targeted CEQA reform as one way to promote housing production, advocating an easing of CEQA review (Krist, 2005). Meanwhile, other reformers advocated new tiering policies to support compact development and "smart growth." From this perspective, CEQA should be reoriented to accommodate and support strategies to enhance regional objectives (such as for reducing transportation-related GHGs), even if this means easing CEQA review of some projects with localized impacts. If local project review could be tiered off stronger regional environmental plans, a new frame might be set for more coordinated strategies.

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[8] Under this statute, a lead agency prepares an MEIR to evaluate the cumulative impacts, growth-inducing impacts, and irreversible significant effects of subsequent projects to the greatest extent possible. An EIR is then not required for subsequent projects outlined in the MEIR if it is no more than five years old or certified adequate, includes a capital outlay program for the subsequent project, and there are no additional site-specific significant effects, based on an Initial Study. For those with some effects, a streamlined, "focused EIR" is allowed if the lead agency finds that the MEIR of cumulative, growth-inducing, and irreversible significant effects is adequate. CEQA review can be limited to impacts "peculiar to the parcel or project" unless there is "substantial new information." Since 2004, agencies have also been allowed to adopt mitigated negative declarations that tier off of MEIRs.

[9] See Barbour and Teitz (2005) for a discussion of these obstacles.

[10] In 1998, the state legislature enacted a CEQA exemption for 100-unit affordable housing projects in urbanized areas. The same year, a categorical exemption was added to CEQA guidelines for infill development consistent with General Plans and zoning and that met other criteria (Elkind and Stone, 2006). (Categorical exemptions, provided through CEQA guidelines, are considered "soft" exemptions because the guidelines also state they should not be used if "there is a reasonable possibility that the activity will have a significant effect…due to unusual circumstances.") In 2002, exemptions for infill and affordable housing were strengthened through passage of SB 1925, which created a "harder" statutory exemption for projects that meet certain criteria, including consistency with a General Plan (ibid). However, localities still retain considerable discretion to determine whether "unusual circumstances" exist for a given project.

[11] In 2005, only 15% of local planning agencies reported having used the categorical exemption for infill. Less than 3% were using the new statutory exemption provided by SB 1925 (Elkind and Stone, 2006).

SB 375 addresses these issues by linking CEQA review more closely to regional plans, specifically SCSs or APSs, and by strengthening the exemption for infill projects that are consistent with an SCS or APS. If a project is deemed consistent with a regional SCS or APS that the California Air Resources Board agrees is sufficient to achieve the greenhouse gas reduction targets for the region if it were implemented, the project can avoid certain CEQA review requirements, including the need to assess growth-inducing impacts and project specific or cumulative impacts from cars and light-duty truck trips on global warming. Infill projects that meet certain criteria are eligible for other forms of CEQA streamlining, up to and including total exemption from CEQA. These provisions, as well as their potential effectiveness, are discussed in more detail later in the report.

III. Implementation Challenges

SB 375 builds on strengths of California's planning system and recent planning innovations. In particular, it builds on the innovative regional blueprint process, which has galvanized regional problem-solving capacity. Through the blueprints, the state's MPOs have pioneered many regional smart growth techniques, such as funneling competitive grants and loans to localities that provide supportive land uses for transit expansion, and conditioning the provision of new transit funds on supportive local land uses.

SB 375 retains the governance framework that underlies the blueprint model, so it makes use of the same capacity for innovation and consensus-building. However, the blueprint governance model also has some inherent weaknesses when it comes to producing plans with a strong regional focus, weaknesses that can be expected to persist under SB 375.

In the state's planning framework, most MPOs coincide with Councils of Governments (COGs). COG/MPOs act as an interface between local governments and state and federal programs and have no independent authority as such. COG/MPOS are governed by representatives of local governments and sometimes other entities such as transit districts, and are not directly accountable to voters. Governing boards of the larger COG/MPOs generally operate on a combination of population and one-government, one-vote bases.

This structure maintains broad local government "buy-in" for regional decision-making; COG/MPOs must devise policies that gain broad support from member local governments. To implement SB 375, COG/MPOs must convince member local governments that adopting local policies with regional benefits is in their self-interest. In relation to land use, COG/MPOs have no actual authority; they can only influence local policy by providing incentives from their own resources, or through peer pressure or technical assistance.

The voluntary, collaborative COG/MPO governance structure has long made it difficult to develop plans and programs with a strong regional systems focus. The governing structure can foster a "lowest common denominator" approach to policymaking, steering away from controversial policies that could create winners and losers among local government members. COG/MPOs face a structural incentive to allocate benefits or mandates equally across jurisdictions (sometimes called the "peanut butter approach") (Innes and Gruber, 2001; Speaker's Commission on Regionalism, 2002).

Compact development, such as is encouraged by SB 375, has been contentious in some blueprint processes. To resolve conflicts, some MPOs have "exported" projected housing growth to other regions, assuming that the growth will occur outside the region rather than devising strategies to accommodate it within the region. Many MPOs distribute rewards and incentives broadly among participating jurisdictions.[12] Although this practice helps to maintain "buy-in," it can also dissipate the effectiveness of strategies that rely on concentrating resources. An independent review of transit strategies in the San Diego region, conducted by a panel of experts, concluded that the effectiveness of the MPO's smart growth plan "is diluted by the effort to apply smart

[12] For more about the history of blueprint development and implementation, see Barbour and Teitz (2006).

growth principles too broadly. A more effective strategy might be to focus smart growth incentives in areas where a more immediate effect could be realized" (Wilbur Smith Associates, 2006, p. ES-4).

The MPO role is further constrained by funding formulas that tend to reinforce the county role in transportation programming. MPOs' main source of authority is their control over allocation of Regional Transportation Improvement Program (RTIP) funds, the state's main program for transportation capital expansion in urban regions.[13] Allocating RTIP funds is central to SB 375, because RTIP projects and dollars represent much of the leverage in SB 375 for inducing more sustainable development patterns. MPOs select transportation capital investment projects for funding in the RTIP based on regional and local priorities, as defined in their long-range (20+year) regional transportation plans (RTPs). In air quality non-attainment areas (which comprise most of the state), MPOs complete RTPs on a four-year cycle.

According to an established formula, funds for the RTIP are geographically divided by a "north-south split" and then further divided into county shares based on a statutory formula based on population and highway lane-miles. Further complicating decision-making are governance provisions that "sub-allocate" programming authority to county agencies in a few regions, including the Los Angeles area. Another related issue is that in urban areas, county transportation planning agencies are required to prepare biennial Congestion Management Plans, which tend to influence outcomes in terms of RTIP funding priorities. The result is that, like MPO/COG governance arrangements, the transportation funding system also can make it harder to produce plans with a regional focus, especially in multi-county regions. (These issues and their implications are considered in more detail later in the report.)

SB 375 is likely to be prone to similar weaknesses as blueprint planning, because it retains the same governance model. As it stands, the incentives under SB 375 for local government participation in SCS development may be too weak to induce substantial changes in behavior. MPOs can direct their transportation funds to reward jurisdictions that provide supportive land uses, but they also face strong incentives to distribute their resources more broadly. The main new incentive supplied through SB 375 to induce a locality to promote infill development is to obtain regulatory streamlining under CEQA. However, that option depends on a locality choosing to make use of the CEQA streamlining. Many jurisdictions and developers may not feel inclined to do so, especially if they face opposition from residents. (These issues are also considered in more detail later in the report.)

[13] The State Transportation Improvement Program (STIP) is the state's main program for transportation capital expansion. Since passage of Senate Bill 45 in 1997, 75 percent of STIP funds have been allocated to the Regional Transportation Improvement Program (RTIP) to fund projects in the state's urban areas – projects chosen by the state's 48 Regional Transportation Planning Agencies (RTPAs). The remaining 25 percent of funds are designated for the Interregional Transportation Improvement Program (ITIP) to fund projects chosen by Caltrans for programs outside urban areas. Authorized through specific legislation, designated RTPAs usually coincide with an area's council (or association) of governments, and/or a county transportation commission. In the state's metropolitan areas, RTPAs also tend to coincide with MPOs. RTPAs (or RTPA/MPOs) select transportation capital investment projects for funding in the RTIP based on regional priorities, as defined in their 20-year regional transportation plans (RTPs). Projects are selected from a large pool of projects proposed by cities, counties, and transit agencies. The RTPAs then submit their respective lists to the California Transportation Commission for approval. The CTC can either adopt or reject an individual RTIP in its entirety, but cannot delete or add specific projects. Together, the 48 regional proposals form the statewide RTIP.

SB 375 provides no additional resources, in the form of state funds, to cover planning costs or to reward localities that choose to adopt policies with regional benefits but local costs. Those costs, which can be substantial, include costs for building infrastructure to support infill development, addressing service needs of new residents, and addressing localized impacts such as increased traffic congestion. Thus, SB 375 does little to alter current governance arrangements or to provide new funds or other incentives that could substantially boost infill development.

SB 375 Depends on State Support to Work

The governance model of SB 375 requires strong state support to work effectively. The law depends fundamentally on local government participation in developing plans and policies to support state and regional objectives, and the state government sets the framework of fiscal and regulatory policies in which local governments make those choices. If state policies work to support SB 375, then its collaborative governance model can work as a means for coordinating state and local priorities and preferences. However, if state programs and policies do not provide sufficient support or counteract SB 375 objectives, then there is little reason to expect local governments to develop ambitious SCSs through the MPO/COG framework.

Furthermore, the state government has many more resources than MPOs to incentivize land use choices that support SB 375, whereas MPOs are limited to using the transportation dollars over which they have authority. If MPOs direct those funds toward rewarding local jurisdictions for land uses supporting SB 375, they will have fewer funds available for other transportation-related projects and maintenance of existing infrastructure.

It is important to recognize that, given the structure of regional decision-making in California, SB 375 cannot work optimally unless the state government provides strong support. Some state policies and programs do currently work to promote SB 375 objectives. One example is a set of new programs funded through Proposition 1C, a $2.85 billion state housing bond passed by voters in 2006. The $300 million Transit-Oriented Development Program, funded through Proposition 1C, provides low interest “gap” financing for rental housing development projects, as well as mortgage assistance, for affordable housing within ¼ mile radius of transit stations. The $850 million Infill Infrastructure Grant Program, also funded through Prop 1C, supports the construction and rehabilitation of infrastructure for higher-density affordable and mixed-income housing development in infill areas. Both programs are administered by the state’s Department of Housing and Community Development.

Prop 1C programs represent the first time that California has put substantial resources behind a policy to support infill development. In fact, the premise for the programs was devised by the MPOs themselves, some of which have been providing such incentive grants to localities since the early 2000s. However, it is difficult for MPOs to direct substantial amounts of transportation funding toward land use-related programs and projects.

Many other state programs send a different message than Prop 1C, however; they do not work to support SB 375 objectives. An example is Proposition 1B, a $20 billion transportation bond passed by voters along with Proposition 1C. Proposition 1B directs only $4 billion, or 20% of its total funds, to transit expansion. The legislature subsequently exempted all projects funded through Proposition 1B from conformity with SB 375. More recently, substantial state budget

cuts to transit have further undermined SB 375 objectives. Approximately $1 billion of transportation funding was diverted in the 2009-10 state budget to relieve the deficit in the state's General Fund (MTC, 2009). Given that SB 375 relies on transportation investment as leverage for achieving success, these state actions send mixed signals to local governments about how strongly the state endorses the SB 375 process. (These issues are considered in more detail later in the report).

Recent funding cuts to cities, counties, transit agencies, and redevelopment districts exacerbate more long-standing fiscal limitations faced by these agencies and local governments. Many state fiscal policies work against SB 375 objectives. In particular, fiscal policies for local governments discourage infill and housing development. Since Proposition 13 was passed in 1978, local governments' ability to raise property tax revenue – the traditional mainstay of local government finance – has been limited. In addition to cutting property taxes substantially, Prop 13 also mandated a two-thirds vote in both state legislative houses to approve state tax increases and a two-thirds local popular vote for local special taxes (which were not defined). In 1996, voters passed Proposition 218, which established that majority voter approval is required to impose or increase any local tax for general purposes, and two-thirds voter approval is required for taxes designated for special purposes.[14]

Local governments have responded to these fiscal limitations by maximizing revenue sources over which they retain control.[15] Community-wide taxes and services, traditionally derived mainly through property taxes, have declined as a share of city finance.[16] The cost of city services has become increasingly "internalized," based on a "user pays" principle. Such financing may be efficient economically if services can be treated independently. However, as community-wide taxing power declines, community-wide needs such as shared infrastructure become harder to address. This challenge directly affects opportunities for supporting infill development, which often requires rehabilitation of old or heavily burdened public facilities.

Fiscal constraint affects local government choices about land use and development in other ways as well. As land use choices became increasingly "fiscalized" (scrutinized with an eye to budget impacts), one consequence is that city governments strongly favor retail development over housing and industry—land uses generally less able to "pay their way" in terms of the cost of services (Lewis and Barbour, 1999; Coleman, 2006). Cities compete to attract retail development and associated sales tax revenue, which in California is allocated to the jurisdiction in which the sale occurred.

Another land use impact has been to transfer the costs of infrastructure for new development onto the development itself. Local officials can impose fees and exactions on developers and

[14] Vote requirements for property assessments and property-related fees and charges also were specified. New benefit assessments must meet extensive requirements for determining proportionate benefits and weighted voting according to benefit.

[15] In particular, cities became more aggressive about imposing user charges and fees. Revenue from charges and fees increased by 162 percent in California cities from 1972 to 2002, faster than for California counties and cities in the rest of the nation (Barbour, 2007). Per capita revenue from benefit assessments in California nearly doubled from 1987 to 2002, reaching a level more than twice as high as in the rest of the U.S.

[16] Before Prop 13, most community-wide discretionary revenue came from two sources—property and sales taxes. These sources declined from 39 percent of city revenue in 1972 to 29 percent in 2002 (Barbour, 2007).

create community facilities districts.[17] These techniques facilitate development in "greenfields" more than "infill" areas, because fees imposed on new development do not require voter approval, and because they are easier to coordinate than in already built-up areas. Moreover, infrastructure needs in developed areas are often more expensive to address than in greenfield areas.

Conclusions

In many respects, SB 375 represents a bold new step for California. It aims to achieve a challenging policy objective, namely to reorient development planning to help reduce greenhouse gas emissions substantially. This is like turning a huge ship around, because many aspects of the current planning and development process (including some mentioned above) facilitate low-density, car-dependent development instead.

However, in its methods for accomplishing this goal, SB 375 represents merely an evolution in planning practice in California. It retains the fundamental elements of the existing planning system, while also strengthening coordination between major regional planning programs – the RTP and RHNA processes – and aligning CEQA more closely to support regional planning objectives.

On its own, it is unclear that SB 375 can turn the ship around. The voluntary governance model of SB 375 contains strengths and weaknesses, which reflect its collaborative approach. On the one hand, collaborative governance makes SB 375 an ideal vehicle for developing consensus across state, regional, and local lines in articulating new development priorities. On the other hand, the collaborative framework means that the support structure of state policies surrounding SB 375 is critical to determining success. If that structure is weak, or even worse, counter-productive, then SB 375 simply cannot be expected to overcome those obstacles.

