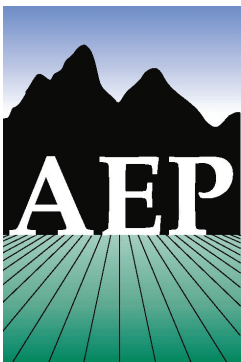




Association of Environmental Professionals (AEP) SB375 Consistency and CEQA Draft: May 2012

**Comments on the Draft Whitepaper will be accepted through June 7, 2012.
Comments can be email to: aepccc@googlegroups.com**



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ACRONYMS

AB	Assembly Bill
AMBAG	Association of Monterey Bay Area Governments
BAAQMD	Bay Area Air Quality Management District
CARB	California Air Resources Board
CEQA	California Environmental Quality Act
EKAPCD	Eastern Kern Air Pollution Control District
GHG	Greenhouse Gas
MPO	Metropolitan Planning Agency
RTP	Regional Transportation Project
SACOG	Sacramento Area Council of Governments
SANDAG	San Diego Associated Governments
SB	Senate Bill
SCAG	Southern California Associated Governments
SCAQMD	Southern California Air Quality Management District
SCP	Sustainable Communities Project
SCS	Sustainable Communities Strategy
SJVAPCD	San Joaquin Valley Air Pollution Control District
SLOAPCD	San Luis Obispo Air Pollution Control District
SLOCOG	San Luis Obispo Council of Governments
TPP	Transit Priority Project

1. EXECUTIVE SUMMARY

Rich Walter, ICF International

Senate Bill 375 (SB 375), signed into law in 2008 by then Governor Schwarzenegger, requires California's Metropolitan Planning Organizations (MPOs) to create Sustainable Communities Strategies (or SCSs) as part of their periodic Regional Transportation Plan (RTP) development to lower greenhouse gas (GHG) emissions from the passenger/light duty vehicle sector. While the bill created certain specified streamlining approaches under the California Environmental Quality Act (CEQA), a substantive question has arisen for CEQA practitioners and CEQA lead agencies in assessing whether or not consistency with a SCS should or should not be considered a significant impact on the environment under CEQA.

CEQA Guidelines Section 15125(d) requires the consideration of project consistency with local and regional plans designed to lower impacts on the environment. SB 375 is designed to promote regional integrated land use and transportation planning with the specific intent of lowering GHG emissions. However, the California legislature also specified that SB 375 did not create any new land use authority for the MPOs, that the SCS were not legally binding land use plans, and that cities and counties were not in any way obligated to amend their local land use plans to match the SCS that may be adopted by a MPO. Local land use authorities are required by prior land use planning law to adopt a housing element that is consistent with the Regional Housing Needs Allocation (RHNA) that is established by the regional MPO and SB 375 requires that regional MPO establish a RHNA that is consistent with the SCS, but this requirement still does not mandate that a local city or County adopt the specific land use assumptions used in a SCS, only that zoning is adopted that would allow the mix of housing specified in the RHNA.

What then does SB 375 consistency mean for CEQA?

This paper explores that question at length and suggests the following conclusions for consideration by CEQA lead agencies and practitioners:

- ✓ A project that qualifies as a Sustainable Communities Project (SCP), a Transit Priority Project (TPP), or a specified residential or mixed use project (as defined by SB 375) can utilize the streamlining provisions allowed by SB 375, are by definition consistent with SB 375 and can be determined to have a less than significant impact related to passenger/light-duty vehicle GHG emissions.
- ✓ A project that can be shown to be consistent with the land use planning assumptions and applicable policies in an SCS can be determined to be consistent with a SCS and to have a less than significant impact related to passenger/light-duty vehicle GHG emissions.
- ✓ A project that is inconsistent with a SCS does not necessarily have significant GHG emissions.
- ✓ A project that is consistent with a qualified GHG reduction plan, such as a Climate Action Plan, meeting the requirements in CEQA Guidelines 15183.5 can be determined to have a less than significant impact related to GHG emissions, regardless of consistency or lack thereof with an adopted SCS.

- ✓ A project with GHG emissions less than an established GHG emissions threshold that is supported by substantial evidence and reasoning can be determined to have less than significant GHG emissions regardless of consistency or lack thereof with an adopted SCS.
- ✓ The per capita passenger/light-duty vehicle GHG emissions targets used in regional SCSs are designed for regional application not for individual jurisdictions or individual projects. Even in SB 375 planning, the SCS is not evaluated by the MPO or the California Air Resources Board in terms of whether every jurisdiction meets the target, but rather if the SCS as whole meets the target. Thus, these targets are not necessarily appropriate significance thresholds for project evaluation of GHG emissions under CEQA because they are limited to one sector only and CEQA requires evaluation of all project-related direct and indirect GHG emissions. Thus, a project may have more per capita passenger/light-duty vehicle GHG emissions than the regional target and may or may not have significant GHG emissions depending on an overall evaluation of the project's GHG emissions. CEQA lead agencies are advised to use caution in any application of the regional passenger/light-duty vehicle GHG emissions target for use in local Climate Action Plans or local CEQA project evaluations.
- ✓ Local land use agencies are required to adopt Housing Elements consistent with the RHNAs adopted by their MPOs. Consistency with the RHNAs is an appropriate consideration under CEQA for adoption of Housing Elements and General Plans. While the RHNAs must be consistent with the SCS, consistency with the RHNAs is not synonymous with consistency with all elements of an SCS, as the RHNA establishes goals for specified types of housing, but does not establish a specific land use plan or pattern to achieve the allocations.
- ✓ Evaluating General Plan, Climate Action Plan, or project consistency with a SCS can be technically done out to 2020 in relation to GHG emissions given the existence of the overall context of AB 32 GHG reduction requirements at a state level.
- ✓ Evaluating General Plan, Climate Action Plan, or project consistency with a SCS out to 2035 in relation to GHG emissions is problematic given the lack of state or federal planning horizons for GHG reduction out to 2035. The adopted SCSs may have a horizon of 2035, but they only address the passenger/light-duty vehicle sector and not all sources of GHGs, without which an evaluation of the significance of overall GHG emissions would be incomplete. CEQA lead agencies should consider carefully their approach to evaluating consistency with a SCS in relation to GHG emissions for periods after 2020.
- ✓ Any CEQA determinations made should be supported by substantial evidence in the administrative record for the CEQA evaluation.

This paper also makes several recommendations that would assist CEQA lead agencies and CEQA practitioners in considering issues surrounding SB 375 consistency:

- ✓ The land use assumptions used by MPOs in calculation vehicle miles travelled (VMT) and passenger/light-duty vehicle GHG emissions for RTP/SCSs should be more transparent and available to local cities and counties and the public at large. Adopted RTP/SCSs do not always disclose fully their methodologies and assumptions in calculating GHG reductions which could impede a local jurisdiction understanding how exactly a regional RTP/SCS may project land use growth within a particular community. Cities and counties should be able to see and readily understand all the land use and transportation assumptions used in an SCS.

- ✓ MPOs can play a critical role in promoting consistency across regions in the evaluation of land use and transportation emissions by continuing their ongoing efforts in land use and transportation modeling and creating and fostering tools that can be applied on the local level by cities and counties that would be consistent with regional evaluation of land use and transportation.
- ✓ MPOs have done a good job of reaching out to cities and counties during development of their RTP/SCSs and have supported pilot projects demonstrating the value of integrated planning. MPOs should continue to engage with local jurisdictions and leverage regional resources to support local initiatives for integrated local land use and transportation planning.
- ✓ CEQA lead agencies practitioners should adhere to CEQA guidelines admonishment against speculation and should acknowledge the practical, technical, and legal limitations to very long-term GHG reduction planning, particularly for the period from 2035 to 2050. While long-term evaluations can provide insight into potential long-term effects of current decisions, the uncertainty of state, federal, market, and technological conditions more than 20 years in the future can undermine the validity and value of prescriptive planning and mandates that may be adopted based on speculative assumptions.

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DRAFT

2. BACKGROUND

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This chapter presents general information regarding SB 375 and other applicable legislation such as SB 226, AB 32 and other guidelines related to climate change analysis and CEQA.

2.1 *SB 375 (2008)*

SB 375, as enacted in 2008, set forth five general requirements related to planning activities including:

- ✓ require CARB to provide each region with GHG emission reduction targets for automobiles and light truck sector (completed February 2011);
- ✓ require RTPs to include a SCS designed to achieve this reduction as stated by CARB and if the reduction targets are not met by an SCS, then an Alternative Planning Strategy (APS) must be identified separate from the RTP;
- ✓ require the California Transportation Commission (CTC) to maintain guidelines for travel demand models (Adopted April 7, 2010);
- ✓ require cities and counties to revise their housing elements at least every 8 years; and
- ✓ streamline CEQA requirements for certain projects that are consistent with the SCS.

As of April 2012, RTP/SCSs have been adopted by three of the four largest MPOs in California: the San Diego Association of Governments (SANDAG), the Southern California Association of Governments (SCAG), and the Sacramento Area Council of Governments (SACOG). The Metropolitan Transportation Commission (MTC), the MPO for the San Francisco Bay Area is scheduled to adopt their RTP/SCS in 2013 and MPOs for other areas in California are also working on their respective plans.

2.1.1 **VMT-GHG Reductions**

The key requirement of SB 375 is the development of reduction targets for each of the 18 MPOs. This process began with the appointment of the Regional Targets Advisory Committee (RTAC) by CARB. The RTAC members were appointed in January 2009 and completed their work in September 2009. The RTAC members consisted of a mix of elected officials, public agency staff, representatives of various environmental and business groups, and academics. The RTAC was intended to provide more specific guidance to CARB and MPO Staff related to the target setting exercise.

In their initial meetings, the RTAC identified 10 key questions that were to be addressed in their work. A summary of their questions are provided below::

- ✓ What are the key factors within the control of local governments and MPOs that influence GHG emissions from automobiles and light trucks use?
- ✓ How do economic and other factors affect the magnitude of change possible in the land use and transportation sectors?

- ✓ What are acceptable, reliable, and cost-effective data quality and modeling tool standards for implementing various methodologies to process the factors into targets?
- ✓ What support and authority can the state provide to local governments and MPOs in the form of implementation tools, and how do these tools affect VMT and GHG emissions?
- ✓ How should automobile and light-duty truck trips that cross regional and sub-regional boundaries be treated?
- ✓ Should goods movement trips be considered relative to their impact on passenger vehicle emissions?
- ✓ What metric(s) should be used to express regional targets?
- ✓ How should the relationship between land use/transportation measures and external factors, such as low-carbon fuel and vehicle efficiency regulations be treated?
- ✓ How can the various methods be evaluated to see if they support the goal of setting the most ambitious achievable targets?
- ✓ How can SB 375 implementation inform and influence existing and future federal laws and policies, when appropriate?

