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with Climate Change and Sustainability Topped  
State Legislative Land Use Reform Agenda in 2008**

Spring 2009



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**Patricia E. Salkin**

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# Zoning and Land Use Planning

PATRICIA E. SALKIN\*

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## Linking Land Use with Climate Change and Sustainability Topped State Legislative Land Use Reform Agenda in 2008

### Introduction

At the end of the last century, state legislative land use reforms were in vogue, with reports of up to 1,000 land use law related bills having been introduced in state houses across the country.<sup>1</sup> The majority of these reform proposals were aimed at modernizing antiquated planning and zoning enabling acts and providing

vehicles for more flexible zoning techniques as part of the smart growth movement.<sup>2</sup> In the early part of the 21st century, state legislative reforms have focused primarily on themes surrounding sustainability. In 2008, only one state—Michigan—focused on recodification of its planning and zoning enabling acts.<sup>3</sup> Many more states pursued statutory reforms to address the strong linkages between land use and climate change, green development and affordable housing. These were the only discernable trends in 2008. The remainder of the new laws discussed include regionalism, ethics, sex offender residency restrictions, environmental justice, vested rights, initiative and referenda and wireless communication facilities, but they seem focused on unique issues present in the individual state or in response to organized advocacy committed to a reform agenda.

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## I. Climate Change Legislation

Global warming, climate change, reducing greenhouse gas emissions, reducing the carbon footprint, and going green are just some of the buzz words in the news over the last two years that have captured the attention of lawmakers and policymakers at all levels of government. In Congress, lawmakers have proposed, among other things, mandating standards to reduce greenhouse gas emissions,<sup>4</sup> and governors across the country have announced myriad programs designed to encourage the use by governments of green products,<sup>5</sup> the construction of green buildings,<sup>6</sup> and the offering of a combination of tax incentives and grants for private developers and other members of the public who develop and install various renewable energy products.<sup>7</sup> In addition, interstate initiatives, such as the Climate Registry<sup>8</sup> and the Regional Greenhouse Gas Initiative (which includes Connecticut, Delaware, Maine, New Hampshire, New Jersey, New York, and Vermont) call for reductions in emissions from all states using a cap and trade CO<sub>2</sub> system.<sup>9</sup> Individual states, such as California, have also

been proactive in enacting comprehensive legislation designed to reduce emissions.<sup>10</sup> States took varied approaches to climate change as a land use issue in 2008.

### A. California

In California, Governor Arnold Schwarzenegger signed into law Senate Bill 375,<sup>11</sup> requiring, among other things, the creation of a regional “preferred growth scenario” of land use and transportation improvements that provides for anticipated growth in jobs and housing, while meeting state-mandated goals for reducing greenhouse gas emissions. Five significant aspects of the new law from a land use perspective are: the creation of regional targets for greenhouse gas emissions reduction tied to land use; a requirement that regional planning agencies create a plan to meet those targets, even if that plan is in conflict with local plans; a requirement that regional transportation funding decisions be consistent with this new plan; tethering together regional transportation planning and housing efforts for the first time; and new California Environmental Quality Act (CEQA) exemptions and streamlining for projects that conform to the new regional

plans, even if they conflict with local plans.<sup>12</sup> Bill Fulton explains on his California Planning and Development Report blog that, “Once the MPOs (Metropolitan Planning Organizations) have received the regional targets in late 2010, they will be required to create a ‘Sustainable Communities Strategy’ that lays out how the emissions reduction will be met. Technically, this strategy becomes part of the Regional Transportation Plan—an important point, because it tethers the sustainable strategy to federal transportation planning law.”<sup>13</sup> Further, the requirement that the regional transportation plan (RTP) be internally consistent means that “action items and financing decisions called for in the RTP must be consistent with the Sustainable Communities Strategy.”<sup>14</sup>

#### B. Florida

Florida Governor Charlie Crist signed a new law in 2008 that, among other things, requires local governments to address climate change in comprehensive plans with greenhouse gas reduction strategies, energy-efficient development patterns, and factors to increase energy conservation in housing design and construction and in other contexts.<sup>15</sup> This is a great

method of getting local governments to think proactively about how they can accomplish community planning in the most sustainable manner possible, and it is likely more states will adopt this approach in 2009. It should be noted that in some states, such as California, mandated state environmental review laws are also being used to assess the impact of proposed land development projects on climate change.<sup>16</sup>