Some state policies and programs – Proposition 1C in particular – have moved California toward fully supporting SB 375. However, Prop 1C is not an ongoing program, and too many state policies work in a different direction. Until the state government takes further action to support SB 375, it is not clear that this promising new approach can achieve its goals.

In the next sections, this report will discuss steps the state government can take to strengthen the SB 375 support system. Some of these policies require more concerted action by the state government in terms of directing its own resources and programs toward SB 375 objectives. However, other policy options would empower regions and localities to address those objectives themselves with more appropriate tools.

[17] In 1982, the state authorized "Mello-Roos" financing. Within designated areas, two-thirds of the voters, or landowners representing two-thirds of the land area, can issue debt for capital improvements, and levy taxes to pay for it. In practice, governments often work with developers to establish such districts for new neighborhoods.

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IV. A Proposed Policy Framework to Support SB 375

To ensure successful implementation of SB 375, a strong framework of policies and programs should be established at the state, regional, and local levels, to support its goals. This section outlines the key elements of such a policy framework, and considers the state government's role in coordination and monitoring of growth management policies and programs.

Elements of an Effective Framework

Effective implementation of SB 375 will require policies and programs that:

- Encourage efficient land use and transportation,
- Keep housing affordable for a range of incomes,
- Conserve and manage natural resource areas, while
- Respecting local preferences, differences, and innovations.

This set of policy goals reflects the "three E's" of sustainable development – to strengthen and enhance equity, the economy (through efficient resource use), and environmental quality simultaneously. A policy framework to accomplish this should establish:

- Clear goals
- Clear means to achieve these goals
- Coordination with other related policies
- Maintenance of implementation flexibility
- Adequate funding
- Clear enforcement measures
- Clear means of evaluating and monitoring goals

These policy elements conform to lessons from national research on policy elements necessary for effective growth management (Ingram et al, 2009; Carruthers, 2002; Porter et al, 2005; Binger et. al, 2008).

Policy Goals

The policy framework outlined above starts with the requirement for setting clear goals. Does California have clear policy goals and objectives in place for implementing SB 375? AB 32 establishes a strong policy mandate, with quantifiable goals for reducing greenhouse gas emissions. However, it has not yet been translated into clear policy objectives for land use and transportation. SB 375 was passed to help take that step; it establishes the process for developing GHG reduction targets, under AB 32, for land use and transportation, and it also establishes an ongoing regional planning process to achieve them.

However, while SB 375 calls for a coordinated planning process, it does not specify explicit transportation or land use objectives to achieve the GHG targets. This flexibility is a potential strength of SB 375, in that it allows for state, regional, and local innovation in meeting the AB 32 targets. However, lack of clear policy objectives for land use and transportation could also

hinder SB 375 implementation. MPOs utilize performance standards in developing RTPs, but their methods vary. For its part, the state government has not developed and applied a systematic performance management framework for growth and investment policy to align with SB 375. Until its objectives are operationalized into measurable performance standards, it will be hard for the state to know whether its policy measures work to achieve the goals.

In fact, California does have a law in place that establishes policy guidance for growth management, which could be used to develop clearer objectives for land use and transportation policy under SB 375. Assembly Bill (AB) 857 (Wiggins, 2002) established an over-arching set of planning priorities to guide state policymaking related to land development:

- To promote infill development and equity by rehabilitating, maintaining, and improving existing infrastructure, particularly in underserved areas, and to preserve cultural and historic resources;
- To protect, preserve, and enhance environmental and agricultural resources, including working landscapes, natural lands, recreation lands, and other open spaces; and
- To encourage efficient development patterns by ensuring that new infrastructure supports development that uses land efficiently, is built adjacent to existing developed areas, is in an area planned for growth, is served by adequate transportation and other essential utilities and services, and minimizes ongoing costs to taxpayers.

AB 857 requires that state entities' functional plans, as well as state agency infrastructure requests, demonstrate consistency with these planning priorities. Consistency must also be demonstrated through the state's five-year infrastructure plan, which the administration has been required to prepare annually since 2002.[18] AB 857 also requires that the Governor's Environmental Goals and Policy Report (EGPR) be consistent with the planning priorities. The EGPR, required by state law since 1971, is intended to provide a 20- to 30-year policy framework for state growth and development, and to guide state expenditures.

Together, AB 857, the EGPR, and the five-year infrastructure plan could provide an effective integrated framework for land use and resource planning and policy. However, implementation has not been systematic (Dowall and Reid, 2008; Fulton, 2008; LUSCAT, 2008). Although the Schwarzenegger administration has prepared the five-year plans, it is not clear how they work to achieve AB 857 goals. The priorities have not been operationalized into systematic standards or mandates. The EGPR has been prepared only twice – once in 1978 by Governor Edmund "Gerry" Brown's administration, and again in 2003 under Governor Gray Davis.

Policy Objectives and Standards

Translating the goals of AB 857 into clear, operational objectives for land use, housing, and transportation policy could help achieve SB 375 while also ensuring that state infrastructure and growth policy is more consistent, coordinated, and efficient. To support SB 375, the state could establish (and/or support regional agencies and local governments that establish) quantifiable performance standards for achieving the following:

- Reducing VMT-related greenhouse gas emissions through land use, housing, and transportation investment.

[18] The plan describes infrastructure needed by state agencies and schools, and proposes funding for facilities.

- Ensuring the provision of adequate housing, including affordable housing, especially near transit.
- Protecting and expanding natural resource areas and open space in metropolitan regions.

How might these standards be operationalized? This report discusses some options in depth in its specific high-priority recommendations, which follow this chapter. Developing a VMT reduction standard will be especially important for use at the regional level, for example in evaluating SCSs. That is because there is currently no mechanism in place to ensure that greenhouse gas reductions in SCSs derive from actions that work to reduce VMT. If SCSs do not work to reduce VMT, then a critical tool for reducing transportation-related GHGs will remain weak.

A quantifiable affordable housing standard might be necessary for local governments or regions in relation to RHNA requirements in order to evaluate their SB 375 achievements. One way this might be accomplished is by developing a new standard to measure (and then reward) actual production of RHNA-imposed targets for new housing at different income levels. The report discusses this option in the recommendations section.

Natural resources standards might include determining whether local governments or regions have designated areas off-limits to development which align with state-regulated environmental plans such as multi-species habitat, watershed management, and stormwater plans, and requiring that localities and regions (through MPOs) participate in development of, and contribute to long-term implementation and funding for, mitigation plans that apply to the jurisdictional territory in question.

How could such standards be developed and utilized? The standards might be developed by an independent board similar to the Regional Targets Advisory Committee now tasked with recommending to CARB how to set the MPO GHG reduction targets under SB 375. This independent board might report to a state oversight and coordinating body, such as the Strategic Growth Council (SGC), which could take on the responsibility of overseeing a more coordinated approach to state growth management policy and programs. The SGC was established in 2008 to promote "sustainable communities," and consists of the Secretaries of relevant state agencies.[19] The standards themselves could be administered by the appropriate agencies (for example, Caltrans and the California Transportation Commission (CTC) for transportation standards, the Department of Housing and Community Development (HCD) for RHNA standards, and the Natural Resources Agency for resources standards.

Potential uses for the standards include:

- Determining how the state invests its own money, such as transportation, housing, and natural resource bond dollars.
- Determining which localities are rewarded with (or given priority for) state and regional grants and loans.

[19] The SGC consists of the Secretaries of the following agencies: Resources; CalEPA; Business, Transportation, and Housing (BTH); and Health and Human Services. Among other duties, the Council has been directed to identify programs that may be coordinated to: improve air and water quality; improve natural resource protection; increase the availability of affordable housing; improve transportation; meet the goals of AB 32; encourage sustainable land use planning, and; revitalize urban and community centers in a sustainable manner. In addition, the SGC is tasked with recommending policies and investment strategies to encourage the development of sustainable communities.

- Communicating with MPOs regarding their standards and measures for implementing SB 375.

Coordination and Monitoring

Coordination and monitoring are two other key elements of this proposed policy framework. Better coordination and monitoring is needed especially at the state level, where these aspects of growth policy have been particularly weak. To address these concerns, the CSC proposes that an inter-agency body, such as the Strategic Growth Council (SGC), be empowered to oversee and coordinate state policies to achieve the goals outlined in this report. The SGC could be assisted by an independent board authorized to help set performance targets (similar to the Regional Targets Advisory Committee).

The SGC could also implement and oversee an ongoing system for monitoring performance of relevant policies and programs. This might include periodic assessments of needs and progress in key policy areas. The development of SCSs and APSs provides an invaluable opportunity for the state to consider what resources and policies will be necessary to achieve sustainability goals. A state process is needed to collate and summarize the regional results to inform Californians about what it will take for the state to live up to its climate policy goals and other sustainability objectives. Finally, the SGC should also consider "meta-scale" growth issues that extend beyond regional boundaries – issues relating to overall impacts on state resources, for example, or to inter-regional needs and relationships. As the state's regions grow ever more inter-connected within "mega-regional" frameworks, such cross-jurisdictional perspectives will be essential.

Conclusion

California needs a more coordinated approach at the state level to managing growth policy. Too many policies work to counteract SB 375 objectives, and to-date there has been too little effort at the state level to change that. The next section of the report completes the picture by setting out a series of individual but related high-priority actions to strengthen SB 375, within the parameters of the framework discussed above. Some of the recommendations emphasize action at the state level, while others call for empowering regions and localities to address SB 375 on their own. Ultimately, all these approaches are necessary, and the broad state-level coordinating framework presented in this section provides a means for ensuring that such policies work in tandem.

V. Specific Policy Actions to Strengthen SB 375

In this section, the CSC presents ten high-priority recommendations for strengthening SB 375. These are intended to work together in a mutually supportive fashion. Some approaches emphasize action at the state level, while others call for empowering regions and localities to address SB 375 with more appropriate tools. Given the ongoing budget crisis at the state level, actions to empower regions and localities may offer the most immediate promise. Ultimately, however, all these approaches are important in creating a strong policy support system to assure that the objectives of SB 375 are achieved.

Strategies

The high-priority recommendations presented in this report advance the following general strategies:

- Provide stable, ongoing funding for transit, transit-oriented development, affordable housing, and protection of natural resource areas;
- Provide stable, ongoing funding needed to plan for sustainable development;
- Designate desirable areas in urban regions for transit expansion and transit-oriented development ("priority development areas"), and designate areas in urban regions that should be off-limits to development ("priority conservation areas");
- Allocate resources to the above-mentioned areas;
- Utilize quantifiable performance measures to evaluate and reward desirable outcomes, and allow for flexibility in accomplishing these outcomes;
- Provide funding incentives and disincentives (rewards and penalties) that encourage efficient development and put a price on "sprawl";
- Expand regional, and local fiscal capacity contingent on funds being used to support SB 375 objectives;
- Do this in a manner that does not unfairly burden one group of Californians disproportionate to the benefits they receive, and that respects differences in local geographies, economies, and lifestyles.

One of these strategies requires further explanation – the designation of "priority development areas" (PDAs) and "priority conservation areas" (PCAs). Some MPOs have already adopted this approach – designating PDAs and PCAs for their own SB 375-related programs and activities. Many of our recommendations rely on this method for determining how (and where) resources should be directed. To apply this method statewide, the state might establish general parameters for designating such areas, and then MPOs could designate them within their regions.

Outcomes

The recommendations for action are intended to bring about the following outcomes:

1) Support the "three legs" of SB 375

The strategies proposed here seeks to strengthen a "three-legged" stool supporting SB 375, namely to support protection and management of natural resource areas, efficient use of transportation and land, and housing affordability. Each of these legs must be strong and sturdy for SB 375 to succeed. The recommended policy actions would work to ensure this in a variety of ways, starting with the state government identifying standards, programs, and policies for directing its own resources toward these ends. The policies would also empower regions and localities to accomplish SB 375 themselves. In particular, they would expand regional and local financing tools for achieving SB 375-related objectives.

2) Get the "prices right" for efficient transportation and land uses

Many of the recommended policy actions would work together to ensure that governments and individual consumers face prices that more accurately reflect the full social and environmental costs of development, housing, and transportation choices. As it stands, many current state policies work to render low-density, car-dependent development and transport easier and cheaper to build and purchase than more compact, energy-efficient options. Government policies that promote less efficient development and transport are counter-productive economically as well as environmentally, because they make the state's economy (and its regional economies) less productive and efficient than they could be. Therefore, the package of high-priority actions aims to establish new pricing signals that reward efficiency.

Pricing policies have consequences for social equity, and the following policy proposals attempt to address those consequences. Policies which simply raise prices on common activities (such as driving alone) can be onerous if they are not coupled with programs that make suitable alternatives available. Therefore, the recommended policy actions seek to honor a basic principle of sound "demand management" – to direct revenue raised from new pricing policies toward provision of effective alternatives.

3) Promote the development of vibrant "transit villages" and "transit corridors."

Many of the report's recommendations would work together to help enable regions and localities to develop "transit villages" and "transit corridors" as vibrant, livable neighborhoods that provide not only efficient housing and transport options, but also rich public amenities such as schools, libraries, and parks. The proposed policies would enhance the capacity of MPOs and localities to expand transit, transit-oriented development, and amenities in a mutually supportive, iterative fashion. Some recommendations provide financing options for localities to "capture value" from the potential profits that transit villages and corridors can provide. Other measures would direct more state and regional resources and regulatory relief to support transit expansion and supportive land uses.

Recommendation 1: Direct state and regional transportation funds to regions, priority development areas, and localities that achieve "smart mobility" performance targets and provide transit-supportive land uses.

Summary:

Transportation funding is central to SB 375 implementation. However, many recent state funding choices have not been geared to promote SB 375 objectives. If California does not direct its transportation resources toward achieving the goals of SB 375, then the law effectively becomes an unfunded mandate. MPOs cannot be expected to achieve the goals of SB 375 if they lack the means to do so. The state can address this problem by:

- Prioritizing state transportation expenditures, including grants to localities, for projects that meet smart growth criteria or conform to SCSs or APSs.
- Empowering MPOs to make similar choices to fund projects that provide enduring reductions in VMT and meet other smart growth criteria. To accomplish this, more funds could be allocated directly to MPOs, rather than on the traditional bases of "county shares" or "local shares," with the stipulation that they be used for projects determined to be effective for helping achieve SB 375 goals.
- Promoting strategies which link funding for transit expansion to local commitments to establish transit-supportive land uses.

State Transportation Funding Has Not Supported SB 375 Objectives

In recent years California has failed to direct transportation resources to support SB 375 objectives. About two-thirds of California's state transportation revenues are currently spent on construction, rehabilitation, and repair of highways (LAO, 2007). To the degree that SB 375 implementation depends on transit investment to succeed, the current balance of state funds in favor of roadways over transit needs to change.

The priority placed by the state on funding roadways over transit does not just reflect expenditures on maintenance of an aging highway system, but also the state's capital expansion choices.[20] In particular, recent transportation bonds have funded highways, streets, and roads over transit.[21] In 2006, state voters passed Proposition 1B, which provided $19.9 billion in bond funding for transportation programs – one of the most substantial boosts to transportation

[20] California's ongoing program for transportation capital expansion is called the State Transportation Improvement Program (STIP). The 2006 STIP plan, covering the period from 2006 through 2011, provided about $5.9 billion for capital improvements – 65 percent for highways and roads, 29 percent for transit, and 6 percent for transportation enhancements (including roadway beautification and bicycle and pedestrian facilities) (LAO, 2007).

