

Discussion of Frequently Asked Questions about SB375

By
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Abstract

This article summarizes how California Senate Bill (SB) 375 affects cities and counties throughout the state, and discusses frequently asked questions about SB375.

Introduction

California SB375 (Chapter 728, Statutes of 2008) establishes new links between regional transportation plans, greenhouse gas reduction, land use planning, and housing. This legislation has been characterized as everything from “a monumental step forward” (California State Association of Counties) to “unlikely to be as dramatic as its strongest supporters envision” (California Building Industry Association). Regardless of these differing opinions, one thing is certain: SB375 will shake up the status quo in the major metropolitan areas of California.

Background

California Senate bill 375 sets forth a new, multi-level approach to integrating land use and transportation planning that will lead to reductions in greenhouse gases. In a nutshell, the bill requires the Air Resources Board to adopt greenhouse gas reduction targets for each region of California, and that each Metropolitan Planning Organization adopt a Sustainable Communities Strategy (SCS) or an Alternative Planning Strategy (APS) to include in its Regional Transportation Plan (RTP). With those strategies in place, local governments will be able to utilize a new CEQA exemption for “Transit Priority Projects” and take advantage of additional CEQA streamlining provisions. Additionally, local agencies must amend their housing elements to be consistent with the new strategies. (See the fall issue of the ICF Jones & Stokes *Impact Report* for a more complete discussion of SB375, available [here](#).)

SB375 is not easy to understand. As the result of 2 years of intensive negotiations between its author, Senate President Pro Tem Darrell Steinberg, and many stakeholders groups with varying policy agendas, it represents consensus language on all the key issues. Clarification of SB375 awaits either further “clean up” legislation, or the results of future litigation.

Questions and Discussion about SB375

The following questions and discussion address portions of SB375 that are relatively clear.

General Plan Consistency

Question: Must the SCS be consistent with the existing general plans of cities and counties within the region?

Discussion: There is some debate regarding the degree to which the SCS must be consistent with existing city/county general plans (GPs).

The California State Association of Counties and the League of California Cities supported SB375 with the understanding that it favors giving strong consideration to existing local plans, as evidenced by such language as “[an SCS is] subject to the requirements of Part 450 of Title 23 of, and Part 93 of Title 40 of, the Code of Federal Regulations, including the requirement to utilize the most recent planning assumptions considering local general plans and other factors.” However, our discussions with at least one Metropolitan Planning Organization (MPO) indicate that they have not limited themselves to existing GPs when preparing their current RTPs. Further, RTPs that do not follow local GPs, such as the Sacramento Area Council of Government’s (SACOG’s) Metropolitan Transportation Plan based on its Blueprint scenario, have nonetheless received federal approval. Because many GPs call for extensive amounts of relatively low density development or extensive underutilized commercial strips, it could be difficult for an SCS to meet greenhouse gas targets while reflecting only the existing GPs.

This may prove problematic as SCSs are developed if the elected officials refuse to sign a plan that veers away from the current GPs or if environmental groups demand that the SCS be more progressive with regard to compact development and higher density than spelled out in existing GPs. This may result in litigation.

Question: Does SB375 require our city or county to amend its general plan to conform to the SCS or APS?

Discussion: On its face, SB375 does not require any general plan to be amended. However, SB375 connects, for the first time, the RTP with the Regional Housing Needs Allocation (RHNA) that guides preparation of the city or county housing element. If the SCS integrates a housing component that identifies the general locations of housing opportunity sites, then the housing element would arguably be required to reflect those sites. This could require amendments to a GP. Also, since all elements of a GP must be internally consistent, any changes to a plan’s housing element may necessitate changes to other elements.

The RHNA has never been administered in a way that directs the specific locations of housing opportunities within cities and counties. An attempt to interpret SB375 in this manner is likely to result in litigation over the authority of the MPO to specify housing locations. The answer to this question may be something for the courts to resolve in the future.

