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ARTICLE

# When Inconvenient Truths Displace Popular Fictions: What Proposed SB 375 and The California Legislation Addressing Climate Change Reveal About Local Land Use Planning and Control

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## I. INTRODUCTION.

It has long been an axiom of California land use law that land use planning and regulation is primarily a local matter, subject to local control.[1] But, while California courts and land use practitioners tend to accept this notion as a first principle, is it really true? Or has local land use control become more of a popular fiction, a legal paradigm often invoked but now so riddled with conditions and qualifications that it fails adequately to explain the reality of what is a much more complex regulatory scheme?[2] And if local control is, or has for some time been, diminishing, is that a good or a bad thing in light of the ever more regional—even global—cumulative impacts of the physical developments shaped by land use planning and regulation? This article explores these questions in the context of recently proposed California legislation (SB 375) designed to reduce greenhouse gas (GHG) emissions from the critical transportation sector by land use planning and regulation at the regional level.

## II. CALIFORNIA LAND USE PLANNING AND REGULATION: LOCAL OR REGIONAL?

The politically popular theory that locally elected legislators—city councilpersons and county supervisors—are in the best position to know local conditions and their constituents' best interests animates the principle of local land use planning authority. While California has had a Regional Planning Law in place since 1963,[3] that law provides that any regional plans created under it "shall be advisory only and shall not have any binding effect on the counties and cities located within the boundaries of the regional planning district for which the regional plan is adopted."[4] Moreover, regional planning districts created under that law cannot perform any functions unless the legislative bodies of two-thirds of the counties and cities located within their boundaries declare by resolution a need for them to function in the region.[5] While it is true that State Planning and Zoning Law,[6] the Subdivision Map Act,[7] and the California Environmental Quality Act (CEQA)[8] cabin the outer boundaries of local land use planning and control by mandating public, orderly, informed and environmentally-conscious decision making processes, it is equally true the Planning and Zoning Law,[9] the Map Act,[10] and CEQA[11] all contain provisions recognizing, or at least paying "lip service" to, the primacy of local control.[12] And, if the proper processes are followed, it has long been recognized that the substantive content of these local legislative land use decisions—which include general plan, specific plan, and zoning enactments and amendments—is the product of a political balancing within the broad discretion of the local legislators.[13]

Thus, California courts have consistently held that they will not closely scrutinize or interfere with the legislative exercise of local land use planning and regulatory authority or question the wisdom of local land use legislation, so long as the local decisions are not arbitrary, and they bear some

 

reasonable relation to the public welfare.[14] The California Supreme Court seemingly strengthened the legal basis for local land use control by enshrining the general plan that must be adopted by cities and counties as the "constitution" for local development to which all other local land use laws and approvals are subordinate and must conform.[15] It has also reaffirmed local control's roots in the local police power and extended the principle to endorse "ballot box planning," i.e., general plan land use element amendments accomplished directly by "the people" through local initiatives that are not subject to environmental review under CEQA.[16]

Yet, there has always been a geographic chink in the theory of local land use control. The twin realities of seemingly unlimited population growth and limited natural resources, combined with increasing popular and legal awareness of the same, have inevitably eroded local land use planning and regulatory authority to some extent.[17] As California cities rapidly grow and expand due to the State's burgeoning population, their physical boundaries often literally disappearing as they converge, the dividing line between those matters that are purely "local" and those that are of regional or statewide concern also increasingly blurs and shifts. "Externalities" like traffic congestion, air pollution, infrastructure deterioration, groundwater depletion, overburdening of local services and urban decay may result from local land use decisions, spread across local jurisdictional boundaries, and create regional problems of statewide concern. It is self-evident to any commuter stuck for hours in traffic snarled by an accident, or to any Southern California resident of a non-attainment air district on a hot, windless summer day, that the impacts of "local" land use planning and regulation are regional, not local, in scope. More than ever, regional transportation infrastructure and systems, affordable housing, water supply, resource conservation, pollution reduction, and farmland and open space preservation present complex and daunting challenges calling for the cooperation of local jurisdictions and a coordinated regional approach to decisions affecting land use.[18]