[21] More than half of the bond funds ($11.3 billion, or 56%) was targeted for capital improvements to state highways and local roads to reduce congestion. Another $3.2 billion (16%) was targeted for goods movement improvements to highways, rail, and ports, and related air quality improvements. The remainder ($1.5 billion, or 7%) was targeted for safety and security improvements for bridges, rail, transit, and ports (LAO, 2007).

funding in California in recent years. However, as mentioned above, only 20% of the funds were targeted for transit capital improvements.

The state legislature recently adopted explicit measures to exempt Prop 1B funding, still mid-stream and underway, from SB 375, and gave counties a few years in which to propose discretionary sales tax measures for transportation purposes that do not conform to SB 375.[22] Given the long time horizon for funding most transportation projects (and the marginal amount of new funding available to initiate *new* projects in any given long-term investment plan), the exemptions – especially for Prop 1B funding – mean that most transportation funds in the state will be spent for pre-SB 375 priority projects for a long time to come.

Recent state budget cuts to transit programs only worsen the problem. In recent years, the legislature has diverted substantial shares of revenue from the Public Transportation Account (PTA) – the main state funding source for transit – to cover General Fund costs. Funding for the State Transit Assistance (STA) program, which supports ongoing transit operations, was eliminated from the 2009-10 state budget. When combined, budget cuts to the STA with other cuts to public transit funds that normally would have gone towards transit capital projects, the total loss of transit funding statewide during fiscal year 2009-10 amounts to $1 billion (MTC, 2009). According to the California Public Transit Association (CPTA), this year's diversions of transit funding bring the total amount diverted to General Fund purposes by the state legislature over the past decade to more than $5 billion – $3 billion in the last two years alone (CPTA, 2009).

Performance Standards Are Needed for "Smart" Mobility and Accessibility

In directing its transportation resources toward projects that support SB 375 objectives, the state needs a way to determine which transportation projects are best suited for the purpose. Caltrans, the state's department of transportation, has been taking steps to make that possible under a project called the "Smart Mobility Framework." This project is working to design criteria for evaluating proposed transportation plans and projects at the state, regional, and local levels, according to "smart" criteria, which will include density, design, configuration, connectivity, safety, parking strategies, mixtures of land uses, availability of transit, bicycle and pedestrian infrastructure, and open spaces. The performance measurement tools, as well as related technical assistance, will be available for use by local and regional agencies as well as for Caltrans plans and projects by early 2010.[23]

A performance measure for assessing long-term VMT reductions from transportation projects (and related land use and development policies) may be especially important for Caltrans and

[22] In particular, transportation projects funded by an MPO are not required to be consistent with an SCS as prepared under SB 375 if they are programmed for funding on or before December 31, 2011 and if: (1) they are contained in the 2007 or 2009 Federal Statewide Transportation Improvement Program and funded under Proposition 1B; or (2) were specifically listed in a ballot measure prior to December 31, 2008 approving a sales tax measure for transportation purposes. In addition, a transportation sales tax authority need not change funding allocations approved by the voters for categories of transportation projects in a sales tax measure adopted prior to December 31, 2010. Another exemption – in this case for environmental review – was provided in SB 97 (Dutton, 2007). This measure exempts transportation and flood control projects funded by the 2006 state bonds (1B and 1E) from global warming considerations under CEQA.

[23] Interim project reports can be found at http://www.dot.ca.gov/hq/tpp/offices/ocp/smf.html

MPOs to devise. Although SB 375 calls for reducing transportation-related greenhouse gas emissions, it does not explicitly call for doing so through projects that reduce VMT per se. Some projects that reduce GHGs in the short term might have counter-productive impacts when considered over a longer time frame. For example, one means that MPOs could adopt for reducing GHGs might be to support projects that reduce traffic congestion, because idling in rush-hour traffic jams can increase GHG emissions. However, a highway improvement project that reduces congestion by increasing road capacity could have a counter-productive long-term impact, if new drivers are induced to use the expanded roadway capacity in response.

With a "smart" performance measurement system at its disposal, Caltrans and the California Transportation Commission (CTC) could then evaluate whether state-funded projects help achieve SB 375 objectives. In order to ensure that state transportation funds are directed wisely toward achieving SB 375 objectives, it will be critical for Caltrans and the CTC to employ such performance standards in allocating resources. For example, the "smart" performance standards could be used as a basis for:

- Determining how to spend state-programmed funds, such as state bond funds;
- Allocating competitive grants and loans to localities;
- Allocating some portion of local streets and roads funds;
- Evaluating MPO/RTPA performance measures applied in SCS/RTPs, and negotiating with regions to enhance their performance measurement capacity.

Empowering MPO/RTPAs to Implement SB 375

Another means by which the state could strengthen SB 375 implementation would be to provide MPOs with greater authority to program investments that support SB 375 objectives. As it stands, the authority of MPOs is limited by a) their governance structure, and b) state funding allocation formulas.

As noted earlier in this report, the governance structure of COG/MPOs inhibits their ability to devise and adopt policies with a strong focus on regional performance outcomes. Particularly in relation to land use, COG/MPOs have no independent authority; they are governed by representatives of local governments and other entities such as transit districts.

The MPO role is further conditioned by state funding formulas that tend to reinforce their status as regional "umbrella" organizations, rather than enabling MPOs to adopt concerted regional policies based on regionally defined performance goals. As noted earlier, MPOs' main source of authority is their control over allocation of Regional Transportation Improvement Program (RTIP) funds, the state's main program for transportation capital expansion in urban regions. However, according to a long-established formula, funds for the RTIP are geographically divided by a "north-south split" in which 60 percent of STIP funds are allocated to the 13 southern counties and the remainder to the 45 northern counties. These funds are further divided into county shares based on a statutory formula allocating 75 percent of funds based on population, and 25 percent based on highway lane-miles. Note that the formula for allocating county shares tends to reward those counties that build more highways and roads, and it does not direct spending to those parts of a region that might be able to produce the greatest regional benefit from improved transit or TOD.

Governance provisions in multi-county areas, as well as state mandates for county-level transportation planning priorities further complicate the question of RTIP decision-making. In the state's multi-county regions, county transportation planning agencies have been provided a substantial role in programming projects to be funded. For example, in the Los Angeles region, all RTIP funds are "sub-allocated" to county agencies for programming. A related issue is that county transportation planning agencies are required to prepare a biennial Congestion Management Plan (county agencies are designated as "Congestion Management Agencies," or CMAs, for that purpose).[24]

The sub-allocation of RTIP programming authority, combined with the congestion reduction mandate, influences RTIP funding priorities. The policy priorities of CMAs do not necessarily coincide with the goals of SB 375. Reflecting their mandate to manage congestion, CMAs have historically been deemed stronger proponents of roadway as opposed to transit investment, in comparison with multi-county MPOs (see e.g. Lewis and Sprague, 1997). In any case, sub-allocation requirements mean that county priorities must be aggregated in RTPs and RTIPs in multi-county metro areas in the state. The county share formula can work against MPOs that seek to target funds for programs and projects that are regional in scope and cross county lines, because county-level priorities do not always match regional-scale priorities.

For these reasons, the state should reevaluate how funds are allocated to MPOs in order to strengthen the regional role in STIP programming. First, the state may wish to alter the statutory formula for county shares, for example, by basing 25 percent of the formula on highway lane miles and fixed transit lane miles (and possibly some factor for bus service). Secondly, the state may decide to allocate a portion of funds to MPOs directly, rather than allocating the funds using the county share formula.

Rewarding Supportive Land Use by Localities

In addition to funding "smart" transportation projects, another way that the state and regions can strengthen SB 375 implementation is to direct some portion of transportation funds to localities that adopt supportive land uses. The state and regions should establish clear metrics to measure cities' and counties' performance in achieving the land use goals of an SCS and give greater weight to these measurements when selecting both transit and highway projects for inclusion in an RTP

An assertive version of this approach was pioneered by the Metropolitan Transportation Commission (MTC – the Bay Area's MPO) through its transit-oriented development (TOD) policy, adopted in 2005. The state government and/or other MPOs could follow this model. Under the TOD Policy, MTC conditions allocation of discretionary funding for new transit

[24] Proposition 111, passed in 1990, instituted a nine cent per gallon increase in the state gasoline tax, to be devoted to transportation needs in counties, provided that congestion management plans (CMPs) are written by those counties. As implemented by Assembly Bill 1791, Proposition 111 required the formation (designation) of congestion management agencies (CMAs) in each county having an urban-area population of 50,000 or more (Lewis, 1997). CMPs, which must be updated every two years, must include the following elements: a) Traffic level of service standards established for a system of highways and roadways designated by the congestion management program agency; b) performance elements regarding the movement of people and goods; c) program elements that promote alternative transportation methods, including carpools, vanpools, transit, bicycles, and other strategies, d) analysis of land use decisions on regional transportation systems; and e) a seven-year capital improvement program.

expansion on supportive local land-use plans and policies. The conditions for MTC's TOD Policy apply to the $18 billion in priority transit projects adopted in 2001 through MTC's Regional Transit Expansion Policy (Resolution 3434) (MTC, 2008). In a related move, in 2005, MTC adopted the TOD Policy, establishing measurable transportation corridor objectives, performance criteria, and project evaluation screening criteria for supportive land uses along each new transportation corridor.

The TOD policy contains three key elements. First, it establishes corridor-based performance measures quantifying minimum levels of housing development around transit. The idea behind the policy is that transit investments make most sense where higher-density land uses surround a transit station. Affordable housing units earn a 50 percent bonus in meeting the thresholds. Second, it requires station area planning for jobs and housing, station access, design standards, parking and other amenities. This program was funded at $9.2 million from 2006 through 2009. The TOD policy is expected to help stimulate the construction of at least 42,000 new housing units and boost the region's overall transit ridership by over 50 percent by 2035 (ibid). Third, it calls for the creation of corridor working groups, to be coordinated by county congestion management agencies (CMAs), to bring together local government staff, transit agencies, and other stakeholders to help develop the station area plans to meet the corridor-wide land-use thresholds. This encourages cooperation and provides some flexibility among participating jurisdictions in collectively determining how to achieve overall standards.

MTC's TOD Policy represents a strategy that characterizes a number of policies described in this report (e.g. transportation air quality conformity), namely combining clear performance objectives with flexible implementation by local actors. In MTC's case, the policy does not impose a strict mandate on local agencies; instead it provides a "carrot large enough to be a stick."

Like MTC, other MPOs in the state, including the Sacramento Area Council of Governments (SACOG) and the San Diego Association of Governments (SANDAG), have also pursued strategies to closely link transit expansion to supportive land uses by local governments along transit routes. The approach adopted by the other MPOs has been somewhat less prescriptive than MTC's, but the goals are the same – to iteratively plan for expanding transit and TOD along targeted routes and in targeted zones.

Recommendation 2: Provide greater state and regional revenue-raising authority for transportation, contingent on those funds being used for SB 375 objectives.

Summary:

California's MPOs cannot implement SB 375 effectively without adequate transportation funds at their disposal. Given steady erosion in the value of the state's main funding source for transportation purposes – the gas tax – and repeated diversions by the legislature of transportation funds to address the ongoing budget crisis, measures are needed to increase revenue for transit.

Certain revenue-raising measures would be especially conducive to SB 375 implementation. In particular, setting higher user fees on driving makes sense from a number of angles. Higher user fees (so-called "pricing policies") can a) raise revenue for transportation, while b) simultaneously increasing efficiency by reducing demand for driving, and c) providing revenue to fund transit alternatives, thereby limiting the fees' impact on consumers. These pricing policies can also be implemented in a fashion that strengthens the MPO role in SB 375 implementation.

Specifically, the state should consider the following:

- Increasing the gas tax.
- Instituting a VMT or carbon tax that includes transportation-related carbon emissions (regions could be authorized to do the same).
- Enabling regions to adopt congestion pricing (tolling) policies.
- Making these strategies contingent on revenues being used for transit and other alternatives to driving alone.

The Gas Tax: A Declining Revenue Source

In recent years, transportation funding in the state has been constrained by two major factors. First, the state government has diverted a considerable amount of funding to help balance the state's budget. According to the California Legislative Analyst's Office (LAO) – the state's non-partisan budget "watchdog" agency – the ongoing diversion of transportation funds since 2001–02 has resulted in instability and unpredictability of funding, which has produced project delays, planning complications, and inefficiencies at Caltrans (LAO, 2009a). In particular, the LAO notes that erratic transit funding over recent years has created instability in ongoing programs and for specific projects (LAO, 2009b). For these reasons, the LAO advocates that the legislature provide more stable and predictable funding for the state's transit programs.

Finding new funding sources for transportation, including transit, has also become a pressing concern because the value of the state's main transportation revenue source – the 18 cents state excise tax on gasoline and diesel, commonly referred to as the "gas tax"– has been eroding over time. One reason is that gas consumption has declined every year since 2005. Lower

consumption, however good for the environment, makes the gas tax a less effective revenue generator. In the future, increasing fuel efficiency and a switch to alternatively powered vehicles could continue to put downward pressure on gasoline consumption and therefore on gas tax revenues (LAO, 2009a).

Another reason for the declining value of the gas tax is inflation. The current state gas tax rate (18 cents per gallon) has been in place since 1994. Since then, inflation has eroded the value of per gallon gas tax revenues by 29 percent, so that 18 cents is worth less than 13 cents today (in constant dollar terms). Between 1991 and 2006, travel on California's roads increased by an estimated 35 percent, but gas tax revenues (in constant dollar terms) did not increase. As a result, revenue generated per vehicle-mile traveled declined by more than 20 percent over the period (LAO, 2007).

Meanwhile, rehabilitation needs for the state's transportation facilities have been piling up. Revenue from gas tax and from truck weight fees has been insufficient to adequately fund needed highway maintenance and rehabilitation (LAO, 2009a). As rehabilitation needs take an ever larger share of declining revenues, little is left over for new transportation projects. Proposition 1B has provided some one-time additional funding for highway rehabilitation, but it does not address the long-term mismatch between growing maintenance and rehabilitation needs and declining revenues to pay for these activities (ibid).

To provide an ongoing, stable source of funding for highway repairs, LAO and some MPOs have recommended that the legislature increase the gas tax.[25] The legislature also should evaluate new transportation funding mechanisms as new technologies come online – technologies which could permit charging fees to drivers based on the number of miles traveled. Mileage-based fees, also advocated by the LAO and some MPOs, offer an advantage over gas taxes in that revenues are not eroded by increasing fuel economy or use of alternative fuels. A similar approach is to impose a carbon tax, which could include transportation but also be extended to other economic sectors such as energy usage. The carbon tax approach is being advocated by the Commission on the 21st Century Economy, a stakeholder advisory group created in 2008 by Governor Schwarzenegger (Nguyen, 2009). A carbon tax in the transportation sector would likely take the form of either the aforementioned gas tax increase or a VMT tax (ibid).

