

A Tale of Two Cities: SB375 and the LAFCo Process

The Law: SB 375 (Steinberg, 2008)

SB 375 contains five parts:

1. The creation of regional targets for greenhouse gas (GHG) emission reductions tied to land use.
2. A requirement that regional planning agencies create a plan to meet those targets, even if that plan is in conflict with local plans.
3. A requirement that regional transportation funding decisions be consistent with this new plan.
4. Linking regional transportation planning and affordable housing goals.
5. New CEQA exemptions and streamlining for projects that conform to the new regional plans, even if they conflict with local plans.

1. Regional Targets for Reducing California's Emissions

Reducing greenhouse gas emissions is a result of growing concerns about global warming, climate change as well as of the United States' refusal to sign the Kyoto Accords. California's major initiatives for reducing greenhouse gas (GHG) emissions were outlined in Assembly Bill 32 (Nunez, 2006), a 2005 Executive Order from Governor Schwarzenegger and a 2004 California Air Resources Board (CARB) regulation. The goal is a reduction in GHG emissions to 1990 levels by 2020 - a reduction of approximately 30 percent, and then an 80 percent reduction below 1990 levels by 2050. CARB, an appropriate acronym, was designated as the lead agency to implement the law.

Under SB 375, CARB has two years – until September 30, 2010 – to give each of California's metropolitan planning organizations a GHG emissions reduction target. CARB produced a draft scoping plan which includes three separate actions:

- 1) Greater fuel efficiency from new vehicles – addressed in AB 1493, which (until the last presidential election, California and the federal government were fighting over).
- 2) Reducing the carbon content of fuels – a requirement under Schwarzenegger's low-carbon emissions standards and also the subject of the past dispute with the federal government.

- 3) Changes in the State's growth patterns that will result in a reduction in overall driving and achieve approximately 2.5% of CARB's regional GHG reduction goals.¹

To meet the goals, GHG emissions would have to be reduced by 4% per year until 2030 while California's population is expected to grow by 12% during the same time period. CARB's Drafting Scoping Plan for AB32 notes that "...per capita emissions must decrease at an average rate of slightly less than 5% per year during the 2020-2030 period."

2. Regional Planning Agencies and Sustainable Communities Plans

The majority of the populated areas in California are in one of the 16 Metropolitan Planning Organizations, a federally designated transportation policy-making and funding agency. Each Metropolitan Planning Organization (MPO)² will receive the regional targets for GHG reductions from CARB by 2011. But it is important to understand the relationship of MPOs and Regional Transportation Planning Agencies (RTPA) and their role in SB 375.

The key regional transportation planning entities in California are the RTPAs and MPOs. Every county in California is served by an RTPA, and every county with at least one urbanized area is also served by a MPO. (See map)

Federal law defines a MPO as a "forum" for cooperative transportation decision-making. The minimum size for a MPO to be formed is an urbanized area over 50,000 in population, but a single MPO may serve more than one urbanized area and may include multiple counties.

RTPAs are created pursuant to California law (Government Code Section 29532 et seq.) and although State law does not define a RTPA, Government Code Section 65080 identifies some RTPA responsibilities: to adopt a regional transportation plan and to prepare and adopt a regional transportation improvement program. The RTPAs are local transportation commissions, county transportation commissions, councils of government, and associations of government.

MPOs and RTPAs perform generally the same transportation planning work. For example, both prepare an annual Overall Work Program (OWP) and both develop regional transportation plans (RTPs), and both program projects into transportation improvement programs.³

¹ California Planning and Development Report, October 1 2008

² MPOs are generally known in California as councils of government or associations of government. In 1962, the US Congress passed legislation that required the formation of an MPO for any Urbanized Area (UZA) with a population greater than 50,000. Federal funding for transportation projects and programs are channeled through this planning process. MPOs are governed by Federal law (23 USC 134 and 135).

