

STATE OF CALIFORNIA

GOVERNOR'S OFFICE of PLANNING AND RESEARCH



STATE CLEARINGHOUSE AND PLANNING UNIT

Senate Bill 375 CEQA Provision Flow Charts

Developed by the Governor's Office of Planning and Research February 2011

<u>Purpose</u>

The Governor's Office of Planning & Research (OPR), working with the Climate Action Team's Climate Change, Land Use, and Infrastructure Group (CCLU-In) developed the following charts to assist state, regional, and local governments in understanding the California Environmental Quality Act (CEQA) provisions enacted by Senate Bill 375 (Steinberg 2008) (SB 375). SB 375's CEQA provisions will be available for agencies to utilize at such time as a regional Sustainable Communities Strategy (SCS) or Alternative Planning Strategy (APS) has been adopted by the applicable Metropolitan Planning Organization (MPO) and accepted by the California Air Resources Board. The charts outline the new options described in the California Public Resources Code (PRC) Sections for the review and analysis of certain types of projects:

- 21155.1 (Exemption for "Transit Priority Projects" (TPP's))
- 21155.2 (Sustainable Communities Environmental Assessment and Limited Environmental Impact Report (EIR) for TPP's)
- 21159.28 (Limited Analysis for "Mixed Use Residential Projects" (MURP's))

There are four charts. Chart 1 is a basic overview of all three options. Chart 2 is a basic overview of the TPP exemption. Chart 3 is a basic overview of the option of using either a Sustainable Communities Environmental Assessments (SCEA) or a Limited EIR for a TPP. Chart 4 is a basic overview of the option available for mixed use /residential projects. The PRC text has been truncated in each chart, please refer to the statute for the complete language.

These charts are meant to provide assistance in understanding SB 375's new CEQA options, and should not be considered legal advice. Lead agencies with legal questions regarding the use of the SB 375 CEQA provisions should seek assistance from their legal counsel prior to using these provisions and adopting or certifying CEQA documents.

These charts attempt to outline the CEQA statutes enacted by SB 375. Other CEQA process requirements (such as the issuance of a Notice of Preparation, holding scoping meetings, filing a Notice of Determination, etc.) are not included in these charts, but still must be completed by the lead agency to be compliant with the law. In order for TPP's or MURP's to be eligible for any of the SB 375 CEQA provisions they must 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" (PRC Section 21155(a) and 21159.28).

Brief Introduction to SB 375

In 2008, the California Legislature and Governor Schwarzenegger enacted SB 375. This landmark bill coordinates land use and transportation planning to reduce greenhouse gas (GHG) emissions from cars

and light trucks. The law requires MPO's to add a new component to their Regional Transportation Plans (RTPs), the Sustainable Communities Strategy (SCS). An SCS must "set forth a forecasted development pattern for the region, which, when integrated with the transportation network, and other transportation measures and policies, will reduce the greenhouse gas emissions from automobiles and light trucks to achieve, if there is a feasible way to do so, the greenhouse gas emission reduction targets approved" by the California Air Resources Board. (GC 65080(b)(2)(B)). If the SCS is unable to feasibly reduce GHG emissions to achieve the GHG emission reduction targets established by ARB, the MPO's shall prepare an Alternative Planning Strategy (APS) showing how the GHG emissions reduction targets would be achieved. After the MPO adopts the SCS or APS it must submit the SCS or APS to the ARB for review. ARB must review whether the SCS or APS would meet the regional GHG emission reduction target. Review by ARB is limited to acceptance or rejection of the MPO's determination that the SCS or APS submitted would, if implemented, achieve the region's GHG emission reduction targets.

Please refer to Government Code Section 65080 for the statutory requirements for ARB to establish and update the regional GHG emissions reduction targets, and the requirements for RTPs, SCSs, and APSs. For additional information on RTP requirements, and for detail and context of the SCS and APS provisions please see the "2010 California Regional Transportation Guidelines". (http://www2.dot.ca.gov/hg/tpp/offices/orip/rtp/index_files/2010_RTP_Guidelines_4-27-10.pdf)

In order to encourage land use planning and development that is consistent with an SCS or APS, SB 375 includes new CEQA provisions that can be used by lead agencies for TPP's as defined in (PRC 51155) and for MURP's as defined in PRC 21159.28(d).

