




# ENERGY CONSERVATION STRATEGIES AND CLIMATE ACTION PLANS

CLARION

March 2010



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## SESSION OVERVIEW

- Introductions
- Why Undertake Energy Conservation Strategies and Climate Action Plans
  - Follow the money!
  - Avoid the big stick!
- How To



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## FEDERAL FUNDING FOR LOCAL PLANS

**American Recovery and Reinvestment Act of 2009**

- Includes \$16.8 billion for Department of Energy (DOE) Office of Efficiency and Renewable Energy
  - \$3.2 billion for DOE's Energy Efficiency and Conservation Block Grant Program
    - 68% by formula allocation to larger local governments - must prepare EEC strategy
    - 28% to states who pass through 60% of that amount to smaller local governments - competitive basis in some states

<http://www.eecbg.energy.gov/>

Fund Allocation for Energy Efficiency & CDBGs  
\$3,033,399 as of 12/31/2009

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## FEDERAL FUNDING FOR LOCAL PLANS

### American Recovery and Reinvestment Act of 2009

- Eligible Local Activities - broadly defined
  - Development of local energy efficiency/conservation strategies
  - Transportation programs to save energy
  - Material reduction/recycling programs
  - Energy efficient building codes
  - Zoning codes that promote energy efficient patterns



<http://www.eecbg.energy.gov/>

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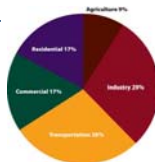
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## FEDERAL REGULATORY DEVELOPMENTS

### U.S. EPA REGULATION OF GREENHOUSE GAS EMISSIONS

- Response to U.S. Supreme Court ruling in *Massachusetts v. EPA* – must regulate GHG as an air pollutant
- EPA determines: "...climate change is an enormous problem. The greenhouse gases that are responsible for it endanger public health and welfare within the meaning of the Clean Air Act."
- EPA issues proposed rule requiring mandatory reporting of GHG emissions - first step towards regulation
- Potential state implementation plan restrictions on GHG emissions from transportation - must reduce VMTs



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## POTENTIAL FEDERAL GHG LEGISLATION

### CAP AND TRADE LEGISLATION

- Early legislation focused on research and monitoring GHGs (six acts)
- American Clean Energy And Securing Act of 2009 (ACESA) - approved by House in June 2009 (219-212)
  - Mandatory cap and trade program to regulate GHG
  - 17% reduction by 2020; 83% by 2050 (from 2005 levels)
  - 20% of electricity production from renewable sources
  - Increased investment in renewable energy
  - Enhance development of carbon capture/sequestration
  - Assistance to affected low-income households and workers
- Several similar bills under consideration in Senate (e.g., Kerry-Boxer Clean Energy Jobs and American Power Act)



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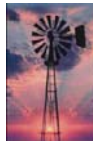
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## STATE LEGISLATIVE AND ADMINISTRATIVE DEVELOPMENTS: EXECUTIVE ORDERS

MAJORITY OF GOVERNORS ARE ISSUING EXECUTIVE ORDERS RELATING TO SUSTAINABILITY, CLIMATE CHANGE, AND GHG EMISSIONS (FL, NY, VA, CA, WA, etc.)

- 25 states have climate action plans
- 16 states have established statewide GHG reduction targets (5 mandatory)
- Most have local government implications



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## STATE LEGISLATIVE AND ADMINISTRATIVE DEVELOPMENTS: EXECUTIVE ORDERS

NEW YORK - GOV. PATERSON ISSUED E.O. 24

- Reduce GHG emissions from all sources in state to 80% of 1990 levels by 2050
- Prepare Climate Action Plan to achieve goals (prepared by Sept. 2010)
  - Inventory GHG emissions and assess actions to reduce
  - Identify and analyze anticipated reductions
  - Identify legal, regulatory, and policy constraints to reduction
  - Recommend ways to address constraints

WASHINGTON - GOV. GREGOIRE ISSUED E.O. 09-05

- Follow-up to RCW 47.01.440, 70.235.020, and 235.050, which established GHG reduction goals for state of Washington
- Initiates efforts to:
  - Inventory and allocate GHG reductions for stationary sources
  - Develop emission benchmarks, by sector (based on industry best practices)
  - Develop recommendations for forestry offset protocols
  - Evaluate best options for low-carbon fuel standards
  - Work with regional transportation councils to develop and adopt regional transportation plans to reduce GHGs and achieve statutory benchmarks