³ California Department of Transportation

CALIFORNIA

Metropolitan Planning Organizations (MPOs) and Regional Transportation Planning Agencies (RTPAs)



Under SB 375 MPOs will develop a “Sustainable Communities Strategy” that “...lays out how the emissions reduction will be met. Technically, this strategy becomes part of the Regional Transportation Plan (RTP) – an important point, because it tethers the sustainable strategy to federal transportation planning law.”⁴

The Sustainable Communities Strategy will be developed by the MPOs and will establish future growth patterns for the region. But the Sustainable Communities Strategy “...is subject to certain provisions of federal transportation law that could undercut the anti-sprawl efforts – especially a provision stating that the RTP must be based on “current planning assumptions” in the region, i.e. General Plans of cities and counties. “If a certain type of development pattern { *as envisioned by SB 375* } is unlikely to emerge from local decision-making,” League of California Cities lobbyist Bill Higgins noted recently, “it will be difficult for the regional agency to say that it reflects current planning assumptions.

In addition, Higgins and other local government lobbyists succeeded in inserting language saying that the Sustainable Communities Strategy is not a land-use plan and SB 375 does not confer land-use authority on the MPOs. As Higgins said... at the CCAPA conference in Hollywood, this means that local governments’ own General Plans don’t have to conform to this Sustainable Communities Strategy.

As is typically the case in planning, the Sustainable Communities Strategy can contain only “feasible” measures to reduce greenhouse gas emissions. If the end result doesn’t hit the CARB target, the MPO must develop a second plan – the “Alternative Planning Strategy,” which is technically separate from the RTP but nevertheless must lay out an alternative plan to meet the target. The alternative strategy becomes important in the CEQA exemptions below.”⁵

3. Transportation Funding Consistency

The one item that has concerned most local agencies is the often repeated assertion that SB 375 will strip transportation funds from regions not meeting GHG reductions and/or not changing its land use patterns. But SB 375 only requires that the Regional Transportation Plan action items and financing decisions must be consistent with the Sustainable Communities Strategy. And the Boards of MPOs and RTPAs are comprised of elected officials from local agencies.

“In other words, SB 375 talks tough about tying state and federal transportation dollars to land use decisions, but the bill does not alter the current regional planning structure, which delegates decision-making authority to local officials sitting as MPO board members.”⁶

⁴ California Planning and Development Report, October 1 2008

⁵ California Planning and Development Report, October 1 2008

⁶ California Planning and Development Report, October 1 2008

4. Connection to Regional Housing Needs Assessment

SB 375 also changes the Housing Element law and links regional transportation planning and affordable housing. There are three major components to the changes required by SB 375:

1. Now the regional transportation plans and Housing Elements must be updated once every eight years.
2. Rezoning required by the Housing Element must be completed within three years and must include minimum density and development standards for the site.
3. Regional Housing Needs Assessment (RHNA) "fair share" numbers⁷ must conform to the Sustainable Communities Strategy. "This has important consequences for the RHNA process and Housing Element implementation. The regional planning agencies are required to provide local governments with a housing allocation representing their "fair share" of regional growth. But the Sustainable Communities Strategy is likely to concentrate future development around transit stops. The end result of the RHNA process in the future is likely to look something like what the Association of Bay Area Governments has recently done in this arena – cutting a deal among the local governments to allow more housing in transit-rich areas, and rearranging the RHNA numbers to accommodate that goal."⁸

5. CEQA Exemptions and Streamlining

Under SB 375 two types of development projects are either exempt from CEQA, or have streamlined review – if they are consistent with the Sustainable Communities Strategy--even if they conflict with local plans. They are residential/mixed-use projects and "transit priority projects".

Streamlining the environmental review process is reserved for residential/mixed-use project. The reduced CEQA review for residential/mixed use projects will not have to address growth-inducing impacts or project-specific/cumulative impacts associated with climate change.

Transit priority projects are obviously the preferred development under SB 375. They can either take advantage of the full CEQA exemption or a streamlined environmental review if they meet the following:

1. Contain at least 50% residential use
2. Have a minimum net density of 20 units per acre
3. Have a floor-area ratio for the commercial portion of the project at 0.75

⁷ RHNA quantifies the need for affordable housing within each jurisdiction. RHNA consists of two measurements of housing need--existing need and future need.

