

# Implementing SB 375: Promises and Pitfalls

Heather Haney\*

## INTRODUCTION

On September 30, 2008, California passed the Sustainable Communities and Climate Protection Act, or SB 375. The legislation was the first in the country to link land use, transportation, and housing planning with global warming. The nation's attention was once again focused on California's efforts to address global climate change through innovative regulation.<sup>1</sup> Three years before, the legislature had passed The Global Warming Solutions Act of 2006, or AB 32, which requires the state to reduce greenhouse gas (GHG) emissions to 1990 levels no later than 2020.<sup>2</sup> Since passenger vehicles account for approximately thirty percent of the state's total emissions and their numbers have increased drastically from 1990 levels,<sup>3</sup> it was generally accepted that without improved land use and transportation policies, California would not be able to achieve the goals of AB 32.<sup>4</sup> The general concept is that

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Heather Haney is a student at The University of California, Berkeley, School of Law. She holds both a Bachelor's Degree in Environmental Biology *magna cum laude* and a Master's Degree in Environmental Science and Policy *summa cum laude* from the University of Pennsylvania. Before attending law school, she worked for five years as an environmental consultant in Southern California, conducting field surveys and preparing technical documents in accordance with local, state, and federal environmental laws for both private and public entities. She also has experience working for a variety of non-profits including land conservancies, redevelopment corporations, and zoological institutes.

1. See Editorial, *Cut the Sprawl, Cut the Warming*, N.Y. TIMES, Oct. 7, 2008, at A30, available at <http://www.nytimes.com/2008/10/07/opinion/07tue2.html>.

2. Currently, signatures are being collected for a ballot initiative to repeal AB 32 until the state's unemployment rate falls from its current 12+ percent to under 5.5 percent for four consecutive quarters. Recent articles have reported that two major oil refiners based in Texas who operate refineries in California have been funding the signature-gathering efforts. See Colin Sullivan, *Texas Refiners Mum About Funding Push to Halt Calif. Climate Law*, N.Y. TIMES, Mar. 3, 2010, available at <http://www.nytimes.com/cwire/2010/03/03/03climatewire-texas-refiners-mum-about-funding-push-to-hal-73127.html>; Jim Sanders, *Capitol Alert: Ted Costa, Who Pushed to Suspend AB 32, Now Opposes Effort*, SACRAMENTO BEE, Mar. 10, 2010, available at <http://www.sacbee.com/static/weblogs/capitolalertlatest/2010/03/leader-of-anti-.html>.

3. See S.B. 375, 2008 Cal. Stat. 728, § 1(b), (c) (According to the California Air Resources Board, GHG emissions from automobiles and light trucks increased from 108 million metric tons in 1990 to 135 million metric tons by 2004.).

4. *Id.*

movement away from low-density suburban “sprawl” and toward higher-density, transit-oriented development that is less dependent on the private automobile would lead to lower GHG emissions.

SB 375 has three goals: (1) to use the regional transportation planning process to help achieve the goals of AB 32; (2) to provide possible streamlining of California Environmental Quality Act (CEQA) procedures for residential projects, helping achieve the GHG emissions reduction goals; and (3) to coordinate the regional housing needs allocation process with the regional planning process. It builds upon existing regulatory structures and seeks to incentivize more compact development through project funding and process streamlining.

This Article will discuss the legislative history behind SB 375, the current language of the statute, what compromises were made in developing its final language, what potential obstacles may arise in implementing the law, and suggestions on additional legislative and administrative steps that should be taken to practically achieve its goals.

