




Date: February 2, 2010

To: Honorable Mayor and Members of the City Council

From: Patrick O'Donnell, Councilmember, 4th District 

Subject: **Delegation of the preparation of the Sustainable Communities Strategy as required by SB 375**

Background

AB 32, which was adopted by the California Legislature in 2006, requires that the State's total greenhouse gas (GHG) emissions be reduced to 1990 levels by 2020. The reductions have been divided into various sectors of the economy, including transportation, power generation and land use. SB 375 was adopted in 2008 to achieve the local land use GHG emission reductions through a regional planning process impacting air quality, transportation, land use and housing in cities and counties.

SB 375 requires metropolitan planning organizations, such as the Southern California Association of Governments (SCAG), to develop a Sustainable Communities Strategy (SCS) that will become part of the Regional Transportation Plan (RTP). The SCS establishes policies and strategies to attain the region's respective GHG reduction targets.

SB 375 permits subregions of SCAG to accept delegation to undertake development of the SCS for their own subregion. In response to this, the Gateway Cities Council of Governments (COG) retained the team of Wildan Energy Solutions, Iteris, and Sespe to prepare a policy report to assist the COG and its member cities in making a determination as to whether to accept delegation of the SCS.

Action at the COG

Based on the report, and on the recommendation of the COG's City Managers Steering Committee, the COG's Board of Directors voted at their meeting of January 6, 2010, to accept delegation from SCAG to develop a subregional SCS, contingent upon ratification by a majority of the member city councils. Attached is a report prepared by City staff that outlines some of the major items of discussion, including the benefits, potential costs, and potential liability.

Recommendation:

Ratify the decision made at the Gateway Cities Council (COG) of Governments Board Meeting for the COG to accept delegation of the preparation of the Sustainable Communities Strategy as required by SB 375 and authorize the City Manager to identify funding for this activity.

Staff Analysis of SB 375 Delegation

Summary of the Issues

SB 375 raises complicated questions of how cities can effectively balance the competing need to reduce GHG emissions, accommodate affordable housing, while incorporating projects to increase mobility, still retaining local control of land uses, which is a fundamental goal of every community. SB 375 can be viewed much like the California Environmental Quality Act when it was adopted in 1972. Over the last 38 years, CEQA has fundamentally altered the way cities review and approve development and other projects. The COG believes that SB 375 will fundamentally change the way cities prepare general plans and approve developments and other projects in the upcoming decades.

The Advantages of Delegation

At the COG meeting, there was significant discussion about both the pros and the cons of accepting delegation. Many cities felt this was an important issue of local control and that the COG could successfully create a plan that fits our communities' needs. Long Beach was held up as an example of a city that is setting the standard for sustainable policies and projects in the Sustainable City Action Plan and General Plan, and can serve as an example on how to draft this SCS.

- 1) A COG SCS will permit the COG to fully present its achievements and the achievements of the individual cities in reducing GHGs.
- 2) Many of the pieces of the SCS already exist in the COG studies, reports and programs implemented over the last decade. The City of Long Beach is a model of sustainability and could serve to guide the other communities. This should reduce the overall cost of preparing the SCS.
- 3) The COG SCS would provide increased local control and certainty, while the concerns of our individual cities are likely to get lost among the 188 SCAG cities.
- 4) The COG SCS could be specifically tailored to the programs that are appropriate for the COG communities, such as our Subregional ITS or Goods Movement Strategies.
- 5) The COG SCS would be of sufficient size (2.1 million residents) that it enables the COG to comment to the California Air Resources Board on a more equal basis with SCAG if there are disagreements.
- 6) The COG could have a public participation process geared to the concerns and addressing the needs of our region. An early effort to reach out to the environmental community, housing advocates, the Attorney General and

other interest groups to solicit comments, should help to reduce the potential of conflict and litigation over the COG SCS.

- 7) A COG SCS will enable more accurate tracking of costs and allow for the filing of test claims with the State Mandates Commission.

For additional discussion of pros and cons of accepting delegation, please see the memo distributed to Council on SB 375 on December 23, 2009, which also includes a summary of the Wildan report.

Costs of Accepting Delegation

Accepting delegation will require Gateway COG cities to pay an assessment to fund the preparation of the SCS. Two models for payment were initially proposed; one based solely on population, and another that spreads a base amount to each city, then distributes the remaining amount based on population. It was estimated that for each \$250,000 in costs, Long Beach would pay approximately \$60,000 under the first model, and \$39,000 under the second model. Long Beach successfully advocated for the second model, which was approved by the COG Board. Currently, the estimate for development of an SCS is between \$250,000 and \$750,000. Under this scenario, Long Beach's one-time costs would range from \$39,000 to \$117,000 over an 18-month period.

Long Beach expressed concern at the meeting that costs will need to be controlled so that the plan would not cost \$750,000. COG executive staff committed to working with Long Beach to allow us to play a role in selecting the consultant and crafting the scope of work, as well as drawing on Long Beach's experience in crafting our Sustainable City Action Plan and General Plan to help keep costs low. It is expected that if each COG city contributes some staff time and the consultant's scope of work is carefully crafted, the costs of the SCS development will remain close to \$250,000.

Assessments for the COG are paid out of the City Manager's Office. Staff are currently researching non-general fund sources to pay for this one-time assessment. Ultimately, funding will need to be identified, which will likely cause a shift of priorities to accommodate this need and cover these costs.

Potential Liability

Accepting delegation of the SCS also involves accepting the associated liability. This was discussed at length at the COG Board, with the COG's attorney ultimately recommending delegation to the Board. While there is a potential for lawsuits, a locally controlled SCS allows our region to create a plan that we can implement, rather than having a SCAG plan handed down to the region that may create implementation problems and additional liability.

If the COG had not accepted delegation, the potential for liability remained, as SCAG is an agency funded by member contributions as well. While SCAG has

stated that they will not raise member dues for development of an SCS or to cover associated liability costs, there is no guarantee that those dues will not go up in the future.

Unfunded Mandate

The COG Board discussed how SB 375 is an “unfunded State mandate” in several areas, including initial SCS preparation, and in the ongoing costs of implementing GHG reduction requirements. The Board requested a legal opinion from the COG special counsel on whether SB 375 was an unfunded mandate. The COG Board also requested that the City Managers Steering Committee work with the cities and special counsel on filing test claims.

Conclusion

After a great deal of discussion and research into the alternatives, the cost, and the liability, staff supports the COG decision to accept delegation and recommends that the City Council ratify the COG’s decision. Long Beach is a leader in sustainable planning and development and sees the SCS as an opportunity for COG cities to work together to reduce greenhouse gas emissions in the region.