

A New Era for Regional Planning in California: A Look at Senate Bill 375

By Terry Rivasplata, ICF Jones & Stokes

On September 30, 2009, Governor Schwarzenegger signed into law Senate Bill 375 (Steinberg; Chapter 728, Statutes of 2008) which ushers in a new era for regional planning in California. Senate Bill (SB) 375 is an ambitious bill that combines regional transportation planning with sustainability strategies in order to reduce greenhouse gas (GHG) emissions in California's urbanized areas. It also establishes new streamlining opportunities for compatible projects under the California Environmental Quality Act (CEQA). The result of 2 years of intensive negotiations among business, development, housing, and environmental groups, this legislation represents a delicately balanced and complex set of compromises. This article summarizes the main provisions of the bill.

In his signing statement, the Governor made the following remarks.

"This landmark bill takes California's fight against global warming to a whole new level, and it creates a model that the rest of the country and world will use. When it comes to reducing greenhouse gases, California is first in tackling car emissions, first to tackle low-carbon fuels, and now with this landmark legislation, we are the first in the nation to tackle land-use planning. What this will mean is more environmentally friendly communities, more sustainable developments, less time people spend in their cars, more alternative transportation options, and neighborhoods we can safely and proudly pass on to future generations."

Regional Transportation Planning, Sustainability, and Greenhouse Gas Reduction

SB 375 is intended to improve transportation planning by incorporating consideration of greenhouse gas emissions and linking regional transportation plans (RTPs) to infill development and housing as part of the transportation planning process. Under existing law, each regional transportation planning agency must adopt an RTP that includes a policy element, an action element, and a financial element. Federal law identifies some of these planning agencies as Metropolitan Planning Organizations (MPOs). SB 375 will require MPOs to include a "sustainable communities strategy" (SCS) in their RTPs and details the contents of that strategy.

SB 375 will mandate that the California Transportation Commission (CTC), in consultation with the California Department of Transportation (Caltrans) and the Air Resources Board (ARB), develop guidelines for travel demand models used by MPOs. The modeling guidelines will be required to account for the information listed in the following bullets. The bill will encourage but not mandate that cities and counties use these guidelines.

SB 375 Terminology and Acronyms

SB 375 introduced new terms into California's already complex planning lexicon. To help the reader understand the bill, we have developed the following list of terms and their acronyms:

Alternative Planning Strategy	APS
Air Resources Board	ARB
California Environmental Quality Act	CEQA
Metropolitan Planning Organization	MPO
Regional Transportation Plan	RTP
Sustainable Communities Strategy	SCS
Transit Priority Project	TPP
Vehicle Miles Traveled	VMT

- Relationship between land use density, household vehicle ownership, and vehicle miles traveled (VMT)
- Impacts of enhanced transit on vehicle ownership and VMT
- Changes in travel and land development patterns likely to result from highway or passenger rail expansion
- Mode splitting (e.g., allocating trips between autos, transit, carpools, bike, and pedestrian trips)
- Speed, frequency, and hours of transit operation

Additionally, SB 375 will require the ARB to provide each region with GHG emissions reduction targets from the auto and light truck sector for 2020 and 2035 by June 30, 2010.

Under SB 375, MPOs will be required to develop an SCS that addresses the following topics.

- General location of land uses, residential density, and building intensity in the region
- Areas sufficient to accommodate:
 - o all expected residential growth over the RTP's 8-year planning cycle
 - o the 8-year regional housing need
 - o the State's housing goals
- Identification of a transportation network to service the region's transportation needs
- Information on resource areas and farmland
- A regional development pattern, transportation network, and other transportation measures that would reduce GHG emissions from autos and light trucks to meet the ARB targets, if feasible

The scenario developed under the SCS must enable the RTP to comply with the federal Clean Air Act. Within the Southern California Council of Governments (SCAG) region, the bill provides that a county and its cities may propose a sub-regional strategy that may be approved by the transportation planning agency. In the San Francisco Bay Area, the bill describes the related duties of the Association of Bay Area Governments (ABAG) and the Metropolitan Transportation Commission (MTC).

SB 375 authorizes ARB to review and accept the compliance of the SCS with the GHG target, but does not authorize ARB to review and accept any other part of the RTP or SCS. If the SCS is not accepted as compliant, the MPO could adopt an "alternative planning strategy" (APS) that would be separate from the RTP for purposes of meeting the target, if feasible. The RTP and its SCS are subject to CEQA. However, adoption of an APS is not.

Nothing in SB 375 gives MPOs the authority to regulate land use or supersede local planning authority, nor are city and county general plans required to be consistent with an SCS.

Housing Elements

Existing law requires city and county general plans to include a housing element that provides for community housing needs over a 5-year period. Housing needs are assigned to cities and counties by the COG based on a regional housing needs allocation. SB 375 makes extensive revisions to the housing element process, including requiring consistency with the RTP growth assumptions and placing it on an 8-year schedule in parts of the state. SB 375 also mandates that affordable housing sites be re-zoned accordingly within 3 years of adopting the revised housing element.

CEQA Streamlining

SB 375 establishes a complex new CEQA streamlining approach. This approach will apply if the project is a "transit priority project" that is consistent with the land use provisions of an RTP/SCS or APS that ARB is satisfied would achieve the GHG emission reduction targets. A transit priority project must conform to the following requirements.

- Contain at least 50% residential use
- Have a minimum net density of 20 units/acre
- Be located within 0.5 mile of a major transit stop or high-quality transit corridor included in an RTP

SB 375 also establishes a new statutory exemption for transit priority projects that meet strict environmental and land use criteria, and one of three other criteria. The exemption can be approved only after a public hearing. Summarized below are the mandatory environmental criteria and land use criteria for relying on the new exemption.

- Mandatory environmental criteria
 - o The project can be served by existing utilities and all in-lieu fees will be paid.
 - o The site does not contain wetlands or riparian areas and has no significant value as wildlife habitat, does not harm listed species, and does not destroy or remove any locally protected species.
 - o The site is not on the "Cortese list."
 - o A preliminary environmental assessment (PEA) has been performed, and any hazardous material has been remediated.
 - o The project will not have a significant effect on historical resources.
 - o The site is not subject to wildland fire hazard or undue risk of explosion from materials stored at nearby properties.
 - o The site is not subject to risk of public health exposure, seismic risk as a result of being within an Alquist-Priolo zone, landslide hazard, or flood risk.
 - o The site is not on developed open space.
 - o The project buildings will be 15% more energy efficient than required under the California Energy Code and will use 25% less water than the average used in the region.
- Mandatory land use criteria
 - o The site is not larger than 8 acres.
 - o No more than 200 residential units are proposed.
 - o There will be no net loss of affordable housing units in the area.
 - o No single level building exceeds 75,000 square feet in area.

- o The applicable adopted mitigation measures or performance standards from the SCS EIR will be incorporated into the project.
- o The project will not conflict with nearby operating industrial uses.
- o The project is within 0.5 mile of a rail or ferry transit station or within 0.25 mile of a high-quality transit corridor included in an RTP.

The transit priority project must also meet at least one of the following criteria.

- 20% or more of the housing will be affordable to moderate-income families, or 10% will be rented to low-income families, or 5% will be rented to very-low income families, and sufficient commitments are made to ensure affordability.
- The developer has paid or will pay in lieu fees to develop the units required above.
- The project provides public open space equal to at least 5 acres per 1,000 residents.

Document Streamlining Methods

SB 375 also creates two alternative methods to streamline the CEQA document process where a transit priority project incorporates all of the feasible mitigation measures and performance standards adopted in the RTP/SCS or APS EIR. The two approaches are described below.

- Approach Number 1—Review the project through a “sustainable communities environmental assessment.” Under this abbreviated CEQA process, a lead agency must take the following steps. (The fair argument standard will not apply to this new environmental assessment.)
 - o Prepare an initial study to identify the project-specific impacts.
 - o Identify the cumulative or growth-inducing impacts analyzed in the SCS or APS EIR that do not require further evaluation.
 - o Incorporate measures that substantially lessen to a level of insignificance or avoid all project-specific impacts.
 - o Circulate the draft assessment for public comment for 30 days.
 - o Consider the comments received.
 - o Conduct a public hearing before the city council or board of supervisors (the planning commission can hear this project if there are provisions for appeal).
 - o Approve the assessment with the findings that:
 - a. all the effects required to be identified in the initial study have been identified and analyzed, and
 - b. either changes have been required in the project that avoid all project-specific significant effects or such changes are the responsibility of another agency that has or can and should adopt them.
- Approach Number 2—Review the project through an EIR, with the following special provisions.
 - o Prepare an initial study identifying the project-specific impacts that may have a significant effect on the environment.
 - o Identify the cumulative or growth-inducing impacts analyzed in the SCS or APS EIR that do not require further evaluation.
 - o The EIR must address the project’s potential impacts, but it is not required to analyze off-site alternatives.
 - o Otherwise, it is subject to the usual provisions for EIR content and procedure.

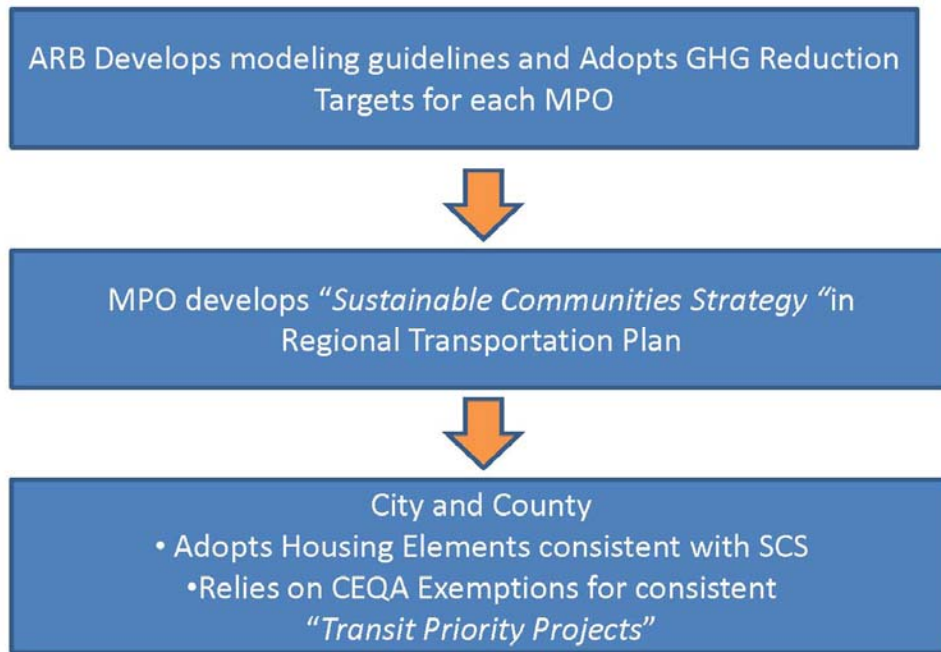
SB 375 further provides that the legislative body may adopt standard traffic mitigation policies applicable to transit priority projects. A transit priority project seeking a land use approval would then not be required to incorporate any mitigation that has been identified in an EIR that would otherwise be the responsibility of either the lead agency or a responsible agency. This includes mitigation of traffic impacts “on intersections, streets, highways, freeways, or mass transit.” The legislative body will be required to adopt or amend these measures at a public hearing and to review the measures and update them every 5 years.

For cases when a project is consistent with the use provisions of an RTP/SCS or APS that ARB is satisfied would achieve the GHG emission reduction targets, SB 375 will also limit the need to analyze growth inducement or any project-specific cumulative impact on GHG emissions or the regional transportation network from autos and light trucks in a CEQA document for residential and mixed-use residential projects. A residential or mixed use residential project is defined as either a transit priority project or a project with at least 75% of the total building area consisting of residential use. The regional transportation network includes the state transportation facilities. This provision will authorize levying conditions, exactions, or fees to mitigate the project's impacts on the structure, safety, or operations of the regional network or local roads.

Conclusion

SB 375 is the first step toward bringing State, regional, and local governments together on reducing greenhouse gases. It will likely take several years to become fully implemented because the State must develop the modeling guidelines and the GHG regional reduction targets, then the regional agencies must develop their sustainable communities strategies. After the State and regional agencies accomplish their SB 375 responsibilities, cities and counties will be required to bring their housing elements into conformity and be able to take advantage of the new CEQA streamlining tools. Figure 1 illustrates this relationship.

Figure 1. SB 375 - State/Regional/Local Relationships



For further information about SB 375 contact the author, [Terry Rivasplata](#) (916) 737-3000, [Michele Rodriguez](#) (415) 296-0524, or one of ICF Jones & Stokes' other SB 375 experts at climatechange@jsanet.com.

Gov. Schwarzenegger Issues Executive Order Directing State Agencies to Plan for Sea Level Rise and Climate Impacts

Given the serious threat of sea level rise to California's water supply and coastal resources and the impact it would have on our state's economy, population and natural resources, Governor Arnold Schwarzenegger today issued an Executive Order (EO) to enhance the state's management of climate impacts from sea level rise, increased temperatures, shifting precipitation and extreme weather events.

"We have to adapt the way we work and plan in order to manage the impacts and challenges that California and our entire planet face from climate change," Governor Schwarzenegger said.

"Given the serious threat of sea level rise to California's water supply, population and our economy, it's critically important that we make sure the state is prepared when heavy rains cause flooding and the potential for sea level rise increases in future years."

There are four key actions in the EO including: (1) initiate California's first statewide climate change adaptation strategy that will assess the state's expected climate change impacts, identify where California is most vulnerable and recommend climate adaptation policies by early 2009; (2) request the National Academy of Science establish an expert panel to report on sea level rise impacts in California to inform state planning and development efforts; (3) issue interim guidance to state agencies for how to plan for sea level rise in designated coastal and floodplain areas for new projects; and (4) initiate a report on critical existing and planned infrastructure projects vulnerable to sea level rise.

One key benefit that the EO will facilitate is California's first comprehensive climate adaptation strategy. This effort will improve coordination within state government and adapt the way work so that better planning can more effectively address climate impacts to human health, the environment, the state's water supply and the economy.

Another benefit from the EO includes providing consistency and clarity to state agencies on how to address sea level rise in current planning efforts, reducing time and resources unnecessarily spent on developing different policies using different scientific information.

The EO and its actions carry on the Governor's environmental leadership by continuing to address climate change adaptation in coordination with our climate change mitigation policies as outlined in AB 32. The states of Washington and Oregon, as well as Canada and Mexico, along with several global institutions have expressed interest in coordinating our climate change adaptation policies as outlined in this EO.

California's Energy Commission, the California Ocean Protection Council and Caltrans are conducting numerous scientific studies on the impact of climate change, including new sea level rise impact projections that are being used to develop the state's climate change adaptation strategy.

Full text of executive order:

EXECUTIVE ORDER S-13-08

by the Governor of the State of California

WHEREAS climate change in California during the next century is expected to shift precipitation patterns, accelerate sea level rise and increase temperatures, thereby posing a serious threat to California's economy, to the health and welfare of its population and to its natural resources; and

WHEREAS California is a leader in mitigating and reducing its greenhouse gas emissions with the 2006 Global Warming Solutions Act (Assembly Bill 32), the Low Carbon Fuel Standard (Executive Order S-01-07), the 2008 Senate Bill 375 and the Renewable Portfolio Standard; and

WHEREAS these efforts, coupled with others around the world, will slow, but not stop all long-term climate impacts to California; and

WHEREAS California must begin now to adapt and build our resiliency to coming climate changes through a thoughtful and sensible approach with local, regional, state and federal government using the best available science; and

WHEREAS there is a need for statewide consistency in planning for sea level rise; and

WHEREAS California's water supply and coastal resources, including valuable natural habitat areas, are particularly vulnerable to sea level rise over the next century and could suffer devastating consequences if adaptive measures are not taken; and

WHEREAS the country's longest continuously operating gauge of sea level, at Fort Point in San Francisco Bay, recorded a seven-inch rise in sea level over the 20th century thereby demonstrating the vulnerability of infrastructure and resources within the Bay; and

WHEREAS global sea level rise for the next century is projected to rise faster than historical levels with the Intergovernmental Panel on Climate Change predicting that global sea levels will rise by between seven to 23 inches this century and some experts predicting even higher rises; and

WHEREAS while climate models predicting global sea level rise are generally understood and improving, less information is available for sea level rise projections specific to California that accounts for California's topography, coastal erosion rates, varying land subsidence levels and tidal variations; and

WHEREAS billions of dollars in state funding for infrastructure and resource management projects are currently being encumbered in areas that are potentially vulnerable to future sea level rise; and

WHEREAS safety, maintenance and operational efforts on existing infrastructure projects are critical to public safety and the economy of the state; and

WHEREAS the longer that California delays planning and adapting to sea level rise the more expensive and difficult adaptation will be; and

WHEREAS the California Resources Agency is a member of the California Climate Action Team and is leading efforts to develop and implement policy solutions related to climate change adaptation regarding current and projected effects of climate change; and

WHEREAS the Department of Water Resources (DWR) is responsible for managing the state's water resources to benefit the people of California, and to protect, restore and enhance the natural and human environments; and

WHEREAS California's coastal management agencies such as the California Coastal Commission, the California Ocean Protection Council (OPC) and California State Parks are charged with managing and protecting the ocean and coastal resources of the state; and

WHEREAS the California Energy Commission's (CEC) Public Interest Energy Research Program has funded research on climate change since 2001 including funding the development of

preliminary sea level rise projections for the San Francisco Bay area by the Scripps Institution of Oceanography/University of California at San Diego.

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, by virtue of the power vested in me by the Constitution and statutes of the State of California, do hereby order effective immediately:

1. The California Resources Agency, in cooperation with DWR, CEC, California's coastal management agencies, and the OPC, shall request that the National Academy of Sciences (NAS) convene an independent panel to complete the first California Sea Level Rise Assessment Report and initiate, within 60 days after the signing of this Order, an independent sea level rise science and policy committee made up of state, national and international experts.

2. By March 31, 2009, the OPC, DWR and the CEC, in coordination with other state agencies, shall hold a public workshop to gather policy-relevant information specific to California for use in preparing the Sea Level Rise Assessment Report and to raise state awareness of sea level rise impacts.

3. The California Resources Agency shall request that the final Sea Level Rise Assessment Report be completed as soon as possible but no later than December 1, 2010. The final Sea Level Rise Assessment Report will advise how California should plan for future sea level rise.

The report should include: (1) relative sea level rise projections specific to California, taking into account issues such as coastal erosion rates, tidal impacts, El Niño and La Niña events, storm surge and land subsidence rates; (2) the range of uncertainty in selected sea level rise projections; (3) a synthesis of existing information on projected sea level rise impacts to state infrastructure (such as roads, public facilities and beaches), natural areas, and coastal and marine ecosystems; and (4) a discussion of future research needs regarding sea level rise for California.

4. The OPC shall work with DWR, the CEC, California's coastal management agencies and the State Water Resources Control Board to conduct a review of the NAS assessment every two years or as necessary.

5. I direct that, prior to release of the final Sea Level Rise Assessment Report from the NAS, all state agencies within my administration that are planning construction projects in areas vulnerable to future sea level rise shall, for the purposes of planning, consider a range of sea level rise scenarios for the years 2050 and 2100 in order to assess project vulnerability and, to the extent feasible, reduce expected risks and increase resiliency to sea level rise. However, all projects that have filed a Notice of Preparation, and/or are programmed for construction funding the next five years, or are routine maintenance projects as of the date of this Order may, but are not required to, account for these planning guidelines. Sea level rise estimates should also be used in conjunction with appropriate local information regarding local uplift and subsidence, coastal erosion rates, predicted higher high water levels, storm surge and storm wave data.

6. The Business, Transportation, and Housing Agency shall work with the California Resources Agency and the Governor's Office of Planning and Research (OPR) to prepare a report within 90 days of release of this Order to assess vulnerability of transportation systems to sea level rise that will include provisions for investment critical to safety, maintenance and operational improvements of the system and economy of the state.

7. By June 30, 2009, the California Resources Agency, through the Climate Action Team, shall coordinate with local, regional, state and federal public and private entities to develop a state Climate Adaptation Strategy. The strategy will summarize the best known science on climate change impacts to California (led by CEC's PIER program), assess California's vulnerability to the identified impacts and then outline solutions that can be implemented within and across state agencies to promote resiliency. A water adaptation strategy will be coordinated by DWR with

input from the State Water Resources Control Board, an ocean and coastal resources adaptation strategy will be coordinated by the OPC, an infrastructure adaptation strategy will be coordinated by the California Department of Transportation, a biodiversity adaptation strategy will be jointly coordinated by the California Department of Fish and Game and California State Parks, a working landscapes adaptation strategy will be jointly coordinated by the California Department of Forestry and Fire Protection and the California Department of Food and Agriculture, and a public health adaptation strategy will be jointly coordinated by the California Department of Public Health and the California Air Resources Board, all as part of the larger strategy. This strategy will be facilitated through the Climate Action Team and will be coordinated with California's climate change mitigation efforts.