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## STATE LEGISLATIVE DEVELOPMENTS: MANDATORY/OPTIONAL PLAN ELEMENTS

### MANDATORY PLAN ELEMENTS

- CALIFORNIA - AB 32(CA Global Warming Solutions Act) requires Air Resources Board to adopt mandatory GHG reduction regulations that local govts must implement. SB 375 requires new regional transportation plans that reduce GHG emissions from vehicles—must link to development patterns.
- OREGON - Energy conservation is statewide planning goal No. 13. Must manage land use to maximize conservation of all forms of energy.
- VERMONT - Local comprehensive plans must have "energy plan" that includes analysis of energy resources and policies related to energy conservation, development of alternative energy, and density and patterns of land use to promote energy conservation. 24 V.S.A. 4382



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## STATE LEGISLATIVE DEVELOPMENTS: OPTIONAL/MANDATORY PLAN ELEMENTS

### MANDATORY PLAN ELEMENTS

- FLORIDA - HB 697 requires local plan elements (land use, transportation, housing, conservation) to address energy and greenhouse gas reduction
  - State DCA rejecting local plans that fail to address
    - Zoning must be in accord with plans
    - State and citizens may enforce consistency requirement

### OPTIONAL SUSTAINABLE PLAN ELEMENTS

- NEBRASKA (N.R.S. Sec. 99-913)
  - Local plans/zoning may encourage solar and wind energy use and access
- MAINE
  - Under State Growth Management Act, state planning office reviews and approves all local plans according to specific criteria. However, Act does not specifically mention climate change as mandatory element of local plans - state planning office issues informal guidelines for integrating climate change strategies into local plans.  
<http://www.state.me.us/spo/landuse/techassist/climatechange.htm>



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## STATE LEGISLATIVE DEVELOPMENTS: STATE ENVIRONMENTAL QUALITY ACTS

### LITTLE NEPA'S

- NEW YORK
  - State Environmental Quality Review Act (SEQRA) requires agencies to identify and assess actions for potential adverse environmental impact. Energy use and greenhouse gas emissions must be considered. DEC proposed policy July 15, 2009.  
[http://www.dec.ny.gov/docs/administration\\_pdf/eisghgpolicy.pdf](http://www.dec.ny.gov/docs/administration_pdf/eisghgpolicy.pdf)
- CALIFORNIA (CEQA)
  - Attorney General Brown has filed numerous suits against state agencies and local governments for failure to analyze increased air pollution/GHG emissions from projects and their impacts and undertake mitigation measures as required by CEQA and AB 32.



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## CASE LAW: STATE - CALIFORNIA

State suing local governments to reduce GHG emissions through plans and development regulations.

- *California v. County of San Bernardino* (Cal Sup. Ct. Case No. CIVSS 700329 San Bernardino 2007)
  - Attorney General initiated suit seeking to set aside county's adoption of General Plan update, development regulations, and EIR under CEQA because it did not adequately analyze and mitigate the adverse effects of the plan on GHG emissions.
  - Used CEQA and AB 32 as bases for claim.



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## CASE LAW: STATE - CALIFORNIA

### *California v. County of San Bernardino (cont.)*

- County and State reached settlement agreement August 2007. In settlement, without admitting liability, County agreed to:

- Add General Plan policy describing goal of reducing GHG emissions reasonably attributable to county's discretionary land use decisions and its internal government operations
- Prepare a **Greenhouse Gas Emissions Reduction Plan** that:
  - Inventories all known/reasonably discoverable sources of GHG emissions.
  - Identifies the baseline of GHG emissions currently being emitted in county.
  - Inventories GHG emissions in 1990
  - Projects new GHG emissions reasonably expected from county's discretionary land use decisions under General Plan update and governmental operations, in 2020
  - Establishes a target for reduction of GHG emissions from those sources
- Conduct environmental review of General Plan and GHGERP pursuant to CEQA.
- Make best efforts to complete by February 2010.
- Adopt feasible measures to control emissions of diesel engine exhaust on projects/facilities under county's discretionary land use jurisdiction.



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## CASE LAW: STATE - CALIFORNIA

### Citizens suing local governments

- ***Sierra Club and State of California v. City of Stockton*** (Cal. Sup. Ct. Case No. CV 034405 January 2008)

- Sierra Club initiated petition for writ of mandate seeking to vacate and set aside county's adoption of General Plan update, development regulations, and EIR under CEQA because it did not adequately analyze and mitigate the adverse effects of the plan on GHG emissions.
- Attorney General intervened and joined the Sierra Club in the suit.



