MAKE IT WORK
IMPLEMENTING SENATE BILL 375

POLICY BRIEF

EFFICIENT LAND USE PATTERNS PRIOR-ITY CONSERVATION AREAS REGIONAL COLLABORATION TRANSIT-ORIENTED DEVELOPMENT AFFORDABLE HOUSING STABLE TRANSIT FUNDING MIXED LAND USES PERFORMANCE MEASURES SMART GROWTH CRITERIA REVENUE RAISING AUTHORITY PARKING POLICIES PRIORITY DEVELOPMENT AREAS TAX IN-CREMENT FINANCING INFRASTRUC-TURE FUNDING PROPERTY TAX LAWS FISCALIZATION OF LAND USE REVENUE SHARING FUNDING LOCAL PLANNING ENVIRONMENTAL REVIEW INCENTIVES INDIRECT SOURCE IMPACTS TRANSFER OF DEVELOPMENTS EFFICIENT LAND USE PATTERNS PRIORITY CONSERVA-TION AREAS REGIONAL COLLABORA-TION TRANSIT-ORIENTED PERFOR-MANCE MEASURES SMART GROWTH
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A POLICY BRIEF FROM THE CENTER FOR A SUSTAINABLE CALIFORNIA
UNIVERSITY OF CALIFORNIA, BERKELEY
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Earlier this year, the University of California, Berkeley, established the Center for a Sustainable California. One of its initial objectives is to be a resource in identifying ways of implementing Senate Bill (SB) 375.

SB 375 aims to help achieve California’s greenhouse gas reduction objectives by promoting more efficient land use and development patterns. While it is the first legislation of its kind in the United States, it is widely recognized that on its own the bill will not significantly change land use patterns and greenhouse gas emissions in California, absent other state policies that support its goals. We hope the research findings and action recommendations summarized in this report will prove to be of value to key stakeholders working to implement SB 375, including state, regional, and local officials.

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Introduction

In order to help the state achieve its goals for reducing greenhouse gases (GHGs) that contribute to global warming, California passed Senate Bill 375 in 2008 calling on the state’s urban regions to develop plans for more efficient land use and development. While SB 375 is ambitious in its goals, it is modest in its means. Although SB 375 promotes more coordinated regional planning, it relies on existing institutions and leaves most fundamental aspects of state and local planning processes intact.

This policy brief 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 summarizes findings and recommendations from a longer report available at http://sustainablecalifornia.berkeley.edu. The report concludes that without stronger support from the state government, the SB 375 process may prove incapable of achieving its goals.

SB 375 calls on existing regional planning agencies for implementation, namely Metropolitan Planning Organizations (MPOs), which are currently responsible for developing federally mandated long-range regional transportation investment plans. Under SB 375, the state’s eighteen MPOs must devise “Sustainable Communities Strategies” (SCSs) to achieve state-mandated GHG reduction targets. In this effort, SB 375 aligns the MPO planning process more closely with a state-mandated process for coordinating local government plans to accommodate new housing – the Regional Housing Needs Allocation process. In addition, SB 375 eases environmental review requirements under the California Environmental Quality Act (CEQA) for new developments located near transit stations.

Relying on MPOs makes sense because California’s MPOs have been recent leaders in strategic growth planning. In particular, SB 375 explicitly lauds the innovation of regional “blueprint” planning, developed by MPOs during the past decade, to produce collaborative regional/local plans that achieve preferred scenarios for future regional development.

However, some inherent weaknesses of MPO governance are likely to persist under SB 375. MPOs have no independent authority as they act primarily as an interface between local governments and state and federal programs. Moreover, MPOs have no actual authority over local land use decisions. The voluntary, collaborative Council of Government structure, under which MPOs generally operate, has long made it difficult to develop plans and programs with a regional systems focus. The MPO role is further constrained by state funding formulas that tend to reinforce counties’ role...
in transportation programming and cities’ role in land use planning and infrastructure provision.

The promise of regional planning under SB 375 will not be realized without state support. While the new 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.

Some current state policies and programs do promote SB 375 objectives. Programs to support infill and transit-oriented development, funded through Proposition 1C, a 2006 state housing bond, present one example. However, many other state programs contradict SB 375’s goals; for example, recent state transportation funding choices and budget cuts have favored roadways over transit.