## III. THE GLOBAL WARMING ERA AND THE ENACTMENT OF AB 32.

Like regional air pollution and traffic congestion, the challenges presented by climate change due to global warming caused in part by human activities transcend parochial local jurisdictional boundaries and require a regionally coordinated approach.[19] The "business as usual" mindset of many California businesses was abruptly altered by the passage of the Global Warming Solutions Act of 2006 (AB 32),[20] which heralded a new environmental regulatory model mandating a cut in total statewide greenhouse gas (GHG) emissions (measured in metric tons of carbon dioxide or "$CO^2$" equivalent emissions) to 1990 levels by the year 2020.[21] Reflecting a bold legislative response to climate change's "serious threat to the economic well-being, public health, natural resources, and the environment of California,"[22] AB 32 empowered the California Air Resources Board (CARB) to complete a statewide inventory and establish California's 1990 GHG emis-

sions "baseline," adopt mandatory GHG reporting regulations, and adopt major regulatory and market mechanisms effective by 2011 to meet the mandatory reduction target by 2020.[23] CARB's ongoing implementation of AB 32 will dramatically affect all sectors of California's economy, including the construction, transportation, oil and gas, electricity and agricultural sectors. In December 2007, CARB established the 1990 GHG emissions level at 427 million metric tons of $CO^2$ equivalent, meaning that California will need to reduce its current GHG emissions by about 173 million metric tons by 2020 to achieve AB 32's mandate.[24] CARB is making significant efforts to reduce emissions from the fuel combustion and transportation sectors, which are responsible for the "lion's share" of GHG emissions, including a proposed low-carbon fuel standard, strict vehicle emission limits and other measures. But fuel standards and emission limits alone won't do the job under AB 32. Because they do not address another critical component of the transportation sector GHG emissions equation—vehicle miles traveled—and since that component is heavily influenced by land use development patterns, California legislators are now proposing further regional constraints on local land use regulation via SB 375.

## IV. SB 375: PROPOSED LEGISLATION TO MANDATE SOPHISTICATED REGIONAL MODELING OF VEHICLE USAGE AND ESTABLISH REGIONAL LAND USE PLANNING AND CONTROLS TO HELP ACHIEVE AB 32'S MANDATORY GHG REDUCTION GOALS.

Senate Bill 375 (SB 375), a GHG reduction bill significantly affecting land use, was introduced by Senator Steinberg on February 21, 2007, and has been making its way through the State Legislature. In simplified terms, SB 375 in its current form proposes to reduce greenhouse gases from the transportation sector (i.e., mainly emissions from cars and light trucks) to "target" levels developed by CARB by means of controlling local land use planning and development patterns through regulation on a regional basis. SB 375 would amend and add numerous sections of the Government Code governing long range state and regional transportation planning and programming and congestion management; it would also amend and add numerous provisions of CEQA relating to infill development and streamlined environmental review for later projects consistent with approved land use plans. While the bill is still undergoing amendment, as part of an ongoing dialogue designed to address early opposition by developers and pubic agencies (much of it on the basis of perceived erosion of "local control"), the version of SB 375 last amended in the Assembly in September 2007 is instructive as an indicator of the legislative proposal's key points, and is the basis for this article's summary and analysis of the bill's basic content.

The Legislature's draft findings and declarations of purpose for proposed SB 375 reflect the nature and magnitude of the problem, and the

 

Legislature's intent to significantly change existing land use policy in California in order to reduce GHG emissions from the transportation sector so that California will be able to meet AB 32's mandatory goals:

(a) The transportation sector contributes over 40 percent of the greenhouse gas emissions in the State of California; automobiles and light trucks alone contribute 30 percent. The transportation sector is the single largest contributor of greenhouse gases of any sector.

(b) In 2006, the Legislature passed and the Governor signed Assembly Bill 32…which requires the State of California to reduce its greenhouse gas emissions to 1990 levels no later than 2020. In 1990, greenhouse gas emissions from automobiles and light trucks were approximately 73 million metric tons, but by 2006 these emissions had increased to approximately 100 million metric tons.

