



MEMORANDUM

DATE: December 13, 2010
TO: Housing Element Committee (HEC)
FROM: Lilly Schinsing, Associate Planner
SUBJECT: SB 375 Materials

Discussion

At the November 22, 2010 HEC meeting the Committee directed staff to provide an overview on the basics of Senate Bill (SB) 375. Attached is a brochure prepared by Mintier Harnish, planning consultants, outlining the basics of SB 375. The Housing Accountability Act is mentioned on page 6 of the brochure, under item 4c. Attached is the text of the Housing Accountability Act (California Government Code Section 65589.5).

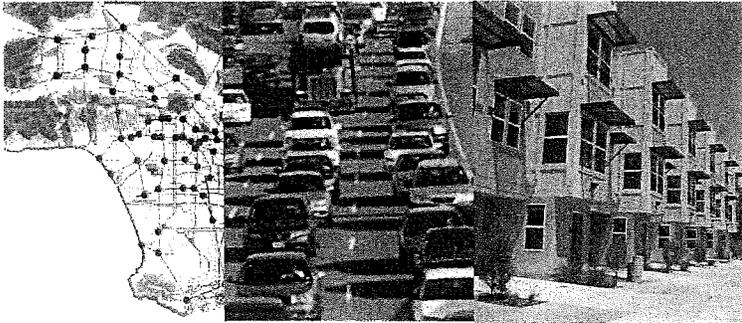
Attachments:

- "Regional Planning and Climate Change: Understanding SB 375," prepared by Mintier Harnish
- California Government Code Section 65589.5: "Housing Accountability Act"

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REGIONAL PLANNING AND CLIMATE CHANGE

Understanding SB 375



SB 375 aligns three major planning processes - land use planning, transportation planning and funding, and State housing mandates - and seeks to reduce greenhouse gas emissions.

The passage of SB 375 has focused new attention on regional planning in California, leading many State, regional, and local officials to ask how land use, transportation, and housing planning will be affected by this new law. This brochure provides some initial answers to that question.

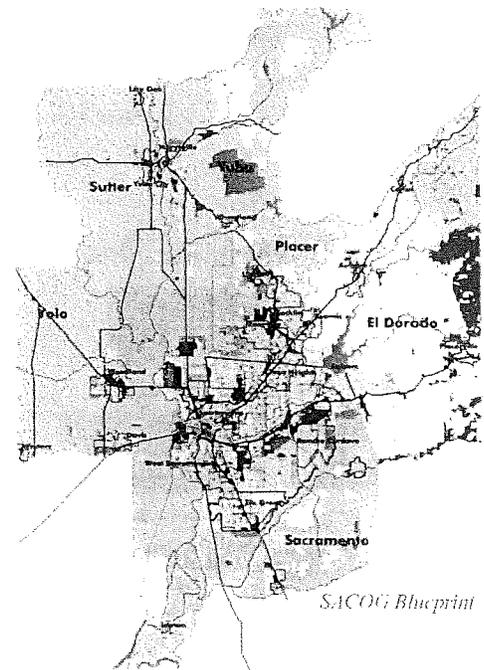
SB 375 is a complex piece of legislation that has raised many questions about how it will be implemented and how effective it will be ultimately in addressing climate change.

This brochure summarizes SB 375 (and clean-up legislation SB 575) and explains who will implement it and how it is likely to change the transportation and land use planning process. It dispels some common myths about SB 375 and tries to clarify the implications of the new law.

SB 375, at its heart, builds on existing laws and processes by keeping decision-making at the local level. SB 375 is intended to provide for local flexibility by achieving AB 32 goals through incentives, rather than new regulations or penalties.

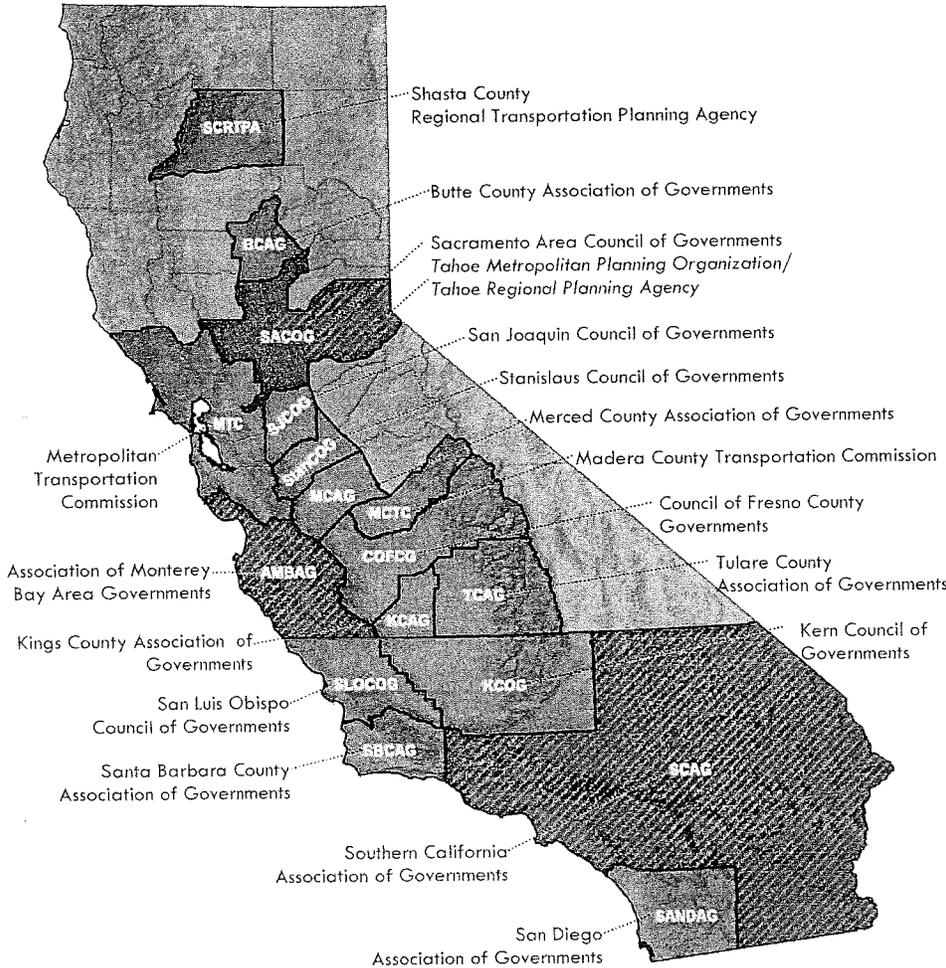
SB 375 At-a-Glance

- Implements AB 32 to reduce greenhouse gas (GHG) emissions by reducing vehicle miles traveled through land use planning.
- Applies to the 18 Metropolitan Planning Organizations (MPO) in California.
- Adds a Sustainable Communities Strategy (SCS) element to regional transportation plans (RTP).
 - An SCS is a regional development plan similar to a regional blueprint.
 - An SCS must be internally consistent with RTP transportation funding elements.
 - An SCS must feasibly meet GHG emission reduction targets set by the California Air Resources Board (CARB).
- Permits a separate Alternative Planning Strategy (APS) when GHG targets cannot be feasibly met through an SCS.
- Provides certain CEQA streamlining and transportation funding incentives for transportation and development projects consistent with an SCS or APS.
- Increases coordination between regional transportation and housing planning.
- Requires consistency among the Regional Housing Needs Allocation (RHNA) and an RTP and SCS or an APS.
- Changes the frequency of RHNA and housing element updates from five to eight years.
- Increases penalties for failure to meet update deadlines or rezone adequate housing sites.



