

## Planning for States and Nation/States: A TransAtlantic Exploration

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### **Response to William Fulton's paper: "Will Climate Change Save Growth Management in California"?**

**By Mike McKeever**

Mr. Fulton does an excellent job of describing California's SB375 and putting it in context of prior planning initiatives in the State of California and the nation. As a career long observer and commentator on California and national planning practice and a City Councilman within the largest regional planning agency in the country, the Southern California Council of Governments (SCAG), as that region developed and adopted its first Sustainable Communities Strategy (SCS) under the new law, he is well positioned to offer his observations. My comments, of course, are affected by my own background, the essentials of which include: most of my career was as a planner in Portland, Oregon, a state and region with arguably the most evolved and explicit system of state and regional planning in the country; I was one of a small group of people actively involved in drafting SB375; and I was appointed by the California Air Resources Board (CARB) to chair the 25 person Regional Targets Advisory Committee (RTAC) to recommend to CARB the policy and technical methods they should use to establish greenhouse gas reduction emission targets for the 18 MPOs in the state. While I agree with Mr. Fulton's observations and even his conclusion that the new law represents a nudge in the right direction, the first round of plans developed under the law suggest it is a very powerful nudge indeed.

The law itself is unlike anything else in the planning landscape in the United States. It is not a classic planning regulatory law that establishes clear outcomes that must be met by regional and local plans. It does contain several important requirements that define how the planning process must occur, including:

- the development of multiple planning scenarios, broad inclusion of the public and local governments and use of clear models and visual materials to promote understanding of scenario impacts before the preferred scenario is selected;
- required analysis of certain impacts such as farmland and natural resource conversion rates to urbanization;
- the adopted plan must meet CARB's adopted greenhouse gas reduction target for the region if it is feasible to do so;
- the state mandated regional housing plans be consistent with the SCS;

- and all transportation investments funded over the next several decades through these multi-billion dollar plans be consistent with the SCS.

As the author of the legislation, Senate Pro Tem Darrell Steinberg says, the law is mainly based on carrots, but very strong carrots.

At this juncture, four years into the implementation of the law, CARB has established what most consider to be the “most ambitiously achievable” greenhouse gas reduction targets for the 18 MPOs, and three of the four largest MPOs in the state have adopted their first round of plans (which must be updated every four years). The power of the law to change behavior is undoubtedly most in evidence in the SCAG region itself, which made a remarkable transformation from vocal opposition to the new law and initial advocacy with the RTAC and CARB to set very modest greenhouse gas reduction targets, to the adoption of a very progressive plan that embraces sustainability principles, exceeds the targets established by CARB, and has been widely praised as transformative for the region (see <http://www.nrdc.org/globalwarming/sb375/implementation-report/>). Of course, much remains to be proved during the implementation phase, but every great plan begins with a bold vision and broad consensus to achieve it. The largest, seemingly most unwieldy MPO in the country, astonishingly to participants and outside observers alike, has met these marks. No one doubts that SB375 is the reason.

At this juncture, six important elements of SB375’s implementation stand out.

1. The power of a planning versus a regulatory law to change behavior. Oregon’s system is the country’s premier example of a regulatory approach to planning. State law requires local governments adopt Comprehensive Plans that meet state adopted goals, their zoning codes and individual land use decisions must be consistent with those Comprehensive Plans, and there is a separate legal system established to address lawsuits alleging violations of these requirements. The Portland regional government is the only in the country with a voter adopted home rule charter, a directly elected policy board, and an explicit requirement that local government Comprehensive Plans must also be consistent with the regional framework plan. As Ethan Seltzer’s paper clearly articulates, this system has worked exceedingly well for Oregon over multiple decades.

The three regional plans adopted under SB375 do not have this regulatory foundation, but they all are much improved over prior plans, most notably with much more compact growth footprints, major increases in medium and higher density housing products, and significant shifts in the transportation investment portfolio from conventional highway capacity projects to transit, walking, biking and complete streets road investments. In the San Diego and Sacramento regions, land use components of the SCSs are nearly entirely

consistent with adopted local General Plans. The SCAG region's land use component is substantially consistent with the local General Plans, but also projects explicit changes to them to increase densities and proximity to transit. Those changes were transparent to their local governments during the development of the plan, which was unanimously adopted by their large governing board. Many of those local governments, with SCAG's assistance, are already embarked on initiatives to update their General Plans to be consistent with the SCAG SCS.

The Metropolitan Transportation Commission, the MPO for the San Francisco Bay Area, will adopt their first SCS in April, 2013. Its draft SCS exceeds the greenhouse gas reduction targets established by CARB and would yield even more greenhouse gas reductions than the three prior adopted plans, all of which also outperform the CARB targets. The eight MPOs in the Central Valley have somewhat less aggressive CARB targets than the four largest MPOs, and are on a slower SCS adoption schedule. But the best information I have suggests that all eight are likely to at least meet their targets, and some are estimating they will exceed them.

Much remains to be seen about how effective implementation will be with both the land use and transportation elements of the plans. But the new law gets credit for nudging these regions towards substantial change and improvement in their regional plans compared to prior efforts.

2. The power of a performance standard to spur better decisions. While SB375 does not have conventional regulatory teeth, it explicitly requires the regions to meet a greenhouse gas emission target established by a state regulatory board if feasible to do so. While it is up to each region to determine feasibility the law requires certain information be developed and considered in making that determination. And while the law allows a region to adopt an SCS that does not meet the greenhouse gas reduction targets if it concludes meeting the targets is not feasible, it can only do so if it prepares an Alternative Planning Scenario (APS) that illustrates what additional land use and/or transportation actions would need to be taken to meet the target. Probably the strongest proof of the SB375 "strong carrot" is the fact that none of the MPOs who have adopted or are actively developing their first SCSs has the slightest interest in an APS. It is not clear how much of the disdain for the APS is based on the perceived negative political consequences it would create for the MPO, or litigation risk that may be created if they choose that path, but what is crystal clear is how strongly the MPOs wish to avoid the use of this provision in the statute.