#### C. Washington

Noting that patterns of land use development influence transportation-related greenhouse gas emissions and the need for foreign oil and that the state and its residents will not achieve emission reductions established by the state without a significant decrease in transportation emissions,<sup>17</sup> the Washington Legislature required the Department of Community, Trade and Economic Development to: (1) develop and provide counties and cities with a range of advisory climate change response methodologies, a computer modeling program, and estimates of greenhouse gas emissions reductions which must reflect regional and local variations of the county or city by December 1, 2009; (2) work with the De-

partment of Transportation to reduce vehicle miles traveled; (3) administer a local government global warming mitigation and adaptation program, which must conclude by June 30, 2010. Counties and cities are selected for the program through a competitive process; (4) provide grants and technical assistance to aid the selected counties and cities in their efforts to anticipate, mitigate, and adapt to global warming and its associated problems; (5) prepare a report of program findings and recommendations to the Governor and Legislature by January 1, 2011; and (6) prepare an additional report including description of actions that counties and cities are taking to address climate change, among other items, by December 1, 2008.<sup>18</sup>

## II. Renewable Energy

In tandem with the goals of the new climate change laws, a number of states enacted measures designed to ensure the use of alternative energy tied to building permits. For example, a new statute in Hawaii mandates that on or after January 1, 2010, no building permit shall be issued for a single-family dwelling that does not include

a solar water heater system. The statute also repeals the solar energy tax credit by 2010.<sup>19</sup> The Green Communities Act<sup>20</sup> in Massachusetts requires, among other things, that the State Board of Building Regulations and Standards adopt, as its minimum standard, the latest edition of the International Energy Conservation Code as part of the State Building Code. The law also makes it possible for people who own wind turbines and solar-generated power to sell their excess electricity into the grid (“net-metering”) at favorable rates, and authorizes utility companies to own solar electric installations they put on their customers’ roofs—a practice that was previously prohibited. In Virginia, a new law authorizes an expedited process for issuing permits for construction or operation of a qualified energy generator, which includes energy that is generated or produced from biomass. “Biomass” is defined as organic material such as forest-related materials, agricultural-related materials, animal waste, crops and trees, landfill gas, and municipal solid waste.<sup>21</sup>

A research project by a group of students from the University of New Hampshire has

led to a new law restricting municipalities from unreasonably prohibiting the installation or performance of small wind energy systems. The law, signed in July 2008, also establishes a simple framework for local regulation of wind turbines that are used for generation of power that is intended primarily for on-site use. The law establishes a maximum property line setback of 150% of turbine height and a maximum noise level of 55 decibels at the property line. It also requires the building inspector to notify by certified mail the abutters and regionally affected municipalities and regional planning councils when a building permit application for a turbine is filed. Further, where the small wind energy system is not used for a continuous 12-month period, it is deemed abandoned, and following notice and an opportunity to be heard, the planning board may order its removal. In addition, the state statute dealing with zoning and renewable energy (RSA 357:2) was amended to provide that “installation of solar, wind, or other renewable energy systems or the building of structures that facilitate the collection of renewable energy *shall*

*not be unreasonably limited by use of municipal zoning powers or by the unreasonable interpretation of such powers* except where necessary to protect the public health, safety, and welfare.” (emphasis added) The law also required the State Office of Energy and Planning to develop a model ordinance by September 30, 2008, which it has done.<sup>22</sup> In 2009, the issue of control over the siting of wind turbines is certain to attract further national legislative attention. Recently, the Supreme Court in Washington State ruled that the State Energy Siting Law applies to wind turbines and preempts local zoning,<sup>23</sup> and the Ohio Siting Board adopted rules for the siting of wind farms, providing some room for local control but not exclusivity.<sup>24</sup>

A new law in Virginia provides that community associations may establish reasonable restrictions as to the size, place, and manner of installation of solar energy collection devices but may not prohibit them,<sup>25</sup> and in California, a new law prevents neighbors from allowing trees or shrubs to be planted in a manner that interferes with a solar collector.<sup>26</sup>

### III. Green Buildings

At the end of September 2008, New York Governor David Paterson signed into law the Green Residential Building Grant Program, amending the Public Authorities Law to authorize the New York State Energy Research and Development Authority (NYSERDA) to: (1) develop and establish standards and criteria for a new green residential building grant program, and consult existing standards and criteria, such as those established by the United States Green Building Council under its Leadership in Energy and Environmental Design (LEED) programs and the American National Standards Institute (ANSI), in developing such standards; and (2) develop and establish other standards and criteria that are necessary for the administration of the program (such as eligibility criteria, training and qualification procedures for builders and technicians, application procedures, award determinations, award levels, and inspection, documentation and compliance requirements).<sup>27</sup> The new law further provides that the amount of the grants will be based on a number of considerations, including the size and the type of the residential struc-

ture, but may not exceed \$7,500 for one-family and two-family homes, \$11,250 for residential buildings with three to six dwelling units, and \$15,000 for residential buildings with more than six dwelling units. In addition to these limitations, no single owner, such as a developer of multiple qualified residential buildings who is a qualified owner, may receive more than \$120,000 in incentive payments during any calendar year.