⁸ California Planning and Development Report, October 1 2008

4. Be located within ½ mile of a rail stop, a ferry terminal, or a bus line with 15-minute headways.

Transit priority projects that can take advantage of the CEQA streamlining if they also:

- are no bigger than 8 acres or 200 units
- can be served by existing utilities
- will not have a significant effect on historic resources
- buildings exceed energy efficiency standards
- provide ANY of the following:
 - 5 acres of open space
 - 20% moderate income housing
 - 10% low income housing
 - 5% very low income housing

However it has been noted that CEQA currently contains a similar exemption for infill development which is exactly what SB 375 wants to promote. Many practitioners noted that the exemption is seldom used currently. The obstacles to using the existing exemption include (but certainly are not limited to) objections of neighbors, CEQA challenges, lack of political will, abundance of caution etc, etc. It is unknown if the changes in CEQA are enough to overcome these traditional barriers.

6. CALAFCO's Involvement

SB 375 was amended through lobbying by CALAFCO to require the Sustainable Communities Strategy to consider adopted Municipal Service Reviews (MSRs) and Spheres of Influence (SOI). As a result SB 375 included the following subsection {Government Code §65080(b)(2)}:

(F) In preparing a sustainable communities strategy, the metropolitan planning organization shall consider spheres of influence that have been adopted by the local agency formation commissions within its region.

Recently the CALAFCO Legislative Committee met to consider conforming the Cortese-Knox-Hertzberg (C-K-H) Act to SB 375. The report to the Legislative Committee, comprised of CALAFCO Board members and staff, stated:

“In 2008 the Senate Transportation Committee briefly considered introducing legislation requiring LAFCoS to consider adopted “Blueprint Plans” in its consideration of proposals. CALAFCO suggested that such legislation was premature in lieu of consideration of SB 375. At the time, CALAFCO’s position was to revisit this issue should SB 375 pass.

“Now that SB 375 is law, CALAFCO should consider Amending C-K-H to include consideration of the regional plans required by SB 375. Since CALAFCO asked that the plans include adopted spheres, it is appropriate that LAFCo considered adopted plans. In addition, LAFCo can play an important role in GHG reductions by assuring that local agency boundary changes are consistent with adopted plans. Further it is

only through LAFCo applications that special district boundary changes and service changes can be reviewed in light of an adopted Sustainable Communities Strategy or an Alternate Planning Strategy. CKH Currently contains a reference to regional plans that appears to become obsolete under SB 375”

The CALAFCO legislative Committee considered the current law which states:

56668.5. The commission may, but is not required to, consider the regional growth goals and policies established by a collaboration of elected officials only, formally representing their local jurisdictions in an official capacity on a regional or subregional basis. This section does not grant any new powers or authority to the commission or any other body to establish regional growth goals and policies independent of the powers granted by other laws.

It also considered a proposed change which would have eliminated the current language 56668.5 and added a 16th factor that would have required LAFCOs to consider the “extent to which the proposal will implement a regional transportation plan, including a to consider a Sustainable Communities Strategy or an Alternate Planning Strategy, adopted pursuant to Section 65080.

The CALAFCO Legislative Committee discussed the proposed language but the final recommendation was NOT to add a 16th factor LAFCo to consider when reviewing proposals but to modify 56668(g) as follows:

56668 (g) Consistency with city or county general plan and specific plans and any applicable regional transportation plan, including a sustainable communities strategy or alternate planning strategy adopted pursuant to Section 65080.

The CALAFCO Board of Directors voted to support the proposed language which has now been introduced as SB 215 (Wiggins).

CASE STUDIES

CASE 1: The City of Futureville

The City of Futureville (the “City of Tomorrow Today!”) is situated in a broad, flat valley with surrounding open space and agricultural uses. It is considered one of the most beautiful valleys in the state.