Without further state support, the incentives under SB 375 for local government participation in SCS development may be too weak. There are no ongoing planning resources or rewards for localities that choose to adopt policies with regional benefits but local costs. Some of the local costs for accommodating infill can be substantial, including costs of building new infrastructure and addressing localized impacts such as increased traffic congestion.

To ensure successful implementation of SB 375, the state should implement a coordinated set of policies that support its aims, and then effectively coordinate and monitor SB 375-related programs. To help accomplish this, SB 375’s goals should be translated into quantifiable performance objectives for land use, housing, and transportation policies that the state and regions can use as a basis for allocating resources.

This policy brief presents ten priority actions that the state and regions can pursue to address SB 375 implementation challenges. The recommendations are based on research on policy options advanced and/or implemented in California and elsewhere, and interviews with stakeholders and relevant authorities. The actions are intended to bring about the following outcomes:

- Support the “three legs” of SB 375

The policy actions will strengthen the “three-legged” SB 375 stool: efficient use of transportation and land, housing affordability, and protection and management of natural resource areas. The recommended policies would oblige the state government to identify standards and programs for directing its own resources toward these ends. The policies would also empower regions and localities to achieve SB 375 goals, particularly by expanding regional and local financing tools.
• Get the “prices right” for efficient transportation and land use

Many of the recommended policy actions work to ensure that the full social and environmental costs of development, housing, and transportation choices are accurately borne by governments and individual consumers.

• Promote the development of vibrant “transit villages” and “transit corridors”

Many of the recommended actions would help localities and regions develop “transit villages” and “transit corridors” as vibrant, livable neighborhoods that provide efficient housing and transport options, and rich public amenities. Some recommended policies would provide financing options for localities to “capture value” from the potential development that transit villages and corridors may encourage. Other measures would direct more state and regional resources and regulatory relief to support transit expansion and related land uses.
Recommendations

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.

Transportation funding is central to SB 375 implementation but many recent state funding choices do not promote its objectives. About two-thirds of California’s state transportation revenue is currently spent on construction, rehabilitation, and repair of highways. 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. This imbalance could be addressed by the state taking three actions:

a) Prioritize state transportation expenditures, including grants to localities, for projects that meet smart growth criteria or conform to regional sustainability strategies.

Caltrans, the state’s department of transportation, should pursue and implement a project it has recently initiated, called the “Smart Mobility Framework.” It is aimed at designing criteria for evaluating proposed transportation plans and projects at the state, regional, and local levels, according to “smart” criteria, such as density, design, connectivity, safety, and parking. With a “smart” performance measurement system at its disposal, Caltrans and the California Transportation Commission (CTC) could utilize performance standards 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 regional performance measures, and
negotiating with regions to enhance their performance measurement capacity.

b) Empower MPOs to Implement SB 375 Objectives

The ability of MPOs to support SB 375 objectives is limited by their governance structure and the state’s transportation funding allocation formula. Most MPOs in the state coincide with Councils of Government (COGs). The collaborative governance structure of COG/MPOs makes them ideal for developing intergovernmental consensus on development priorities. However, the governance structure also makes it difficult to implement forceful policies to promote regional priorities, absent support from the state government. COG/MPOs have few independent revenue sources at their disposal, and adopted policies on land use are only advisory to local governments. State funding formulas also weaken the regional role; transportation capital expansion funds are allocated to counties using a formula based on population and highway lane-miles.

The state should reevaluate the formula for allocating funds to regional agencies, for example by basing 25 percent of the formula on highway lane miles and fixed transit lane miles and possibly a factor for bus service. The state may also decide to allocate a portion of funds to MPOs directly, rather than using the county share formula.

c) Reward Supportive Land Use by Localities

The state and regions could direct a greater portion of transportation funds to localities that adopt supportive land uses. They should establish clear metrics to measure cities’ and counties’ performance in achieving SCS land use goals and give greater weight to these measurements when funding transportation projects.

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. The TOD policy encourages cooperation and flexibility among participating jurisdictions, establishes corridor-based performance measures for developing housing near transit, and creates corridor-working groups to bring together stakeholders to develop station area plans.
Provide greater state and regional revenue-raising authority for transportation, contingent on those funds being used for SB 375 objectives.