SB 375 adds to an RTP a land use component that will likely resemble a regional blueprint. Regional blueprints strive to balance transportation planning with land use planning, housing needs, resource protection, and other planning issues in order to achieve more sustainable regional growth patterns and improve quality of life.

Metropolitan Planning Organizations Responsible for Implementing SB 375



Who is involved?

SB 375 involves agencies and stakeholders from State, regional, and local government, as well as property owners and developers. SB 375 focuses on the 18 Metropolitan Planning Organizations (MPOs) in California, which include 36 counties and almost 98 percent of the state's population.

- California Air Resources Board (CARB), California Transportation Commission (CTC), and Caltrans establish GHG reduction targets and review regional GHG emission reduction plans.
- MPOs prepare either a Sustainable Communities Strategy (SCS) or Alternative Planning strategy (APS) and coordinate RHNA with transportation plans.
- Local governments continue to exercise land use approval authority, but they will be eligible for priority transportation funding or CEQA streamlining where plans or projects are consistent with an SCS or APS.

How are the RHNA Process and Housing Elements affected by SB 375?

SB 375 changes the timing and process for determining RHNA and updating housing elements. It also increases penalties for failure to meet update deadlines or rezone adequate housing sites.

Timing

SB 375 establishes an eight-year cycle for RHNA determinations and housing element adoption to match up with the timing for GHG reduction targets and RTP preparation.

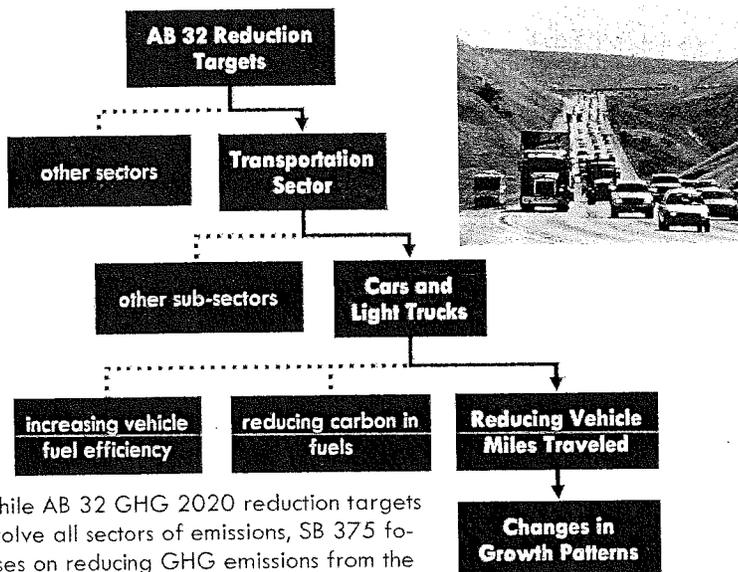
Process and Requirements

SB 375 requires that MPOs determine the RHNA consistent with an SCS or APS. Housing elements are required to be adopted within new mandated deadlines. Cities and counties must rezone the sites identified in elements for specific residential uses within three years. Housing elements must include an implementation schedule, as well as an annual hearing and report to review implementation progress.

Penalties

Cities and counties that do not adopt their housing element within the mandated timelines will be required to update their element every four years instead of eight. Cities and counties that do not rezone residential sites consistent with their housing element within three years will be vulnerable to legal sanctions and court-imposed jurisdiction over certain land use actions.

Which GHG emissions does SB 375 reduce?



While AB 32 GHG 2020 reduction targets involve all sectors of emissions, SB 375 focuses on reducing GHG emissions from the transportation sector. SB 375 aims to reduce vehicle-miles-traveled by cars and light trucks, by linking regional transportation planning to land use and housing to change growth patterns.

What is a Sustainable Communities Strategy?

A Sustainable Communities Strategy (SCS) is a regional development plan similar to the recent regional blueprint efforts. The primary SCS objective is to reduce GHG emission by influencing land use patterns to reduce vehicle miles traveled. An SCS will include data analysis, maps and charts, goals and policies, quantified objectives, and an implementation program. An SCS will likely address such topics as air quality, transportation, complete streets, transit, biking, walking, land use, housing, mixed use, open space protection, and farmland preservation. An SCS must: be based on realistic planning assumptions; be consistent with adopted general plans and spheres of influence; and consider natural resources and farmland. Similar to a general plan, it must also be internally consistent with the transportation and financing elements of the RTP. Finally, an SCS must meet established GHG reduction targets. Local plans and development projects consistent with an SCS will be eligible for CEQA streamlining and be given priority for transportation funding.

What is an Alternative Planning Strategy?

If an SCS is unable to achieve the GHG emissions reduction targets (and many likely will not), an MPO must prepare an APS showing how the targets may be achieved through alternative development patterns, infrastructure, or additional transportation measures or policies. This will most likely occur when an MPO, after considering existing environmental conditions, adopted general plans, and population growth projections, is unable to prepare an adequate SCS. An APS is similar to an SCS in most respects. It will address the same range of topics, include the same type of information and analysis, and have the same local plan consistency requirement. However, an APS is **not** part of or required to be consistent with an RTP. Local plans and development projects consistent with an APS will be eligible for CEQA streamlining. However, an MPO and local plans and development projects will **not** be given priority for transportation funding.

While encouraged, local city and county general plans and land use decisions are NOT required to be consistent with an SCS or APS. Incentives are available to those communities that are consistent.

What incentives are available?