#### I. LEGISLATIVE HISTORY PRE-SB 375— THE IMPLEMENTATION OF AB 32

In September 2006, Governor Schwarzenegger signed AB 32, granting the California Air Resources Board (CARB) broad authority over any “source” of GHG emissions.<sup>5</sup> In addition, CARB was authorized to require participation in programs to reduce GHG emissions and to monitor compliance with statewide GHG limits.<sup>6</sup>

AB 32 set certain benchmarks for CARB. By January 1, 2008, CARB was required to adopt regulations requiring monitoring and annual reporting of GHG emissions from the most important sources.<sup>7</sup> CARB met that deadline and is now focusing on meeting the next benchmark of January 1, 2011 by establishing GHG emission limits and emission reduction measures necessary to achieve 1990 levels.<sup>8</sup> These GHG emission limits and reduction measures are to become operative by January 1, 2012.<sup>9</sup>

Planning experts and CARB quickly realized that even if cars become more efficient and run on cleaner fuels, meeting AB 32’s GHG emissions reduction targets will require Californians to drive less.<sup>10</sup> Their idea was that through strategic regional planning there could be a

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5. CAL. HEALTH & SAFETY CODE § 38560 (West 2010).

6. *Id.* § 38562.

7. *See id.* § 38550.

8. *See id.* § 38562(a).

9. *Id.*

10. *See* CALIFORNIA AIR RESOURCES BOARD, CLIMATE CHANGE SCOPING PLAN: A FRAMEWORK FOR CHANGE PURSUANT TO AB 32 THE CALIFORNIA GLOBAL WARMING SOLUTIONS ACT OF 2006 (2008), available at <http://www.arb.ca.gov/cc/scopingplan/document/scopingplandocument.htm>.

reduction in the number of trips and vehicle miles traveled (VMTs).<sup>11</sup> Although this is easily said, adopting new development patterns requires changing local land use polices, an arena of already complex procedures involving deeply entrenched agencies typically opposed to change. SB 375 sets in motion a regional planning process to do just that.

## II. OVERVIEW OF SB 375

SB 375 went into effect on January 1, 2009 and targets GHG emissions from passenger vehicles and light trucks.<sup>12</sup> It is the product of much political compromise. Senator Steinberg called it “an unlikely and powerful coalition for changing the way we think and act about sustainable growth.”<sup>13</sup> The statute endured twelve amendments, with developers, environmentalists, and local and regional governments adding their concerns and making concessions before its eventual adoption.<sup>14</sup> As a result of these compromises, the statute sacrificed strict mandates and instead opted for an incentives-only approach. The bill has something for everyone, while leaving several issues open to interpretation and the will of concerned parties. Although critics are skeptical of “carrot with no stick” laws, at a minimum SB 375 is the first step toward creating an overarching strategy for pursuing regional transportation-oriented development and reaching the goals of AB 32. In addition, SB 375 not only provides a means for achieving the AB 32 goals for cars and light trucks; it also provides more certainty for local governments and developers by framing how these reduction goals from daily transportation could be achieved.<sup>15</sup>

### A. Regional GHG Emissions Targets

SB 375 first requires CARB to establish GHG emissions reduction targets for all eighteen Metropolitan Planning Organizations (MPOs)<sup>16</sup> in the state for 2020 and 2035 by September 30, 2010.<sup>17</sup> CARB appointed the Regional Targets Advisory Committee to recommend ways to reduce

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11. *Id.* at 49–50.

12. S.B. 375, 2008 Cal. Stat. 728, § 1(a).

13. Darrell Steinberg, Cal. State Sen., Comments at SB 375 Press Conference (Aug. 8, 2008), available at <http://www.ecovote.org/podcast/sb375-press-conf.m4v>.

14. Complete legislative history of SB 375 is available at [http://www.leginfo.ca.gov/pub/07-08/bill/sen/sb\\_0351-0400/sb\\_375\\_bill\\_20080930\\_history.html](http://www.leginfo.ca.gov/pub/07-08/bill/sen/sb_0351-0400/sb_375_bill_20080930_history.html).

15. See BILL HIGGINS, LEAGUE OF CALIFORNIA CITIES, TECHNICAL OVERVIEW OF SB 375 (v. 1.3) 2 (2009), available at <http://www.cacities.org/sb375summary> [hereinafter LEAGUE OVERVIEW].

16. MPOs are federally-mandated and federally-funded transportation policy-making organizations in the United States that are made up of representatives from local government and governmental transportation authorities. Any urbanized area with a population greater than 50,000 is mandated to create a MPO in order to ensure that federal funding for transportation projects and programs is channeled through a comprehensive planning process.