8. By May 30, 2009, OPR, in cooperation with the California Resources Agency, shall provide state land-use planning guidance related to sea level rise and other climate change impacts.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

I FURTHER DIRECT that as soon as hereafter possible, this Order shall be filed with the Office of the Secretary of State and that widespread publicity and notice be given to this Order.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 14th day of November 2008.

Senate Bill No. 375

CHAPTER 728

An act to amend Sections 65080, 65400, 65583, 65584.01, 65584.02, 65584.04, 65587, and 65588 of, and to add Sections 14522.1, 14522.2, and 65080.01 to, the Government Code, and to amend Section 21061.3 of, to add Section 21159.28 to, and to add Chapter 4.2 (commencing with Section 21155) to Division 13 of, the Public Resources Code, relating to environmental quality.

[Approved by Governor September 30, 2008. Filed with
Secretary of State September 30, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

SB 375, Steinberg. Transportation planning: travel demand models: sustainable communities strategy: environmental review.

(1) Existing law requires certain transportation planning activities by the Department of Transportation and by designated regional transportation planning agencies, including development of a regional transportation plan. Certain of these agencies are designated under federal law as metropolitan planning organizations. Existing law authorizes the California Transportation Commission, in cooperation with the regional agencies, to prescribe study areas for analysis and evaluation.

This bill would require the commission to maintain guidelines, as specified, for travel demand models used in the development of regional transportation plans by metropolitan planning organizations. The bill would require the commission to consult with various agencies in this regard, and to form an advisory committee and to hold workshops before amending the guidelines.

This bill would also require the regional transportation plan for regions of the state with a metropolitan planning organization to adopt a sustainable communities strategy, as part of its regional transportation plan, as specified, designed to achieve certain goals for the reduction of greenhouse gas emissions from automobiles and light trucks in a region. The bill would require the State Air Resources Board, working in consultation with the metropolitan planning organizations, to provide each affected region with greenhouse gas emission reduction targets for the automobile and light truck sector for 2020 and 2035 by September 30, 2010, to appoint a Regional Targets Advisory Committee to recommend factors and methodologies for setting those targets, and to update those targets every 8 years. The bill would require certain transportation planning and programming activities by the metropolitan planning organizations to be consistent with the sustainable communities strategy contained in the regional transportation plan, but would state that certain transportation projects programmed for

funding on or before December 31, 2011, are not required to be consistent with the sustainable communities strategy process. To the extent the sustainable communities strategy is unable to achieve the greenhouse gas emission reduction targets, the bill would require affected metropolitan planning organizations to prepare an alternative planning strategy to the sustainable communities strategy showing how the targets would be achieved through alternative development patterns, infrastructure, or additional transportation measures or policies. The bill would require the State Air Resources Board to review each metropolitan planning organization's sustainable communities strategy and alternative planning strategy to determine whether the strategy, if implemented, would achieve the greenhouse gas emission reduction targets. The bill would require a strategy that is found to be insufficient by the state board to be revised by the metropolitan planning organization, with a minimum requirement that the metropolitan planning organization must obtain state board acceptance that an alternative planning strategy, if implemented, would achieve the targets. The bill would state that the adopted strategies do not regulate the use of land and are not subject to state approval, and that city or county land use policies, including the general plan, are not required to be consistent with the regional transportation plan, which would include the sustainable growth strategy, or the alternative planning strategy. The bill would also require the metropolitan planning organization to hold specified informational meetings in this regard with local elected officials and would require a public participation program with workshops and public hearings for the public, among other things. The bill would enact other related provisions.

Because the bill would impose additional duties on local agencies, it would impose a state-mandated local program.

(2) The Planning and Zoning Law requires each city, county, or city and county to prepare and adopt a general plan for its jurisdiction that contains certain mandatory elements, including a housing element. Existing law requires the housing element to identify the existing and projected housing needs of all economic segments of the community.

Existing law requires the housing element, among other things, to contain a program which sets forth a 5-year schedule of actions of the local government to implement the goals and objectives of the housing element. Existing law requires the program to identify actions that will be undertaken to make sites available to accommodate various housing needs, including, in certain cases, the rezoning of sites to accommodate 100% of the need for housing for very low and low-income households.

This bill would instead require the program to set forth a schedule of actions during the planning period, as defined, and require each action to have a timetable for implementation. The bill would generally require rezoning of certain sites to accommodate certain housing needs within specified times, with an opportunity for an extension time in certain cases, and would require the local government to hold a noticed public hearing within 30 days after the deadline for compliance expires. The bill would, under certain conditions, prohibit a local government that fails to complete

a required rezoning within the timeframe required from disapproving a housing development project, as defined, or from taking various other actions that would render the project infeasible, and would allow the project applicant or any interested person to bring an action to enforce these provisions. The bill would also allow a court to compel a local government to complete the rezoning within specified times and to impose sanctions on the local government if the court order or judgment is not carried out, and would provide that in certain cases the local government shall bear the burden of proof relative to actions brought to compel compliance with specified deadlines and requirements.

Existing law requires each local government to review and revise its housing element as frequently as appropriate, but not less than every 5 years.

This bill would extend that time period to 8 years for those local governments that are located within a region covered by a metropolitan planning organization in a nonattainment region or by a metropolitan planning organization or regional transportation planning agency that meets certain requirements. The bill would also provide that, in certain cases, the time period would be reduced to 4 years or other periods, as specified.

The bill would enact other related provisions. Because the bill would impose additional duties on local governments relative to the housing element of the general plan, it would thereby impose a state-mandated local program.

(3) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

This bill would exempt from CEQA a transit priority project, as defined, that meets certain requirements and that is declared by the legislative body of a local jurisdiction to be a sustainable communities project. The transit priority project would need to be consistent with a metropolitan planning organization's sustainable communities strategy or an alternative planning strategy that has been determined by the State Air Resources Board to achieve the greenhouse gas emission reductions targets. The bill would provide for limited CEQA review of various other transit priority projects.

The bill, with respect to other residential or mixed-use residential projects meeting certain requirements, would exempt the environmental documents for those projects from being required to include certain information regarding growth inducing impacts or impacts from certain vehicle trips.

The bill would also authorize the legislative body of a local jurisdiction to adopt traffic mitigation measures for transit priority projects. The bill would exempt a transit priority project seeking a land use approval from

compliance with additional measures for traffic impacts, if the local jurisdiction has adopted those traffic mitigation measures.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The transportation sector contributes over 40 percent of the greenhouse gas emissions in the State of California; automobiles and light trucks alone contribute almost 30 percent. The transportation sector is the single largest contributor of greenhouse gases of any sector.

(b) In 2006, the Legislature passed and the Governor signed Assembly Bill 32 (Chapter 488 of the Statutes of 2006; hereafter AB 32), which requires the State of California to reduce its greenhouse gas emissions to 1990 levels no later than 2020. According to the State Air Resources Board, in 1990 greenhouse gas emissions from automobiles and light trucks were 108 million metric tons, but by 2004 these emissions had increased to 135 million metric tons.

(c) Greenhouse gas emissions from automobiles and light trucks can be substantially reduced by new vehicle technology and by the increased use of low carbon fuel. However, even taking these measures into account, it will be necessary to achieve significant additional greenhouse gas reductions from changed land use patterns and improved transportation. Without improved land use and transportation policy, California will not be able to achieve the goals of AB 32.

(d) In addition, automobiles and light trucks account for 50 percent of air pollution in California and 70 percent of its consumption of petroleum. Changes in land use and transportation policy, based upon established modeling methodology, will provide significant assistance to California's goals to implement the federal and state Clean Air Acts and to reduce its dependence on petroleum.

(e) Current federal law requires regional transportation planning agencies to include a land use allocation in the regional transportation plan. Some regions have engaged in a regional "blueprint" process to prepare the land use allocation. This process has been open and transparent. The Legislature intends, by this act, to build upon that successful process by requiring metropolitan planning organizations to develop and incorporate a sustainable communities strategy which will be the land use allocation in the regional transportation plan.

(f) The California Environmental Quality Act (CEQA) is California's premier environmental statute. New provisions of CEQA should be enacted

so that the statute encourages developers to submit applications and local governments to make land use decisions that will help the state achieve its climate goals under AB 32, assist in the achievement of state and federal air quality standards, and increase petroleum conservation.

(g) Current planning models and analytical techniques used for making transportation infrastructure decisions and for air quality planning should be able to assess the effects of policy choices, such as residential development patterns, expanded transit service and accessibility, the walkability of communities, and the use of economic incentives and disincentives.

(h) The California Transportation Commission has developed guidelines for travel demand models used in the development of regional transportation plans. This act assures the commission's continued oversight of the guidelines, as the commission may update them as needed from time to time.

(i) California local governments need a sustainable source of funding to be able to accommodate patterns of growth consistent with the state's climate, air quality, and energy conservation goals.

SEC. 2. Section 14522.1 is added to the Government Code, to read:

14522.1. (a) (1) The commission, in consultation with the department and the State Air Resources Board, shall maintain guidelines for travel demand models used in the development of regional transportation plans by federally designated metropolitan planning organizations.

(2) Any revision of the guidelines shall include the formation of an advisory committee that shall include representatives of the metropolitan planning organizations, the department, organizations knowledgeable in the creation and use of travel demand models, local governments, and organizations concerned with the impacts of transportation investments on communities and the environment. Before amending the guidelines, the commission shall hold two workshops on the guidelines, one in northern California and one in southern California. The workshops shall be incorporated into regular commission meetings.

(b) The guidelines shall, at a minimum and to the extent practicable, taking into account such factors as the size and available resources of the metropolitan planning organization, account for all of the following:

(1) The relationship between land use density and household vehicle ownership and vehicle miles traveled in a way that is consistent with statistical research.

(2) The impact of enhanced transit service levels on household vehicle ownership and vehicle miles traveled.

(3) Changes in travel and land development likely to result from highway or passenger rail expansion.

(4) Mode splitting that allocates trips between automobile, transit, carpool, and bicycle and pedestrian trips. If a travel demand model is unable to forecast bicycle and pedestrian trips, another means may be used to estimate those trips.

(5) Speed and frequency, days, and hours of operation of transit service.

SEC. 3. Section 14522.2 is added to the Government Code, to read:

14522.2. (a) A metropolitan planning organization shall disseminate the methodology, results, and key assumptions of whichever travel demand models it uses in a way that would be useable and understandable to the public.

(b) Transportation planning agencies other than those identified in paragraph (1) of subdivision (a) of Section 14522.1, cities, and counties are encouraged, but not required, to utilize travel demand models that are consistent with the guidelines in the development of their regional transportation plans.

SEC. 4. Section 65080 of the Government Code is amended to read:

65080. (a) Each transportation planning agency designated under Section 29532 or 29532.1 shall prepare and adopt a regional transportation plan directed at achieving a coordinated and balanced regional transportation system, including, but not limited to, mass transportation, highway, railroad, maritime, bicycle, pedestrian, goods movement, and aviation facilities and services. The plan shall be action-oriented and pragmatic, considering both the short-term and long-term future, and shall present clear, concise policy guidance to local and state officials. The regional transportation plan shall consider factors specified in Section 134 of Title 23 of the United States Code. Each transportation planning agency shall consider and incorporate, as appropriate, the transportation plans of cities, counties, districts, private organizations, and state and federal agencies.

(b) The regional transportation plan shall be an internally consistent document and shall include all of the following:

(1) A policy element that describes the transportation issues in the region, identifies and quantifies regional needs, and describes the desired short-range and long-range transportation goals, and pragmatic objective and policy statements. The objective and policy statements shall be consistent with the funding estimates of the financial element. The policy element of transportation planning agencies with populations that exceed 200,000 persons may quantify a set of indicators including, but not limited to, all of the following:

(A) Measures of mobility and traffic congestion, including, but not limited to, daily vehicle hours of delay per capita and vehicle miles traveled per capita.

(B) Measures of road and bridge maintenance and rehabilitation needs, including, but not limited to, roadway pavement and bridge conditions.

(C) Measures of means of travel, including, but not limited to, percentage share of all trips (work and nonwork) made by all of the following:

- (i) Single occupant vehicle.
- (ii) Multiple occupant vehicle or carpool.
- (iii) Public transit including commuter rail and intercity rail.
- (iv) Walking.
- (v) Bicycling.

(D) Measures of safety and security, including, but not limited to, total injuries and fatalities assigned to each of the modes set forth in subparagraph (C).

(E) Measures of equity and accessibility, including, but not limited to, percentage of the population served by frequent and reliable public transit, with a breakdown by income bracket, and percentage of all jobs accessible by frequent and reliable public transit service, with a breakdown by income bracket.

(F) The requirements of this section may be met utilizing existing sources of information. No additional traffic counts, household surveys, or other sources of data shall be required.

(2) A sustainable communities strategy prepared by each metropolitan planning organization as follows:

(A) No later than September 30, 2010, the State Air Resources Board shall provide each affected region with greenhouse gas emission reduction targets for the automobile and light truck sector for 2020 and 2035, respectively.

(i) No later than January 31, 2009, the state board shall appoint a Regional Targets Advisory Committee to recommend factors to be considered and methodologies to be used for setting greenhouse gas emission reduction targets for the affected regions. The committee shall be composed of representatives of the metropolitan planning organizations, affected air districts, the League of California Cities, the California State Association of Counties, local transportation agencies, and members of the public, including homebuilders, environmental organizations, planning organizations, environmental justice organizations, affordable housing organizations, and others. The advisory committee shall transmit a report with its recommendations to the state board no later than September 30, 2009. In recommending factors to be considered and methodologies to be used, the advisory committee may consider any relevant issues, including, but not limited to, data needs, modeling techniques, growth forecasts, the impacts of regional jobs-housing balance on interregional travel and greenhouse gas emissions, economic and demographic trends, the magnitude of greenhouse gas reduction benefits from a variety of land use and transportation strategies, and appropriate methods to describe regional targets and to monitor performance in attaining those targets. The state board shall consider the report prior to setting the targets.

(ii) Prior to setting the targets for a region, the state board shall exchange technical information with the metropolitan planning organization and the affected air district. The metropolitan planning organization may recommend a target for the region. The metropolitan planning organization shall hold at least one public workshop within the region after receipt of the report from the advisory committee. The state board shall release draft targets for each region no later than June 30, 2010.

(iii) In establishing these targets, the state board shall take into account greenhouse gas emission reductions that will be achieved by improved vehicle emission standards, changes in fuel composition, and other measures

it has approved that will reduce greenhouse gas emissions in the affected regions, and prospective measures the state board plans to adopt to reduce greenhouse gas emissions from other greenhouse gas emission sources as that term is defined in subdivision (i) of Section 38505 of the Health and Safety Code and consistent with the regulations promulgated pursuant to the California Global Warming Solutions Act of 2006 (Division 12.5 (commencing with Section 38500) of the Health and Safety Code).

(iv) The state board shall update the regional greenhouse gas emission reduction targets every eight years consistent with each metropolitan planning organization's timeframe for updating its regional transportation plan under federal law until 2050. The state board may revise the targets every four years based on changes in the factors considered under clause (iii) above. The state board shall exchange technical information with the Department of Transportation, metropolitan planning organizations, local governments, and affected air districts and engage in a consultative process with public and private stakeholders prior to updating these targets.

(v) The greenhouse gas emission reduction targets may be expressed in gross tons, tons per capita, tons per household, or in any other metric deemed appropriate by the state board.

(B) Each metropolitan planning organization shall prepare a sustainable communities strategy, subject to the requirements of Part 450 of Title 23 of, and Part 93 of Title 40 of, the Code of Federal Regulations, including the requirement to utilize the most recent planning assumptions considering local general plans and other factors. The sustainable communities strategy shall (i) identify the general location of uses, residential densities, and building intensities within the region; (ii) identify areas within the region sufficient to house all the population of the region, including all economic segments of the population, over the course of the planning period of the regional transportation plan taking into account net migration into the region, population growth, household formation and employment growth; (iii) identify areas within the region sufficient to house an eight-year projection of the regional housing need for the region pursuant to Section 65584; (iv) identify a transportation network to service the transportation needs of the region; (v) gather and consider the best practically available scientific information regarding resource areas and farmland in the region as defined in subdivisions (a) and (b) of Section 65080.01; (vi) consider the state housing goals specified in Sections 65580 and 65581; (vii) set forth a forecasted development pattern for the region, which, when integrated with the transportation network, and other transportation measures and policies, will reduce the greenhouse gas emissions from automobiles and light trucks to achieve, if there is a feasible way to do so, the greenhouse gas emission reduction targets approved by the state board; and (viii) allow the regional transportation plan to comply with Section 176 of the federal Clean Air Act (42 U.S.C. Sec. 7506). Within the jurisdiction of the Metropolitan Transportation Commission, as defined by Section 66502, the Association of Bay Area Governments shall be responsible for clauses (i), (ii), (iii), (v), and (vi), the Metropolitan Transportation Commission shall be responsible

for clauses (iv) and (viii); and the Association of Bay Area Governments and the Metropolitan Transportation Commission shall jointly be responsible for clause (vii).

(C) In the region served by the multicounty transportation planning agency described in Section 130004 of the Public Utilities Code, a subregional council of governments and the county transportation commission may work together to propose the sustainable communities strategy and an alternative planning strategy, if one is prepared pursuant to subparagraph (H), for that subregional area. The metropolitan planning organization may adopt a framework for a subregional sustainable communities strategy or a subregional alternative planning strategy to address the intraregional land use, transportation, economic, air quality, and climate policy relationships. The metropolitan planning organization shall include the subregional sustainable communities strategy for that subregion in the regional sustainable communities strategy to the extent consistent with this section and federal law and approve the subregional alternative planning strategy, if one is prepared pursuant to subparagraph (H), for that subregional area to the extent consistent with this section. The metropolitan planning organization shall develop overall guidelines, create public participation plans pursuant to subparagraph (E), ensure coordination, resolve conflicts, make sure that the overall plan complies with applicable legal requirements, and adopt the plan for the region.

(D) The metropolitan planning organization shall conduct at least two informational meetings in each county within the region for members of the board of supervisors and city councils on the sustainable communities strategy and alternative planning strategy, if any. The metropolitan planning organization may conduct only one informational meeting if it is attended by representatives of the county board of supervisors and city council members representing a majority of the cities representing a majority of the population in the incorporated areas of that county. Notice of the meeting shall be sent to the clerk of the board of supervisors and to each city clerk. The purpose of the meeting shall be to present a draft of the sustainable communities strategy to the members of the board of supervisors and the city council members in that county and to solicit and consider their input and recommendations.

(E) Each metropolitan planning organization shall adopt a public participation plan, for development of the sustainable communities strategy and an alternative planning strategy, if any, that includes all of the following:

(i) Outreach efforts to encourage the active participation of a broad range of stakeholder groups in the planning process, consistent with the agency's adopted Federal Public Participation Plan, including, but not limited to, affordable housing advocates, transportation advocates, neighborhood and community groups, environmental advocates, home builder representatives, broad-based business organizations, landowners, commercial property interests, and homeowner associations.

(ii) Consultation with congestion management agencies, transportation agencies, and transportation commissions.

(iii) Workshops throughout the region to provide the public with the information and tools necessary to provide a clear understanding of the issues and policy choices. At least one workshop shall be held in each county in the region. For counties with a population greater than 500,000, at least three workshops shall be held. Each workshop, to the extent practicable, shall include urban simulation computer modeling to create visual representations of the sustainable communities strategy and the alternative planning strategy.

(iv) Preparation and circulation of a draft sustainable communities strategy and an alternative planning strategy, if one is prepared, not less than 55 days before adoption of a final regional transportation plan.

(v) At least three public hearings on the draft sustainable communities strategy in the regional transportation plan and alternative planning strategy, if one is prepared. If the metropolitan transportation organization consists of a single county, at least two public hearings shall be held. To the maximum extent feasible, the hearings shall be in different parts of the region to maximize the opportunity for participation by members of the public throughout the region.

(vi) A process for enabling members of the public to provide a single request to receive notices, information, and updates.

(F) In preparing a sustainable communities strategy, the metropolitan planning organization shall consider spheres of influence that have been adopted by the local agency formation commissions within its region.

(G) Prior to adopting a sustainable communities strategy, the metropolitan planning organization shall quantify the reduction in greenhouse gas emissions projected to be achieved by the sustainable communities strategy and set forth the difference, if any, between the amount of that reduction and the target for the region established by the state board.

(H) If the sustainable communities strategy, prepared in compliance with subparagraph (B) or (C), is unable to reduce greenhouse gas emissions to achieve the greenhouse gas emission reduction targets established by the state board, the metropolitan planning organization shall prepare an alternative planning strategy to the sustainable communities strategy showing how those greenhouse gas emission targets would be achieved through alternative development patterns, infrastructure, or additional transportation measures or policies. The alternative planning strategy shall be a separate document from the regional transportation plan, but it may be adopted concurrently with the regional transportation plan. In preparing the alternative planning strategy, the metropolitan planning organization:

(i) Shall identify the principal impediments to achieving the targets within the sustainable communities strategy.

(ii) May include an alternative development pattern for the region pursuant to subparagraphs (B) to (F), inclusive.

(iii) Shall describe how the greenhouse gas emission reduction targets would be achieved by the alternative planning strategy, and why the development pattern, measures, and policies in the alternative planning

strategy are the most practicable choices for achievement of the greenhouse gas emission reduction targets.

