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Senate Bill 375, adopted to implement the Global Warming Solutions Act of 2006, will significantly impact cities, counties, council of governments, developers, builders and the public in general.

*For a list of commonly used acronyms, please refer to page 7.*

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## Is Regional Planning Finally Here?

### California Enacts Sweeping Land Use Legislation Tying Transportation Funding To Regional Growth Patterns To Reduce Greenhouse Gas Emissions By Curbing Sprawl

In a major piece of legislation on transportation and land use planning in California, Governor Schwarzenegger has signed Senate Bill 375 ("SB 375"). The bill will: (1) require that the California Air Resources Board (the "Board" or "CARB") provide each region of the state with greenhouse gas emissions ("GhG") reduction targets for the automobile and light truck sector; (2) require regional transportation to include a sustainable communities strategy designed to achieve the targets for GhG emissions reduction; (3) require the California Transportation Commission (the "Commission") to maintain guidelines for travel demand models; (4) require cities and counties to revise their housing elements every eight years in conjunction with the regional transportation plan and complete any necessary rezoning within a specific time period; and (5) relax California Environmental Quality Act ("CEQA") requirements for housing developments that are consistent with the region's sustainable communities strategy.

This bill significantly impacts cities, counties, council of governments, developers, builders and the public in general in an attempt to help implement the Global Warming Solutions Act of 2006 ("AB 32") by aligning planning with housing, land use, transportation, and GhG emissions for the 17 Metropolitan Planning Organizations ("MPOs"<sup>1</sup>) in the state. The bill seeks to change land use practices by giving each region a greenhouse emissions reduction target and requiring the regions to adopt regional growth strategies that can achieve these targets. The regions will then assign housing needs to cities and counties under the housing element law in a manner consistent with the growth strategy and ensure that regional transportation spending plans are consistent with the strategy. While cities and counties are not required to implement the growth strategy directly, they will be required to rezone land needed to accommodate their housing needs within three (3) years of the beginning of the housing element planning period. Lastly, the bill facilitates infill development by granting CEQA relief to housing developments that are consistent with the growth strategy.

SB 375 will have significant impact on the MPOs, primary Council of Governments throughout the state, as well as planning and zoning in cities and counties. Developers will be able to design projects that conform to the Sustainable Community Strategies ("SCS") and receive some relief from CEQA.

<sup>1</sup> The metropolitan planning organizations include four multiple county MPOs, including the Association of Monterey Bay Government (AMBAG – Monterey, San Benito, and Santa Cruz counties); Metropolitan Transportation Commission (MTC – Alameda, Contra Costa, Solano, Marin, Napa, Sonoma, San Francisco, San Mateo, and Santa Clara counties); Sacramento Area Council of Governments (SACOG – Sacramento, Yolo, El Dorado, Placer, Yuba and Sutter counties) and the Southern California Association of Governments (SCAG – Los Angeles, Ventura, San Bernardino, Riverside, Imperial and Orange counties). Single County MPOs include Butte, Fresno, Kern, Kings, Madera, San Diego, San Joaquin, San Luis Obispo, Santa Barbara, Shasta, Stanislaus, and Tulare counties.

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The regulations for reporting and verification of emissions are to be adopted by January 1, 2010.

### Introduction

AB 32 requires the Board to monitor and regulate “sources of emissions of greenhouse gases that cause global warming in order to reduce emissions of greenhouse gases”, and to adopt regulations in an open public process to require the reporting and verification of GhG emissions. The Board was required, by January 1, 2008, to “determine what the statewide greenhouse gas emissions level was in 1990” and then approve “a statewide greenhouse gas emissions limit that is equivalent to that level, to be achieved by 2020.” The regulations for the reporting and verification of emissions must be enforceable no later than January 1, 2010. The Board must update its plan to reduce GhG emissions at least once every five (5) years. By January 1, 2011, the Board is required to adopt GhG emissions limits and reduction measures to “achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions in furtherance of achieving the statewide greenhouse gas emissions limit.” These limits are to be effective beginning in 2012.

In 2007, the Governor signed into law Senate Bill No. 97. This bill requires the Office of Planning and Research, by July 1, 2009, to “prepare, develop, and transmit to the Resources Agency guidelines for the mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions... including, but not limited to, effects associated with transportation or energy consumption.” The Resources Agency is required to certify and adopt the guidelines by January 1, 2010.

### Senate Bill 375

SB 375 determined that the transportation sector is the single largest contributor of greenhouse gases, producing over 40 percent of the greenhouse gases in the State of California, with automobiles and light trucks contributing almost 30 percent (30%) of the greenhouse gases. GhG emissions can be substantially reduced by increased use of low carbon fuel and new vehicle technology. However, greater reductions in GhG emissions will be needed and can be achieved through improved transportation and changed land use. These measures will also help California comply with the state and federal Clean Air Acts and reduce dependence on petroleum. SB 375 requires “metropolitan planning organizations to develop and incorporate a sustainable communities strategy which will be the land use allocation in the regional transportation plan.”