17. S.B. 375, 2008 Cal. Stat. 728, § 1(a).

emissions from each of California's eighteen MPOs. The twenty-one-member committee includes local government representatives of the MPOs, affected air districts, coalitions of cities and counties, and members of the public.<sup>18</sup> On October 9, 2009, the committee issued its final report to CARB recommending the establishment of reduction targets that it says must be "ambitious" enough to meet AB 32's mandate, but "achievable"—in other words, within each region's financial and political grasp.<sup>19</sup> The focus is now on CARB, which must begin a consultation process with each of the MPOs to estimate baseline emissions that are "ambitious yet achievable" depending on regional transportation projects.

### 1. *Sustainable Communities Strategies*

Once the targets are set, the real planning begins as MPOs must update their Regional Transportation Plans (RTPs) so that the resulting development patterns and supporting transportation networks reduce GHG emissions in accordance with their regional thresholds.<sup>20</sup> The keystone of this is the development of a Sustainable Communities Strategy (SCS). Each RTP must develop and adopt an SCS as a land use blueprint to reach the targeted GHG reductions from passenger vehicles and light trucks if there is any feasible way to do so. But how does CARB determine when an SCS is "feasible?" Although the definition of "feasible" is the same as that used in CEQA, CARB's "determination of 'feasibility' is a quasi-legislative act that is reviewable under the 'arbitrary and capricious' standard instead of the 'substantial evidence' standard."<sup>21</sup> CARB's finding of feasibility is thus granted substantial judicial deference.

### 2. *Alternative Planning Strategies*

If a MPO cannot feasibly meet its GHG emission reduction target in an SCS, an Alternative Planning Strategy (APS) must be prepared.<sup>22</sup> This alternative strategy must "identify the principal impediments" to achieving regional targets and show how the emission reductions will be met through alternative development patterns, infrastructure, or additional transportation measures or policies.<sup>23</sup> Presumably, since the APS is not integrated into the RTP, it would contain more severe

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18. CAL. GOV'T. CODE § 65080(b)(2)(A)(i).

19. BILL HIGGINS, LEAGUE OF CALIFORNIA CITIES, ABRIDGED SUMMARY OF RTAC REPORT 2 (2009), available at [http://www.cacities.org/resource\\_files/28374.RTACExtendedSummary.pdf](http://www.cacities.org/resource_files/28374.RTACExtendedSummary.pdf).

20. See CAL. GOV'T. CODE § 65080(b)(2)(A)(i).

21. LEAGUE OVERVIEW, *supra* note 15, at 5 n.18.

22. CAL. GOV'T CODE § 65080(b)(2)(B)(vii).

23. *Id.* § 65080(b)(2)(I)(i); see also *id.* § 65080(b)(2)(I).

limitations on development than the SCS in order to ensure that the GHG reduction goals are met.

### 3. *Federal Funding and Local Government Conformity*

Although many have asked if the choice between developing an SCS or APS matters, there are at least some potential benefits to the SCS. The first is the possible effect of federal transportation funding to the region. An acceptable SCS is incorporated into the RTP, while an APS is not. SB 375 makes it clear that local government transportation projects that are identified in the RTP and are consistent with the SCS are given priority for federal transportation funding. Thus, projects that are not consistent with the SCS, or are developed under an APS, could have transportation funding withheld, which may result in an increased need for privately financed transportation infrastructure (such as toll roads) to serve developments that are found inconsistent. A prior version of the bill would have explicitly prohibited the funding of inconsistent or APS projects, but that language was altered.<sup>24</sup>

It is important to note that neither the SCS nor APS directly affect or supersede local land use decisions, and in neither case must local general plans, local specific plans, or local zoning be consistent with the documents.<sup>25</sup> Although local planning agencies are encouraged to conform their various planning documents with the SCS or APS, they are under no obligation to do so.<sup>26</sup> The senate had no delusions that the success of SB 375 was in the hands of the local governments, stating “[t]his bill is . . . built on faith that cities and counties will voluntarily implement the SCS or at least respond to regional political pressure to do so.”<sup>27</sup>

