

## Environmental and Land Use **ADVISORY**

October 13, 2008

### Preferred Growth Planning Becomes State Mandate Under SB 375

Newly passed Senate Bill 375 is touted as the most important “land use” bill to reach the Governor’s desk in over 30 years. Newcomers to the bill might find this odd, given that the professed purpose of SB 375 is to reduce automobile and light truck greenhouse gas emissions throughout California in compliance with its parent-bill, AB 32.

Predecessor AB 32 requires the state to reduce greenhouse gas emissions (GHGs) to 1990 levels by the year 2020. Regulatory efforts to date have primarily focused on larger stationary sources such as industry. Senate Bill 375 tiers off these carbon emission mandates to target the transportation sector, which contributes over 40 percent of GHGs throughout the state. Automobiles and light trucks alone contribute almost 30 percent. While transportation emissions can be reduced by new technologies and low carbon fuels, SB 375 proclaims that additional measures are needed if the State is to achieve its 2020 reduction goals under AB 32.

#### How Does SB 375 Work?

Senate Bill 375 attempts to reduce automobile and light truck emissions by reducing the number of “vehicle miles traveled” (VMTs). The strategic linchpin is reducing VMTs through “preferred growth” planning. That is, the bill seeks to curtail VMTs — and hence reduce emissions — by creating regulatory “incentives” for local jurisdictions to plan for and approve “transit priority projects” that, in theory, will concentrate new development along transit centers and reduce the amount of time we spend in our cars. Sounds simple, right? Perhaps — until one gets into the nitty-gritty.

#### And Gritty It Is

Senate Bill 375 is 52 single-spaced pages of densely layered, overlapping mandates requiring the cooperative efforts of the State Air Resources Board (ARB), the California Transportation Commission (CTC), the California Department of Transportation (DOT), a newly-appointed Regional Targets Advisory Committee (RTAC) and 18 federally designated metropolitan planning organizations (MPOs) throughout California. The bill requires these entities to develop emission reduction targets, adopt new guidelines and develop integrated regional planning and transportation strategies designed to meet the new VMT reduction goals.

By September 30, 2010, for example, the ARB in coordination with the MPOs must draft and release GHG reduction targets for automobile and light truck emissions for the years 2020 and 2035. Once adopted, the

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ARB-appointed RTAC will review and update these reduction targets every eight years. In turn, each MPO must develop a “sustainable communities strategy” for integration into the applicable regional transportation plan. Each sustainable communities strategy must (among other requirements) identify development areas capable of meeting the region’s projected housing needs, identify a transportation network capable of serving the region– and forecast regional development patterns which, “when integrated with the transportation network,” will reduce VMTs in such a way as to achieve ARB’s 2020 and 2035 reduction targets. In addition, each “sustainable communities strategy” must be publicly vetted by the MPO and approved by the ARB. If a region’s MPO cannot develop and get approval for its sustainable communities strategy, the legislation allows for an “alternative planning strategy” which, if implemented, would meet the approved VMT reduction goals. The ARB has the authority to either approve or reject the MPO’s sustainable communities strategy. If rejected, then it’s back to the drawing board for the MPO.

One can easily see this is no small feat, and obviously no quick fix. The legislation also requires the new RTAC to assist ARB in setting the GHG emission reduction targets; the CTC to revamp the guidelines for travel demand models to be used by MPOs in developing regional transportation plans; regional transportation planning agencies to prepare and adopt regional transportation plans that achieve a coordinated and balanced regional system; and local governments to update their housing elements to incorporate the regional needs assessment and actually rezone land under a specified timetable.

### **“SB 375 Does Not Regulate Land Use”**

Senate Bill 375 claims not to “regulate” local land use and states that “nothing” in the bill requires a city’s or county’s land use regulations to be consistent with either the applicable regional transportation plan or an MPO’s sustainable communities strategy or alternative planning strategy.

While this technically may appear to be true, the legislation nevertheless mandates that local governments within MPO non-attainment areas must revise their housing elements within 18 months of the adoption of the new regional transportation plan and sustainable communities strategy. The housing element must reflect the revised regional housing needs assessments and, further, local governments must rezone land to accommodate designated housing allocations. All the statute fails to mandate are the areas subject to rezoning. Moreover, if the local government fails to accomplish the rezones, it can potentially lose its authority to disapprove projects that are consistent with an applicable sustainable communities strategy and also be subject to judicial review and sanctions.

On the upside, there are a few carrots thrown in for local governments who get with the program. First, those cities and counties that implement planning consistent with its approved sustainable communities strategy will maintain eligibility for federal transportation funding. Those who don’t, won’t.

Second, the legislation creates an exemption from the California Environmental Quality Act (CEQA) for qualified transit oriented development projects. To qualify for the exemption, thereby expediting the permit process, the development must be a “transit priority project” as defined by the statute and must also be consistent with the applicable sustainable communities strategy. The Bill also creates a new type of “streamlined” environmental review process for transit priority projects that do not entirely qualify for a full exemption. These new processes are modeled on similar exemptions already contained in CEQA for streamlining other public benefit development projects, such as those that provide affordable housing.

## Is GHG Our New Land Use Mantra?

Many will say SB 375 was bound to happen and is long overdue. Its author, Senator Darrell Steinberg, has been shepherding the bill for several years. Noted land use expert William Fulton has also observed that SB 375 has “nary a new idea in it” given that its central focus — tying transportation funding to “smart growth” — has been “kicking around Sacramento for 20 years.” But most will agree that state prioritization of GHG emission reductions in the form of AB 32 was the golden axe needed to chop through the “decades-old logjam” between environmentalists, developers and government to enact a “smart-growth” bill with edge.

Yet the central question is obvious: *Will it work?* Is it the case that residential development throughout California will now be driven by GHG emission standards, or that ARB regulations will actually become the new measuring stick for future development? Senator Steinberg says it worked in Sacramento, so it should also work statewide. Yet as we saw with Senate Bill 1818 — which mandated local incentives for qualified affordable housing projects — many local jurisdictions took years to implement the mandates, and some never have.

And although the legislation contains a so-called CEQA exemption for qualified transit priority projects, the rigors of meeting the statute’s criteria are enough to swallow the exemption — not to mention the resulting minefield of potential litigation for agencies that actually use it.

But what it does instill in local land use decisionmaking is the concept that GHG emission reduction is a hyper-priority, by-product of good strategic planning. The related issues of regional traffic management, air quality degradation, infrastructure capacity and carbon footprints are now codified components of regional regulation and local land use reviews — and it appears they are likely to stay for a good, long while.

## What Next?

It is difficult to predict just how SB 375 will change the landscape of our land use debates. The legislation contains strong mandates for the MPOs to conduct stakeholder outreach workshops and meetings throughout the draft and final adoption of their respective sustainable communities strategy, as well as ARB’s adoption of regional GHG emission target reductions. City, county, agency and other stakeholder input during this time will be critical to developing coordinated strategies that work.

It is no doubt an important bill, and is one that does not yet appear to be on the immediate radar of many local planners and decisionmakers. Local implementation through housing element updates is still years away. But the dialogue that must occur as regional transportation plans are revised, and sustainable communities strategies developed, is definitely one that all interested stakeholders should plan to join.

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