(iv) An alternative development pattern set forth in the alternative planning strategy shall comply with Part 450 of Title 23 of, and Part 93 of Title 40 of, the Code of Federal Regulations, except to the extent that compliance will prevent achievement of the greenhouse gas emission reduction targets approved by the state board.

(v) For purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), an alternative planning strategy shall not constitute a land use plan, policy, or regulation, and the inconsistency of a project with an alternative planning strategy shall not be a consideration in determining whether a project may have an environmental effect.

(I) (i) Prior to starting the public participation process adopted pursuant to subparagraph (E) of paragraph (2) of subdivision (b) of Section 65080, the metropolitan planning organization shall submit a description to the state board of the technical methodology it intends to use to estimate the greenhouse gas emissions from its sustainable communities strategy and, if appropriate, its alternative planning strategy. The state board shall respond to the metropolitan planning organization in a timely manner with written comments about the technical methodology, including specifically describing any aspects of that methodology it concludes will not yield accurate estimates of greenhouse gas emissions, and suggested remedies. The metropolitan planning organization is encouraged to work with the state board until the state board concludes that the technical methodology operates accurately.

(ii) After adoption, a metropolitan planning organization shall submit a sustainable communities strategy or an alternative planning strategy, if one has been adopted, to the state board for review, including the quantification of the greenhouse gas emission reductions the strategy would achieve and a description of the technical methodology used to obtain that result. Review by the state board shall be limited to acceptance or rejection of the metropolitan planning organization's determination that the strategy submitted would, if implemented, achieve the greenhouse gas emission reduction targets established by the state board. The state board shall complete its review within 60 days.

(iii) If the state board determines that the strategy submitted would not, if implemented, achieve the greenhouse gas emission reduction targets, the metropolitan planning organization shall revise its strategy or adopt an alternative planning strategy, if not previously adopted, and submit the strategy for review pursuant to clause (ii). At a minimum, the metropolitan planning organization must obtain state board acceptance that an alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets established for that region by the state board.

(J) Neither a sustainable communities strategy nor an alternative planning strategy regulates the use of land, nor, except as provided by subparagraph (I), shall either one be subject to any state approval. Nothing in a sustainable communities strategy shall be interpreted as superseding the exercise of the

land use authority of cities and counties within the region. Nothing in this section shall be interpreted to limit the state board's authority under any other provision of law. Nothing in this section shall be interpreted to authorize the abrogation of any vested right whether created by statute or by common law. Nothing in this section shall require a city's or county's land use policies and regulations, including its general plan, to be consistent with the regional transportation plan or an alternative planning strategy. Nothing in this section requires a metropolitan planning organization to approve a sustainable communities strategy that would be inconsistent with Part 450 of Title 23 of, or Part 93 of Title 40 of, the Code of Federal Regulations and any administrative guidance under those regulations. Nothing in this section relieves a public or private entity or any person from compliance with any other local, state, or federal law.

(K) Nothing in this section requires projects programmed for funding on or before December 31, 2011, to be subject to the provisions of this paragraph if they (i) are contained in the 2007 or 2009 Federal Statewide Transportation Improvement Program, (ii) are funded pursuant to Chapter 12.49 (commencing with Section 8879.20) of Division 1 of Title 2, or (iii) were specifically listed in a ballot measure prior to December 31, 2008, approving a sales tax increase for transportation projects. Nothing in this section shall require a transportation sales tax authority to change the funding allocations approved by the voters for categories of transportation projects in a sales tax measure adopted prior to December 31, 2010. For purposes of this subparagraph, a transportation sales tax authority is a district, as defined in Section 7252 of the Revenue and Taxation Code, that is authorized to impose a sales tax for transportation purposes.

(L) A metropolitan planning organization, or a regional transportation planning agency not within a metropolitan planning organization, that is required to adopt a regional transportation plan not less than every five years, may elect to adopt the plan not less than every four years. This election shall be made by the board of directors of the metropolitan planning organization or regional transportation planning agency no later than June 1, 2009, or thereafter 54 months prior to the statutory deadline for the adoption of housing elements for the local jurisdictions within the region, after a public hearing at which comments are accepted from members of the public and representatives of cities and counties within the region covered by the metropolitan planning organization or regional transportation planning agency. Notice of the public hearing shall be given to the general public and by mail to cities and counties within the region no later than 30 days prior to the date of the public hearing. Notice of election shall be promptly given to the Department of Housing and Community Development. The metropolitan planning organization or the regional transportation planning agency shall complete its next regional transportation plan within three years of the notice of election.

(M) Two or more of the metropolitan planning organizations for Fresno County, Kern County, Kings County, Madera County, Merced County, San Joaquin County, Stanislaus County, and Tulare County may work together

to develop and adopt multiregional goals and policies that may address interregional land use, transportation, economic, air quality, and climate relationships. The participating metropolitan planning organizations may also develop a multiregional sustainable communities strategy, to the extent consistent with federal law, or an alternative planning strategy for adoption by the metropolitan planning organizations. Each participating metropolitan planning organization shall consider any adopted multiregional goals and policies in the development of a sustainable communities strategy and, if applicable, an alternative planning strategy for its region.

(3) An action element that describes the programs and actions necessary to implement the plan and assigns implementation responsibilities. The action element may describe all transportation projects proposed for development during the 20-year or greater life of the plan. The action element shall consider congestion management programming activities carried out within the region.

(4) (A) A financial element that summarizes the cost of plan implementation constrained by a realistic projection of available revenues. The financial element shall also contain recommendations for allocation of funds. A county transportation commission created pursuant to Section 130000 of the Public Utilities Code shall be responsible for recommending projects to be funded with regional improvement funds, if the project is consistent with the regional transportation plan. The first five years of the financial element shall be based on the five-year estimate of funds developed pursuant to Section 14524. The financial element may recommend the development of specified new sources of revenue, consistent with the policy element and action element.

(B) The financial element of transportation planning agencies with populations that exceed 200,000 persons may include a project cost breakdown for all projects proposed for development during the 20-year life of the plan that includes total expenditures and related percentages of total expenditures for all of the following:

- (i) State highway expansion.
- (ii) State highway rehabilitation, maintenance, and operations.
- (iii) Local road and street expansion.
- (iv) Local road and street rehabilitation, maintenance, and operation.
- (v) Mass transit, commuter rail, and intercity rail expansion.
- (vi) Mass transit, commuter rail, and intercity rail rehabilitation, maintenance, and operations.
- (vii) Pedestrian and bicycle facilities.
- (viii) Environmental enhancements and mitigation.
- (ix) Research and planning.
- (x) Other categories.

(C) The metropolitan planning organization or county transportation agency, whichever entity is appropriate, shall consider financial incentives for cities and counties that have resource areas or farmland, as defined in Section 65080.01, for the purposes of, for example, transportation investments for the preservation and safety of the city street or county road

system and farm to market and interconnectivity transportation needs. The metropolitan planning organization or county transportation agency, whichever entity is appropriate, shall also consider financial assistance for counties to address countywide service responsibilities in counties that contribute towards the greenhouse gas emission reduction targets by implementing policies for growth to occur within their cities.

(c) Each transportation planning agency may also include other factors of local significance as an element of the regional transportation plan, including, but not limited to, issues of mobility for specific sectors of the community, including, but not limited to, senior citizens.

(d) Except as otherwise provided in this subdivision, each transportation planning agency shall adopt and submit, every four years, an updated regional transportation plan to the California Transportation Commission and the Department of Transportation. A transportation planning agency located in a federally designated air quality attainment area or that does not contain an urbanized area may at its option adopt and submit a regional transportation plan every five years. When applicable, the plan shall be consistent with federal planning and programming requirements and shall conform to the regional transportation plan guidelines adopted by the California Transportation Commission. Prior to adoption of the regional transportation plan, a public hearing shall be held after the giving of notice of the hearing by publication in the affected county or counties pursuant to Section 6061.

SEC. 5. Section 65080.01 is added to the Government Code, to read:

65080.01. The following definitions apply to terms used in Section 65080:

(a) "Resource areas" include (1) all publicly owned parks and open space; (2) open space or habitat areas protected by natural community conservation plans, habitat conservation plans, and other adopted natural resource protection plans; (3) habitat for species identified as candidate, fully protected, sensitive, or species of special status by local, state, or federal agencies or protected by the federal Endangered Species Act of 1973, the California Endangered Species Act, or the Native Plant Protection Act; (4) lands subject to conservation or agricultural easements for conservation or agricultural purposes by local governments, special districts, or nonprofit 501(c)(3) organizations, areas of the state designated by the State Mining and Geology Board as areas of statewide or regional significance pursuant to Section 2790 of the Public Resources Code, and lands under Williamson Act contracts; (5) areas designated for open-space or agricultural uses in adopted open-space elements or agricultural elements of the local general plan or by local ordinance; (6) areas containing biological resources as described in Appendix G of the CEQA Guidelines that may be significantly affected by the sustainable communities strategy or the alternative planning strategy; and (7) an area subject to flooding where a development project would not, at the time of development in the judgment of the agency, meet the requirements of the National Flood Insurance Program or where the area is subject to more protective provisions of state law or local ordinance.

(b) “Farmland” means farmland that is outside all existing city spheres of influence or city limits as of January 1, 2008, and is one of the following:

(1) Classified as prime or unique farmland or farmland of statewide importance.

(2) Farmland classified by a local agency in its general plan that meets or exceeds the standards for prime or unique farmland or farmland of statewide importance.

(c) “Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

(d) “Consistent” shall have the same meaning as that term is used in Section 134 of Title 23 of the United States Code.

(e) “Internally consistent” means that the contents of the elements of the regional transportation plan must be consistent with each other.

SEC. 6. Section 65400 of the Government Code is amended to read:

65400. (a) After the legislative body has adopted all or part of a general plan, the planning agency shall do both of the following:

(1) Investigate and make recommendations to the legislative body regarding reasonable and practical means for implementing the general plan or element of the general plan, so that it will serve as an effective guide for orderly growth and development, preservation and conservation of open-space land and natural resources, and the efficient expenditure of public funds relating to the subjects addressed in the general plan.

(2) Provide by April 1 of each year an annual report to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development that includes all of the following:

(A) The status of the plan and progress in its implementation.

(B) The progress in meeting its share of regional housing needs determined pursuant to Section 65584 and local efforts to remove governmental constraints to the maintenance, improvement, and development of housing pursuant to paragraph (3) of subdivision (c) of Section 65583.

The housing element portion of the annual report, as required by this paragraph, shall be prepared through the use of forms and definitions adopted by the Department of Housing and Community Development pursuant to the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2). Prior to and after adoption of the forms, the housing element portion of the annual report shall include a section that describes the actions taken by the local government towards completion of the programs and status of the local government’s compliance with the deadlines in its housing element. That report shall be considered at an annual public meeting before the legislative body where members of the public shall be allowed to provide oral testimony and written comments.

(C) The degree to which its approved general plan complies with the guidelines developed and adopted pursuant to Section 65040.2 and the date of the last revision to the general plan.

(b) If a court finds, upon a motion to that effect, that a city, county, or city and county failed to submit, within 60 days of the deadline established in this section, the housing element portion of the report required pursuant to subparagraph (B) of paragraph (2) of subdivision (a) that substantially complies with the requirements of this section, the court shall issue an order or judgment compelling compliance with this section within 60 days. If the city, county, or city and county fails to comply with the court's order within 60 days, the plaintiff or petitioner may move for sanctions, and the court may, upon that motion, grant appropriate sanctions. The court shall retain jurisdiction to ensure that its order or judgment is carried out. If the court determines that its order or judgment is not carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled. This subdivision applies to proceedings initiated on or after the first day of October following the adoption of forms and definitions by the Department of Housing and Community Development pursuant to paragraph (2) of subdivision (a), but no sooner than six months following that adoption.

SEC. 7. Section 65583 of the Government Code is amended to read:

65583. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, mobilehomes, and emergency shelters, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

(a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include all of the following:

(1) An analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected housing needs for all income levels, including extremely low income households, as defined in subdivision (b) of Section 50105 and Section 50106 of the Health and Safety Code. These existing and projected needs shall include the locality's share of the regional housing need in accordance with Section 65584. Local agencies shall calculate the subset of very low income households allotted under Section 65584 that qualify as extremely low income households. The local agency may either use available census data to calculate the percentage of very low income households that qualify as extremely low income households or presume that 50 percent of the very low income households qualify as extremely low income households. The number of extremely low income households and very low income households shall equal the jurisdiction's allocation of very low income households pursuant to Section 65584.

(2) An analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition.

(3) An inventory of land suitable for residential development, including vacant sites and sites having potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites.

(4) (A) The identification of a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit. The identified zone or zones shall include sufficient capacity to accommodate the need for emergency shelter identified in paragraph (7), except that each local government shall identify a zone or zones that can accommodate at least one year-round emergency shelter. If the local government cannot identify a zone or zones with sufficient capacity, the local government shall include a program to amend its zoning ordinance to meet the requirements of this paragraph within one year of the adoption of the housing element. The local government may identify additional zones where emergency shelters are permitted with a conditional use permit. The local government shall also demonstrate that existing or proposed permit processing, development, and management standards are objective and encourage and facilitate the development of, or conversion to, emergency shelters. Emergency shelters may only be subject to those development and management standards that apply to residential or commercial development within the same zone except that a local government may apply written, objective standards that include all of the following:

(i) The maximum number of beds or persons permitted to be served nightly by the facility.

(ii) Off-street parking based upon demonstrated need, provided that the standards do not require more parking for emergency shelters than for other residential or commercial uses within the same zone.

(iii) The size and location of exterior and interior onsite waiting and client intake areas.

(iv) The provision of onsite management.

(v) The proximity to other emergency shelters, provided that emergency shelters are not required to be more than 300 feet apart.

(vi) The length of stay.

(vii) Lighting.

(viii) Security during hours that the emergency shelter is in operation.

(B) The permit processing, development, and management standards applied under this paragraph shall not be deemed to be discretionary acts within the meaning of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(C) A local government that can demonstrate to the satisfaction of the department the existence of one or more emergency shelters either within its jurisdiction or pursuant to a multijurisdictional agreement that can accommodate that jurisdiction's need for emergency shelter identified in paragraph (7) may comply with the zoning requirements of subparagraph (A) by identifying a zone or zones where new emergency shelters are allowed with a conditional use permit.

(D) A local government with an existing ordinance or ordinances that comply with this paragraph shall not be required to take additional action

to identify zones for emergency shelters. The housing element must only describe how existing ordinances, policies, and standards are consistent with the requirements of this paragraph.

(5) An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584 and from meeting the need for housing for persons with disabilities, supportive housing, transitional housing, and emergency shelters identified pursuant to paragraph (7). Transitional housing and supportive housing shall be considered a residential use of property, and shall be subject only to those restrictions that apply to other residential dwellings of the same type in the same zone.

(6) An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, and the cost of construction.

(7) An analysis of any special housing needs, such as those of the elderly, persons with disabilities, large families, farmworkers, families with female heads of households, and families and persons in need of emergency shelter. The need for emergency shelter shall be assessed based on annual and seasonal need. The need for emergency shelter may be reduced by the number of supportive housing units that are identified in an adopted 10-year plan to end chronic homelessness and that are either vacant or for which funding has been identified to allow construction during the planning period.

(8) An analysis of opportunities for energy conservation with respect to residential development.

(9) An analysis of existing assisted housing developments that are eligible to change from low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use. "Assisted housing developments," for the purpose of this section, shall mean multifamily rental housing that receives governmental assistance under federal programs listed in subdivision (a) of Section 65863.10, state and local multifamily revenue bond programs, local redevelopment programs, the federal Community Development Block Grant Program, or local in-lieu fees. "Assisted housing developments" shall also include multifamily rental units that were developed pursuant to a local inclusionary housing program or used to qualify for a density bonus pursuant to Section 65916.

(A) The analysis shall include a listing of each development by project name and address, the type of governmental assistance received, the earliest possible date of change from low-income use and the total number of elderly

and nonelderly units that could be lost from the locality's low-income housing stock in each year during the 10-year period. For purposes of state and federally funded projects, the analysis required by this subparagraph need only contain information available on a statewide basis.

(B) The analysis shall estimate the total cost of producing new rental housing that is comparable in size and rent levels, to replace the units that could change from low-income use, and an estimated cost of preserving the assisted housing developments. This cost analysis for replacement housing may be done aggregately for each five-year period and does not have to contain a project-by-project cost estimate.

(C) The analysis shall identify public and private nonprofit corporations known to the local government which have legal and managerial capacity to acquire and manage these housing developments.

(D) The analysis shall identify and consider the use of all federal, state, and local financing and subsidy programs which can be used to preserve, for lower income households, the assisted housing developments, identified in this paragraph, including, but not limited to, federal Community Development Block Grant Program funds, tax increment funds received by a redevelopment agency of the community, and administrative fees received by a housing authority operating within the community. In considering the use of these financing and subsidy programs, the analysis shall identify the amounts of funds under each available program which have not been legally obligated for other purposes and which could be available for use in preserving assisted housing developments.

(b) (1) A statement of the community's goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing.

(2) It is recognized that the total housing needs identified pursuant to subdivision (a) may exceed available resources and the community's ability to satisfy this need within the content of the general plan requirements outlined in Article 5 (commencing with Section 65300). Under these circumstances, the quantified objectives need not be identical to the total housing needs. The quantified objectives shall establish the maximum number of housing units by income category, including extremely low income, that can be constructed, rehabilitated, and conserved over a five-year time period.

(c) A program which sets forth a schedule of actions during the planning period, each with a timeline for implementation, which may recognize that certain programs are ongoing, such that there will be beneficial impacts of the programs within the planning period, that the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls, the provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available and the utilization of moneys in a low- and moderate-income housing fund of an agency if the locality has established a redevelopment project area pursuant to the Community

Redevelopment Law (Division 24 (commencing with Section 33000) of the Health and Safety Code). In order to make adequate provision for the housing needs of all economic segments of the community, the program shall do all of the following:

(1) Identify actions that will be taken to make sites available during the planning period of the general plan with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Section 65584.09. Sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing.

(A) Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, rezoning of those sites, including adoption of minimum density and development standards, for jurisdictions with an eight-year housing element planning period pursuant to Section 65588, shall be completed no later than three years after either the date the housing element is adopted pursuant to subdivision (f) of Section 65585 or the date that is 90 days after receipt of comments from the department pursuant to subdivision (b) of Section 65585, whichever is earlier, unless the deadline is extended pursuant to subdivision (f). Notwithstanding the foregoing, for a local government that fails to adopt a housing element within 120 days of the statutory deadline in Section 65588 for adoption of the housing element, rezoning of those sites, including adoption of minimum density and development standards, shall be completed no later than three years and 120 days from the statutory deadline in Section 65588 for adoption of the housing element.

(B) Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program shall identify sites that can be developed for housing within the planning period pursuant to subdivision (h) of Section 65583.2. The identification of sites shall include all components specified in subdivision (b) of Section 65583.2.

(C) Where the inventory of sites pursuant to paragraph (3) of subdivision (a) does not identify adequate sites to accommodate the need for farmworker housing, the program shall provide for sufficient sites to meet the need with zoning that permits farmworker housing use by right, including density and development standards that could accommodate and facilitate the feasibility of the development of farmworker housing for low- and very low income households.

(2) Assist in the development of adequate housing to meet the needs of extremely low, very low, low-, and moderate-income households.

(3) Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities.

(4) Conserve and improve the condition of the existing affordable housing stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or private action.

(5) Promote housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability.

(6) Preserve for lower income households the assisted housing developments identified pursuant to paragraph (9) of subdivision (a). The program for preservation of the assisted housing developments shall utilize, to the extent necessary, all available federal, state, and local financing and subsidy programs identified in paragraph (9) of subdivision (a), except where a community has other urgent needs for which alternative funding sources are not available. The program may include strategies that involve local regulation and technical assistance.

(7) The program shall include an identification of the agencies and officials responsible for the implementation of the various actions and the means by which consistency will be achieved with other general plan elements and community goals. The local government shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort.

(d) (1) A local government may satisfy all or part of its requirement to identify a zone or zones suitable for the development of emergency shelters pursuant to paragraph (4) of subdivision (a) by adopting and implementing a multijurisdictional agreement, with a maximum of two other adjacent communities, that requires the participating jurisdictions to develop at least one year-round emergency shelter within two years of the beginning of the planning period.

(2) The agreement shall allocate a portion of the new shelter capacity to each jurisdiction as credit towards its emergency shelter need, and each jurisdiction shall describe how the capacity was allocated as part of its housing element.

(3) Each member jurisdiction of a multijurisdictional agreement shall describe in its housing element all of the following:

(A) How the joint facility will meet the jurisdiction's emergency shelter need.

(B) The jurisdiction's contribution to the facility for both the development and ongoing operation and management of the facility.

(C) The amount and source of the funding that the jurisdiction contributes to the facility.

(4) The aggregate capacity claimed by the participating jurisdictions in their housing elements shall not exceed the actual capacity of the shelter.