In considering how to implement a mileage-based approach, California can learn from other states. The State of Oregon conducted a pilot program to test a mileage–based fee system, and determined the program to be a success (Whitty, 2007). At the conclusion of Oregon's pilot program, 91 percent of program participants said that they would agree to continue paying the mileage fee in lieu of the gas tax if the program were extended statewide (ibid). The pilot study also determined that privacy rights were substantially protected, and that costs of implementation and administration of the tax were low. An additional benefit was that the mileage fee could be integrated with congestion pricing strategies, for example by adjusting rates for the electronically-collected mileage fee for time-of-day travel in specific geographic areas where

[25] The LAO suggests that certain alternative indexing methods may be preferable to indexing the gas tax to inflation, such as indexing it to fuel economy (LAO, 2009a). In addition, the LAO also suggests taxing alternative fuels such as ethanol and natural gas at a comparable rate to conventional motor fuels, if these fuels become a more prevalent energy source for transportation.

congestion prevails. The area pricing strategy applied in the pilot program produced a 22 percent decline in driving during peak periods.

Although the Oregon Department of Transportation deemed the pilot study to be a success, it also noted that the general public may not be ready for implementation of mileage charges. ODOT expects that an extensive outreach effort will be needed before the motoring public will accept the charges (ibid, pps. 56-57).

At the same time, raising the gas tax or instituting a VMT tax has some negative consequences that concern the social justice community. Transportation forms a large share of most household budgets and the impact of price increases would affect low-income households disproportionately. Such households have less discretionary income and transportation costs form a larger share of their household budgets (Lipman, 2006). For this reason, any substantial increase in the tax should be coupled with strategies to address equity issues. The tax increase might be rebated to low-income households in a manner that still retains the efficiency benefits of a tax, such as by utilizing a method similar to the Earned Income Tax Credit, in which households can receive a rebate as part of their annual tax return.

Another challenge arises in regard to project coordination. Pricing policies work most effectively as demand management measures (both in terms of efficiency and political acceptability) if alternative mode options are enhanced at the same time that the price of driving is increased. Otherwise, the public faces higher prices for driving, but is still forced to drive because no alternatives are available. Thus, pricing policies make most sense when coupled with substantial new provision of transit and other mode alternatives.

Thus, the benefits of a gas/VMT/carbon tax are potentially high, but the political obstacles are also extremely high. Notwithstanding the obstacles, it may be difficult to successfully implement SB 375 without imposing aggressive new pricing policies. For example, MTC modeled potential effects of an aggressive pricing policy, including a 20% increase in the gas tax, for its most recent RTP (MTC, 2008).[26] The modeling results indicated that MTC will not be able to achieve its GHG reduction goals unless it implements the pricing policy along with other strategies, such as a more aggressive land use strategy to promote density near transit.

Congestion Pricing

Another pricing option that the state could promote is congestion pricing, or "tolling." The state might adopt enabling legislation to allow regions to undertake congestion pricing, contingent on the funds being used to promote transit alternatives.

In recent years, there has been a growing public acceptance of charging tolls for road usage, particularly when tolls can finance new facilities or offer congestion relief (LAO, 2009a). Congestion pricing HOT lanes have already been approved by the legislature in specific

[26] MTC estimated effects of a carbon or vehicle-miles traveled (VMT) tax that on its own would increase the cost of driving by 20 percent, along with parking surcharges of $1 per trip and congestion tolls of 25 cents per mile for freeway driving during peak commute periods. The cumulative impact on a typical 11-mile, peak-period commute on a congested freeway would be a three-fold increase in driving costs.

corridors in both northern and southern California.[27] Like a gas tax or VMT tax, congestion pricing can enhance SB 375 objectives through a "push-pull" approach to managing transportation demand. More specifically, higher prices for driving alone (or rewards for carpooling) can help reduce solo driving, while toll revenues raised can be invested into providing transit alternatives.

A legislative bill introduced this year (AB 744, Torrico) would authorize MTC's congestion pricing program within the nine-county Bay Area. MTC estimates it could generate about $6 billion in net toll revenues over the 25-year period (MTC, 2008). Specifically, AB 744 would authorize the Bay Area Toll Authority (BATA) to develop an 800-mile Bay Area Express Lane Network, impose a fee for use of the network, and issue bonds secured by network revenue. BATA would finance, construct, and operate the express lane network to provide free-flowing traffic for carpools, buses, and toll payers, using congestion pricing. Tolls for non-carpools using the express lanes can be collected electronically.

The bill is intended to create a framework for collaboration and partnership in development of the network. Although BATA is established as the lead agency to plan, finance, and manage the HOT network, the expenditure plans would be developed from a "bottom up" process in each individual travel corridor, led by congestion management agencies.

The bill also defines policy goals for the program (e.g. to use revenues for network improvements, including transit provision, such that benefits to corridor travelers are commensurate with revenues). The provision enabling revenues to be used for transit is key to ensuring that this proposal helps achieve SB 375 goals. Otherwise (and in any case), the revenue could just be used to expand highway capacity and thus increase VMT and greenhouse gas emissions. For that reason, the approach would be stronger if it mandated that in using HOT lane revenue, priority be given to projects that reduce VMT and GHGs.

[27] Existing law authorizes a joint powers authority to operate a value-pricing HOT lane program on the Sunol Grade on State Route 680 in Alameda and Santa Clara Counties. The San Diego Association of Governments is also authorized to operate a value-pricing and transit development program on no more than two corridors within San Diego County, and allows HOV lanes to be used as HOT lanes. Last year, the legislature also passed congestion-pricing authorizations for Riverside County and Los Angeles County (from AB 744 legislative staff bill analysis).

Recommendation 3: Encourage parking strategies that promote efficient use of land and transportation.

Summary:

Parking strategies are inherently related to transportation and land use; a decision to drive or not is directly related to the availability of parking at the destination or origin. Parking strategies have various benefits in that they (a) can create a new revenue source, while (b) decreasing demand for driving, and (c) incentivizing more compact development by reducing the cost of development (through reducing the need to build parking space).

Therefore, the CSC recommends that the state direct resources and technical assistance to localities pursuing parking strategies that discourage automobile use. Resources might include giving priority for receipt of state grants and loans to localities that have enacted parking management policies which work to support infill, transit-oriented development, and otherwise reduce VMT.

Parking Management Is a Critical Transportation/Land Use Strategy

The existence of free and low-cost parking supply for cars is a direct incentive to drive, thus contributing to GHG emissions from VMT. Parking policy has a substantial influence on land use and shapes the possibilities for transit-oriented development (TOD). Current parking policy effectively treats parking as a commodity of little value, thereby reducing the cost of driving so the true cost is not reflected. SB 375 challenges the notion that parking should be provided as a low-cost or free commodity by linking transportation and land use planning, calling for efficient development.

Since municipalities are limited in directly affecting vehicle travel, land use provides an excellent opportunity to manage and direct towards non-automobile use. Parking policies directly target driving and should therefore have long-term impacts on VMT reduction. Reducing parking requirements for new development (for example by setting a parking maximum, instead of a minimum) supports compact land use. According to MTC, "establishing the parking maximum limits the number of spaces, promotes more efficient use of land, enhances urban form, encourages the use of alternative modes, provides for better pedestrian movement, and protects air and water quality" (MTC, 2007).

It is important to manage parking requirements carefully in transit districts. Parking requirements commonly imposed on new development projects by city planning departments fail to recognize the lower trip generation rates of transit-oriented development (Arrington and Cervero 2008). Current parking standards overestimate TOD parking needs by as much as half. The problem arises because the data used in developing commonly-used parking standards are taken from suburban areas.

Improper parking standards for TODs can prevent a TOD project from being built as structured parking costs at least $25,000 per space, and underground parking can cost as much as $45,000

per space (Ohland and Poticha, 2009). Correcting the standards used to establish parking requirements could produce higher TOD densities (up to 30%), and lower developer fees (as much as 50%) (ibid).

Improper parking policies can also harm retail sales and increase traffic congestion, thereby reducing the economic strength of an area. Many suburban parking codes require more spaces than are actually needed, creating pedestrian-unfriendly "dead spaces" around buildings by setting parking supply requirements based on usage at peak, holiday periods (Shoup, 2005).

Thus, careful parking management is an important element of local economic development. When more space is dedicated for parking than is actually needed, and when parking is offered free-of-charge, the result can be to create high costs for development, making many housing and commercial projects financially infeasible (Senate Committee on Transportation, 2009). The cost of land, construction, and maintenance is too high because the true cost of parking is not reflected in current parking codes and frameworks.

Overcoming Challenges to Parking Management Strategies

Americans have come to expect low-cost parking, and reducing its supply can provoke resistance. Various challenges must be overcome to manage parking effectively and gain community support in the bargain. One challenge is to mitigate indirect effects of shortages of car parking, such as parking "spillover" into nearby neighborhoods if parking is restricted.

In addition, concerns from developers and business owners will need to be addressed. While some developers may support lower parking requirements because they can reduce construction costs, others may worry about reducing a building's market value or rental income stream Business owners may worry that reducing parking will make them less competitive. However, transit-oriented housing and business districts may thrive if parking policies encourage pedestrian activity. Therefore, careful studies should be undertaken when determining parking needs in infill areas; in many cases, such studies are likely to indicate that lowering parking requirements will enhance the local economy as well as provide environmental benefits.

A Menu of Parking Policies

Localities may want to combine various parking management policies. One of the simplest options is to establish a residential parking permit program. This allows a locality to create a new revenue source and to establish a more realistic cost for parking. Another useful strategy is shared parking; utilizing the same parking space for different land uses at different times increases the efficiency of land use, which can enhance the financial feasibility of compact projects. Parking requirements also can be reduced in conjunction with transportation demand management programs.

Unbundling, or separating, parking costs from development and rent costs is another effective way to control parking demand that can also potentially increase profits for business owners and developers. Currently, the price of parking is hidden in rent or purchase costs, obscuring parking's true cost to drivers. But if renter/owner costs for housing and parking were separated, many occupants of a given building might opt out of parking. Unbundling of parking pricing may also benefit business owners, developers, and consumers. Businesses bear the cost of "free

parking," which they either pass onto customers or pay themselves. In some cases, unbundled parking may provide a competitive advantage.

Parking strategies also can form an important component of coordinated strategies to develop a full-fledged "transit corridor" or transit village." In this approach, parking management might be coordinated with transit expansion. Fees generated from parking revenue might be specifically directed toward investment for future transit. This strategy can help overcome concerns from neighborhood residents about losing mobility options. If funds are borrowed up front, localities can invest in the transit infrastructure needed to support the population when parking restrictions are put into place.

Finally, to gain local business support for parking management, a portion of revenues generated from parking polices could be directed to improve streets and public spaces. This would directly benefit businesses while also enhancing the neighborhood's amenities for the general public (Shoup, 2005).

Models for Parking Management

Across the nation, states, regions, and cities are implementing innovative parking management programs from which California's policy makers and developers can learn. Boulder, Colorado, for example, uses revenue from downtown parking meters to pay for free bus passes for business employees. The strategy has freed up about 850 available parking spaces for customers in the district. This example combines direct investment in transit with the use of fees to benefit the district in which the pricing policy is implemented

Several cities and regions have adjusted their parking requirements to support compact development. Portland, Oregon, for example, has instituted maximums instead of minimums in the central city, as well as shared parking and car sharing. Arlington County, Virginia, imposed maximum parking requirements based on distance from Metro stations, where the lowest ratio goes to properties closest to the stations (EPA, 2006).

The cities of Wilton Manors, Florida, and Long Beach, California, are working with private companies to assist in parking management goals. In Florida, the city teamed with a private development company to create a new zoning overlay which exempted the developer from standard parking requirements by allowing shared parking in off-site public parking structures. Similarly, a developer in Long Beach worked with the city to assess parking demand and modify parking requirements by allowing hotel and retail to share available parking. Combining shared parking with in lieu fees made the project financially feasible (ibid).

Washington State and New Mexico have recognized parking policies as incentives for SB375-like planning. Washington's 2008 Comprehensive Plan recommends parking disincentives as an approach to reduce VMT (Hogan, 2008). New Mexico identifies parking requirements in zoning codes as a key strategy to promote smart growth and reduce GHG emissions (ibid).

Recommendation 4: Provide more funding options to support infrastructure and infill development.

Summary:

A central goal of SB 375 is to reduce GHGs from VMT by linking transportation and land use practices. On the ground, that often translates into a need for more compact "infill" development accessible to transit. Infill development may be an environmentally friendly, efficient land use strategy, but cost barriers can be substantial for local governments and developers. The success of SB 375 depends on the ability of local governments to encourage compact, mixed-use development. However, localities have few resources to directly support infill development, especially infrastructure costs. In order to address this concern, the state should:

- Direct, ongoing funding for infrastructure and infill development to projects located in regionally designated priority development areas and where the locality has achieved RHNA performance targets at the time of funding.
- Place a constitutional amendment on the ballot to lower the voter threshold for passage of local and/or regional infrastructure bonds for SB 375-related purposes (as defined by the regional SCS or APS).
- Expand tax increment financing (TIF) options for transit-oriented development, transit, and infill, to support comprehensive transit village and corridor strategies.

Local Governments Face Substantial Barriers in Developing Infill

The financial barriers to implementing an effective infill strategy range from the cost of updating century-old sewer lines to finding adequate funds to build and maintain affordable housing units in gentrifying neighborhoods. Building infill often imposes substantial costs on local governments and developers, including costs to update aging or overtaxed infrastructure and costs for assembling complex land parcels, all in neighborhoods where current residents may raise substantial concerns about the impact of new development. Add to that the fiscal constraints imposed on local governments by voter initiatives such as Proposition 13, and it is no wonder that many local governments find it difficult to accommodate much infill.

By contrast, development in "greenfields" at the edge of urban regions is often more cost-effective for developers and local governments, where there are fewer restrictions on developments, fewer neighbors to object to the development, fewer logistical concerns during construction, and the infrastructure is more modern or it can be planned and funded more easily. The cost of new infrastructure to support development in greenfields can often be imposed on the development itself, in the form of developer fees or exactions, some portion of which then get translated into higher housing costs for new residents. By contrast, the cost for replacing an aging sewer line down the main street of a built-up city is less easy to impose on new development. Furthermore, current residents may balk at the idea of paying new taxes to bring new development into the neighborhood.

Another infill-related cost is for building and maintaining affordable housing units. Transit-oriented development (TOD) is now gaining market appeal, and SB 375 will help increase demand for TOD through strategies such as transit expansion. Cities run the risk of allowing gentrification in neighborhoods near transit to price out lower-income families. For this reason, measures are needed to help ensure that compact, transit-oriented neighborhoods remain affordable to a mix of families.

While many of these costs of infill development are experienced locally, many benefits of infill development are experienced primarily at the state and regional scale, in the form of lower costs for investment in large-scale infrastructure like highways and transit systems, and lower environmental costs such as for air pollution, greenhouse gas emissions, and loss of open space. This imbalance between local costs and regional benefits makes it imperative for the state and regions to support localities that take on infill development.

The State and Regions Should Provide More Funding to Support Infill

The state's four largest MPOs have developed innovative programs to reward localities that build infill development – programs which provide a model for the state government and other MPOs to emulate. In 1998, the MTC launched its Transportation for Livable Communities (TLC) Capital and Planning Program. This program supports community-based transportation projects that connect transportation investments with supportive land uses. In 2001, MTC also established the innovative Housing Incentive Program (HIP) to reward communities that promote high-density housing near transit with transportation-related capital funding. Other MPOs have followed suit with similar programs.