SB 375 provides that the Commission and the Board shall “maintain guidelines for travel demand models that are used in the development of regional transportation plans by federally designated metropolitan planning organizations.” An advisory committee must be formed before any revisions can be made to the guidelines. The advisory committee must include representatives of the metropolitan planning organizations, local governments, organizations that have knowledge of travel demand models, and other specified organizations. Additionally, the Commission is required to hold two (2) workshops before amending the guidelines.

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SB 375 requires the growth pattern in the SCS to be based upon the “most recent planning assumptions considering local general plans and other factors.”

The guidelines should take several factors into account including the relationship between land use density and household vehicle ownership, the impact of enhanced transit service level on vehicle ownership and miles, changes that could result in passenger rail or highway expansion, “mode splitting that allocates trips between automobile, transit, carpool, and bicycle and pedestrian trips,” and detailed information regarding the time and speed of transit service.

### **Metropolitan Planning Organizations (“MPOs”) - Sustainable Communities Strategies (“SCS”)**

Each MPO is required to prepare a sustainable communities strategy that identifies (1) “the general location of uses, residential densities, and building intensities within the region;” (2) “areas within the region sufficient to house all the population of the region;” (3) “areas within the region sufficient to house an eight- (8) year projection of the regional housing need;” and (4) “a transportation network to service the transportation needs of the region.” The strategy should also consider information regarding resource areas and farmland, state housing goals, and forecasted development patterns. The MPO must conduct two (2) informational meetings in each county within its region for city councils and the county’s board of supervisors; perform outreach efforts; and hold workshops and public hearings. If the sustainable communities strategy is unable to achieve GhG emissions reduction targets, the planning organization must prepare an alternative planning strategy (“APS”). The biggest single difference is that the SCS is part of the regional transportation plan (“RTP”) and the APS is not.

Like the federal Clean Air Act, SB 375 requires the growth pattern in the SCS to be based upon the “most recent planning assumptions considering local general plans and other factors.” It also requires that the SCS be consistent with the federal regulations that require a realistic growth development pattern. In addition, the SCS must consider or address several additional factors:

- Consider the spheres of influence that have been adopted by the local agency formation commission (LAFCO);
- Identify the general location of uses, residential densities, and building intensities within the region;
- Identify areas sufficient to house all economic segments of the population of the region over the long term planning horizon of the regional transportation plan;
- Identify areas within the region sufficient to house an eight-year projection of the regional housing need for the region;
- Identify a transportation network to service the transportation needs of the region;
- Gather and consider the best practically available scientific information regarding resource areas and farmland in the region (note, there is no requirement to act on this information);
- Set a forecasted development pattern for the region, which, when integrated with the

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SB 375 does not require that a local general plan, local specific plan, or local zoning be consistent with the SCS.

transportation network and other transportation measures and policies, will reduce the GhG emissions from automobiles and light trucks to achieve, if there is a feasible way to do so, the GhG emissions reduction targets approved by the state board; and

- Quantify the reduction in GhG emissions projected to be achieved by the SCS and, if the SCS does not achieve the targeted reductions in GhG emissions, set forth the difference between the amount that the SCS would reduce GhG emissions and the target for the region.

Of all these requirements, the one that has generated the most concern to date is the requirement that the RTP include a development pattern which, if implemented, would achieve the GhG emissions targets if there is a feasible way to do so. It is important to emphasize that this development pattern must comply with federal law, which requires that any pattern be based upon “current planning assumptions” that include the information in local general plans and sphere of influence boundaries. If a certain type of development pattern is unlikely to emerge from local decision-making, it will be difficult for the regional agency to say that it reflects current planning assumptions.

In addition, the SCS will not directly affect local land use decisions. The SCS does not in any way supersede a local general plan, local specific plan, or local zoning. SB 375 does not require that a local general plan, local specific plan, or local zoning be consistent with the SCS.

### The Alternative Planning Strategy (“APS”)

In the case where the SCS does not achieve the GhG emissions reduction target, the MPO must develop an Alternative Planning Strategy (“APS”). The APS is a separate document from the RTP and therefore does not automatically affect the distribution of transportation funding. The APS must identify the principal impediments to achieving the targets within the SCS. The APS must also include a number of measures—such as alternative development patterns, infrastructure, or additional transportation measures or policies—that, taken together, would achieve the regional target.

The APS must describe how the GhG emissions reduction targets would be achieved and why the development pattern, measures, and policies in the APS are the most practicable choices for the achievement of the GhG emissions targets. Like the SCS the APS does not directly affect or supersede local land use decisions; nor does it require that a local general plan, local specific plan, or local zoning be consistent with the APS.

In addition, SB 375 provides that the APS does not constitute a land use plan, policy, or regulation and that the inconsistency of a project with an APS is not a consideration in determining whether a project may be deemed to have an environmental effect for purposes of the California Environmental Quality Act (“CEQA”).

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SB 375 requires rezoning of certain sites to accommodate certain housing needs, generally within three (3) years.