While the public dialogue during development and adoption of the SCS is broad-based, with greenhouse gas reduction being one of many public policy objectives advanced by the plans, the requirement to try to achieve a specific greenhouse gas reduction target has

had a major impact on the planning processes. Each region has spent a great deal of technical and policy effort analyzing the feasibility of a broad range of measures they could implement to meet the targets. Substantial changes to those plans, big and small, have resulted.

The focus and precision that results from planning to meet a specific numerical target is quite different than most planning processes. Most plans have a general set of goals they purport to value. Usually those goals are expressed very generally, such as improving air quality or conserving valuable natural resources. Sometimes the metric that will be used to determine whether the goal is being met is state (e.g. amount of reduction in criteria pollutants, acres of wetlands conserved) but rarely is a specific numerical metric established at the outset and even more rarely are there specific consequences known at the outset if the plan does not meet or exceed the specific metric. The SB375 requirement that CARB set performance metrics for every MPOs plan in the state is unique and has proven to be very powerful at driving change.

3. Increased capacity of regional planning agencies. A wave of activity, innovation and change is sweeping through the MPOs in California. Mr. Fulton notes the importance of prior law in California that devolved much more decision-making authority for transportation investments from the state to regions. With more responsibility, came more accountability, which ultimately improved performance. As a group, California's regions may have been more ready for the kind of enhanced responsibilities that came with SB375 than many other regions in the country. Whatever the reasons, a flurry of positive activity has ensued over the last four years, most notably including much greater active day-to-day collaboration between the executives and senior staffs of the four largest MPOs (comprising 85% of the state's population) and significant upgrades to the quality of data and analytical capabilities. All four of the largest regions were represented on the RTAC and advocated that its report recommend that CARB allow the regions the time to go through a collaborative bottom up scenario planning process for the purpose of developing a joint recommendation to CARB on what their targets should be. This process resulted in a remarkable amount of learning, moves towards standardization, and ultimately recommendations from the MPOs for greenhouse gas reduction targets that were much more aggressive than many had been advocating for during the RTAC process.

The collaborative process had a feeling of collegial competition as the regions challenged each other to find practical ways to improve the performance of their scenarios. The amount of cross-learning and collaborative action was so substantial that one had the sense that, to use one of the economist's phrases of the day, a cluster of regional planning knowledge was being developed in the state. Part of the theory of economic clusters is that when they reach a certain critical mass the speed of knowledge building and capacity

continually increases. It was remarkable that during an era of economic collapse and reductions in government staff and capacity across the board that regional planning was such a center of activity in California. CARB endorsed each of the four MPO's target recommendations without change and a beginning of a culture of constructive partnership between CARB and the regions was created.

The SCAG region, again, is worthy of special mention. It is a huge region that in addition to the six-county MPO has six powerful county transportation commissions and 13 sub-regional councils of governments nested underneath SCAG. In the past, SCAG has been relegated to more of a rubber stamp for the actions of these various sub-regional actors, and has seldom if ever been regarded as a significant player in advancing a regional agenda or driving change. That changed in a very significant way over the last four years. Through development of its SCS, SCAG accomplished the adoption of a plan that departs in fundamental ways from its prior plans and will require significant local government General Plan changes to implement. It accomplished this with the support of its members and many of its key environmental and business stakeholders, and over the active objections of its home building industry. SCAG's story is emblematic of perhaps the biggest legacy of SB375 to date, which is the increased importance of regional planning and action that it represents. Given the regional scale of many societal problems it seems possible, and possibly even likely, that the law will be a precursor to other regional approaches to public policy making.

4. National Implications. The federal government recently approved a two-year federal transportation bill. Significant national changes often start in California and the passage and early signs of success of SB375 led many environmental interest groups to advocate that the bill include strong provisions for performance-based scenario planning and funding. While much of the detail of early proposals (some of which was included in the House passed global warming bill and the original Senate transportation bill) did not remain in the bill that passed, language was included that establishes the basic framework to upgrade the performance and scenario planning requirements for state transportation departments and MPOs. Guidance is being written post-haste to implement these portions of the bill and MPOs and DOTs across the country are having serious conversations about these elements in the law. Most assume that at the minimum they will be included in what is expected to be a longer term bill after the election. Some are hoping these provisions in the law may be expanded if President Obama is re-elected. And others are speculating that if the President is re-elected his administration's Sustainability Communities Initiative (SCI), a partnership of the Department of Housing and Urban Development, Environmental Protection Agency, and Environmental Protection Agency, may aggressively use executive authority to promote integrated, performance based scenario planning regardless of whether new legislation is passed.

Over the last three years, the SCI has awarded substantial grants to most of the MPOs in the country who are choosing to voluntarily embark on performance-based scenario planning in many respects in a more comprehensive way than required by SB375.

In summary, the economic, social and environmental forces that naturally focus on a regional geography are getting stronger, not weaker. Historically regional scale governmental agencies have too often been weak players, ineffectual at helping either private or public sector entities to plan and act in a way that channels these regional forces to produce meaningful benefits for their regions. SB375 represents an innovative approach to regional action on transportation, land use, housing and climate change. It is still early, but the track record to date is very encouraging. In California the law may be the nudge that became a game changer in many of the state's largest regions. If the early trend holds it may lead to meaningful regional action on other issues in the state as well as provide impetus for the federal government to more aggressively pursue integrated, performance-based regional actions.