Although local governments are given the choice of whether or not to comply with SB 375, the possibility of losing federal transportation funds is serious. In addition, if regions develop integrated land use, housing, and transportation plans that meet the SB 375 targets (either

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24. Many city and county governments drafted “Oppose Unless Amended” memoranda directed at early versions of the bill. *See, e.g.*, CELIA MCADAM, PLACER COUNTY TRANSP. PLANNING AGENCY, LEGISLATIVE POSITION: SB 375: UPDATE (2008), available at <http://www.tahoegateway.com/agendas/board/2008/August08/J.pdf>. Sen. Steinberg ensured maintenance of California’s current land use status quo by inserting explicit guarantees of local government autonomy into the law: “Nothing in this section shall require a city’s or county’s land use policies and regulations, including its general plan, to be consistent with the regional transportation plan or an alternative planning strategy.” CAL. GOV’T CODE § 65080(b)(2)(K). Nowhere in the statute is the receipt of transportation funding made contingent on local compliance with or adoption of the compact scenarios of a SCS or APS.

25. *See* CAL. GOV’T CODE § 65080(b)(2)(H).

26. *Id.* § 65080(b)(2)(J).

27. MARK STIVERS, SENATE TRANSP. & HOUSING COMM., BILL ANALYSIS, S.B. 375, 2007–08 Sess., at 13 (2008), available at [http://www.leginfo.ca.gov/pub/07-08/bill/sen/sb\\_0351-0400/sb\\_375\\_cfa\\_20080903\\_100317\\_sen\\_comm.html](http://www.leginfo.ca.gov/pub/07-08/bill/sen/sb_0351-0400/sb_375_cfa_20080903_100317_sen_comm.html).

through an SCS or APS) then new residential and mixed-use residential projects can be relieved of certain review requirements imposed by CEQA.

### *B. CEQA Exemptions and Streamlining*

In this incentive-driven legislation, the major “carrot” dangled before both private and public developers is lessened burdens under CEQA. SB 375 offers CEQA streamlining for two basic forms of compact transit-based projects: residential or mixed-use projects consistent with SCS (or APS), and transit priority projects.<sup>28</sup>

#### *1. Residential or Mixed-Use Projects Consistent with SCS/APS*

In its Environmental Impact Report (EIR), a residential or mixed-use project that is consistent with the SCS/APS is not required to discuss “growth-inducing impacts”<sup>29</sup> or GHG effects from passenger vehicles and light truck trips nor include a less dense alternative to reduce GHGs.<sup>30</sup> However, this CEQA streamlining is minimal at best, and only applies to projects containing at least seventy-five percent residential development.<sup>31</sup>

#### *2. Transit Priority Projects*

Transit Priority Projects (TPPs) must meet four requirements to be eligible for various CEQA reprieves: 1) be consistent with an approved SCS or APS; 2) contain at least fifty percent residential use; 3) have a minimum net density of twenty units per acre; and 4) be located within one-half mile of a major transit stop or high quality transit corridor included in a RTP.<sup>32</sup> Projects deemed TPPs are eligible for review under a Sustainable Communities Environmental Assessment (SCEA), rather than a traditional EIR. This SCEA is similar to already familiar CEQA streamlining documents, the Negative Declaration and Mitigated Negative Declaration. Under a SCEA the project need not: 1) consider prior cumulative effects mitigated in earlier EIRs; 2) repeat the analysis of growth-inducing effects; or 3) repeat car and light truck effects on

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28. CAL. GOV'T CODE § 65080(b)(2)(I).

29. CEQA defines “growth-inducing impacts” as “ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. Included in this are projects which would remove obstacles to population growth . . . [or] requir[e] construction of new facilities that could cause significant environmental effects.” CAL. CODE REGS. tit. 14, § 15126.2(d).

30. CAL. PUB. RES. CODE § 21159.28(a).

31. See CAL. PUB. RES. CODE § 21159.28(d).

32. “Transit priority projects” is defined in CAL. PUB. RES. CODE § 21155(b). “Major transit stop” is defined in CAL. PUB. RES. CODE §§ 21064.3, 21155(b). “High quality transit corridor” is defined in CAL. PUB. RES. CODE § 21155(b).