Other Approvals

Projects that use the SB 375 CEQA provisions will still need to obtain discretionary permits or other approvals from the lead agency and responsible agency. Regardless of any CEQA streamlining or exemption benefits that a project receives from the SB 375 CEQA provisions, the lead agency must consider the merits of the project before moving forward with project approvals (such as a general plan amendment, rezone, use permit, variance, etc.) in accordance with local codes and procedures. Responsible agencies will also need to rely on the CEQA document prepared by the lead agency prior to issuing permits or otherwise approving the project.

Feedback and Next Steps

OPR will continue to maintain and update these charts. The next step is to include expanded explanations for each section similar to the CEQA Process Flow Chart on CERES: http://ceres.ca.gov/cega/flowchart/.

Please send suggestions to improve the charts to Scott Morgan, Director of the State Clearinghouse, at: Scott.Morgan@opr.ca.gov.

Edited 02.02.2011

Senate Bill 375 CEQA Chart: Overview of 3 New Options for Certain Projects Chart 1

The Metropolitan Planning Organization adopted and the California Air Resources Board accepted the MPO's determination that a SCS or APS can achieve the region's greenhouse gas emissions reduction target. (Government Code Section 65080(b)(2)(J)(ii)) Is the Proposed Project a residential or mixed use residential project that is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either an approved SCS or APS? (PRC Section 21155(a) and 21159.28(a)) No Yes Does the proposed project meet the definition of a TPP? (PRC Project does NOT qualify for SB 375 CEQA provisions. Lead Agency Section 21155(b)) will use standard CEQA process. Yes No Does the mixed use residential project consist of at least 75% total building square footage of residential uses and has the project incorporated the mitigation measures required by an applicable prior Does the TPP meet the exemption criteria environmental document? (PRC Section 21159.28) in PRC Section 21155.1? Yes No Project does NOT qualify for Yes SB 375 CEQA provisions, Lead Project is exempt from CEQA. Refer to Sustainable Communities Environmental Agency will use standard CEQA Chart 2 for more information on the SB 375 Assessment (SCEA)/Limited Environmental process. Exemption provisions. Impact Report may be used for analysis of TPPs that have incorporated all feasible Lead Agency may file a Notice of mitigationmeasures, performance standards, Exemption upon project approval. or criteria set forth in prior applicable EIRs. (PRC Section 21155.2) (PRC Section 21152) Mixed use residential projects with a Documents NOT required to reference, total square footage of at least 75% residential describe, or discuss the following: uses and TPPs can use the provisions in PRC 1. growth inducing impacts, Section 21159.28. 2. project specific or cumulative impacts Documents developed pursuant to PRC from cars and light trucks on global Section 21159.28 are NOT required to warming or the regional transportation reference, describe, or discuss the following: network, and 1. growth inducing impacts, 3. a reduced density alternative (EIRs 2. project specific or cumulative impacts from cars and light trucks Cumulative effects identified and mitigated on Global Warming or the Regional for in previous applicable EIR's shall NOT be Transportation Network, and treated as cumulatively considerable for the 3. a Reduced Density Alternative (EIRs project. only). The substantial evidence standard, not the Refer to Chart 4 for more information on the fair argument standard, applies to the lead SB 375 limited analysis provisions. agency's decision to review and approve an SCEA. Lead Agency must adopt or certify the Refer to Chart 3 for more information on the CEQA document prior to project approval. SB 375 SCEA/Limited EIR provisions. (CEQA Guidelines Section 15074 and 15090) Lead Agency must approve the SCEA or Responsible Agencies must consider the certify the Limited Environmental Impact environmental document prepared by the Report prior to project approval (PRC Section Lead Agency and reach their own conclusions 21155 (b)(5) and CEQA Guidelines Section on whether and how to approve the project. 15090). (CEQA Guidelines Section 15096) Responsible Agencies must consider the environmental document prepared by the

Lead Agency and reach their own conclusions

on whether and how to approve the project.

(CEQA Guidelines Section 15096)

SB 375 Transit Priority Project CEQA Exemption Flow Chart Chart 2

Is the project consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a SCS or APS? (PRC Section 21155(a))

Yes

Is the Proposed Project a Transit Priority Project (TPP) as defined by PRC Section 21155(b)?