The Final RTAC Report from September 29, 2009 included 12 recommendations which addressed many of the questions listed above including:

- ✓ Expressing the reduction targets as a uniform reduction in GHG emissions per capita from 2005 levels.
- ✓ The recognition that regional targets should vary between region accounting for the regional variations throughout the state.
- ✓ Targets should be “ambitious but achievable” in that each MPO should go well beyond their usual practices.
- ✓ Targets should be developed through a collaborative process involving MPO’s, ARB Staff, and other stakeholders.
- ✓ The use of existing travel demand models and other tools to assist with setting these GHG reduction targets.
- ✓ Creation of a standardized list of Best Management Practices (BMP’s) to document potential GHG reductions from potential strategies.
- ✓ High levels of public engagement is vital to this process.
- ✓ Any target recommendations should consider the current economic conditions.
- ✓ Any evaluation of targets and implementing strategies should consider positive or negative impacts on issues like housing and equity.

- ✓ Agencies should document the co-benefits of any GHG reduction strategies.
- ✓ The State of California should provide sufficient resources to assist with the implementation of SB 375 related to issues like transit, redevelopment, and planning assistance.
- ✓ CARB should consider potential improvements to the target process as part of on-going monitoring efforts.

Many of these recommendations were implemented in the process which CARB implemented to set and adopt the targets for the various MPO's throughout California.

Table 2-1 documents the adopted targets for each region for 2020 and 2035. As recommended by the RTAC, these reduction targets are expressed in terms of percentage in per capita reduction from 2005 per capita levels.

Table 2-1: AB 375 Targets Established by the California Air Resources Board

Region	2020 Reduction Target	2035 Reduction Target
Southern California (SCAG)	-8%	-13%
San Francisco Bay Area (MTC)	-7%	-15%
San Diego (SANDAG)	-7%	-13%
Sacramento (SACOG)	-7%	-16%
San Joaquin Valley MPO's	-5%	-10%
Tahoe	-7	-5%
Shasta	0%	0%
Butte	+1%	+1%
San Luis Obispo (SLOCOG)	-8%	-8%
Santa Barbara (SBCAG)	0%	0%
Monterey Bay (AMBAG)	0%	-5%

As shown in the Table above, there is a significant variation in the levels of targets assigned. The highest level of targets were assigned to the four largest regions in the state covering the San Francisco Bay Area (MTC), Los Angeles Area (SCAG), Sacramento Area (SACOG), and San Diego (SANDAG). It should be noted that these targets were adopted through a public process involving CARB and Staff from the various MPO's. As such, these targets were the result of extensive negotiation and discussion between CARB and the various agencies.

Some key observations regarding these targets are as follows:

- ✓ These targets only apply to passenger/light-duty vehicle on-road emissions and do not address other sectors such as building energy, water, waste, or other sectors.
- ✓ These emission reduction targets are intended to address measures above and beyond those related to increased fuel economy and improvements in fuel technology
- ✓ These targets are expressed in terms of per capita emission reductions. While many observers refer to these reductions as being VMT reductions, they are actually GHG emission reductions. This aspect of the targets is a key one in that it is possible to achieve emission reductions without reducing VMT.

- ✓ These reductions are expressed in terms of per capita reductions as compared to 2005. This use of a per capita metric is significant since it potentially allows overall emission levels to increase in a region with significant population growth. The targets are not expressed in terms of absolute levels of emission reductions.
- ✓ The targets throughout the state vary widely. For example, the targets range from a 16% reduction for SACOG as compared to a 1% increase in Butte County.
- ✓ As recommended by the RTAC, these reduction are intended to be “ambitious but achievable”, which indicates that these reductions should require a significant level of effort by the MPO but not be so unrealistic that they are unachievable

2.1.2 RTAC Methodology

Transportation emissions are particularly problematic in that it is difficult to assign emissions to a geographic region. Travel behavior in California is complex in that many people often travel outside their home community to travel to work, shop, and other purposes. Additionally, some areas have high levels of through traffic in that vehicles traveling to other areas simply pass through on the way to and from their final destination.

This issue of travel behavior complicates target setting in that regions may have significant levels of vehicular travel for which they have a limited ability to address. For example, many regions are unable to significantly affect the levels of through travel on their major roadways and freeways. A regional target that included this through travel would essentially penalize a region since the region would be responsible for reducing emissions that they had little control over.

The RTAC specifically addressed this issue by discussing the role of four potential types of inter-regional trips as related to target setting including:

- ✓ Case #1 – Trips that begin in one MPO region and end in another MPO region after crossing their shared boundary (MPO-to-MPO).
- ✓ Case #2 – Trips that begin outside of an MPO region, travel across some portion of the region, and end outside of the MPO region (through trips).
- ✓ Case #3 – Trips that begin in an MPO region and end outside of an MPO region.
- ✓ Case #4 – Trips that end in an MPO region but do not begin in an MPO region.

The recommendation of the RTAC was that trips associated with Case #1 should be divided equally between the affected MPO’s because each MPO has an equal opportunity to reduce the vehicle trips by land use and transportation strategies. The RTAC also recommended that MPO’s could not be held responsible for through trips and would only be responsible for half of the trips that begin or ended within their boundaries but not for the entirety of those trips. The last two cases of trips with an origin or destination at a non-MPO (e.g., regions may include interstate, international, tribal trips, and military base trips) will be addressed on a case-by-case basis. The RTAC also concurred that MPO’s would be entirely responsible for trips that begin and ended within their boundaries.

2.1.3 CEQA Streamlining

One potential incentive for implementation of SB 375 is related to CEQA streamlining. At a broad level, housing developments that are consistent with or would further an MPO's SCS document should be incentivized as they would help the region achieve its reduction target. The legislation specifically identifies new categories of projects that are subject to relaxed CEQA standards as described below.

Sustainable Communities Projects

SB375 created several new categories of projects including the Transit Priority Project (or TPP) and the Sustainable Communities Project (or SCP) for the purpose of providing streamlining under CEQA. These provisions apply only to qualifying TPPs or SCPs and the decision whether to invoke these provisions lies solely with the city or county lead agency within which the project is located.

"Transit priority projects" are defined as follows:

- ✓ Consistent with the general use designation, density, building intensity, and applicable policies in either a SCS or APS¹ for which CARB has concurred the plan would meet the established GHG reduction targets;
- ✓ at least 50% residential use;
- ✓ a Floor-Area Ratio (FAR) of 0.75 or more if the project has between 26 and 50% nonresidential uses;
- ✓ a minimum net density of at least 20 dwelling units per acre; and
- ✓ within 0.5 mile of a major transit stop² or high quality transit corridor³ included in an RTP.

If a TPP complies with the following criteria, it is determined to be a SCP and is statutorily exempt from CEQA when the following additional criteria are met. As one part of this exemption, the qualifying SCP need not undertake a GHG emissions analysis.

- ✓ The project buildings must:
 - be 15% more energy efficient than what is required in Title 24 regulations;
 - use 25% less water than average household use in the region;
 - be located within 0.5 mile of a rail transit station or a ferry terminal included in a RTP or within 0.25 mile of a high-quality transit corridor included in a RTP;

¹ Note that this does not require consistency with the applicable city or county general plan or zoning ordinance. In cases where the proposed TPP or SCP is inconsistent with the general plan or zoning of the city or county, that jurisdiction would be legally prohibited from approving the project and therefore would not apply these provisions.

² "Major transit stop" means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods

³ "High Quality transit corridor" means a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours.

- meet one of the three following criteria:
 - 20% moderate income housing, 10% low income housing, or 5% very low income housing AND the TPP developer provides assurances 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.
 - The TPP developer has paid or will pay in-lieu fee sufficient to result in the development of an equivalent number of units that would otherwise be required pursuant to the above bullet.
 - The project provides public open space equal to or greater than five acres per 1,000 residents of the project.
- and be adequately served by existing utilities and the project applicant has paid or committed to pay all applicable in-lieu or development fees.
- ✓ The project cannot:
 - contain wetlands or riparian areas;
 - have significant value as a wildlife habitat;
 - harm any species protected by the federal Endangered Species Act, the California Endangered Species Act, or the Native Plant Protection Act;
 - cause the destruction or removal of any species protected by local ordinance;
 - be located on a site included on any list of facilities and sites compiled pursuant to section 65962.5 of the Government Code (concerns hazardous waste sites);
 - have a significant effect on historic resources;
 - be subject to wildlands fire hazard (unless local requirements contain provision to mitigate the risk);
 - be subject to unusually high risk of fire or explosion from materials stored or used on nearby properties;
 - have a risk of a public health exposure exceeding state or federal standards;
 - be subject to a seismic risk due to being within a delineated earthquake fault zone or seismic hazard zone unless the applicable local regulations contain provisions to mitigate associated risks;
 - be subject to landslide hazard, floodplain, floodway or restriction zone unless applicable local regulation contain provisions to mitigate the risk of a landslide or flows;

- located on “developed open space”⁴;
 - be more than 8 acres in area;
 - contain more than 200 residential units;
 - result in a net loss in the number of affordable housing units in the project area;
 - include any single level building greater than 75,000 square feet; or
 - conflict with nearby operating industrial uses.
- ✓ The project site must be subject to a preliminary endangerment assessment to determine the existence of any release of a hazardous substance and the potential for exposure of future occupants to significant health hazards from any nearby property or activity. If release of a hazardous substances or exposure to hazards from surrounding areas is found, then the release shall be removed, the hazard abated or otherwise mitigated to a less than significant level in compliance with state and federal requirements,
 - ✓ Mitigation measures/performance measures from the prior applicable adopted EIRs must be incorporated.⁵

Given the extensive list of limitations, it is unlikely that many projects will be able to take advantage of the CEQA exemption provided for SCPs by SB 375. For those projects that do meet the SCP criteria, they would qualify for a statutory exemption from CEQA as specified in SB 375.

Transit Priority Projects

A TPP, as defined above, that does not qualify as a SCP can still qualify for a streamlined CEQA process (although not an exemption) through one of two ways:

- ✓ Sustainable Communities Environmental Assessment (SCEA): Preparation of an Initial Study is required to address all impacts other than precluded impact areas of analysis for a) growth inducement, b) global warming, and c) regional transportation network.⁶ A SCEA must contain measures to avoid or mitigate all impacts to a less than significant level (other than the precluded impact subjects). The SCEA initial study’s determination of significance is subject to

⁴ “Developed open space defined as publicly owned, or financed in whole or in part by public funds; generally open to, and available for use by, the public; 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. 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.