(e) Except as otherwise provided in this article, amendments to this article that alter the required content of a housing element shall apply to both of the following:

(1) A housing element or housing element amendment prepared pursuant to subdivision (e) of Section 65588 or Section 65584.02, when a city, county, or city and county submits a draft to the department for review pursuant to Section 65585 more than 90 days after the effective date of the amendment to this section.

(2) Any housing element or housing element amendment prepared pursuant to subdivision (e) of Section 65588 or Section 65584.02, when the city, county, or city and county fails to submit the first draft to the department before the due date specified in Section 65588 or 65584.02.

(f) The deadline for completing required rezoning pursuant to subparagraph (A) of paragraph (1) of subdivision (c) shall be extended by one year if the local government has completed the rezoning at densities sufficient to accommodate at least 75 percent of the sites for low- and very low income households and if the legislative body at the conclusion of a public hearing determines, based upon substantial evidence, that any of the following circumstances exist:

(1) The local government has been unable to complete the rezoning because of the action or inaction beyond the control of the local government or any other state federal or local agency.

(2) The local government is unable to complete the rezoning because of infrastructure deficiencies due to fiscal or regulatory constraints.

(3) The local government must undertake a major revision to its general plan in order to accommodate the housing related policies of a sustainable communities strategy or an alternative planning strategy adopted pursuant to Section 65080.

The resolution and the findings shall be transmitted to the department together with a detailed budget and schedule for preparation and adoption of the required rezonings, including plans for citizen participation and expected interim action. The schedule shall provide for adoption of the required rezoning within one year of the adoption of the resolution.

(g) (1) If a local government fails to complete the rezoning by the deadline provided in subparagraph (A) of paragraph (1) of subdivision (c), as it may be extended pursuant to subdivision (f), except as provided in paragraph (2), a local government may not disapprove a housing development project, nor require a conditional use permit, planned unit development permit, or other locally imposed discretionary permit, or impose a condition that would render the project infeasible, if the housing development project (A) is proposed to be located on a site required to be rezoned pursuant to the program action required by that subparagraph; and (B) complies with applicable, objective general plan and zoning standards and criteria, including design review standards, described in the program action required by that subparagraph. Any subdivision of sites shall be

subject to the Subdivision Map Act. Design review shall not constitute a “project” for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code.

(2) A local government may disapprove a housing development described in paragraph (1) if it makes written findings supported by substantial evidence on the record that both of the following conditions exist:

(A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(3) The applicant or any interested person may bring an action to enforce this subdivision. If a court finds that the local agency disapproved a project or conditioned its approval in violation of this subdivision, the court shall issue an order or judgment compelling compliance within 60 days. The court shall retain jurisdiction to ensure that its order or judgment is carried out. If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders to ensure that the purposes and policies of this subdivision are fulfilled. In any such action, the city, county, or city and county shall bear the burden of proof.

(4) For purposes of this subdivision, “housing development project” means a project to construct residential units for which the project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of at least 49 percent of the housing units for very low, low-, and moderate-income households with an affordable housing cost or affordable rent, as defined in Section 50052.5 or 50053 of the Health and Safety Code, respectively, for the period required by the applicable financing.

(h) An action to enforce the program actions of the housing element shall be brought pursuant to Section 1085 of the Code of Civil Procedure.

SEC. 8. Section 65584.01 of the Government Code is amended to read:

65584.01. (a) For the fourth and subsequent revision of the housing element pursuant to Section 65588, the department, in consultation with each council of governments, where applicable, shall determine the existing and projected need for housing for each region in the following manner:

(b) The department’s determination shall be based upon population projections produced by the Department of Finance and regional population forecasts used in preparing regional transportation plans, in consultation with each council of governments. If the total regional population forecast for the planning period, developed by the council of governments and used for the preparation of the regional transportation plan, is within a range of

3 percent of the total regional population forecast for the planning period over the same time period by the Department of Finance, then the population forecast developed by the council of governments shall be the basis from which the department determines the existing and projected need for housing in the region. If the difference between the total population growth projected by the council of governments and the total population growth projected for the region by the Department of Finance is greater than 3 percent, then the department and the council of governments shall meet to discuss variances in methodology used for population projections and seek agreement on a population projection for the region to be used as a basis for determining the existing and projected housing need for the region. If no agreement is reached, then the population projection for the region shall be the population projection for the region prepared by the Department of Finance as may be modified by the department as a result of discussions with the council of governments.

(c) (1) At least 26 months prior to the scheduled revision pursuant to Section 65588 and prior to developing the existing and projected housing need for a region, the department shall meet and consult with the council of governments regarding the assumptions and methodology to be used by the department to determine the region's housing needs. The council of governments shall provide data assumptions from the council's projections, including, if available, the following data for the region:

(A) Anticipated household growth associated with projected population increases.

(B) Household size data and trends in household size.

(C) The rate of household formation, or headship rates, based on age, gender, ethnicity, or other established demographic measures.

(D) The vacancy rates in existing housing stock, and the vacancy rates for healthy housing market functioning and regional mobility, as well as housing replacement needs.

(E) Other characteristics of the composition of the projected population.

(F) The relationship between jobs and housing, including any imbalance between jobs and housing.

(2) The department may accept or reject the information provided by the council of governments or modify its own assumptions or methodology based on this information. After consultation with the council of governments, the department shall make determinations in writing on the assumptions for each of the factors listed in subparagraphs (A) to (F), inclusive, of paragraph (1) and the methodology it shall use and shall provide these determinations to the council of governments.

(d) (1) After consultation with the council of governments, the department shall make a determination of the region's existing and projected housing need based upon the assumptions and methodology determined pursuant to subdivision (c). The region's existing and projected housing need shall reflect the achievement of a feasible balance between jobs and housing within the region using the regional employment projections in the applicable regional transportation plan. Within 30 days following notice of

the determination from the department, the council of governments may file an objection to the department's determination of the region's existing and projected housing need with the department.

(2) The objection shall be based on and substantiate either of the following:

(A) The department failed to base its determination on the population projection for the region established pursuant to subdivision (b), and shall identify the population projection which the council of governments believes should instead be used for the determination and explain the basis for its rationale.

(B) The regional housing need determined by the department is not a reasonable application of the methodology and assumptions determined pursuant to subdivision (c). The objection shall include a proposed alternative determination of its regional housing need based upon the determinations made in subdivision (c), including analysis of why the proposed alternative would be a more reasonable application of the methodology and assumptions determined pursuant to subdivision (c).

(3) If a council of governments files an objection pursuant to this subdivision and includes with the objection a proposed alternative determination of its regional housing need, it shall also include documentation of its basis for the alternative determination. Within 45 days of receiving an objection filed pursuant to this section, the department shall consider the objection and make a final written determination of the region's existing and projected housing need that includes an explanation of the information upon which the determination was made.

SEC. 9. Section 65584.02 of the Government Code is amended to read:

65584.02. (a) For the fourth and subsequent revisions of the housing element pursuant to Section 65588, the existing and projected need for housing may be determined for each region by the department as follows, as an alternative to the process pursuant to Section 65584.01:

(1) In a region in which at least one subregion has accepted delegated authority pursuant to Section 65584.03, the region's housing need shall be determined at least 26 months prior to the housing element update deadline pursuant to Section 65588. In a region in which no subregion has accepted delegation pursuant to Section 65584.03, the region's housing need shall be determined at least 24 months prior to the housing element deadline.

(2) At least six months prior to the department's determination of regional housing need pursuant to paragraph (1), a council of governments may request the use of population and household forecast assumptions used in the regional transportation plan. This request shall include all of the following:

(A) Proposed data and assumptions for factors contributing to housing need beyond household growth identified in the forecast. These factors shall include allowance for vacant or replacement units, and may include other adjustment factors.

(B) A proposed planning period that is not longer than the period of time covered by the regional transportation improvement plan or plans of the

region pursuant to Section 14527, but a period not less than five years, and not longer than six years.

(C) A comparison between the population and household assumptions used for the Regional Transportation Plan with population and household estimates and projections of the Department of Finance.

(b) The department shall consult with the council of governments regarding requests submitted pursuant to paragraph (2) of subdivision (a). The department may seek advice and consult with the Demographic Research Unit of the Department of Finance, the State Department of Transportation, a representative of a contiguous council of governments, and any other party as deemed necessary. The department may request that the council of governments revise data, assumptions, or methodology to be used for the determination of regional housing need, or may reject the request submitted pursuant to paragraph (2) of subdivision (a). Subsequent to consultation with the council of governments, the department will respond in writing to requests submitted pursuant to paragraph (1) of subdivision (a).

(c) If the council of governments does not submit a request pursuant to subdivision (a), or if the department rejects the request of the council of governments, the determination for the region shall be made pursuant to Sections 65584 and 65584.01.

SEC. 10. Section 65584.04 of the Government Code is amended to read:

65584.04. (a) At least two years prior to a scheduled revision required by Section 65588, each council of governments, or delegate subregion as applicable, shall develop a proposed methodology for distributing the existing and projected regional housing need to cities, counties, and cities and counties within the region or within the subregion, where applicable pursuant to this section. The methodology shall be consistent with the objectives listed in subdivision (d) of Section 65584.

(b) (1) No more than six months prior to the development of a proposed methodology for distributing the existing and projected housing need, each council of governments shall survey each of its member jurisdictions to request, at a minimum, information regarding the factors listed in subdivision (d) that will allow the development of a methodology based upon the factors established in subdivision (d).

(2) The council of governments shall seek to obtain the information in a manner and format that is comparable throughout the region and utilize readily available data to the extent possible.

(3) The information provided by a local government pursuant to this section shall be used, to the extent possible, by the council of governments, or delegate subregion as applicable, as source information for the methodology developed pursuant to this section. The survey shall state that none of the information received may be used as a basis for reducing the total housing need established for the region pursuant to Section 65584.01.

(4) If the council of governments fails to conduct a survey pursuant to this subdivision, a city, county, or city and county may submit information related to the items listed in subdivision (d) prior to the public comment period provided for in subdivision (c).

(c) Public participation and access shall be required in the development of the methodology and in the process of drafting and adoption of the allocation of the regional housing needs. Participation by organizations other than local jurisdictions and councils of governments shall be solicited in a diligent effort to achieve public participation of all economic segments of the community. The proposed methodology, along with any relevant underlying data and assumptions, and an explanation of how information about local government conditions gathered pursuant to subdivision (b) has been used to develop the proposed methodology, and how each of the factors listed in subdivision (d) is incorporated into the methodology, shall be distributed to all cities, counties, any subregions, and members of the public who have made a written request for the proposed methodology. The council of governments, or delegate subregion, as applicable, shall conduct at least one public hearing to receive oral and written comments on the proposed methodology.

(d) To the extent that sufficient data is available from local governments pursuant to subdivision (b) or other sources, each council of governments, or delegate subregion as applicable, shall include the following factors to develop the methodology that allocates regional housing needs:

(1) Each member jurisdiction's existing and projected jobs and housing relationship.

(2) The opportunities and constraints to development of additional housing in each member jurisdiction, including all of the following:

(A) Lack of capacity for sewer or water service due to federal or state laws, regulations or regulatory actions, or supply and distribution decisions made by a sewer or water service provider other than the local jurisdiction that preclude the jurisdiction from providing necessary infrastructure for additional development during the planning period.

(B) The availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development and increased residential densities. The council of governments may not limit its consideration of suitable housing sites or land suitable for urban development to existing zoning ordinances and land use restrictions of a locality, but shall consider the potential for increased residential development under alternative zoning ordinances and land use restrictions. The determination of available land suitable for urban development may exclude lands where the Federal Emergency Management Agency (FEMA) or the Department of Water Resources has determined that the flood management infrastructure designed to protect that land is not adequate to avoid the risk of flooding.

(C) Lands preserved or protected from urban development under existing federal or state programs, or both, designed to protect open space, farmland, environmental habitats, and natural resources on a long-term basis.

(D) County policies to preserve prime agricultural land, as defined pursuant to Section 56064, within an unincorporated area.

(3) The distribution of household growth assumed for purposes of a comparable period of regional transportation plans and opportunities to

maximize the use of public transportation and existing transportation infrastructure.

(4) The market demand for housing.

(5) Agreements between a county and cities in a county to direct growth toward incorporated areas of the county.

(6) The loss of units contained in assisted housing developments, as defined in paragraph (9) of subdivision (a) of Section 65583, that changed to non-low-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions.

(7) High-housing cost burdens.

(8) The housing needs of farmworkers.

(9) The housing needs generated by the presence of a private university or a campus of the California State University or the University of California within any member jurisdiction.

(10) Any other factors adopted by the council of governments.

(e) The council of governments, or delegate subregion, as applicable, shall explain in writing how each of the factors described in subdivision (d) was incorporated into the methodology and how the methodology is consistent with subdivision (d) of Section 65584. The methodology may include numerical weighting.

(f) Any ordinance, policy, voter-approved measure, or standard of a city or county that directly or indirectly limits the number of residential building permits issued by a city or county shall not be a justification for a determination or a reduction in the share of a city or county of the regional housing need.

(g) In addition to the factors identified pursuant to subdivision (d), the council of governments, or delegate subregion, as applicable, shall identify any existing local, regional, or state incentives, such as a priority for funding or other incentives available to those local governments that are willing to accept a higher share than proposed in the draft allocation to those local governments by the council of governments or delegate subregion pursuant to Section 65584.05.

(h) Following the conclusion of the 60-day public comment period described in subdivision (c) on the proposed allocation methodology, and after making any revisions deemed appropriate by the council of governments, or delegate subregion, as applicable, as a result of comments received during the public comment period, each council of governments, or delegate subregion, as applicable, shall adopt a final regional, or subregional, housing need allocation methodology and provide notice of the adoption of the methodology to the jurisdictions within the region, or delegate subregion as applicable, and to the department.

(i) (1) It is the intent of the Legislature that housing planning be coordinated and integrated with the regional transportation plan. To achieve this goal, the allocation plan shall allocate housing units within the region consistent with the development pattern included in the sustainable communities strategy.

(2) The final allocation plan shall ensure that the total regional housing need, by income category, as determined under Section 65584, is maintained, and that each jurisdiction in the region receive an allocation of units for low- and very low income households.

(3) The resolution approving the final housing need allocation plan shall demonstrate that the plan is consistent with the sustainable communities strategy in the regional transportation plan.

SEC. 11. Section 65587 of the Government Code is amended to read:

65587. (a) Each city, county, or city and county shall bring its housing element, as required by subdivision (c) of Section 65302, into conformity with the requirements of this article on or before October 1, 1981, and the deadlines set by Section 65588. Except as specifically provided in subdivision (b) of Section 65361, the Director of Planning and Research shall not grant an extension of time from these requirements.

(b) Any action brought by any interested party to review the conformity with the provisions of this article of any housing element or portion thereof or revision thereto shall be brought pursuant to Section 1085 of the Code of Civil Procedure; the court's review of compliance with the provisions of this article shall extend to whether the housing element or portion thereof or revision thereto substantially complies with the requirements of this article.

(c) If a court finds that an action of a city, county, or city and county, which is required to be consistent with its general plan, does not comply with its housing element, the city, county, or city and county shall bring its action into compliance within 60 days. However, the court shall retain jurisdiction throughout the period for compliance to enforce its decision. Upon the court's determination that the 60-day period for compliance would place an undue hardship on the city, county, or city and county, the court may extend the time period for compliance by an additional 60 days.

(d) (1) If a court finds that a city, county, or city and county failed to complete the rezoning required by subparagraph (A) of paragraph (1) of subdivision (c) of Section 65583, as that deadline may be modified by the extension provided for in subdivision (f) of that section, the court shall issue an order or judgment, after considering the equities of the circumstances presented by all parties, compelling the local government to complete the rezoning within 60 days or the earliest time consistent with public hearing notice requirements in existence at the time the action was filed. The court shall retain jurisdiction to ensure that its order or judgment is carried out. If the court determines that its order or judgment is not carried out, the court shall issue further orders to ensure that the purposes and policies of this article are fulfilled, including ordering, after considering the equities of the circumstances presented by all parties, that any rezoning required by subparagraph (A) of paragraph (1) of subdivision (c) of Section 65583 be completed within 60 days or the earliest time consistent with public hearing notice requirements in existence at the time the action was filed and may impose sanctions on the city, county, or city and county.

(2) Any interested person may bring an action to compel compliance with the deadlines and requirements of paragraphs (1), (2), and (3) of subdivision (c) of Section 65583. The action shall be brought pursuant to Section 1085 of the Code of Civil Procedure. An action may be brought pursuant to the notice and accrual provisions of subdivision (d) of Section 65009. In any such action, the city, county, or city and county shall bear the burden of proof.

SEC. 12. Section 65588 of the Government Code is amended to read:

65588. (a) Each local government shall review its housing element as frequently as appropriate to evaluate all of the following:

(1) The appropriateness of the housing goals, objectives, and policies in contributing to the attainment of the state housing goal.

(2) The effectiveness of the housing element in attainment of the community's housing goals and objectives.

(3) The progress of the city, county, or city and county in implementation of the housing element.

(b) Except as provided in paragraph (7) of subdivision (e), the housing element shall be revised as appropriate, but not less than every eight years, to reflect the results of this periodic review, by those local governments that are located within a region covered by (1) a metropolitan planning organization in a region classified as nonattainment for one or more pollutants regulated by the federal Clean Air Act or (2) a metropolitan planning organization or regional transportation planning agency that is required, or has elected pursuant to subparagraph (L) of paragraph (2) of subdivision (b) of Section 65080, to adopt a regional transportation plan not less than every four years, except that a local government that does not adopt a housing element within 120 days of the statutory deadline for adoption of the housing element shall revise its housing element as appropriate, but not less than every four years. The housing element shall be revised, as appropriate, but not less than every five years by those local governments that are located within a region covered by a metropolitan planning organization or regional transportation planning agency that is required to adopt a regional transportation plan not less than every five years, to reflect the results of this periodic review. Nothing in this section shall be construed to excuse the obligations of the local government to adopt a revised housing element no later than the date specified in this section.

(c) The review and revision of housing elements required by this section shall take into account any low- or moderate-income housing provided or required pursuant to Section 65590.

(d) The review pursuant to subdivision (c) shall include, but need not be limited to, the following:

(1) The number of new housing units approved for construction within the coastal zone after January 1, 1982.

(2) The number of housing units for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, required to be provided in new housing developments either within

the coastal zone or within three miles of the coastal zone pursuant to Section 65590.

(3) The number of existing residential dwelling units occupied by persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, that have been authorized to be demolished or converted since January 1, 1982, in the coastal zone.

(4) The number of residential dwelling units for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, that have been required for replacement or authorized to be converted or demolished as identified in paragraph (3). The location of the replacement units, either onsite, elsewhere within the locality's jurisdiction within the coastal zone, or within three miles of the coastal zone within the locality's jurisdiction, shall be designated in the review.

(e) Notwithstanding subdivision (b) or the date of adoption of the housing elements previously in existence, each city, county, and city and county shall revise its housing element according to the following schedule:

(1) Local governments within the regional jurisdiction of the Southern California Association of Governments: June 30, 2006, for the fourth revision.

(2) Local governments within the regional jurisdiction of the Association of Bay Area Governments: June 30, 2007, for the fourth revision.

(3) Local governments within the regional jurisdiction of the Council of Fresno County Governments, the Kern County Council of Governments, and the Sacramento Area Council of Governments: June 30, 2002, for the third revision, and June 30, 2008, for the fourth revision.

(4) Local governments within the regional jurisdiction of the Association of Monterey Bay Area Governments: December 31, 2002, for the third revision, and June 30, 2009, for the fourth revision.

(5) Local governments within the regional jurisdiction of the San Diego Association of Governments: June 30, 2005, for the fourth revision.

(6) All other local governments: December 31, 2003, for the third revision, and June 30, 2009, for the fourth revision.

(7) (A) All local governments within a metropolitan planning organization in a region classified as nonattainment for one or more pollutants regulated by the federal Clean Air Act (42 U.S.C. Sec. 7506), except those within the regional jurisdiction of the San Diego Association of Governments, shall adopt the fifth revision of the housing element no later than 18 months after adoption of the first regional transportation plan to be adopted after September 30, 2010.

(B) All local governments within the regional jurisdiction of the San Diego Association of Governments shall adopt their fifth revision no more than five years from the fourth revision and their sixth revision no later than 18 months after adoption of the first regional transportation plan to be adopted after the fifth revision due date.

(C) All local governments within the regional jurisdiction of a metropolitan planning organization or a regional transportation planning agency that has made an election pursuant to subparagraph (L) of paragraph

(2) of subdivision (b) of Section 65080 shall be subject to the eight-year planning period pursuant to subdivision (b) of Section 65588 and shall adopt its next housing element 18 months after adoption of the first regional transportation plan following the election.

(f) For purposes of this article, “planning period” shall be the time period for periodic revision of the housing element pursuant to this section.

SEC. 13. Section 21061.3 of the Public Resources Code is amended to read:

21061.3. “Infill site” means a site in an urbanized area that meets either of the following criteria:

(a) The site has not been previously developed for urban uses and both of the following apply:

(1) The site is immediately adjacent to parcels that are developed with qualified urban uses, or at least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses, and the remaining 25 percent of the site adjoins parcels that have previously been developed for qualified urban uses.

(2) No parcel within the site has been created within the past 10 years unless the parcel was created as a result of the plan of a redevelopment agency.

