

Legal Updates & News

Bulletins

SB 375 Becomes Law, Pushing Greenhouse Gas Reduction to the Forefront of California Transportation, Economic and Land Use Planning

October 2008

by [David A. Gold](#), [Zane O. Gresham](#), [Mitchell S. Randall](#), [Miles H. Imwalle](#)

Related Practices:

- [Cleantech](#)
- [Environmental Law](#)
- [Land Use & Natural Resource Law](#)

LUEL Briefing, October 2, 2008

With California's historic budget battle finally resolved, the Governor recently signed hundreds of bills that had been waiting in limbo, including SB 375, a law some have declared to be the most significant piece of land use legislation since 1976's Coastal Act. Whether SB 375 results in the changes its proponents hope for, only time will tell. At the very least it is an ambitious – and complex – law that seeks to tackle one of the most challenging sources of greenhouse gas (“GHG”) emissions: the private automobile. This is a key issue for California's efforts to meet AB 32's GHG emissions reduction mandate because the Air Resources Board has found that, even if cars become more efficient and run on cleaner fuels, the target levels cannot be met without also reducing vehicle miles traveled. SB 375 takes on this task by envisioning a bold new development pattern, one in which people live closer to jobs and services and have better access to transit. SB 375's approach to this problem is to link what have largely been unrelated planning processes: regional transportation, housing allocation, and land use planning.

If this so-called “climate change smart growth bill” lives up to its supporters' claims, California may witness a new era in land use planning and development in California, with a movement away from low-density suburban “sprawl” and toward higher-density, transit-oriented-development – that is, a development pattern less dependent on the private automobile and one with a smaller carbon footprint. On the other hand, if its detractors prove correct, SB 375 will add another layer to the planning process and new avenues for litigation, while doing little to reduce GHG emissions. Whichever viewpoint eventually proves correct, SB 375 represents a bold shift away from the suburban sprawl type of development and supporting transportation, which has made up most of California's growth for the last several decades. Anyone interested in California's transportation systems, housing development, or land use planning needs to be familiar with SB 375.

What you Need to Know About SB 375

The heart of SB 375 is the creation of a new regional planning document called a “sustainable communities strategy,” or “SCS.” An SCS is essentially a blueprint for regional transportation infrastructure and development that is designed to reduce GHG emissions from cars and light trucks to target levels that will be set by the Air Resources Board (“ARB”) for 18 regions throughout California. Each of the various metropolitan planning organizations, and the Association of Bay Area Governments (“ABAG”) in the Bay Area, must prepare an SCS and include it in that region's regional transportation plan (“RTP”). ARB must also determine whether implementation of the SCS will achieve the region's GHG emissions reduction target. The SCS, in turn, influences transportation, housing, and land use planning. For example, transportation projects and programs must be consistent with the SCS in order to receive state funding. The housing allocation plan under the regional housing needs allocation process must be consistent with the SCS. On the land use front, certain residential and mixed-use projects that are consistent with the SCS may be eligible for some form of CEQA relief.

For public and private project applicants, the biggest carrot is CEQA relief. Certain qualifying in-fill residential and mixed-use projects may take advantage of a new streamlined review that allows the project applicant to forego certain analyses, including GHG emissions impacts, cumulative traffic impacts, or growth-inducing impacts. SB 375 also introduces a new CEQA document, known as a “Sustainable Communities Environmental Assessment,” which may be used by certain qualifying projects and is similar to a Negative Declaration or Mitigated Negative Declaration, except that it receives more deference when reviewed by a

court. SB 375 also exempts certain in-fill projects from CEQA review, although the exemption is narrow in scope and in practice may have relatively little impact on development patterns. (Indeed, CEQA already has an in-fill exemption, which has only been expanded upon slightly under SB 375) Thus, the legislation encourages project proponents to pursue projects consistent with the SCS and the goals of SB 375. However, at the insistence of local governments, there is nothing in SB 375 to prevent local jurisdictions from approving traditional “sprawl” type development and supporting infrastructure. It remains to be seen whether the CEQA relief “carrot” is strong enough to lure public and private project proponents into doing projects that otherwise would not have happened.

