



INSTITUTE FOR LOCAL GOVERNMENT

Promoting Good Government at the Local Level

Understanding AB 32's Impacts on Local Government: A Local Official's Guide

Discussion Draft*

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The Institute prepared this analysis of AB 32 to help local officials understand how the law applies to their cities and counties. We welcome feedback regarding what additional topics could be included in the frequently ask questions section, as well as any areas in the explanation that could be clearer. Comments may be transmitted via the following:

- Email to info@ca-ilg.org (put "AB 32 Guide Comments" in the subject)
- Fax us to 916.444.7535
- Mail to 1400 K Street, Suite 205, Sacramento, CA 95814

To view this document online, visit www.ca-ilg.org/AB32LegalAnalysis

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<ul style="list-style-type: none">• Public Service Ethics• Public Engagement• Intergovernmental Conflict Resolution	<ul style="list-style-type: none">• Sustainability and Climate Change• Healthy Communities• Land Use• Local Government 101
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About This Guide

A key premise of the Institute for Local Government's sustainability program efforts is the value of *voluntary* action by local agencies to undertake sustainability policy initiatives. These include policies that will reduce greenhouse gas emissions, conserve energy and other natural resources, save money, and improve the health of local communities and their residents.

Toward that end, the Institute has developed a number of policy resources designed to help local officials evaluate what makes sense in their individual communities in these areas. See www.ca-ilg.org/climatechange.

Local agencies act within the policy context, however, of state and federal laws. For example, reducing greenhouse gas emissions is a priority at the state level in California. As a result, it is helpful for local officials as they ponder their own initiatives, to understand how state policy affects these areas.

This guide examines how the **California Global Warming Solutions Act of 2006 (sometimes known by its legislative identity: AB 32)**¹ specifically affects local agencies. The idea is, with this knowledge in hand, local agency officials can evaluate

- 1) What their agencies need to do to comply with state law, and
- 2) What additional sustainability activities may make sense for their local communities.

Companion Resource

Another law, **Sustainable Communities and Climate Protection Act of 2008** (sometimes known by its legislative identity: SB 375)², is worthy of local officials' attention as it relates to sustainability and greenhouse gas emissions reduction. For the Institute for Local Government analysis of that law's impacts on local agencies, see www.ca-ilg.org/SB375LegalAnalysis.

AB 32 Overview

"AB 32" is a state law enacted in 2006 relating to greenhouse gas emissions reductions. Its formal name is California Global Warming Solutions Act of 2006.³ It is a complex law, affecting a number of activities.

This legal analysis explains, in plain language terms, how AB 32 (and its implementation by the California Air Resources Board and other state agencies thus far) impacts local agency operations and policymaking in California. The analysis concludes with answers to frequently asked questions.

Legislative and Regulatory History

In 2006, the Legislature enacted and the Governor signed AB 32.⁴ AB 32 directs a state agency, the Air Resources Board, to develop a program to reduce by the year 2020 the amount of greenhouse gas emissions produced to the level of greenhouse gases that were produced in 1990. That law directs the Air Resources Board, to do three things:

- Establish a statewide greenhouse gas emissions limit to be achieved by 2020;⁵
- Identify the "maximum technologically feasible and cost-effective greenhouse gas emissions reductions" from certain sources or categories of sources of greenhouse gases;⁶ and
- Adopt rules and regulations that impose requirements upon these sources of greenhouse gases to achieve the statewide limit.⁷

The work of the Air Resources Board is ongoing. Some regulations to achieve the statewide greenhouse gas emissions limit have been adopted. AB 32 refers to these as "discrete early action items" (see sidebar on page 5). Other regulations have not yet been adopted. All regulations to achieve the statewide greenhouse gas emissions limit must be in place by January 1, 2011.⁸

What Is A "Greenhouse Gas?"

Under AB 32, a "greenhouse gas" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride."⁹ AB 32 is based upon the premise that greenhouse gases pose a serious threat to the economic well-being, public health, natural resources, and the environment in California."¹⁰

Areas of Impact on Local Agencies

Three areas of Air Resources Board regulation have an immediate impact on cities and counties:

- Methane gas emissions reductions from municipal solid waste landfills; and
- Greenhouse gas emissions reductions from increased energy efficiency and use of renewable sources of electricity from municipally-owned electric utilities.
- Mandatory commercial recycling.

In addition to this regulatory activity, two other areas of Air Resources Board activity are of interest to local agencies:

- **Advisory Assistance:** The Air Resources Board has issued advisory assistance to local agencies to help them reduce greenhouse gas emissions from their own operations.
- **Land Use and Transportation Policy:** The Air Resources Board has weighed in on the importance of making a connection between land use and transportation policy.

After explaining the Air Resources Board's overall process for implementing AB 32, this guide explains each of the above impacts in more detail.

Who Is on the Air Resources Board?

The Air Resources Board (ARB) is part of the California Environmental Protection Agency. The ARB consists of 11 individuals appointed by the Governor on the basis of their demonstrated interest and proven ability in the field of air pollution control and their understanding of the needs of the general public in connection with air pollution problems.

- Four members must meet specific qualifications related science, medicine, and engineering.
- Two are members of the public.
- Five members must be from regional air quality management or air pollution districts throughout the state. Because of the membership of these districts, this means that these five members have tended to be city and county elected officials who serve on specified air districts.¹¹

Air Resources Board Activities in Implementing AB 32

When a bill becomes law, it creates a general state policy. Depending on the breadth and specificity of the policy, it then becomes the task of the executive branch of government to flesh out the specific measures necessary to accomplish the policy.

State agencies frequently accomplish this task by adopting regulations. To be legally valid, the regulations must be consistent with the law that they implement.¹² The regulatory process also creates opportunities for interest groups and the public to weigh in on the wisdom of various proposals.¹³ AB 32 is an example of a law in which the state Legislature directs a state agency, the Air Resources Board, to fill in the implementing details by adopting regulations.

For AB 32, these implementing details have several dimensions:

- **Statewide Greenhouse Gas Emissions Limit:** The Air Resources Board must adopt a statewide greenhouse gas emissions limit to reduce greenhouse gas emissions to 1990 levels by 2020.¹⁴
- **Mandatory Reporting:** The Air Resources Board must report and verify statewide greenhouse gas emissions on a yearly basis, beginning with the

sources or categories of sources that contribute the most to statewide emission levels.¹⁵

- **Reducing Greenhouse Gas Emissions:** The Air Resources Board must identify sources of greenhouse gases (or categories of sources) and then adopt regulations to achieve the “maximum technologically feasible and cost-effective” reductions of those emissions that are possible from those sources. The Air Resources Board must also monitor compliance with and enforce emission reduction measures it creates.¹⁶

“Early Action Items”

AB 32 directed the Air Resources Board to make a list available on June 30, 2007 of individual or “discrete early action” greenhouse gas emission reduction measures that could be implemented prior to full implementation of AB 32 on January 1, 2011.¹⁷ Statewide standards for reducing methane gas emissions at publically and privately owned municipal solid waste landfills were adopted as one of these “early action” measures.