GHG emissions or the regional transportation network. In addition, the SCEA gains a higher level of deference in the courts, which employ the substantial evidence standard and not a fair argument standard during review.<sup>33</sup>

In addition, some TPPs may meet more rigorous requirements and be declared “sustainable communities projects,” making them completely exempt from CEQA mandates.<sup>34</sup> For a TTP to reach this level, the legislative body of the lead agency must conduct a public hearing and find that eight environmental criteria, seven landuse criteria, and one of three affordable housing criteria have all been met.<sup>35</sup> Given the extent of these requirements, it is unlikely that many projects will be deemed “sustainable communities projects” and qualify for full CEQA exemption.

### C. *Housing Element Reform*

SB 375 requires that planning for transportation and housing occur together in order to reflect the necessary balance between jobs and housing within a region. To accomplish this goal, these historically separate planning areas are assessed together using the regional employment projections in the applicable regional transportation plan.<sup>36</sup> The bill extends the general plan housing element update period from five to eight years, synchronizing it with the eight-year Regional Housing Needs Allocation periods.<sup>37</sup> The housing allocation plan must be consistent with the development pattern in the SCS. Once the housing element has been submitted, local governments have three years to rezone parcels to demonstrate consistency with the SCS. If they fail to rezone within the three-year period, SB 375 provides two remedies: 1) a private right of action to require rezoning within sixty days or to force the local government to overturn the denial of a consistent project;<sup>38</sup> or 2) the local government is simply not allowed to disapprove a housing development project (or impose other discretionary measures to make the project infeasible) if the project has at least forty-nine percent affordable housing.<sup>39</sup> Not only may any interested person bring an action to require a city to complete its rezoning within sixty days, the court may also impose sanctions on the local government.<sup>40</sup> This alignment of housing allocation and transportation planning, and the degree to which

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33. *Id.* § 21155.

34. *Id.* § 21155.2.

35. *Id.* § 21155.1(a)–(c).

36. CAL. GOV'T CODE § 65584.01(d)(1).

37. *Id.* § 65588.

38. *Id.* § 65587(c).

39. *Id.* § 65583(g).

40. *Id.* § 65587(d)(1).

it compels local governments to accommodate affordable housing, is one of the most extraordinary aspects of SB 375.<sup>41</sup>

However, this is premised on the existence of an approved SCS. By allowing an APS that is wholly separate from the RTP, these mandates for internal consistency among the documents and the smart growth priorities they represent could be lost.

### III. OBSTACLES TO IMPLEMENTATION

#### A. *Feasibility and APS*

The presence of an approved and adopted SCS incorporated into the RTP is central to the success of SB 375. This document is the keystone to administrative reconstruction and the harmonization it hopes to achieve, and when removed the entire structure quickly falls apart. While it is true that local governments are under no mandate to adopt either an SCS or APS as part of their own General Plan, MPOs are required to include the SCS as part of their RTP. If a particular region makes development of an SCS impossible under the “feasibility” rubric, then an APS is required, effectively removing any additional requirements under SB 375.

Not requiring the APS to be included in the RTP and instead allowing it to be a separate document is a marked departure from many of the original drafts of the statute. The ultimate exclusion of the APS from the RTP is the result of intense local government lobbying, allowing for regional compliance under the law while leaving policy and funding choices unaffected and areas under an APS with virtually no practical requirements under SB 375. This concession fundamentally weakens the statute, but was likely necessary if the bill was ever going to be adopted. The hope is that MPOs will agree with the smart growth goals of SB 375 and develop “feasible” SCSs, or that CARB will hold MPOs accountable if they try to skirt the requirement. Over the past year, multiple workshops were held across the state to encourage local and regional agencies to effectively implement SB 375.<sup>42</sup>

#### B. *Permanent Funding Source*

One of the biggest issues that must be overcome for this law to reach its goals is funding. When SB 375 was passed, no source of funding was identified for the additional duties the law requires of regional agencies.

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41. See John Darakjian, *SB 375: Promise, Compromise and the New Urban Landscape*, 27 UCLA J. ENVTL. L. & POL'Y 371 (2009).