⁵ SB 375 is unclear as to what constitutes “the prior environmental impact reports.” This seems to be intended to mean the EIR prepared and adopted for the SCS. If that’s the case, then an APS adopted without an EIR could not be the basis for this streamlining provision.

⁶ SB 375 specifies that a project can still be subject to conditions, exactions or fees for mitigation of project impacts on the structure, safety, or operations of the regional transportation network or local streets and roads. Presumably this means that TPPs are still subject to traffic impact fees, even though they are exempt from CEQA analysis of impacts on the regional transportation network. Analysis of impacts on local streets and roads is still required.

the substantial evidence standard,⁷ not the fair argument standard that would apply to a tiered mitigated negative declaration.

- ✓ EIR: Preparation of an Initial Study is required as described above for the SCEA path and an EIR to address only the significant or potentially significant impacts identified in the Initial Study, but no analysis of off-site alternatives is required.

For TPP projects, the SB 375 streamlining provisions allow projects to complete a smaller CEQA document (the SCEA) for projects that can mitigate all their impacts without fear of the “fair argument” standard which otherwise makes it much easier to legally challenge CEQA documents. If an EIR is prepared for significant impact subjects, then the EIR does not need to analyze off-site alternatives. Both provisions will help to limit the analysis necessary for TPPs.

Certain Residential or Mixed Use Projects

SB 375 also provides more limited streamlining for other projects consistent with a SCS or APS that don’t meet the criteria for a TPP or SCP. If a residential or mixed-use residential project⁸ is consistent with the use designation, density, building intensity, and applicable policies specified for the project area in either a SCS or APS, for which CARB has concurred that it meets the GHG reduction targets, and if the project incorporates the mitigation measures required by an applicable prior environmental document⁹, then the applicable CEQA document (i.e., negative declaration, mitigated negative declaration, SCEA, or EIR) need not 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. Any EIR prepared for such a project 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. The statute is not clear as to whether an SCS-consistent mixed-use project would be freed from considering the project-specific GHG emissions that may be produced by non-passenger/light-duty vehicle sources.

2.2 SB 226 (2011)

SB 226, signed by Governor Brown in 2011, requires new CEQA guidelines for the streamlining of infill projects. The bill provides that a project’s GHG emissions are not, in and of themselves, deemed to cause a categorical exemption to be inapplicable under specified conditions. The bill requires the Office of Planning and Research (OPR), on or before July 1, 2012, to prepare, develop, and transmit to the Natural Resources Agency, and the Secretary of the Natural Resources Agency, on or before January 1, 2013, to certify and adopt guidelines for statewide standards for infill projects that would promote specified goals and priorities.

OPR has developed draft guidelines (May 1, 2012) including performance standards for infill projects which include the following mandatory measures:

⁷ The SCEA is distinct from a MND in this regard as MNDs are subject to the fair argument standard.

⁸ A residential or mixed-use residential project is defined as a project where at least 75 % 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.

⁹ As noted above, SB 375 is unclear as to what constitutes “the prior environmental impact reports.” This seems to be intended to mean the EIR prepared and adopted for the SCS. If that’s the case, then an APS adopted without an EIR could not be the basis for this streamlining provision.

- ✓ Renewable energy – all non residential projects must include on-site renewable power generation where feasible and residential projects are encouraged to do so.
- ✓ Soil and water remediation – Projects located on a site listed pursuant to Section 65962.5 of the government Code ,must document their remediation or plans for remediation.
- ✓ Residential Units near High-volume Roadways and Stationary Sources – Projects near such sources must comply with all applicable policies and standards for health protection and as necessary include additional measures to protect public health.

Depending on project type the following would also be required.

- ✓ Residential – Projects must either have per capita VMT less than the regional average OR be located within 1/2 mile of a major transit stop for a high quality transit corridor.
- ✓ Commercial/Retail – Commercial project with no single floor > 50,00 square feet is eligible if located in a low-vehicle travel area or within 1/2 mile of 1,800 households any commercial and retail project is eligible if the project would reduce total existing VMT
- ✓ Office building– Eligible if within a low vehicle travel area or within 1/4 mile of an existing major transit stop.
- ✓ Transit – Transit stations are eligible.
- ✓ School – Elementary schools are eligible within one mile of 50% of the student population; middle and high schools are eligible if within 2 miles of 50% of the student population. Any school within 1.2 mile of an existing major transit stop or a stop along a high quality transit corridor is eligible. In addition, schools must provide parking and storage for bicycles and scooters.
- ✓ Small Walkable Community Projects – These projects, as defined in the 15183.3 subdivision (e)(6) are eligible if they implement the mandatory measures noted above.
- ✓ Mixed-Use Projects – These projects must comply with the performance standards for the predominant use.

2.3 AB 32 (2006)

In September 2006, then Governor Schwarzenegger signed the California Global Warming Solutions Act of 2006 (Assembly Bill 32) into law. Assembly Bill 32 establishes a cap on statewide GHG emissions and sets forth the regulatory framework to achieve the corresponding reduction in statewide emission levels. Under Assembly Bill 32, ARB is required to take the following actions:

- ✓ adopt early action measures to reduce GHG;
- ✓ establish a statewide GHG emissions cap for 2020 based on 1990 emissions;
- ✓ adopt mandatory report rules for significant GHG sources;

- ✓ adopt a scoping plan indicating how emission reductions would be achieved through regulations, market mechanisms, and other actions; and
- ✓ adopt regulations needed to achieve the maximum technologically feasible and cost-effective reductions in GHGs.

California needs to reduce GHG emissions by approximately 20 to 22% of the latest BAU projection of year 2020 GHG emissions to achieve Assembly Bill 32's reduction goal.

2.4 Executive Order S-03-05 (2005)

Signed by Governor Arnold Schwarzenegger on June 1, 2005, Executive Order S-3-05 asserts that California is vulnerable to the effects of climate change. To combat this concern, Executive Order S-3-05 established the following GHG emissions reduction targets for state agencies:

- ✓ by 2010, reduce GHG emissions to 2000 levels;
- ✓ by 2020, reduce GHG emissions to 1990 levels; and
- ✓ by 2050, reduce GHG emissions to 80% below 1990 levels.

It is important to note that, as an executive order, S-03-05 is not mandatory for local governments or private development.

2.5 SB 97/OPR Guidelines on Greenhouse Gas Emissions

One important milepost in the state of the practice was the 2010 adoption of the CEQA Guideline Amendments addressing GHG emissions. CEQA Guidelines, Section 15064.4 provides guidance on determining the Significance of GHG emissions:

- a) *The determination of the significance of greenhouse gas emissions calls for careful judgment by the lead agency consistent with the provisions in section 15064. A lead agency should make a good-faith effort, based to the extent possible on scientific and factual data to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project. A lead agency should have discretion to determine, in the context of a particular project, whether to:*
 1. *Use a model or methodology to quantify greenhouse gas emissions resulting from a project and which model or methodology to use. The lead agency has discretion to select the model or methodology it considers most appropriate provided it supports its decision with substantial evidence. The lead agency should explain the limitations of the particular model or methodology selected for use; and/or*
 2. *Rely on a qualitative analysis or performance based standards.*
- b) *A lead agency should consider the following factors, among others, when assessing the significance of impacts from greenhouse gas emissions on the environment:*
 1. *The extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting;*
 2. *Whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project.*
 3. *The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse*

gas emissions. Such requirements must be adopted by the relevant public agency through a public review process and must reduce or mitigate the project's incremental contribution of greenhouse gas emissions. If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding compliance with the adopted regulations or requirements, an EIR must be prepared for the project.

The guidelines point out the need for lead agencies to make a “good-faith effort based to the extent possible on scientific and factual data,” in an analysis of GHG emissions either by using a model or methodology to quantify emissions, or rely upon “quantitative analysis or performance bases standards. Also note that CEQA Guidelines 15064.4(b) provides three factors to consider in determining significance. CEQA Guidelines 15064.4(b) combined with recent developments in modeling, published GHG emissions protocols and methodologies, and various air district thresholds have resulted in the type of quantitative GHG emissions analysis typical in a CEQA evaluation today.

The 2010 changes to the CEQA guidelines also allow for tiering project CEQA compliance from a GHG reduction plan.¹⁰ These plans, commonly referred to as a “qualified” GHG reduction plan, must meet the following criteria to allow for tiering (CEQA Guidelines 15183.5):

(a) Lead agencies may analyze and mitigate the significant effects of greenhouse gas emissions at a programmatic level, such as in a general plan, a long range development plan, or a separate plan to reduce greenhouse gas emissions. Later project-specific environmental documents may tier from and/or incorporate by reference that existing programmatic review. Project-specific environmental documents may rely on an EIR containing a programmatic analysis of greenhouse gas emissions as provided in section 15152 (tiering), 15167 (staged EIRs) 15168 (program EIRs), 15175-15179.5 (Master EIRs), 15182 (EIRs Prepared for Specific Plans), and 15183 (EIRs Prepared for General Plans, Community Plans, or Zoning).

(b) Plans for the Reduction of Greenhouse Gas Emissions. Public agencies may choose to analyze and mitigate significant greenhouse gas emissions in a plan for the reduction of greenhouse gas emissions or similar document. A plan to reduce greenhouse gas emissions may be used in a cumulative impacts analysis as set forth below. Pursuant to sections 15064(h)(3) and 15130(d), a lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project complies with the requirements in a previously adopted plan or mitigation program under specified circumstances.

(1) Plan Elements. A plan for the reduction of greenhouse gas emissions should:

(A) Quantify greenhouse gas emissions, both existing and projected over a specified time period, resulting from activities within a defined geographic area;

(B) Establish a level, based on substantial evidence, below which the contribution to greenhouse gas emissions from activities covered by the plan would not be cumulatively considerable;

(C) Identify and analyze the greenhouse gas emissions resulting from specific actions or categories of actions anticipated within the geographic area;

¹⁰ Various names are used to refer to greenhouse gas reduction plans, the most common in use term being a Climate Action Plan or CAP. However, any plan that meets the requirements listed in CEQA Guidelines Section 15183.5 can be considered a “qualified” plan.

(D) Specify measures or a group of measures, including performance standards, that substantial evidence demonstrates, if implemented on a project-by-project basis, would collectively achieve the specified emissions level;

(E) Establish a mechanism to monitor the plan's progress toward achieving the level and to require amendment if the plan is not achieving specified levels;

(F) Be adopted in a public process following environmental review.