The Air Resources Board adopted 44 such interim measures including:

- Fuel standards to reduce the “carbon intensity” of California’s vehicle fuel by at least 10 percent by 2020. Low carbon fuels include bio fuels (such as ethanol and biodiesel) as well as hydrogen, electricity, and compressed natural gas;
- Restrictions on certain refrigerants for non-professional recharging of leaky automotive air conditioning systems;
- Reduction of greenhouse gases in consumer products used as propellants in aerosol products, tire inflators, electronics clearing, dust removal, handheld sirens, and other items;
- Tire inflation program to promote proper vehicle tire pressures (which increases fuel economy and hence reduces greenhouse gases). As owners of fleet vehicles, local agencies will be affected in the same way as other drivers when it comes to lower carbon fuels and will benefit from a redoubled effort to maintain proper tire pressures in vehicles;
- Reductions of perfluorocarbons (PFCs) from the semiconductor industry; and
- Providing an alternative source of power for cargo ships while they are docked in port.

These measures were incorporated into regulations that took effect January 1, 2010.¹⁸

Setting Greenhouse Gas Limits

On December 6, 2007, the Air Resources Board adopted the 1990 emissions level and 2020 statewide greenhouse gas emissions limit called for in AB 32.¹⁹ Prior to adopting the statewide greenhouse gas emissions limit, the Air Resources Board held four public workshops and nine technical discussions on its inventory of 1990 emissions. In addition, the Air Resources Board convened several technical workgroups on emissions estimates associated with electricity generation, cement, landfills and petroleum refining.²⁰

Achieving the limit means cutting approximately 30 percent from emissions levels projected for 2020, or about 15 percent from the 2010 level. On a per-capita basis, it means reducing the annual emissions of every man, woman, and child by 14 tons of carbon dioxide equivalents to reach a level of 10 tons of carbon dioxide equivalents per capita by 2020.²¹

Mandatory Reporting

On December 6, 2007, the Air Resources Board adopted a regulation requiring mandatory reporting of greenhouse gas emissions. Annual reporting is required of operators of cement plants, petroleum refineries of a certain size, operators of hydrogen plants with specified minimum emissions, operators of electricity generating facilities, retail providers of electricity to end users, and operators that produce in excess of 25,000 tons of CO₂ from stationary combustion sources.²²

Reducing Greenhouse Gases

Scope of Air Resources Board Authority

AB 32 defines the phrase "sources or categories of sources of greenhouse gases" very broadly. The definition includes:

"...any source, or category of sources, of greenhouse gas emissions whose emissions are at a level of significance, as determined by the state board, that its participation in the program...will enable the state board to effectively reduce greenhouse gas emissions and monitor compliance with the statewide greenhouse gas emissions limit."²³

This means that the Air Resources Board has authority to adopt regulations for a very wide range of residential, industrial, commercial, and governmental activities if emissions from those activities are at a "level of significance" as determined by the Air

Resources Board that their participation in the AB 32 program will reduce emissions consistent with the statewide limit.

Process

With the emissions reduction goal and mandatory reporting system in place, the work of the Air Resources Board then became determining how to achieve greenhouse gas emission reductions from a variety of sources or categories of sources of greenhouse gases consistent with the annual limit. To this end, AB 32 directed the Air Resources Board to prepare and approve a "scoping plan" by January 1, 2009 for achieving the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions by 2020.²⁴

In developing the "scoping plan," AB 32 requires the Air Resources Board to consult with all state agencies with jurisdiction over sources of greenhouse gases, including the Public Utilities Commission and the State Energy Resources Conservation and Development Commission on all elements of its plan that pertain to energy related matters.²⁵ The Air Resources Board was required to conduct a series of public workshops in regions of the state that have the most significant exposure to air pollutants, including communities with minority populations and communities with low-income populations.²⁶

On December 11, 2008, the Air Resources Board approved the Climate Change Scoping Plan required by AB 32.²⁷ Prior to approving the Climate Change Scoping Plan, the Air Resources Board and other state agencies involved with the process held extensive meetings on technical issues and policy proposals; public input was solicited other ways as well. According to the Board, 42,000 people submitted comments on the plan; these comments are posted online.²⁸

Resulting Policies

Key elements of the Climate Change Scoping Plan are:

- Expanding and strengthening existing energy efficiency programs.
- Achieving a statewide renewables energy mix of 33 percent for electricity generation.
- Developing a California cap-and-trade program.
- Establishing targets for transportation-related greenhouse gas emissions for regions throughout California and pursuing policies and incentives to achieve those targets.

- Adopting measures pursuant to existing laws including clean car standards and low carbon fuel standards.
- Creating targeted fees on high global warming potential gases and a fee to fund the administrative costs of state's long term commitment to AB 32 implementation.²⁹
- Adopting measures to increase commercial recycling.

The scoping plan must be updated every five years.³⁰

The Climate Change Scoping Plan includes a list of 69 measures for reducing greenhouse gas emissions.³¹ Some of the measures have been adopted as regulations by the Air Resources Board.³² Others will be adopted as regulations on or before January 1, 2011. Some measures are covered by existing laws or regulations already adopted by the Air Resources Board and other state agencies. Still other measures are advisory to various "sources or categories of sources of greenhouse gases."³³ Measures that are advisory do not have the force of law but rather are suggestions for voluntary behavior.

For those measures requiring further regulations, the Air Resources Board must adopt such regulations by January 1, 2011. These regulations would become operative beginning on January 1, 2012.³⁴ To meet these deadlines, the Air Resources Board is holding public hearings for each of the regulatory sectors covered.³⁵

AB 32 Implementation and Local Agencies

Three areas of Air Resources Board activity implementing AB 32 directly impact cities and counties:

- Reductions of methane gas emissions at city or county-owned municipal solid waste landfills;
- Reduction of greenhouse gas emissions from increased energy efficiency and use of renewable sources of electricity associated with the generation of electricity by municipal electric utility;
- Mandatory commercial recycling.

The first two areas affect some, but not all, cities and counties. Mandatory commercial recycling affects all cities and counties.

Solid Waste Landfills

State regulations require both private and public owners and operators of landfills that accept municipal solid wastes to install methane gas collection and control systems, if they have not already done so.³⁶ Those owners and operators who have existing methane gas collection and control systems must satisfy enhanced methane monitoring requirements to ensure that their system is operating optimally.³⁷ The reason solid waste landfills are regulated under AB 32 is because methane released from improperly managed landfills is a strong greenhouse gas.³⁸

The Air Resources Board has developed a "Landfill Emissions Tool Version 1.2" to help estimate emissions from landfills. The Tool is available for download at <http://www.arb.ca.gov/cc/landfills/landfills.htm>.

