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Land Use Alert

SB 375: How Will California's New Anti-Sprawl Law Impact Future Development In The State?

On September 30, 2008, Governor Schwarzenegger signed SB 375. In doing so, he stated that the legislation "constitutes the most sweeping revision of land use policies since Governor Ronald Reagan signed the California Environmental Quality Act." SB 375 is intended to, among other things, facilitate accomplishment of the land use sector's contribution toward achieving the goals of the Global Warming Solutions Act of 2006 (AB 32).

In order to obtain support from the League of Cities, homebuilders, and environmental organizations, it was necessary to modify a number of provisions contained in earlier versions of the bill and, as a result, some suggest that the bill is not as sweeping as advertised. Provided below are a summary of some of the key elements of SB 375 and a discussion of how this legislation may affect future development activities in the State.

The impact of SB 375

The new legislation adds more regulation and coordination to the already challenging and time consuming development process and creates a regional planning structure that could create additional barriers and costs to necessary development. On the other hand, the new law finally ties together planning for transportation and housing, provides for more certainty in rezoning to accommodate residential development and allows for some streamlining and exemptions under CEQA.

What is less clear is whether the regional planning efforts will lead to the accomplishment of the targeted greenhouse gas (GHG) reduction goals while also facilitating future development at the edge, which will be a crucial component to meeting the State's projected future housing needs. The bill strongly encourages higher density, compact, infill, transit oriented development. Although much of our future residential needs can be achieved with this type of development the majority of such future housing needs must come from development at the edge.

How this will be accommodated as part of the Sustainable Communities Strategies is uncertain. The development of Sustainable Communities Strategies for each of the Metropolitan Planning Organizations (MPOs) will be a significant challenge, will require careful coordination between local jurisdictions, and will be the key to success or failure of this legislation in achieving the balance between projected growth and reduced GHG emissions. It will be imperative that members of the development industry be actively engaged in these regional planning efforts.

Summary of key elements of SB 375

1. **Establishes Regional Greenhouse Gas Emission Reduction Targets.** The California Air Resources Board (CARB) has until September 30, 2010, to provide each of California's MPOs a GHG emission reduction target for cars

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and light trucks. These reductions for cars and light trucks do not include reduced emissions resulting from greater fuel efficiency or from the use of low carbon fuels, both of which are governed by other legislation and regulation. A Regional Target Advisory Committee will be established to assist CARB in setting these targets. Expert industry representation on this Committee will be critically important.

2. **Requires Preparation of Sustainable Communities Strategies.** After the MPOs have received their regional GHG emission reduction targets in 2010, they are required to create a Sustainable Communities Strategy (SCS) that establishes how the emission reduction target will be accomplished. The SCS will become part of the Regional Transportation Plan (RTP) for an MPO. Under the legislation, the SCS must incorporate the Regional Housing Needs Assessment (RHNA), which allocates projected housing needs on a fair share basis to all cities and counties, and include provisions addressing resource and open space land protection. Given that the bill also provides that the SCS is not a land use plan, does not confer land use authority on the MPOs, and that local governments' own general plans don't have to conform to the SCS, it creates some doubt as to how effective the SCS plans will be in meeting the regional GHG reduction targets.
3. **Requires Transportation Funding Be Consistent with the SCS.** Transportation funding must be consistent with the SCS. However, most of the decision-making regarding transportation funding is made by the MPOs and the MPO board members are local elected officials. Thus, it remains to be seen whether those local elected officials, serving as MPO board members, will restrict transportation funding to local jurisdictions within their boundaries. Another uncertainty is how federal transportation dollar distribution may or may not be affected by the approval of projects inconsistent with an SCS.
4. **Links Regional Planning Efforts for Transportation and Housing.** Planning for both transportation and housing is to occur together. Of real significance is the requirement that the RHNA allocation numbers for housing must conform to the SCS. This will create challenges in developing SCSs that can achieve the targeted emission reduction goals unless local jurisdictions work together to concentrate regional housing needs in the more transit-rich local jurisdictions. In addition, local jurisdictions will now have a time certain (3 years) within which they must rezone property to be consistent with their adopted housing element.
5. **Provides Project Streamlining Under CEQA.** Residential or mixed-use projects and "transit-priority projects" that meet certain criteria can be streamlined or even exempt under CEQA. Residential or mixed-use projects that conform to the SCS for the MPO within which the project is located do not need to address growth-inducing impacts or project-specific or cumulative impacts dealing with climate change in their CEQA document. Transit-priority projects, which are defined in the legislation, are, at a minimum, subject to the same streamlined environmental review as residential or mixed-use projects. Certain transit-priority projects will be fully exempt under CEQA.

Please feel free to give us a call if we can be of assistance in

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