(2) Use with Later Activities. A plan for the reduction of greenhouse gas emissions, once adopted following certification of an EIR or adoption of an environmental document, may be used in the cumulative impacts analysis of later projects. An environmental document that relies on a greenhouse gas reduction plan for a cumulative impacts analysis must identify those requirements specified in the plan that apply to the project, and, if those requirements are not otherwise binding and enforceable, incorporate those requirements as mitigation measures applicable to the project. If there is substantial evidence that the effects of a particular project may be cumulatively considerable notwithstanding the project's compliance with the specified requirements in the plan for the reduction of greenhouse gas emissions, an EIR must be prepared for the project.

In the state of the practice, even “qualitative analysis,” relies upon local or regional planning documents that contain GHG emission inventories and performance standards (see further discussion in Chapter 3).

2.6 Greenhouse Gas Threshold Status

Thresholds of significance have been included in CEQA guidelines adopted by a number of Air Quality Management Districts or Air Pollution Control Districts in the state including the following:

- ✓ *San Francisco Bay Area (BAAQMD)* – The San Francisco Bay Area Air Quality Management District (BAAQMD) adopted CEQA guidelines in June 2010 including thresholds for evaluation of GHG emissions projects and plans under CEQA. For land use projects, the guidelines recommended the use of a 1,100 metric tons of carbon dioxide equivalent (MTCO₂e) mass emissions threshold based on a “gap” analysis evaluating the needed reductions in Bay Area emissions needed from new land use projects in order to reduce emissions in 2020 to 1990 levels. For plans, the guidelines recommend the use of a GHG efficiency threshold of 6.6 MTCO₂e per “service population” (SP), which is defined as the combination of residents and employees or reduction of 15 percent below baseline (2008 or earlier) emission levels. BAAQMD also adopted a GHG threshold for point source industrial projects of 10,000 MTCO₂e. The industrial point source projects that BAAQMD is lead agency under CEQA are typically Title V permitted sources regulated under the Clean Air Act.¹¹
- ✓ *Southern California (SCAQMD)* – The South Coast Air Quality Management District (SCAQMD) has been developing CEQA guidelines for several years and may adopt them in 2012. The draft CEQA guidelines include project thresholds for residential, commercial, and mixed use projects and a plan threshold of 6.6 MTCO₂e per SP for 2020 and 4.2 MTCO₂e per SP for 2035. SCAQMD

¹¹ In January 2012, an Alameda Superior Court ruling found that the BAAQMD's adoption of its 2010 CEQA Guidelines (which contain the District's recommended GHG significance thresholds) needed to comply with CEQA prior to adoption. Thus at present (April, 2012), the BAAQMD CEQA guidelines have not been officially adopted and are considered draft until the case is successfully appealed and/or BAAQMD complies with CEQA.

also adopted a GHG threshold of 10,000 MTCO₂e for point source industrial projects when SCAQMD is the lead agency.

- ✓ *SJVAPCD* – The San Joaquin Valley Air Pollution Control District (SVJAPCD) adopted CEQA guidelines in late 2009, which recommend a project level significance threshold of 29% reduction compared to BAU levels. SJVAPCD did not provide any specific plan level thresholds, although one could presume that the project threshold could also be applied at the plan level.
- ✓ *SLOAPCD* – The San Luis Obispo Air Pollution Control District (SLOAPCD) adopted GHG emissions thresholds for projects and plans evaluated under CEQA. SLOAPCD followed a similar “gap” analysis to that used by BAAQMD. For land use projects, SLOAPCD recommends the use of a 1,150 MT CO₂e mass emissions threshold. For plans, SLOAPCD recommends the use of a GHG efficiency threshold of 4.9 MTCO₂e per (SP) or reduction of emissions per a qualified GHG reduction plan with a goal tied to AB 32 reduction goals. SCAQMD also adopted a GHG threshold of 10,000 MTCO₂e for point source industrial projects.
- ✓ *EKAPCD* – The Eastern Kern County Air Pollution Control District (EKAPCD) adopted a CEQA threshold of 25,000 MTCO₂e for stationary projects where it is the lead agency.

The GHG thresholds adopted by these agencies are advisory in nature and not compulsory for use by a CEQA lead agency (other than the adopting agency itself). However, as expert agencies in the field of air pollution and GHG emissions, CEQA lead agencies should consider whether or not the thresholds recommended by their local air district is or is not appropriate for use in a particular jurisdiction. If using an alternative threshold, CEQA lead agencies are advised to support their rationale for that threshold with documented evidence and reasoning.

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3. GREENHOUSE GAS EMISSIONS AND CEQA

Michael Hendrix, Atkins

This chapter discusses CEQA requirements to analyze GHG emissions. A brief discussion of the current state of the practice in analyzing GHG emissions, an overview of GHG emissions sectors versus transportation, and projecting emissions out to years 2020 and 2035.

3.1 *State of the Practice*

Prior to 2007, analysis of GHG emissions within a CEQA document was extremely rare. Back in 2007 expert agencies such as the air districts or the California Air Resources Board (ARB) did not provide CEQA guidance or thresholds in determining the significance of GHG emissions impacts. During the span of time between 2007 and 2012, a lot has changed concerning analysis of GHG emissions in CEQA. One important milestone in the state of the practice was the 2010 adoption of the CEQA Guideline Amendments addressing GHG emissions.

The guidelines point out the need for lead agencies to make a “good-faith effort based to the extent possible on scientific and factual data,” in an analysis of GHG emissions either by using a model or methodology to quantify emissions, or rely upon “quantitative analysis or performance based standards. CEQA Guidelines 15064.4 (b) combined with recent developments in modeling, published GHG emissions protocols and methodologies, and various air district thresholds have resulted in the type of quantitative GHG emissions analysis typical in a CEQA evaluation today. In the state of the practice, even “qualitative analysis,” relies upon local or regional planning documents that contain GHG emission inventories and performance standards. These developments are summarized below.

There has been substantial development in modeling software for GHG emissions:

- ✓ The California Emissions Estimator Model (CalEEMod2011);
- ✓ The Bay Area Air Quality Management District (BAAQM) GHG Model combined with URBEMIS (URBEMIS/BGM)¹²; and
- ✓ The International Council on Local Environmental Initiatives (ICLEI) Clean Air and Climate Protection (CACP) model.¹³

In addition, there has been substantial development in methodologies and protocols:

- ✓ The AEP California Community-wide Greenhouse Gas Baseline Inventory Protocol White Paper (June 2011);
- ✓ The General Reporting Protocol (version 2.0) published by The Climate Registry;¹⁴

¹² URBEMIS will need to be upgraded with EMFAC2011 for this to be an up to date modeling solution

¹³ The ICLEI CACP model is only available to local government members and while useful at a planning level for GPUs or specific plans may not be applicable for use in modeling a discrete development project.

¹⁴ Draft published January 2012. Note that while this protocol was published for use in inventorying GHG emissions in the voluntary registry, the emission factors, calculations, and methods are based upon scientific and factual data making it a great resource in CEQA analysis.

- ✓ The local Government Operations Protocol (version 1.1) published by the ARB, ICLEI, and the Climate Registry;¹⁵
- ✓ Guide to Air Quality Assessment in Sacramento County (Chapter 6, GHG Emissions) published by SMAQMD;
- ✓ California Environmental Quality Act Air Quality Guidelines published by the BAAQMD;¹⁶
- ✓ Quantifying Greenhouse Gas Mitigation Measures published by the California Air Pollution Control Officers Association (CAPCOA 2010); and
- ✓ Other Air District guidelines associated with their adoption of thresholds (SJVAPCD, SLOAPCD).

In addition, analysis of GHG emissions can tier from a local or regional plans or regulations for the reduction of GHG emissions. These plans are typically in the form of a GHG reduction plan or climate action plan adopted through CEQA by the lead agency. More details on how GHG reduction plans and climate action plans can work in relation to CEQA are discussed in Chapter 4.

Note that while the CEQA practice concerning GHG emissions has come a long way, it continues to evolve. Many air districts throughout the state are in the process of drafting CEQA thresholds for GHG emissions, while various industry groups legally challenge adopted GHG thresholds and CEQA Guideline Sections. In addition, community-wide emissions protocols are being drafted and proposals by EPA, ARB, and air districts on expanding the list of defined GHG emissions is occurring as the state of the science evolves. The message here is that the state of the practice is still evolving and will continue to evolve over time.

3.2 All Sectors of GHG Emissions vs. Transportation

Many have been confused on exactly what SB375 would do with regard to the analysis of GHG emissions in CEQA. Some had thought that a SCS for the region would create a regional GHG reduction plan with programmatic level analysis and regional GHG emissions inventories allowing CEQA tiering of GHG analysis once the MPO ~~and~~ adopts and ARB approves it. In fact, an adopted SCS only has marginal tierability in a CEQA analysis of projects. This is because the SCS only analyzes and addresses one emissions sector and only addresses it on a regional scale.

3.2.1 Sectors of GHG Emissions Reasonably Attributed to Projects

CEQA requires that an evaluation of environmental effects of a project include all direct physical changes in the environments which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project (CEQA Guidelines Section 15064 (d)). Based upon the models, methodology and protocols listed above, projects evaluated under CEQA may generate one or more of the following sectors of GHG emissions:

- ✓ Energy Sector

¹⁵ Published in May 2010. This protocol is not applicable to development projects analysis.

¹⁶ Updated May 2011.

- Direct GHG emissions associated with the generation of electricity or indirect GHG emissions associated with the consumption of electricity during construction and/or operation of the proposed project;
- Direct GHG emissions associated with combustion of natural gas during construction and/or operation of the proposed project;
- Indirect GHG emissions associated with embedded energy used to convey or treat water and wastewater consumed or generated during construction and/or operation of the proposed project;
- ✓ Solid Waste Sector
 - Direct or indirect GHG emissions associated with the generation and disposal of solid waste at landfills during construction and operation of the proposed project.
- ✓ Agriculture
 - Direct or indirect GHG emissions associated with agricultural projects such as livestock, cropland, and orchards. GHG emissions associated with agriculture can include emissions from fertilizer, manure management, irrigation water, anamorphic soil conditions producing fugitive methane emissions (rice cultivation), and farm equipment.
 - GHG emissions sink (reduction) associated with carbon sequestered in the vegetation of agricultural projects.
- ✓ Transportation
 - Direct GHG emissions associated with on-road passenger vehicles and light duty trucks generated during construction and/or operation of the proposed project.
 - Direct GHG emissions associated with on-road heavy duty trucks generated during construction and/or operation of the proposed project.
 - Direct GHG emissions associated with off-road mobile sources generated during construction and/or operation of the proposed project.
- ✓ Other:
 - Direct or indirect GHG emissions associated with other activities generated during construction and/or operation of the proposed project. These can include the generation of high global warming potential GHG emissions such as refrigerants (CFCs, HFCs) sulfur hexafluoride (SF6) or other GHG emissions during construction and/or operation of the proposed project.