These MPO programs have seeded many valuable projects, but they remain constrained because MPO funding is generally restricted for transportation-related purposes and current transportation needs are substantial. In 2006, California took a major step toward increasing its support for infill development and related infrastructure when voters passed Proposition 1C, a $2.85 billion bond for housing-related programs. Prop 1C funded the Infill Infrastructure Grant Program at $850 million, to support the construction and rehabilitation of infrastructure for higher-density, affordable and mixed-income housing in infill areas.[28] Prop 1C also funded the Transit-Oriented Development Program, at $300 million, to provide low interest "gap" financing for rental housing development projects, as well as mortgage assistance, for affordable housing within ¼ mile radius of transit stations.[29] Both programs are administered by the state's Department of Housing and Community Development (HCD).

[28] Grants from the Infill Infrastructure Grant (IIG) Program have ranged from $250,000 to $20 million. The following criteria are used for selection: project readiness, housing affordability, density, proximity and access to transit, parks, employment centers, and consistency with a regional blueprint or similar regional growth plan. The criteria also specify parking maximums and the use of funds for roads, transit linkage facilities, and pedestrian and bike facilities. By the end of 2008, the IIG Program had awarded $340 million for 9,893 newly constructed or rehabilitated rental units (HCD Cumulative Proposition 1C Bond Awards through December 31, 2008).

[29] By the end of 2008, the TOD program had awarded $145 million for 3,629 new and 297 rehabbed units (ibid). Developments must have a minimum of 50 units and criteria for approval include estimates of how much the proposed project will increase transit ridership and minimize automobile trips. Other criteria include: the extent to which the development serves moderate and below moderate income levels, if it includes transit-supportive land use (services in the area that would encourage walking i.e. bank, church, community service center), and if it promotes economic efficient parking policies.

Unfortunately, the success of HCD's Proposition 1C programs could potentially be short lived if a permanent funding source is not secured. A permanent source of funding for programs that support infill development, especially for infrastructure and affordable housing, should be a priority for the state. One example of this type of source is a 2007 legislative bill (AB 239), which would have authorized Contra Costa and San Mateo Counties to charge a $25 real estate recording fee to fund affordable housing within their respective jurisdictions.

To ensure the success of SB 375, the projects that receive HCD funding and other state resources should be consistent with that region's SCS or APS. To maximize effectiveness, the state should also reward localities that have achieved their RHNA goals and prioritize funding awards for projects in regionally identified priority development areas. (See this report's RHNA recommendation for a proposal to establish a production-based RHNA compliance standard.)

In order to increase public acceptance of infill, securing an ongoing source of funding for the Infill Incentive Program may be especially important. Through such a program, the state can reward localities that encourage infill development and help them avoid incurring local costs to provide regional benefits. By securing funds for new facilities and amenities, local governments may be able to demonstrate to neighborhood residents that they too will benefit by endorsing new infill development.

Empowering Regions and Localities to Fund Infrastructure and Infill

As noted above, there is no permanent state funding source for infill development. Given the state's budget crises, a new source of state-level funding may be hard to secure soon. For this reason, the CSC recommends that greater regional and local authority also be granted to provide SB 375-related infrastructure. In California, a two-thirds vote is necessary to approve special taxes to pay for local infrastructure bonds. California is one of only eight states to impose this sort of "super-majority" requirement on local general obligation bonds (Hanak, 2009).

A constitutional amendment could be placed on the ballot to lower the voter threshold to 55 percent for approving bonds for infrastructure deemed consistent with an SCS. This would increase the likelihood of passage of such bonds substantially, and thus motivate more infill development projects and proposals. Voters indicated they could support this sort of measure when they passed Proposition 39 in 2002, lowering the voter threshold for passing local school bonds from 66 to 55 percent. Approval of local school bonds shot up dramatically afterward (Hanak, 2009).

This approach could also be regionalized, thereby directly strengthening SCS or APS strategies and MPOs, by passing a constitutional amendment that would enable regions to develop unified capital expenditure plans that conform to their SCS or APS, which would be funded through a region-wide tax levy that would require only a 55 percent vote for passage (Speaker's Commission on Regionalism, 2003). This approach would be similar to the process now in place for "self-help" county sales taxes for transportation purposes. Through this process, nineteen counties have placed transportation measures on the ballot and gained voter approval for sales tax increases to fund specified packages of transportation improvement projects. Our proposal would result in similar measures being placed on regional ballots, but they could be adopted at a lower passage rate, and could fund all the elements of infrastructure needed to implement SCS or APSs, not just transportation.

Tax Increment Financing and SB 375

Tax Increment Financing (TIF) provides another method for regions and localities to increase infrastructure funds. TIF is a structure by which local agencies in California are authorized to capture the incremental property tax increases from development in a designated area. This tool has been used in two ways in California: through redevelopment and through Infrastructure Financing Districts (IFDs). In the case of redevelopment, after a local area is designated as "blighted," a local redevelopment agency may keep all the tax increment generated through improvements to the area, after depositing a minimum of 20% of the TIF revenues into a low and moderate income housing fund, and passing through 25% of the tax increment generated from the area to affected taxing agencies (those local government agencies that would otherwise receive taxes from the area).

Infrastructure Financing Districts were authorized through the Infrastructure Financing District Act (SB 308), passed in 1990. As opposed to redevelopment districts, IFDs can be created by cities and counties without the finding of blight. However, an IFD only captures that portion of the tax increment attributable to the city (or county for an unincorporated area) itself and not that portion that goes to the county, schools, and special districts in the region unless such entities agree to forego their shares. Upon receiving two-thirds voter approval in an IFD, bonds may be issued for projects including highways, transit, water systems, sewer projects, flood control, child care facilities, libraries, parks, and solid waste facilities. IFDs cannot overlap with redevelopment areas. In 2008, a legislative bill (AB 1836, Feuer) proposed eliminating the two-thirds vote requirements and permitting the local city council or board supervisors to create the districts for public transit facilities.

TIF strategies sometimes raise concerns among competing local governments and also among social justice advocates. Questions may arise about unfair distribution of property tax increment to the applicable taxing agencies. The public agencies who would otherwise gain revenue from increased taxes generated in redevelopment areas are left to find funding elsewhere, even though they may be expected to increase services in the newly revitalized districts (Bise, 2009). Furthermore, housing set-aside funds can be used for affordable housing anywhere in the city and not only in the redevelopment area (HCD, 2009). Essentially, the provision of affordable housing resulting from TIF revenue in only one location – the redevelopment district – can be exported from the area to a completely different part of the city, thereby displacing residents without rebuilding affordable housing for the original occupants of the area in question. This provision raises concern among some social justice advocates.

The CSC proposes designating land within a half-mile radius of transit stations as potential TIF areas so that TIF could be used without the permission of all the applicable taxing agencies (a requirement of an IFD). With the exception of the county government because of their social service responsibilities to the region, the property tax rates would be frozen at the time of the TIF formation and revenues would be paid to all pertinent taxing agencies at that level, similar to the current process in redevelopment areas.

In order to offset any displacement, 30% of the total TIF revenue should be set aside for an Affordable Housing Trust to be used within the TIF area. The remaining funds could then be used to finance transit and other infrastructure improvements. In addition, based on a model

implemented in Chicago, a TIF Neighborhood Investment Fund and a Small Business Investment Fund might be created with a portion of the remaining TIF revenues. Small business owners and residents of the TIF area would have direct access to these funds which would provide them with small grants to make improvements to their property (NCBG, 2003).

A few recent legislative bills have modified the Transit Village concept; they would provide similar methods for attaining the same goals. The Transit Village Act of 1994 provided financial incentives for cities and counties to plan more intense mixed-use development within a quarter mile radius of rail stations - thereby establishing Transit Villages. In 2005, SB 521 aimed to expand a transit village area to include the area within a mile radius from a station and redefine areas rich in transit but with a lack of high density development as "blighted." Another bill (AB 338, Ma) would expand the maximum size of a transit village development district from a quarter mile to a half mile radius and allow it to be designated an IFD. Cities and counties with transit village plans would be allowed to issue bonds (repaid by TIF revenues), without voter approval, to improve and develop the infrastructure necessary for the plan to succeed. TIF funded housing development in transit villages would have to be 20 percent affordable with income and age restrictions in place.

A Model for Transit Village and Transit Corridor Strategies

By combining TIF for transit expansion with TIF for supportive land uses, local governments and regions can leverage the mutual benefits from transit and TOD, and "capture value" from the economic potential in these areas. An example of this strategy is the meteoric development of a neighborhood in downtown Portland, Oregon, known as the Pearl District. The district, a 90-block mixed-use area, is now one of Portland's hottest neighborhoods (Cervero et al. 2004; Reconnecting America and CTOD 2007). The district's redevelopment was based on construction of Portland's new Downtown Streetcar system, which opened in 2001. The construction of the streetcar was based on careful coordination of TOD and transit strategies.

The city used creative, mostly local funding approaches to finance streetcar construction. For example, the city increased parking charges and then issued bonds backed by future parking revenues, raising $28.5 million. This strategy helped to discourage driving while also building a transit alternative (ibid). The city also leveraged future developer profits to raise funds. The planned streetcar made higher-density development possible, with lower parking ratios, enabling developers to earn higher profits. The city leveraged private sector contributions on that basis; property owners along the alignment agreed to form a local improvement district, which added $10 million for streetcar construction. Tax increment financing contributed another $7.5 million, and another $11 was raised from a mix of other funding sources (ibid).

The Pearl District provides a model for California regions and localities. It shows that concerted efforts to leverage multiple strategies can achieve "lift-off" for a vibrant new transit district. The Pearl District also shows that a TOD-transit strategy can be successful economically, even as it also produces environmental benefits.

Recommendation 5: Enforce Regional Housing Needs Assessment (RHNA) requirements and redesign RHNA into a performance-based approach.

Summary:

SB 375 links local housing policy directly to regional transportation planning by aligning schedules for the regional transportation plan (RTP) process and the Regional Housing Needs Assessment (RHNA) process, and requiring that the plans be consistent. These requirements will help promote planning coordination and more compact development. However, they also raise concerns about gentrification in transit-rich neighborhoods. In coming years, as SB 375 policies start to work in tandem with growing market demand for transit-oriented housing, lower-income families may find themselves out-priced from this type of housing. Steps will be needed to help ensure that affordable units are built and maintained, especially near transit.

For this reason, the CSC recommends that the state strengthen RHNA enforcement by:

- Imposing financial sanctions for non-compliance.
- Distributing a list of sites state-wide with overdue zoning.
- Taking legal action against late-to-rezone cities.

Furthermore, the team recommends that the state assist localities in preparing housing elements that conform closely to SCSs. In addition, the state and/or regions should provide performance-based rewards for actual production of affordable units through:

- Priority access to state loans, grants, and subventions, and
- Access to funds from a regional commercial linkage fee.

RHNA under SB 375 and the Threat of Gentrification

Until passage of SB 375, the state's main programs to coordinate regional long-range plans for transportation and housing – the RTP and RHNA processes – were not directly connected. SB 375 aligns RTPs with RHNA by coordinating their schedules in each region,[30] and by requiring that they be consistent. To help promote more compact development and ensure regional "jobs-housing balance," SB 375 also requires that SCSs identify areas within the region sufficient to house the entire projected population and workforce of the region over the planning period.

These requirements will help promote better planning coordination and more compact development. However, a potential casualty in this new process is the state's traditional approach to "fair share" housing allocations. Through the RHNA process, COG/MPOs allocate to each locality its "fair share" of the region's projected housing need, broken down by affordability categories. Local governments are then required to update General Plans and zoning to accommodate their targets.

[30] The RHNA timeline is extended to match the RTP cycle (it is extended from five years to eight years in air quality non-attainment areas; MPOs complete RTPs on a four-year cycle in these areas).

Under SB 375, some jurisdictions will be asked to take on more housing than they would have in the past, and others less. Specifically, to support compact growth strategies, it is likely that central cities will be asked to accommodate a larger share of the region's housing growth, and many outlying (often wealthier) suburban communities will be asked to take on less. This shift in approach could weaken the "fair share" goal of promoting income de-segregation.

These concerns about gentrification might seem misplaced. After all, communities receiving larger housing targets under SB 375 will still be required to accommodate all income categories. There is cause for concern about gentrification under SB 375, however, due to the way that fair share provisions are applied. In practice, fair share income requirements have been implemented through density requirements (so-called "Mullin densities") as a proxy for affordability. This approach operates on the assumption that more compact, multi-unit housing is likely to be more affordable. SB 375 calls this logic into question. The SCS process is intended to encourage higher densities in general, for all income levels. Furthermore, market trends are expected to align with policy efforts under SB 375 in promoting more transit-oriented multi-unit housing production than in the past. Market demand for transit-oriented development is on the rise,[31] and demand is predicted to grow even more in coming years as a result of demographic trends favoring smaller and older households (Ewing et al. 2008; MTC 2006).

As SB 375 works to buttress the growing demand for compact housing, cities run the risk of allowing neighborhoods near transit to gentrify and price out lower-income families. That would mean lower-income families lose the affordability benefit of lower-cost transportation options in areas near transit. Transit is cheaper than driving, on average, and households near transit spend less on transportation than others.[32] At the same time, losing low-income housing near transit would also mean a loss of transport efficiency, because lower-income individuals are more likely than others to use transit.[33] Therefore, locating affordable housing near transit boosts ridership and revenues and maximizes transit benefits from TOD.

In combination, these factors suggest that the use of density standards as a proxy for affordable housing levels may not be tenable under SB 375. Especially because TOD is now gaining market appeal, other measures may be needed to help ensure that compact, transit-oriented neighborhoods remain affordable to a mix of families rather than allowing gentrification to occur. These measures are needed not only to address equity concerns, but also for the sake of emissions reduction strategies.

[31] Multi-family building permits dropped precipitously during the 1990s as a share of all building permits in California, from 37% in 1990 to 19% in 1995. After that, they began to rise steadily, reaching 29% by 2004. Between 2004 and 2007, they increased much more quickly, to 39%. Source: Author's calculation from data from the Construction Industry Research Board.

[32] Low-density, car-dependent development translates directly into higher housing and transportation costs for consumers. Households in low-density communities tend to own more cars and drive longer distances. Car ownership, in turn, is most families' biggest transportation expense, averaging $5,873 per car each year before gas and repairs (AAA 2009). Low-density neighborhoods also tend to have less access to transit, and this affects household costs because using transit is generally cheaper than driving. According to the American Public Transit Association, San Francisco residents who use transit save $11,682 annually on average, compared to residents who drive, based on today's gas prices and the average unreserved parking rate (Williams and Miller 2009).

[33] While 67% of California workers with earnings below $35,000 drive alone to work, 80% of other workers do so. Source: Author's calculation from data from American Community Survey 2005-2007 3-Year Estimates.

To address these concerns and ensure that an adequate supply of affordable housing is provided under SB 375, the CSC recommends a series of actions to strengthen RHNA compliance. The actions start by strengthening enforcement of existing RHNA requirements, but then extend further, calling for a closer link between RHNA and SCSs, and for rewards to be provided for actual production of affordable units, rather than merely enforcing zoning requirements.

Strengthening RHNA Compliance

RHNA non-compliance has been common (Lewis, 2003). Many localities have failed to keep their housing elements up-to-date or to rezone sufficient land to accommodate the housing units specified under RHNA. SB 375 strengthens RHNA requirements, including enforcement provisions, but there is reason to question whether the provisions will be effective.