Municipal Electric Utilities

Electricity generation is the second largest source of greenhouse gas emissions.³⁹ Three main ways to reduce greenhouse gas emissions from energy generation are through:

1. Increases in energy efficiency by end users (such as business and residential customers);
2. Efficiencies in energy generation itself; and

3. Increasing the amount of energy produced by alternative sources, such as wind and power, which do not generate as many greenhouse gases as conventional generating sources.⁴⁰

The Climate Change Scoping Plan outlines a wide range of measures designed to reduce greenhouse gas emissions related to energy.⁴¹ Some of the measures are based upon laws and regulations other than or in addition to AB 32.⁴²

An example is California's Renewable Portfolio Standard (also known as the RPS) adopted in 2002. It requires investor-owned utilities to have 20 percent of their generating capacity to come from renewable energy by a certain date.⁴³ Another law requires municipal electric utilities to set their own renewable portfolio targets.⁴⁴ State energy regulators⁴⁵ recommended in 2008 that the Air Resources Board require municipal electric utilities to meet a 20 percent renewable portfolio standard by 2017.⁴⁶

Besides identifying existing laws and programs that will reduce greenhouse gas emissions from energy generation, the Climate Change Scoping Plan includes a proposal to increase the Renewable Portfolio Standard to 33 percent. The proposal would apply to both investor-owned and municipal utilities. The Air Resources Board will consider the proposal in late September.⁴⁷

Mandatory Commercial Recycling

The Climate Change Scoping Plan includes a mandatory commercial recycling measure.⁴⁸ The goal of including increased business recycling in the Climate Change Scoping Plan is to reduce the amount of recyclable materials that are sent to a solid waste landfill and that potentially contribute to methane production.

Regulations Pending

In collaboration with another state agency, the Department of Resources, Recycling, and Recovery (the agency responsible for administering the state's solid waste laws known as CalRecycle), the Air Resources Board has published a draft of proposed regulations requiring commercial recycling.⁴⁹ CalRecycle will hold a workshop September 21, 2010 to receive input on the current version of the regulations.⁵⁰ The regulation timeline anticipates continuing the regulatory process through 2010, with final adoption of the regulations in 2011.

The *proposed* regulations require the following for businesses and cities and counties.

- By July 1, 2010, businesses (including multi-family housing with five units or more) that generate more than four cubic yards of waste and/or recyclables per week must either subscribe to a recycling service, send materials to a mixed

waste processing facility, or bring the recyclables to recycling facility themselves.⁵¹

- Effective July 1, 2012, every city and county must implement a commercial recycling program to divert solid waste generated by businesses that produce more than four cubic yards of solid waste and recyclables per week.⁵² The program may be implemented through adoption of a commercial recycling policy or ordinance, requiring a mandatory commercial recycling program through a franchise agreement or contract with a solid waste or recycling service provider, or requiring that commercial solid waste be sent to a mixed waste processing facility.⁵³
- The commercial recycling program must include education and outreach to covered businesses to insure that the program targets the appropriate components of the jurisdiction's commercial waste stream.⁵⁴
- The commercial recycling program must include identification and monitoring of businesses to assess if the businesses are subscribing to recycling services. If any business is not complying with the requirements, at a minimum, the local agency must notify the businesses that they are out of compliance.⁵⁵

The regulations authorize a city or county to do all of the following:

- Determine the specific material types included in the commercial recycling program;⁵⁶
- Include an enforcement component, specify design standards that specify storage space requirements for storage of recyclable materials, exemptions deemed appropriate by the jurisdiction for businesses not able to comply due to lack of storage space, non-generation of recyclable materials or lack of markets for recyclable materials;⁵⁷
- Enact a policy or program that goes beyond the minimum requirements included in the regulations, such as requiring all businesses to recycle, regardless of the quantity of solid waste generated.⁵⁸

Effect on Existing Local Commercial Recycling Programs

Some cities and counties already require commercial recycling. The proposed regulations do not require cities and counties that already require commercial recycling to implement a new or expanded program, as long as the local agency meets the education, outreach and monitoring criteria included in the regulations.⁵⁹ A city or

county must implement a commercial recycling program even if the jurisdiction has met its 50 percent per capita equivalent disposal target under AB 939.⁶⁰

Oversight by CalRecycle

CalRecycle will review the adequacy of a city or county's commercial recycling program as part of its periodic review of the jurisdiction's AB 939 program. In doing so, CalRecycle will consider whether the jurisdiction is "making a good faith effort" to implement its commercial recycling program.⁶¹

During its review, CalRecycle may include a number of factors in evaluating a jurisdiction's "good faith effort." These include

- The extent to which businesses have subscribed to recycling services.
- The extent to which the jurisdiction is conducting education and outreach activities to businesses.
- The extent to which the jurisdiction is monitoring business compliance and notifying those which are out of compliance.
- The availability of markets for collected recyclables.⁶²

Commercial Recycling Legislation Pending

At the end of the 2010 legislative session, the Legislature passed and sent to the Governor for consideration AB 737.⁶³ Among other provisions, AB 737 generally would put into law the proposed commercial recycling regulations being developed by CalRecycle. The Governor has until September 31, 2010 to sign or veto the bill.

Resources Available for Local Officials on Commercial Recycling Options

Information about commercial recycling resources and options is available on the Institute's website at www.ca-ilg.org/commercialrecycling. These resources include a sample annotated commercial recycling ordinance (<http://www.ca-ilg.org/samplecomrecycord>), examples of education materials, as well as past webinars offered by the Institute to assist cities and counties develop commercial recycling ordinances and education programs.

Information about the state's commercial recycling regulatory process, including the text of the proposed resolutions, is available at www.calrecycle.ca.gov/climate/Recycling/default.htm.

Local Agency Voluntary Efforts Encouraged

In the Climate Change Scoping Plan, the Air Resources Board refers to local agencies as “essential partners” in achieving California’s greenhouse gas reduction goals.⁶⁴ This is because of the influence and authority local agencies have over significant emission sources through their planning and permitting processes, local ordinances, outreach and education efforts, and operations.⁶⁵ The Climate Change Scoping Plan notes that “cities and counties will need to actively engage in implementing Scoping Plan measures at the local level and undertake other emission reduction actions that make sense for each community.”⁶⁶

The Scoping Plan also encourages local agencies to voluntarily adopt a reduction goal for municipal operations emissions to reduce greenhouse gas emissions by 15 percent from current levels by 2020.⁶⁷ To achieve such voluntary goals, the Air Resources Board encourages local agencies to use a “comprehensive approach” to reducing greenhouse gas emissions through their general plans or as part of a separate climate action plan. Key elements of any comprehensive plan should include:

1. Development of municipal and community-level greenhouse gas emissions inventories;
2. Adoption of local emissions reductions mechanisms and strategies;
3. Establishment of emission reduction goals; and
4. Development of an emissions reporting mechanism to track progress toward those goals.⁶⁸

To assist local agencies identify sources of greenhouse gas emissions produced by their facilities and operations, the Air Resources Board adopted the “Local Government Operations Protocol.”⁶⁹ This is a standardized set of guidelines to assist local agencies in quantifying and reporting greenhouse gas emissions associated with their public buildings, facilities, vehicles, wastewater and potable water treatment facilities, landfill and composting facilities, and other governments operations.⁷⁰

Resources Available for Local Officials on Voluntary Local Greenhouse Gas Reduction Options

Information about policy and operational opportunities for reducing greenhouse gas emissions locally is available at www.ca-ilg.org/climatepractices. This information includes a series of ten "best practice areas" along with options for local agencies to consider in each area. It includes links to resources on each option, as well as community stories describing other local agencies' experiences.