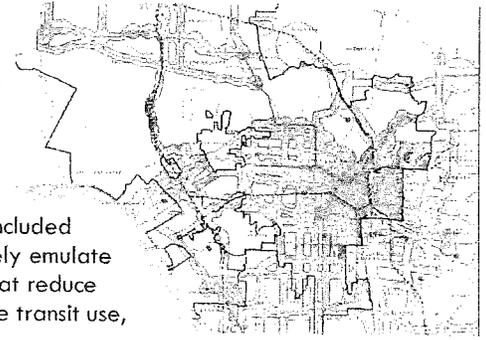
SB 375 includes incentives for projects that are consistent with an adopted SCS or APS. Residential/mixed-use projects and Transportation Priority Projects (TPPs) that meet certain requirements are eligible for CEQA streamlining. **It should be noted that the CEQA streamlining criteria contained in SB 375 are extremely detailed.**

CEQA analysis for residential/mixed-use projects found consistent with an SCS or APS is not required to describe growth-inducing impacts, project specific impacts from cars and light trucks on global warming, or alternatives that address the effects of cars and light trucks.

CEQA analysis for TPPs found consistent with an SCS or APS may be eligible for a full CEQA exemption. TPPs may also be eligible for a Sustainable Communities Environmental Assessment (SCEA) exemption. The SCEA exemption excludes requirements to analyze growth-inducing impacts, project-specific impacts on global warming from cars and light trucks, and alternatives that address the effects of cars and light trucks. Finally, TPPs may be exempt from additional traffic mitigation measures if local governments adopt specific traffic mitigation measures for TPPs.

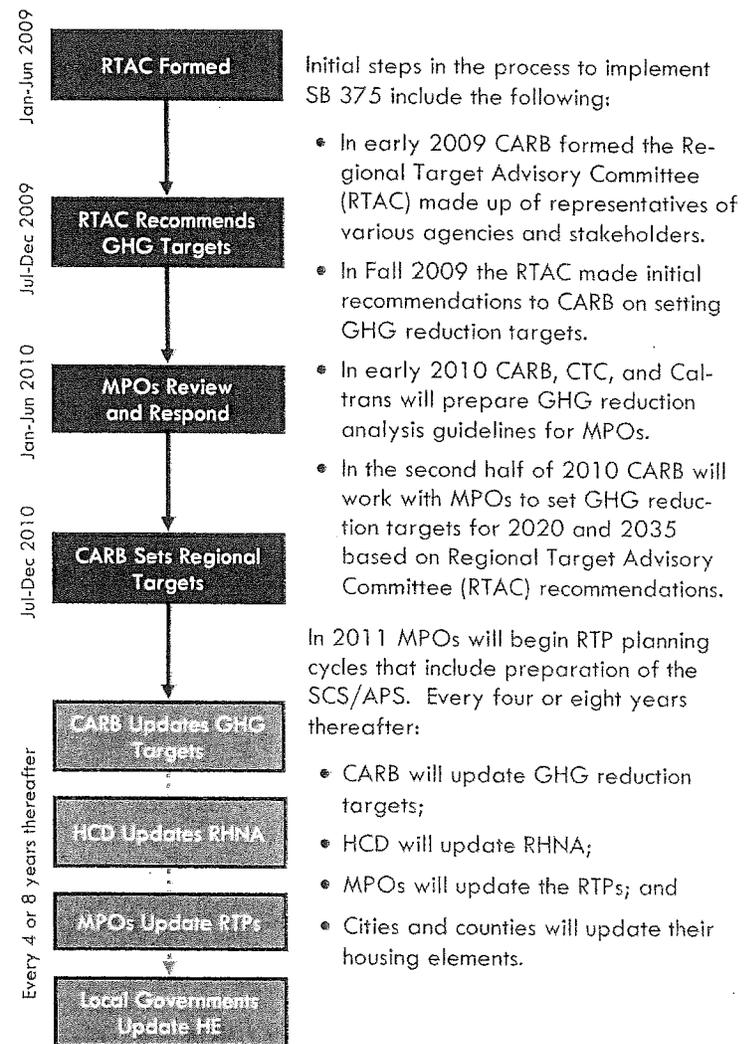
How will an SCS/APS look?

An SCS or APS will likely resemble a regional blueprint plan. It will use a combination of diagrams, policies, and actions that would achieve the regional GHG emissions target. Measures included in an SCS or APS will likely emulate policies and programs that reduce vehicle miles and increase transit use, biking, and walking.



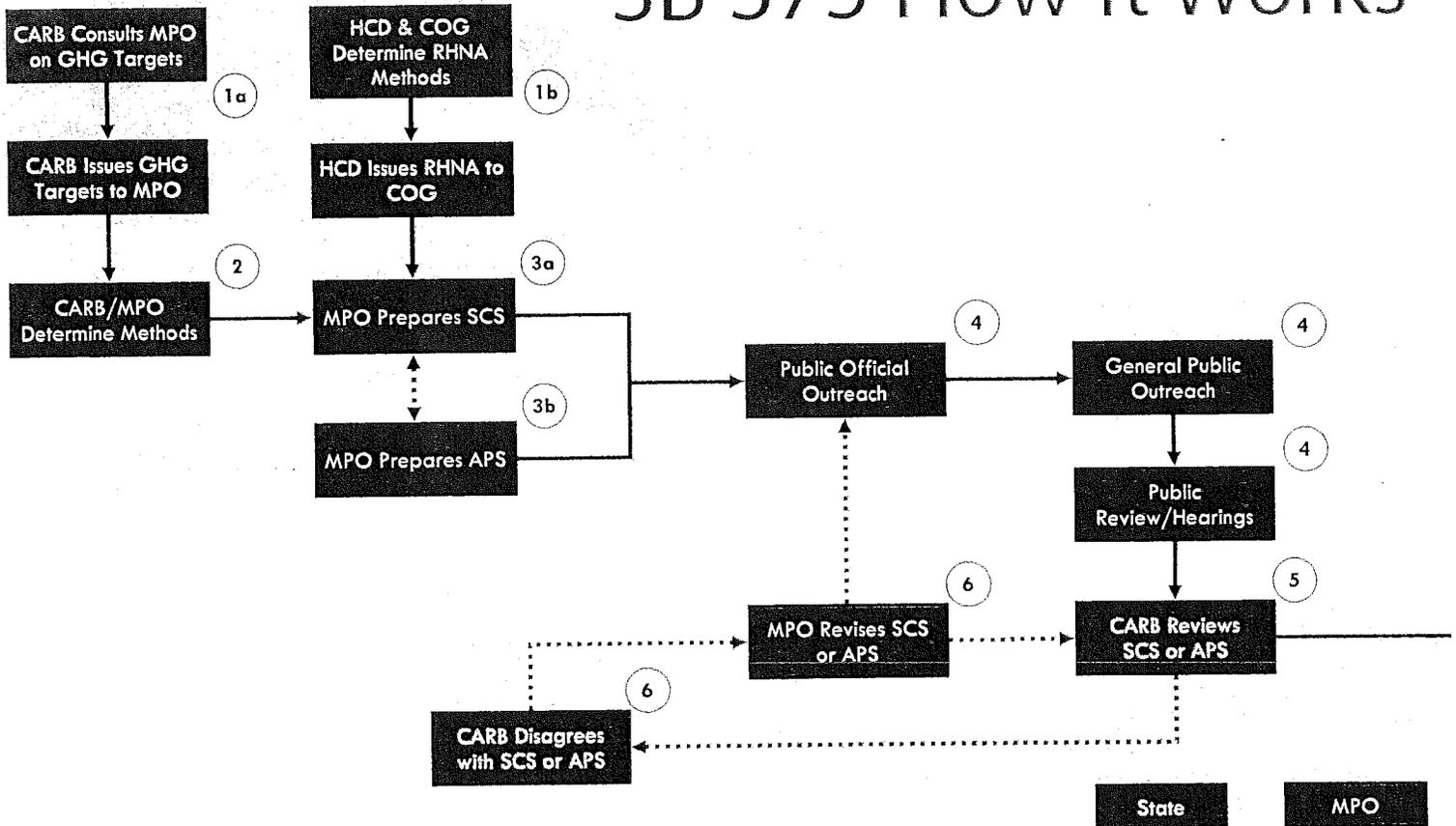
An SCS or APS is not just a land use plan. Infrastructure and additional transportation measures and policies are required in both. In addition, an SCS or APS may include growth limits and environmental protections. In the case of an APS, policies and programs must also recognize resource constraints that may limit implementation.