### IV. Environmental Justice

There was a disappointing lack of state statutory attention to the subject of the intersection of environmental justice and land use planning in 2008. In May 2008, the Connecticut Legislature passed, and the Governor signed, the State's first environmental justice law.<sup>28</sup> Effective January 1, 2009, definitions are provided for "environmental justice community," "affecting facility," "meaningful public participation," and "community environmental benefit agreement." By the statutory definition, 25 low income towns (called distressed municipalities) and low income neighborhoods in 34 other Connecticut

towns are identified as environmental justice communities.<sup>29</sup> Applicants who propose to locate an affected facility in an environmental justice community must file a meaningful public participation plan with the department of environmental protection or the Connecticut Siting Council. Measures to facilitate meaningful public participation in the regulatory process are described. A municipality, owner or developer may enter into a community environmental benefit agreement which provides mitigation, such as environmental education, diesel pollution reduction, construction of biking and walking trails, staffing for parks, urban forestry, and community gardens, among other things.

## V. Ethics

With continued allegations of unethical conduct in the land use planning and decisionmaking process,<sup>30</sup> it is surprising that state legislatures are not incorporating clarifying language into state planning and zoning enabling statutes in recognition of the different types of conflicts issues that might arise in the land use context. On March 10, 2008, Virginia Governor Tim Kaine signed

SB 532. The law places financial disclosure requirements on each individual member of the Loudoun County board of supervisors, planning commission, and board of zoning appeals in any proceeding before each such body involving an application for a special exception, a variance, or a zoning ordinance change, except when the application constitutes the adoption of a comprehensive zoning plan, a generally applicable ordinance, or is filed by the board of supervisors and involves more than 10 parcels owned by different parties. Under the new law, prior to any hearing on the matter or at such hearing, the covered officials must make a full public disclosure of any business or financial relationship that such member has, or has had within the 12-month period prior to such hearing: (i) with the applicant; (ii) with the title owner, contract purchaser, or lessee of the land that is the subject of the application; (iii) if any of the foregoing is a trustee (other than a trustee under a corporate mortgage or deed of trust securing one or more issues of corporate mortgage bonds), with any trust beneficiary having an interest in such land; and (iv) with the agent, attorney, or real

estate broker of any of the foregoing. The new law was reportedly limited to Loudoun County in an effort to get the legislation enacted without delay.<sup>31</sup>

## **VI. Initiative and Referenda**

The use of ballot box zoning, or initiative and referenda, has become a popular tool in many states to enable residents to regulate more directly the use of land.<sup>32</sup> In March 2008, Utah Governor Jon Huntsman signed S.B. 53 addressing the use of initiative and referenda for administrative land use and zoning matters. Sponsored by Senator Goodfellow, and supported by the Utah Leagues of Cities and Towns as well as realtors and developers, the bill prohibits the use of local initiatives for land use ordinances or changes in land use ordinances, and it prohibits voters from requiring that the implementation of a land use ordinance be submitted to the voters. According to the bill's sponsor, the measure was aimed at clarifying the existing law and that citizens can still petition against the ordinance, but just not against the process. This is disputed by others who claim that the measure has done more

that clarify existing law and that now the public has lost its voice in the process.<sup>33</sup> The new law was enacted the same year that the Utah Supreme Court held that a zoning ordinance could be modified by initiative,<sup>34</sup> and the Alaska Supreme Court invalidated a local initiative measure designed to regulate the size of retail and wholesale buildings.<sup>35</sup>

## **VII. Regionalism**

Regionalism did not garner a lot of attention in 2008, but a new law in Connecticut requires the Secretary of the Office of Policy and Management to: (1) rank the state's policies for developing and conserving land; and (2) track the extent to which the state's principles for managing growth are being implemented. According to the Connecticut Office of Legislative Research:

These policies and principles are specified in the State Plan of Conservation and Development (Plan of C&D), which serves as the basis for state agencies deciding whether to fund major physical development projects. The Act also requires the secretary to reassess the boundaries of the state's planning regions at least once every 20 years and change them if necessary. The law allows towns within these regions to form three types of regional planning bodies.

