



California Building Industry Association

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MEMORANDUM FOR: Interested Parties

SUBJECT: **Senate Bill 375**

The purpose of this memorandum is to outline the deal points on Senate Bill 375. A final version of the bill will be transmitted as soon as it is available.

Summary of CBIA Action on SB 375

CBIA has long sought land-use reforms that provide greater certainty in the planning, entitlement and project-approval processes practiced by local governments. Over the last five years, CBIA and CMBC had sponsored several pieces of legislation aimed at accomplishing these reforms. The latest was SB 303 (Ducheny).

SB 375 (Steinberg) was introduced in 2007 and was designed to take a different approach to land planning and land use. On the heels of the enactment of AB 32, the "Global Warming Solutions Act of 2006" – which establishes greenhouse gas (GHG) emissions targets for the state to achieve over a period of years and decades – the sponsors of SB 375 sought to dramatically alter development patterns in California through a state-based land-use planning and decision-making scheme.

Because the SB 375 approach was overly restrictive – and because it seemed to ignore the state's housing need – CBIA actively opposed the measure and was successful in stopping it in August of 2007 before it reached the Assembly floor. Among the most objectionable provisions of SB 375 were:

- Top-down planning and land-use requirements;
- Withholding of federal and state transportation funding;
- New "resource land" designation that prohibited development;
- "Concentric circle" development mandates that required all infill development opportunities to be exhausted before moving to the circle's next ring;
- Top-down establishment of regional GHG targets; and
- The absence of incentives for housing (i.e. CEQA reform).

During the fall and winter of 2007-2008, CBIA worked with the League of California Cities ("the League") on refining SB 303 and forged a bond in opposition to SB 375. The alliance was built around the establishment of regional blueprints to guide planning and land use. A broad-based coalition backing CBIA and the League and helped to get CBIA's SB 303 moving again after being stalled in the Assembly by pro-SB 375 forces.

In early spring of 2008, CBIA and CMBC approached Senator Steinberg on the possibility of a compromise – a merging of SB 375 with SB 303. Senator Steinberg agreed to begin discussions and ultimately negotiations on a composite bill. The first casualties of the negotiations were the objectionable provisions of SB 375 (listed above) – all of which were stricken from the bill.

What ultimately emerged was a compromise agreement which was reached earlier this week and which is summarized below. Highlighting the agreement are provisions to:

- Ensure that adequate land for housing be zoned;
- Establish greater certainty in the land-use entitlement process;
- Provide relief from excessive and duplicative environmental reviews; and
- Produce a road map for compliance with the land-use elements of AB 32.

The following is a more detailed summary of SB 375.

Overview of SB 375

The overarching objective of the bill is to establish the strategy for achieving regional greenhouse gas (GHG) reduction targets established by the California Air Resources Board (CARB) attributable to automobiles and light duty trucks resulting from regional land use patterns.

The bill looks to accomplish those reductions not on a project-by-project basis but as part of a larger regional planning effort that links regional transportation planning with local (city/county) land use planning through the development of a “blueprint-like” “sustainable communities strategy” (SCS) . The purpose and function of the SCS is to act as the regional land use base over which the transportation programs, projects and investments contained in the federally mandated regional transportation plan (RTP) are implemented.

In addition to linking regional transportation planning with local land use planning, the bill aligns both of those activities with the state mandated housing element process and provides significant regulatory reform to development projects that are proposed within areas consistent with the SCS.

What Regions are Included in SB 375

The bill applies to regions covered by the state’s seventeen metropolitan planning organizations or councils of government (COGs):

- Butte County Assoc of Governments
- Council of Fresno County Governments
- Kern Council of Governments
- Kings County Association of Governments
- Madera County Transportation Commission
- Merced County Association of Governments
- Metropolitan Transportation Commission (Bay Area)
- Association of Monterey Bay Area Governments
- Sacramento Area Council of Governments
- San Diego Association of Governments

- San Joaquin Council of Governments
- San Luis Obispo Council of Governments
- Santa Barbara County Association of Governments
- Shasta County Regional Transportation Planning Agency
- Southern California Association of Governments
- Stanislaus Council of Governments
- Tulare County Association of Governments

Regional Carbon Targets For Autos and Light Duty Trucks

SB 375 grants new statutory authority to CARB to establish regional carbon targets (for 2020 and 2035) associated with autos and light duty trucks for the affected regions. The targets must be in place by September 30, 2010.