The City has a history of polarized politics as the economic base of agriculture has faded. During the 1960s, a few high-tech video companies migrated to the City. Also beginning in the late 1960s, it began attracting a diverse new population: retirees buying homes in semi-rural subdivisions and artists drawn to a small but vibrant cultural center. In spurts during the last 30 years, the area has also attracted "equity refugees" and daily commuters from the two heavily urbanized counties to the west. A rapid bus service provides limited relief to increasingly long traffic delays. The City Council has flip-flopped with each election cycle between a pro-growth and a slow-growth majority. The one thing that unites all residents is a hatred of the urbanized counties to the west and especially of the COG (County Regional Association to Build Solutions or “CRABS”) that oversees all three counties.

The air quality in the county is good; however the two counties to the west are non-attainment areas for multiple pollutants and has been the subject of several lawsuits brought by environmental groups

With everyone reeling from a mortgage and banking crisis, the state deficit, layoffs, and high food/fuel costs, the county has discussed bankruptcy. The City, due to its more diverse economy and prudent (some say stingy) fiscal controls, is more financially sound but not robust.

Citizens in the City approved a growth boundary as a means of protecting the remaining agricultural uses that surround the City. And LAFCo’s agricultural protection policies were specifically written to try to offer some protection for the City’s agricultural uses. Finally, LAFCo adopted a sphere of influence for the City that is identical to the growth boundary and the Commission has consistently refused to change it. The reasons cited by the Commission are preservation of the agricultural uses and serious concerns about the availability of services.

There are currently three water service providers that serve the City of Futureville and its sphere of influence:

1. City of Futureville
2. Hope Springs Water District

3. Eternal Springs Water District

Most of the water supply within area is pumped from the local groundwater basins and groundwater levels have generally been declining for the past 50 years. The basin is adjudicated as a result of a lawsuit over the continued overdraft of groundwater. Simply stated, current demand exceeds supply; future demand will also exceed supply unless new sources of water are found. The lack of water has fueled the anti-growth faction in the city.

As a further complication, water quality problems from the multiplicity of septic systems and past agricultural uses affect current drinking water quality. To comply with the increased federal standard for improving the water quality, all three agencies must fund expensive sewer treatment facilities or cooperate with the City. The City has the only sewage treatment plant in the valley.

All five current City Council members are hard-line anti-growth advocates and they will not approve any development permits. Their official reasoning is that none of the agencies –the City or either special district—will provide water or sewer “will-serve” letters. In addition, rate payers have refused to approve rate increase for both Districts; Hope Springs WD has investigated bankruptcy.

The City’s General Plan has planned and zoned the area in its sphere for open space, agricultural and very limited large lot residences (farm homes). The few unincorporated areas not in the City’s sphere are also zoned for open space and agriculture by the County. The City, County and LAFCo have a loose, legally questionable agreement that discourages the County from developing land within the City’s sphere.

The COG, however, has designated the City of Futureville and its surrounding areas (including the entire valley) as the tri-county region’s “high priority” development area. The COG’s goal in preparing its Sustainable Communities Strategy (SCS) is that decisions regarding growth, transportation, land use, and economic development should be made to promote and sustain **all** residents in the three-county region. The COG’s planners point out, and many agree, that the City of Futureville has the perfect mix of topography, property values, open space and initial infrastructure to serve as a SCS.

COG envisions Futureville as a dense, urban area with industrial uses for employment, a major transportation hub, a commuter rail, and a significant increase in affordable housing.

The County BOS is being lobbied heavily, and some say threatened, to ignore the agreement, to change their land use designation and to allow development in the unincorporated areas surrounding the City—most of which is in the City’s sphere.

The County desperately needs both transportation money and the economic stimulus the COG's plans might provide.

The COG has been sued repeatedly and numerous citizens' groups have begun collecting money for yet another round of lawsuits. The latest lawsuit claims that the COG violated the California Environmental Quality Act (CEQA) by underreporting the significant adverse environmental impacts of the projects described in their plans. The COG has been seen as aloof and has only involved a few like-minded agencies and residents in its planning processes. They developed their plans without referencing MSRs or spheres of influence.