Certain revenue-raising measures could be especially conducive to SB 375 implementation. In particular, setting higher user fees on driving (so-called “pricing policies”) can a) increase the overall availability of funding for transportation improvements, while b) simultaneously increasing roadway efficiency by reducing demand for driving, and c) advancing transit alternatives. These pricing policies can also be implemented in a fashion that strengthens the MPO role in SB 375 implementation. The state should consider two specific types of strategies:

a) **Increase the Gas Tax or Institute a VMT or Carbon Tax**

In recent years, transportation funding has been constrained by measures adopted to balance the state’s budget and also by the declining value of the gas tax. Meanwhile, maintenance and rehabilitation needs for highways and transit throughout the state are insufficient. Proposition 1B has provided some one-time funding for highway rehabilitation, but falls well short of addressing the issue of declining funds and increasing needs.

To provide a stable source of funding for transportation, the legislature could increase the gas tax and evaluate new funding mechanisms like a carbon tax for transportation and other economic sectors. California can learn from other states, like Oregon, in considering a mileage-based system. Oregon conducted a successful pilot program to test this approach, producing a 22% decline in peak period driving. More than 90% of participants said they would support paying the mileage fee in lieu of the gas tax if the program were implemented statewide.

Although the benefits of a gas/VMT/carbon tax are potentially high, the political obstacles are also extremely high. Furthermore, measures are needed to ensure that cost effects of the tax do not fall disproportionately upon low-income drivers. Notwithstanding the obstacles, it may be difficult to successfully implement SB 375 without imposing aggressive new pricing policies.
b) **Enable Regions to Adopt Congestion Pricing**

The state could also promote congestion pricing, or “tolling,” by adopting enabling legislation to allow regions to undertake congestion pricing, contingent on the funds being used to promote measures that reduce VMT.

In recent years, there has been growing public acceptance of charging tolls for road usage, particularly when tolls can finance new facilities or offer congestion relief. Congestion pricing HOT lanes have been approved by the legislature in specific corridors in California. Higher prices for driving alone (or rewards for carpooling) can help reduce solo driving, while toll revenues raised can be invested for transit alternatives and other measures to reduce VMT that benefit road users who pay the tolls.
Encourage parking strategies that promote efficient use of land and transportation.

The existence of free and low-cost parking supply for cars is a direct incentive to drive, thus contributing to GHG emissions. Current parking policy often effectively treats parking as a commodity of little value, thereby reducing and masking the true cost of driving. Local parking policies have a substantial influence on land use and can help shape the possibilities for transit-oriented development. Parking management policies could be utilized to decrease the demand for driving and encourage compact development by reducing its cost.

The state and regional agencies should consider directing resources and technical assistance to localities pursuing parking strategies that discourage automobile use. This could include providing or prioritizing grants and loans to localities that have enacted parking management policies which support infill, transit-oriented development, and otherwise reduce automobile travel. This approach would encourage localities to:

a) **Use Parking Management as a Strategy for Compact Development**

Managing parking requirements carefully is especially important in transit districts; however, current policies often fail to recognize the lower trip generation rates of transit-oriented development, overestimating TOD parking needs by as much as half. Reducing parking requirements for new development (for example by setting a parking maximum, instead of a minimum) supports compact land use and can help make compact, transit-oriented development projects economically feasible. The state and regional agencies should encourage localities to pursue careful parking demand evaluation studies for development projects in transit districts.

b) **Encourage Localities to Adopt a Menu of Parking Management Policies**

The state and regional agencies should encourage localities to consider a menu of coordinated parking policies to reduce auto use and VMT. “Smart” parking management is needed not only at the scale of specific development projects, but also for neighborhoods, cities, and even regions as a whole. Coordinated parking
policies can do more than enhance financial feasibility for specific projects, they can also increase land use efficiency and while providing funds to support neighborhood amenities.

For example, localities can combine reduced parking requirements for specific projects with residential parking permit programs, full-cost parking pricing, and shared parking programs. Unbundling, or separating, parking costs from development and rent costs is another effective way to control parking demand, increase profits for business owners and developers, and reflect parking’s true costs. Fees generated from parking can be invested in future transit and other improvements to business districts. Parking strategies are integral components of coordinated efforts to develop full-fledged “transit corridors” or “transit villages.”