Evaluations of GHG emissions in a CEQA analysis need to look at all of the GHG emissions sources attributable to a project's construction and/or operational activities, which are likely to include most of the sectors listed in the bullet points above.

3.2.2 Transportation Related GHG Emissions

Under SB 375, the SCS needs to reduce GHG emissions associated with on road passenger vehicles and light duty trucks. As such the SCS mitigates only a portion of on-road transportation related emissions within the region. The regional analysis of GHG emissions in the development of the SCS does not look at heavy duty truck trips, off-road mobile sources, or other sources of GHG emissions. Therefore, the SCS has limited CEQA tierability for most development projects. A lead agency may be able to tier from the analysis of GHG emissions associated with passenger vehicles and light duty trucks (see Chapter 4), but will still need to quantify or “qualitatively” evaluate GHG emissions from all the other GHG emissions sources reasonably attributable to the proposed project construction and/or operational activities.

3.3 Future Year 2020 GHG Emissions

CEQA analysis of a proposed project needs to predict the environmental effects that would occur as a result of a project. Therefore, future reasonably foreseeable projections on what would occur related to ground disturbance, increased noise levels, increased traffic, increased air pollution, and other environmental effects attributable to a project need to be made. However, unique to the analysis of GHG emissions is year 2020. The reason that GHG emission analysis focuses on year 2020 is because the statewide reduction target in AB32 is based on year 2020 (i.e. reduce GHG emissions down to 1990 levels by year 2020). Note that in the evolution of CEQA practice, GHG thresholds are a very recent development and the thresholds that have been adopted are based upon the AB32 reduction target. CEQA analysis of GHG emissions between the years 2007 and 2010 at times used various forms of the AB 32 reduction target or tried to demonstrate compliance with the AB 32 scoping plan as a way of determining significance. In addition, GHG reduction planning and climate action plans use the 2020 reduction target as a goal of the plan. For these reasons, future year 2020 is an important aspect of analyzing GHG emissions. In plans or programs to reduce GHG emissions, future year 2020 is analyzed several ways in the development of the GHG reduction strategy. The following summarizes the planning process and how future year 2020 is used.

3.3.1 Future Year 2020 Business as Usual (BAU) GHG Emissions

Once existing baseline conditions are calculated for a planning area of a GHG reduction plan or programs, the next step is to predict how growth in the planning area will change the amount of GHG emissions over time. Because year 2020 is likely to be related to a GHG reduction target used in these types of plans or programs, predicting year 2020 business as usual (BAU) is the next step. The BAU looks at how the existing emissions inventory will grow in response to the growth in the planning area absent any intervention by any additional measures or mitigation. The BAU analysis uses the existing efficiencies and technology of GHG sources and does not predict improvements in those efficiencies or technology in looking at year 2020 BAU. As such, 2020 BAU is an estimate of emission based only upon the predicted growth in the planning area. This exercise in the planning process is meant to see what would occur if the nothing was done to reduce GHG emissions.

3.3.2 Meeting a Year 2020 Reduction Target

Once projections of 2020 BAU are made, the next step is to see how those emissions can be reduced. A typical planning analysis will first look at reductions reasonably anticipated to occur in the planning area as a result of federal and state regulations. Improvements in the fuel efficiency of automobiles, reductions in emissions from electric generating stations, growth in renewable energy, and building efficiency standards are a few of the ways that federal and state regulations can influence the predicted

future GHG emissions within a planning area. The regional SCS will also influence a portion of the transportation related GHG emissions within a planning area. The point of predicting all of these reductions within a planning area is to estimate how these various regulations will influence GHG emissions in 2020 and be able to compare that with the 2020 reduction target, which is usually based upon one variation or another of the AB 32 reduction target.

SB 375 requires a regional reduction target for year 2020. One should not confuse the SB 375 regional 2020 reduction target with the AB 32 reduction target. The SB 375 reduction target is a focused goal of reducing GHG emissions from passenger vehicles and light duty trucks only. The AB 32 reduction target is a goal of reducing the total amount of GHG emissions from all emission sectors.

3.4 Future Year 2035 GHG Emissions

SB 375 also requires a regional reduction target for year 2035 with a focused goal of reducing GHG emissions associated with passenger vehicles and light duty trucks. AB 32 does not have a 2035 reduction target.

However, some GHG reduction plans or programs have chosen a 2035 reduction target with the goal of reducing the total GHG emissions from all emission sectors based upon an interpolation of the broader long-term reduction goals found in Executive Order S-3-05. Within Executive Order S-3-05 are both the 2020 reduction target of AB 32 and the long term goal of reducing the statewide total GHG emissions down to 80% below 1990 levels of emissions by year 2050. A continued decline in emissions between 2020 and 2050 can be predicted using the Executive Order S-3-05 reduction goals. From that projected decline in emissions one can interpolate a 2035 reduction target of total GHG emissions. Some concerned citizens and groups have pointed to the long-term 2050 reduction target in Executive Order S-3-05 as the target that must be achieved in order to address climate change. However, using current technology, the 2050 reduction target cannot be achieved. It is hoped that future technology will be able to solve this problem and make the 2050 reduction target achievable. Currently, that is not possible. Further, as noted above, Executive Order S-03-05 is not legally binding on local governments or private development and does not have the force of law like AB 32.

Nothing in CEQA requires a 2035 reduction target or a projection of emissions in 2035. However, CEQA does require an analysis to look at the whole of a project and for long term planning projects such as general plans or specific plans that have a horizon year beyond 2020, an analysis of post 2020 emissions and a determination of significance will need to be made in order to analyze the entire project at horizon year. The year 2035 is a possible analysis year because it usually encompasses the whole of a long term project. However, there are no adopted California or federal regulations for achieving GHG reductions out to 2035 and thus it may be very difficult for a local jurisdiction on its own to demonstrate that it could feasibly meet a target interpolated between the AB 32 2020 target and the 2050 S-03-05 target.

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4. SB 375 CONSISTENCY AND CEQA

Rich Walter, ICF International

This chapter discusses the relation between SB 375 consistency and CEQA primarily in regards to GHG emissions. A brief discussion of implications for CEQA analysis of SCS consistency for subject areas others than GHG emissions is discussed at the end of this chapter.

4.1 Introduction

SB 375 specifically provides that it does not require a general plan to be consistent with an SCS or APS. Accordingly, SB 375 does not intend to usurp local land use planning prerogative. SB 375 explicitly stipulates that an APS shall not constitute a land use plan, policy, or regulation, and the inconsistency of a project with an APS shall not be a consideration in determining whether a project may have an environmental effect under CEQA. However, SB 375 is silent on the issue of whether consistency with an SCS is or is not a consideration for CEQA.

As GHG emissions are best understood as a cumulative impact issue¹⁷, CEQA Guidelines, Section 15064(h)(3) describes how consistency with a cumulative plan or mitigation program can be used for find an impact to be less than significant:

A lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program (including, but not limited to, water quality control plan, air quality attainment or maintenance plan, integrated waste management plan, habitat conservation plan, natural community conservation plan, plans or regulations for the reduction of greenhouse gas emissions) that provides specific requirements that will avoid or substantially lessen the cumulative problem within the geographic area in which the project is located. Such plans or programs must be specified in law or adopted by the public agency with jurisdiction over the affected resources through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency. When relying on a plan, regulation or program, the lead agency should explain how implementing the particular requirements in the plan, regulation or program ensure that the project's incremental contribution to the cumulative effect is not cumulatively considerable.

Conversely CEQA Guidelines Section 15125(d), describes the obligation to disclose project inconsistency with plans designed to address cumulative environmental impacts in an EIR:

*The EIR shall discuss any inconsistencies between the proposed project and applicable general plans, specific plans and regional plans. Such regional plans include, but are not limited to, the applicable air quality attainment or maintenance plan or State Implementation Plan, area-wide waste treatment and water quality control plans, **regional transportation plans**, regional housing allocation plans, regional blue print plans¹⁸, greenhouse gas reduction plans, habitat conservation plans, natural community conservation plans and regional land use plans for the protection of the Coastal Zone, Lake Tahoe Basin, San Francisco Bay, and Santa Monica Mountains. (emphasis added)*

¹⁷ No individual plan or project, by itself, in isolation from other GHG emissions, is sufficient to cause global warming and related climate change. It is only cumulative global emissions that can cause such effects.

¹⁸ Note that regional blueprint plans do not constitute either an SCS or APS unless they have been prepared pursuant to SB 375 and ratified by the ARB.

Combined, these portions of the CEQA guidelines create the opportunity to use consistency of a project with an applicable plan or program as evidence that a project's contribution to a cumulative impact is less than significant. It is important to note that the CEQA guidelines do not specify that mere inconsistency with applicable plans or programs is evidence of a significant impact on the environment. However if the project's inconsistency is an indication that the project is resulting in a significant direct or indirect physical impact on the environment or is contributing considerably to a significant cumulative impact, then the plan or program inconsistency may be related to a significant impact as defined by CEQA.

When the Legislature passed SB 375, there was a specific intent to streamline the CEQA process for projects that are consistent with an SCS or APS that meets CARB established reduction targets for 2020 and 2035 for the passenger/light-duty vehicle GHG emissions¹⁹. There are several specified methods of streamlining described in SB 375 which are discussed below. This chapter also discusses approaches to evaluating consistency with SB 375 as it relates to CEQA for projects that don't meet the streamlining criteria in SB 375. As presented below, a key finding of this white paper is that inconsistency with SB 375 is not a presumption of a significant effect on the environment as it relates to GHG emissions.

Figure 1, at the end of this paper, illustrates a decision-making flowchart by which consistency of projects with SB 375 can be evaluated as it relates to CEQA.