(c) Greenhouse gas emissions from automobiles and light trucks can be substantially reduced by new technology and by the increased use of low carbon fuel. However, even taking these measures into account, it will be necessary to achieve significant additional greenhouse gas reductions from changed land use patterns and improved transportation. Without significant changes in land use and transportation policy, California will not be able to achieve the goals of AB 32.

(d) In addition, automobiles and light trucks account for 50 percent of air pollution in California and 70 percent of its consumption of petroleum. Changes in land use and transportation policy will provide significant assistance to California's goals to implement the federal and state Clean Air Acts and to reduce its dependence on petroleum.

(e) Current planning models and analytical techniques used for making transportation infrastructure decisions and for air quality planning should be able to assess the effects of policy choices, such as residential development patterns, expanded transit service and accessibility, the walkability of communities, and the use of economic incentives and disincentives.[25]

SB 375 would require the California Transportation Commission (Commission), an 11-member body[26] responsible for evaluating and prioritizing projects throughout the state for the state transportation improvement program (STIP),[27] to adopt by Summer 2008 guidelines for travel demand models[28] used in the development of regional transportation plans by the larger California regional transportation planning agencies; these agencies include federally designated metropolitan planning organizations (MPOs), county transportation agencies or commissions in designated Federal Clean Air Act non-attainment areas, and the multi-county designated trans-

portation planning agency known as the Southern California Association of Governments.[29] These guidelines would be prepared by the Commission with the assistance of an advisory committee comprised of representatives of regional transportation planning agencies, the department of transportation, local governments and interested agencies, and technical experts.[30] The guidelines would be required to account for the relationship between land use density, household vehicle ownership and vehicle miles traveled, the impact of enhanced transit service levels on vehicle ownership and miles traveled, travel mode splitting, and induced travel and land development from highway or passenger rail expansion.[31] The goal is ultimately to provide a uniform framework for regional agencies to follow in improving the sophistication of travel demand modeling statewide.[32]

Proposed SB 375 contemplates that the use of more sophisticated travel demand modeling, in conjunction with a new regional planning framework, would support the development of plans to meet regional GHG reduction targets set by CARB, presumably with AB 32's mandated reductions in mind. Regional transportation improvement programs would be required to be accompanied by a report to the Commission on the relationship of each project included in the program to the regional transportation plan and the supplement, if any, required by SB 375.[33] SB 375 would require regional transportation plans within the region under the jurisdiction of each of the regional transportation planning agencies that is required to use the Commission's new guidelines to include what previous versions of the proposed bill called a "preferred growth scenario," but which the most recent version now refers to as a "sustainable communities strategy."[34] It would further require that CARB, in consultation with affected transportation planning agencies and after holding at least one public workshop, by not later than January 1, 2009, "provide each affected region with [GHG] emission reduction targets from the automobile and light truck sector for 2020 and 2035, respectively."[35] CARB would be required to update the regional targets consistent with the timing of regional transportation plan updates until 2050.[36] In setting the regional targets, CARB would be required to consider GHG emissions that would be achieved by improved vehicle emission standards, fuel consumption changes, and other CARB-approved and prospective measures to reduce GHG emissions from other sources.[37]

## V. SB 375'S REGIONAL LAND USE PLANNING FRAMEWORK FOR GHG REDUCTION: SHAPING LOCAL DEVELOPMENT TO CONFORM TO THE "SUSTAINABLE COMMUNITIES STRATEGY".

The "sustainable communities strategy" (or "preferred growth scenario") required under SB 375 to be included in the regional transportation plans must identify areas within the region sufficient to satisfy all of its housing needs and a transportation network, and exclude significant resource areas and farmlands from these areas.[38] The sustainable communities strategy

 

must set forth a development pattern for the region, a transportation network and other transportation measures that will reduce auto and light truck GHG emissions to achieve CARB's targets if feasible.[39] Presumably, the strategy would somehow be required to inventory the region's auto and light truck emissions and establish measures to reduce them, to the greatest extent feasible, to achieve the targets developed by CARB.[40]