Transit Priority Projects must contain the following:

- at least 50% residential use, based on total building square footage and, if project contains between 26% and 50% non-residential uses, a FAR of not less than 0.75;
- 2. minimum net density of at least 20 dwelling units per acre; and,
- 3. be within one-half mile of either of the following which have been included in a Regional Transportation Plan:
 - a. a major transit stop that contains an existing rail station, a ferry terminal served by transit, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during peak commute periods; or,
 - b. a high quality transit corridor that has fixed route bus service with service intervals no longer than 15 minutes during peak commute hours.

No

The project does not qualify for SB 375 CEQA provisions. Lead Agency will use standard CEQA process.

> No The project may

NOT use the PRC

Section 21155.1 CEQA

Exemption, may

qualify for PRC Section

21152.28 provisions.

(See Chart 4)

Yes

Does the Transit Priority Project comply with all the following environmental criteria? PRC Section 21155.1(a)

- 1. The TPP served by existing utilities and the applicant has paid or committed to pay all applicable fees.
- 2. The site of the TPP does not contain wetlands or riparian areas, does not have significant value as a wildlife habitat, and the TPP does not harm any protected species.
- 3. The TPP is not included on any sites on the Cortese List.
- 4. The TPP is subject to a preliminary endangerment assessment to determine the existence of any hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from the area.
- 5. The TPP does not have a significant effect on historical resources.
- 6. The TPP site is not subject to:
 - a. a wildland fire hazard, as determined by CalFire,
 - b. an unusually high risk of fire or explosion from materials stored or used on nearby properties,
 - c. risk of a public health exposure,
 - d. seismic risk as a result of being within a delineated earthquake fault zone or a seismic hazard zone, and
 - e. landslide hazard, flood plain, flood way, or restriction zone.
- 7. The TPP is not located on developed open space.
- 8. The TPP buildings are 15% more energy efficient than Title 24 and use 25% less water than average households.

No

The project may
NOT use the PRC
Section 21155.1 CEQA
Exemption, may
qualify for PRC Section
21151.2 and 21159.28
provisions. (See Charts
3 and 4)

Yes

Does the TPP meet all the following land use criteria? PRC Section 21155.1(b)

- 1. TPP site is not more than eight acres.
- 2. TPP does not contain more than 200 residential units.
- 3. TPP does not result in a net loss of affordable housing within the project area.
- 4. TPP does not include any single level building exceeding 75,000 square feet.
- 5. Applicable mitigation measures or performance standards from prior EIRs have been incorporated.
- 6. TPP does not conflict with nearby industrial uses.
- 7. TPP is located within one-half mile of a rail transit station or high-quality transit corridor, or ferry terminal that have been included in a RTP.
- 8. The TPP meets one of the following criteria (PRC Section 21155.1 (c)):
 - a. the TPP will sell at least 20% of housing to families of moderate income, 10% of housing will be rented to families of low income, or at least 5% of the housing is rented to families of very low income, and the developer provides legal commitments to ensure the continued availability of these housing units for very low, low-, and moderate income households,
 - b. the TPP developer has paid or will pay in-lieu fees sufficient to result in the development of the affordable units described above, and
 - c. the TPP provides public open space equal or greater than 5 acres per 1,000 residents of the project.

Yes

If the city or county's legislative body finds, after conducting a public hearing, that a TPP meets all of the specified requirements, the TPP is declared a sustainable communities project and shall be exempt (PRC Section 21155.1 (a)). The Lead Agency may file a Notice of Exemption after approving the project. (PRC Section 21152)

No

The project may NOT use the PRC Section 21155.1 CEQA Exemption, may qualify for PRC Section 21151.2 and 21152.28 provisions. (See Charts 3 and 4)

SB 375 Transit Priority Project SCEA/Limited Analysis EIR CEQA Flow Chart Chart 3

Is the project consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a SCS or APS (PRC Section 21155(a)) and has the project incorporated all feasible mitigation measures, performance standards, or criteria set forth in the prior applicable EIR's and adopted in findings (PRC Section 21155.2(a))?

Yes

Is the proposed project a Transit Priority Project (TPP) as defined by PRC Section 21155(b)?

Transit Priority Projects must contain the following:

- at least 50% residential use based on total building square footage and a floor area ratio of 0.75.
- 2. minimum net density of at least 20 dwelling units per acre, and
- 3. be within one-half mile of either of the following which have been included in a Regional Transportation Plan:
 - a. a major transit stop that contains an existing rail station, a ferry terminal served by transit, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during peak commute periods, or
 - a high quality transit corridor included in a regional transportation plan that has fixed route bus service with service intervals no longer than 15 minutes during peak commute hours.