4.2 *Projects Consistent with an SCS*

- ✓ **Sustainable Communities Projects** - As noted above, SB375 created several new categories of projects including the Transit Priority Project (or TPP) and the Sustainable Communities Project (or SCP) for the purpose of providing streamlining under CEQA. If a TPP complies with criteria described above, it is determined to be a "Sustainable Communities Project" (SCP) and is statutorily exempt from CEQA. As one part of this exemption, the qualifying SCP need not undertake a GHG emissions analysis. Given the extensive list of limitations, it is unlikely that many projects will be able to take advantage of the CEQA exemption provided for SCPs by SB 375. For those projects that do meet the SCP criteria, they would qualify for a statutory exemption from CEQA as specified in SB 375.
- ✓ **Transit Priority Projects** - For TPP projects, the SB 375 streamlining provisions allow projects to complete a smaller CEQA document (the SCEA) for projects that can mitigate all their impacts without fear of the "fair argument" standard which otherwise makes it much easier to legally challenge CEQA documents. If an EIR is prepared for significant impact subjects, then the EIR does not need to analyze off-site alternatives. Both provisions will help to limit the analysis necessary for TPPs.
- ✓ **Certain Residential or Mixed Use Projects** - SB 375 also provides more limited streamlining for other projects consistent with a SCS or APS that don't meet the criteria for a TPP or SCP. If a residential or mixed-use residential project²⁰ is consistent with the use designation, density, building intensity, and applicable policies specified for the project area in either a SCS or APS, for which CARB has concurred that it meets the GHG reduction targets, and if the project

¹⁹ CARB is required to ratify whether an SCS or APS meets these targets. It is not, however, empowered to modify an SCS or APS nor condition its ratification.

²⁰ A residential or mixed-use residential project is defined as a project where at least 75 % 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.

incorporates the mitigation measures required by an applicable prior environmental document²¹, then the applicable CEQA document (i.e., negative declaration, mitigated negative declaration, SCEA, or EIR) need not 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. Any EIR prepared for such a project 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. The statute is not clear as to whether an SCS-consistent mixed-use project would be freed from considering the project-specific GHG emissions that may be produced by non-passenger/light-duty vehicle sources.

- ✓ **Other Projects Consistent with the SCS** -SB 375 only provides CEQA streamlining options for SCPs, TPPs, and residential or mixed use projects with more than 75% residential use. However, there could also be mixed use projects with less than 75% residential use, commercial, and industrial projects that will be consistent with the land use designations, densities and applicable policies (for the specified land use) in a SCS, since a SCS must also contain designation for these uses. While these projects could not use the streamlining provisions in SB 375, a local agency could find that passenger/light-duty vehicle GHG emissions of such SCS-consistent projects to be less than significant under CEQA because they are consistent with a regional plan for the reduction of GHG emissions (per CEQA Guidelines Section 15064 (h)(3)). Non-passenger/light-duty vehicle GHG emissions would need to be evaluated per the normal requirements of CEQA as the SCS does not evaluate such emissions. For SCS-consistent projects, the lead agency would not need to be concerned about issue raised above concerning the impact of transportation emissions in other jurisdictions for non-SCS consistent projects.

4.3 *Projects Inconsistent with an SCS*

Under CEQA, the underlying reason SB 375 allows streamlining provisions is that SB 375 is intended to support a regional land use and transportation network that reduces GHG emissions from the passenger/light-duty vehicle sector beyond “business as usual” (BAU) conditions. However, there are many GHG sources and SB 375 is only one means by which to reduce GHG emissions. A project may reduce its GHG emissions overall to a level that a lead agency finds is less than significant, even though that project may not be consistent with an SCS.

GHG emissions can result from many sectors including building energy, onroad transportation, offroad transportation, waste production, water use, industrial processes, and other sectors.

Clearly, a lead agency can and must consider factors other than consistency with a SCS when making a determination as to whether a project would or would not have significant GHG emissions. The 2010 updates to the CEQA guidelines included two new criteria on GHG emissions for help in determining whether GHG emissions are significant:

- ✓ Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?

²¹ As noted above, SB 375 is unclear as to what constitutes “the prior environmental impact reports.” This seems to be intended to mean the EIR prepared and adopted for the SCS. If that’s the case, then an APS adopted without an EIR could not be the basis for this streamlining provision.

- ✓ Conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases?

In theory, consistency with a SB 375 SCS could be a consideration under both criteria. However, this paper argues that the true evaluation of significance of GHG emissions under CEQA should be about the entirety of a project's emissions, and not about only one sector of emissions and not about mere consistency with a SCS, which may not be revealing about the full significance of a project's GHG emissions.

An SCS is not a legally binding land use plan in terms of its land use designations or densities. General plan and zoning powers are specifically reserved to cities and counties. Thus, the assumed land use designations and densities in a SCS are not regulations or requirements referenced in Section 15064.4 (d) above. However, SB 375 required that the Regional Housing Needs Allocation (RHNA) issued by a Metropolitan Planning Organization (MPO) must be consistent with an SCS. Under California housing law, a city's or county's housing element must identify sufficient sites to accommodate its assigned share of the RHNA. As a result, it can be argued that to the extent RHNAs are required to be consistent with the SCS and must be reflected in local general plans, inconsistency with an SCS could be a factor considered when making determinations of significance under CEQA for affordable housing projects.

Given this guidance, several different options are available to local CEQA lead agencies when evaluating project consistency with SB 375 and evaluating the significance of project GHG emissions.

4.3.1 Is Inconsistency with the SCS Necessarily a Significant CEQA Impact?

Nothing in the law creates a presumption that a local development project that is inconsistent with an SCS would have a significant GHG emissions contribution. Therefore, a project in one jurisdiction that is inconsistent with the SCS could result in increased passenger/light-duty vehicle GHG emissions in other jurisdictions compared to that which would occur with a SCS-consistent project, despite being consistent with a qualified GHG reduction plan in its own jurisdiction.

Imagine a project that proposes lower-density residential housing in an area designated in the SCS for higher-density housing or a project that proposes residential housing in an outlying area that the SCS identifies as agricultural or open space (with corresponding residential designations closer to jobs, services, and transit in the SCS). These projects would likely result in higher passenger/light-duty vehicle emissions than estimated in the SCS as they would likely result in relatively higher amounts of trips (and lengthier trips) made in private vehicles as opposed to transit trips, as assumed in an SCS compliant scenario. The local qualified GHG plan may have a relatively larger emphasis on building energy efficiency, renewable energy, waste reduction, water conservation, or other measures than on land use/transportation measures, which could lead to a situation where such projects could be consistent with the local plan, but inconsistent with the SCS. While jurisdictional GHG emissions overall may be less than significant, such projects may result in greater vehicle trips (and relatively lesser transit trips) within adjoining jurisdictions than under a SCS-consistent scenario. When a lead agency makes a finding that a project is consistent with its local qualified GHG reduction plan, it is only finding that the project's emissions are less than significant because the jurisdiction's GHG emissions will meet their identified target.

In this scenario, it is possible that the project could contribute to a neighboring jurisdiction's passenger/light-duty vehicle GHG emissions in a considerable way, yet be considered to be less than significant. In metropolitan areas, vehicle trips cross multiple jurisdictions and thus a single project

could result in vehicle emissions in many different cities and counties that are not accounted for in its “home” jurisdiction’s qualified plan.

The current practice in assigning transportation GHG emissions by jurisdiction is known as the “origin-destination” method, in which one-half of every trip is assigned to the trip origin and one half is assigned to the trip destination. This means that a local qualified GHG reduction plan will only address half of any trip associated with existing or future development; the other half will go to another jurisdiction. As a result, there is a certain amount of emissions “leakage” from project transportation emissions that is not captured in local GHG reduction plan. In a metropolitan setting, with a multiplicity of trip destinations in neighboring jurisdictions, it will be difficult on a project level to disclose what the impact of a non-SCS consistent project may be on other jurisdictions. Other jurisdictions may or may not develop in ways anticipated in an SCS, further complicating evaluation of this effect. Also, other jurisdictions may or may not have qualified GHG reduction plans that may or may not rely on SCS-consistent development in their own and adjoining jurisdictions. If land use planning in destination jurisdictions does not result in development that could be served by regional transit systems, then there may be no difference in the effect of an SCS-inconsistent project in the origin jurisdiction (compared to an SCS-consistent project) because inter-jurisdictional trips would need to be made by personal vehicle in either case.

If many jurisdictions adopt qualified GHG reduction plans that rely heavily on emission reductions from non-transportation sectors and development patterns are inconsistent with the regional SCS, then cumulative passenger/light-duty vehicle emissions in the region could fall short of that called for in the SCS.²² In the hypothetical case in which every regional jurisdiction has a qualified GHG reduction plan consistent with AB 32 reduction targets that relies more heavily on non-transportation emissions reductions and allows more transportation emissions than called for in the SCS, then the region as a whole may reduce overall GHG emissions consistent with AB 32 while resulting in far more passenger/light-duty vehicle emissions than expected under SB 375. From a GHG perspective, this would be a less than significant outcome at least for 2020 (the horizon year for AB 32), but could be an issue for years after 2020 depending on state of local, regional, and state level GHG emissions reduction planning.

One possible approach for a lead agency is to consider a tradeoff argument. While a project that is not consistent with the SCS may result in greater onroad transportation emissions within and outside the jurisdiction than a SCS-consistent project, due to the other reductions expected from implementation of the qualified GHG reduction, these emissions could be offset by reductions in other sectors such that overall project emissions could be less than significant. In order to support conclusions regarding the full impact of a project on transportation emissions, projects should use a “full trip” methodology, instead of splitting trips 50/50 as recommended by the RTAC for SB 375 studies. By accounting for the entire trip emissions within local accounting, then project analysis could describe how overall emissions are being reduced to the identified local target, even though vehicle emissions in other jurisdictions might not be reduced as much as with a project (or a GHG reduction plan) that is fully consistent with an SCS.

²² There is significant debate whether an RTP/SCS must be fully consistent with local General Plans. It appears from the development of the first round of SCSs (SANDAG, SCAG, and SACOG), that the MPOs may not always feel that the SCS must be limited to the land use pattern in the adopted General Plans.

4.3.2 Projects Consistent with a Qualified GHG Reduction Plan

As noted above, the 2010 changes to the CEQA guidelines allow for tiering project CEQA compliance from a GHG reduction plan (CEQA Guidelines 15183.5).

Recent years have seen the development of such plans by a number of communities across California. Since the 2010 revision of the CEQA guidelines, some lead agencies, such as the City and County of San Francisco, have been using tiering from their GHG reduction plan for their project analysis of GHG emissions and many more intend to do so.