The rules governing these bodies vary. The act gives them largely the same powers and duties and refers to them collectively as regional planning organizations (RPOs). It also makes many conforming technical changes regarding RPOs. By law, most RPOs must prepare a 10-year regional plan of development. These plans do not have to be consistent with the state plan, but the law requires the secretary to review them to determine if they are not inconsistent with the state plan. The act requires the secretary to develop uniform criteria for reviewing regional plans of development. Lastly, the act expands the range of projects eligible for regional performance incentive grants, which are currently available for delivering an existing municipal service on a regional basis. The act extends eligibility to new services that are not being provided anywhere in the region. It also drops the requirement that proposed projects increase local purchasing power or lower tax rates but requires the secretary to give priority to those that do.<sup>36</sup>

### **VIII. Sex Offender Residency Restrictions**

Perhaps the most controversial topic of 2008 in state and local legislatures and in the courts across the country has been the subject of sex offender residency restrictions. Communities continue to debate the development and adoption of residency restrictions that prohibit convicted sex offenders from residing in close proxim-

ity to areas where children are known to congregate.<sup>37</sup> These laws, whether adopted at the state or local levels, have been successfully challenged on both constitutional<sup>38</sup> and preemption grounds.<sup>39</sup> Despite this, local governments continue to enact these laws, absent specific state legislation, in response to public pressure.<sup>40</sup> In June, Oklahoma enacted amendments to state law prohibiting any person registered as a sex offender from residing either temporarily or permanently within a 2,000-foot radius of any public or private school site; educational institution; playground or park that is established, operated, or supported in whole or in part by city, county, state, federal or tribal government; or a licensed day care center.<sup>41</sup> To address constitutional takings problems with similar laws, the Oklahoma statute provides that establishment of a day care center or park in the vicinity of the residence of a registered sex offender will not require the relocation of the sex offender or the sale of the property. This statute also does not require anyone to sell or otherwise dispose of any real estate or home acquired or owned prior to the conviction of the person as a sex offender.

## IX. Vested Rights

The subject of vested rights is always a controversial and emotional property rights issue. While many states deal with the subject through common law, a number of states have adopted statutes to address the timing of when interests in building permits and/or zoning approvals vest for purposes of acquiring a cognizable property interest.<sup>42</sup> Introduced at the request of the Realtors Association, a new law in Virginia provides that property owners who have constructed buildings or structures in accordance with zoning ordinances in effect at that time cannot be required by the locality to remove them due to future changes in the zoning ordinance so long as they have paid property taxes on the structure for at least 15 years. Localities may require, however, that such structures be brought into compliance with state building code requirements. Specifically, the measure prevents local governments from requiring the removal of non-conforming structures if a building permit and certificate of occupancy were issued at the time the structure was built.<sup>43</sup>

## X. Wireless Communication Facilities

While Congress passed, and the President signed, the Telecommunications Act of 1996 for the purpose of ensuring a national telecommunications infrastructure, some states believe that further guidance for municipalities is needed and/or that statewide uniformity is desired. While the federal Act does not preempt local zoning control, it does set certain parameters on how local governments may review applications from wireless providers for towers and antennae. Due to a number of issues across the State, North Carolina has enacted a cell tower law, consistent with the federal law, but designed to address more specific issues and concerns that have arisen in the State. Ch. SL 2007-526 of the Laws of North Carolina took effect on December 1, 2007, providing a statewide statutory scheme for the siting of cell towers. The law was enacted for the purpose of establishing consistent, statewide standards that both preserve local zoning authority but curb practices that have apparently prevented wireless coverage expansion in the State. Codified in the N.C.G.S. Sec-

tions 160A-400.50 to 160A-400.53 (for cities) and N.C. G.S. Sections 153A-349.50 to 153A-349.53 (for counties), the new law makes clear that cities and counties may enact ordinances regulating the siting of cell towers, and while not preempting local control, the new law clearly sets parameters local governments must now follow. Highlights of the new law include: local governments are required to review collocation applications and respond to deficiencies within 45 days of receipt of the application, and to render a final determination on complete applications within 45 days; consultant fees must now be set in advance and incorporated into the permit application fee, and such fees must be reasonable and not exceed what is usual and customary for such services; review of applications may not include an evaluation of the applicant's business decision about its design services, customer demand for its services or quality of its service in a particular area—local governments may only address public safety, land development or zoning issues; a streamlined process for collocations meaning that so long as applications for co-location

are in accordance with site plan and building permit requirements, they are not otherwise subject to zoning or public hearings if they meet five statutory criteria (the collocation does not increase the overall height or width of the tower; the ground space for the fenced compound does not increase; the tower itself is in compliance with the requirements and conditions originally placed on the structure; the antennas comply with all safety requirements; and the collocation does not exceed the structural loading limits of the tower).<sup>44</sup>

### **XI. Workforce Housing**

The subjects of affordable housing and workforce housing, sometimes used interchangeably and sometimes defined differently, continue to challenge communities to enact zoning and land use regulations that encourage a mix of housing stock offering diverse price ranges and rental/ownership interests. More states are beginning to discuss mandating fair share housing plans first set forth by the Supreme Court of New Jersey in the landmark *Mount Laurel*<sup>45</sup> case. While this approach may seem heavy-handed, absent a clear message from state legis-

latures (or state high courts in the case of New Jersey), local governments may be unable to muster the political will to seriously address the affordable housing crisis. New Hampshire took a step in this direction in 2008.