Transportation and Land Use: Action Deferred to SB 375 Implementation Process

“Transportation” is one of the “sectors” that is regulated as a “source of greenhouse gas emissions” in the Climate Change Scoping Plan.⁷¹ The Air Resources Board has the authority to regulate emissions from vehicles and light trucks because greenhouse gas emissions from the transportation sector are considered sources whose emissions are at a level of significance.⁷²

The Climate Change Scoping Plan explains that greenhouse gas emission reductions in the transportation sector will come from three strategies:

1. More efficient vehicles,
2. Lower-carbon fuels,⁷³ and
3. Reduction of vehicle use or vehicle miles traveled.⁷⁴

The Air Resources Board addresses the first two strategies as part of its regulatory authority over vehicle standards and fuel standards.⁷⁵

The number of vehicle miles traveled statewide increased about 35 percent from 1990 to 2007.⁷⁶ If current trends persist, vehicle miles traveled are expected to increase another 20 percent by 2020 and more than double between now and 2040.⁷⁷ The Air Resources Board envisions that emission reductions in this sector will be achieved through regulations, market mechanisms and land use policy.⁷⁸

One of the Climate Change Scoping Plan elements is Recommended Action T-3: Regional Transportation-Related Greenhouse Gas Targets.⁷⁹ The basis of Recommended Action T-3 is SB 375 (Steinberg) enacted into law as Chapter 728 in 2008. Senate Bill 375 requires ARB to develop, in consultation with metropolitan planning organizations, passenger vehicle greenhouse gas emission reductions targets for 2020 and 2035 by September 30, 2010.⁸⁰ Through the SB 375 process, regions will work to integrate development patterns, the transportation network, and other transportation measures and policies in a way that achieves greenhouse gas emission reductions while meeting regional planning objectives.⁸¹

According to the Air Resources Board, SB 375's implementation will be an important way of achieving significant additional greenhouse gas reductions from changed land use patterns and improved transportation to help achieve the goals of AB 32.⁸² The Air Resources Board calls for a partnership of local and regional agencies to create a sustainable vision for the future that accommodates population growth in a carbon

efficient way.⁸³ The Plan notes that integration of the sustainable communities strategies or alternative planning strategies with local general plans will be key to the achievement of these goals.⁸⁴ The Scoping Plan also includes suggestions for how the regions can meet their targeted reductions in greenhouse gas emissions.⁸⁵

More Detailed Analysis Available on SB 375

The Institute has prepared *A Local Official's Guide to Understanding California's Sustainable Communities and Climate Protection Act of 2008 (SB 375)* as a companion to this analysis of AB 32. The SB 375 guide explains, in plain language terms, what SB 375 means for metropolitan planning organizations and county and city officials, including how SB 375 relates to other laws promoting sustainability. Specifically, the guide explains the following:

1. The policy background against which SB 375 was adopted;
2. The metropolitan planning organizations' obligations to prepare plans: a) a "sustainable community strategy" and if necessary b) an "alternative planning strategy;"
3. How SB 375 connects local environmental analyses required under the California Environmental Quality Act to regional transportation plans; and
4. How city and county officials and their constituents can influence the regional planning process.

At the end, the guide also answers frequently asked questions and offers a glossary of key terms relating to SB 375. The guide is available at see www.ca-ilg.org/SB375LegalAnalysis.

Frequently Asked Questions

1. *Does AB 32 require cities and counties to reduce their levels of greenhouse gas emissions reductions?*

AB 32 itself does not *require* cities and counties to reduce levels of greenhouse gas emissions from their operations. However, AB 32 gives the Air Resources Board the authority to regulate “sources of greenhouse gas emissions” whose emissions are at a level of significance and, therefore, reductions from which will enable the Air Resources Board to help achieve the statewide greenhouse gas emissions limit.⁸⁶ The operations of cities and counties are “sources of greenhouse gas emissions.”⁸⁷ The Air Resources Board has the authority to identify and regulation which operations emit greenhouse gases at a level that should be reduced.

One such operation that the Air Resources Board has chosen to regulate is municipal solid waste landfills.⁸⁸ The Air Resources Board’s regulation relating to landfills took effect on June 21, 2010.⁸⁹ The regulations apply to both publically and privately owned and operated landfills.

The second operation that the Air Resources Board has chosen to regulate as a significant source of greenhouse gas emissions is electric utilities. The Air Resources Board will consider the adoption of regulations for municipal and publically-owned electric utilities on September 21, 2010.

The third area of Air Resources Board activity affecting cities and counties is mandatory commercial recycling.

Even if they are not required to do so, a number of cities and counties are voluntarily taking steps to reduce their greenhouse gas emissions and are encouraging their residents and businesses to do so. The Air Resources Board is also encouraging that cities and counties voluntarily to reduce emissions of greenhouse gases from their operations by 15 percent by the year 2020.⁹⁰

2. *What is the relationship between the Climate Change Scoping Plan and AB 32?*

AB 32 requires the Air Resources Board to prepare and approve a scoping plan for achieving the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions from sources or categories of sources of greenhouse gases by 2020.⁹¹ The Climate Change Scoping Plan is the Board’s “roadmap” for achieving the state’s 2020 emissions limit. It describes mandatory and voluntary measures to achieve the limit. The Climate Change Scoping Plan itself does not impose requirements to reduce greenhouse gas emissions. Rather, it identifies mandatory and voluntary measures and the timeline for their implementation.⁹²

3. *Does AB 32 take away or in any way interfere with local land use authority?*

No. There is no language in AB 32 that purports to preclude or direct land-use decision-making by cities and counties or that authorizes the Air Resources Board to make land use decisions.

Cities and counties enact laws pursuant to their “police power” authority under the California Constitution.⁹³ The source of cities and counties’ authority to enact and enforce land use laws is the “police power.”⁹⁴ In enacting and enforcing land use laws, California cities and counties do not rely on authority delegated by the general land use laws of the state or the federal government.⁹⁵

However, the Constitution imposes a significant limitation on the exercise of the “police power.” Land-use laws (or any other law enacted under the police power) may not “conflict” with the general state laws.⁹⁶ A conflict exists if the local law duplicates or contradicts the state law, or enters an area fully occupied by the state law, either expressly or by legislative implication.⁹⁷

Ordinances of charter cities relating to matters that are municipal affairs may be valid even if they are in conflict with general state laws or even if state laws have been enacted to cover the same subject. In matters of statewide concern, however, charter cities remain subject to and controlled by applicable general laws.⁹⁸

Some state laws have preempted local land use authority. AB 32 charges the Air Resources Board with monitoring and regulating sources of emissions of greenhouse gases that cause global warming in order to reduce emissions of greenhouse gases.⁹⁹ Achieving greenhouse gas reductions from passenger vehicles is addressed by the Air Resources Board in the Climate Change Scoping Plan.¹⁰⁰ The Scoping Plan also states that it is important to achieve greenhouse gas reductions from changed land use patterns and improved transportation to help achieve the goals of AB 32.¹⁰¹ However, neither AB 32 nor the Scoping Plan direct cities and counties in how to change land use patterns or improve transportation.