SB 375: Getting Started



The next four pages detail the process of implementing SB 375.

SB 375 How It Works



1a CARB and MPO Collaborate

- CARB consults MPO on the quantification and distribution of GHG reduction targets.
- Next, CARB issues GHG reduction targets to MPO.

1b HCD and COG Collaborate

- HCD consults with COG regarding RHNA assumptions and methodologies.
- Next, HCD issues RHNA to COG.

2 CARB/MPO Determine Methods

- CARB works with MPO to determine a methodology the MPO will use to analyze and quantify GHG reductions to meet GHG emissions reduction targets.

3a MPO Prepares SCS

- MPO then prepares a draft SCS that can feasibly meet GHG reduction targets and is consistent with other elements of the RTP and RHNA.

3b MPO Prepares APS

- If SCS cannot feasibly meet GHG reduction targets, an MPO may revise the SCS to meet the targets or prepare an APS.
- An APS is separate from the RTP, but consistent with the RHNA, and shows how the targets may be achieved through alternative development patterns, infrastructure, or additional transportation measures or policies.

4 Public Outreach, Review, and Hearings

- First, MPO must conduct at least two informational meetings on the draft SCS or APS for local elected officials (members of the board of supervisors and city councils) in each county within its region.
- Next, MPO must conduct a public workshop, consistent with Federal law, that includes a broad range of stakeholder groups. Workshops must provide the public with a clear understanding

standing of the issues and policy choices. Three workshops are required for counties with a population greater than 500,000.

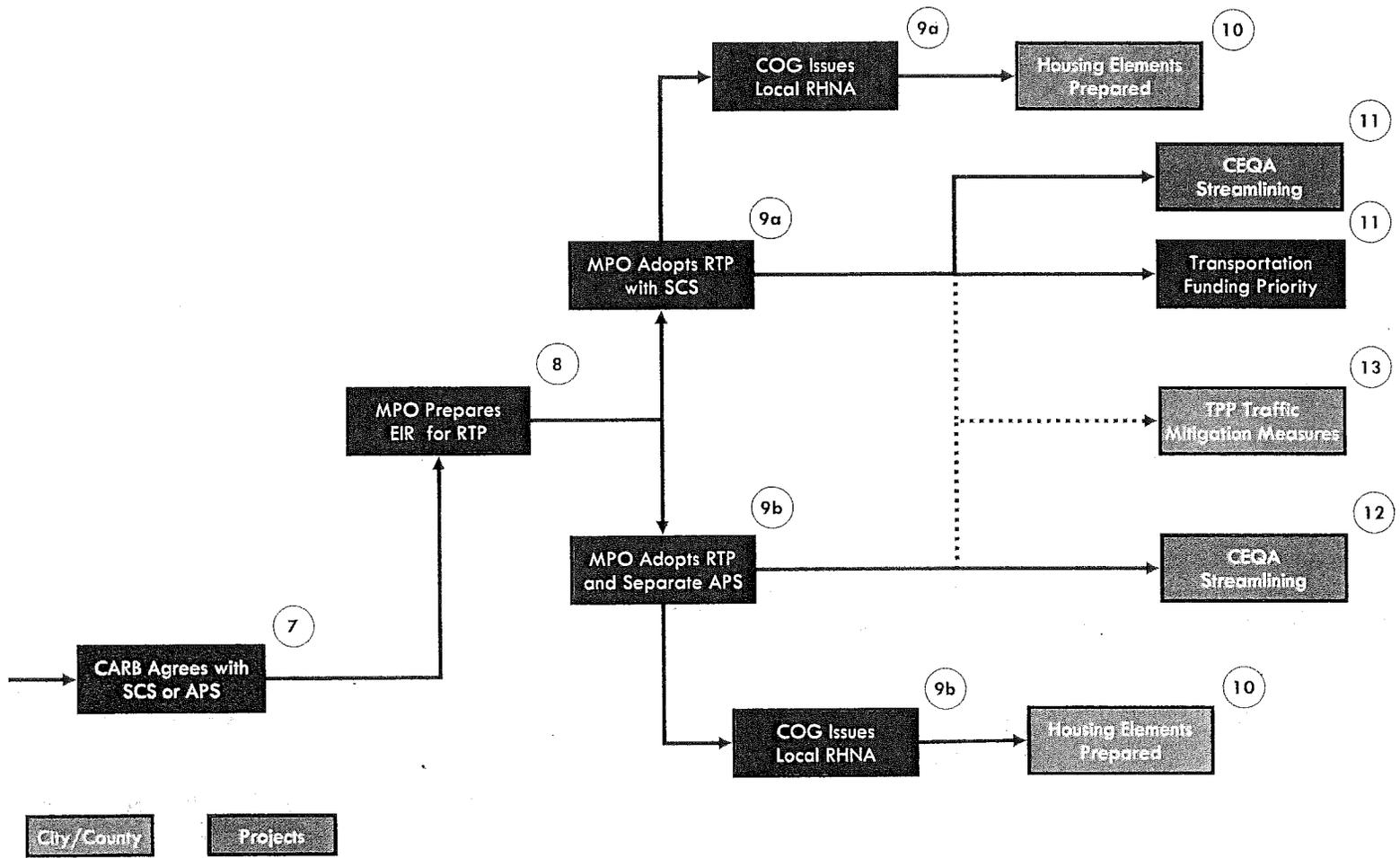
- Finally, MPO must hold at least three public hearings on the SCS or APS in multi-county regions, and two public hearings in single-county regions. The draft SCS or APS must be circulated at least 55 days before the adoption of the RTP.
- As part of the outreach process, MPO must establish a mechanism for public notices, access to information, and updates.