SB 375 would also add broad definitions of "significant resource areas"[41] and "significant farmland"[42] which are generally off limits to the planned land use development. In identifying lands for housing and employment growth as required, the regional transportation planning agencies would be required to give priority to infill and redevelopment in existing urbanized areas, and to lands that do not contain significant resource areas that are adjacent to areas of foreseeable future development.[43] If the sustainable communities strategy identifies development on lands containing significant resource areas, it must describe measures to mitigate the impacts of development on such lands.[44] If the sustainable communities strategy is unable to reduce GHG emissions to achieve the CARB targets, the regional transportation planning agency shall prepare, as a separate document, a supplement showing how a sustainable communities strategy that would meet the targets could be achieved through alternative development patterns or additional transportation measures.[45]

## VI. SB 375'S IMPACTS ON LOCAL LAND USE PLANNING AND CONTROL: CONSISTENCY REQUIREMENTS AND THE POWER OF THE PURSE.

If the "sustainable communities strategy" or "preferred growth scenario" component of the regional transportation plans under the proposed SB 375 sounds like it would cover many of the same land use planning topics now regulated by local general plans and zoning, that is precisely because it would.[46] But would this new regional planning law simply create a toothless "advisory" planning regime, or would it have real impacts and implications for local land use control?

SB 375 could have significant practical implications for local land use authority and control through control over transportation project funding mechanisms, i.e., the "power of the purse." If SB 375 ultimately contains (or is construed to contain) a strong consistency requirement, it could effectively control many local land use decisions concerning new development. A prior version of SB 375 would have explicitly prohibited the funding of transportation projects and improvements that are not consistent with the required transportation plan, stating: "On and after January 1, 2009, projects and improvements to be funded shall be consistent with regional transportation plans developed pursuant to Section 65080."[47] This language has been deleted as a result of political wrangling, but the most recent version still provides that projects programmed for funding before

2012 would *not* be required to be consistent with the sustainable communities strategy *if* they are (1) approved by a pre-2007 ballot measure, (2) funded pursuant to the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006,[48] or (3) contained in the Federal Statewide Transportation Improvement Program for 2009 or previous years.[49] By negative implication, projects other than those exempted *may* be required by SB 375 to be consistent with the sustainable communities strategy in order to be funded. The regional transportation plan's action element describing implementation actions and responsibilities must also be consistent with the sustainable communities strategy.[50]

SB 375 would define consistency with the sustainable communities strategy or consistency with the regional transportation plan to mean "that the capacity of the transportation projects or improvements does not exceed that which is necessary to provide reasonable service levels for the existing population and the planned growth of the region as set forth in the sustainable communities strategy."[51] This indicates an intent to avoid the inducement of unplanned local land use development, i.e., development at levels not envisioned or approved in the preferred growth scenario/sustainable communities strategy of the regional transportation plan, by prohibiting the "overbuilding" of transportation network infrastructure.

SB 375 would also amend Government Code section 65584.01, dealing with the Department of Housing and Community Development's (HCD) determination of existing and projected housing needs for local planning purposes, to add: "The region's existing and projected housing need shall reflect the achievement of a feasible balance between jobs and housing within the region using the regional employment projections in the applicable regional transportation plan."[52] This provision is also aimed at reducing vehicle miles traveled by encouraging needed residential development near employment centers.

## VII. SB 375'S PROPOSED CEQA AMENDMENTS.

SB 375 would amend CEQA to provide for "streamlined" environmental review of certain types of projects that are consistent with the regional plan:

> If a residential, commercial, or retail project is consistent with a sustainable communities strategy, as modified by a supplement, if any, adopted pursuant to Section 65080 of the Government Code, the environmental analysis of that project may tier the analysis of the climate impacts of greenhouse gas emissions from automobiles and light trucks associated with the project from the environmental impact report prepared for the regional transportation plan. For purposes of this section, "consistent with a sustainable communities strategy" means that the use, density, and intensity of the project are consistent with the use, density, and intensity identified for the

 

> project area in the sustainable communities strategy, as modified by a supplement, if any, and any mitigation measures adopted in the environmental impact report on the regional transportation plan have been or will be incorporated into the project. Nothing in this subdivision restricts the use of a tiered environmental impact report as otherwise provided in this division.[53]