#### A. New Hampshire

Seventeen years ago, the New Hampshire Supreme Court issued a resounding decision in favor of affordable housing,<sup>46</sup> determining that the state's planning and zoning statutes called for every municipality to provide a reasonable and realistic opportunity for the development of housing that is affordable to low and moderate income households, and particularly for the development of multi-family structures. However, as has been common in other states, municipalities did not fully heed the Court's call for action on affordable housing, and the State Legislature stepped in to mandate change. In 2008, the New Hampshire Legislature codified this ruling, enacting a law that requires all municipalities to provide reasonable and realistic opportunities for the development of workforce housing, including rental housing.<sup>47</sup> To determine if such opportunities exist, the collective

impact of all local land use regulations must be considered, and workforce housing of some type must be allowed in a majority of land area where residential uses are permitted (but not necessarily multi-family in a majority of such areas). Recognizing that some municipalities have already done what is necessary under this law, the existing housing stock of a community is to be accounted for to determine if a municipality is providing its "fair share" of current and reasonably foreseeable regional need for workforce housing. Importantly, reasonable restrictions may still be imposed for environmental protection, water supply, sanitary disposal, traffic safety, and fire and life safety protection.

This new law also significantly mitigates the cost of litigation by providing an accelerated appeals mechanism. If a developer proposes to create workforce housing that meets the statute's definitions and requirements and the local board reviewing the proposal either denies the application or imposes conditions on it that would have an unreasonable financial burden, the developer can petition the superior court for review, and the court must

conduct a hearing on the merits within six months. As a means of addressing exclusionary municipal land use regulations, the court will be able to order the “builder’s remedy,” allowing the developer to proceed without further local review in situations that call for such an award.

The law also provides a series of definitions, including ones for “affordability” (30% cost burden), “workforce housing” (affordable for renters at 60% area median income or owners at 100% area median income), multi-family housing (5 or more units per structure), and “reasonable and realistic opportunities” (addressing the economic viability of a proposal).

#### B. New York

In August, Governor David Paterson signed into law The Long Island Workforce Housing Program.<sup>48</sup> Introduced by then-Majority Leader Dean Skelos, the new law which took effect on January 1, 2009, provides that when a developer makes an application to a local government to build five or more residential units in Nassau or Suffolk counties, the local government shall require one of the following, in exchange for a density bonus of

at least ten percent, or other incentives:

- The set aside of at least ten percent of those units for “affordable workforce housing”, defined as housing for individuals or families at or below 130 percent of Long Island’s median income; or
- The construction of the required affordable units on other land within the same municipality; or
- The payment of a fee for each affordable unit that the developer would have been required to construct. The fee shall be equal to two times the median income for a family of four on Long Island. In cases where the fee exceeds the appraised value of the building lot, the fee shall equal the appraised value of the lot.

The fees collected by the local government may be used in one of the following ways:

- The local government may establish a trust fund to be used for the construction of affordable housing, the purchase of land for the purpose of providing affordable housing, or rehabilitating existing structures to provide affordable housing; or
- The local government may turn the funds over to another local government within the same county, subject to an intermunicipal agreement, to be used in the same manner described above; or
- The local government may turn the funds over to the Long Island Housing Partnership. Fifty percent

of this money must be used in the same manner described above; the remaining 50% must be used, through the creation of a revolving loan fund, to provide down payment assistance to qualified homebuyers who are eligible for the partnership's employer-assistance housing benefit program.

Further, the law provides that all units created under this act shall remain affordable for subsequent purchasers.