The fact that the state has legislated on the same subject does not necessarily preclude a city or county from exercising its municipal power or authority. The county or city retains the prerogative to make additional regulations on the subject as long as the local agency’s regulations are not inconsistent with the purpose of the state law.¹⁰²

Preemption occurs only where the Legislature has manifested an intention, expressly or by implication, wholly to cover the topic in statute (usually referred to as “occupying the field”) so that any local regulations will necessarily be inconsistent with state law.¹⁰³ Although AB 32 “preempts” the field of reducing greenhouse gas emissions in order to

meet the 2020 goal, AB 32 does not preempt local land-use decision-making or require that land-use decisions be made to implement the goal.¹⁰⁴

4. *How does AB 32 affect city and county authority in solid waste and recycling?*

Cities and counties have two roles in solid waste and recycling:

1. They regulate collection of solid waste and recycling;¹⁰⁵ and
2. Some cities and counties own and operate collection services and municipal landfills.

With respect to the first role, state integrated waste management law addresses regulation of solid waste and recycling extensively as a general matter.¹⁰⁶ This law pre-dates AB 32. It provides detailed standards and goals which a local agency must meet, while at the same time leaving decisions on how to meet those standards and goals to individual cities and counties.¹⁰⁷

The state's proposed mandatory commercial recycling regulations being prepared as a result of the Climate Change Scoping Plan¹⁰⁸ add to the level of regulation and will apply to all cities and counties' regardless of how they provide for solid waste and recycling collection services.¹⁰⁹ The Department of Resources, Recycling and Recovery, which administers the state's integrated waste management law, will be responsible for monitoring local agencies' compliance with the mandatory commercial recycling program.

However, as they now stand, the proposed regulations follow past practices of leaving it to the individual city or county to determine how best to meet the new commercial recycling requirements.¹¹⁰

With respect to the second role related to publically-owned municipal solid waste landfills, AB 32-related landfill methane control measures are of interest. These were one of the "discrete early action" items, which were adopted by the Air Resources Board in June 2009 and took effect January 1, 2010. These control measures set statewide standards for the installation and performance of active gas collection/control systems at uncontrolled municipal solid waste landfills. Publically (as well as privately)-owned and operated solid waste landfills must comply with the regulations.

5. *What happens if Proposition 23 passes in November 2010?*

Proposition 23 on the November, 2010 California statewide ballot would suspend AB 32 until the unemployment rate in California is 5.5 percent or less for four consecutive quarters.¹¹¹ Under Proposition 23, “suspending” AB 32 means that Proposition 23 would prohibit state agencies from proposing or adopting new regulations, or enforcing previously adopted regulations that would implement AB 32.¹¹²

What does this mean as a practical matter? The analysis turns on what state regulatory measures “implement AB 32.” Courts read ballot measures according to the following rules:

- When a court interprets an initiative, if the language is not ambiguous, courts presume the voters intended the meaning apparent from that language. Courts may not add to the statute or rewrite it to conform to some assumed intent not apparent from that language.¹¹³
- In interpreting a voter initiative, a court applies the same principles that govern statutory construction, turning first to the language of the statute, giving the words their ordinary meaning.¹¹⁴
- When a court interprets an initiative, if the language is ambiguous, courts will look to statements of voter intent and ballot pamphlet arguments to resolve the ambiguity.¹¹⁵
- The initiative power is liberally construed to promote the democratic process.¹¹⁶

AB 32 added sections 38500 to 38598 to California's Health and Safety Code. If Proposition 23 passes, those sections would be suspended until the unemployment rate reached those specified in Proposition 23. Similarly, regulations adopted by the Air Resources Board based on the authority or directions in those sections of the Health and Safety Code would be suspended if Proposition 23 passes, as would any future regulations initiated as a result of AB 32.

Activities relating to climate change and reducing greenhouse gas emissions that implement laws *other than* AB 32 (in other words, laws other than those found in California Health and Safety Code sections 38500 to 38598) would not be affected by Proposition 23. Examples include:

- Vehicle fuel efficiency standards;¹¹⁷ and
- California Environmental Quality Act requirements relating to analyzing greenhouse gas emissions.¹¹⁸

Because these laws are not a part of AB 32 they would not be suspended by Proposition 23.

The Legislative Analyst estimates that more than one-half of the emission reductions from implementing the Climate Change Scoping Plan that are needed to meet the AB 32 greenhouse gas reduction goal would result from laws other than AB 32 and, therefore, not be suspended by Proposition 23.¹¹⁹

6. *Besides Proposition 23 are there other ways that implementation of AB 32 might be delayed?*

AB 32 gives the Governor the authority to adjust the deadlines for individual regulations to “the earliest feasible date” after the deadline established by AB 32. The Governor may exercise this authority “in the event of extraordinary circumstances, catastrophic events, or threat of significant economic harm.” The adjustment period may not exceed one year unless the Governor makes an additional adjustment.¹²⁰

7. *Who enforces AB 32?*

The Air Resources Board monitors compliance with and enforces any rule, regulation, order, emission limitation, emissions reduction measure, or market-based compliance mechanism adopted by the Board.¹²¹ Violations are punishable by fines and injunctions.¹²²

8. *What is the relationship between AB 32 and the California Environmental Quality Act (CEQA)?*

AB 32 and the California Environmental Quality Act operate differently in how they affect the levels of greenhouse gases that are released into the atmosphere.

AB 32 is a wide-ranging measure that seeks to reduce the overall levels of greenhouse gas emissions. The Air Resources Board is responsible for developing regulations to implement AB 32 and for enforcing those regulations once they are adopted.¹²³ These regulations govern existing facilities and activities, as well as future facilities and activities. Whether a regulated entity is (or would be) in compliance with these regulations is one analysis.

Under the California Environmental Quality Act, local and state agencies analyze the impact of new projects on a variety of elements of the environment. The result of this analysis is whether a project will have a significant effect on the environment, including impacts related to greenhouse gas emissions generated by the project from transportation or energy consumption.¹²⁴ For example, a local agency may be pursuing

targets pursuant to a climate action plan where *any* additional greenhouse gas emissions result in a significant impact that needs to be mitigated.

If this is the case, public agencies must analyze whether steps can be taken that can mitigate the impacts identified. The environmental analysis helps decision-makers determine whether they want to approve the project or not.

This is a different analysis than whether a project would comply with the Air Resources Board's regulations--presumably the project would have to comply with the regulations in order to operate lawfully. The question an environmental analysis asks is whether, in spite of that compliance, there are alternative projects or mitigation measures that would reduce the impact of the project even further.

Thus, a project's emissions could still be significant even though they comply with state standards. Put another way, while compliance with AB 32 regulations may be considered among other factors in determining the significance of a project's emissions, such compliance is not determinative.¹²⁵

Glossary

Air Resources Board: The California Air Resources Board is a state agency is comprised of representatives of regional air quality management districts and air pollution control districts (who are city and county officials), the automotive industry; physician member, the legal community, and three public members.¹²⁶ Its director is appointed by the Governor.¹²⁷ Some of its major regulatory areas include climate change (including AB 32 implementation), energy and mobile sources of air pollution and particulate matter, smoke management; and toxics.¹²⁸ The Air Resources Board also has some responsibilities in the implementation of SB 375.¹²⁹

Alternative Planning Strategy: Under SB 375, an alternative planning strategy must be prepared by a metropolitan planning organization if the sustainable communities strategy is unable to reduce greenhouse gas emissions to achieve the greenhouse gas emission reduction targets established by the Air Resources Board.¹³⁰ For more information, see the Institute's guide on SB 375: www.ca-ilg.org/SB375LegalAnalysis .