SB 375 would also add Chapter 4.2 (commencing with Section 21155) to Division 13 of the Public Resources Code. These new provisions would essentially require the CEQA document prepared for certain projects meeting numerous specified conditions to only examine their significant or potentially significant *project specific* impacts if they are located in a local jurisdiction that has amended its general plan so that the land use, circulation, housing and open-space elements are consistent with the regional transportation plan's sustainable communities strategy.[54] To qualify for this streamlined CEQA review, a prior environmental impact report (EIR) must have been certified on the sustainable communities strategy and on the general plan amendments to conform to it, and the development projects must be residential or mixed-use (consisting of primarily residential uses), located on an infill site meeting numerous qualifications, incorporate applicable mitigation measures, not exceed 200 units, and be found by the local legislative body (after a public hearing) to be a sustainable communities project.[55] Such projects would be reviewed under CEQA through a "sustainable communities environmental assessment," following the preparation of an initial study and incorporation of mitigation measures after a public hearing addressing project-specific impacts only, and a lead agency's adoption of such assessments would be reviewed under the substantial evidence standard.[56] Much like the existing CEQA exemptions for certain affordable housing and infill residential development projects in urbanized areas,[57] however, the partial CEQA exemptions proposed by SB 375 are complex and highly qualified.[58] Given the limited nature of SB 375's proposed CEQA exemptions, this Legislative "carrot" would not appear to provide much added "incentive" to local agencies to conform their general plans and zoning to the regional transportation plan's preferred growth scenario/sustainable communities strategy. Rather, it seems that, if SB 375 becomes law, local agencies will essentially be forced to conform their plans and projects to the preferred growth scenario/sustainable communities strategy of the regional transportation plans to insure that the projects they plan and approve will be served by adequate transportation infrastructure, and as probably the only feasible way to mitigate traffic congestion and GHG emissions impacts.

## VIII. WHAT IT ALL MEANS FOR "LOCAL" LAND USE CONTROL.

If enacted into law, what impact would SB 375 ultimately have on the traditional California model of "local control" of land use planning and

regulation? Would it further erode local land use planning and regulatory control, and, if so, does it really matter anymore?

In what is, perhaps, a nod to tradition, or an effort to mute local opposition, certain language of proposed SB 375 pays lip service to the notion of local control by stating that the regional plans "shall present clear, concise policy guidance to local and state officials,"[59] and by assuring that:

> A sustainable communities strategy does not regulate the use of land, nor shall it be subject to any state review or approval. Nothing in a sustainable communities strategy shall be interpreted as superseding or interfering with the exercise of the land use authority of cities and counties within the region….[60]

But as Montaigne aptly observed, "Saying is one thing and doing is another." Proposed SB 375 may well contain a powerful consistency requirement and provisions that would effectively prohibit funding of transportation infrastructure projects to serve growth that does not conform to the preferred growth scenarios set forth in the regional transportation plans, and would limit the capacity of proposed and approved transportation projects to *only* that needed to serve such preferred growth scenarios. It seems inevitable that local land use plans and approvals will have to conform to such scenarios where feasible to ensure adequate transportation infrastructure and mitigate environmental impacts of future approved developments.

It also seems inevitable that future land use development must be regionally planned in some manner to achieve the GHG reductions now mandated by California law under AB 32. Perhaps it is time to recognize that we have entered into a new era of regional and global impacts and challenges, in which the paradigm of autonomous, politically-driven local land use planning and control is being rapidly supplanted by a new model of effectively mandatory regional plans driven by sophisticated technical modeling programs, data and projections, i.e., travel demand models and population forecasts using the best available information and technology. Ultimately, whether SB 375 or similar laws and proposals signal the demise of traditional local land use planning control, and whether, if so, that is a bad or a good thing, may be in the eye of the beholder.