5 CARB Review and Decision

- After the public review process is complete, CARB reviews the draft SCS or APS.
- CARB can agree or disagree with MPO methodology and findings that the plan can feasibly achieve the regional GHG reduction targets. However, CARB does not "approve" either plan.
- CARB must complete its review and make determinations within 60 days.

6 SCS or APS Rejected

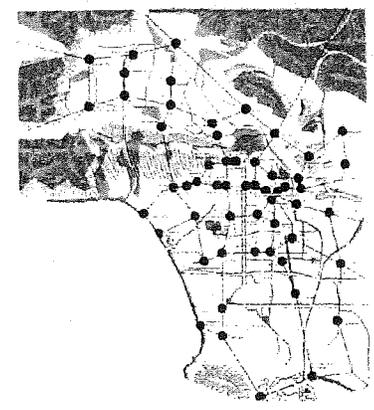
- If CARB disagrees with an SCS or APS, it must provide its reasons and make recommendations to remedy deficiencies.
- MPO must then revise the SCS or APS. If the MPO prepared an SCS, it may change its strategy and prepare an APS.
- MPO must then resubmit the plan to CARB for review until CARB agrees with the methodology and findings.



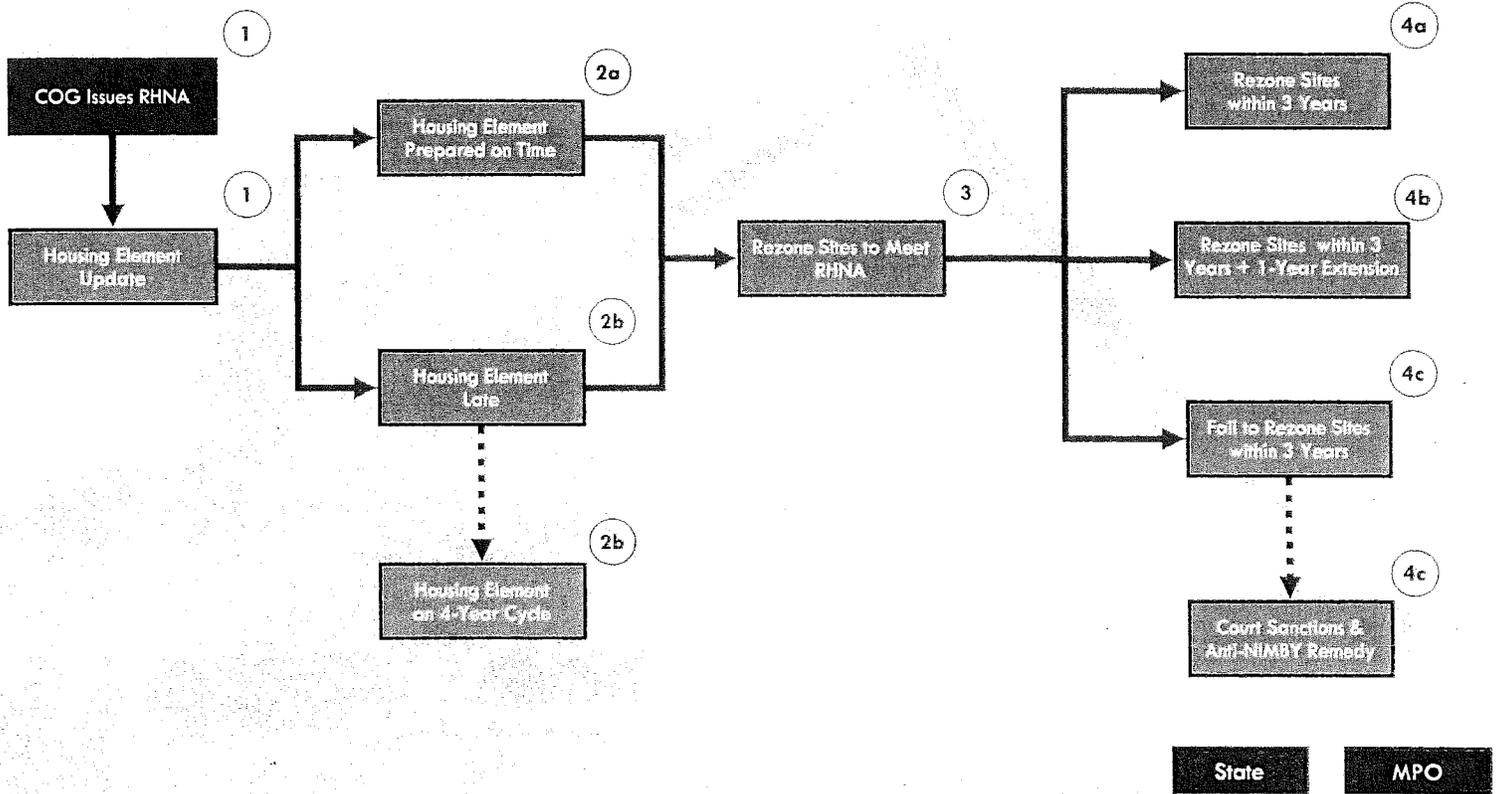
City/County Projects

- 7 CARB Agrees with SCS or APS**
 - If CARB agrees with the approach outlined in the SCS or APS, MPO integrates the SCS into the RTP ensuring internal consistency with the other RTP elements.
- 8 Review of RTP**
 - MPO then submits the RTP for State and Federal review and approval, and conducts applicable environmental review.
 - If MPO prepared an SCS, it is included in the RTP.
 - If MPO prepared an APS, it is not included in the RTP and not subject to State and Federal review or environmental review.
- 9a MPO Adopts RTP with SCS**
 - After review of the RTP that includes the SCS, MPO adopts the RTP.
 - COG then issues an RHNA that is consistent with the RTP and SCS to cities and counties within its region.
- 9b MPO Adopts RTP and Separate APS**
 - After review of the RTP, MPO adopts the RTP and separately adopts the APS.
 - The COG then issues RHNA that is consistent with the APS to cities and counties within its region.
- 10 Local Governments (Cities/Counties)**
 - Local governments (i.e., cities and counties) receive an RHNA from COG and prepare Housing Element.
 - *See the next page for details on the Housing Element process under SB 375.*

- 11 RTP with SCS Incentives**
 - Upon adoption of the RTP that includes an SCS, consistent residential/mixed-use projects and TPPs become eligible for CEQA streamlining.
 - Transportation funding priority is also available to MPO, jurisdictions, and projects that are consistent with the RTP and SCS.
- 12 RTP with APS Incentives**
 - Upon adoption of the RTP and separate APS, consistent residential/mixed-use and TPPs become eligible for CEQA streamlining.
 - Transportation funding priority is not given to MPOs that only have an APS.
- 13 Traffic Mitigation Measures**
 - Local governments can also prepare traffic mitigation measures to provide additional CEQA streamlining for TPPs. The measures must be consistent with the RTP and SCS or APS.
 - *See the next page for details on the process for projects to receive incentives.*



SB 375 For Housing Elements



1 COG issues RHNA

- Upon adoption of every other RTP (i.e., every eight years), COG issues the RHNA to cities and counties. The RHNA projection period is for ten years and the planning period is eight years. The RHNA must be consistent with the RTP and SCS or separate APS.
- Each jurisdiction has 18 months from the adoption of the RTP to prepare and submit its Housing Element to the California Department of Housing and Community Development (HCD). HCD must provide comments on the Housing Element within 60 days.
- After addressing HCD comments, jurisdictions have 90 days to adopt (or self-certify) the Housing Element.