No

Project does not qualify for SB 375 provisions. Lead Agency will use standard CEQA process.

Yes

City or County may choose to use a Sustainable Communities Environmental Assessment (SCEA) or a Limited Environmental Impact Report for projects that are not exempt under PRC Section 21155.1.

No

Project may NOT use a SCEA or Limited Environmental Impact Report. Project may be eligible for PRC Section 21159.28 provisions. (See Chart 4)

Sustainable Communities Environmental Assessment (PRC Section 21155.2(b))

(SCEAs would be used for projects that are determined to have less than significant environmental impacts)

- 1. The lead agency shall prepare an initial study for an SCEA that identifies all significant impacts except for the following:
 - a. growth inducing impacts, and
 - b. project specific or cumulative impacts from cars and light trucks on global warming or the regional transportation network.
- 2. The initial study shall also identify any cumulative impacts that have been adequately addressed and mitigated in a prior applicable certified EIR. Where the lead agency determines the impact has been adequately mitigated, the impact shall be not be cumulatively considerable.
- The SCEA shall contain mitigation measures to avoid or mitigate to a level of insignificance all significant effects identified in the initial study.
- The draft SCEA shall be circulated for a 30 day public comment period, and the lead agency shall consider all comments received.
- 5. The SCEA may be approved after the lead agency conducts a public hearing, reviews comments received, and finds the following:
 - a. that all potentially significant effects have been identified and analyzed, and
 - b. that each significant effect has been mitigated to level of insignificance by either the lead agency or another agency with the responsibility and jurisdiction to implement the mitigation measures.
- If the planning commission conducts the public hearing, the fee to appeal its decision to the decision-making body shall not exceed \$500.
- The substantial evidence standard, not the fair argument standard, applies to the lead agency's decision to review and approve an SCEA.

Limited Analysis Environmental Impact Report (PRC Section 21155.2(c))

- The lead agency shall prepare an initial study that identifies all significant impacts except for the following:
 - a. Growth inducing impacts
 - Project specific or cumulative impacts from cars and light trucks on global warming or the regional transportation network
- The initial study shall also identify any cumulative impacts that have been adequately addressed and mitigated in a prior applicable certified EIR. Where the lead agency determines the impact has been adequately mitigated, the impact shall be not be cumulatively considerable.
- The EIR is not required to analyze off-site alternatives to the project.

Lead Agency must certify the Limited EIR prior to project approval. (CEQA Guidelines Section 15090)

Responsible Agencies must consider the environmental document prepared by the Lead Agency and reach their own conclusions on whether and how to approve the project. (CEQA Guidelines Section 15096)

Lead Agency must approve the SCEA prior to project approval. (PRC Section 21155.2(b)(5))

Responsible Agencies must consider the environmental document prepared by the Lead Agency and reach their own conclusions on whether and how to approve the project. (CEQA Guidelines Section 15096)

SB 375 Residential/Mixed Use Project CEQA Streamlining Chart Chart 4

Is the project consistent with the general use designation, density, building intensity, and applicable policies in specified for in the project area in either an SCS or APS? (PRC Section 21159.28(a)) Yes No Project does NOT qualify for SB 375 CEQA Is the proposed project a residential or mixed-use residential project provisions. Lead Agency will use standard where at least 75% of the total building square footage of the project CEQA process. consists of residential use (PRC Section 21159.28(d) or is a Transit Priority Project as defined in PRC Section 21155(a)? Does the project incorporate the mitigation measures required by an applicable prior Environmental Document? (PRC Section 21159.28(a)) Yes No The project's CEQA document is NOT required to reference, describe, Project does NOT qualify for SB 375 CEQA or discuss the following (PRC Section 21159.28(a and b)): provisions. Lead Agency will use standard CEQA process. 1. growth inducing impacts, 2. project specific or cumulative impacts from cars and light trucks on global warming or the regional transportation network, or 3. a reduced density alternative (EIRs only). Lead Agency adopts or certifies CEQA document prior to project approval. (CEQA Guidelines Section 15024 and 15090) Responsible Agencies must consider the environmental document prepared by the Lead Agency and reach their own conclusions on whether and how to approve the project. (CEQA Guidelines Section 15096)