Across the nation, states, regions and cities are implementing innovative parking management programs from which California’s policy makers can learn. Boulder, Colorado, for example, uses revenue from downtown parking meters to pay for free bus passes for business employees. In another case, Arlington County, Virginia imposed maximum parking requirements based on distance from Metro stations, where the lowest ratio goes to properties closest to stations.
Provide more funding options to support infrastructure and infill development.

The success of SB 375 depends on the ability of local governments to encourage compact, mixed-use development. However, financial barriers to implementing an effective infill strategy can be substantial, ranging from the cost of upgrading old sewer lines to finding adequate funds to build and maintain affordable housing units in gentrifying neighborhoods. While many of these costs of infill 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 plan for and accommodate infill development. In order to address this concern, the state should consider pursuing three strategies:

a) **Provide More State and Regional Funding that Supports Infill**

A permanent source of funding for programs that support infill development, especially for infrastructure and affordable housing, should be a priority for the state. To ensure the success of SB 375, 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. In order to increase public acceptance of infill, securing an ongoing source of funding for the Infill Incentive Program, seeded through passage of Proposition 1C in 2006, may be especially important.

b) **Empower Regions and Localities to Fund Needed Infrastructure**

Greater regional and local authority also should be granted to finance SB 375-related infrastructure. A constitutional amendment, similar to Proposition 39 passed in 2002 for school bonds, could be placed on the ballot to lower the voter threshold to 55 percent for approving bonds for infrastructure deemed consistent with a regional SCS. This would increase the likelihood of passage of such bonds substantially, and thus motivate more infill development projects and proposals.

c) **Allow Tax Increment Financing to Promote Local Transit-Oriented Development**

Under California redevelopment law, local redevelopment agencies are authorized to use tax-increment financing (TIF) to help achieve redevelopment objectives in areas determined to be blighted. The state should authorize cities and counties to use TIF
powers also in non-blighted areas near rail facilities and along major bus corridors to achieve transit-oriented development (TOD) objectives. 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 establish a “value capture” strategy from the economic potential in these areas. To accomplish this, land within a half-mile radius of transit stations could be designated as potential TIF areas. The result of successful TOD can be vibrant, mixed-use communities and pedestrian friendly town centers with improved access to public transit.

In order to offset resident 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.
Enforce RHNA requirements and redesign RHNA into a performance-based approach.

SB 375 links local housing policy more 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. To promote planning coordination and more compact development, the state should strengthen RHNA enforcement, and the state and/or regions should provide performance-based rewards for actual production of needed housing. More specifically, the state and regions could pursue three strategies:

a) **Strengthen RHNA Compliance**

SB 375 strengthens RHNA requirements, including enforcement provisions, but there is reason to question whether the provisions will be effective. The 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.

The state should strengthen sanctions for RHNA non-compliance by:
1) Imposing financial sanctions for non-compliance such as ineligibility for certain state transportation funds, ineligibility for other desirable state funds, or fines.
2) Directing HCD to distribute a list of sites with overdue zoning to nonprofit developers and affordable housing advocates.
3) Instructing 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.

b) **Link RHNA to Sustainability Strategies**

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

c) **Reward Production of Needed Housing**

The RHNA system provides no assurance that stipulated targets for additional new housing units will actually be met. Meeting housing targets is especially critical for affordable units under SB 375, because of potential concerns about gentrification in neighborhoods near transit. Furthermore, “fair share” RHNA requirements have
utilized density standards as a proxy for affordability; however, SB 375 calls into question the assumption that more compact, multi-unit housing is likely to be more affordable. For these reasons, a procedure for demonstrating actual production or maintenance of affordable units is critical for successful implementation of SB 375.

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. Communities can be evaluated and rewarded for successfully adopting local land use and development ordinances that encourage residential development and affordable units, and for how well they seek and leverage public subsidies for developments that include affordable units. First, performance might be measured using a graduated standard, such as according to the following categories of localities:

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.

Then, communities in the first two categories could be rewarded; this could entail priority access to state or regional loans, grants, and subventions. 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.

An example of a regionally-based system for rewarding localities would be to establish a regional fund for purposes directly related to implementing SCSs, including providing affordable housing. 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.
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”).