2a Housing Element Prepared on Time

- If the Housing Element is prepared on time (i.e., 120 days after the statutory deadline), it is adopted by the local jurisdiction and certified by HCD.

2b Housing Element NOT Updated on Time

- If the Housing Element is not prepared within 120 days after the statutory deadline, the local jurisdiction housing element time frame is reset from every 8 years to every 4 years.

3 Rezone Sites

- If Housing Element identifies sites for rezoning to meet the RHNA, jurisdiction must rezone sites within 3 years of adoption or 90 days after receipt of HCD comments, whichever is earlier.

4a Rezone Sites within 3 years

- If a jurisdiction rezones its sites within 3 years, no further provisions apply.

4b Rezone Sites within 3 Years Plus 1-year Extension

- A 1-year extension to rezone sites is available to local jurisdictions if 75 percent of rezonings are complete and one of the following is presented in a public hearing and adopted in a resolution with supporting findings:
 - Action or inaction beyond the control of the local agency;
 - Infrastructure deficiencies are present due to fiscal or regulatory restraints; and
 - Major revisions to its general plan are needed to accommodate housing-related policies of an SCS or APS.
- If a jurisdiction rezones its sites within 4 years, no further provisions apply.

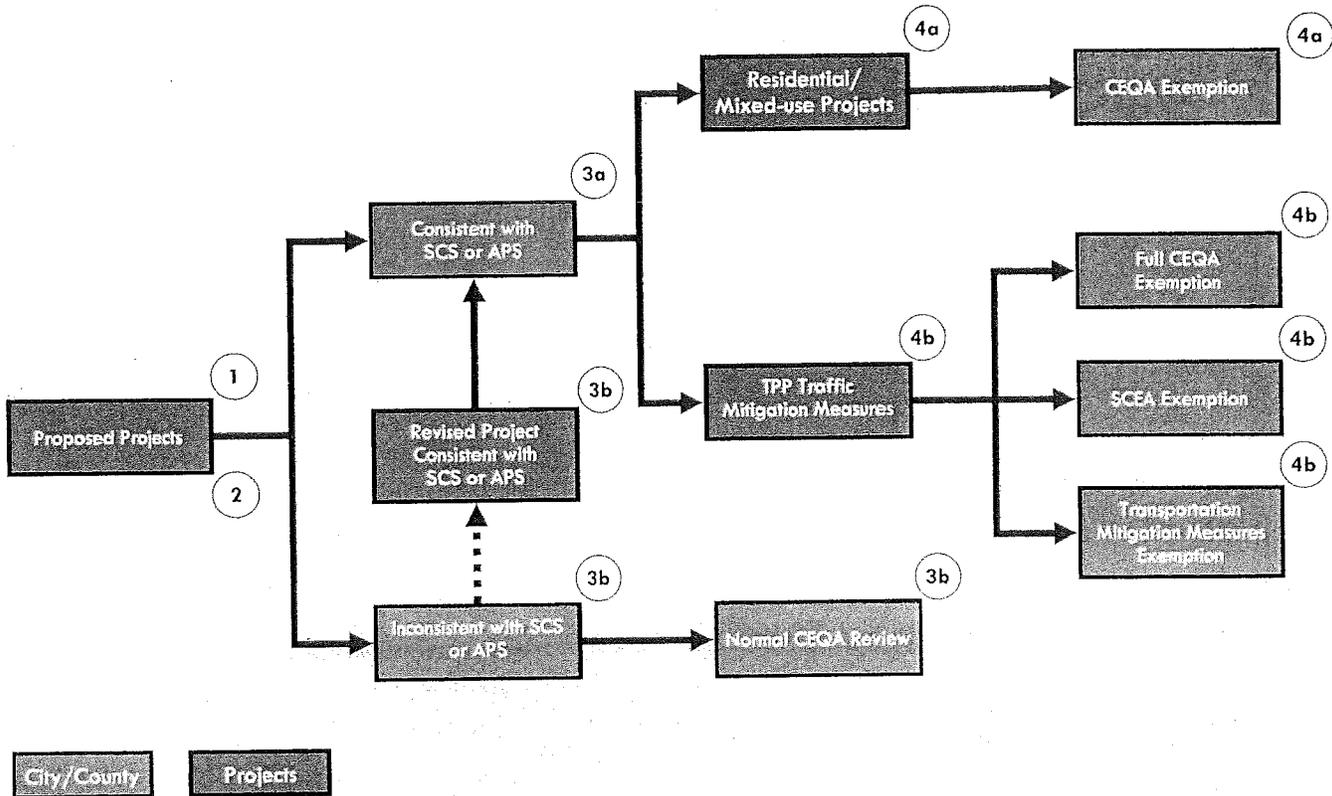
4c Fail to Rezone Sites within 3 years or 3 years plus 1-year Extension

- If a jurisdiction does **not** rezone its sites within 3 years or 3 years with a 1-year extension, it is vulnerable to challenges under the Housing Accountability Act (i.e., Anti-NIMBY law) and court sanctions.

Housing Element Cycle Starts Over

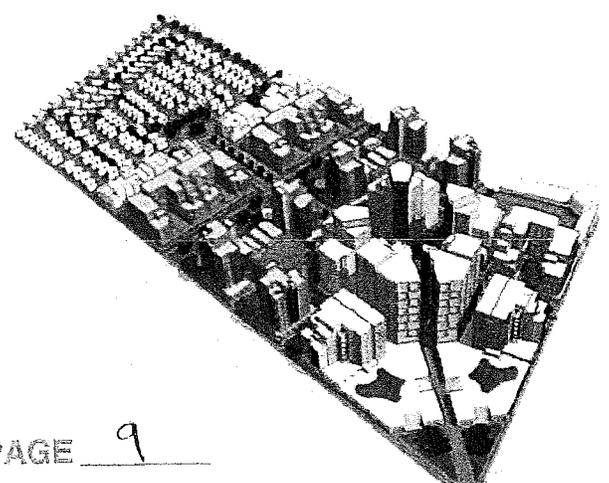
- The Housing Element cycle starts over, simultaneously with the RTP update schedule.
- Local jurisdictions must annually report on Housing Element implementation.
- Housing Elements must be updated every 4 years for those that did **not** meet statutory deadlines and every eight years for those that did meet their statutory deadlines.