Under SB 375, local governments will be assigned draft RHNA targets at the same time as adoption of the region's RTP. After a six-month appeal period, the COG will issue final RHNA targets to all cities and counties. Local governments will then have an additional 12 months to adopt a revised housing element that identifies adequate sites to accommodate the RHNA or commits to a rezoning program to address any shortfall. If the locality's housing element does not identify adequate sites for housing for all income levels, the locality is required to complete rezoning within three years of the adoption of the new housing element. SB 375 includes two main new enforcement provisions to ensure that the rezoning takes place:

- "Builder's Remedy:" If a local government does not complete the rezoning required under SB 375, significant restrictions are placed on that government's ability to disapprove or condition a housing project in which at least 49 percent of units are designated for lower-income households. A developer can build on any site identified for residential development in the locality's housing element, as long as the development meets the element's specified density and development standards. The local government must allow the development to proceed unless it finds that the development will have a "specific, adverse impact upon the public health or safety." If the jurisdiction illegally denies or conditions the development, any interested party may sue, and a court can order compliance.

- "Citywide Remedy:" Any interested party can sue to compel a locality to complete rezoning required for RHNA compliance under SB 375. The local government will have the burden of proving its action was legal, and the court can impose sanctions.

These new sanctions for non-compliance depend on an interested party initiating a lawsuit against a non-compliant jurisdiction. Developers (and other interested parties) may be unwilling to spend resources or to antagonize a city by undertaking such an action. Another sanction already in place for non-compliance stipulates that non-compliant localities are ineligible for certain affordable housing programs. However, a locality uninterested in providing affordable housing may not feel this constraint (Lewis, 2003).

For these reasons, the CSC recommends strengthening sanctions for RHNA non-compliance. The state might accomplish this by:

a. Imposing financial sanctions for non-compliance.
The state could impose financial penalties on localities that do not obtain HCD certification of their housing elements for two successive rounds of RHNA updates. The sanctions might include ineligibility for certain state transportation funds, ineligibility for other desirable state funds, or fines. Linking receipt of state transportation dollars to RHNA compliance would strengthen the transportation-land use nexus under SB 375.

b. Directing HCD to distribute a list of sites with overdue zoning.
This proposed strategy would seek to encourage housing production by making use of the two new avenues introduced by SB 375 through which cities can be forced to rezone land. HCD would monitor whether localities complete rezoning consistent with their housing elements. If a locality failed to complete the required rezoning after the allotted three-year period had elapsed, HCD would then add every site that the city had failed to rezone to a list of all such sites statewide. HCD would regularly distribute the list to for-profit and nonprofit developers and affordable housing advocates statewide, who could then take advantage of the increased power, under SB 375, to permit needed housing on these sites.

c. Directing the State Attorney General to sue cities and counties with inadequate affordable housing sites, especially those containing a particularly extensive portion of the SCS development pattern.
This proposed strategy calls for the state itself, rather than other interested parties, to sue non-compliant jurisdictions. The state could direct HCD to work with the Attorney General's office to inform delinquent municipalities that their housing element rezoning program is inadequate or overdue and that they face legal action. If no action is then taken, the Attorney General could be directed to sue the noncompliant jurisdiction to compel it to undertake the necessary rezoning.

Linking RHNA More Closely to SCSs

The CSC recommends that the state direct COG/MPOs to review draft housing elements not only for RHNA compliance, but also for close consistency with the SCS or APS. Furthermore, HCD and COG/MPOs should offer localities additional technical assistance in housing element development to ensure that housing elements connect effectively to the SCS and thereby help reduce GHG emissions.

Rewarding Production of Needed Housing

Many observers contend that the RHNA system is ineffective, inefficient, and overly cumbersome. Through the requirements for localities to produce housing elements and comply with RHNA, state housing law focuses on process (preparation of a plan) not on performance (increasing the supply and affordability of housing). The RHNA system is highly contentious, yet provides no assurance that stipulated targets for additional new housing units will actually be met. Providing rewards to localities that actually produce housing, especially affordable housing, could help shift the system toward one based on performance rather than procedural compliance.

Local governments do not actually build most housing, nor can they control many aspects of the housing market that influence production by private or nonprofit developers and builders; they are only responsible for setting up a regulatory system that can promote housing. Nevertheless, cities

can and do choose to adopt policies and programs facilitating housing production, and they should be rewarded when they do. Cities and counties encourage housing in two basic ways: through adoption of local land use and development ordinances that encourage residential development and affordable units, and through energetic seeking and leveraging of public subsidies for developments that include affordable units. Communities can be evaluated and rewarded for how successfully they perform these critical tasks.

To implement this approach, HCD and/or COG/MPOs might evaluate and reward communities based on their housing production in compliance with the SCS, especially of affordable units, over the term of RHNA compliance. Performance might be measured using a graduated standard, such as by applying the following categories:

1. Communities that satisfactorily meet the housing needs determination goals,
2. Communities that do not meet the goals, but nevertheless can document good performance relative to similar communities in the region (or sub-region),
3. Communities that neither meet the targets, nor perform well relative to others.

Communities that either satisfactorily meet their housing performance goals, or perform well relative to the regional average, could be rewarded; communities that don't meet their performance goals might be subjected to stricter housing element review by HCD or, in extreme circumstances, sanctioned in terms of their access to state funding allocations. Incentives could be tiered based on the level of compliance and could include priority rating for allocation of competitive state and regional grants, loans and subventions.

A few recent state housing programs adopted this approach. For example, the Workforce Housing Reward Program, funded through Proposition 46, passed in 2002, provided financial incentives to cities and counties that issued building permits for new housing affordable to very low or low-income households. The awards could be used for capital assets such as traffic improvements, neighborhood parks, bike paths, or school facilities.

An ongoing, more systematic version of this sort of program at the state and/or regional level is needed. Such a program could: a) address concerns about gentrification, b) link RHNA compliance more closely to SCSs, and c) help establish more cooperation and less conflict in applying state housing law. One example of how this might be accomplished would be to establish a regional fund for purposes directly related to implementing SCSs, such as for providing transportation improvements and other capital assets. Funds could be awarded to cities and counties that clearly demonstrate that they are taking actions (beyond planning) to accommodate their fair share of units, particularly affordable units. The fund could be financed through a regional impact fee on commercial development in job-heavy, housing-poor areas (this idea from Lewis, 2003).

Recommendation 6: Modify state property tax laws that encourage localities to base land use decisions on potential revenues that can be generated (a.k.a. "fiscalization of land use".

Summary:

In California, fiscally constrained local governments often make land use choices based on the amount of revenue they can obtain. The stress to obtain revenue has led to intense "fiscalization of land use," leading many localities to favor "big box" and other commercial developments which bring in significant sales tax. In order to produce more compact and efficient housing development as called for under SB 375, localities need more support from the state to overcome barriers related to fiscalization of land use.

In other sections of this report, strategies are presented to create new revenue sources for regions and localities to use for SB 375 purposes. These new revenue sources should help reduce pressure on localities to prioritize sales-generating land uses. In this section, the report discusses a set of "revenue-neutral" fiscal measures that the state and regions can adopt to reduce the tendency of localities to "chase" sales tax revenue. Rather than enabling jurisdictions to raise new revenue, these policies aim to increase local reliance on property taxes instead of sales taxes, and provide other means to reduce intra-jurisdictional competition for sales tax revenue.

These actions include:

- Instituting a strategy where localities receive a greater share of property taxes.
- Promoting revenue sharing agreements among localities in a region for SB 375-related purposes.

Fiscal Obstacles and Constraints

The state's fiscal policies and tax structure does not provide adequate incentives for cities and counties to develop in infill sites, create multifamily affordable housing, or limit sprawl. Instead, the fiscal system that local governments operate under tends to work against SB 375 objectives in some important ways.

As noted earlier in the report, Proposition 13 and other voter initiatives have limited local governments' ability to raise property tax revenue – the traditional mainstay of local government finance. Local governments have responded by maximizing revenue sources over which they retain control, in particular, increasing user charges and fees. As a result, community-wide taxes and services, traditionally derived mainly through property taxes, have declined as a share of city finance, and shared infrastructure has become harder to address. This helps explain why localities find it difficult to build infrastructure needed to support infill.

As land use choices have become increasingly "fiscalized," city governments have strongly favored retail development over housing and industry, and they have competed with one another to attract retail uses to their jurisdictions. Localities have also tended to transfer the costs of infrastructure for new development onto the development itself, as local officials can impose fees

and exactions on new development without seeking voter approval. This technique tends to facilitate development in "greenfields" areas more than "infill" development.

Compounding the problem of fiscal constraint for localities has been fiscal unpredictability resulting from revenue shifts by the state government undertaken to help address ongoing budget deficits. This year's state budget agreement, for example, allows for diversion of up to $2.05 billion in redevelopment agency property tax revenues in 2009-10 and 2010-11, and it borrows another $1.94 billion in local government funds that must be repaid by 2013 (California Budget Project, 2009).

Fiscalization Challenges

Without financial incentives to develop infill housing, cities have prioritized retail uses and expended resources to "chase" retail, rather than working cooperatively to identify and support land uses with the most regional benefits. However, reducing the fiscalization of land use poses challenges. Currently, local sales taxes are awarded on a "situs" basis, to the locality in which the sale occurred. Given current fiscal constraints, it will be difficult to reduce localities' reliance on the retail sector, and many localities can be expected to resist giving up associated revenue. This challenge points to the importance of creating new local revenue streams, as well as of adopting measures to reduce competition among localities for scarce resources.

Given the state's budget woes, finding new state funding sources to support balanced development and planning will be difficult. However, regions and localities need to receive incentives in return for implementing compact development. These must come from new or reorganized revenue sources, rather than from existing state funds, since current sources are scarce.

Overcoming Fiscal Challenges

It is critical that new funding streams and reconfigured current streams be permanently ingrained in our state's system. Furthermore, funds should be strategically allocated to infill and priority development areas. One method to overcome fiscalization barriers is allowing a greater portion of local property taxes to be allocated to cities and counties in exchange for returning sales taxes to the state. Alternately, sales taxes might be directed to counties, in exchange for a larger share of property taxes going to cities. A modification of this option would be to allocate only growth in these taxes above an existing baseline according to the new system. Still another option would be to increase the share localities receive from property taxes from all residential development. This increase in share would come from the schools' share of property tax and the state would compensate the schools.

It makes sense to redirect property taxes to cities because cities are and should be – especially under SB 375 – responsible for encouraging housing. Increasing city property tax revenue and simultaneously decreasing their dependency on sales tax would encourage cities to plan for and approve needed housing. Furthermore, property taxes are a more stable and predictable form of revenue than sales taxes which tend to fluctuate greatly from year to year (Speaker's Commission on Regionalism, 2002).

By providing incentives to increase residential development and fewer incentives to chase retail, the region's housing needs could be better addressed, and resources currently being allocated to "chasing retail" could be put to better use. Such a program should be careful to not place a burden on roads, public safety, and infrastructure by taking away the major funding source for a jurisdiction that currently relies on economic development through a large retail sector. An approach that guarantees that cities and counties do not lose any previous level of revenue would restructure the existing system to align more closely with SB 375 goals.

Another, more direct way to strengthen regional planning would be to "regionalize" some portion of existing revenue. This approach, called revenue sharing, would not raise new funds, but rather pool a portion of the growth in certain revenue to address regional needs. For example, regional revenue sharing of sales taxes (or some portion) would have the added benefit of reducing the incentive to compete for the development, instead allowing the benefits of retail and commercial success to be reaped by all participating governmental units. To design this regional approach, communities might enter into regional compacts with neighboring local governmental units, with the goal of achieving greater efficiency in delivering public services.

Regional revenue sharing has been successfully implemented in various states including Maine, Massachusetts, Minnesota, and New York. Among the advantages cited, this strategy has been attributed with helping improve the quality of the regional labor force by leveling the playing field for low-income communities' access to basic social services (NAIOP, 2008).

Recommendation 7: Provide additional CEQA streamlining for projects within priority development areas designated in regional SCSs, and also provide funding mechanisms to assist local governments in conducting plan-level CEQA review.

Summary:

Regulatory streamlining under the California Environmental Quality Act (CEQA) is one incentive the state can provide to encourage local governments and developers to build more infill housing and participate in regional planning strategies under SB 375. For this reason, SB 375 includes CEQA streamlining provisions to encourage compliance; however, the provisions may not be enough to induce substantial new infill development. For that reason, the CSC recommends that CEQA streamlining provisions be expanded and supported by:

- Amending CEQA to stipulate that if an adequate plan-level review is conducted for a "priority development area" designated under an SCS or APS, and a specific plan for development is prepared within one of these areas, then projects conforming to the provisions of these plans would be classified as being exempt from further review.

- Providing funding mechanisms to assist local governments and regional agencies in conducting plan-level CEQA review as a basis for tiering local projects that conform to the plans.

CEQA Streamlining under SB 375

SB 375 currently includes two types of CEQA streamlining. The broadest incentive is provided for projects that are deemed consistent with a regional SCS or APS that the California Air Resources Board agrees is sufficient to achieve the greenhouse gas reduction targets for the region if it were implemented. In those cases, streamlining is provided by "front-loading" some CEQA review requirements based on the CEQA assessment already conducted for the SCS or APS. For a project deemed consistent with the SCS or APS, the lead agency is not required to reference, describe, or discuss growth-inducing environmental impacts, project specific cumulative impacts, or a reduced residential density alternative.[34]

The other type of CEQA streamlining included in SB 375 provides for reduced review for Transportation Priority Projects (TPPs). TPPs, which also must be consistent with the SCS or APS, must meet three requirements: (1) contain at least 50% residential use; commercial use, if any, must have floor area ratio (FAR) of not less than 0.75; (2) have a minimum net density of

[34] More specifically, a residential or mixed-use project which is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in an SCS (or APS, if it is produced) is not required to reference, describe, or discuss (1) growth-inducing impacts; or (2) project specific or cumulative impacts from cars and light-duty truck trips on global warming or the regional transportation network if the project incorporates the mitigation measures required by an applicable prior environmental document. In addition, an EIR prepared for this type of project is not required to reference, describe, or discuss a reduced residential density alternative to address the effects of car and light-duty truck trips generated by the project (Higgins, 2009).

20 units per acre; and (3) be located within one-half mile of a major transit stop or high quality transit corridor included in an RTP (Higgins, 2009).

TPPs may obtain three types of streamlining under SB 375:

- A TPP is totally exempt from CEQA if it complies with a long list of criteria.
- A TPP that does not qualify for a complete exemption may nevertheless qualify for a "sustainable communities environmental assessment" (SCEA) if the project has conformed to mitigation requirements from prior applicable environmental impact reports. An SCEA is similar to a "negative declaration" under CEQA in which the lead agency may determine that all potentially significant effects have been identified, analyzed and mitigated to a level of insignificance, and thereby avoid conducting further review.[35]
- SB 375 also authorizes the adoption of traffic mitigation measures for transit priority projects, and stipulates that a TPP does not need to comply with any additional mitigation measures for traffic impacts if such measures have been adopted (Higgins, 2009).[36]

CEQA Incentives under SB 375 May Not Be Enough

CEQA relief provided under SB 375 is optional, and it is not clear that the incentives are adequate to induce substantially more infill or TOD development. In particular, the exemptions provided for specific TPPs may be insufficient to induce much new infill. The definition of a TPP under SB 375 is narrow; a long list of stipulations must be met before a project can be designated as a TPP, including that it contain not more than 200 residential units, that it can be served by existing utilities, that buildings are 15% more energy efficient than required under state law and use 25% less water than the regional average, and that it provides either 5 acres or more of open space per 1,000 residents or 20% housing for moderate income residents, 10% housing for low income residents, or 5% for very low income (or in-lieu fees sufficient to develop the equivalent number of units).