If a project is consistent with a qualified GHG reduction plan, then a lead agency can make a finding that the project's GHG emission contributions are less than significant under CEQA. It is possible that some projects will be fully consistent with a local qualified plan, but inconsistent with the land use designations and densities in a regional SCS. In such a case, the project's GHG emissions overall (from all sectors) could be found by the lead agency to be less than significant, even though the project's passenger/light-duty vehicle GHG emissions may be greater than that anticipated in the SCS. The local agency's evidence for such a finding would need to be based on an argument that the qualified plan addresses all emission sectors, including onroad transportation, and overall will result in GHG emission levels that are less than significant.

4.3.3 Projects with GHG Emissions below a Significance Threshold

As discussed above, a number of air districts have adopted CEQA guidelines with recommended CEQA significance thresholds for the evaluation of GHG emissions. While air district's recommended CEQA guidelines are advisory in nature, many lead agencies within those air districts with adopted CEQA significance thresholds for GHG emissions are using them for CEQA evaluations. Local jurisdictions in air districts without adopted significance thresholds have also developed thresholds of their own that have been used in CEQA evaluations, sometimes using recommendations from other air districts or concepts from the CAPCOA White Paper on CEQA and Climate Change.

As discussed earlier, one of the requirements of a qualified GHG reduction plan is "a level, based on substantial evidence, below which the contribution to greenhouse gas emissions from activities covered by the plan would not be cumulatively considerable." This is a threshold of significance that will be used by the jurisdiction adopting the qualified GHG reduction plan.

If a jurisdiction does not have a qualified GHG reduction plan, it can use an air district or other significance threshold to evaluate project GHG emissions under CEQA. If the project's emissions (or mitigated emissions) overall are less than the identified threshold, then a finding of less than significant could be made. A project's GHG emissions may be found to be less than the identified threshold despite being inconsistent with the land use designations or densities found in a SCS. Similar to the discussion above concerning qualified GHG reduction plans, a project consistent with a significance threshold used by a lead agency, but inconsistent with an SCS may result in transportation emissions in other jurisdictions that are higher than that of an SCS-consistent project. Depending on GHG emissions jurisdiction planning on other jurisdictions that "receive" trips from the project under consideration, these additional emissions may or may not affect the ability of other jurisdictions to reach their GHG reduction targets and may affect overall regional ability to meet SCS targets.

As with the example above for a project consistent with a qualified GHG reduction plan, but inconsistent with an SCS, a lead agency may be able to make a finding that a project with GHG emissions that are less

than a significance threshold, but inconsistent with the land use designations and densities in a SCS, will offset higher transportation emissions in the region through reduction of GHG emissions from other sectors associated with the project. In this case, the lead agency should consider the use of the “full trip” methodology and should identify the evidence for the offsetting argument in its CEQA document and findings.

Thresholds of significance, whether adopted by an air district or with a qualified GHG reduction plan, do not provide a safe harbor for significance determinations. The “fair argument” standard still applies in most cases. Where different GHG emissions thresholds may be applied to a project, the fair argument standard suggests that the stricter threshold should be used to determine significance. It is possible that concerned parties may make a fair argument that a project that has emissions less than a local or air district significance threshold but is not consistent with a SCS has a potentially significant impact. If a lead agency believes (or a court determines) that a fair argument has been made, then an EIR would be required. With an EIR, a concerned party may make the same argument, but the legal standard for an EIR is substantial evidence, and as long as the lead agency can support the selected threshold with substantial evidence, it may be more difficult for a challenging party to prevail with such an argument.

4.3.3 Other Projects

SCS consistency for projects that do not qualify for streamlining under SB 375 as an SCP, TPP, or a residential or mixed use project (as defined in SB375) and that are not consistent with a qualified GHG reduction plan (or where one does not exist) and have emissions that exceed an air district or local significance threshold can be evaluated under CEQA in several ways.

- ✓ **Project Inconsistent with Qualified GHG Reduction Plan**– If a qualified plan exists and the project is inconsistent with it, even after mitigation, the lead agency can conclude that GHG emissions are significant overall. The project’s consistency with a SCS as it relates to passenger/light-duty vehicle GHG emissions is moot as the project would already have a significant impact related to GHG emissions overall
- ✓ **Project GHG Emissions Exceed Air District and/or Local Significance Threshold** – If a project has emissions that exceed a significance threshold determined appropriate for the project by a local lead agency, then the lead agency must conclude that GHG emissions are significant overall. The project’s consistency with a SCS as it relates to passenger/light-duty vehicle GHG emissions is moot as the project would already have a significant impact related to GHG emissions overall.
- ✓ **Projects with passenger/light-duty vehicle GHG per capita emissions less than those estimated in the SCS** – It is possible that a project may be inconsistent with SCS land use designations, densities, and policies, but may result in passenger/light-duty vehicle GHG emissions less than those estimated in the SCS for a SCS-consistent project on the same location. As noted above, the lead agency can evaluate such a project for consistency with a qualified GHG reduction plan or a significance threshold and conclude significance of GHG emissions on that basis. If the passenger/light-duty vehicle GHG per capita emissions are less than those for a SCS-consistent project on the project site, that could be a consideration for evaluation of the transportation emissions. The comparison of GHG emissions between the project and an SCS-consistent alternative needs to be careful to ensure a fair comparison. For example, a lower-density residential project proposed on a location designated for high-density residential use in an SCS may result in less emissions due to less units overall, but could mean that overall areas of high-

density in the jurisdiction may be less or high-density residential units would need to be placed further from transit systems. Another example would be the placement of commercial use in an area designated for transit-oriented residential or mixed use in an SCS that may displace residential to other locations less transit-oriented or alternatively may result in reduction of inbound vehicle trips compared to alternatives that have commercial areas located in less transit-oriented areas. Given the complexities involved, lead agencies should use caution in making a significance finding under CEQA using an argument that a project would result in less passenger/light-duty vehicle GHG emissions than an SCS-consistent alternative and should fully evaluate the land use consequences of different land use options for the project site. Any comparative evaluation between a project that is inconsistent with an SCS to an alternative that is consistent should use the “full trip” methodology to ensure that all effects on transportation emissions are disclosed.

- ✓ **Projects with passenger/light-duty vehicle GHG per capita emissions more than those estimated in the SCS** –As discussed above, in and of itself, a project with passenger/light-duty vehicle GHG emissions more than those that would result from a project consistent with the SCS land use designations and densities does not necessarily have significant GHG emissions under CEQA, particularly if the project is consistent with a qualified GHG reduction plan or is less than an applicable significance threshold. Lead agencies should evaluate project consistency with their local GHG reduction plan (if one exists) or with the determined GHG significance threshold (if a qualified local GHG reduction plan does not exist). If the project fails one of those comparisons (as applicable), then GHG emissions are significant overall and the inconsistency with the SCS is moot as it relates to GHG emissions.

4.4 Plans, SB 375, and CEQA Evaluations of GHG Emissions

As noted above, SB 375 does not require local land use planning to be consistent with a SCS. This applies to a General Plan as well as to Specific Plans, and preserves the local land use authority of cities and counties. However, under CEQA, a proposed General Plan or Specific Plan amendment should be evaluated to determine whether or not it is consistent with the SCS (which constitutes a plan for the purpose of avoiding an environmental effect) and whether the inconsistency would result in any significant impacts on the environment (see CEQA Guidelines Appendix G, checklist item X.(b)). Thus, proposed local plans will need to be evaluated under CEQA using the same methods as those articulated above for project CEQA evaluations of GHG emissions.

4.5 Evaluating 2035 GHG Emissions Under CEQA

AB 32 has a GHG emissions reduction target for 2020. SB 375 requires an SCS to meet CARB-identified targets reductions for 2020 and 2035 (compared to 2005) passenger/light-duty vehicle emissions. SB 375 also requires CARB over time to identify reduction targets for the years after 2035 up to 2050, but does not specify when CARB is required to identify targets for years after 2035 or when an SCS must meet such targets.

CEQA has no specific milestone years for the evaluation of GHG emissions but emissions should be estimated for full buildout of the project. Given that the regional SCS will provide emissions projections and reduction targets for GHG emissions from passenger and light duty vehicle, some may suggest that project-specific CEQA analyses could use 2035 as a future condition.

Most GHG reduction plans have targets identified for 2020 to match AB 32, although a few have targets for years before 2020 (such as San Francisco which has a 2012 target), and some have targets for years after 2020 (such as Berkeley which has a voter-adopted target for 2050). To date, no local GHG reduction plan has an actual plan to achieve GHG emissions reductions out to 2035 or to 2050, although some have aspirational goals for future reductions beyond 2020. Although there is Executive Order S-03-05, signed by former Governor Schwarzenegger, which contains a goal of reducing emissions to 80% below 1990 levels by 2050, there is no plan (nor even development of a plan) by the state to actually achieve this goal. Furthermore, as noted previously an Executive Order is not a legal mandate for local governments or private development. There is also no federal plan or legislation to reduce GHG emissions overall, although the U.S. Environmental Protection Agency is using its authority under the Clean Air Act to mandate emissions reductions from vehicles and stationary sources and the federal executive branch is requiring emissions reductions from federal government operations. At any rate, the federal government has no plan for reductions out to 2035 or 2050.

Beyond 2020, local jurisdictions cannot presume state or federal actions will reduce GHG emissions sufficiently to play a part in stabilizing global climate change. Local jurisdictions lack the legal authority to mandate changes in vehicle technology, fuels, electricity production and technology, and industrial point sources. In many local GHG reduction plans, California state measures will often account for two thirds to three quarters of reductions needed to meet a reduction goal consistent with AB 32, with the local measures accounting for the remaining one quarter to one-third of reductions. Without state action, it is highly doubtful that many local jurisdictions could feasibly reduce their jurisdictional emissions to meet their local targets for 2020. Given the ambitious goals commonly identified in scientific literature for 2050 to avoid the more catastrophic effects of climate change are substantial reductions below 1990 levels, like those in Executive Order, S-03-05, it is likely infeasible for any local jurisdiction to create a realistic plan for reduction of GHG emissions to meet such ambitious targets absent state (and likely federal) actions.

These limitations are important considerations in any CEQA evaluation of GHG emissions. At present, most GHG reduction plans, significance thresholds, and CEQA evaluation do not consider emissions in the context of needed reductions for 2035 or 2050, focusing instead on emissions needed by 2020 to be consistent with AB 32.²³ Since SB 375 requires a SCS to result in passenger/light-duty vehicle GHG emission reductions out to 2035, this raises unique challenges for evaluating SCS consistency under CEQA. While a project may be consistent with a qualified GHG reduction plan or a significance threshold based on a 2020 horizon, the local lead agency would not be able to use consistency with a reduction plan or threshold for a significance determination for years beyond 2020.