The state’s fiscal policies and tax structure do not actively facilitate infill development, encourage multifamily affordable housing, or limit sprawl. Fiscally constrained local governments often make land use choices based on the amount of revenue they can obtain, and state policies do little to counteract this “fiscalization of land use” even when the consequences are detrimental for promoting efficient development patterns.

By limiting property taxes, Proposition 13 induced local governments to maximize other revenue sources over which they retain control, in particular, user charges and fees. As a result, community-wide services have declined and localities find it harder to build infrastructure needed to support infill. One result of constrained local budgets is that localities often transfer the costs of new infrastructure to new development through fees and exactions; this technique tends to facilitate new development in outlying areas, rather than within urbanized areas. Budget shortfalls have also led many localities to favor “big box” and other commercial developments, which bring in significant sales tax revenue, over housing (especially affordable housing).

Finally, continuing fiscal unpredictability and revenue shifts by the state government have only worsened local planning problems related to budget constraint. In order to produce more compact and efficient development as called for under SB 375, localities need more support from the state to overcome the fiscal incentives that counteract efficient land use. To address this concern, the state should consider two actions:

a) Facilitate a Tax Swap to Reduce Fiscalized Land Use

Tax swaps could mitigate the promotion of commercial land uses. Under this approach, a greater portion of local property taxes could be allocated to cities and counties in exchange for returning sales taxes to the state. Alternatively, sales taxes might be directed to counties, in exchange for a larger share of property taxes going to cities. Allocating property tax revenue to
cities would aid cities in building affordable housing. Moreover, property tax revenue is more stable than sales tax revenue, which can fluctuate with the economy’s effects on consumers.

b) Promote Regional Revenue Sharing

To strengthen regional cohesion and planning, a portion of existing sales tax revenue could be “regionalized.” Through revenue sharing agreements adopted among localities within regions, existing revenue streams could be pooled instead of allocated based on situs, reducing the incentive to compete for development while maintaining aggregate revenue. Shared resources could also result in greater efficiency of governmental service provision by eliminating redundancy within a region.

In adopting one of these schemes, the state must be wary of taking resources from infrastructure, public safety, and schools. An approach that guarantees that no local revenue cuts will occur could help in reducing opposition.
Provide additional CEQA streamlining for projects within priority development areas designated in regional SCSs, and also provide funding mechanisms to assist governments in conducting plan-level CEQA review.

Streamlining environmental review of infill projects, as required under the California Environmental Quality Act (CEQA), can 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 ensure that CEQA works to promote, not detract from, infill strategies, the state should amend CEQA to encourage plan-level review for projects in “priority development areas” designated in SCSs, and establish a funding mechanism to provide local governments and regional agencies with assistance in conducting plan-level review.

a) Limitations of CEQA Streamlining under SB 375

SB 375 currently includes two types of CEQA streamlining, neither of which may encourage much more infill development. The first type of CEQA streamlining provides for reduced review for Transportation Priority Projects (TPPs) – projects located near transit that meet specific criteria. The second type of streamlining is intended to encourage “tiering,” or CEQA review conducted at the level of local or regional plans instead of at the project level. For those projects that are deemed consistent with an SCS or APS, streamlining is provided by “front-loading” some CEQA review requirements based on the assessment already conducted for the SCS or APS. Currently, the SCS or APS is not required to reference growth-induced environmental impacts, project specific impacts, or a reduced residential density alternative.

SB 375’s tiering provisions could help re-orient CEQA to support regional, rather than just local, environmental priorities and plans. However, the provisions may not be adopted locally because SB 375 does nothing to address many traditional obstacles to adoption of tiering. For example, some research has indicated that local governments may tend to substitute project-level CEQA analysis for plan-level analysis because developers are required to pay for the project reviews. SB 375 provides no resources to conduct plan-level reviews.

Furthermore, the narrow definition of a TPP may not actually induce substantially more infill or TOD development. Research indicates that fewer than 15% of developers took up prior exemptions for infill projects provided under state law, due to potential legal exposure and other concerns. Essentially, CEQA
relief provided under SB 375 is optional, and it is not clear that the new provisions will induce localities that are resistant to infill to alter their approach.

While the provisions of SB 375 may not be enough to prompt much new infill development and tiering, a new requirement established under “normal” CEQA rules mandating review of climate change impacts could be more promising. Tiering could become an attractive option to local agencies as a way to meet the new requirement. In particular, a project compatible with an SCS or APS need not consider project-specific or cumulative impacts from cars and light trucks on global warming.