California Environmental Quality Act (acronym CEQA-- pronounced "See-qwa"): The California Environmental Quality Act is a state law which requires that state and local governments evaluate public and private projects to determine whether they will have a significant impact on the environment.¹³¹ If significant impacts are identified, then the California Environmental Quality Act requires that state and local governments determine whether measures can be imposed on the project which can reduce the significant impact.¹³²

Climate Action Team (CAT): Established by Executive Order S-3-05 on June 1, 2005,¹³³ comprised of the representatives of the following state agencies: California Environmental Protection Agency; Business, Transportation and Housing Agency; Food and Agriculture; Resources; Air Resources Board; Energy Commission; Public Utilities Commission. The CAT coordinates statewide efforts to implement global warming emission reduction programs and the state's Climate Adaptation Strategy.¹³⁴

Greenhouse Gas (GHG): This is a term used to refer to all of the following gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. Greenhouse gases are measured in tons or million metric tons of carbon dioxide equivalents (sometimes indicated as MMTCO₂e).¹³⁵

Greenhouse Gas Emission Source: Any source, or category of sources, of greenhouse gas emissions whose emissions are at a level of significance, as determined by the state Air Resources Board, that its participation in the AB 32 program will enable the state board for effectively reduce greenhouse gas emissions and monitor compliance with the

statewide greenhouse gas emissions limit.¹³⁶ The transportation sector and electricity generation account for the top two largest sources of greenhouse gas emissions.¹³⁷

Metropolitan Planning Organization: A metropolitan planning organization is “the policy board of an organization created and designated to carry out metropolitan transportation planning.”¹³⁸ It is a regional organization governed by locally elected officials but is a creature of federal transportation law.¹³⁹ An metropolitan planning organization is the recipient of federal and state funds for region-wide and local transportation projects.¹⁴⁰ In turn, it determines which transportation projects will receive those funds. Metropolitan planning organizations have substantial responsibilities under SB 375. For more information, see the Institute’s guide on SB 375: www.ca-ilg.org/SB375LegalAnalysis .

Regional Transportation Plan: A regional transportation plan is an action-oriented and pragmatic plan that presents clear, concise policy guidance to local and state officials about achieving a coordinated and balanced regional transportation system.¹⁴¹ The regional transportation plan is adopted by metropolitan transportation organizations and is subject to both state and federal law.¹⁴²

SB 375: Senate Bill 375¹⁴³ authored by Senator Darrell Steinberg that requires each of the 18 metropolitan planning organizations in California to include a sustainable communities strategy in the region’s transportation plan. The goal of the sustainable communities strategy is to achieve the greenhouse gas emissions reduction targets established for the region by the ARB. For more information, see the Institute’s guide on SB 375: www.ca-ilg.org/SB375LegalAnalysis.

Statewide Greenhouse Gas Emission Limit: The maximum allowable level of statewide greenhouse gas emissions in 2020 as determined by the Air Resources Board.¹⁴⁴ In December 2007, the Board approved the 2020 emissions limit of 427 million metric tons of carbon dioxide equivalent of greenhouse gases.¹⁴⁵

Sustainable Communities Strategy: The sustainable communities strategy is a mandatory element of the regional transportation plan which, when integrated with the transportation network and other transportation measures and policies, will reduce the greenhouse gas emissions from automobiles and light trucks in the region, if there is a feasible way to do so, to achieve the greenhouse gas emission reduction targets approved by the Air Resources Board.¹⁴⁶ For more information, see the Institute’s guide on SB 375: www.ca-ilg.org/SB375LegalAnalysis.

Endnotes

¹ That law added division 25.5 (commencing with section 38500) to the California Health and Safety Code, relating to air pollution (specifically greenhouse gas emissions). The Sustainable Communities and Climate Protection Act of 2008 amended the Government and Public Resources Codes. Specifically it amended sections 65080, 65400, 65583, 65584.01, 65584.02, 65584.04, 65587, and 65588 of, and added sections 14522.1, 14522.2, and 65080.01 to, the Government Code. With respect to the Public Resources Code, it amended section 21061.3 of that code, added section 21159.28 to that code, and added Chapter 4.2 (commencing with Section 21155) to Division 13 of that code.

² The Sustainable Communities and Climate Protection Act of 2008 amended the Government and Public Resources Codes. Specifically, it amended sections 65080, 65400, 65583, 65584.01, 65584.02, 65584.04, 65587, and 65588 of, and added section 14522.1, 14522.2, and 65080.01 to, the Government Code. With respect to the Public Resources Code, it amended section 21061.13 of that code, and added section 21159.28 to that code, and added Chapter 4.2 (commencing with Section 21155) to Division 13 of that code.

³ See Cal. Health & Safety Code § 38500 and following.

⁴ AB 32's enactment followed Governor Schwarzenegger's issuance of an executive order in 2005 establishing certain greenhouse gas reduction goals for the state. Executive Order S-3-05 Order #1, available at <http://gov.ca.gov/executive-order/1861/> (creating goals to reduce greenhouse gas emissions to 1990 levels by 2020 and to further reduce greenhouse gas levels to 80 percent below 1990 levels by 2050). The Governor's executive order was a statement of executive department policy issued pursuant to the authority granted in California Constitution Article V, section 1. AB 32 is the legislative implementation of the policy goals established in the executive order.

⁵ See Cal. Health & Safety Code § 38550.

⁶ See Cal. Health & Safety Code § 38562(a).

⁷ See Cal. Health & Safety Code § 38562.

⁸ See Cal. Health & Safety Code § 38562(a).

⁹ See Cal. Health & Safety Code § 38505(g).

¹⁰ See Cal. Health & Safety Code § 38501(a).

¹¹ Cal. Health & Safety Code § 39510 (specifying that of the five members from regional air districts, one must be a board member from the South Coast Air Quality Management District, one a board member from the Bay Area Air Quality Management District, one a board member from the San Joaquin Valley Unified Air Pollution Control District, one a board member from the San Diego County Air Pollution Control District, and one a board member of any other district).

¹² See Cal. Gov't Code § 11340 and following. A state agency, the Office of Administrative Law, is responsible for making sure regulations that are proposed are authorized by law, and are clear and necessary.

¹³ See Cal. Gov't Code §§ 11346 – 11348.

¹⁴ See Cal. Health & Safety Code § 38550.

¹⁵ See Cal. Health & Safety Code § 38530(b)(1).

¹⁶ See Cal. Health & Safety Code § 38580.

¹⁷ See Cal. Health & Safety Code § 38560.5.

¹⁸ See titles 13 and 17 of the California Code of Regulations. Title 13 includes regulations relating to mobile sources and fuels. Title 17 includes regulations relating to the other early action measures.

¹⁹ The statewide emissions limit adopted by the Air Resources Board is 427 million metric tons of carbon dioxide equivalent (MMTCO₂E) of greenhouse gases. The limit was adopted by Air Resources Board Resolution 07-55 on December 6, 2007.

²⁰ "California 1990 Greenhouse Gases Emissions Level and 2020 Emissions Limit," the Staff Report to the Air Resources Board, page 11, November 16, 2007 available at http://www.arb.ca.gov/cc/inventory/pubs/reports/staff_report_1990_level.pdf.