### C. Rhode Island

Recognizing that "the slowness and uncertainty of securing permits and regulatory approval from state agencies can impair the viability of affordable housing development, make such development more expensive, and can jeopardize federal and other monies," Rhode Island has authorized developers of affordable housing to request that a project be classified as a project of critical housing concern. The request must contain a description of how the project is consistent with applicable provisions of state plans. If the state determines the project is a housing project of critical concern, a certificate is issued. The developer will file the certificate with the various state agencies that have permitting authority over the project. Specific deadlines are included for state action; and the housing resources com-

mission is tasked with rule-making authority to implement this new law.<sup>49</sup>

## XII. Conclusion

State Legislatures were busy in 2008, but the activity was much more focused on the land use connections to major national themes including climate change and affordable housing, and less on modernization of planning and zoning enabling acts to allow for even greater flexibility. In addition, the legislative attention to eminent domain reform that peaked in 2006 and 2007 as a result of the *Kelo*<sup>50</sup> decision seems to have waned in 2008. Trends to watch in 2009 include climate change and sustainability. It is also likely that more states will address the issue of sex offender residency restrictions which attracted significant local attention across the country in 2008. Given the state of the economy and the demographics, workforce housing and affordable housing for seniors are also likely to attract continuing interest in 2009.

<sup>1</sup>Salkin, Reform Proposals by the Thousand, in *Planning Communities for the 21st Century* (American Planning Association 1999).

<sup>2</sup>Planning for Smart Growth: 2002 State of the States, (American Planning Association February 2002).

<sup>3</sup>On March 13, 2008 Governor Jennifer Granholm signed SB 206 authorizing Public Act 33 of 2008, the Michigan Planning Enabling Act (PEA), which unifies Michigan's three planning acts (municipal, township and county) into a single statute. See, [http://www.planningmi.org/downloads/public\\_act\\_33.pdf](http://www.planningmi.org/downloads/public_act_33.pdf). The Act takes effect in September 2008. According to the Michigan Chapter of the American Planning Association, the single act provides a uniform process for preparing comprehensive plans, makes consistent notification requirements, and generally simplifies and improves the organization and content of the planning act. A chart comparing the old provisions and the new provisions can be accessed at: [http://www.planningmi.org/downloads/pea\\_comparison\\_table.pdf](http://www.planningmi.org/downloads/pea_comparison_table.pdf).

<sup>4</sup>America Climate Security Act of 2007, S. 2191, 110th Cong. (2007) available at: <http://thomas.loc.gov/cgi-bin/query/D?c110:1:/temp/~c110tRTU18>; Lieberman-Warner Climate Security Act of 2008, S. 3036, 110th Cong. (2008) available at: [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_cong\\_bills&docid=f:s3036pcs.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:s3036pcs.txt.pdf); Reducing Global Warming Pollution from Vehicles Act of 2008, S. 2555 S. 2555, 110th Cong. (2008) available at: <http://thomas.loc.gov/cgi-bin/query/z?c110:S.2555> (site visited December 2008).

<sup>5</sup>Guidelines and specifications for the Procurement and Use of Environmentally Sensitive Cleaning and Maintenance Products for all Public and Non-Public Elementary and Secondary Schools in New York State, <http://www.ogs.state.ny.us/bldgadmin/environmental/GreenGuidelines.pdf> (site visited December 2008).

<sup>6</sup>Connecticut LEED Standards and State Requirements, [\[ct.gov/rpt/2008-R-0162.html\]\(http://www.cga.ct.gov/rpt/2008-R-0162.html\) \(site visited December 2008\).](http://www.cga.</a></p>
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<sup>7</sup>Summary of Government LEED Incentives—April, 2008. See, <https://www.usgbc.org/ShowFile.aspx?DocumentID=2021> (site visited December 2008).

<sup>8</sup>The Climate Registry program involving 31 states, representing 70% of the country's population, announced a multi-state and tribe collaboration designed to develop and manage a greenhouse gas emissions reporting system. See <http://www.theclimateregistry.org/> for more information.

<sup>9</sup>Overview of RGGI CO<sub>2</sub> Budget Trading Program, [http://www.rggi.org/docs/program\\_summary\\_10\\_07.pdf](http://www.rggi.org/docs/program_summary_10_07.pdf) (site visited December, 2008).

<sup>10</sup>For example, see, The Global Warming Solutions Act of 2006, in which California pledges to reduce their emissions 80% by 2050. The Global Warming Solutions Act, CA HLTH & SD. 25.5 § 38500 (2006). See also: <http://www.arb.ca.gov/cc/docs/ab32text.pdf>, also see <http://dsireusa.org/>.

<sup>11</sup>For a summary of the new law, see the League of California Cities Memorandum at: <http://www.calredevelop.org/AM/Template.cfm?Section=Home&CONTENTID=5004&TEMPLATE=/CM/ContentDisplay.cfm> (site visited January 2009). The bill can be viewed at: [http://www.leginfo.ca.gov/pub/07-08/bill/sen/sb\\_0351-0400/sb\\_375\\_bill\\_20080902\\_enrolled.pdf](http://www.leginfo.ca.gov/pub/07-08/bill/sen/sb_0351-0400/sb_375_bill_20080902_enrolled.pdf) (site visited January 2009).