To assist in laying the ground-work for the setting of the targets, SB 375 establishes the Regional Targets Advisory Committee (RTAC) and gives CARB the authority, by January 31, 2009, to appoint the committee members from a list of organizations including homebuilders. The purpose of the RTAC is to recommend by way of a report due December 31, 2009, factors to be considered and technical methodologies to be used in the setting of the regional targets. Factors include data needs, modeling, growth forecasts, economic and demographic trends, etc. This information will be exchanged with each MPO and affected air district and may include a recommended target for the region.

Once set, the targets are required to be updated every eight years and may be revised on a four-year basis but only to reflect changes in technical methodologies and modeling. CARB may express the target on a gross tonnage, tons per capita, tons per household metric or any other measurement deemed appropriate. A specified public process within the region is required.

The Plan to Achieve the Targets

Planning for GHG reductions occurs in one of two ways: A SCS is required to be developed as part of the RTP. If the SCS, as it is reviewed by CARB, is determined to meet the target then no further planning is necessary. If the SCS is determined not to achieve the target then an Alternative Planning Scenario (APS) must be developed to demonstrate how the targets could be achieved.

A. Sustainable Communities Strategy. This acts as the land use baseline within the RTP. For the RTP planning period (nominally a 20-25 yr. doc.) the SCS must project long-term growth patterns using existing general plans as a starting point, identify the general location of uses, residential densities and building intensities within the region sufficient to meet an 8-year Regional Housing Needs Assessment (RHNA) allocation and, when integrated with the regional transportation network, achieves where feasible the CARB GHG targets.

SB 375 does not mandate that the targets actually be achieved. Rather it looks to create incentives to achieve the targets by allocating funding to transportation projects consistent with the SCS and by offering CEQA streamlining to projects consistent with the SCS/APS.

B. Alternative Planning Scenario. If the GHG targets cannot be achieved by the SCS then a region prepares an APS which demonstrates how, with additional transportation funding & or policies, other infrastructure or alternative development patterns the region could achieve its target. The APS is separate from the RTP (possibility of conflict with federal law) but may be adopted concurrently with the RTP & the SCS. For CEQA purposes, the APS is not a land use plan and the inconsistency of a housing project with the APS is not a consideration in determining whether a project may have an environmental effect.

There are public participation criteria for the development and adoption of both the SCS and the APS.

An EIR is required on the adopted RTP/ SCS/ APS.

How Environmental Resources are Handled Within SCS/APS

SB 375 requires that information on resources and farmland (defined in the bill) be gathered and considered as part of the SCS/APS planning.

Important Land-Use Disclaimers

- An SCS does not regulate the use of land.
- No abrogation of vested rights.
- No requirement to be for a city/county's general plan or land-use policies to be consistent with the SCS/APS.

Submittal To CARB

After adoption of the SCS or APS, the MPO shall submit the plan to CARB. CARB's authority is limited to acceptance or rejection of the plan. Should the SCS be rejected, the region would then prepare an APS.

Special Provisions for Preparation and Adoption of SCS in SCAG Region

Within the six-county region represented by the Southern California Association of Governments (SCAG), a sub-regional COG and the county transportation commission may work together to propose a SCS for that sub-region. If one is proposed, SCAG is required to(1) include the sub-regional SCS within the regional SCS to the extent that it is consistent with the provisions of SB 375 and federal law and (2) approve the sub-regional strategy for that sub-region to the extent it is consistent with (the amended RTP section of) SB 375.

Housing Element Alignment With SCS and RTP

SB 375 requires that the three planning processes for RHNA, RTP and SCS be aligned.

- The SCS must fully accommodate the region's RHNA allocation.