### Cities and Counties – Impacts on Housing Element

SB 375 also imposes a state-mandated local program for cities and counties. The Planning and Zoning Law provides that each city and county must prepare and adopt a general plan. An annual report must be provided by April 1 of each year to the Office of Planning and Research, and the Department of Housing and Community Development to inform of the status of the plan and the progress in implementing the plan. The city or county must show the progress it is making to meet its share of the regional housing needs. The annual report must include a housing element portion which identifies existing and projected housing needs for all economic segments of the community and a five- (5) year schedule of actions that the local government will take to implement the housing element's goals and objectives. This bill changes the regional housing needs assessment ("RHNA") from five (5) years to eight (8) years for regions that adopt a regional transportation plan every four (4) years. SB 375 requires rezoning of certain sites to accommodate certain housing needs, generally within three (3) years. If a city or county does not meet the deadline, it may not, except in specified circumstances, "disapprove a housing development project, nor require a conditional use permit... or other locally imposed discretionary permit, or impose a condition that would render the project infeasible, if the housing project (A) is proposed to be located on a site required to be rezoned... and (B) complies with applicable, objective general plan and zoning standards." Also, if a city and county does not complete the rezoning by the deadline, a court may compel it to complete the rezoning within a specified time period and if rezoning is not completed, the court may impose sanctions. This is a major concession of cities and counties as they have historically opposed any legislation that required them to rezone property.

The housing element must be revised as appropriate, but not less than every eight (8) years. However, for cities and counties located within an MPO in a region classified as nonattainment for a pollutant under the federal Clean Air Act, a housing element must be revised no later than eighteen (18) months after the adoption of the first regional transportation plan.

### Transit Priority Projects – Residential or Mixed Use Projects

SB 375 exempts certain transit priority projects from CEQA. In order to be classified as a transit priority project, the project must (1) be "consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy," which if implemented would "achieve the greenhouse gas emissions reduction targets;" and (2) contain at least fifty percent (50%) residential use, contain at least twenty (20) dwellings units per acre, and "be within one-half (1/2) mile of a major transit stop or high-quality transit corridor included in a regional transportation plan."

A transit priority project will be exempt from CEQA if a legislative body finds that the transit priority project (1) can be adequately served by existing utilities, the project applicant pays the

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Residential or mixed-used residential projects covered by a SCS or APS... that incorporate mitigation measures required by a prior environmental document... are not required to cover growth reducing, project specific, or cumulative impacts from... trips generated by the project on global warming or the regional transportation network.

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development fees, the project site does not contain wetlands, riparian areas, or harm endangered species or historical resources; (2) meets specified land-use criteria regarding density and building requirements; and (3) the project either (a) provides a certain percentage of home sales and rentals to moderate, low, and very-low income families, (b) the developer pays in lieu fees in an amount sufficient to cause a development of units for moderate, low, and very-low income families, or (c) the project provides public open space in a specified quantity.

A city or county may adopt traffic mitigation measures that would apply to a transit priority project. If traffic mitigation measures are adopted by the legislative body, a transit priority project will not be required to comply with any additional mitigation measures.

SB 375 also contains a provision for residential or mixed-use residential projects covered by a SCS or APS. If the strategy, when implemented, achieves the GhG emissions targets, and if the project incorporates mitigation measures required by an applicable prior environmental document, then any findings or other determinations for an exemption, a negative declaration, a mitigated negative declaration, or other environmental report is not required to cover growth reducing, project specific, or cumulative impacts from cars and light-duty truck trips generated by the project on global warming or the regional transportation network.

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Is SB 375 only the  
beginning of regional  
planning in California?

### Key Dates In The Implementation Of SB 375

January 1, 2009	CARB adopts Scoping Plan, which will include the total reduction of carbon in million metric tons from transportation planning.
January 31, 2009	CARB shall appoint a Regional Targets Advisory Committee ("RTAC") to recommend factors to be considered and methodologies to be used for setting reduction targets.
June 1, 2009	MPOs in attainment areas and RTPs not within an MPO may elect to opt into the 8 year planning cycle.
September 30, 2009	RTAC must report its recommendations to CARB.
June 30, 2010	CARB must provide draft targets for each region to review.
September 30, 2010	CARB must provide each affected region with a GhG emissions reductions target.
October 1, 2010	Beginning this date, MPOs updating their RTP will begin 8 year planning cycle that includes SCS-APS and alignment for the RHNA process.
December 31, 2010*	Transportation sales tax authorities need not change allocations approved by voters for categories of projects in a sales tax measure approved by voters prior to this date.
December 31, 2011	Federal Statewide Transportation Improvement Projects programmed before this date are exempt from the requirement to be consistent with the SCS.

### Commonly Used Acronyms

Greenhouse Gas Emissions ("GhG")  
Alternative Planning Strategy ("APS")  
Regional Transportation Plan ("RTP")  
Sustainable Communities Strategies ("SCS")  
Metropolitan Planning Organizations ("MPOs")  
Regional Housing Needs Assessment ("RHNA")  
Local Agency Formation Commission ("LAFCO")  
California Air Resources Board ("Board" or "CARB")  
California Transportation Commission ("Commission")  
Regional Targets Advisory Committee ("RTAC")  
California Environmental Quality Act ("CEQA")  
The Global Warming Solutions Act of 2006 ("AB 32")

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