It may be the case that few development projects would meet the TPP standard. Either way, local agencies and developers must choose to take up the exemption. As noted earlier in the report, research indicates that fewer than 15% of developers took up prior exemptions for infill projects provided under state law (Elkind and Stone, 2006). SB 375 relaxes the existing exemptions somewhat, for example by expanding from 100 to 200 the number of allowable units. Furthermore, SB 375 does address one obstacle that may have prevented take-up in the past – legal exposure (Collin, 1993). By applying the "substantial evidence" standard rather than the "fair argument" standard for initiating review of subsequent project effects under an SCEA, SB

[35] There are a few significant differences between an SCEA and a standard negative declaration: 1) cumulative effects of the project that have been addressed and mitigated in prior environmental impacts need not be treated as cumulatively considerable; 2) growth-inducing impacts of the project are not required to be referenced, described or discussed; and 3) project specific or cumulative impacts from cars and light duty truck trips on global warming or the regional transportation network need not be referenced, described, or discussed. Furthermore, an SCEA is reviewed under the "substantial evidence" standard, with the intent being to eliminate the "fair argument" test for identifying potential effects as the standard of review for an SCEA (ibid).

[36] These measures may include requirements for the installation of traffic control improvements, street or road improvements, transit passes for future residents, or other measures that will avoid or mitigate the traffic impacts of transit priority projects.

375 may limit legal exposure for TPPs.[37] However, SB 375 does nothing to address some other primary obstacles that have prevented developers from taking up the prior exemptions, including reluctance to rouse NIMBY sentiment, and a resulting preference on the part of developers for using infill sites already cleared by CEQA review (ibid).

The tiering provisions under SB 375 may prove to be more useful; the provisions could help re-orient CEQA to support regional, rather than just local, priorities and plans. A good example is how traffic congestion impacts are assessed and mitigated. Traditionally, if a specific local development project was determined to be congestion-inducing, mitigation measures might have included lowering the project's density. Within the SB 375 framework, the localized congestion impacts instead can be assessed within a wider lens (through the SCS), and a lower density project alternative need not be included in the project-level review.

However, the project's congestion effects will still be experienced locally, and SB 375 provides no concrete assistance to localities for mitigating those local effects. For this reason especially, it is not clear that SB 375's provisions will do much, on their own, to encourage more plan-level, rather than project-level review and mitigation.

Furthermore, SB 375 does nothing to address perhaps the most substantial obstacle to plan-level review – financial constraint. Some research has indicated that local governments may tend to substitute project-level CEQA analysis for plan-level analysis because project review has a built-in funding mechanism – namely, project developers are required to pay for CEQA reviews (Olshansky, 1996). By contrast, local governments have no continuing, significant source of funding to conduct city-wide and area-wide planning and analysis, including CEQA review. The cost of such planning is substantial; the cost of a General Plan update, for example, can range from $500,000 in smaller communities to as much as $5 million in larger ones (League of California Cities, 2007). SB 375 does nothing to address the imbalance in funding for plan-level versus project-level review, nor to enhance mitigation options for localities that accept projects (such as infill) that produce regional benefits but local costs.

New CEQA Requirements for Review of Climate Change Impacts Could Prompt Tiering

On their own, SB 375's tiering provisions may do little to encourage more plan-level review, for the reasons just noted. However, some recent changes in CEQA's "normal rules" may render SB 375's tiering provisions more attractive to local governments. Since passage of AB 32, a new requirement has been added to CEQA's normal rules stipulating that local agencies must now address climate impacts of projects through CEQA review and mitigation.[38] SB 375 tiering

[37] According to the "fair argument" standard, an EIR must be prepared whenever it can be fairly argued on the basis of substantial evidence that a significant adverse effect may result, even when other evidence exists to the contrary. A Negative Declaration is prepared when no substantial evidence exists, including situations when potentially significant effects identified in the initial study can be avoided or mitigated by revisions in the project. By contrast, the "substantial evidence" standard means that the decision of the lead agency not to prepare an EIR will be upheld when it is supported by substantial evidence, regardless of the existence of a fair argument to the contrary.

[38] Since March, 2006, the California Attorney General's Office has actively pressured local agencies to address climate issues in CEQA reviews, through comment letters issued to 47 lead agencies so far (see http://ag.ca.gov/globalwarming/ceqa/comments.php). Senate Bill 97, passed in 2007, directs the Governor's Office of Planning and Research to prepare CEQA guidelines "for the mitigation of greenhouse gas emissions or the effects

options could be very attractive to local agencies as a way to meet the new requirement. In particular, the provision under SB 375 that a project compatible with an SCS or APS need not consider project-specific or cumulative impacts from cars and light trucks on global warming could be attractive to local governments for this reason.

Thus, the combination of new provisions under normal CEQA rules, plus the streamlining provisions under SB 375, could encourage more tiering. For example, if the Environmental Impact Report conducted for RTP/SCS/APS could qualify as a "Master Environmental Impact Report" (MEIR) under normal CEQA rules, then projects within the plan would be deemed "within the scope" of the program and EIR, and could be used as a basis for tiering by local agencies (Bridges, 2009).

However, challenges must be overcome to make this approach work. At the regional scale, it will be challenging to identify subsequent projects within the scope of a Master EIR in sufficient detail, and to be able to confirm the adequacy of cumulative effects assessment after five years (ibid). At the local scale, it will be challenging to find the resources in time and money to fully integrate local plans and projects with regional plans and programs (ibid). Therefore, the exciting possibilities for using CEQA tiering under SB 375 only make it more imperative to find adequate funding to enable development of legally defensible plan-level reviews.

Strengthening Plan-Level Review under SB 375

To strengthen SB 375, the state should focus on strengthening tiering provisions and practices– in other words, encourage plan-level, instead of project-level CEQA review. More specifically, the state should take steps to ensure that MPOs and local agencies are able to develop legally defensible plans under CEQA to use as the basis for tiering of specific projects. This approach could help local governments participate in regional infill strategies, and also help ensure that project-level CEQA review does not serve as a deterrent to those strategies.

The state could do this by providing regions and local agencies with a) technical assistance, and b) an ongoing source of funds for regional and local planning under SB 375, including funds specifically designated for plan-level CEQA review. One option for providing this funding might be to establish a revolving loan fund that would allow MPOs and localities to develop plans and conduct associated CEQA review, the costs of which could then be assessed on developers whose projects achieve CEQA compliance by conforming with the plan.

In addition, the state should amend CEQA to stipulate that if an adequate plan-level CEQA review is conducted for a "priority development area" designated under an SCS or APS, and a specific plan for development is prepared within one of these areas, projects conforming to the provisions of these plans, proposed within 10 years of the plan's adoption, would be fully exempt from further review under CEQA.[39]

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of greenhouse gas emissions" by July 1, 2009, and mandates that the California Resources Agency adopt the guidelines by January 1, 2010.

[39] To avoid legal exposure, this CEQA relief may need to be coupled with some type of "short form" ability to resolve lawsuits and/or a financial disincentive to bring lawsuits.

This sort of strategy is not new in California or in the US. The State of Washington is pursuing this approach under its Growth Management Act (GMA) and Regulatory Reform Act (RRA). Under the GMA, certain jurisdictions (generally counties with a population of 50,000 or more, and population growth of more than 10 percent in the 10 years prior to May 1995, and the cities within these counties) were required to update their comprehensive land use plans and development regulations in the mid-1990s to implement growth management (Morris, 2001). The RRA, passed in 1995, streamlined the state's environmental review and permitting process.

The RRA has worked in coordination with the GMA's "planned action" provision, under which a county or city may designate specific types of development within a defined geographic area. The prospective impacts and infrastructure needs of future development within the planned action area are addressed in a programmatic (i.e., non-project) Environmental Impact Study (EIS). A planned action EIS functions like a sub-area plan, serving as the "umbrella" environmental review document for development within the defined area (ibid).

This coordinated process has provided a number of benefits, according to some observers (ibid). Planned action EISs more effectively review cumulative and regional effects than individual project EISs and mitigation has been systematized (many mitigation requirements are now standardized in local ordinances). The process has worked well even for planned (desired) future development. Overall, the process has resulted in fewer environmental reviews in the state, and greater consistency in the reviews that have been conducted.

The basis for adopting a similar approach already exists in California under provisions for CEQA review of "specific plans." A specific plan is "a tool for the systematic implementation of the general plan. It effectively establishes a link between implementing policies of the general plan and the individual development proposals in a defined area" (OPR, n.d.). A Master EIR conducted for a specific plan can form the basis for analyzing the effects of subsequent projects (CEQA Guidelines §15175, et. seq.). Later projects which are consistent with the specific plan, meet certain requirements, and which fall "within the scope" of the plan's Master EIR require no further negative declaration or EIR.[40]

The logic of the relationship between specific plans and local general plans could be extended to the regional SCS or APS framework. Using this approach, specific plans for "priority development areas" under an SCS or APS might obtain exemption from further CEQA review of conforming projects.[41]

[40] Section 65457 provides that once the EIR has been certified and the specific plan adopted, any residential development project, including any subdivision or zone change, which is undertaken to implement and is consistent with the Specific Plan is exempt from additional CEQA review. A similar approach to tiering is described under Public Resources Code §21080.7. In urbanized areas, no additional EIR or negative declaration is required for "any project involving the construction of housing or neighborhood commercial facilities" when the project meets certain stipulations including consistency with a Specific Plan that has a certified EIR adopted not more than five years previously which is sufficiently detailed to identify the project's significant effects and corresponding mitigation measures (ibid).

[41] Under current law, specific plans must be consistent with local general plans, and so this approach might not work in cases where an SCS or APS plan for a "priority development area" was not consistent with the relevant local government general plan(s) for the same area.

A current obstacle to this approach is that existing law requires that specific plans be consistent with local general plans. This means that tiering a plan for a "priority development area" from an SCS or APS might not work if the planned development is not consistent with the relevant local government general plan(s) for the same area. California might follow Washington's example in considering how to resolve such concerns.

The specific plan model has additional advantages beyond providing regulatory relief under CEQA. Specific plans are required to stipulate necessary financial "implementation measures," which can include redevelopment financing, Mello-Roos financing, community assessment districts, and associated developer fees and exactions. Through this approach, PDA specific plans might help consolidate a number of financial and CEQA streamlining tools to facilitate greater participation in and implementation of SCS or APS strategies.

Recommendation 8: Implement an Indirect Source Review program within regional air quality management districts to reduce VMT.

Summary:

Implementing an indirect source review (ISR) program in California regions would assist the state in meeting SB 375 goals by discouraging sprawl, decreasing VMT, and decreasing GHG emissions. An ISR program ensures that developers take into account how the design, location, and other characteristics of projects affect air pollution, by requiring that they make changes onsite or offsite to mitigate effects.

ISRs have a significant potential to decrease GHG emissions and create funds for the sort of development supported by SB 375. The state can give regions the authority to adopt this program as a means of achieving GHG targets set by AB 32 and thereby also create a new funding source to invest in facilities to promote efficient land use or transportation.

What Is an Indirect Source Review Program?

An ISR requires that developers take into account how the design, location, and other characteristics of their projects affect air pollution. Under existing authority, regional air quality control districts in California may consider imposing an ISR to regulate the construction and long-term transportation impacts of land development which does not meet established standards (Strauss, 2009). An ISR requires that developers make changes either onsite or offsite that will reduce pollution caused by vehicle use linked to the development project and energy used by the project, both during construction and over the life of the project's operation (Environmental Defense Fund, 2009).

ISRs for new development have already been implemented by some local air districts in the state and proposed by others for purposes of "criteria" pollution reduction (i.e. pollutants that are controlled under federal and state air quality regulations).[42] Many environmental advocates argue that ISR should be extended to address GHG emissions as well.

The San Joaquin Valley adopted one of the state's most complete ISR programs in 2005 using computer generated projections to evaluate impacts of proposed development projects on air quality. The program requires development projects that exceed a certain size to mitigate pollutants (e.g. applications are required for projects that provide at least 50 residential units or

[42] The San Joaquin Valley Unified Air Pollution Control District adopted an ISR (Rule 9510), in December 2005. Imperial County Air Pollution Control District also has adopted and is implementing an ISR rule (Trinity Consultants, 2009). Two large air districts are currently in the process of developing ISRs: the South Coast Air Quality Management District and the Sacramento Metropolitan Air Quality Management District (Environmental Defense Fund, 2009). The Sacramento district staff anticipates that its rule will help encourage developers to build in ways consistent with the region's blueprint plan (ibid).The Bay Area Air Quality Management District is among other regional air quality boards currently considering adopting an ISR (Trinity Consultants, 2009).

2,000 square feet of commercial space).[43] The program provides an opportunity for developers to reduce criteria air pollutant emissions through onsite design changes and/or mitigate emissions through offsite pollution reduction projects. The developer can either identify those offsite mitigation opportunities, or pay the costs of offsite reduction to the air district and allow the district to identify and make those reductions. The air district provides a variety of options to reduce air pollutants by incorporating mitigation measures, including bicycle lanes, bus stops, proximity to existing local retail, and cleaner fleet construction vehicles.

Expanding ISRs to Cover GHGs

The San Joaquin Valley ISR has proved to be successful in reducing air pollution (San Joaquin Valley Air Pollution Control District, 2008). According to a study of the San Joaquin Valley program, the same approach and tools used to reduce criteria pollutants could be effectively used to encourage GHG emissions reduction (Lawrence Frank and Company, Inc., 2008). URBEMIS, the software used to calculate indirect emissions from construction, area source, and operational air pollutants from land use projects in the San Joaquin Valley, is currently being updated to include GHG emissions. The California Air Resources Board is also working on establishing GHG emissions inventorying and modeling standards as part of its AB 32 implementation (San Joaquin Valley Air Pollution Control District, 2008).

The CSC recommends that similar programs be developed in each air district in the state, and that they be directed to address GHGs and VMT. Developers could choose to mitigate indirect GHG emissions or pay a fee to the region (MPO), which the MPO could directly invest elsewhere to reduce GHG emissions or fund SB 375 supportive-projects. This approach would be neutral in development and design, with options for developers to mitigate GHG emissions relating to their project however they see fit. Installing bike lanes, bicycled parking, making pedestrian walkability improvements, or increasing density, are among options developers can integrate into projects to decrease GHG emissions, specifically those relating to VMT. At the same time, such mitigation measures could enhance the profitability of the projects themselves.

ISR Implementation Challenges

The ISR approach must be designed carefully to be effective. For example, the approach runs the risk of inducing developers to build in a region without an ISR program. A problem also arises when developers are unable to impose the increased cost of development onto homebuyers, if homebuyers are able to seek less expensive housing outside the area covered by the ISR. A "spillover" effect could occur if workers in the region live outside the area affected with the higher fees and potentially drive to work, thus increasing tailpipe emissions. There would have to be a way to (a) prevent fees from getting passed onto homebuyers in an imbalanced fashion across the wider (mega)region, and (b) ensure that the revenue is used in a way that directly and effectively addresses sprawl while also enhancing regional amenities, including affordable housing. This approach could help assure that ISRs deter sprawl, while helping to retain affordable development within the specified region.