When doing a General Plan, a local jurisdiction is required to assess impacts out to the planning horizon or buildout of the plan. However, as described above, given current state and federal GHG reduction planning, and the current challenges to meet AB-32 reduction targets, it is likely infeasible to meet highly ambitious GHG reductions for 2035 and 2050. Should a lead agency choose to make a conclusion in a CEQA document for 2035 or 2050 for a General Plan overall, a significant unavoidable conclusion is likely the best route to go. To argue that a city or county, all on its own, could meet a highly ambitious 2035 or 2050 goal, based on a presumption of future state or federal activity, would be largely speculative and would be impaired by the inability to ascertain what portion of the emissions inventory would be the responsibility of local jurisdictions to reduce. While one can suggest that more substantial

²³ The adopted BAAQMD and SJVAPCD thresholds and the proposed SCAQMD thresholds are all based on reductions in the context of AB 32 target reductions by 2020. None of these threshold concepts consider periods beyond 2020.

GHG reductions will be needed after 2020 and that current actions can influence GHG emissions after 2020, the lack of key information means the substantial evidence to prove that such ambitious goals can feasibly be met through enforceable local measure, is likely lacking in most cases.

Which brings us to the issue of project consistency with an SCS. It can be argued that a project that is not consistent with a SCS could result in passenger/light-duty vehicle GHG emissions that are greater than that envisioned in the SCS and thus may result in significant GHG emissions. However, passenger/light-duty vehicle GHG emissions are only one part of overall GHG emissions. At a statewide level, in 2008, on-road transportation emissions from passenger vehicles were approximate 28% of overall GHG emissions.²⁴ Conclusions about the significance of GHG emissions in CEQA are best made in the context of all project emissions rather than just a single sector. While a project might have somewhat higher passenger/light-duty vehicle GHG emissions in 2035 than a SCS consistent project, it is impossible to conclude what effect that might have on overall local, regional, or state emissions unless one has a substantial basis by which to evaluate all sectors. It is impossible to know with any degree of certainty what vehicle efficiencies and fuels will be available in 2035 and what prices for transportation fuel will be, all of which will highly influence overall vehicle-related GHG emissions. Thus the consequence of relatively higher vehicle-miles travelled on a project level on overall GHG emissions in 2035 is difficult to evaluate with precision. Freezing vehicle efficiencies and vehicle fuels at 2020 levels would be a conservative approach, but is also very likely to overstate the level of transportation emissions.

CEQA lead agencies have several options they can consider for the evaluation of SCS consistency for passenger/light-duty vehicle emissions in 2035:

- ✓ Disclose project GHG emissions quantitatively in 2035, “freezing” emission factor assumptions at levels predicted for 2020 with AB 32 compliance, identify a 2035 significance threshold based on a trendline from the AB 32 2020 goal to 2050 S-03-05 goal, and evaluate significance similar to that described above in regards to the significance threshold.
- ✓ Use consistency with the SCS as the sole factor for determining significance of 2035 passenger/light-duty vehicle GHG emissions and do not analyze other GHG emissions.
- ✓ Discuss project GHG emissions in 2035 on a qualitative basis and project consistency with the SCS, but do not make any conclusions regarding the significance of passenger/light-duty vehicle or other GHG emissions in 2035, on the basis that conclusions about the spectrum of GHG emissions would be speculative in absence of any legally-mandated statewide reduction goals for after 2020.

4.6 Other CEQA Implications from SB 375

In addition to reducing passenger/light-duty vehicle GHG emissions, an SCS must also allow the RTP to comply with relevant portions of federal Clean Air Act, identify locations of land uses and housing within the region, consider information on resource areas and farmland, consider housing goals and establish the RHNA for each city and county under its jurisdiction, and identify a transportation network to service

²⁴ Passenger vehicle GHG emissions in California 2008 were an estimated 133.34 million metric tons of CO₂ equivalent MMTCO₂e compared to overall GHG emissions of 477.74 MMTCO₂e (not including forestry net emissions).

the transportation needs of the region. Thus, in addition to its role in directing regional transportation priorities, an SCS could also have effects on regional air quality, land use, housing, resource areas, and farmland.

Because the SCS does not create any specific thresholds for evaluation of other resources and because it is not a legally enforceable plan, it does not appear that CEQA evaluations for projects being considered by cities and counties need consider SCS consistency when evaluating subject areas other than GHG emissions. Thus, the context for evaluation of impacts to resources other than GHG emissions will be derived more from consideration of the existing environment at the time of the CEQA evaluation and other applicable regulations and plans.

While the SCS is not an enforceable plan, as noted above, a local housing element is required to be consistent with the share of the RHNA assigned to the city or county by the SCS. Since SB 375 requires the RHNA to be consistent with the SCS, the extent to which the assigned RHNA share must be met by development in an SCP or TPP may become an issue if the city or county opts to approve lower density projects at those locations. Consistency with the RHNAs, like consistency with a SCS, may or may not result in a significant physical impact on the environment.

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5. RECOMMENDATIONS

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The following recommendations would assist CEQA lead agencies and CEQA practitioners in considering issues surrounding SB 375 consistency:

- ✓ The land use assumptions used by MPOs in calculation vehicle miles travelled (VMT) and passenger/light-duty vehicle GHG emissions for RTP/SCSs should be more transparent and available to local cities and counties and the public at large. Adopted RTP/SCSs do not always disclose fully their methodologies and assumptions in calculating GHG reductions which could impede a local jurisdiction understanding how exactly a regional RTP/SCS may project land use growth within a particular community. Cities and counties should be able to see and readily understand all the land use and transportation assumptions used in an SCS.
- ✓ MPOs can play a critical role in promoting consistency across regions in the evaluation of land use and transportation emissions by continuing their ongoing efforts in land use and transportation modeling and creating and fostering tools that can be applied on the local level by cities and counties that would be consistent with regional evaluation of land use and transportation.
- ✓ MPOs have done a good job of reaching out to cities and counties during development of their RTP/SCSs and have supported pilot projects demonstrating the value of integrated planning. MPOs should continue to engage with local jurisdictions and leverage regional resources to support local initiatives for integrated local land use and transportation planning.
- ✓ CEQA lead agencies practitioners should adhere to CEQA guidelines admonishment against speculation and should acknowledge the practical, technical, and legal limitations to very long-term GHG reduction planning, particularly for the period from 2035 to 2050. While long-term evaluations can provide insight into potential long-term effects of current decisions, the uncertainty of state, federal, market, and technological conditions more than 20 years in the future can undermine the validity and value of prescriptive planning and mandates that may be adopted based on speculative assumptions.

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Figure 1: Decision Tree for Evaluating SB 375 Consistency and CEQA

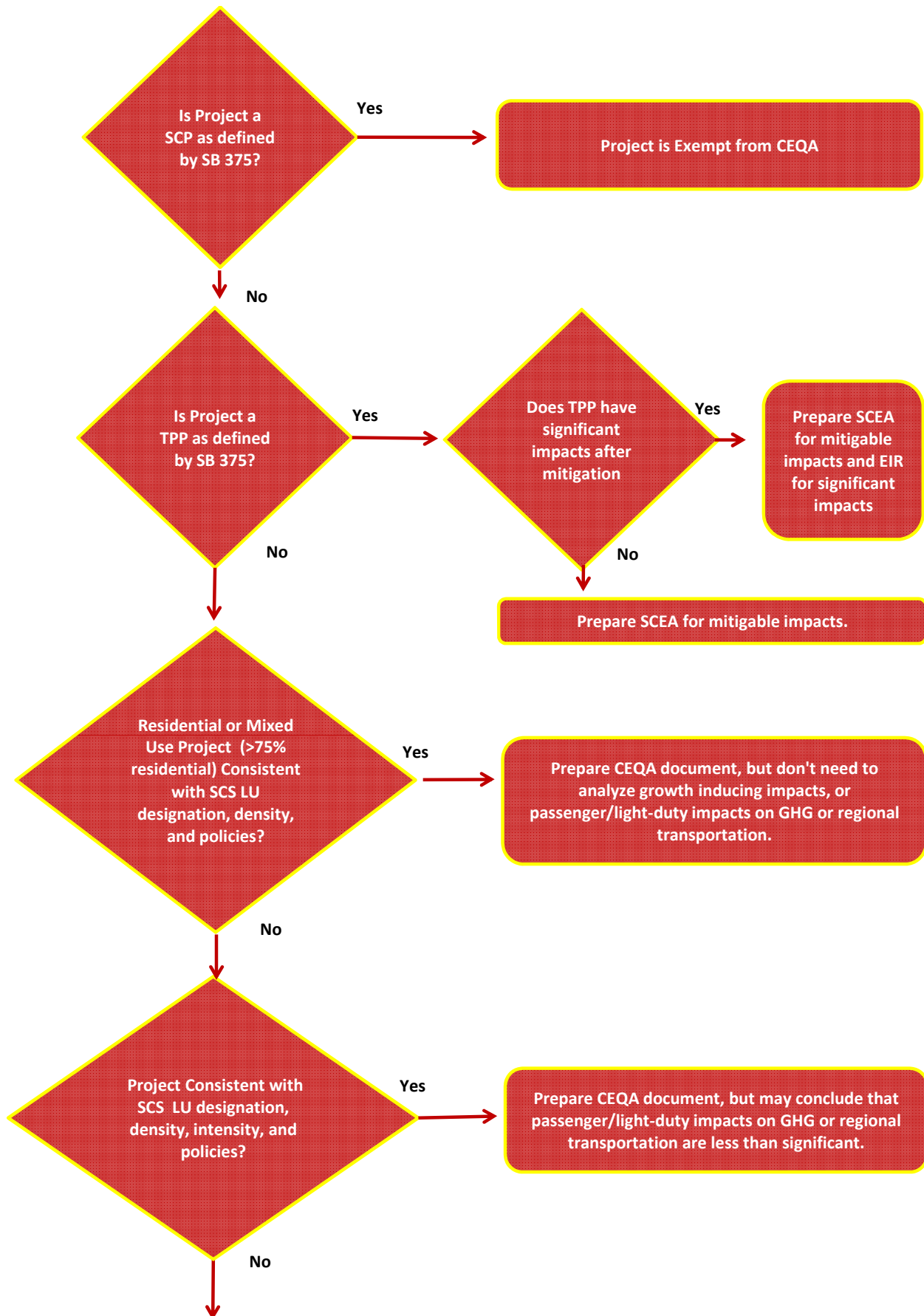


Figure 1: Decision Tree for Evaluating SB 375 Consistency and CEQA