SB 375, however, does have teeth, particularly as it relates to the state’s transportation infrastructure and its housing allocation planning process. Most significantly, transportation projects and programs must be consistent with the SCS to receive state transportation funding, which will likely mean a much stronger focus on transit projects and less on highway projects.

As for housing, cities may under certain circumstances be required to rezone parcels to residential or may have less discretion to disapprove certain residential projects. At the same time, cities and counties are given some new flexibility, as SB 375 lengthens the regional housing needs allocation process from five to eight years.

As for the timing of SB 375, two key events must occur before any of the various incentives become available. First, ARB must set target GHG emissions levels for the various regions, a process that must be completed by September 30, 2010. Second, the applicable metropolitan planning organization must prepare and adopt an SCS for the region. Both processes are likely to be contentious and potentially subject to litigation.

That is not to say that impacts will not be felt in the near term. Similar to AB 32, which had immediate unintended impacts on the scope of CEQA review, SB 375 is likely to quickly engender action at the local level and by environmental organizations to move toward this new denser, transit-focused infrastructure and development pattern. This will most likely be true particularly in the state’s existing metropolitan regions, such as the Bay Area, Sacramento, Los Angeles, and San Diego. For the more rural areas, which in the last decade witnessed an explosion in suburban residential development, particularly in the Central Valley, SB 375 may, combined with the current economic climate, severely curtail continued growth. The passage of SB 375 is a strong signal that California’s land use and infrastructure planning – indeed its entire economy and way of life – may be shifting to one that is more urban and transit-friendly.

For a detailed review of the mechanics of SB 375, [please see below](#).

A Word on How the SB 375 Sausage Was Created

SB 375 is a piece of compromise legislation led by Senator Steinberg that has been endorsed by a wide array of interest groups, including home builders, environmentalists, local governments, and affordable housing advocates. While Senator Steinberg has been widely praised for bringing together such a diverse group, it remains to be seen whether the end result will achieve its lofty goals. Local governments withheld support until language was added to ensure that the bill did not infringe on their traditional land use decision-making authority (e.g., General Plans do not need to be consistent with the SCS). Indeed, there is very little in SB 375 to require cities or counties to carry out development consistent with the SCS. Environmental groups fought hard against giving up too much in the way of CEQA relief. Home builders pushed for a requirement that local agencies be required to rezone identified housing sites within 3 years. And affordable housing advocates pushed for stronger affordable housing requirements to obtain the CEQA benefits. While each group achieved some of what it was looking for, each also compromised in other areas. One group remains largely opposed – many local transportation authorities still oppose the bill and lobbied the Governor to veto it due to its implications for RTPs and the funding for their projects and programs.

The great unknown is whether this bill – which operates more by offering “carrots” than by threatening “sticks” – will actually result in a changed development pattern, or whether it will just add another layer of planning (and related delay, cost, and litigation risk). One thing remains certain, anyone interested in the development of California, particularly its transportation and housing, needs to be familiar with this significant new legislation.

If you would like further information or have questions relating to SB 375, or California’s other climate change regulations under AB 32 or evolving Green Building standards, please contact David Gold (dgold@mofa.com /925-295-3310) or Mitch Randall (mranda@mofa.com / **925-295-3377**) in Walnut Creek, Zane Gresham (zgresham@mofa.com / **415-268-7145**) or Miles Imwalle (mimwalle@mofa.com / **415-268-6523**) in San Francisco, or Tom Ruby (truby@mofa.com / **650-813-5857**) in Palo Alto.

Detailed Overview of SB 375

(1) *Sustainable Communities Strategy, Emissions Reduction Targets and Transportation Funding.*

The Sustainable Communities Strategy. Regional transportation plans (“RTP”) prepared by the applicable metropolitan planning organization (“MPO”), or ABAG in the Bay Area, must include an SCS. The SCS is a blueprint for development within that region, designed to reduce GHG emissions from cars and light trucks, that identifies the general location of various land uses and focuses on identifying areas for locating regional housing needs and the transportation network.