- Housing element period is now eight years (changed from five years) with COGs distributing their RHNA numbers at the beginning of the planning period coincidental with the development of the SCS and the RTP.
- Housing element due to Department of Housing and Community Development (HCD) one year into planning period following allocation of the RHNA.
- Zoning pursuant to RHNA allocation is to be completed within three years.
- A one-year extension on zoning is possible but in order to qualify, a jurisdiction must have already completed 75 percent of the zoning.
- Missing housing element deadlines opens a jurisdiction up to court-imposed sanctions.
- Anti-NIMBY provision applicable where site is suitable for residential use but the zoning has not been completed within the timeframes. Local government may deny only for a health or safety reason. Applies to projects that are 49 percent affordable.
- Penalty for failure to submit a housing element to HCD throws a locality back into a four-year housing element cycle.

CEQA Streamlining for Projects Consistent with an SCS/APS

In the situation where a region has adopted a SCS or an APS determined by CARB to achieve the applicable regional GHG targets attributable to automobiles and light-duty trucks and a residential or mixed-use residential development project is proposed consistent with the use designation, density, building intensity and applicable policies specified for the project area in the plan and the project has incorporated the applicable mitigation measures in the prior RTP/SCS EIR, certain new CEQA benefits attach.

Specifically:

- Residential and mixed-use residential projects need not analyze growth-inducing impacts;
- Residential and mixed-use residential projects need not analyze cumulative impacts from autos and light duty trucks generated by the project on global warming or on the regional transportation network;
- Environmental documents are not required to analyze or discuss a reduced residential density alternative to address the effects of autos & light duty trucks generated by the project;
- Residential and mixed-use projects need not analyze GHG emissions resulting from autos and light duty trucks.

Mixed-use residential defined. 50 percent residential in infill areas and 75 percent residential elsewhere.

Regional Transportation network defined. Includes all existing and proposed transportation improvements in the transportation and air quality conformity modeling within the RTP. However, projects must comply with conditions, exactions or fees for the mitigation of the project's impacts on the regional transportation network or local streets and roads.

Transit Priority Project CEQA Streamlining

- **Exempt if:** smaller than 8 acres & 200 units and meet a number of other environmental qualifications and at least 20% of the units affordable to moderate income purchasers or set a side open space at a 5 acre per 1000 people ratio;
- **Project-specific, Environmental Assessment (AKA Short-Form EIR):** Non-exempt transit priority projects qualify for initial study project specific analysis, shorter comment period and exemption from cumulative or growth inducing analysis consistent with the SCS/APS.

Traffic Mitigation Streamlining

- Local agencies can adopt traffic mitigation measures for projects that are at least 10 upa and 75% residential. Once adopted, the project need not comply with other traffic mitigation measures. The measures must be updated every 5 years.

Transit Priority Project (TPP) Defined. A TPP is a project that is consistent with the SCS/APS, at least 50 percent residential, at a density of at least 20 units per acre and within a half-mile of a transit corridor with a 15-minute service at peak times.

Transportation Sales Tax Exemption

The language in SB 375 as it is proposed to be amended has grandfathering provisions for both (1) projects contained in countywide transportation sales tax measures and (2) categories of funding contained within adopted countywide transportation sales tax measures. Projects programmed for funding on or before 12-31-2011 are grandfathered in (not subject to SB 375) if they are contained in the 2007 or 2009 Federal Statewide Transportation Improvement Program (FSTIP) or were specifically listed in a ballot measure approved as of 12-31-08. As to categories of funding contained in adopted transportation sales tax measures, nothing in SB 375 requires a change to those funding categories if the sales tax measure is adopted by December 31, 2010.

Rural Sustainability Element

SB 375 includes a rural sustainability element within the RTP directing the MPO to consider financial incentives for counties that have resource or farmland areas. Additionally, the element requires the MPO or county transportation agency to consider financial assistance for services responsibilities for the county-wide residents in counties that contribute toward the GHG reduction targets by implementing policies for growth within cities.

CBIA will be transmitting language as soon as it is available. Furthermore, as some provisions of SB 375 may change over the next few weeks CBIA will keep you informed. If you have any questions, please contact me at rlyon@cbia.org.