(b) The site has been previously developed for qualified urban uses.

SEC. 14. Chapter 4.2 (commencing with Section 21155) is added to Division 13 of the Public Resources Code, to read:

CHAPTER 4.2. IMPLEMENTATION OF THE SUSTAINABLE COMMUNITIES STRATEGY

21155. (a) This chapter applies only to a transit priority project that is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy, for which the State Air Resources Board, pursuant to subparagraph (H) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code, has accepted a metropolitan planning organization’s determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets.

(b) For purposes of this chapter, a transit priority project shall (1) contain at least 50 percent residential use, based on total building square footage and, if the project contains between 26 percent and 50 percent nonresidential uses, a floor area ratio of not less than 0.75; (2) provide a minimum net density of at least 20 dwelling units per acre; and (3) be within one-half mile of a major transit stop or high-quality transit corridor included in a regional transportation plan. A major transit stop is as defined in Section 21064.3, except that, for purposes of this section, it also includes major transit stops that are included in the applicable regional transportation plan. For purposes of this section, a high-quality transit corridor means a corridor

with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours. A project shall be considered to be within one-half mile of a major transit stop or high-quality transit corridor if all parcels within the project have no more than 25 percent of their area farther than one-half mile from the stop or corridor and if not more than 10 percent of the residential units or 100 units, whichever is less, in the project are farther than one-half mile from the stop or corridor.

21155.1. If the legislative body finds, after conducting a public hearing, that a transit priority project meets all of the requirements of subdivisions (a) and (b) and one of the requirements of subdivision (c), the transit priority project is declared to be a sustainable communities project and shall be exempt from this division.

(a) The transit priority project complies with all of the following environmental criteria:

(1) The transit priority project and other projects approved prior to the approval of the transit priority project but not yet built can be adequately served by existing utilities, and the transit priority project applicant has paid, or has committed to pay, all applicable in-lieu or development fees.

(2) (A) The site of the transit priority project does not contain wetlands or riparian areas and does not have significant value as a wildlife habitat, and the transit priority project does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), or the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), and the project does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete.

(B) For the purposes of this paragraph, “wetlands” has the same meaning as in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(C) For the purposes of this paragraph:

(i) “Riparian areas” means those areas transitional between terrestrial and aquatic ecosystems and that are distinguished by gradients in biophysical conditions, ecological processes, and biota. A riparian area is an area through which surface and subsurface hydrology connect waterbodies with their adjacent uplands. A riparian area includes those portions of terrestrial ecosystems that significantly influence exchanges of energy and matter with aquatic ecosystems. A riparian area is adjacent to perennial, intermittent, and ephemeral streams, lakes, and estuarine-marine shorelines.

(ii) “Wildlife habitat” means the ecological communities upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.

(iii) Habitat of “significant value” includes wildlife habitat of national, statewide, regional, or local importance; habitat for species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531, et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with

Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code); habitat identified as candidate, fully protected, sensitive, or species of special status by local, state, or federal agencies; or habitat essential to the movement of resident or migratory wildlife.

(3) The site of the transit priority project is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(4) The site of the transit priority project is subject to a preliminary endangerment assessment prepared by a registered environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity.

(A) If a release of a hazardous substance is found to exist on the site, the release shall be removed or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(B) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(5) The transit priority project does not have a significant effect on historical resources pursuant to Section 21084.1.

(6) The transit priority project site is not subject to any of the following:

(A) A wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.

(B) An unusually high risk of fire or explosion from materials stored or used on nearby properties.

(C) Risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.

(D) Seismic risk as a result of being within a delineated earthquake fault zone, as determined pursuant to Section 2622, or a seismic hazard zone, as determined pursuant to Section 2696, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake fault or seismic hazard zone.

(E) Landslide hazard, flood plain, flood way, or restriction zone, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.

(7) The transit priority project site is not located on developed open space.

(A) For the purposes of this paragraph, “developed open space” means land that meets all of the following criteria:

(i) Is publicly owned, or financed in whole or in part by public funds.

(ii) Is generally open to, and available for use by, the public.

(iii) Is predominantly lacking in structural development other than structures associated with open spaces, including, but not limited to,

playgrounds, swimming pools, ballfields, enclosed child play areas, and picnic facilities.

(B) For the purposes of this paragraph, “developed open space” includes land that has been designated for acquisition by a public agency for developed open space, but does not include lands acquired with public funds dedicated to the acquisition of land for housing purposes.

(8) The buildings in the transit priority project are 15 percent more energy efficient than required by Chapter 6 of Title 24 of the California Code of Regulations and the buildings and landscaping are designed to achieve 25 percent less water usage than the average household use in the region.

(b) The transit priority project meets all of the following land use criteria:

(1) The site of the transit priority project is not more than eight acres in total area.

(2) The transit priority project does not contain more than 200 residential units.

(3) The transit priority project does not result in any net loss in the number of affordable housing units within the project area.

(4) The transit priority project does not include any single level building that exceeds 75,000 square feet.

(5) Any applicable mitigation measures or performance standards or criteria set forth in the prior environmental impact reports, and adopted in findings, have been or will be incorporated into the transit priority project.

(6) The transit priority project is determined not to conflict with nearby operating industrial uses.

(7) The transit priority project is located within one-half mile of a rail transit station or a ferry terminal included in a regional transportation plan or within one-quarter mile of a high-quality transit corridor included in a regional transportation plan.

(c) The transit priority project meets at least one of the following three criteria:

(1) The transit priority project meets both of the following:

(A) At least 20 percent of the housing will be sold to families of moderate income, or not less than 10 percent of the housing will be rented to families of low income, or not less than 5 percent of the housing is rented to families of very low income.

(B) The transit priority project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for very low, low-, and moderate-income households at monthly housing costs with an affordable housing cost or affordable rent, as defined in Section 50052.5 or 50053 of the Health and Safety Code, respectively, for the period required by the applicable financing. Rental units shall be affordable for at least 55 years. Ownership units shall be subject to resale restrictions or equity sharing requirements for at least 30 years.

(2) The transit priority project developer has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the

development of an equivalent number of units that would otherwise be required pursuant to paragraph (1).

(3) The transit priority project provides public open space equal to or greater than five acres per 1,000 residents of the project.

21155.2. (a) A transit priority project that has incorporated all feasible mitigation measures, performance standards, or criteria set forth in the prior applicable environmental impact reports and adopted in findings made pursuant to Section 21081, shall be eligible for either the provisions of subdivision (b) or (c).

(b) A transit priority project that satisfies the requirements of subdivision (a) may be reviewed through a sustainable communities environmental assessment as follows:

(1) An initial study shall be prepared to identify all significant or potentially significant impacts of the transit priority project, other than those which do not need to be reviewed pursuant to Section 21159.28 based on substantial evidence in light of the whole record. The initial study shall identify any cumulative effects that have been adequately addressed and mitigated pursuant to the requirements of this division in prior applicable certified environmental impact reports. Where the lead agency determines that a cumulative effect has been adequately addressed and mitigated, that cumulative effect shall not be treated as cumulatively considerable for the purposes of this subdivision.

(2) The sustainable communities environmental assessment shall contain measures that either avoid or mitigate to a level of insignificance all potentially significant or significant effects of the project required to be identified in the initial study.

(3) A draft of the sustainable communities environmental assessment shall be circulated for public comment for a period of not less than 30 days. Notice shall be provided in the same manner as required for an environmental impact report pursuant to Section 21092.

(4) Prior to acting on the sustainable communities environmental assessment, the lead agency shall consider all comments received.

(5) A sustainable communities environmental assessment may be approved by the lead agency after conducting a public hearing, reviewing the comments received, and finding that:

(A) All potentially significant or significant effects required to be identified in the initial study have been identified and analyzed.

(B) With respect to each significant effect on the environment required to be identified in the initial study, either of the following apply:

(i) Changes or alterations have been required in or incorporated into the project that avoid or mitigate the significant effects to a level of insignificance.

(ii) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

(6) The legislative body of the lead agency shall conduct the public hearing or a planning commission may conduct the public hearing if local

ordinances allow a direct appeal of approval of a document prepared pursuant to this division to the legislative body subject to a fee not to exceed five hundred dollars (\$500).

(7) The lead agency's decision to review and approve a transit priority project with a sustainable communities environmental assessment shall be reviewed under the substantial evidence standard.

(c) A transit priority project that satisfies the requirements of subdivision (a) may be reviewed by an environmental impact report that complies with all of the following:

(1) An initial study shall be prepared to identify all significant or potentially significant effects of the transit priority project other than those that do not need to be reviewed pursuant to Section 21159.28 based upon substantial evidence in light of the whole record. The initial study shall identify any cumulative effects that have been adequately addressed and mitigated pursuant to the requirements of this division in prior applicable certified environmental impact reports. Where the lead agency determines that a cumulative effect has been adequately addressed and mitigated, that cumulative effect shall not be treated as cumulatively considerable for the purposes of this subdivision.

(2) An environmental impact report prepared pursuant to this subdivision need only address the significant or potentially significant effects of the transit priority project on the environment identified pursuant to paragraph (1). It is not required to analyze off-site alternatives to the transit priority project. It shall otherwise comply with the requirements of this division.

21155.3. (a) The legislative body of a local jurisdiction may adopt traffic mitigation measures that would apply to transit priority projects. These measures shall be adopted or amended after a public hearing and may include requirements for the installation of traffic control improvements, street or road improvements, and contributions to road improvement or transit funds, transit passes for future residents, or other measures that will avoid or mitigate the traffic impacts of those transit priority projects.

(b) (1) A transit priority project that is seeking a discretionary approval is not required to comply with any additional mitigation measures required by paragraph (1) or (2) of subdivision (a) of Section 21081, for the traffic impacts of that project on intersections, streets, highways, freeways, or mass transit, if the local jurisdiction issuing that discretionary approval has adopted traffic mitigation measures in accordance with this section.

(2) Paragraph (1) does not restrict the authority of a local jurisdiction to adopt feasible mitigation measures with respect to the effects of a project on public health or on pedestrian or bicycle safety.

(c) The legislative body shall review its traffic mitigation measures and update them as needed at least every five years.

SEC. 15. Section 21159.28 is added to the Public Resources Code, to read:

21159.28. (a) If a residential or mixed-use residential project is consistent with the use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities

strategy or an alternative planning strategy, for which the State Air Resources Board pursuant to subparagraph (I) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code has accepted the metropolitan planning organization's determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets and if the project incorporates the mitigation measures required by an applicable prior environmental document, then any findings or other determinations for an exemption, a negative declaration, a mitigated negative declaration, a sustainable communities environmental assessment, an environmental impact report, or addenda prepared or adopted for the project pursuant to this division shall not be required to reference, describe, or discuss (1) growth inducing impacts; or (2) any project specific or cumulative impacts from cars and light-duty truck trips generated by the project on global warming or the regional transportation network.

(b) Any environmental impact report prepared for a project described in subdivision (a) shall not be 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.

(c) "Regional transportation network," for purposes of this section, means all existing and proposed transportation system improvements, including the state transportation system, that were included in the transportation and air quality conformity modeling, including congestion modeling, for the final regional transportation plan adopted by the metropolitan planning organization, but shall not include local streets and roads. Nothing in the foregoing relieves any project from a requirement to comply with any conditions, exactions, or fees for the mitigation of the project's impacts on the structure, safety, or operations of the regional transportation network or local streets and roads.

(d) A residential or mixed-use residential project is a project where at least 75 percent of the total building square footage of the project consists of residential use or a project that is a transit priority project as defined in Section 21155.

SEC. 16. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Senate Bill No. 732

CHAPTER 729

An act to amend Sections 75076 and 75077 of, and to add Chapter 12 (commencing with Section 75100) and Chapter 13 (commencing with Section 75120) to Division 43 of, the Public Resources Code, relating to the environment, and making an appropriation therefor.

[Approved by Governor September 30, 2008. Filed with
Secretary of State September 30, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

SB 732, Steinberg. Environment.

The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, an initiative statute approved by the voters at the November 7, 2006, statewide general election makes about \$5.4 billion in bond funds available for safe drinking water, water quality and supply, flood control, natural resource protection, and park improvements.

This bill would require the State Department of Public Health, the Department of Fish and Game, and the San Francisco Bay Area Conservancy, when implementing the provisions of the initiative, among other things, to develop and adopt guidelines and regulations, consult with other entities, conduct studies, and follow certain procedures for establishing a project, grant, loan, or other financial assistance program implementing the initiative.

The bill would establish the Strategic Growth Council and would appropriate \$500,000 from the funding provided by the initiative to the Resources Agency to support the council and its activities. The bill would require the council to take certain actions with regard to coordinating programs of member state agencies to improve air and water quality, improve natural resource protection, increase the availability of affordable housing, improve transportation, meet the goals of the California Global Warming Solutions Act of 2006, encourage sustainable land use planning, and revitalize urban and community centers in a sustainable manner. The council would be required to manage and award grants and loans to support the planning and development of sustainable communities, for preparing, adopting, and implementing general plans, general plan elements, regional plans, or other planning instruments, and for preparing, planning, and implementing urban greening plans. The council would also be required to, not later than July 1, 2010, and every year thereafter, provide a report to the Legislature with specified information regarding the management of the grants and loans.

The bill would provide that in any case in which the provisions of the bill and the initiative conflict, the initiative shall prevail.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 75076 of the Public Resources Code is amended to read:

75076. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to the development and adoption of program guidelines and selection criteria adopted pursuant to this division.

SEC. 2. Section 75077 of the Public Resources Code is amended to read:

75077. Funds provided pursuant to this division, and any appropriation or transfer of those funds, shall not be deemed to be a transfer of funds for the purposes of Chapter 9 (commencing with Section 2780) of Division 3 of the Fish and Game Code.

SEC. 3. Chapter 12 (commencing with Section 75100) is added to Division 43 of the Public Resources Code, to read:

CHAPTER 12. IMPLEMENTATION PROVISIONS

75100. (a) (1) Each state agency disbursing a competitive grant pursuant to this division shall develop project solicitation and evaluation guidelines. The guidelines may include a limitation on the size of a competitive grant to be awarded.

(2) Prior to disbursing a competitive grant, each state agency shall conduct at least one public meeting to consider public comments prior to finalizing the guidelines. Each state agency shall publish the draft solicitation and evaluation guidelines on its Internet Web site at least 30 days before the public meetings. Meetings shall be held at geographically appropriate locations. Upon adoption, each state agency shall transmit copies of the guidelines to the fiscal committees and the appropriate policy committees of the Legislature. To the extent feasible, each state agency shall provide outreach to disadvantaged communities to promote access and participation in those meetings.

(3) The guidelines may include a requirement for the applicant to illustrate an ongoing commitment of financial resources, unless the purposes of awarding a grant financed by this division is to assist a disadvantaged community.

(4) The guidelines shall require a new grant solicitation for each funding cycle. Each funding cycle shall consider only those applications received as a part of the solicitation for that funding cycle.

(b) Notwithstanding subdivision (a), a state agency, in lieu of adopting guidelines pursuant to subdivision (a), may use guidelines existing on January 1, 2007, and those guidelines as periodically amended thereafter.

75101. (a) For the purposes of implementing Section 75025, the State Department of Public Health shall do all of the following:

(1) Develop guidelines pursuant to Section 75100 in collaboration with the Department of Toxic Substances Control and the state board.

(2) In collaboration with the Department of Toxic Substances Control and the state board, develop and adopt regulations governing the repayment of costs that are subsequently recovered from parties responsible for the contamination.

(b) For the purposes of implementing subdivision (a) of Section 75050, the Department of Fish and Game, when funding a natural community conservation plan, shall fund only the development of a natural community conservation plan that is consistent with the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code).

(c) The San Francisco Bay Area Conservancy may use the funds made available pursuant to subdivision (c) of Section 75060 to restore the salt ponds in the south San Francisco Bay and to create trails and visitor facilities for public use in that area.

75102. Before the adoption of a negative declaration or environmental impact report required under Section 75070, the lead agency shall notify the proposed action to a California Native American tribe, which is on the contact list maintained by the Native American Heritage Commission, if that tribe has traditional lands located within the area of the proposed project.

75103. It is the intent of the Legislature that any public funds made available by this division to investor-owned utilities regulated by the Public Utilities Commission should be for the benefit of the ratepayers or the public and not the investors pursuant to oversight by the Public Utilities Commission.

75104. State agencies that are authorized to award a loan or grant financed by this division shall provide technical assistance with regard to the preparation of an application for a loan or grant in a manner that, among other things, addresses the needs of economically disadvantaged communities.

SEC. 4. Chapter 13 (commencing with Section 75120) is added to Division 43 of the Public Resources Code, to read:

CHAPTER 13. STRATEGIC GROWTH COUNCIL AND CLIMATE CHANGE
REDUCTION

75120. For purposes of this chapter, the following definitions shall apply:

(a) “Council” means the Strategic Growth Council established pursuant to Section 75121.

(b) “Regional plan” means either of the following:

(1) A long-range transportation plan developed pursuant to Section 134(g) of Title 23 of the United States Code and any applicable state requirements.

(2) A regional blueprint plan, which is a regional plan that implements statutory requirements intended to foster comprehensive planning as defined in Section 65041.1 of, Chapter 2.5 (commencing with Section 65080) of

Division 1 of Title 7 of, and Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of, the Government Code. A regional blueprint plan articulates regional consensus and performance outcomes on a more efficient land use pattern that supports improved mobility and reduces dependency on single-occupancy vehicle trips; accommodates an adequate supply of housing for all income levels; reduces impacts on valuable farmland, natural resources, and air quality, including the reduction of greenhouse gas emissions, increases water and energy conservation and efficiency; and promotes a prosperous economy and safe, healthy, sustainable, and vibrant neighborhoods.

75121. (a) The Strategic Growth Council is hereby established in state government and it shall consist of the Director of State Planning and Research, the Secretary of the Resources Agency, the Secretary for Environmental Protection, the Secretary of Business, Transportation and Housing, the Secretary of California Health and Human Services, and one member of the public to be appointed by the Governor. The public member shall have a background in land use planning, local government, resource protection and management, or community development or revitalization.

(b) Staff for the council shall be reflective of the council's membership.

75122. The members of the council shall elect a chair of the council every two years.

75123. (a) The council's meetings shall be open to the public and shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

(b) The council may sponsor conferences, symposia, and other public forums, to seek a broad range of public advice regarding local, regional, and natural resource planning, sustainable development, and strategies to reduce and mitigate climate change.

75124. Of the funds made available pursuant to subdivisions (a) and (c) of Section 75065, the sum of five hundred thousand dollars (\$500,000) is hereby appropriated to the Resources Agency to be used in support of the council and its activities in accordance with this chapter.

75125. The council shall do all of the following:

(a) Identify and review activities and funding programs of member state agencies 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 the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code), encourage sustainable land use planning, and revitalize urban and community centers in a sustainable manner. At a minimum, the council shall review and comment on the five-year infrastructure plan developed pursuant to Article 2 (commencing with Section 13100) of Chapter 2 of Part 3 of Division 3 of the Government Code and the State Environmental Goals and Policy Report developed pursuant to Section 65041 of the Government Code.

(b) Recommend policies and investment strategies and priorities to the Governor, the Legislature, and to appropriate state agencies to encourage the development of sustainable communities, such as those communities that promote equity, strengthen the economy, protect the environment, and promote public health and safety, and is consistent with subdivisions (a) and (c) of Section 75065.

(c) Provide, fund, and distribute data and information to local governments and regional agencies that will assist in developing and planning sustainable communities.

(d) Manage and award grants and loans to support the planning and development of sustainable communities, pursuant to Sections 75127, 75128, and 75129. To implement this subdivision, the council may do all of the following:

(1) Develop guidelines for awarding financial assistance, including criteria for eligibility and additional consideration.

(2) Develop criteria for determining the amount of financial assistance to be awarded. The council shall award a revolving loan to an applicant for a planning project, unless the council determines that the applicant lacks the fiscal capacity to carry out the project without a grant. The council may establish criteria that would allow the applicant to illustrate an ongoing commitment of financial resources to ensure the completion of the proposed plan or project.

(3) Provide for payments of interest on loans made pursuant to this article. The rate of interest shall not exceed the rate earned by the Pooled Money Investment Board.

(4) Provide for the time period for repaying a loan made pursuant to this article.

(5) Provide for the recovery of funds from an applicant that fails to complete the project for which financial assistance was awarded. The council shall direct the State Controller to recover funds by any available means.

(6) Provide technical assistance for application preparation.

(7) Designate a state agency or department to administer technical and financial assistance programs for the disbursing of grants and loans to support the planning and development of sustainable communities, pursuant to Sections 75127, 75128, and 75129.

(e) No later than July 1, 2010, and every year thereafter, provide a report to the Legislature that shall include, but is not limited to, all of the following:

(1) A list of applicants for financial assistance.

(2) Identification of which applications were approved.

(3) The amounts awarded for each approved application.

(4) The remaining balance of available funds.

(5) A report on the proposed or ongoing management of each funded project.

(6) Any additional minimum requirements and priorities for a project or plan proposed in a grant or loan application developed and adopted by the council pursuant to subdivision (c) of Section 75216.