Question: If an adopted GP or specific plan establishes areas that could be identified as transit priority sites, how can the city or county ensure that those will be reflected in the SCS?

Discussion: A city or county can’t be sure that the areas that it believes are suitable transit priority project sites will eventually be identified as such in the SCS. There are several reasons for this:

- The MPO has sole responsibility for adopting the SCS. It may or may not decide to accept the city or county recommendations for higher density development nodes.
- The SCS may not actually identify specific transit priority project sites. The transit priority project concept is discussed in the portion of SB375 that discusses CEQA streamlining and that establishes the precise qualifications for such sites. It will be left to cities and counties to determine whether a particular project meets those qualifications.

That said, in the spirit of good planning MPOs should reach out to their constituent local agencies when developing their SCSs. Additionally, cities and counties should take an early and active role in drafting SCSs and provide the MPO with recommendations for locating higher density development and meeting with MPO staff to familiarize them with their general plans. They could also use this time to brief MPO staff on California planning law, the city's development review process, and ordinances/policies that could be useful for reducing greenhouse gases and any impacts of the prospective development pattern that will be set out in the SCS.

CEQA

Question: Can we begin using the statutory exemption and environmental assessment approaches described in SB375 (Public Resources Code [PRC] Section 21155 et seq.)?

Discussion: No. Those provisions require a determination that the proposed transit priority project is consistent with the SCS as part of the adopted RTP or the separately adopted APS. The first of the SB375 RTPs are not expected to be adopted until sometime in 2011.

Question: Must a proposed transit priority project be consistent with the general plan and zoning of its city or county in order to qualify for a statutory CEQA exemption under PRC Section 21155.1?

Discussion: The CEQA provisions are based on a project's consistency with the adopted SCS or APS, not on its consistency with the adopted city general plan or zoning. So a project that is inconsistent with zoning and the relevant GP could still qualify for the exemption. However, as a practical matter, such projects would have to seek amendments to the city/county general plan and zoning requirements. In the absence of those amendments, the city would be obligated to deny a project that is inconsistent with its general plan and zoning.

Question: If the site needs a general plan amendment (GPA) and rezoning to match the SCS or APS provisions, would the CEQA exemption apply?

Discussion: Arguably, the CEQA exemption would not apply if the general plan/zoning ordinance contains wildland fire hazard, seismic risk, or landslide and flooding provisions that act to mitigate risks AND the project would require any of those provisions to be amended. No one can say for certain whether the exemption would apply to GPAs and rezonings where those existing general plan and zoning provisions would not be affected.

Question: Who gets to determine whether a site is eligible for the statutory infill exemption under PRC Section 21155.1?

Discussion: The exemption is a statutory exemption, so if the project qualifies, then the city or county MUST apply the exemption. However, the city or county alone is empowered to determine whether the proposal meets all of the requirements for exemption set out in PRC Sections 21155 and 21155.1, including the project's consistency with the SCS or APS. It could not use general plan or zoning inconsistency to disqualify a project from the exemption, unless the inconsistency relates to wildland fire hazard, seismic risk, or landslide and flooding provisions that act to mitigate project risks.

Question: When does a city or county use a Sustainable Communities Environmental Assessment (SCEA) or an Environmental Impact Report (EIR), or rely on the general plan's EIR?

Discussion: A city or county can pick the one that works the best for them under the project's circumstances. Use of either an SCEA or EIR under PRC Section 21155.2, subsections (b) and (c), respectively, is optional. Subsection (b) states that: "A transit priority project that satisfies the requirements of subdivision [a] *may* be reviewed through a sustainable communities environmental assessment..." (emphasis added). Subsection (c) uses similar language for EIRs. So the city or county can choose which of these three makes the most sense in a given situation. If the project will require a GPA and/or rezoning (and is consistent with the SCS/APS), then it may be that the SCEA/EIR is the best route since the general plan EIR would not apply in that situation.

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