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REAL ESTATE & LAND USE

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SB 375 – California’s New Planning Paradigm

Will it Work?

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Senate Bill (“SB”) 375 (Steinberg) may turn out to be the most significant land use legislation in California since general plan and zoning consistency was mandated in the late 1960’s. “May turn out” because there are many obstacles to the effective implementation of this legislation and because the bill was crafted through an uneasy compromise among the various constituencies, including government advocacy organizations like the League of California Cities and the California State Association of Counties, builder groups, environmental organizations, and affordable housing advocates.

Goals of SB 375

The focus of the legislation is the reduction in greenhouse gases (GHG) through the reduction of vehicle miles traveled by passenger vehicles through land use regulation and improved transportation opportunities. This reduction is to be accomplished primarily in four ways:

- Connecting regional planning to the existing regional transportation planning process.
- Coordinating the regional housing needs process with regional transportation planning.
- Providing incentives for local governments to implement the regional plans through funding opportunities.
- Providing incentives for builders to comply with regional

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plans and consistent local plans in the form of streamlined California Environmental Quality Act (CEQA) processing.

As articulated in the legislation itself, one of the goals is to encourage local and regional planning agencies to develop “regional blueprints” to guide land use allocations. Land use planning in California has historically reflected a struggle between local jurisdictions (cities and counties), regional planning agencies (such as the Southern California Association of Governments (SCAG) in Southern California or the Association of Bay Area Governments in Northern California (ABAG), state agencies with regional regulatory powers that affect local land use (like air quality management districts or Regional Water Quality Control Boards), and the state and federal governments themselves. By focusing on regional planning, SB 375 attempts to incentivize local governments to make land use decisions consistent with the plans developed by regional planning agencies.

The SB 375 Process

The basic concept behind SB 375 is to coordinate two existing regional planning functions, the Regional Housing Needs Assessment (Housing Needs Assessment) and the Regional Transportation Plan, which are already the responsibility of Metropolitan Planning Organizations, and to add a new land use function designed to achieve GHG reduction targets. In Southern California the two Metropolitan Planning Organizations are SCAG and the San Diego Association of Governments (SANDAG). The process is as follows:

- The California Air Resources Board (CARB) will establish regional emission reduction targets for each region defined as a Metropolitan Planning Area *by no later than September 30, 2010*.
- Each Metropolitan Planning Organization must then develop a Sustainable Communities Strategy (SCS) to achieve these targets within its region, if feasible to do so. The SCS must identify areas sufficient to house regional population and projected growth, a regional transportation network, and a forecasted development pattern, which, when integrated with the transportation network, will achieve the GHG reduction targets.
- The SCS will be a part of the Regional Transportation Plan that is to be developed by each transportation planning agency. In general, these plans will be required to be completed in 2012. The Regional Transportation Plan is the key document for the

with key executive and legislative branch officials and their staffs in both political parties at the federal, state and local level.

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allocation of federal transportation dollars to states and regions within states.

- If the SCS fails to achieve the targets, an Alternative Planning Strategy (APS) must be developed by the Metropolitan Planning Organization. The APS must achieve the targeted reductions. The APS, however, does not become part of the Regional Transportation Plan, which means that it serves as a mostly advisory document and will not affect transportation funding.
- CARB then reviews the SCS and APS, if any. CARB can only approve or reject the Metropolitan Planning Organization's determination that the plan will achieve the regional targets. If CARB determines that a plan will not achieve the reduction targets, the Metropolitan Planning Organization shall revise its strategy or adopt an APS, if one has not already been adopted, and submit them to CARB for further review. The Metropolitan Planning Organization must obtain CARB acceptance that either the SCS or APS will achieve the regional targets.
- Cities and counties are not required to incorporate the SCS or APS into local general plans, but a failure to do so will affect the availability of federal and state transportation dollars for nonconforming local agencies.

Housing Element Law

SB 375 resolves past inconsistencies between regional transportation planning and regional housing plans by requiring that the regional housing needs assessments be considered in the development of the Regional Transportation Plan and that the Housing Needs Assessments be consistent with the Regional Transportation Plan development patterns. SB 375 attempts to adjust the time frames for the adoption of Housing Needs Assessments and Regional Transportation Plans so as to permit this coordination to occur. SB 375 also includes certain anti-NIMBY provisions limiting the ability of a local agency to turn down or render infeasible certain affordable housing projects. Finally, SB 375 mandates that cities and counties rezone properties to match their Housing Needs Assessment allocations within three years of the adoption of their updated housing element. A failure to rezone results in an automatic determination that their housing element is out of compliance.

CEQA Streamlining

There are two types of CEQA streamlining available. Both require the adoption of an SCS or APS, which means that the

streamlining will not be available until around 2012. The two types of streamlining are as follows:

1. Residential and Mixed-Use Projects. For residential or mixed-use projects where at least 75% of total building square footage consists of residential use that are consistent with a CARB-approved SCS or APS, the CEQA documentation is not required to reference, describe or discuss growth-inducing impacts or project-specific or cumulative impacts on global climate change resulting from passenger vehicles.

2. Transit Priority Projects. Transit Priority Projects are defined as projects that (i) consist of at least 50% residential use based on total building square footage (if the project includes between 26% and 50% nonresidential uses the project must have a floor area ratio (FAR) of not less than .75), (ii) provide a minimum net density of 20 units per acre, and (iii) are located within a half mile of a major transit stop or high-quality transit corridor included in a Regional Transportation Plan. A Transit Priority Project may qualify for one of three CEQA "streamlines."