<sup>12</sup>See Bill Fulton's discussion of the new law at: <http://www.cp-dr.com/node/2140> (site visited December 2008).

<sup>13</sup><http://www.cp-dr.com/node/2140> (site visited December 2008).

<sup>14</sup><http://www.cp-dr.com/node/2140> (site visited December 2008).

<sup>15</sup>Chapter 2008-191 can be accessed at: [http://laws.flrules.org/files/Ch\\_2008-191.pdf](http://laws.flrules.org/files/Ch_2008-191.pdf); For more general information on climate change in Florida, see <http://www.dep.state.fl.us/climatechange>.

<sup>16</sup>See, for example, California Governor's Office of Planning & Research, CEQA Guidelines and Greenhouse Gases, available at: <http://www.opr.ca.gov/index.php?a=ceqa/index.html> (site visited January 2009).

<sup>17</sup>2008 New Laws, S.B. No. 6580.

<sup>18</sup>2008 New Laws, S.B. No. 6580. In addition, the law directed the appointment of an advisory policy committee comprised of representatives from the association of builders, real estate professionals, local government planners, association of agricultural interests, a member experienced in growth management and land use planning issues, a member representing a statewide business association, a member with experience in mobility and transportation issues, a member representing an association of office and industrial properties, an architect, and others.

<sup>19</sup>SB644 SD3 HD3 CD1, (see, [http://capitol.hawaii.gov/session2008/bills/SB644\\_CD1\\_.htm](http://capitol.hawaii.gov/session2008/bills/SB644_CD1_.htm)).

<sup>20</sup>S.2768 To view the Governor's Press Release see: [http://www.mass.gov/?pageID=gov3pressrelease&L=1&L0=Home&sid=Agov3&b=pressrelease&f=080702\\_bill\\_energy\\_clean&csid=Agov3](http://www.mass.gov/?pageID=gov3pressrelease&L=1&L0=Home&sid=Agov3&b=pressrelease&f=080702_bill_energy_clean&csid=Agov3). The 98-page bill (along with a bill summary) can be accessed at: <http://www.mass.gov/legis/bills/senate/185/st02pdf/st02768.pdf>; For another summary see: <http://www.clf.org/uploaded-Files/CLF%20Green%20Communities>.

<sup>21</sup>2008 New Laws, H.B. No. 1443.

<sup>22</sup>New Hampshire Office of Energy and Planning, Zoning Ordinance for Small Wind Turbines, available at: <http://www.nh.gov/oep/resource-library/referencelibrary/w/windturbines/documents/SWESModelOrdinanceFall2008.doc> (site visited January 2009).

<sup>23</sup>Residents Opposed to Kittitas Turbines v. State Energy Facility Site Evaluation Council (EFSEC), 2008 WL 4939317 (Wash. 2008).

<sup>24</sup>See, <http://www.opsb.ohio.gov/OPSB/cases/case.cfm?id=4284> (site visited January 2009).

<sup>25</sup>2008 New Laws, S.B. No. 320.

<sup>26</sup>2008 New Laws, S.B. No. 1399.

<sup>27</sup>Chapter 631 of the New York Laws of 2008 (S. 8134-B).

The new law can be accessed at: <http://assembly.state.ny.us/leg/?bn=S08134&sh=t> (site visited January 2009).

<sup>28</sup>Pub. Act 08-94, HB 5145. The new can be accessed at: <http://www.cga.ct.gov/2008/ACT/PA/2008PA-00094-R00HB-05145-PA.htm> (site visited January 2009).

<sup>29</sup>See, Connecticut Coalition for Environmental Justice, <http://www.environmental-justice.org/EJ%20Bill%20Passed.htm> (site visited January 2009).

<sup>30</sup>See, for example, Patricia E. Salkin, "Crime Doesn't Pay and Neither Do Conflicts of Interest in Land Use Decisionmaking," 40 *The Urb. Lawyer* 561 (Summer 2008). For a general discussion on myriad ethics issues that arise in the land use context, see, Salkin, *American Law of Zoning*, 5th ed., Chapter 38, Ethics in Land Use (2008).

<sup>31</sup>Chap. 532 of the Laws of 2008. The text of the new law can be ac-

cessed at: <http://leg1.state.va.us/cgi-bin/legp504.exe?081+ful+SB532ER>.