42. See, e.g., Local Government Commission, *Implementing SB 375*, <http://www.lgc.org/events/past/2009.html> (last visited Apr. 23, 2010); Great Communities Collaborative, *Implementing SB 375 Workshop*, <http://www.greatcommunities.org/events/implementing-sb375-workshop/> (last visited Jan. 30, 2010).

Recently, the Southern California Association of Governments estimated the agency would need \$8 million to begin the implementation of SB 375, not taking into account the costs incurred by local agencies for related planning activities.<sup>43</sup> Although the Legislature acknowledged the need for additional funding, currently the only potential source of funding identified is \$90 million in Proposition 84 funds.<sup>44</sup> However, these funds are designated for the planning and development of sustainable communities in general, and many other government activities besides SB 375 implementation are eligible for the \$90 million.<sup>45</sup> In addition, SB 375 requires a consistent, long-term funding stream since regions have GHG emission reduction targets in both 2020 and 2035. The one-time funding provided under Proposition 84 will likely not be sufficient.

Earlier this year, Senator Mark DeSaulnier introduced SB 406, which would provide permanent funding for SB 375.<sup>46</sup> Under SB 406, if agencies elect to create an SCS, they could implement a \$1 or \$2 surcharge on vehicle registration costs.<sup>47</sup> Some counties oppose this funding scheme because certain regions may be unable to pass resolutions to implement the surcharge, thus not allowing for uniform funding opportunities statewide.<sup>48</sup> Instead, they believe that since SB 375 is a state mandate, SB 406 should be amended to allow for a funding mechanism implemented by a statewide fee, rather than passing the burden to the regional governments.<sup>49</sup>

However, on October 11, 2009, Governor Schwarzenegger vetoed SB 406, stating that although “reducing greenhouse gas emissions is of utmost priority” the bill will impose a new fee on motor vehicle registration, and “such an increase should be subject to voter approval.”<sup>50</sup> Currently, SB 406 is back in the state senate’s “unfinished business” file because of this veto.<sup>51</sup> The Legislature reconvened in January of 2010 and did not have the two-thirds vote of both houses required to override the Governor’s veto.

In addition to a need for a permanent funding stream to support SB 375 level planning, other financial incentives will likely be needed to

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43. ORANGE COUNTY TRANSPORTATION AUTHORITY SUMMARY OF SB 406 (2009), available at <http://www.octa.net/pdf/406.pdf>.

44. *Id.*

45. *See id.*

46. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF SB 406 (2009), available at <http://www.aroundthecapitol.com/billtrack/analysis.html?aid=33241>.

47. *Id.*

48. *Id.*

49. *Id.*

50. Governor Schwarzenegger's SB 406 Veto Message (2009), available at [http://gov.ca.gov/pdf/press/2009bills/SB406\\_DeSaulnier\\_Veto\\_Message.pdf](http://gov.ca.gov/pdf/press/2009bills/SB406_DeSaulnier_Veto_Message.pdf).

51. *See* Total Capitol Bill History of SB 406, [http://www.totalcapitol.com/?bill\\_id=10572](http://www.totalcapitol.com/?bill_id=10572) (last visited Oct. 30, 2009).

encourage actual infill developers.<sup>52</sup> Although SB 375 may remove some of the layers of red tape involved with an infill project (see CEQA exemption discussion below), money for the aged public infrastructure for infill is a huge cost which must be made cheaper. Lower permit fees, competitive grants and loans, or more tax incentives may bring more infill development.

### C. CEQA Exemptions

Since it is clear that SB 375 is a “carrot” rather than a “stick” statute, it is important that the incentives be strong. The availability of CEQA streamlining benefits, the promise of reduced costs, and greater regulatory certainty are vital to the implementation of SB 375. Although state transportation funding “may” be unavailable for projects outside of an SCS, many development projects would merely factor this potential cost into their project plan. However, the possibility of true CEQA reprieve is much more appealing. Unfortunately, by themselves the current SB 375 CEQA exemptions have many limitations, and some revisions are likely necessary to attract development to these transit areas. The problem is that the inclusion of CEQA streamlining benefits was one of the statute’s most divisive compromises, leading to a number of environmental groups withdrawing their support. Pushing for further exceptions may alienate those environmental stakeholders still championing the statute and its goals. The Legislature should tread carefully but almost certainly will need to consider revisions to the CEQA incentives.