SB 375 For Projects



City/County Projects

- 1 **Project proposed**
 - A development project is proposed in a jurisdiction where MPO has an adopted RTP that includes an SCS or an adopted RTP and separately adopted APS.
- 2 **Determine Consistency with SCS or APS**
 - The development project applicant requests CEQA streamlining available through SB 375.
 - During development review the local jurisdiction and MPO determine if the project is consistent with the SCS or APS.
- 3a **Consistent with SCS or APS**
 - If the development project is consistent with the SCS or APS, the jurisdiction and MPO determine the applicable CEQA streamlining available under SB 375.
 - Projects may be eligible for residential/mixed-use CEQA streamlining or Transportation Priority Project (TPP) CEQA streamlining.
- 3b **Inconsistent with SCS or APS**
 - If the development project is inconsistent with an SCS or APS, it is not eligible for CEQA streamlining.
 - The development project applicant may revise the project to be consistent with the SCS or APS or go through the normal CEQA review process.
- 4a **Residential/Mixed-use Projects**
 - A development project that is determined to be consistent with SB 375 requirements for residential/mixed-use projects is eligible for CEQA exemptions.
 - If the project is consistent with an RTP that includes an SCS, the project is eligible to receive priority for transportation funding through an MPO.
- 4b **Transportation Priority Projects (TPP)**
 - Development projects that are determined to be consistent with SB 375 requirements for Transportation Priority Projects (TPP) are eligible for CEQA exemptions including:
 - Full exemption;
 - Sustainable Communities Environmental Assessment (SCEA) exemption; or
 - Transportation Mitigation Measures Exemption. For this exemption, the local jurisdiction must have adopted traffic mitigation measures for TPPs that are consistent with the RTP and SCS or APS.
 - If the project is consistent with an RTP that includes an SCS, the project is also eligible to receive priority for transportation funding through an MPO.



SB 375 Special Concessions

SB 375/575 includes several special considerations for certain regions, projects, and programs.

Transportation Projects

Certain transportation projects are exempt from SB 375:

- 2007 and 2009 Statewide Transportation Improvement Program (STIP) projects.
- Prop 1B projects.
- Sales tax-funded project listed before December 31, 2008.

Sub-regional SCS/APS

- In a multi-county MPO, a sub-regional COG or County Transportation Commission may prepare a sub-regional SCS/APS.

San Joaquin Valley MPOs

- Encourages cooperation among the eight single-county MPOs in the San Joaquin Valley (SJCOG, StanCOG, MCAG, MCTC, COFOG, KCAG, TCAG, and KCOG).
- Permits two or more MPOs to prepare a multi-regional SCS/APS.

Southern California Association of Governments (SCAG)

- Within the SCAG region, a sub-regional COG or County Transportation Commission may prepare a sub-regional SCS/APS.
- SCAG is responsible for conducting outreach and assuring SCS/APS statutory consistency.
- SCAG must include sub-regional SCS/APAs in its regional SCS/APS if consistent with RTP requirements and Federal law.

Tahoe Regional Planning Agency (TRPA) (multi-state MPO)

- May use the Regional Plan for Lake Tahoe Region for its SCS/APS.

Coastal Cities

- Coastal cities must consider low- and moderate-income housing needs in the Coastal Zone.

Non-MPOs and Air Quality Attainment Areas

- Areas of the state that do not have MPOs or are in attainment for air quality may opt into the eight-year RHNA cycle.

Let us help you...

California is experiencing a major shift in environmental policy (i.e., AB 32, SB 97, SB 375) and witnessing its impact on how we plan and develop our communities in a more sustainable way. Many of our clients have found themselves at the center of climate change-related issues, legal threats, and increased environmental scrutiny.

Through our extensive experience helping cities and counties prepare general plans, Mintier Harnish has developed creative and effective approaches to dealing with global warming and climate change while planning for a more sustainable future. Our expertise places our clients at the forefront of climate change-readiness, including: mitigating greenhouse gas emissions and climate change impacts, identifying and exploiting carbon sequestration resources, preparing legally-defensible plans and environmental documents, and creating climate action plans and strategies.

Mintier Harnish is uniquely qualified to address your climate change needs with services that include:

- Updating General Plans to be climate change-ready.
- Preparing Climate Actions Plans (CAPs) and Strategies.
- Developing regional plans (e.g., SCS, APS).
- Assisting in regional planning efforts.
- Quantifying baseline greenhouse gas emissions inventories and establishing reduction targets for communities.
- Preparing realistic goals, policies, implementation programs, and actions to:
 - reduce greenhouse gas emissions;
 - adapt to regional climate change impacts; and
 - exploit local carbon sequestration resources.
- Analyzing greenhouse gas reduction and sustainability measures for costs and benefits.
- Monitoring the effectiveness of policies and programs in reducing greenhouse gas emissions and preparing for climate change impacts.
- Developing and conducting custom public outreach programs on global warming, climate change, and sustainability.

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California Government Code Section 65589.5

(a) The Legislature finds and declares all of the following:

(1) The lack of housing, including emergency shelters, is a critical problem that threatens the economic, environmental, and social quality of life in California.

(2) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.

(3) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(4) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing projects, reduction in density of housing projects, and excessive standards for housing projects.

(b) It is the policy of the state that a local government not reject or make infeasible housing developments, including emergency shelters, that contribute to meeting the need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without complying with subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands for urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) A local agency shall not disapprove a housing development project, including farmworker housing as defined in subdivision (d) of Section 50199.50 of the Health and Safety Code, for very low, low-, or moderate-income households, or an emergency shelter, or condition approval in a manner that renders the project infeasible for development for the use of very low, low-, or moderate-income households, or an emergency shelter, including through the use of design review standards, unless it makes written findings, based upon substantial evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588, is in substantial compliance with this article, and the jurisdiction has met or exceeded its share of the regional housing need allocation pursuant to Section 65584 for the planning period for the income category proposed for the housing development project, provided that

any disapproval or conditional approval shall not be based on any of the reasons prohibited by Section 65008. If the housing development project includes a mix of income categories, and the jurisdiction has not met or exceeded its share of the regional housing need for one or more of those categories, then this paragraph shall not be used to disapprove or conditionally approve the project. The share of the regional housing need met by the jurisdiction shall be calculated consistently with the forms and definitions that may be adopted by the Department of Housing and Community Development pursuant to Section 65400. In the case of an emergency shelter, the jurisdiction shall have met or exceeded the need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. Any disapproval or conditional approval pursuant to this paragraph shall be in accordance with applicable law, rule, or standards.