Thus, the combination of new provisions under normal CEQA rules, plus the streamlining provisions under SB 375, could encourage more tiering and plan-level review. For example, if the Environmental Impact Report conducted for an 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. However, it will be challenging to identify subsequent projects within the scope of a regional Master EIR in sufficient detail, and it will be challenging to fully integrate local plans and projects with regional plans and programs. Therefore, the exciting possibilities for using CEQA tiering under SB 375 only make it more imperative for the state to provide assistance.

b) Strengthen Plan-Level Review under SB 375

The state should take steps to encourage plan-level CEQA review. MPOs and local agencies must be assured that they can develop legally defensible plans under CEQA to use as the basis for tiering of specific projects. This approach could encourage infill and help ensure that project-level CEQA review does not serve as a deterrent to those strategies.

State facilitation should entail technical assistance and an ongoing source of funds for regional and local planning related to plan-level CEQA review. 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 would be fully exempt from further review under CEQA. The basis for adopting a similar approach already exists in California under provisions for CEQA review of “specific plans”.
Implement an Indirect Source Review program within regional air quality management districts to reduce VMT.

Indirect source review (ISR) programs help ensure that developers take into account how the design, location, and other characteristics of projects contribute to air pollution. ISR programs could assist the state in meeting SB 375 goals by discouraging sprawl and decreasing VMT and associated GHG emissions. The state government could help promote adoption of ISR programs in each air district in California to cover GHGs and VMT.

a) Expand ISRS to Cover GHGs

Under existing authority, regional air quality control districts in California may impose ISR to regulate the construction and long-term transportation impacts of land development. An ISR program requires that developers make changes to new projects, either onsite or offsite, that will reduce pollution caused by vehicle and energy use linked to the development, both during construction and over the life of the project’s operation. So far, regional air districts have imposed ISR only for “criteria” pollution reduction, but the ISR approach could be extended to address GHG emissions as well.

ISR has been implemented in the San Joaquin Valley to reduce criteria pollutants, and analysts believe that the same approach and tools could be used effectively to encourage GHG emissions reduction. URBEMIS, the software used to calculate indirect emissions from development projects in the San Joaquin Valley, is currently being updated to include GHG emissions. The California Air Resources Board is also working to establish GHG emissions inventorying and modeling standards as part of its AB 32 implementation.

The state government could encourage adoption of ISR programs by air districts across California. ISR programs would create higher costs for developing in greenfields as opposed to infill sites, helping promote SB 375 goals for encouraging infill and efficient land development. Developers would have to mitigate indirect GHG emissions through on-site improvements, or pay a fee to the region,
which could be invested to reduce GHG emissions through SB 375-supporting projects. Developers could utilize options such as installing bike lanes or increasing pedestrian walkability or density in order to address ISR requirements.

b) Address ISR Implementation Challenges

An ISR program must be designed carefully to be effective. Caution is needed to ensure that this approach does not induce developers to shift their investments into regions that do not have an ISR program. Moreover, revenue generated from an ISR program should be aligned with the objectives of SB 375.

The fee should be large enough to deter developments contrary to SB 375 goals, yet should be reasonable where there are limited onsite mitigation opportunities. Moreover, onsite mitigation should be quantified so that a commensurate reduction in fees is applied. To incentivize infill development even more, projects in regionally established priority development areas or those consistent with the SCS or APS could be exempt from ISR.

To prevent development shifting to areas with less strict regulation, state assistance should be provided in developing an ISR program and programs should be overseen by CARB for consistency between regions. Another possible solution is to implement ISRs statewide through legislation.
Strengthen priority regional development areas and priority conservation areas with a regional transfer of development rights program.