Regional Emissions Reduction Targets. ARB, in consultation with each MPO, must set GHG emissions reduction targets for the car and light truck sector in each region. Targets must be set by September 30, 2010, and updated every 8 years.

Quantification of Reductions. The MPO must quantify the reduction in GHG emissions projected to be achieved by the SCS and determine if the target reduction level will be met. If it will not be met, the MPO must prepare an “alternative planning strategy” showing how additional reductions will be achieved to meet the target.

ARB Review of SCS. Although the MPO prepares the SCS, ARB reviews it to confirm that it will meet the region’s target.

Transportation Funding Tied to SCS. Transportation projects and programs must be consistent with the SCS to receive state funding.

The SCS Does Not Regulate Land Use. The legislation states that SCS documents do not regulate land use and are not subject to state approval. General Plans prepared by cities and counties need not be consistent with the region’s SCS.

(2) *The Housing Requirements*

Regional Housing Needs Assessment Process Revisions. SB 375 aligns the regional housing needs allocation process with the RTP process, and the housing allocation plan must allocate housing units consistent with the SCS. SB 375 extends the regional housing needs allocation process from five to eight years.

Rezoning of Housing Sites. SB 375 requires that the housing element in a city or county’s General Plan include an inventory of land suitable for residential development. If necessary to meet the housing needs of all income levels, the local jurisdiction must rezone identified housing sites within 3 years of adoption of the housing element. In certain circumstances, the bill prohibits a local jurisdiction that fails to complete a required rezoning within the timeframe from disapproving a housing development project for the identified site. The applicant or any interested person may enforce this provision through judicial proceedings.

(3) *CEQA Incentives for “Transit Priority Projects” and Other Residential and Mixed Use Residential Projects*

CEQA Exemption for “Sustainable Communities Projects.” A project is exempt from CEQA if it (1) qualifies as a “transit priority project” and (2) meets the “sustainable communities project” requirements as declared by the legislative body of the local jurisdiction. As shown below, this is a narrow exemption.

Transit Priority Project. To qualify as a “transit priority project,” it must be consistent with the applicable SCS and (i) contain a minimum 50% residential component, (ii) meet minimum density requirements, and (iii) be located within a half mile of an existing major transit stop or a “high quality transit corridor.”

Sustainable Communities Project. A “transit priority project” may qualify as a “sustainable communities project,” if, among other requirements, it

- is not located on a site with wetlands or wildlife habitat of significant value;
- the buildings meet minimum energy efficiency standards;

- the landscaping meets minimum water efficiency standards;
- the site is not more than 8 acres;
- the project consists of less than 200 residential units;
- the project is located within ½ mile of a rail or ferry transit station or within ¼ mile of a “high-quality transit corridor”; and,
- the project either will meet certain affordable housing requirements or provide required open space.

Streamlined Review for Certain Other Residential or Mixed-Use Projects. Although a CEQA exemption is not available, certain residential or mixed-use projects that don’t qualify as a sustainable communities projects may still qualify for a streamlined environmental review under CEQA if they (i) are consistent with the SCS, and (ii) incorporate feasible mitigation measures set forth in a prior applicable environmental impact report.

If a project qualifies, the environmental document for the project is not required to (i) discuss growth inducing impacts or car and light truck impacts on global warming and the regional transportation network, or (ii) include a reduced residential density alternative to address the effects of car and light truck trips or an off-site alternative.

In addition, a qualifying project that would normally have prepared a Negative Declaration or a Mitigated Negative Declaration (“ND” or “MND”) may prepare what SB 375 dubs a “Sustainable Communities Environmental Assessment.” This new document is essentially the same as an ND or MND, except if it is challenged in court, the court reviews it according to the more deferential “substantial evidence” standard rather than the “fair argument” standard, meaning that a “Sustainable Communities Environmental Assessment” is more likely to withstand judicial challenge than a traditional ND or MND.

Generic Traffic Mitigation Measures. Local jurisdictions may adopt traffic mitigation measures that would apply to “transit priority projects.” If such measures are adopted, a transit priority project is not required to comply with any additional traffic related mitigation measures.