## NOTES

1. The source of all state or local land use regulation is ultimately the police power reserved to the states by the Federal Constitution, and this power is also explicitly recognized in local governments by the California Constitution. *See* Cal. Const. Art. XI, § 7 ("A county or city may make and enforce within its limits all local, policy, sanitary and other ordinances and regulations not in conflict with general laws."); *see also* Gov. Code, § 65800 (declaring legislative intent in Planning and Zoning Law "to provide only a minimum of limitation in order that counties and cities may exercise the maximum degree of control over local zoning matters"); *IT Corp. v. Solano County Bd. of Supervisors*, 1 Cal. 4th 81, 89, 2 Cal. Rptr. 2d 513, 820 P.2d 1023, 35 Env't. Rep. Cas. (BNA) 1182 (1991) ("The power of cities and counties to zone land use in accordance with local conditions is well entrenched.");

 

76 Cal. Atty. Gen. Ops. 145, 147 (1993) ("Traditionally, land use control in California has been a matter of local concern."); *see also Big Creek Lumber Co. v. County of Santa Cruz*, 38 Cal. 4th 1139, 1151-1152, 45 Cal. Rptr. 3d 21, 136 P.3d 821, 36 Envtl. L. Rep. 20127 (2006), as modified, (Aug. 30, 2006) (to same effect).

2. *See*, e.g., 9 Miller & Starr, California Real Estate 3d (2007), *Subdivisions, Land Use Planning, and Approvals*, § 25:10, pp. 25-45 to 25-46 (noting while "[l]and use regulation in California has traditionally been legislated at the local level pursuant to cities' and counties' constitutionally-conferred police power…a number of other federal or state laws affect, and may limit or even prohibit, the subdivision and development of real property.").
3. Gov. Code, §§ 65060 et seq.
4. Gov. Code, § 65060.8.
5. Gov. Code, § 65061.3.
6. Gov. Code, §§ 65000 et seq.
7. Gov. Code, §§ 66410 et seq.
8. Pub. Resources Code, §§ 21000 et seq.
9. *See* Gov. Code, § 65800 (declaring legislative intent "to provide only a minimum of limitation in order that counties and cities may exercise the maximum degree of control over local zoning matters").
10. *See*, e.g., Gov. Code, § 66411 ("Regulation and control of the design and improvement of subdivisions are vested in the legislative bodies of local agencies. ….").
11. E.g., Pub. Resources Code, § 21083.1 (courts should not interpret CEQA in a manner that adds new substantive or procedural requirements); Cal. Code Regs., tit. 14, § 15040, subds. (a), (b) (CEQA intended to be used in conjunction with public agencies' discretionary power under other laws, not to grant new powers independent of those laws).
12. *Ibid*.; *see ante* fns. 9-11. These citations to what are, perhaps, the most well known California laws governing land use and development are, of course, an oversimplification, which is part of the point this article is making. The Federal Clean Water Act (*see* 33 U.S.C.A. §§ 1250 et seq.), the Porter Cologne Water Quality Control Act (Wat. Code, §§ 13000 et seq.), the California Coastal Act of 1976 (Pub. Resources Code, §§ 30000 et seq.), the Federal Endangered Species Act (16 U.S.C.A. §§ 1531 et seq.), the Religious Land Use and Institutionalized Persons Act of 2000 (42 U.S.C.A. §§ 2000 cc-2000 cc-5), the Williamson Act (Gov. Code, §§ 51200 et seq.), and laws governing development in state waterways (Fish & Game Code, §§ 1602, 1603) and local agency formations and annexations (Gov. Code, §§ 56000 et seq.), among others, all may impose important State and Federal regulatory mandates, restrictions and prohibitions on the "local" land use planning and approval process.
13. *See, e.g., Lockard v. City of Los Angeles*, 33 Cal. 2d 453, 461, 202 P.2d 38, 7 A.L.R.2d 990 (1949) ("the decision of the zoning authorities as to matters of opinion and policy will not be set aside or disregarded by the courts unless the regulations have no reasonable relation to the public welfare or unless the physical facts show that there has been an unreasonable, oppressive, or unwarranted interference with property rights in the exercise of the police power.").
14. *Id*., at 460-461; *see also*, e.g., *Mira Development Corp. v. City of San Diego*, 205 Cal. App. 3d 1201, 1213, 252 Cal. Rptr. 825 (4th Dist. 1988).
15. *Lesher Communications, Inc. v. City of Walnut Creek*, 52 Cal. 3d 531, 540, 277 Cal. Rptr. 1, 802 P.2d 317 (1990); *Neighborhood Action Group v. County of Calaveras*, 156 Cal. App. 3d 1176, 1182-1184, 203 Cal. Rptr. 401 (3d Dist. 1984).
16. *DeVita v. County of Napa*, 9 Cal. 4th 763, 38 Cal. Rptr. 2d 699, 889 P.2d 1019 (1995), passim.
17. *See*, e.g., laws cited in fn. 12, *ante*.
18. *See*, e.g., California Energy Commission's 2007 Integrated Energy Policy Report (adopted 12/5/07), 2007 IEPR-Docket #06-1EP-1 (stating in pertinent part: "Decisions affecting land use directly affect energy use and the consequent production of greenhouse gases, primarily because of the strong relationship between where we live and work and our transportation needs. Significant efforts are necessary to reduce vehicle miles traveled to meet the state's emission reduction goals. … Research shows that increasing a community's