In order to promote priority development and conservation areas in the SCS, regions should have the opportunity to implement a transfer of development rights (TDR) program. Cities would be encouraged to submit potential “sending and receiving” areas for development rights, to be included in the SCS and managed by the MPO. The program would provide another tool for regions to encourage denser infill development in urban cores while compensating landowners for conservation in less dense areas. If properly planned and managed, the creation of a development rights market aligned with cities’ underlying zoning will offer incentives directly to developers and landowners and will be relatively inexpensive for relevant government agencies.

a) Facilitate Implementation of Optional TDR Programs in the PDA/PCA Framework

A regional TDR program would provide another mechanism to increase land use density within regionally established priority development areas (PDAs) while providing complementary restrictions on development in regionally established priority conservation areas (PCAs). TDR programs provide guidelines for the severance of development rights from the property rights of a piece of land and how these can be sold to another property owner and applied to the potential development of their land. This allows the “receiver” of the rights to develop beyond the baseline zoning as defined by a locality’s general plan. Within this structure, potential “sending” and “receiving” areas of rights should be designated by the appropriate planning body and correspond to areas within PCAs or PDAs, respectively.

The state could assist MPOs in designing a TDR market, on an optional basis, as part of an SCS or APS. In implementing this strategy, cities would submit potential sending and receiving of development rights areas by parcel to the MPO developing the SCS/APS. MPOs would manage and broker development rights transfers.

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. Because receivers would pay for
development rights, open space could be preserved with minimal expenditure of tax dollars beyond planning and administration.

b) **Provide Tailored Assistance for Optional TDRs**

Land use among the different regions in California is diverse and regional TDR programs will need to be administered on a case-by-case basis. Furthermore, a successful TDR program requires a large amount of front-end planning. For these reasons, implementation of this strategy should be optional, and the state should assist interested regional agencies in exploring this option on a case-by-case basis. A TDR program should perhaps initially be tried in one region to analyze its feasibility for others.

Cities will need to be incentivized to accept development rights and a regional TDR program must 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. Existing zoning must be analyzed such that a viable TDR market is created, monitored, and maintained through adjustments to predefined sending and receiving areas based on inevitable local zoning changes. Cities and developers will need to be made aware of the TDR program and a zoning scheme devised such that increased density in PDAs is desired, appropriate, and is maintained. Additionally, support for preservation within designated PCA sending areas is essential and financial incentives must be great enough for a landowner to choose selling development rights over actual development.

Potential sending and receiving areas should 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. Optimal receiving areas should be located where developer interest exists due to inadequate allowable density, and identification should consider the existence or provisions for access to transit, schools, retail areas, housing, and infrastructure, and, importantly, where there is community acceptance.

Those areas receiving development rights should be provided with greater resources commensurate with the increased density. These resources ought to include prioritization for resources for PDA development and for infrastructure upgrades.
Develop and fund state and regional open space and conservation plans and programs as part of Sustainable Communities Strategies.

Designating and protecting areas that should be off-limits to development is as important for a complete “smart growth” strategy as identifying areas where more intense development should occur. Many regions and sub-regions develop habitat conservation plans to help protect threatened and endangered species, as well as broad-scale plans for watershed management. Especially in light of anticipated climate change impacts, these plans should be incorporated into SCSs or APSs and receive adequate funding for ongoing conservation and management. With its geographical and jurisdictional scope and resources, the state government should proactively facilitate cross-jurisdictional land conservation planning.

a) **Incorporate NCCPs and Watershed Plans into SCSs or APSs**

MPOs should assure that SCSs or APSs incorporate and support implementation of regional and local plans for habitat and watershed conservation and management. For example, where applicable, it is important that the Natural Communities Conservation Plans (NCCPs) be included in SB 375-related plans and programs. The NCCP program develops bioregional, multi-species habitat preserves through cooperative agreements among federal and state agencies, local governments, environmentalists, landowners, and others. Currently, there are 32 active, in-progress NCCPs in the state covering more than seven million acres; twelve have been approved and permitted.

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 can provide more certainty at less cost both for landowners and the environment than a more piecemeal regulatory approach. 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 such banks statewide.

b) Provide Stronger State and Regional Leadership for Adaptive Conservation Strategies

Since the impacts from climate change are predicted to be severe on the state’s plant and animal species, California needs to increase its commitment to funding and coordinating conservation planning. Climate change is already interacting with other, existing stressors on endemic (native) species and their habitats to put many of the state’s 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.

Therefore, the state government and regional agencies should identify ongoing sources of substantial new funding for conservation planning and programs. Regions could follow the San Diego area model by raising funds for NCCP land acquisition through county sales tax ballot measures for transportation-related purposes. The state should also 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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