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## CASE LAW: STATE - CALIFORNIA

- ***Sierra Club and State of California v. City of Stockton (cont.)***

- In settlement, City agreed to:

- Prepare **Climate Action Plan** within 24 months, which would be incorporated into the General Plan, and include the following related to GHG emissions:
  - Inventory of current GHG emissions
  - Specific targets for reductions of current and 2020 GHG emissions from sources reasonably attributable to City's discretionary land use decisions/internal government operations
  - Establish goal to reduce per capita VMT attributable to activities in Stockton so that rate of growth in VMT during plan's time frame does not exceed population growth during that time frame



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## CASE LAW: STATE - CALIFORNIA

- *Sierra Club and State of California v. City of Stockton* (cont.)
  - Within 12 months, adopt a green building program (e.g., requiring all new nonresidential development over 5,000 sf to attain LEED Silver standards, at a minimum).
  - Within 12 months, amend plan and require specific amount of new housing growth (440 units) occur in downtown and 14,000 units be located with existing city limits.
  - Within 12 months, amend plan to make sure development at City's outskirts does not grow in a way that is out of balance with infill development (using measurable criteria to ensure balance before entitlements granted).
  - Monitor strategies to make sure they are working.
  - Take specific interim measures with respect to land use approvals.



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## CASE LAW: FEDERAL

*Connecticut v. American Electric Power Company, Inc.*, \_\_\_ P.3d \_\_\_,  
Docket Nos. 05-5104-cv, 05-5119-cv (2d Cir Ct. Appeals Sept 2009)

- Eight states (Connecticut, New York, California, Iowa, New Jersey, Rhode Island, Vermont, and Wisconsin), New York City and three environmental nonprofits sued five power companies that own/operate fossil fuel power plants in 20 states. They are the 5 largest emitters of CO<sub>2</sub> in the US.
- Complaint alleged public nuisance existed because the 650 million tons of CO<sub>2</sub> per year emitted by plants is causing/will cause serious harm to human health and natural resources.
- Plaintiffs sought abatement of plants' contributions to global warming, asking court to cap and require reduction of CO<sub>2</sub> emissions.
- District Court dismissed lawsuit as non-justiciable under the political question doctrine.
- 2d Cir. Ct. App. reversed holding. Recognized federal "public nuisance" can be used to sue power companies based upon injuries from global warming.



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## CASE LAW: FEDERAL

*Connecticut v. American Electric Power Co.*  
(cont.)

- "This case is a critical milestone, allowing global warming cases to be decided by the courts..." Its highly significant that the federal court has affirmed the right of states to challenge the greenhouse gas emissions generated by coal-fired plants. The time has come for Congress to enact long overdue climate protection legislation."

-- Jerry Brown, California Attorney General



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## CASE LAW: FEDERAL

ENDANGERED SPECIES ACT (7 USC 1531; 16 USC 1531)

Potential flood of litigation under ESA to list endangered species due to global warming

*Center for Biodiversity v. USFWS*, 2008 WL 1902703 (ND Cal 2008)



- Suit to force listing of polar bears - iconic symbol of climate change - as endangered species due to global warming.
- USFWS failed to list within 1-year statutory time frame
- Within 2 weeks of suit, polar bear listed. More suits filed. Implications for other states re species threatened or endangered?
- There could be many implications for western states and local govts. because disappearing coastal and oak savannah habitat used by many endangered species.

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## USING GHG EMISSIONS OFFENSIVELY AT THE LOCAL LEVEL

Local governments invoking climate change, GHG, sustainability concerns to deny development proposals.

*Matter of Laidlaw Energy and Environmental, Inc. v. Town of Ellicottville*, 59 A.D.3d 1084, 873 N.Y.S. 2d (N.Y. App. Div. 4<sup>th</sup> Dept. 2009)



- Appellate court affirmed local Planning Board denial of site for new cogeneration (biomass) power plant, based on political concerns related to increased GHG emissions.
- Planning Board calculated the CO<sub>2</sub> emissions from bringing woodchips to the site would result in 1,890,000 pounds of carbon emission per year, plus additional emissions from electrical generation, concluding plant was far from carbon neutral.

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