[43] For these projects, applicants must reduce nitrogen oxides (NOx) and particulate matter (PM) during construction (20 percent of NOx and 45 percent of PM10 from construction equipment exhaust) and after occupancy (33 percent of NOx and 50 percent of PM over 10 years of operation).

There also should be additional incentives integrated in the ISR to encourage developers to make on-site improvements rather than pay the in-lieu fee. While this fee generation is a potential revenue source for the region to use for SB 375 projects, sprawling development may still occur if developers choose the off-site fee option. The fee should be large enough to discourage developments contrary to SB 375 goals of reducing VMT-related GHG emissions. However, it should not be so large as to deter a developer from investing in a region with an ISR. One way to ensure that development in the region is retained, and infill specifically is promoted, would be to exempt all projects that are within SCS or APS priority development areas from the fee.

In order for an ISR to be implemented correctly, there are other challenges in the design of the program that must be addressed. For example, ISR-measured reductions should match the expected increases/decreases in VMT-related emissions over time. In addition, the computer model used to estimate emissions and calculate fees must be designed to precisely estimate future emissions and include GHG as well as criteria air pollutants in its calculation.

Overcoming Challenges

As mentioned above, a critical aspect of a successful ISR is how to prevent development shifting from one region into another to avoid the ISR. An obvious solution is to coordinate ISRs across air districts. Another approach would be to implement ISRs statewide through legislation.

Mitigating air pollution and GHGs associated with the full lifecycle of new development will ensure that reductions are not canceled out by changing patterns over time. The ISR should calculate emissions over the entire lifespan of the project rather than a limited period of time, such as the initial 10 years. The fee structure also must be high enough to penalize sprawl. The analysis tool to examine and create an accurate evaluation of emissions and a proper fee to developers must be developed carefully to deal with these challenges.

Recommendation 9: Strengthen priority regional development areas and priority conservation areas with a regional transfer of development rights program.

Summary:

In order to effectively implement priority development and conservation areas in the SCS, regions should have the opportunity to implement a transfer of development rights program. This would allow regions to offer cities incentives to submit potential "sending and receiving" areas for development rights, to be included in the SCS and managed by the MPO. It would provide another tool for regions to encourage denser infill development in urban cores while compensating land owners for conservation in less dense areas. If properly planned and managed, the creation of a development rights market linked to cities' underlying zoning will offer incentives directly to developers and landowners and will be relatively inexpensive for relevant government agencies.

The CSC recommends that:

- Implementation of a regional TDR program should be optional.
- The state and interested regional agencies should provide resources to explore this option on a case study basis.
- Cities would submit potential sending and receiving of development rights areas by parcel to the MPO helping develop the SCS.
- The MPO would design a TDR market for potential landowners and developers in the SCS based on contractual agreement with the cities.
- The MPO would manage and broker development rights transfers.

A TDR Program in the PDA/PCA Framework

Currently, SB 375 encourages increased infill development through regional planning and CEQA streamlining and conservation only through suggested open space provisions in the SCS. Because the potential degree of influence and actual structure of the SCS are unknown and CEQA streamlining is optional and requirement-driven, a regional TDR program will provide another mechanism to specifically increase land use density within PDAs along with complementary restrictions on development in PCAs.

Many successful TDR programs have been implemented throughout the country[44] mostly for preservation and restoration of natural areas, protection of hillsides, preservation of historic landmarks, protection of agricultural land, promotion of urban form, and promotion of new housing and revitalization (Pruetz 1993, p. viii). While TDR programs often have nuances unique to the areas of conservation and corresponding areas of development, the basic intention is the same. According to the California Office of Planning and Research, transfer of development rights is "a device by which the development potential of a site is severed from its title and made available for transfer to another location. The owner of a site within a transfer

[44] As of September 2007, there were 140 TDR programs in the US, having conserved some 49,000 acres of land. (Walls & McConnell, 2007, p. 8)

area retains property ownership but not approval to develop. The owner of a site within a receiving area may purchase transferable development credits, allowing a receptor site to be developed at a greater density" than established zoning would normally permit (OPR, 2003, p.150). Within this structure, “sending” and “receiving” areas of rights are designated by the appropriate planning body corresponding to areas to be conserved/developed.

TDR could play a key role in conservation efforts by compensating property owners in PCA sending areas, when outright acquisition of property, purchase of development rights, or a regulatory approach is economically or politically infeasible. By amending property titles, a TDR program would allow for the compensation of landowners for withholding and conserving their land with minimal expenditure of tax dollars beyond planning and administration (Walls & McConnell, 2007).

A successful TDR program requires a large amount of front-end planning through the analysis of existing zoning such that a viable TDR market is created, monitored, and maintained through adjustments to designated sending and receiving areas based on inevitable local zoning changes. Cities will need to be aware of the TDR program and encouraged to maintain a zoning scheme such that increased density is desired and appropriate in PDAs, and extra density only allowed through the TDR (Pruetz, 2003). In addition, there must be support for preservation within designated PCA sending areas and financial incentives must be great enough for a landowner to choose selling development rights over actual development.

Implementing a TDR in the SCS and Specific Challenges

To ensure the success of a regional TDR program, many legal and jurisdictional considerations must be addressed. Firstly, a TDR program creates increased government regulation. Secondly, by separating development rights and land ownership, landowners are submitting themselves to changes in actual property rights. Thirdly, because cities retain ultimate police power over land use, a regional TDR program should be implemented and coordinated by the relevant MPO with optional contractual cooperation from cities where potential sending and receiving areas are identified only with permission of the city.

The potential sending and receiving areas could be identified in the SCS as a part of a coordinated inter-jurisdictional process and, rationally, be within PCAs and PDAs. Entire PCAs and PDAs may not be appropriate sending and receiving areas, so a TDR program should focus on parcels critical to preservation and those that can as determined by comprehensive analysis specifically accommodate density above baseline zoning. Identification of optimal receiving areas must consider where developer interest exists due to inadequate allowable density, where the existence or provisions for access to transit, schools, retail areas, housing, and infrastructure are appropriate, and, importantly, where there is community acceptance. Land use among the different regions in California is very heterogeneous and regional TDR programs will need to be administered accordingly. A TDR program should perhaps be tried in one region to analyze its feasibility across-jurisdictions.

A TDR program creates an artificial and imperfect market for development rights mainly to find a source of compensation for property owners to conserve their land. The intention is not to increase the cost of infill development, (purchasing increased density is optional), but to fund

conservation where there may be developers willing to pay for it. Many argue that where there is a will for increased density it should be allowed, though a TDR attempts to monetize this extra value and capitalize on existing dysfunctional zoning. The created rights market does not reflect the true cost of the commodity, nor do the beneficiaries contribute to mitigating the effects, yet TDR can still be viable as it is an effectively costless legislative action.

As such, many cities will be wary of submitting themselves to a regional TDR program; at face value, the costs and other associated consequences of increased density will be borne on only the receiving area. Additionally, cities will lose out on the potential for attracting revenue generating uses in new conservation areas. Indeed, one of the greatest barriers to regional planning is that local jurisdictions retain ultimate control in defining allowed land uses. It is imperative that the cities agreeing to be a part of a regional TDR program be allowed to identify their own potential sending and receiving areas. Of the submitted parcels, the MPO should retain the authority to determine inclusion in an effort to create a viable TDR market for developers and conservationists as a part of its pre-planning effort. MPOs could request particular areas in alignment with the PDAs and PCAs identified in the SCS and advise cities on the benefits of the program and provide transparent understanding of its incentives. These benefits should include many of the strategies outlined in other parts of this report especially where resources are more heavily directed to PDAs and PCAs. For example, state and regional funds, especially for infrastructural improvements, should be prioritized for PDAs that include TDR receiving areas.

Successful examples of existing TDR programs can provide insights to overcoming specific challenges and a framework to develop a new program. Currently, a TDR program begun in 1990 in Boulder County, Colorado exhibiting successful inter-jurisdictional coordination and rights transfer has resulted in the preservation of between 3,200 and 4,700 acres of land. The Boulder program has been implemented through an inter-governmental agreement (IGA) between the County of Boulder and the Cities of Boulder, Lafayette, and Longmont such that it combines the city's agreement to accept development rights for increased density in established urban areas with the County's open space preservation efforts in unincorporated areas. The IGA provides guidelines for intergovernmental cooperation and also has "increased TDR's credibility with developers and the general public" (Pruetz, 2003, p. 174). Similarly, a program in Malibu, California exhibits cooperation between the California Coastal Commission and the County of Los Angeles, and has been successful at conserving 900 parcels (800 acres of land). A regional TDR program will require a similar contractual element between the relevant localities and the regional administrator, explicitly outlining procedure and provisions.

Administration is another challenge of a regional TDR programs. Some TDR programs establish a "rights bank"[45] and the relevant governmental body manages it where the government pre-purchases development rights in sending areas. This guarantees expedited preservation, but not actual receiving of the rights in development areas and can become a financial burden for the relevant jurisdiction. With limited resources, regions should initially focus on brokering the rights transfers and being a technical resource and clearinghouse for information regarding possible rights transfers. State agencies should also promote the use of TDR regionally through technical and logistical assistance in creating a plan for TDR implementation, especially

[45] This type of program organization has been successful in the Long Island Pine Barrens, NY, where the state provided $5 million to start a clearinghouse to buy and sell Pine Barrens Credits. They have sold about one half of their rights (110/230) (Pruetz, 2003, p. 195).

considering TDR's effect on CEQA and the possibility of litigation. Transparency of the program is imperative or property owners and developers will be unaware of their ability to participate, and possibly confused due to "the novelty of the TDR concept and the complexity of the TDR process" (Taintor, 2001, p.18).

Finally, there will need to be consideration of the limitations imposed by other California regulatory bodies. In addition, MPOs that are designing and implementing TDR programs will need to take responsibility. For example, a pertinent question is how a TDR program may function with lands under the jurisdiction of the California Coastal Commission. This body would most likely welcome as many sending areas as possible; however, there exist coastal areas that may be ripe for greater density.

Recommendation 10: Develop and fund state and regional open space and conservation plans and programs.

Summary:

Designating and protecting areas that should be off-limits to development is as important for a complete "smart growth" strategy as designating areas where more intense development should occur. Many regions and sub-regions in the state have developed or are developing broad-scale habitat conservation plans to help protect threatened and endangered species, as well as broad-scale plans for watershed management. These plans should be incorporated into SCSs or APSs and receive adequate funding for ongoing conservation and management.

However, climate change impacts will likely throw many traditional assumptions, strategies, and legal frameworks for conserving natural resources areas into turmoil. Only the state government has the geographic and jurisdictional scope and resources necessary to ensure effective coordination and development of forward-looking conservation strategies in the face of climate effects that are expected to radically alter the natural landscape.

Therefore, the CSC recommends that

- SCSs or APSs should incorporate and support implementation of regional and local plans for habitat and watershed conservation and management.
- The state should provide increased, ongoing coordination and funding for conservation strategies that cross regional boundaries.

Incorporating NCCPs and Watershed Plans into SCSs or APSs

The state developed the Natural Communities Conservation Planning Program (NCCP), around the same time as the blueprint process, to help overcome legal conflicts over endangered species and create a model for integrating economic and environmental goals through collaborative regional land-use planning (Barbour and Kueppers, 2008). The program develops bioregional, multispecies habitat preserves through cooperative agreements among federal and state agencies, local governments, environmentalists, landowners, and others. Currently, there are 32 active, in-progress NCCPs covering more than seven million acres; 12 have been approved and permitted (DFG NCCP website, as of June 29, 2009).[46]

Through coordinated mitigation and regulatory relief, NCCP plans can provide more certainty at less cost both for landowners and the environment than a more piecemeal regulatory approach could. In exchange for agreeing to provide mitigation as required in the program, landowners receive valuable assurances that they will avoid economic consequences from future changes in species status (sanctioned through a federal policy called "no surprises"). Meanwhile, many environmentalists favor the program's landscape-scale approach and the resources the program can produce for assembling large-scale reserves.

[46] The acreage included in NCCP and regional Habitat Conservation Plan (HCPS) areas comprises more than 25 percent of the total land and water area in the state (HCPs are a federal variant that generally covers only a single species) (Barbour and Kueppers, 2008).

Where applicable, it is important that NCCPs be included in SB 375-related plans and programs. NCCP habitat preserves form an important component of the "natural resource areas" that SB 375 requires MPOs to respect as off-limits to development. In some places, such as the San Diego region, NCCP habitat preserves serve as de facto urban growth boundaries.

NCCP plans have faced implementation challenges, related, in particular, to lack of adequate funding and inter-jurisdictional coordination (Greer, 2004; Hierl et al., 2005). This concern makes it imperative for regions, in developing SCSs or APSs, to consider how to support NCCPs within their jurisdictions. The San Diego area provides an instructive example of how ongoing NCCP funding can be secured. In 2004, county voters approved a ballot measure called TransNet to extend the county's half-cent sales tax increase for transportation improvements linked to the COG/MPO's Regional Comprehensive Plan. TransNet includes $650 million (over its 40-year duration) for transportation-related habitat mitigation, and $200 million for NCCP acquisition, management, and monitoring (SANDAG, 2006).

Other environmental plans and programs similar to the NCCP are also important to incorporate into SCSs or APSs. For example, integrated planning at the watershed scale has increased, to address water supply, quality, and habitat concerns simultaneously. Market-based mechanisms also have been introduced, such as "banks" for trading wetlands mitigation credits. The California Department of Fish and Game has approved 55 conservation mitigation "banks" statewide, allowing for tradable offset credits, most for wetlands projects (DFG, 2009).

Stronger State Leadership Is Needed for Adaptive Conservation

In the face of climate change, California needs to increase its commitment to funding and coordinating conservation planning (Barbour and Kueppers, 2008). Climate change is already interacting with other, existing stressors on endemic (native) species and their habitats (such as encroaching land development and invasive species) to put many of the state's endemic species at risk of extinction. Without more concerted effort, California's commitment to protect its rich biodiversity, enshrined in laws such as the California Endangered Species Act, will falter.

These concerns relate directly to SB 375 in that NCCPs already exist in many urban and suburban areas, and designing and funding effective NCCPs in the face of climate change will be more difficult. Species' adaptation to climate change makes it necessary for the state and regions to consider how to identify and protect future habitat needs, and how to preserve crucial habitat "linkages" between existing preserves. The state took an important step in the right direction in 2008 with passage of AB 2785 (Ruskin). The bill requires the Department of Fish and Game to identify and compile a database of California's most critical areas for maintaining habitat connectivity, including wildlife corridors and habitat linkages. However, without substantial new investment in habitat acquisition and management or inclusion of these considerations in SCSs or APSs, the effort may fall short.

Therefore, the CSC recommends that the state identify an ongoing source of substantial new funding for conservation planning and programs and that regions integrate these resources into their SCS or APS processes. The CSC also recommends that the state increase oversight and coordination of research, development, acquisition, and management of habitat plans, preserves, and programs, especially when they cross regional boundaries.

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