<sup>32</sup>See generally, Salkin, *American Law of Zoning*, 5th ed., Chapter 11, Initiative and Referendum (2008), discussing the authority in 24 states for the use of initiative and referendum. In addition, a report identified 114 recent ballot measures dealing with land use. See, <http://lawoftheland.wordpress.com/2008/05/11/new-report-of-initiatives-referenda-identifies-114-recent-ballot-measures-on-eminant-domain-takings-and-big-box-development> (site visited January 2009).

<sup>33</sup>See the article in the March 14th Salt Lake Tribune at: [http://www.sltrib.com/news/ci\\_8569208](http://www.sltrib.com/news/ci_8569208)). The Utah Live blog also offers a discussion of the impact of this new law at: <http://utahlive.net/2008/03/03/right-to-petition-will-be-eliminated-for-the-first-time-under-sb53>. It is suggested that the precise meaning of the new law will likely be litigated in court.

The bill text, status and audio of debate is available at: <http://le.utah.gov/~2008/htmdoc/sbillhtm/SB0053S01.htm> (site visited December 2008).

<sup>34</sup>*Sevier Power Co., LLC v. Board of Sevier County Com'rs*, 2008 UT 72, 196 P.3d 583 (Utah 2008).

<sup>35</sup>*Griswold v. City of Homer*, 186 P.3d 558 (Alaska 2008).

<sup>36</sup>The Act takes effect October 1, 2008 except for the changes affecting the regional performance incentive grants, which took effect July 1, 2008. The Act, PA 08-182, can be accessed at: [http://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Public+Act&bill\\_num=182&which\\_year=2008&](http://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Public+Act&bill_num=182&which_year=2008&)

[SUBMIT1.x=4&SUBMIT1.y=5](http://leg1.state.va.us/cgi-bin/legp504.exe?081+ful+CHAP0377) (site visited January 2009).

<sup>37</sup>See, Dwight H. Merriam and Patricia E. Salkin, "Residency Restrictions for Convicted Sex Offenders: A Popular Approach on Questionable Footing," *New York Zoning Law and Practice Report* (January/February 2009).

<sup>38</sup>*Mann v. Georgia Dept. of Corrections*, 282 Ga. 754, 653 S.E.2d 740 (2007).

<sup>39</sup>*G.H. v. Township of Galloway*, 401 N.J. Super. 392, 951 A.2d 221 (App. Div. 2008).

<sup>40</sup>For example, more than 80 municipalities in New York have adopted local residency restriction laws, despite the fact that more than a dozen bills introduced in the State Legislature in the past year to address the issue statewide have failed to garner support. See, <http://lawoftheland.wordpress.com/2008/12/23/residency-restrictions-for-convicted-sex-offenders-continuing-subject-of-attention-in-new-york> (site visited January 2009).

<sup>41</sup>2008 New Laws, S.B. No. 763.

<sup>42</sup>See generally, Salkin, *American Law of Zoning*, 5th ed., Chapter 32, Vested Rights and Development Agreements (2008).

<sup>43</sup>Chap. 377 of the Laws of 2008 (H.B. No. 1078). See, <http://leg1.state.va.us/cgi-bin/legp504.exe?081+ful+CHAP0377> (site visited January 2009).

<sup>44</sup>The law, along with legislative history is available at: <http://www.ncleg.net/gascripts/BillLookup/Bill-LookUp.pl?Session=2007&BillID=s831> (site visited January 2009).

For an informative article from the North Carolina State Bar Association

describing in more detail the new law, see: <http://zoninglanduse.ncbar.org/Newsletters+/Newsletters> (site visited January 2009).

<sup>45</sup>Southern Burlington County N.A.A.C.P. v. Mount Laurel Tp., 67 N.J. 151, 336 A.2d 713 (1975).

<sup>46</sup>Britton v. Town of Chester, 134 N.H. 434, 595 A.2d 492 (1991).

<sup>47</sup>The law takes effect on July 1, 2009. Chapter 299, Laws of 2008.

The text of the new law is available at: <http://www.gencourt.state.nh.us/legislation/2008/SB0342.html>.

<sup>48</sup>Chapter 444 of the New York Laws of 2008 (S.6823-A).

The bill text can be accessed at: <http://assembly.state.ny.us/leg/?bn=S06823&sh=t> (site visited December 2008).

<sup>49</sup>2008 New Laws, S.B. No. 2109 and H.B. No. 7460.

<sup>50</sup>Kelo v. City of New London, Conn., 545 U.S. 469, 125 S. Ct. 2655, 162 L. Ed. 2d 439, 60 Env't. Rep. Cas. (BNA) 1769, 35 Env't. L. Rep. 20134, 10 A.L.R. Fed. 2d 733 (2005).