75126. (a) An applicant shall declare, in the application submitted to the council for financial assistance for a plan or project pursuant to this chapter, the applicant's intention to follow a detailed budget and schedule for the completion of the plan or project. The budget and schedule shall be of sufficient detail to allow the council to assess the progress of the applicant at regular intervals.

(b) A project or plan funded pursuant to this chapter shall meet both of the following criteria:

(1) Be consistent with the state's planning policies pursuant to Section 65041.1 of the Government Code.

(2) Reduce, on as permanent a basis that is feasible, greenhouse gas emissions consistent with the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code), and any applicable regional plan.

(c) The council may develop additional minimum requirements and priorities for a project or plan proposed in a grant and loan application, including those related to improving air quality.

75127. (a) To support the planning and development of sustainable communities, the council shall manage and award financial assistance to a city or county for preparing, adopting, and implementing a general plan or general plan element that is designed to reduce greenhouse gas emissions, promote water conservation, reduce automobile use and fuel consumption, encourage greater infill and compact development, protect natural resources and agricultural lands, and revitalize urban and community centers.

(b) For the purposes of this section, the preparation and adoption of a general plan may include a comprehensive update of a general plan, amendment or adoption of an individual element of a general plan, or any other revision consistent with the intent of Section 75065.

(c) For the purposes of this section, the implementation of a general plan may include amendment or adoption of a specific plan, community plan, zoning ordinance, or any other plan, ordinance, or policy that is consistent with the intent of Section 75065.

(d) The funding provided pursuant to this section for the preparation, adoption, and implementation of a general plan may also include funding any activity necessary to conform a general plan to a regional plan.

75128. (a) To support the planning and development of sustainable communities, the council shall manage and award financial assistance to a council of governments, metropolitan planning organization, regional transportation planning agency, city, county, or joint powers authority, to develop, adopt or implement a regional plan or other planning instrument consistent with a regional plan that improves air and water quality, improves natural resource protection, increases the availability of affordable housing, improves transportation, meets the goals of the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code), and encourages sustainable land use. The financial assistance provided pursuant to this section shall be funded from moneys made available pursuant to subdivision (c) of Section 75065.

(b) In awarding financial assistance pursuant to this section, the council shall give first priority to an application seeking funding to add or enhance elements of a regional plan that are not funded with federal moneys.

75129. (a) To support the planning and development of sustainable communities, the council shall manage and award financial assistance to a city, county, or nonprofit organization for the preparation, planning, and implementation of an urban greening project that provides multiple benefits, including, but not limited to, a decrease in air and water pollution, a reduction in the consumption of natural resources and energy, an increase in the reliability of local water supplies, or an increased adaptability to climate change. An eligible project funded pursuant to this section shall not include a mitigation action that is required under existing law. The financial assistance provided pursuant to this section shall be funded from moneys made available pursuant to subdivision (a) of Section 75065.

(b) The council shall develop minimum requirements for funding eligible projects pursuant to this section, which shall require a project to meet at least one of the following criteria:

(1) Use natural systems, or systems that mimic natural systems, to achieve the benefits identified in subdivision (a).

(2) Create, enhance, or expand community green spaces.

(c) The multiple benefits of a project, may include, but are not limited to, the establishment or enhancement of one or more of the following:

(1) Tree canopy.

(2) Urban forestry.

(3) Local parks and open space.

(4) Greening of existing public lands and structures, including schools.

(5) Multi-objective stormwater projects, including construction of permeable surfaces and collection basins and barriers.

(6) Urban streams, including restoration.

(7) Community, demonstration, or outdoor education gardens and orchards.

(8) Urban heat island mitigation and energy conservation efforts through landscaping and green roof projects.

(9) Nonmotorized urban trails that provide safe routes for both recreation and travel between residences, workplaces, commercial centers, and schools.

(d) The council shall give additional consideration to a funding project pursuant to this section that meets one or more of the following criteria:

(1) The project uses interagency cooperation and integration.

(2) The project uses existing public lands and facilitates use of public resources and investments including schools.

(3) The project is proposed by an economically disadvantaged community.

(e) Up to 25 percent of the moneys allocated pursuant to subdivision (a) of Section 75065 may be used to award revolving loans or grants to a council of governments, countywide authority, a metropolitan planning organization, local government, or nonprofit organization, for the purpose of creating urban greening plans that will serve as the master document guiding and coordinating greening projects in the applicant's jurisdiction. These urban

greening plans shall be consistent with the jurisdiction's general plan or regional plan, where one exists.

75130. This chapter does not authorize the council to take an action with regard to the exercise of a local government's land use permitting authority.

SEC. 5. In any case in which any of the provisions of this act, and Division 43 (commencing with Section 75001) of the Public Resources Code conflict, that division shall prevail.

SEC. 6. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Addressing Climate Change in NEPA and CEQA Documents

Updated August 2007



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Executive Summary

While climate change has been the subject of scientific study, international treaty, and growing public interest and advocacy for over a decade, it has only recently become a subject of mounting attention in environmental impact assessment practice. In addition to a changing level of public awareness, legislative and court action has heightened the need to develop environmental compliance practice in order to fulfill the mandate of federal and state environmental assessment requirements.

Two landmark actions highlight the changing context for environmental compliance.

- On September 27, 2006, the State of California passed into law the Global Warming Solutions Act of 2006, commonly referred to as Assembly Bill 32. This landmark legislation requires the State of California to reduce its carbon emissions by approximately 25% by the year 2020. The Act states that global warming poses a serious threat to the environment of California, and most observers feel that this legislation effectively ends the debate in California as to whether global warming is simply scientific speculation.
- On April 2, 2007, the U.S. Supreme Court, in *Massachusetts vs. Environmental Protection Agency*, determined that the plaintiffs (a collection of states, cities, and environmental advocacy groups) had standing to sue based on potential harm due to climate change from an increase in greenhouse gas emissions, that greenhouse gas emissions fit within the Clean Air Act definition of a pollutant, and that the Environmental Protection Agency reasons for not regulating these emissions were insufficiently grounded in the Clean Air Act.

The National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA) require most projects under federal or California agency authority to evaluate their impacts on the environment and present feasible ways to offset their impacts. With growing public concern regarding climate change, with the Supreme Court determination that greenhouse gas emissions fit the definition of a pollutant under the federal Clean Air Act, and with the passage of Assembly Bill 32 in California (along with other court decisions and agency actions), there is a compelling argument that climate change must be evaluated within the context of federal and California environmental impact analysis.

The purpose of this paper is to explore how climate change can be addressed in NEPA and CEQA analyses and to present background on federal and California environmental compliance processes. Regarding the scope of the analysis, climate change impact analyses should address two basic questions:

- How will the project *affect* climate change?
- How will the project *be affected by* climate change?

Various approaches to address these questions are discussed herein, identifying some of the key issues in preparing analyses to address climate change in both NEPA and CEQA documents.

This paper will focus on NEPA and CEQA, although there are other state actions (such as in Massachusetts) that are being taken to require analysis of climate change in state-level

environmental compliance. The approaches presented herein may also be applicable to these other state processes as well. This paper does not focus on the science of climate change, for which the reader is directed to the extensive peer-reviewed reports of the Intergovernmental Panel on Climate Change at <<http://www.ipcc.ch>>.

The authors do not intend to claim that NEPA and CEQA are the only or best venues within which to address climate change. Rather, in light of current interest about the proper role of NEPA and CEQA, we offer some suggestions for addressing climate change in NEPA and CEQA analyses.

Introduction

There is broad scientific consensus that humans are changing the chemical composition of our atmosphere. Activities such as fossil fuel combustion, deforestation, and other changes in land use are resulting in the accumulation of trace greenhouse gases (GHGs) such as carbon dioxide (CO₂) in our atmosphere. An increase in GHG emissions is said to result in an increase in the earth's average surface temperature, which is commonly referred to as *global warming*. Global warming is expected, in turn, to affect weather patterns, average sea level, ocean acidification, chemical reaction rates, precipitation rates, etc., which is commonly referred to as *climate change*. The Intergovernmental Panel on Climate Change (IPCC) best estimates are that the average global temperature rise between 2000 and 2100 could range from 0.6°C (with no increase in GHG emissions above year 2000 levels) to 4.0°C (with substantial increase in GHG emissions). Large increases in global temperatures could have massive deleterious impacts on the natural and human environments.¹

To date, there have been no significant environmental regulations enacted in the United States at the national level specifically designed to address climate change. In April 2007, the U.S. Supreme Court determined that the U.S. Environmental Protection Agency (EPA) has the regulatory authority to list GHGs as pollutants under the federal Clean Air Act (CAA) but the EPA has not yet proposed nor adopted any regulations of GHGs to date. Numerous proposals are being considered in the U.S. Congress to regulate GHGs but no legislation has been adopted. Although GHG emissions are currently not addressed in federal regulation, certain state and local governments are passing legislation and adopting action plans to reduce GHG emissions. For example, the State of California recently passed into law the Global Warming Solutions Act of 2006, commonly referred to as Assembly Bill 32 (AB 32), which is designed to significantly reduce GHG emissions generated by California in the short- and long-term. Other states and cities are also adopting action plans to reduce GHG emissions within their jurisdictions.

Projects that fall under the jurisdiction of the National Environmental Policy Act (NEPA) and/or the California Environmental Quality Act (CEQA) are facing increasing pressure to identify and address climate change within the scope of analysis for proposed projects, possibly requiring projects that contribute to climate change to provide a detailed analysis in Environmental Impact Statements (EIS) and Environmental Assessments (EAs) under NEPA and Environmental Impact Reports (EIRs) and Initial Study/Mitigated Negative Declarations (IS/MNDs) under CEQA. Particularly with regard to CEQA, the number of recent legal challenges based on allegedly inadequate climate change analyses points out that failure to discuss this issue at some level may be an invitation to litigation. Addressing climate change within the scope of the NEPA and CEQA analyses is made difficult by the paucity of explicit regulatory guidance on how to meaningfully apply existing NEPA and CEQA regulations to this evolving and important topic.

The purpose of this paper is to discuss climate change from a regulatory framework with a special emphasis on NEPA and CEQA compliance. This paper includes a summary of the landmark California AB 32 legislation, an overview of NEPA and CEQA, possible frameworks for addressing climate change from within NEPA and CEQA, and a summary of relevant decided and pending court cases.

Regulatory Overview

National Environmental Policy Act

For a detailed review of NEPA, readers are referred to *The NEPA Book: A step-by-step guide on how to comply with the National Environmental Policy Act*.⁴ As a courtesy to the reader, a summary of NEPA appearing in *Environmental Protection* is included below.⁵

A concise piece of federal legislation, enacted in 1970 and referred to as the nation's environmental charter, is the National Environmental Policy Act (NEPA) (42 United States Code 4321 et. seq.). This law established a national environmental policy with goals to protect, maintain and enhance the physical and natural environment and the relationship of people with that environment. NEPA provides federal agencies with a roadmap to environmental decision-making and also influences environmental decision-making on a variety of private sector projects.

NEPA created a staff of personal environmental advisors to the president known as the Council on Environmental Quality (CEQ). The CEQ conducts studies, gathers information and produces annual reports relative to our nation's environmental quality. The CEQ oversees the U.S. Environmental Protection Agency's (EPA) planning and policymaking. The CEQ also oversees compliance with NEPA's environmental impact statement requirements.

Before a major federal action can be approved, it must first assess potential environmental impacts. Major federal actions include new or revised federal agency rules, regulations, policies, plans and procedures. Major federal actions also include permitting of such projects as hydroelectric plants, nuclear reactors and interstate pipelines. Even private sector projects using federal funds or located on federal land must engage in the environmental impact evaluation process.

Basically, when a federal agency is determining whether to approve a proposed action, it should first determine if the action is categorically excluded under NEPA regulations. Categorical exclusions are categories of actions determined by the federal agency as exempt actions because they do not individually or cumulatively have a significant effect on the environment, as long as there are no "extraordinary circumstances" that create the potential for significant effects on the human environment.⁵

Proposed federal actions that may have a significant environmental effect must prepare a concise public document providing sufficient evidence and analysis for determining whether to prepare an EIS or a finding of no significant impact (FONSI). The concise public document is the environmental assessment (EA). The EA serves as a pretest for an EIS or FONSI.⁵

The NEPA Council on Environmental Quality (CEQ) regulations define the term *significantly* in terms of context and intensity (40 CFR 1508.27). *Context* relates to the particular geography

where the action would take place and if the impact would have a significant effect on the human environment in a local, regional, or broader context. The CEQ regulations list criteria related to the intensity of the action, including the following.

- The degree to which the proposed action affects public health or safety.
- The degree to which the effects on the quality of the human environment are likely to be highly controversial.
- The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.
- The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.
- Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.
- Whether the action threatens a violation of federal, state, or local law or requirements imposed for the protection of the environment.

If the proposed activity's EA reveals significant environmental effects, an EIS will have to be prepared. The EIS process requires public notice, public comment, and a record of decision on:

- the environmental impact of the proposed activity;
- any adverse environmental effects which cannot be avoided should the proposed activity be implemented;
- alternatives to the proposed activity;
- the relationship between local and short term uses of the environment and the maintenance and enhancement of long term productivity; and
- any irreversible and irretrievable commitments of resources which would be involved in the proposed activity should it be implemented.

The NEPA process is implemented by federal agencies for the projects they undertake, fund, or approve. Most, if not all, federal agencies have adopted specific procedures for implementing NEPA. The CEQ also promulgates guidance on NEPA Implementation.

In an October 8, 1997 memorandum, the CEQ issued draft guidelines on how global climate change should be treated in NEPA documents. The CEQ draft guidance called on federal agencies to consider in NEPA documents both how major federal actions could affect sources and sinks of greenhouse gases and how climate change could potentially influence such actions. The CEQ draft guidance recommended that such analysis be done for programmatic EISs for long-range federal programs, rather than project-level analysis, which the guidance finds "would not find meaningful information in most instances." The 1997 draft guidance was apparently never finalized and is not presently available on the CEQ's website.

Also in 1997, the CEQ released guidance on the assessment of cumulative effects ("Considering Cumulative Effects Under the National Environmental Policy Act, Council on Environmental Quality January 1997"), which mentions global climate change and greenhouse gas emissions

briefly as an example of a cumulative effect. This guidance is available on the CEQ's website at: <<http://www.nepa.gov/nepa/ccnepa/ccnepa.htm>>.

As described below, despite the lack of explicit NEPA guidance on climate change, several federal courts have ruled in recent years that climate change should be addressed in NEPA documents.

California Environmental Quality Act

For a detailed review of CEQA, readers are referred to *CEQA Desktop: A step-by-step guide on how to comply with the California Environmental Quality Act*.⁶ As a courtesy to the reader, an augmented summary of CEQA prepared by the California Resources Agency is presented below.⁷

The basic goal of the California Environmental Quality Act (CEQA) (Pub. Res. Code §21000 et seq.) is to develop and maintain a high-quality environment now and in the future, while the specific goals of CEQA are for California's public agencies to:

1. identify the significant environmental effects of their actions; and, either
2. avoid those significant environmental effects, where feasible; or
3. mitigate those significant environmental effects, where feasible.

CEQA applies to projects proposed to be undertaken or requiring approval by State and local government agencies subject to the jurisdiction of California. Projects are discretionary activities which have the potential to have a physical impact on the environment and may include the enactment of zoning ordinances, the issuance of conditional use permits and the approval of tentative subdivision maps.

Where a project requires approvals from more than one public agency, CEQA requires one of these public agencies to serve as the lead agency. A lead agency must complete the environmental review process required by CEQA. The most basic steps of the environmental review process are:

- Determine if the activity is a project subject to CEQA;
- Determine if the project is exempt from CEQA, and whether there are any "exceptions" to the exemptions creating the potential for a significant environmental impact;
- Perform an Initial Study to identify the potential environmental impacts of the project and determine whether the identified impacts are significant.

Based on its findings of significance, the lead agency prepares one of the following environmental review documents:

- Negative Declaration if it finds no significant impacts;
- Mitigated Negative Declaration if it finds significant impacts but revises the project to avoid or mitigate those significant impacts;
- Environmental Impact Report (EIR) if it finds significant impacts.

The purpose of an EIR is to provide State and local agencies and the general public with detailed information on the potentially significant environmental effects which a proposed project is likely to have and to list ways which the significant environmental effects may be minimized and indicate alternatives to the project.

CEQA defines a *significant effect* on the environment as a substantial or potentially substantial adverse change in the physical environment. The determination of significance is facilitated by public agencies that develop “thresholds of significance” that are identifiable quantitative or qualitative metrics to determine if an action will have a significant effect on the environment. For example, in its *Guide to Air Quality Assessment in Sacramento County*⁸, the Sacramento Air Quality Management District indicates that if a project results in less than 65 pounds per day of nitrogen oxides (NO_x) emitted into the atmosphere, those NO_x emissions are typically deemed by a lead agency as “less than significant.”

CEQA’s “fair argument” standard for determining when to prepare an EIR also plays a role in determining when a project may have a significant effect. Fair argument is intended to trigger an EIR in the face of any uncertainty over the significance of a project’s impact.

Although several local trial courts have ruled on CEQA cases concerning climate change, and a number of CEQA lawsuits have been filed by appellants including the California Attorney General, to date there are no California appellate or Supreme Court decisions governing the character or extent of climate change analysis required under CEQA. The CEQA Guidelines have not been updated to provide guidance as it relates to climate change.

California Assembly Bill 32

AB 32 was co-authored by Assembly Member Fran Pavley and Assembly Speaker Fabian Nunez and signed into law by Governor Arnold Schwarzenegger on September 27, 2006. The bill is 13 pages in length, focuses on GHG emission reduction goals, and specifies which California agencies are responsible for meeting these goals. There are no new prescriptive air quality regulations in the bill requiring emissions reductions by sector or application. Rather, AB 32 is California’s roadmap to GHG emission reduction by listing goals and timelines and giving new authority to existing agencies to meet these goals.

AB 32 begins with the following statement:

Global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. The potential adverse impacts of global warming include the exacerbation of air quality problems, a reduction in the quality and supply of water to the state from the Sierra snowpack, a rise in sea levels resulting in the displacement of thousands of coastal businesses and residences, damage to marine ecosystems and the natural environment, and an increase in the incidences of infectious diseases, asthma, and other human health-related problems.

This statement is meant to effectively end the scientific debate in California over the existence and consequences of global warming. The bill recognizes that GHG reduction in California will require similar reductions by other states and countries in order to be meaningful. As such, California’s prospective emission reductions specified in AB 32 are an attempt to establish a global leadership role on climate change abatement and to act as a blueprint for other states and nations to reduce their respective GHG emissions.

The heart of the bill is the requirement that statewide GHG emissions must be reduced to 1990 levels by the year 2020. The bill requires the California Air Resources Board (CARB) to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective GHG reductions, as specified. The following are the key milestones of AB 32.

- June 30, 2007—Identification of “discrete early action greenhouse gas emissions reduction measures”
- January 1, 2008—Identification of the 1990 baseline GHG emissions level and approval of a statewide limit equivalent to that level. Adoption of reporting and verification requirements concerning GHG emissions
- January 1, 2009—Adoption of a scoping plan for achieving GHG emission reductions
- January 1, 2010—Adoption and enforcement of regulations to implement the “discrete” actions
- January 1, 2011—Adoption of GHG emission limits and reduction measures by regulation
- January 1, 2012—GHG emission limits and reduction measures adopted in 2011 become enforceable

The bill authorizes the use of market-based compliance mechanisms, which are also known as cap and trade programs. Market-based approaches to GHG emission reduction are currently in use in Europe and have been used in the United States to address acid rain precursors; a GHG cap and trade program is also being implemented in the Northeastern and Mid-Atlantic states as part of the Regional Greenhouse Gas Initiative. There is also specific language to support the use of AB 32 to abate other air quality issues, such as ozone, particulate matter, and toxic air contaminant exposures “to the extent feasible and in furtherance of achieving the statewide GHG emissions limit.”

Until CARB finalizes the 1990 emission inventory, most policy makers are using the Climate Action Team Report submitted to the California Governor and Legislature in March 2006 for GHG inventory estimates.² The draft GHG budget was recently presented by CARB on January 22, 2007, and is reproduced here as Figures 1 through 3.³ As shown in Figure 1, California needs to reduce GHG emissions by approximately 25% by the year 2020 to achieve the goals specified in AB 32. As shown in Figure 2, CO₂ represents approximately 83% of California’s GHG emissions. Lastly, as shown in Figure 3, the transportation sector is responsible for roughly 40% of GHG emissions, and electric power and industrial processing contribute approximately 20% each.

Considerations in NEPA and CEQA Analysis

Addressing GHG emission in NEPA and CEQA documentation requires familiarity with three key concepts: 1) cumulative impacts, 2) *de minimis* arguments, and 3) constitutional limitations of CEQA (which also apply to NEPA).

A *cumulative impact* refers to an action that, on its own, may not appreciably impact the environment but when viewed in conjunction with other “reasonably foreseeable” actions is significant. For example, the emissions from a single vehicle may not be seen as leading to an

appreciable increase in ambient ozone concentrations, but on the whole, vehicle fleets are a primary source of ozone precursors. CEQA basically requires the agency to assess whether there is a cumulative impact based on past, present, and reasonably foreseeable probable future projects and then determine if the proposed project's contribution to that cumulative impact is *considerable*. Although not as detailed, NEPA's directive is consistent with CEQA's.