(2) The development project or emergency shelter as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.

(3) The denial of the project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible.

(4) The development project or emergency shelter is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(5) The development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance with this article.

(A) This paragraph cannot be utilized to disapprove or conditionally approve a housing development project if the development project is proposed on a site that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element, and consistent with the density specified in the housing element, even though it is

inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation.

(B) If the local agency has failed to identify in the inventory of land in its housing element sites that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to Section 65584, then this paragraph shall not be utilized to disapprove or conditionally approve a housing development project proposed for a site designated in any element of the general plan for residential uses or designated in any element of the general plan for commercial uses if residential uses are permitted or conditionally permitted within commercial designations. In any action in court, the burden of proof shall be on the local agency to show that its housing element does identify adequate sites with appropriate zoning and development standards and with services and facilities to accommodate the local agency's share of the regional housing need for the very low and low-income categories.

(C) If the local agency has failed to identify a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit, has failed to demonstrate that the identified zone or zones include sufficient capacity to accommodate the need for emergency shelter identified in paragraph (7) of subdivision (a) of Section 65583, or has failed to demonstrate that the identified zone or zones can accommodate at least one emergency shelter, as required by paragraph (4) of subdivision (a) of Section 65583, then this paragraph shall not be utilized to disapprove or conditionally approve an emergency shelter proposed for a site designated in any element of the general plan for industrial, commercial, or multifamily residential uses. In any action in court, the burden of proof shall be on the local agency to show that its housing element does satisfy the requirements of paragraph (4) of subdivision (a) of Section 65583.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the Congestion Management Program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) (1) Nothing in this section shall be construed to prohibit a local agency from requiring the development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the development.

(2) Nothing in this section shall be construed to prohibit a local

agency from requiring an emergency shelter project to comply with objective, quantifiable, written development standards, conditions, and policies that are consistent with paragraph (4) of subdivision (a) of Section 65583 and appropriate to, and consistent with, meeting the jurisdiction's need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. However, the development standards, conditions, and policies shall be applied by the local agency to facilitate and accommodate the development of the emergency shelter project.

(3) This section does not prohibit a local agency from imposing fees and other exactions otherwise authorized by law that are essential to provide necessary public services and facilities to the development project or emergency shelter.

(g) This section shall be applicable to charter cities because the Legislature finds that the lack of housing, including emergency shelter, is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

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

(2) "Housing development project" means a use consisting of any of the following:

(A) Residential units only.

(B) Mixed-use developments consisting of residential and nonresidential uses in which nonresidential uses are limited to neighborhood commercial uses and to the first floor of buildings that are two or more stories. As used in this paragraph, "neighborhood commercial" means small-scale general or specialty stores that furnish goods and services primarily to residents of the neighborhood.

(C) Transitional housing or supportive housing.

(3) "Housing for very low, low-, or moderate-income households" means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to moderate-income households as defined in Section 50093 of the Health and Safety Code, or middle-income households, as defined in Section 65008 of this code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate-income eligibility limits are based.

(4) "Area median income" means area median income as periodically established by the Department of Housing and Community Development

pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for very low or low-income households in accordance with the provisions of this subdivision for 30 years.

(5) "Disapprove the development project" includes any instance in which a local agency does either of the following:

(A) Votes on a proposed housing development project application and the application is disapproved.

(B) Fails to comply with the time periods specified in subparagraph (B) of paragraph (1) of subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

(i) If any city, county, or city and county denies approval or imposes restrictions, including design changes, a reduction of allowable densities or the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete pursuant to Section 65943, that have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households, and the denial of the development or the imposition of restrictions on the development is the subject of a court action which challenges the denial, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d) and that the findings are supported by substantial evidence in the record.

(j) When a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:

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

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

(k) The applicant or any person who would be eligible to apply for

residency in the development or emergency shelter may bring an action to enforce this section. If in any action brought to enforce the provisions of this section, a court finds that the local agency disapproved a project or conditioned its approval in a manner rendering it infeasible for the development of an emergency shelter, or housing for very low, low-, or moderate-income households, including farmworker housing, without making the findings required by this section or without making sufficient findings supported by substantial evidence, the court shall issue an order or judgment compelling compliance with this section within 60 days, including, but not limited to, an order that the local agency take action on the development project or emergency shelter. The court shall retain jurisdiction to ensure that its order or judgment is carried out and shall award reasonable attorney's fees and costs of suit to the plaintiff or petitioner who proposed the housing development or emergency shelter, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section. If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled, including, but not limited to, an order to vacate the decision of the local agency, in which case the application for the project, as constituted at the time the local agency took the initial action determined to be in violation of this section, along with any standard conditions determined by the court to be generally imposed by the local agency on similar projects, shall be deemed approved unless the applicant consents to a different decision or action by the local agency.

(l) If the court finds that the local agency (1) acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter in violation of this section and (2) failed to carry out the court's order or judgment within 60 days as described in subdivision (k), the court in addition to any other remedies provided by this section, may impose fines upon the local agency that the local agency shall be required to deposit into a housing trust fund. Fines shall not be paid from funds that are already dedicated for affordable housing, including, but not limited to, redevelopment or low- and moderate-income housing funds and federal HOME and CDBG funds. The local agency shall commit the money in the trust fund within five years for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households. For purposes of this section, "bad faith" shall mean an action that is frivolous or otherwise entirely without merit.

(m) Any action brought to enforce the provisions of this section shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure, and the local agency shall prepare and certify the record of proceedings in accordance with subdivision (c) of Section 1094.6 of the Code of Civil Procedure no later than 30 days after the petition is served, provided that the cost of preparation of the record shall be borne by the local agency. Upon entry of the trial

court's order, a party shall, in order to obtain appellate review of the order, file a petition within 20 days after service upon it of a written notice of the entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow. If the local agency appeals the judgment of the trial court, the local agency shall post a bond, in an amount to be determined by the court, to the benefit of the plaintiff if the plaintiff is the project applicant.

(n) In any action, the record of the proceedings before the local agency shall be filed as expeditiously as possible and, notwithstanding Section 1094.6 of the Code of Civil Procedure or subdivision (m) of this section, all or part of the record may be prepared (1) by the petitioner with the petition or petitioner's points and authorities, (2) by the respondent with respondent's points and authorities, (3) after payment of costs by the petitioner, or (4) as otherwise directed by the court. If the expense of preparing the record has been borne by the petitioner and the petitioner is the prevailing party, the expense shall be taxable as costs.

(o) This section shall be known, and may be cited, as the Housing Accountability Act.