The most promising solutions include combining some of CEQA’s other existing rules and exemptions for more powerful streamlining incentives. Some possibilities are a Master EIR for the SCS/APS, the existing infill exemption, and the “partial exemption” if coordinated with local planning. Another possibility is loosening the restrictions on what projects qualify for streamlining.

On the same day that Senator DeSaulnier introduced SB 406, California State Assembly Member Kevin Jeffries introduced AB 782 as a bill to extend the current CEQA exemptions under SB 375 to “any development project, including, but not limited to, a residential or mixed-use residential project, health facility, educational facility, retail facility, commercial job center, or transportation project.”<sup>53</sup> Although the CEQA revisions within AB 782 would allow for more successful infill development, many groups are likely to oppose this new broad definition.

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52. Infill development is the planned conversion of empty lots, derelict buildings, and other available urban space for use as residential or mixed-used sites.

53. ASSEMBLY COMMITTEE ON NATURAL RESOURCES, COMMITTEE ANALYSIS OF AB 782 (2009), available at [http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab\\_0751-0800/ab\\_782\\_cfa\\_20090424\\_133928\\_asm\\_comm.html](http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_0751-0800/ab_782_cfa_20090424_133928_asm_comm.html).

In addition, other sections of AB 782 are even more controversial (including the prohibition of judicial review of CARB's acceptance of an SCS/APS or a local government agency's determination that a project is consistent with an approved SCS/APS) and are unlikely to pass through the rigorous gauntlet of SB 375 stakeholders. At the time of this Article's publication, AB 782 had failed to get the necessary votes to pass it out of committee and was not going to be considered further during the current congressional session.<sup>54</sup>

#### CONCLUSION

Although there are many pitfalls in successfully implementing SB 375, the mere fact that it was signed into law is a success. However, many of the concessions made to get the bill passed severely limit its power to entice transit-oriented development. As seen by the introduction of both SB 406 and AB 782, additional legislation is almost certainly necessary. Three major steps must be taken: 1) development of a permanent funding stream; 2) requirement that the APS be included in the RTP; and 3) establishment of better CEQA streamlining benefits. Funding must be made available for SB 375-level planning and for individual infill developers, either through federal recovery grants, statewide vehicle registration fees, or other creative funding opportunities at the local and regional level. In addition, the current "carrots" are not enticing enough, and without at least the small "stick" of the documents being part of the RTP, it is very likely that local governments and developers will choose to do the minimum required under SB 375.

The passage of this bill brought the most unlikely groups to the table, and they need to continue to work together to make the final big concessions that they were unwilling to make last year. Although environmentalists do not want additional CEQA exemptions, the cities and developers do not want the mandate to adopt a plan under the RTP. Both of these things need to happen if SB 375 is ever going to be anything more than "the little statute that could."

However, as the legislation is currently written, it is the willingness of MPOs to adopt an SCS that meets GHG reduction targets that is critical to the success of SB 375. Over the next year, continued communication between CARB and the MPOs will help foster this willingness. In addition, local constituents who are in favor of infill development must be mobilized to become an active voice in these decisions. Even though the decision to comply with SB 375 is driven by incentives and not mandates, there is the strong possibility that these smart-growth goals may be achieved by new social and market forces.

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54. See *Around the Capitol Bill History of AB 782*, [http://www.aroundthecapitol.com/Bills/AB\\_782/](http://www.aroundthecapitol.com/Bills/AB_782/) (last visited Feb. 13, 2010).

While there are many steps that still must be taken for AB 32 and SB 375 to reach their lofty goals, one positive aspect of the bills (now law) is that everyone seems to agree that transportation and planning agencies must begin to work together on land use decisions. Hopefully the many disparate stakeholders in California will make the final compromises necessary for the rest of the nation to continue to turn its attention to our state as a leader in innovative regulation in the struggle against climate change.