A former (and very popular) Futureville City Council member, with the unfortunate name of Samuel T. Grubbs, owns several hundred acres and is working with the COG and the County planning staff to develop a showcase industrial park, a small transportation hub and mixed use residential in the City's SOI-all of it green and built to the Leadership in Energy and Environmental Design (LEED) standards. They plan on using a package sewer plant for wastewater services with a Homeowners Association (HOA) as the ultimate owner/operator. The site is in the SOI of Eternal Springs WD which, compared to its neighbor Hope Springs WD, is at least keeping its financial head above water. The landowner has requested annexation to the City but is concurrently processing plans through the County to open negotiations with the City.

CASE 2: The La Colonia and the City of Frost Falls

The community of Rio Colonia, an 800 acre unincorporated area of the county, is a prime example of community spirit at its best. It has been an established community for the past 175 years with some children representing the sixth and seventh generation to call it home. But there are a lot of issues. Residents call it the "canary in the coal mine" because downturns in the economy hit Rio Colonia first. In this sad, sagging economy, Rio Colonia has been almost brought to its knees. The rates of personal bankruptcy, of unemployment, and of foreclosures in the community are twice the rest of the county.

But residents reminded outsiders that the Rio Colonia community pride was here long before even the adjacent City of Frost Falls was incorporated in 1958. "When you're here to visit, that's great," one resident stated. "But don't come in to change us; we know who we are." Home ownership--more than 60% before the recent flood of foreclosures --contributed to neighborhood pride. In fact residents say that most of the empty, foreclosed homes were bought by speculators who saw the area as "blighted" because of its ethnic diversity.

Residents in both the unincorporated community and the adjacent City of Frost Falls are a tight community. Rio Colonia was put in the City's sphere in 1989 but never felt a need to annex. "Everybody in Rio Colonia and Frost Falls are cousins, uncles or best friends," said resident who counted that she is related to 31 other families in the area. "Why do we need some paper saying we're part of one community?"

Land uses in Rio Colonia include residential, industrial and commercial uses. Residents (and people from the City as well as other parts of the County) shop at a large resident-owned store that generates respectable sales tax and has a regional reputation for locally grown produce, reasonably priced meals and ethnic goods.

There are service issues. Most of the area uses on-site septic systems. For anyone who doesn't know the term "honey-dipper" and is therefore unfamiliar with septic systems, they are a form of primary treatment for wastewater. The septic tank is where solids settle out and the effluent percolates through the soil--theoretically removing contaminants. This method of wastewater disposal can be effective in areas where there is an abundance of sand to leach the wastewater and where the population density is low enough that leach fields can be rested periodically to regenerate the natural cleaning ability of sand. But Rio Colonia has neither—it has clay soils and is densely settled.

The Regional Water Quality Control Board has determined that the wastewater is contaminating the groundwater basin which is also used as the drinking water supply. The pollutants in the groundwater are spreading toward domestic wells outside the area, into the City and ultimately into the other parts of the County.

Since Rio Colonia has relied exclusively on groundwater, the county has not limited additional connections for more than 15 years. Despite all of this, the groundwater basin is over-drafted and in the summer some times water has to be trucked. The only possible water supply for Rio Colonia is the City of Frost Falls.

The local school was closed in 1954, and its spacious grounds and park – over 100 acres – became a bus warehouse for the County's Board of Education. Residents believe it said something about the community's lack of political punch that it couldn't stop the bus warehouse, where buses sit idling every morning before going out on runs. Residents became concerned about the high rates of respiratory illnesses in residents living near the old school site.

The bus warehouse and health concerns became a rallying point for the community. In the 1980s residents managed to create their own community center, rare for such a diverse neighborhood. Residents support the Community Center, built on weekends by the everyone in the community, and scour the region for donations and volunteers to keep its computer training classes, weight room, parenting classes, dancing, programs for seniors, job planning, home improvement assistance, and after-school mentoring programs going. The Community Center has produced a new generation of community leaders.