Particularly as it relates to CEQA, one should avoid making a "*de minimis* argument" that the proposed project's contribution is not considerable based on the size of the contribution in relation to the size of the cumulative problem. The *de minimis* argument essentially states that if an individual project contributes a relatively small amount relative to an existing environmental problem, the new project should be deemed as not being a considerable contribution to the cumulative impact and, therefore, is less than significant. For example, if a factory only emits 0.0001% of the total NO_x emissions in an airshed, one could argue that the factory is a trivial contribution to the environmental problem and should thus be deemed less than significant. CEQA case law has invalidated the *de minimis* argument, finding that it is contrary to the concept of a cumulative impact (see *Communities for a Better Environment v. California Resources Agency* [2002] 103 Cal.App.4th 98). However, the courts have stopped short of declaring that "the addition of one additional molecule to an existing problem" constitutes a cumulative impact. It should be noted that CEQA case law is not binding for interpretation of NEPA cumulative effects analysis.

The U.S. Constitution, as interpreted by the seminal U.S. Supreme Court cases *Nollan* (*Nollan v. California Coastal Commission* 483 U.S. 825 [1987]) and *Dolan* (*Dolan v. City of Tigard* 512 U.S. 374 [1994]), limits the ability of an agency to require mitigation measures through the governmental police powers, including NEPA and CEQA, beyond where there is a direct nexus to the impact and in relation to the size of the impact resulting from that project. This limitation is important when addressing GHG emissions in NEPA and CEQA because it, in effect, states that a mitigation measure cannot require a project to reduce GHG emissions or otherwise address climate change impacts in excess of the emissions created by the project itself. As a result, requiring a project to be carbon-neutral is the most stringent mitigation possible in compliance with constitutional limits, and it is not legal to require that a project remove more GHG emissions than it creates.

Framework for Addressing Climate Change within NEPA and CEQA Environmental Analysis

Overview

At the federal level, there has been no major legislation or regulatory action that clearly states that global warming poses a significant threat to the environment. However, as described below, the U.S. Supreme Court ruling in *Massachusetts vs. Environmental Protection Agency* and other federal court action would support such an argument. Further, CEQ guidance indicates that GHG emissions and climate change should be considered cumulative effects, though the guidance provides no clear direction as to how analysis of climate change should actually be conducted in NEPA document. At this time of transition in NEPA practice, a cautious approach for federal agencies and NEPA practitioners would be to address climate change within NEPA documents and disclose the federal action's relation to GHG emissions and climate change explicitly.

CEQA is not explicitly addressed within AB 32. However, because the bill indicates that “global warming poses a serious threat to ... the environment of California,” climate change, and the need to address and mitigate it, immediately leaves the domain of scientific speculation and becomes more of a political and regulatory reality, at least in California. Because a key objective of CEQA is public disclosure of the reasons for agency approval of projects with significant environment effects, it is now difficult to argue that one should not, at a minimum, disclose the contribution to climate change in CEQA documents.

When addressing climate change in NEPA or CEQA documents, one has to address three fundamental questions:

- How will the project *affect* climate change?
- How will the project *be affected* by climate change?
- If the project contributions to climate change are considered a significant impact on the environment, what constitutes feasible “Fair Share” mitigation?

In the most general sense, one can determine whether a project *affects* climate change by determining if the project will alter the earth’s radiative budget. Examples of activities that could be considered as changing the earth’s radiative budget include, but are not limited to those below.

- **Direct emissions of GHG.** This is the most straightforward way that a project will affect climate change and the one that most people immediately will think of when addressing global warming. Examples include the construction of a new factory or power plant that emits GHGs. Possibly included would be lifecycle and construction emissions associated with materials used and transported to the construction site as well as direct emissions from the construction equipment.
- **Indirect emissions of GHG.** This refers to a project that does not directly emit GHGs but is expected to result in increased GHGs as a result of the project. For example, above and beyond the GHG emissions associated with the building of a freeway or the emissions associated with mining and transporting materials to the site, the creation of a new interstate freeway may result in increased vehicles miles traveled (VMT) in the region, which in turn will result in increased emissions of GHGs. Energy use also results in indirect GHG emissions since most power plants emit GHG during energy production and transmission.
- **Alteration of sinks of GHG.** This refers to the alteration or removal of processes or land uses that uptake or sequester GHGs. For example, because trees sequester atmospheric carbon, clear cutting a forest will remove a GHG sink and thereby accelerate global warming. Another example would be the decision to change a land’s use from one type of crop for another with a lower sequestration rate.
- **Changes in land albedo (reflectivity).** Projects that change the average albedo of land will affect the earth’s radiative balance and could affect global warming. Changes in earth’s average albedo by the melting of the polar ice caps are expected to have an enormous impact on climate change. To a lesser extent, a project that changes a land parcel’s albedo will also affect climate change. For example, a project that requires paving of a large area of land that is primarily ice would accelerate global warming. This is perhaps the most subtle way that a project can affect the radiative budget and will likely be considered a secondary concern to three items listed above since it does not involve changes in GHG emissions or sinks.

The assessment of how a project could contribute to the future GHG emissions is somewhat complicated. An impact analysis under CEQA (and typically also for NEPA) relies on the concept of setting an environmental baseline from which the lead agency determines how a project's proposed environmental effects would impact the environment. For cumulative analysis, the lead agency typically sets a future baseline and determines the cumulative impacts including an analysis of how the project contributes to that impact. However, it may be difficult for the lead agency to set the future baseline for determining a project's contribution to GHG (and global climate change). An example might be where a project is proposed to add housing to an area. These houses would accommodate people who would otherwise live somewhere else, were it not for the project. It may be difficult to attribute the cumulative impact to the project where that future population increase was part of the future cumulative baseline, without the project. Some analysis may be necessary to show if there is a net increase or decrease in the GHG emissions related to locating the population at the project location as compared to somewhere else.

In addition to the determination of how a project will contribute to climate change, one may also have to address how a project will be *affected* by potential changes in climate. Because an analysis of the no-project baseline is required in many EIRs/EISs, one must consider the possibility that the future will be affected by climate change. Examples of expected changes due to the global warming include:

- Change in water availability and quality.
- Increase in the frequency and severity of extreme weather events such as storms, heat waves, and flooding.
- Changes in cloud cover and rainfall patterns.
- Increases frequency and severity of ozone exceedances due in part to changes in photochemistry.
- Sea level rise.
- Increased intrusion of seawater into estuaries due to sea level rise.
- Other effects.

For example, if an endangered species nests in a coastal area, development of land near the coastal area may have to account for anticipated rises in sea level that would effectively push the hypothetical nesting area inland. Determining how climate change may affect a project may be inherently difficult given the speculative nature of many potential effects when applied to a geographically specific area.

Nuts and Bolts—What to Put in Your NEPA and CEQA Documents

Projects that *Affect* Climate Change

In California, there are no statewide significance criteria or approved mitigation methods concerning GHG emissions. In the absence of regulatory guidance, and prior to the resolution on various lawsuits germane to this topic, CEQA documents will address GHG emissions on a case-by-case basis using ad-hoc methods and individual agency judgment.

On the federal level, there is a similar lack of adopted threshold criteria or approved mitigation methods. Although several federal court decisions support the argument that climate change must be discussed in NEPA documents, there is no guidance on what levels of impact would result in a determination that a project has a significant effect on the environment overall. In this interim, NEPA documents will address GHG emissions and climate change on a case-by-case basis using individual agency judgment.

The remainder of this section explores the various methodologies that could be used to address climate change in the absence of regulatory guidance and/or legal precedent. Options are presented in order of increasing level of effort to implement. These approaches are discussed in the context of a program or project that does contribute GHG emissions.

Approach 1. Do Not Address GHG Emissions or Climate Change

This approach is effectively the continuation of the prior status quo wherein GHG emissions and climate change were rarely mentioned in NEPA and CEQA documents. Because it may be difficult to determine how certain projects would contribute to climate change and what the overall impacts would be based on that contribution, some lead agencies have determined it to be speculative to attempt to analyze a project's contribution to climate change and have included no analysis in their documents. Obviously, this approach requires the least amount of effort, but it is possible that the omission of a climate change discussion on a major project will result in critical remarks during the comment period if the underlying program or project can be shown to result in a net increase in GHG emissions. If legal challenge is brought, lack of consideration may affect ability of a public agency to defend itself if the administrative record is silent as to why the agency considered the impact of the program/project to be speculative as it relates to climate change. Thus, if the agency determines that project effects on climate change are speculative it must explain how it reached that conclusion in the project public record.

Approach 2. Discuss Climate Change Qualitatively, With No Significance Conclusion

Given the changing NEPA and CEQA context, most documents will likely have to address climate change in general terms. This approach would, at the minimum, meet directives related to disclosure of potential impacts but would not attempt to make significance determinations or to define appropriate mitigation for the identified impact. Lacking quantification of impact, it may be difficult to determine a project's fair share of potential mitigation, but with no significance determination, there would be no mandate (under CEQA) to adopt such mitigation. This approach would likely be based on an argument that there is currently a lack of guidance on how to perform a climate change analysis within NEPA and CEQA, and thus it is appropriate to restrict the discussion to a qualitative discussion. This approach would also cover potential climate change impacts (e.g., potential sea level rise for coastal development) on the project qualitatively, as feasible.

An example of this approach is the EIR prepared by San Bernardino County for its General Plan Update. The EIR discussed climate change and the relation of development with the General Plan Update to GHG emissions, but did not quantify those emissions nor make a significance conclusion, citing "the lack of any methodologies or significance thresholds that can be applied in determining whether the impacts of the General Plan revision will be significant in terms of

greenhouse gas emissions or climate change.” As described below, the California Attorney General filed suit to challenge the adequacy of this EIR.

Approach 3. Discuss Climate Change Quantitatively, With No Significance Conclusion

Similar to Approach 2, this approach would not attempt to address significance criteria or mitigation, but would attempt to quantify GHG emissions, where feasible, and would attempt to assess climate change impacts on projects through quantitative methods (again where feasible). In this approach, a quantitative analysis of how a project would increase GHG emissions would be performed and potential climate change impacts would be discussed. Where reliable predictions of climate change effects are available, such as with sea level rise, such changes would also be taken into account in the analysis of project effects. The significance of these impacts would not be addressed and no significance conclusion or mitigation be made or adopted. It is critical that one documents that there is a lack of regulatory guidance for this approach to be sound.

Approach 4. Discuss Climate Change Quantitatively, Apply a Net Zero GHG Emission Threshold, Determine Significance and Identify Mitigation

This approach would quantify effects as feasible, apply a zero threshold for GHG emissions, and identify feasible mitigation. In this approach, a quantitative analysis of project GHG emissions, as well as feasible analysis of climate change effects on the project, would be performed and discussed. These impacts would be determined significant if they result in GHG emissions on the theory that *any* increase greater than zero is significant. Feasible mitigation to reduce the project’s GHG emission contribution would be discussed, but the impact would most likely be determined unavoidable unless the project’s contribution could be reduced to zero. At present, it will not be feasible to mitigate most project contributions to zero based on direct mitigation. Therefore, to meet the zero threshold criteria, one must use offset mitigation in the form of GHG emission credits derived from offset projects or through “cap and trade” programs.

The Marin County General Plan Update Draft EIR used a significance threshold that stated that if GHG emissions exceeded existing levels, a significant impact would occur, which is in essence a zero threshold above baseline. The Draft EIR concluded that even with implementation of the Marin County Greenhouse Gas Reduction Plan (a plan identifying a range of actions the County could take to reduce emissions overall), it could not be concluded that GHG emissions would not still increase over current levels and thus a significant unavoidable impact could occur.

A variant on this approach has been applied by several regional transportation agencies in California. Orange County Transportation Agency found in the EIR for its long-range transportation plan that their project would reduce vehicle miles traveled compared to no project conditions and thus would lower GHG emissions, but did not quantify the actual GHG emissions. The San Joaquin Council of Governments conducted quantitative analysis of vehicle GHG emissions for their EIR associated with their regional transportation plan. The regional transportation plan included a mix of infrastructure investments and other programs over an extended period and included roadway congestion improvements, transit projects, and transportation management systems. The EIR found that vehicle GHG emissions with the implementation of the plan were less than the vehicle GHG emissions associated with the no-

project conditions. GHG emissions were identified as increasing substantially compared to current levels, but the agency determined that land use decisions about growth were the causative agent for increased traffic and that the true comparison of project consequences for regional transportation plan should be between no-project and project conditions, not between baseline and project conditions. Thus, the program EIR concluded that the plan would not contribute to increased GHG emissions nor result in any associated significant impacts on the environment related to climate change.

Approach 5. Discuss Climate Change, Apply a Non-Zero Significance Criteria, and Identify Mitigation

This approach would include a quantitative analysis of project GHG emissions and a determination as to whether these changes are significant based on a quantitative threshold. If the threshold is greater than zero, the lead agency must determine the baseline for the future cumulative scenario, significance criteria, and mitigation methods for this approach. Until legal precedent, regulatory guidance, or professional consensus establishes accepted methodology and practice, this will be on an ad hoc basis.

Both qualitative and quantitative approaches to determining significance criteria can be employed.

A qualitative approach could be used when the project is in an area with some local government guidance on how to address climate change. For example, Marin County and San Francisco are two California counties that currently have a greenhouse gas action plan. These plans do not specifically mention CEQA or NEPA, but they do list various measures that the counties plans to employ to achieve GHG emissions reduction. It may be argued that projects that implement all appropriate actions listed in the jurisdictional reduction plan would not have significant impacts. This qualitative approach might obviate the need to make quantitative calculations of GHG emissions while still conforming to a jurisdiction's reduction plan.

A quantitative approach would require the determination of the GHG emissions associated with the project and various project alternatives. The project emissions would then be compared to a threshold of significance and potentially mitigated to a less-than-significant level. Although time consuming, there are adequate tools available to reasonably determine most projects' GHG emissions. The quantitative effect of some mitigation measures, such as requiring solar panels on new homes, will be relatively easy to quantify, whereas other mitigation measures, such as encouraging telecommuting, will require a more subjective analysis.

Perhaps the most challenging aspect of this approach is the determination of a significance threshold greater than zero. One might consider the AB 32 goal of reducing 2020 GHG emissions in California by approximate 25% compared to "business as usual" emissions as a model to identify a significance threshold. Using this concept, a lead agency would quantify GHG emissions for a project following (unmitigated) "business as usual" approaches and then would apply mitigation measures that would reduce emissions by 25%. However, even if all new development were to follow this approach, there would still be substantial net increases in GHG emissions compared to existing levels. When considering that climate change is a cumulative effect, this approach rests on these key premises: (1) other new development is also being required to seek similar reductions; (2) other reduction strategies are being implemented that will

reduce the emissions level of existing development; and (3) the balance of mitigated new development and less emissions from existing development will reach the overall reduction goal.

Potential Mitigation Measures

Mitigation measures to offset or reduce project emissions are likely to be project specific. Some of the project measures that could be adopted are listed below. This is a partial list, as there are myriad opportunities to reduce energy use, transportation emissions, and other direct and indirect sources of GHG emissions, though only certain mitigations strategies will likely apply to any specific project or planning effort.

- For buildings, require energy-efficient design such as that encapsulated in the Leadership in Energy and Environmental Design (LEED) Green Building Ratings. LEED standards are widely recognized benchmarks for the design, construction, and operation of energy-efficient commercial and residential buildings (energy efficiency is only part of LEED; a big part of the rating is also indoor air quality).
- Require incorporation of transit into project design through considerations of siting, location, and transit linkages.
- Require vehicle-reduction measures through carpooling, public transit incentives, and linkages or electric shuttle service to public transit as well as local and regional pedestrian and bike trails.
- Require energy-efficient retrofit of existing building stock to offset increased energy demands of new buildings.
- Require purchase of energy-efficient appliances and office equipment (Energy Star compliant, etc.).
- Promote waste reduction measures and recycling (reduces cost to transport and dispose waste and energy associated with product manufacture).
- Require fleet vehicles to be low-emissions vehicles (high-mileage, hybrid, electric, etc.).
- Incorporate on-site renewable energy production (such as solar installations on building rooftops), waste heat capture (for industrial projects to provide process and/or building heat), and water reuse.
- In planning, promote mixed-use, compact, and higher-density development to reduce trip distance, promote alternatives to vehicle travel, and promote efficiency in delivery of services and goods.

Possible non-project-related mitigation could include the purchase carbon offset credits from an existing carbon trading markets (such as the Chicago Climate Exchange) or purchase credits from future market-based systems (such as what may be developed in California through implementation of AB 32).

While NEPA requires the identification of mitigation measures it does not require the adoption of mitigation measures unless agency-specific NEPA procedures require their adoption or the agency commits to implementing them in a Record of Decision.

CEQA requires the identification of mitigation measures but does not require that all significant impacts be mitigated to less-than-significant values for a project to be approved, if it can be shown that there is no feasible mitigation or alternative to the significant unavoidable impact. Lead agencies are required to adopt a statement of overriding considerations as to why the project should still be approved, notwithstanding the significant and unavoidable impact, but must make findings demonstrating that there are no feasible mitigation measure or alternatives which would reduce the impact to a less-than-significant level.

Projects *Affected by* Climate Change

For projects that do not *affect* climate change but are *affected by* climate change, the requirements for analysis in NEPA and CEQA documents require more complex consideration. Effects that can be reasonably identified based on available evidence, such as rises in sea level and changes in snow pack, are more amenable to analysis, but the extent to which climate change effects on a project that cannot presently be identified on a geographic basis (such as the effect on changing habitat conditions for threatened and endangered species) need to be addressed is uncertain. A number of NEPA and CEQA documents that the authors are involved in have, for example, taken into account estimates of future sea level rise (that consider the effect of global warming) when considering potential flooding and habitat effects for several coastal projects.

It is expected that federal and California agencies will, in time, canonize likely consequences of climate change that fall under its purview. For example, it is expected that the California Department of Water Resources will likely formalize a list of foreseeable water resource and water quality issues associated with varying degrees of climate change. As federal and state agencies and scientific studies identify the ability to identify climate change effects on a more specific geographic basis, they should be used to determine to what extent a project is affected by climate change. In the short term, when federal and California departments have yet to issue guidance, a lead agency must rely on its own interpretation of the ability to engage in non-speculative analysis.

One approach to addressing projects affected by climate change could be to incorporate a range of climate change predictions (including the most conservative) into the no-project baseline. Consider a project that would create a new industrial plant that discharges wastewater into a nearby lake. To determine the possible impacts of the discharge on the water body, one has to characterize the baseline future condition of the lake for the dates that the plant will be in operation. If climate change may potentially change the depth of the lake within the foreseeable future, one could consider the most conservative (e.g. shallow) lake depth for baseline analysis.

Contrasting NEPA and CEQA Climate Change Approaches

NEPA and CEQA have fundamental differences in their objectives and approaches that result in differences in how they examine climate change.

NEPA is concerned primarily with informing agencies and the public of the environmental consequences of a proposed project or action. NEPA requires the integration of other federal agencies' regulatory processes, and the reconciliation of environmental issues within the NEPA process. A NEPA agency will prepare an EIS when an action will have a significant adverse effect overall, but the EIS is not necessarily required to disclose the significance of the individual

effects (biology, air quality, etc.) of the project and thus some federal lead agencies may analyze climate change effects but decide not to determine the specific significance of project impacts related to climate change. NEPA does not require the EIS to include mitigation for the project's effects beyond those required by other federal agencies pursuant to other regulatory processes (such as the CAA). Prior to the U.S. Supreme Court ruling in *Massachusetts vs. Environmental Protection Agency*, the EPA did not consider GHG emissions as "pollutants" under the CAA. With the court ruling, it is possible that the EPA may regulate GHG emissions now or in the future; if it does, then mitigation may be applied in the NEPA process through the authority of the CAA. As noted above, the CEQ does not have explicit guidance on how to address climate change in NEPA, though its general guidance on cumulative effects is suggestive that climate change should be addressed in NEPA documents. In essence then, NEPA requires that a "hard look" at environmental effects be made, but not that the project's effects be mitigated unless other regulatory mandates apply.

CEQA, on the other hand, is based on the premise that a lead agency must examine the project to determine whether it may result in an adverse effect on the environment, determine the significance of that effect, and adopt feasible and fully enforceable mitigation measures whenever feasible. CEQA review centers largely on the lead agency. Although CEQA requires the review of draft documents by other agencies and the public, it does not require the integration of other agencies' permitting or review processes as part of the CEQA process or mitigation. Thus, determinations about significance, feasible mitigation, and alternatives as they relate to climate change effects ultimately rest with the lead agency. However, CEQA requires that those determinations must be founded on substantial evidence and those determination can be subject to legal challenge.

Reading the Tea Leaves: Pending Climate Change Court Cases That May Affect NEPA and CEQA

Addressing climate change within the NEPA and CEQA processes is currently in a transitional period. Until NEPA and CEQA regulations are modified to explicitly address climate change, guidance on how projects should address climate change is likely to be driven by litigation. In this section, federal and state court decisions and pending cases that may influence how climate change is to be addressed in the NEPA and CEQA processes are presented.