density and its accessibility to job centers are the two most significant factors for reducing vehicle miles traveled.")

19. *See*, e.g., Coon & Lawson, "Thinking Globally When Acting Locally: How Will CEQA Adapt To A Changing Environment?" (2007) Cal. Real Property Journal, Vol. 25, No. 2, p. 3.
20. Health & Saf. Code, §§ 38500 et seq., 2006 Cal. Stat. Ch. 488 (AB 32).
21. Health & Saf. Code, §§ 38530, 38550.
22. Health & Saf. Code, § 38501, subd. (a).
23. Health & Saf. Code, §§ 38500 et seq.
24. *See* 12/26/07 Sidley Austin LLP, California Environmental Update, at http://www2.eli.org/pdf/alerts/ Sidley_Austin_12-26-07.pdf.
25. Section 1 of September 2007 draft of SB 375 as amended in Assembly (hereafter "SB 375"). This article is based on the version of SB 375 proposed at the time of this writing. Readers are reminded that this proposed bill has not yet been enacted into law, and it is always possible that the bill will not be passed or will be passed in significantly different form.
26. Gov. Code, § 14502. Nine members of the Commission are appointed by the Governor with the advice and consent of the Senate, and one Senator and one Assembly member appointed as specified serve as ex officio non voting members. (Gov. Code, § 14502, subds. (a), (b).)
27. Gov. Code, §§ 14509, 14520 to 14534.
28. Travel demand models are planning tools, used by regional transportation planning agencies, to attempt to quantify the impacts of alternative transportation policies on variables such as vehicle usage, vehicle miles traveled, and travel patterns, traffic congestion, and regional development. (*See* 8/22/07 Assembly Comm. on Appropriations, SB 375 Bill Analysis, p. 3.)
29. *See* SB 375 proposed addition of Gov. Code, § 14522.1, subds. (a)(1), (d). *See* also Pub. Util. Code, § 130004. Cities, counties, congestion management agencies in multi-county regions, and other transportation agencies would be encouraged, but not required, to use the guidelines.
30. *Id*., § 14522.1, subd. (a)(2)
31. *Id*., proposed new Gov. Code, § 14522.1, subd. (c).
32. 8/22/07 Assembly Comm. on Appropriations, SB 375 Bill Analysis, p. 3.
33. *Id*., proposed amended Gov. Code, § 14527, subd. (a).
34. *Id*., proposed new Gov. Code, § 65080, subd. (b)(2)(B). While earlier versions of the evolving proposed bill referred to a "preferred growth scenario," the current draft SB 375 now often refers to a "sustainable communities strategy," which is the same thing called by a different name. (1/18/08 e-mail communication from William Craven, chief consultant, California Senate Natural Resources and Water Committee, staffing Senator Darrell Steinberg on SB 375.) The latest version appears to have consistently replaced all references to "preferred growth scenario" with "sustainable communities strategy."
35. *Id*., proposed new Gov. Code, § 65080, subd. (b)(2)(A).
36. *Id*.
37. *Id.*
38. *Id*., proposed new Gov. Code, § 65080, subd. (b)(2)(B).
39. *Id*., proposed Gov. Code, § 65080, subd. (b)(2)(B).
40. A provision explicitly so stating has been deleted from the most recent version of proposed SB 375, but it is difficult to see how the reductions to CARB targets can be measured without an accurate baseline.
41. Proposed Government Code section 65080.01 would state: "(a) "Significant resource areas" include (1) all publicly owned parks and open space; (2) open space or habitat areas protected by natural community conservation plans, habitat conservation plans, and other adopted natural resource protection plans; (3) habitat for species identified as candidate, fully protected, sensitive, or special of special status by local, state, or federal agencies or protected by the federal Endangered Species Act of 1973, the California Endangered Species Act, or the Native Plan[t] Protection Act; (4) lands subject to conservation or agricultural easements for conservation or agricultural purposes by local governments, special districts, or nonprofit 501(c)(3) organizations, and lands under Williamson Act