These new leaders decided it was time for a change after the City Council of Frost Falls approved the Preferred Blueprint Scenario (PB) developed by the COG. Residents held a series of community meetings to discuss the COG's PB, the service issues, health concerns and their future. They and the residents voted overwhelmingly to annex to the City of Frost Falls. They understood the financial challenges and collected petitions with 85% of the property owners not only consenting to annexation but also agreeing to impose additional fees to help the City improve the infrastructure. The residents have submitted the petitions and an application to LAFCo for annexation.

And the City of Frost Falls has agreed to annexation for two reasons. First the community organizers from Rio Colonia ran a slate of relatives for the City council and won three seats. Then there's the problem of money.

The City has been hit particularly hard as sales and property tax revenues dropped amid the state's faltering economy. Unlike many other surrounding cities, Frost Falls does not have big-box retailers — giant chain stores that generate a great deal of sales tax revenue, said its Mayor Sherman Peabody.

Compounding the problem is that most of the City's sales taxes come from its car dealerships — a sector of the national economy that has fallen on hard times itself. Meanwhile, income from building permits has plummeted as developers have backed off projects. The City once approved 1,230 permits during one 12-month

period but has just received 20 applications in the last year. Mayor Peabody, whose great-great grandfather was a blacksmith in Rio Colonia, projects that if expenses and revenue remain stagnant, the City won't have enough in its general fund to meet payroll within three months. The residents of Rio Colonia—and their willingness to tax themselves and their healthy tax base—would be a welcome addition to the City.

But there was still the problem of the COG. The COG for this area is an association of local governments in a six-county region. It has adopted a Preferred Blueprint Scenario (PB) in December 2007, a bold vision for growth that promotes compact, mixed-use development and more transit choices. The PB is intended to serve as a framework to guide local government in growth and transportation planning through 2050 as required by SB 375.

The PB links land use and transportation planning, with \$64 billion in transportation investments and deep subsidies for affordable housing development in the six-county region over 21 years. With these strategic investments, the COG can reach even the most ambitious reductions in GHG, curb the growth in traffic congestion and ensure that affordable housing goals are reached. It is a visionary plan that has won international awards and is considered—even by its fiercest opponents—as a masterpiece.

But the COG staff was not content to just develop a plan that was farsighted. Its planners developed the PB through an extensive and exhausting stakeholder driven process. It is the **ONLY** COG in the state that had every single one of its public agencies—cities (including the City of Frost Falls before the November elections), special districts and even school districts – approve the PB.

For the community of Rio Colonia the PB is considered a disaster. That luscious school site is slated to become a six-county regional transportation hub with extremely dense mixed use development surrounding the hub. The community would be torn asunder with light rail lines and dedicated bus lanes.

Without the Rio Colonia transportation hub, the COG's plans are so severely altered that they would have to start the process and developing a new plan all over again. Everyone agrees that starting over would kill the current plan and un-do thousands of hours of work. The COG is opposing the annexation and lobbying Commissioners.

LAFCo is scheduled to hear the annexation proposal in two months.

Discussion Questions

1. **CASE 1:** The annexation application to Futureville is based on the sustainable communities strategy for dense development with heavy emphasis on affordable housing and transportation links. What are the LAFCo related issues? What should the LAFCo staff recommend?
2. **CASE 2:** The annexation application to Frost Falls not only is inconsistent with the sustainable communities strategy but has the potential to derail a model process that could be replicated by other COGs in the state. What are the LAFCo related issues? What should the LAFCo staff recommend?
3. How can LAFCo balance the priorities of the City, County, Districts, COG, region and the SCS?
4. What should LAFCo's role be with respect to the development and implementation of a sustainable communities plan or alternate planning strategy?
5. How should LAFCo respond if application for an SOI amendment or annexation is inconsistent with an adopted SCS? How should LAFCo view a SCS?
6. What perspectives and skills might LAFCo bring to the table?
7. What should the CALAFCO Board recommend for legislative changes if any?