Federal Court Cases

Massachusetts vs. Environmental Protection Agency

Twelve U.S. states and cities (e.g., New York and California), in conjunction with several environmental organizations (e.g., Greenpeace, Sierra Club, and Natural Resources Defense Council), collectively sued to force the EPA to regulate GHGs as a pollutant pursuant to the CAA. The petitioners contended that the CAA gives the EPA the necessary authority, and the mandate, to address GHGs in light of the scientific evidence on global warming. The EPA contended that it does not have the regulatory power to address GHGs, and even if it did it would choose not to. Pivotal to this case was the exact definition of an air pollutant as stipulated in the

CAA. The petitioners claimed that CO₂ is a pollutant and therefore must be regulated by the EPA. EPA claimed that CO₂ is not a pollutant and thus it has no ability to regulate it via the CAA.

The U.S. Supreme Court ruled in April 2007 that the plaintiffs had standing to sue (based on potential harm from climate change that could be influenced by regulation of GHGs), that GHGs fit within the CAA's definition of a pollutant, and that the EPA's reasons for not regulating GHGs were thus insufficiently grounded in the language of the CAA. The court found that, "...the harms associated with climate change are serious and well recognized." The court found that EPA's "... refusal to regulate greenhouse gas emissions presents a risk of harm to Massachusetts that is both 'actual' and 'imminent...'" Moreover, the court believes that action by EPA could reduce the risk of such damage, and the court "...attaches considerable significance to EPA's espoused belief that global climate change must be addressed."

Border Power Plant Working Group v. Department of Energy

Plaintiffs challenged a Department of Energy (DOE) FONSI supporting a decision to grant rights-of-way for transmission lines to connect new power plants in Mexico to the U.S., alleging that an EIS should be prepared in order to analyze the impacts of new CO₂ emissions. DOE argued that the power plants would operate without the transmission lines and thus the emissions were not foreseeable project impacts, and need not be analyzed. The U.S. District Court (Southern District of California) ruled in May 2003 that a portion of the new power plants were intended to produce power for export to the United States and would not operate without the transmission lines and so analysis of the GHG emissions from these plants is required under NEPA. Subsequent to the ruling, DOE conducted a cursory assessment (totaling three paragraphs) of the emissions and summarily dismissed them as negligible.

Friends of the Earth vs. Mosbacher

Friends of the Earth, along with the cities of Oakland, Arcata, Santa Monica, and Boulder, alleged that 32 billion dollars worth of oil and other fossil fuel projects under the purview of the Overseas Private Investment Corporation (OPIC) failed to address climate change, which they claim is required by NEPA. The U.S. District Court (Northern District of California) ruled in March 2007 regarding motions for summary judgment. Relative to climate change, the court found that "it is undisputed that these projects do emit GHGs. Further, based on the statements in their climate change reports regarding the effects of GHGs on climate change, it would be difficult for the Court to conclude that Defendants have created a genuine dispute that GHGs do not contribute to global warming." However, the court was unable to determine whether the alleged actions would have gone forward without OPIC/Export-Import Bank participation and thus did not determine if the defendants were a legally relevant cause of the alleged effects on the environment. The conclusion of this ruling would support an argument that climate change does need to be analyzed under NEPA when the federal agency is a "legally relevant" cause of increased GHG emissions.

Mayo Foundation vs. Surface Transportation Board

The plaintiffs asserted that new and upgraded rail lines would result in increased supply of coal and thus would increase pollutant emissions and degrade air quality. The Surface Transportation Board claimed that all relevant pollutants were regulated by the CAA under which rules the

emissions were found to be not significant. However, the U.S. Court of Appeals, Eighth District, disagreed in its 2003 ruling, noting that carbon dioxide is not regulated under the CAA, and the lack of analysis with respect to increased coal consumption was “irresponsible.” Following the ruling, the Surface Transportation Board published a supplemental EIS that concluded that increases in coal consumption would be minor and thus that increase in emissions would not be significant. The plaintiffs appealed the supplemental EIS analysis in 2006; this suit is pending at the Eighth District.

Center for Biological Diversity vs. National Highway Traffic Administration

The plaintiffs assert that National Highway Traffic Administration violated the Energy Policy and Conservation Act and NEPA by ignoring greenhouse gas emissions and global warming when setting the fuel-economy standards for model year 2008-2011 SUVs and pickup trucks. The case was heard in May 2007 at the U.S. Court of Appeals, Ninth Circuit.

California Court Cases

The following CEQA lawsuits have been filed and/or decided in trial courts in California in the last two years. No California appellate or Supreme Court cases on climate change issues related to CEQA are pending at this time. Therefore, there are not yet any precedents from the Courts that would clarify how CEQA is to be applied to climate change.

State of California vs. San Bernardino County

In April 2007, the Attorney General of California challenged the EIR for the San Bernardino County General Plan Update, alleging that the analysis of GHG emissions and climate change was inadequate. After San Bernardino County issued its CEQA analysis for the General Plan Update, both the State and several environmental groups sued, claiming that the County violated CEQA by failing to assess how the substantial development anticipated by the plan would contribute to climate change and by failing to adopt measures to mitigate the climate change impacts of future development in the County. The State also alleged that the County failed to assess how the significant population growth predicted in the land use update and the concomitant increase in GHG emissions will impact the State’s ability to meet the GHG reduction targets mandated in California’s GHG emission reduction legislation, AB-32. This case is pending at the San Bernardino County Superior Court.

Center for Biological Diversity v. San Bernardino County

In March 2007, the plaintiff alleged that San Bernardino County should have assessed GHG emissions in the CEQA document associated with the permit issues for a commercial compost facility. This case is pending at the San Bernardino County Superior Court.

Center for Biological Diversity and Sierra Club v. City of Desert Hot Springs et al.

In January 2007, plaintiffs challenged the City of Desert Hot Springs' EIR for the Palmwoods Specific Plan/Project involving 2,700 new homes, commercial development, a hotel and a golf course alleging, among other aspects, that the project will contribute to global warming and that the EIR failed to analyze GHG emissions and climate change. This case is pending at the Riverside County Superior Court.

Center for Biological Diversity vs. City of Banning

In November 2006, the plaintiff challenged the City of Banning's EIR for the 1,500-home Black Bench residential development, charging that the project will contribute to global warming, air pollution, and other environmental harm and that the EIR ignored the project's GHG emissions, which plaintiff asserts would be a major new source. This case is pending at the Riverside County Superior Court.

Natural Resources Defense Council vs. Reclamation Board

The plaintiff challenged the failure of the EIR to consider the impacts of climate change on the project. The challenge related to the California Reclamation Board's approval of fill and encroachment permits for a residential development in California's Sacramento-San Joaquin Bay Delta near Lathrop. The petitioners argued that data made available after certification of the project's EIR indicated that sea-level rise due to global climate change would result in worse impacts than disclosed in the EIR.

The Sacramento Superior Court ruled in April 2007 that information about climate change was available at the time of project approval and thus the plaintiff had not shown that the potential for climate change impacts constituted significant information and thus determined that supplemental review was not needed.

American Canyon Community United for Responsible Growth et al. v. City of American Canyon et al.

Plaintiffs alleged that the passage of AB-32 constituted new significant information and that supplemental environmental review was necessary. The Napa County Superior Court ruled in May 2007 that AB 32 is not new significant information and that supplemental review was not needed.

Conclusions

We are currently in a period of transition within the federal and California regulatory community with regards to climate change and NEPA and CEQA compliance.

With the U.S. Supreme Court ruling in *Massachusetts v. Environmental Protection Agency*, the highest court in the nation has established that plaintiffs have standing in federal court based on potential harm from climate change and that greenhouse gases can be regulated under the CAA. Other federal court rulings support the argument that climate change must be analyzed within NEPA documents, but do not provide any direction as to what that analysis must consist of to satisfy NEPA requirements. The CEQ has not developed any specific guidance on climate change and NEPA. Thus, the determination of what constitutes a “hard look” at climate change in NEPA documents remains to be defined by future federal agency action, federal court decisions, and professional practice as influenced by federal agencies, professionals, and advocacy groups.

With the passage of California’s AB 32, the issue of climate change has moved from scientific debate into reality, at least as far as the California legislature and the current California administration is concerned. AB 32 is essentially a roadmap and timeline of how climate change will be addressed in California. Consequently, it does not issue any new explicit regulations or guidelines for the environmental analysis of new projects under CEQA. However, AB 32 does give great credence to the argument that climate change should be addressed during the CEQA process. Exactly how climate change should be addressed, what constitutes adequate analysis, how significance is determined, what constitutes feasible mitigation, and what required findings should be under CEQA will be the debate that California agencies, environmental professionals, the courts, and advocacy groups will be engaged in for the foreseeable future.

Jones & Stokes Climate Change Focus Group

For over 35 years Jones & Stokes has been a leader in NEPA and CEQA compliance; environmental, natural resource, and transportation planning; and management consulting services. Jones & Stokes developed its Climate Change Focus Group (CCFG) to provide guidance on how to best address climate change as part of the NEPA and CEQA processes. The CCFG is a multidisciplinary team of NEPA and CEQA specialists in fields including air quality, water resources, natural resources, transportation, ports and goods movement, energy and public utilities, and land use planning. Please visit the CCFG website at www.climatechangeofocusgroup.com to see how Jones & Stokes can help you address climate change in your environmental documents and integrate climate change considerations into your project planning.

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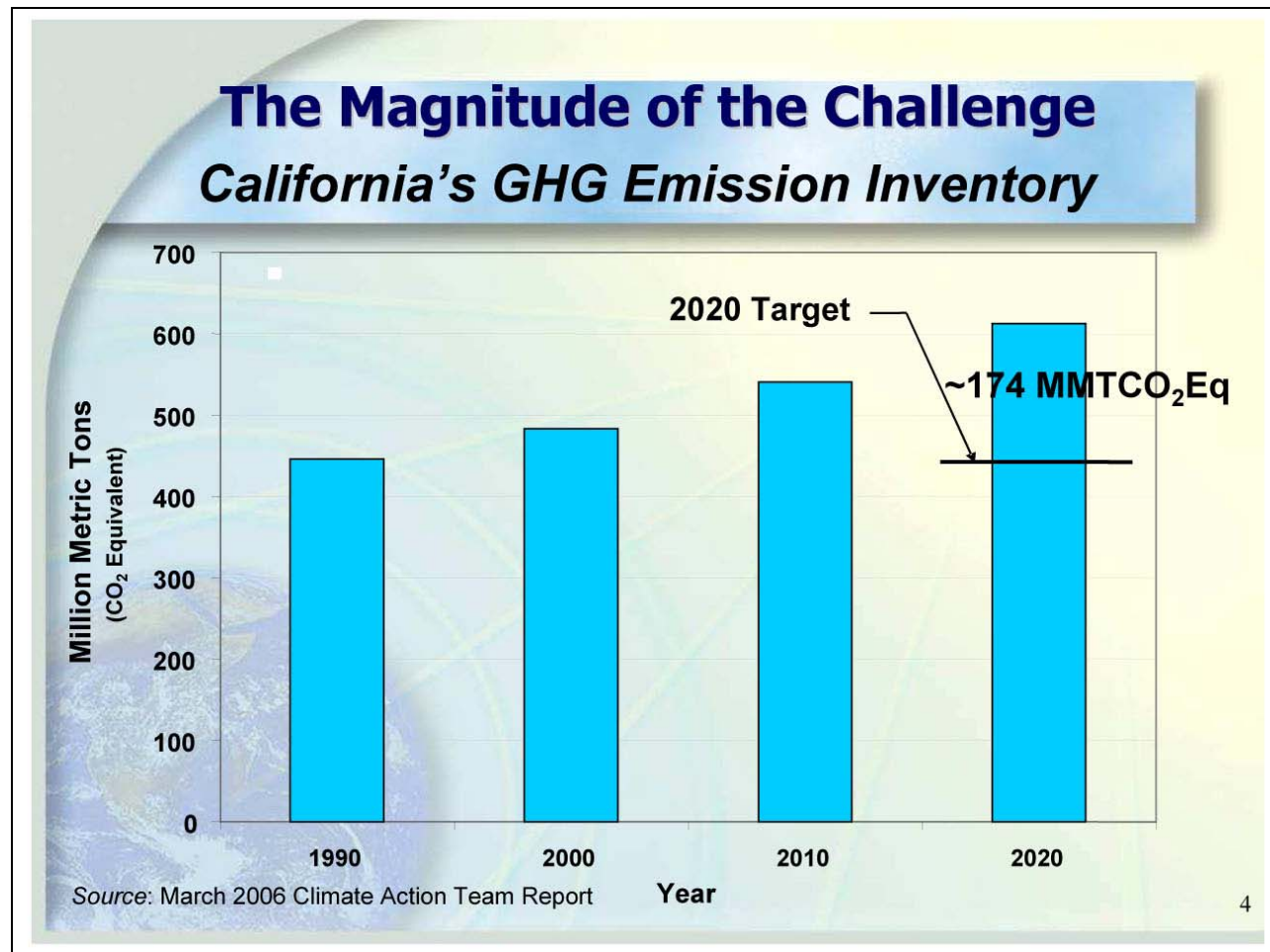


Figure 1. California's GHG Emission Inventory

Note: The blue bars represent the business as usual emission inventory with no climate change regulations. To have the year 2020 emission equal those of 1990, approximately 174 Million Metric Tons of CO₂ Equivalent GHG emissions will have to be reduced³.

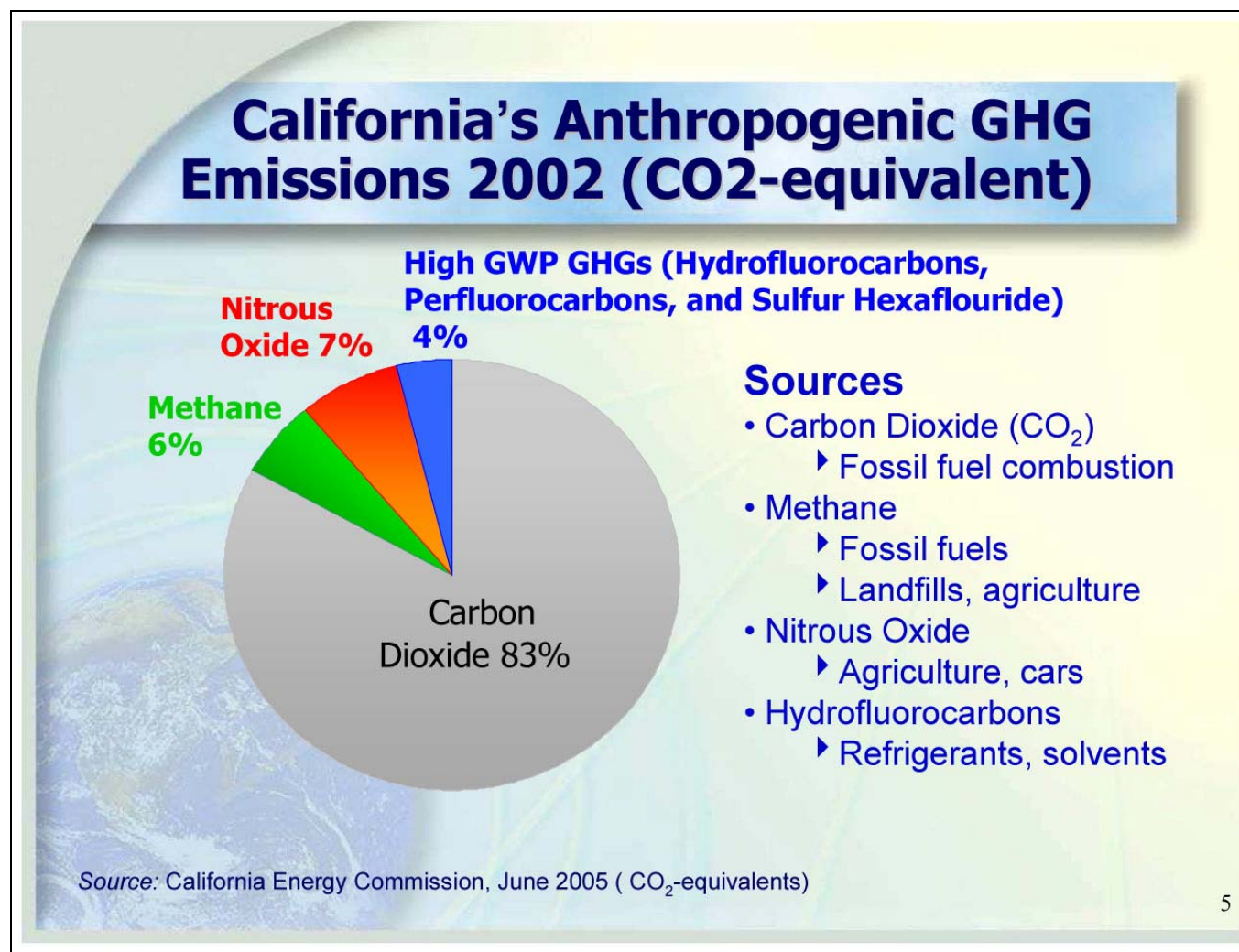


Figure 2. Chemical Speciation of GHG Emissions in the 2002 Californian Emissions Budget³

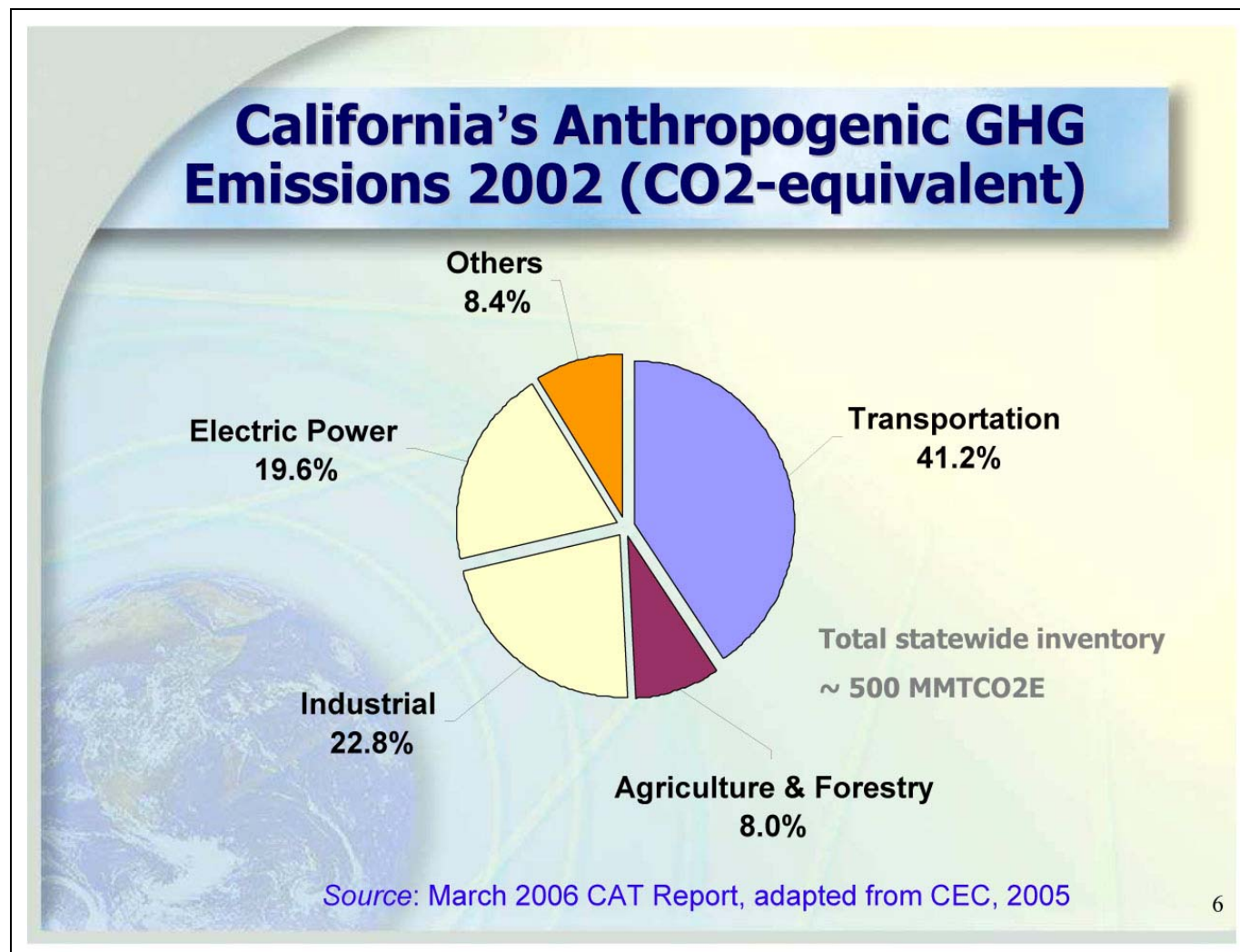


Figure 3. Fraction of GHG Emissions Grouped by Sector of Origin in the 2002 Californian Emissions Budget³