²¹ Climate Change Scoping Plan, page ES-1.

²² Climate Change Scoping Plan, page ES-3.

²³ See Cal. Health & Safety Code § 38505(i).

²⁴ See Cal. Health & Safety Code § 38561.

²⁵ See Cal. Health & Safety Code § 38561(a).

²⁶ See Cal. Health & Safety Code § 38561(g).

²⁷ See Air Resources Board Resolution 08-47.

²⁸ See <http://www.arb.ca.gov/lispub/comm/bccommlog.php?listname=scopingpln08>.

²⁹ See Climate Change Scoping Plan, at page ES-3.

³⁰ See Cal. Health & Safety Code § 38561(h).

³¹ A list of these measures including a timeline for implementation and whether they will be adopted by regulation or are only advisory can be found at http://www.arb.ca.gov/cc/scopingplan/sp_measures_implementation_timeline.pdf.

³² See Early Action Items on Page 8. More information about early action items is available at <http://www.arb.ca.gov/cc/ccea/ccea.htm>.

³³ See Cal. Health & Safety Code § 38505(i).

³⁴ See Cal. Health & Safety § 38562(a).

³⁴ See Cal Health & Safety § 38562(a).

³⁵ See Cal Health & Safety § 38562(a).

³⁶ 17 Cal. Codes of Regs. § 95464(a).

³⁷ Regulations affecting the operations of municipal solid waste landfills can be found at 17 Cal. Code of Regs. §§ 95460-95476. The regulations took effect on June 17, 2010.

³⁸ See CalRecycle Methane Capture Resource Page at <http://www.arb.ca.gov/cc/landfills/landfills.htm> and information at <http://www.calrecycle.ca.gov/lea/Conference/07Conf/Presentations/Day1/GlobalWarmng/Walker.pdf>.

³⁹ See Climate Change Scoping Plan, page C-88.

⁴⁰ See generally pages C-90 – C-96 of the Scoping Plan.

⁴¹ See pages C-87 – 126 of the Climate Change Scoping Plan for an excellent discussion of California's overall energy efficiency and renewable energy programs and how they relate to the Climate Change Scoping.

⁴² Examples include a law adopted in 2007 that requires the California Energy Commission to adopt minimum energy efficiency standards for general purpose lighting that will reduce electricity consumption by 50 percent for indoor residential lighting and by 25 percent for indoor commercial lighting, see Cal. Pub. Res. Code § 25402.5.4 and following, and a law that directs California's investor and municipally-owned electric utilities to invest in electricity generation systems that produce lower-carbon dioxide emissions. See Cal. Code of Regs. §§ 2900-13 and Cal. Public Utilities Code §§ 340-341.

⁴³ See generally Cal. Pub. Util. Code §§ 387, 390.1, 399.25 and 399.11 and following, and 635 and Cal. Pub. Res. Code §§ 25620.1, 25740, 25741, 25742, 25743, 25746, 25751, 25470.5, 25744.5 In 2002, SB 1087 enacted the initial RPS that required the 20 percent target to be reached by 2017. See Cal. Pub. Res. Code §§ 387, 390.1, 399.25 and 399.1. Subsequently, SB 107 changed the deadline to 2010. See Cal. Pub. Res Code § 25740. For more information, see <http://www.energy.ca.gov/portfolio/>; <http://www.cpuc.ca.gov/PUC/energy/Renewables/overview>.

⁴⁴ See Cal. Pub. Util. Code § 387 (a).

⁴⁵ The California Public Utilities Commission and the California Energy Commission.

⁴⁶ See California Energy Commission 100-2008-002-CMF.

⁴⁷ Proposed 17 Cal. Code of Regs. § 97006.

⁴⁸ See Climate Change Scoping Plan, at page C-161, Measure RW-3.

⁴⁹ The proposed regulations are available at <http://www.calrecycle.ca.gov/Actions/PublicNoticeDetail.aspx?id=177&aiid=183> – The proposed regulations are in Attachment 2 at bottom of the page.

⁵⁰ Information about the September 21 workshop is available at <http://www.calrecycle.ca.gov/Calendar/EventDetail.aspx?ID=2679&DS=ACES>.

⁵¹ See Proposed 17 Cal. Code of Regs. §§ 9XXX1(a)(4), 9XXX2(a); 9XXX3.

⁵² See Proposed 17 Cal. Code of Regs. § 9XXX3(a).

⁵³ See Proposed 17 Cal. Code of Regs. § 9XXX3(e).

⁵⁴ See Proposed 17 Cal. Code of Regs. § 9XXX3(g).

⁵⁵ See Proposed 17 Cal. Code of Regs. § 9XXX3(h).

⁵⁶ See Proposed 17 Cal. Code of Regs. § 9XXX3(b).

⁵⁷ See Proposed 17 Cal. Code of Regs. §§ 9XXX3(i).

⁵⁸ See Proposed 17 Cal. Code of Regs. § 9XXX2(c).

⁵⁹ See Proposed 17 Cal. Code of Regs. § 9XXX3(c).

⁶⁰ See Proposed 17 Cal. Code of Regs. § 9XXX4(c).

⁶¹ See Proposed 17 Cal. Code of Regs. § 9XXX4(c).

⁶² See Proposed 17 Cal. Code of Regs. § 9XXX4(c)(1), (2), (3), (4).

⁶³ For the text of AB 737, see http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_0701-0750/ab_737_bill_20100820_amended_sen_v92.pdf.

⁶⁴ California Air Resources Board, AB 32 Scoping Plan, at page 26.

⁶⁵ California Air Resources Board, AB 32 Scoping Plan, at page 26.

⁶⁶ California Air Resources Board, AB 32 Scoping Plan, at page C-49.

⁶⁷ California Air Resources Board, AB 32 Scoping Plan, at page 27.

⁶⁸ California Air Resources Board, AB 32 Scoping Plan, at page 27.

⁶⁹ Available at <http://www.arb.ca.gov/cc/protocols/localgov/localgov.htm>.

⁷⁰ Available at http://www.arb.ca.gov/cc/protocols/localgov/pubs/lgo_protocol_v1_1_2010-05-03.pdf.

⁷¹ Climate Change Scoping Plan, at page C-74.

⁷² See Cal. Health & Safety Code § 38505(i).

⁷³ See 17 Cal. Code of Regs. §§ 95480-95489.

⁷⁴ Climate Change Scoping Plan, at page C-74.

⁷⁵ See 13 Cal. Code of Regs. § 2260; 13 Cal. Code of Regs. §§ 1961; 1961.1.

⁷⁶ Climate Change Scoping Plan, at page C-74.

⁷⁷ Climate Change Scoping Plan, at page C-56.

⁷⁸ Climate Change Scoping Plan, at page C-55.

⁷⁹ Climate Change Scoping Plan, at pages C-74-84.

⁸⁰ See Cal. Gov't Code § 65080(b)(2)(A).

⁸¹ See Cal. Gov't Code § 65080(b)(2)(B).

⁸² Climate Change Scoping Plan, at page C-74.

⁸³ Climate Change Scoping Plan, at page C-75.