- Transit Priority Projects which meet detailed specified criteria similar to those currently available for infill projects, not the least of which is that the project must be less than 8 acres and 200 units, are exempt from CEQA altogether.
- Projects which do not qualify for a complete exemption but which have incorporated all feasible mitigation measures, performance standards, or criteria set forth in prior applicable environmental impact reports (EIRs) may qualify for a "sustainable communities environmental assessment" (SCEA) or a streamlined EIR. A SCEA is similar to a negative declaration with some key differences, including a requirement that the project include all feasible mitigation measures from previous environmental documents addressing the project and where cumulative impacts have been mitigated.
- Projects which do not qualify for a SCEA may utilize a streamlined EIR, which is essentially a focused EIR that is not required to analyze off-site alternatives.
- Where a Transit Priority Project has to undergo some CEQA review, SB 375 imposes limits on traffic mitigation measures that can be imposed on Transit Priority Projects by the local jurisdiction.

Will It Work?

Like any piece of complex legislation, time will tell if SB 375 will be able to achieve its goals. Much will depend on how well the various interest groups continue to cooperate as the planning process unfolds. There undoubtedly will be follow-up legislation, some of which is already in the works.

The following are some of the issues and obstacles that must be overcome:

- A key component of the implementation strategy for SB 375 will be so-called “smart growth” strategies - that is, high-density infill projects near transit facilities and major transportation corridors. A key question is whether there will be a market for this kind of product to the degree necessary to make this strategy work. Key issues for consumers will be the lack of quality schools, limited park and recreation opportunities and fear of high-crime neighborhoods near the new development.
- A second issue with smart growth strategies is how the needed infrastructure in these areas will be funded. Project developers cannot afford to re-create whole communities, particularly in this economic environment.
- A third issue is the tension between “smart growth” advocates that encourage transit-oriented development nodes and “public health” advocates who express concern with the amount of toxic air contaminants exposure experienced by residents close to transportation corridors and transit facilities.
- Will the density and intensity of the smart growth projects conflict with current thinking on environmental impact assessment, particularly traffic impacts? Under smart growth thinking impacted intersections are a good thing because the congestion will motivate people to use transportation alternatives, assuming they are available. Under current traffic analysis methodology, without mitigation these intersections would result in a significant unavoidable impact and a statement of overriding considerations would be required in order to approve the project. Moreover, idling vehicles sitting in gridlock generate their own significant air quality impacts.
- One of the key compromises was the elimination of the original concept of urban limit lines. A concern is that the technical criteria and methodology to be developed by CARB and the Metropolitan Planning Organizations may undermine this compromise through an emphasis on reducing vehicle miles traveled solely through limiting suburban development.

- Will federal oversight of the Regional Transportation Plan process pursuant to the Clean Air Act, which requires a determination that the Regional Transportation Plan includes “realistic growth patterns,” result in a turf war with federal agencies?
- Will the implementation of SB 375 conflict with the implementation of AB 32? The broad authority to address global climate change under AB 32 was specifically delegated to CARB. SB 375 undercuts this authority by assigning responsibility for land use planning to the Metropolitan Planning Organizations. Nothing in SB 375 prevents CARB from regulating the same things. Will CARB and environmental activists accept this encroachment?
- Will the CEQA streamlining provide any incentives at all? The exemptions and limitations do not vary much from existing CEQA streamlining for certain infill projects. These procedures have rarely been utilized due to the very restrictive constraints on qualification for these exemptions and limitations, and the CEQA streamlining provisions of SB 375 are available only to a certain set of projects that can meet rigid criteria. Of particular concern is what will be determined to be required for a project to be “consistent” with a SCS or APS.
- Will the Metropolitan Planning Organizations be able to perform the kind of planning function, particularly given the public scrutiny from local agencies and the general public, that SB 375 assigns to them? The normal planning process for Metropolitan Planning Organizations is very different from the processes conducted by local elected officials. Will local activists accept a limited role in the planning process?
- Will there be adequate funding available for the planning process? This is a significant new function for the Metropolitan Planning Organizations. While some federal dollars now available for transportation planning may be available, it is unlikely that this will be sufficient to cover these costs. The state has its own financial issues. Where will the needed funding come from?
- Will project proponents be entirely left out of the planning process? Most planning decisions will be made long before land is acquired and site-specific planning by developers occurs.
- Vested rights for projects shall not be abrogated. When must the right have been vested? At the time of the effective date of SB 375? At the time of CARB

acceptance of the SCS or APS? Some other point in time?

- Finally, will the Regional Transportation Plans now become the subject of legal challenges much as CEQA documents are today? Will the leverage point simply be moved to the regional level?

Time Will Tell

The implementation of SB 375 is bound to be a challenge to all affected parties. This is particularly true of the building industry. Regional building organizations will have to take a far more active role in the regional planning process if industry concerns are to be considered. Project proponents may not be around when key planning decisions are made at the regional level, and therefore development advocates may find themselves working much earlier in the process before much different agencies (such as SCAG or the OCCOG) to advocate for where housing should be located and transportation facilities built. If the funding carrot works, local agencies will have to adhere to these regional plans and their ability to respond to specific project proposals will be significantly limited. This planning structure also has significant cost implications. How will needed infrastructure in infill areas be funded? How will affordable housing be financed? What will the impact of the regional planning paradigm be on land costs? What will be the cost implications of high-density development? Will the current economic situation compel the Legislature to backpedal on some or all of these strategies? Time will tell.

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