 

contracts; (5) areas designated for open-space uses in adopted open-space elements of the local general plan or by local ordinance; (6) habitat blocks, linkages, or watershed units that protect regional populations of native species, including sensitive, endemic, keystone, and umbrella species, and the ecological processes that maintain them; and (7) an area subject to flooding where a development project would not, at the time of development in the judgment of the agency, meet the requirements of the National Flood Insurance Program or where the area is subject to more protective provisions of state law or local ordinance."

42. Proposed Government Code section 65080.01 would state: "(b) "Significant farmland" means farmland that is classified as prime or unique farmland, or farmland of statewide importance and is outside all existing spheres of influence as of January 1, 2007."
43. *Id*., proposed Gov. Code, § 65080, subd. (b)(2)(F).
44. *Id*.
45. *Id*., proposed Gov. Code, § 65080, subd. (b)(2)(H).
46. *Compare*, e.g., Gov. Code, § 65302, subds. (a) to (e) (local general plan must include land use, circulation, housing, conservation, and open space elements, *inter alia*); Gov. Code, § 65302, subd. (a) ("land use element [must] designate[ ] the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources…."); Gov. Code, § 65583 (mandatory housing element of local general plan must identify and analyze existing and projected housing needs, and must set forth a statement of goals, policies, quantitative objectives, financial resources, and scheduled programs for preservation, improvement, and development of housing for all economic segments of the community, with identification of adequate sites for all types of housing); Gov. Code, § 65302, subd. (b) (general plan must contain "circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes…all correlated with the land use element[.]"); Gov. Code, §§ 65302, subds. (d), (e) (describing required contents of conservation and open space elements).
47. Formerly proposed Gov. Code, § 65080, subd. (b)(2)(F), deleted in most recent version of SB 375.
48. Gov. Code, §§ 8879.20 et seq.
49. SB 375, proposed Gov. Code, § 65080, subd. (b)(2)(J).
50. *Id*., proposed Gov. Code, § 65080, subd. (b)(3).
51. *Id*., proposed Gov. Code, § 65080.01.
52. *Id*., proposed amended Gov. Code, § 65584.01, subd. (d)(1).
53. *Id*., proposed amended Pub. Resources Code, § 21094, subd. (f).
54. *Id*., proposed Pub. Resources Code, § 21155, subd. (a).
55. *Id*., proposed Pub. Resources Code, § 21155.1.
56. *Id*., proposed Pub. Resources Code, § 21155.2, subd. (b).
57. *See,* generally, Pub. Resources Code, §§ 21159.21, 21159.23, 21159.24.
58. 1 Kostka & Zischke, Practice Under the California Environmental Quality Act (CEB 2006), § 5.46, p. 238 (noting "complexity" and "lengthy list of requirements for the use of these exemptions[.]")
59. SB 375, proposed Gov. Code, § 65080, subd. (a).
60. *Id*., proposed Gov. Code, § 65080, subd. (b)(2)(I).

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Edmund Regalia, Marvin Starr, and Harry Miller founded the law firm of Miller Starr Regalia headquartered in Walnut Creek. Mr. Regalia's litigation practice has concentrated on complex real estate and business litigation for over 40 years. Mr. Starr is the original co-author (with Harry Miller) of the Current Law of California Real Estate (1965-1967), later revised as California Real Estate 2d (1990) and California Real Estate 3d (2000-2001). His practice has included all aspects of real property law including the income tax aspects of real estate transactions. Both received an LL.B. (later J.D.) from Boalt Hall in 1958.

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