⁸⁴ Climate Change Scoping Plan, at page C-75.

⁸⁵ Climate Change Scoping Plan, at pages C-80 – C-84.

⁸⁶ See Cal. Health & Safety Code § 38505(i).

⁸⁷ See Cal. Health & Safety Code § 38505(i).

⁸⁸ 17 Cal. Code of Regs. §§ 95460-95476.

⁸⁹ 17 Cal. Code of Regs. §§ 95460-95476.

⁹⁰ See Climate Scoping Plan, at page 27.

⁹¹ See Cal. Health & Safety § 38561.

⁹² The Scoping Plan Measures Implementation Timeline can be found at http://www.arb.ca.gov/cc/scopingplan/sp_measures_implementation_timeline.pdf.

⁹³ See Cal. Const. art. XI, § 7 (“A county or city may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws”).

⁹⁴ See *DeVita v. County of Napa*, 9 Cal. 4th 763 (1995).

⁹⁵ *DeVita*, 9 Cal. 4th at page 765.

⁹⁶ See Cal. Const. art. XI, § 7.

⁹⁷ See *Morehart v. County of Santa Barbara*, 7 Cal. 4th 725, 727(1994); *Sherwin-Williams Co. v. City of Los Angeles*, 4 Cal. 4th 893, 897 (1993). When such a conflict occurs, it is said that the state law “preempts” the local law.

⁹⁸ See *City of Los Angeles v. Department of Health*, 63 Cal. App. 3d 473 (1976).

⁹⁹ See Cal. Health & Safety § 38510.

¹⁰⁰ Climate Change Scoping Plan, at page C-74.

¹⁰¹ Climate Change Scoping Plan, at page C-74.

¹⁰² *DeAryan v. Butler*, 119 Cal. App. 2d 674 (1973).

¹⁰³ *In re Hubbard*, 62 Cal. 2d 119, 126 (1964); *IT Corp. v. Solano County Board of Supervisors*, 1 Cal. 4th 81, 89 (1991); *Sherwin-Williams Co. v. City of Los Angeles*, 4 Cal. 4th 893, 897 (1993).

¹⁰⁴ The Climate Change Scoping Plan includes advice and suggestions about the role the local governments will play in the regional planning process to reach passenger vehicle greenhouse gas reduction targets at page C-75.

¹⁰⁵ See Cal. Pub. Res. Code §§ 40058 and 40059.

¹⁰⁶ See Cal. Pub. Res. Code § 40000 and following.

¹⁰⁷ See Cal. Pub. Res. Code § 40000 and following.

¹⁰⁸ Available at <http://www.calrecycle.ca.gov/climate/Recycling/default.htm>.

¹⁰⁹ See description of the proposed regulations at pages 13 - 15 of this guide.

¹¹⁰ See Proposed Regulation 17 Cal. Code of Regs. § 9XXX3(i).

¹¹¹ The text of Proposition 23 is available at:
http://ag.ca.gov/cms_attachments/initiatives/pdfs/i902_initiative_09-0104.pdf.

¹¹² Proposition 23 would add Section 38600(a) to the California Health and Safety Code.

¹¹³ See *People v. Superior Court (Pearson)*, 48 Cal. 4th 564 (2010).

¹¹⁴ See *People v. Florez*, 132 Cal. App. 314 (2005) *reh'g denied, re.v denied*.

¹¹⁵ See *Florez*, 132 Cal. App. 4th 314 (2005), *reh'g denied, rev. denied*.

¹¹⁶ See *Santa Clara County Local Transportation Authority v. Guardino*, 11 Cal.4th 220, 12 Cal.4th 344E (1995), *modified on denial of rehearing*.

¹¹⁷ Cal. Health & Safety Code §§ 42823 and 43018.5. After delay due to legal challenges, the U.S. Environmental Protection Agency granted California the authority to implement greenhouse gas emission reduction standards for new passenger cars, pickup trucks and sport utility vehicles on June 30, 2009.

¹¹⁸ Cal. Pub. Res. Code § 21000 and following.

¹¹⁹ The Legislative Analyst's analysis of Proposition 23 can be found at:
<http://www.voterguide.sos.ca.gov/pdf/english/23-title-sum-analysis.pdf>.

¹²⁰ Cal. Health & Safety Code § 38599.

¹²¹ Cal. Health & Safety Code § 38580.

¹²² Cal. Health & Safety Code § 38580.

¹²³ Cal. Health & Safety Code § 38560.

¹²⁴ Cal. Pub. Res. Code § 21083.05. In addition, the State of California provides guidance on what must be included in an environmental analysis; this guidance is known as the "CEQA Guidelines." In 2007, SB 97 (*See* Cal. Pub. Res. Code § 21083.05) amended the California Environmental Quality Act to require the guidelines to address greenhouse gas emissions. The changes to the guidelines have been made and became effective on March 18, 2010.

¹²⁵ 14 Cal. Code Regs. § 15064.7 encourages a public agency to develop and publish thresholds of significance which are identifiable, quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant. A public agency could develop and publish a threshold of significance which states that compliance with an adopted Air Resource Board regulation means the effect normally will be determined to be less than significant.

¹²⁶ *See* Cal Health & Safety Code § 39510.

¹²⁷ *See* Cal. Health & Safety Code § 39511.

¹²⁸ *See* Cal. Health & Safety Code § 39003.

¹²⁹ *See* Cal. Gov't Code § 65080(b)(2)(A).

¹³⁰ *See* Cal. Gov't Code § 65080(b)(2)(I).

¹³¹ *See* Cal. Pub. Res. Code § 21080.1.

¹³² *See* Cal. Pub. Res. Code § 21151.

¹³³ Executive Order S-3-05 can be found at <http://gov.ca.gov/executive-order/1861/>.

¹³⁴ http://climatechange.ca.gov/climate_action_team/index.html.

¹³⁵ *See* Cal. Health & Safety Code § 38505(g).

¹³⁶ See Cal. Health & Safety Code § 38505(i).

¹³⁷ Climate Change Scoping Plan, at page C-88.

¹³⁸ 23 U.S.C. § 134; 28 C.F.R. § 450.104.

¹³⁹ 23 C.F.R. §450.300 (implementing the Federal Highway Administration Act and requiring that a metropolitan planning organization be designated for each urbanized area to carry out a continuing, cooperative, and comprehensive multimodal transportation planning process; the process must include the development of a metropolitan transportation plan and a transportation improvement program (TIP) that “encourages and promotes the safe and efficient development, management and operation of surface transportation systems....”).

¹⁴⁰ 23 C.F.R. § 450.308.

¹⁴¹ See Cal. Gov't Code 65080(a).

¹⁴² See Cal. Gov't Code 65080(a).

¹⁴³ http://info.sen.ca.gov/pub/07-08/bill/sen/sb_0351-0400/sb_375_bill_20080930_chaptered.pdf.

¹⁴⁴ See Cal. Health & Safety Code § 38501(h).

¹⁴⁵ California Air Resources Board Resolution 07-55, adopted December 6, 2007, available at http://www.arb.ca.gov/cc/inventory/1990level/arb_res07-55_1990_ghg_level.pdf.

¹⁴⁶ See Cal. Gov't Code § 65080(b)(2)(B).