

# Sustainable Development Regulations: The Next Not-So-Quiet Revolution in Land Use Controls



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**C L A R I O N**

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## INTRODUCTION

- The “Quiet Revolution” and its companion volume “the Taking Issue” spur a raft of state and local land use legislation in the 1970s/80s
- In time, this movement also spawned a powerful “property rights” backlash
- State property rights “protection” legislation
- Limits on eminent domain
- State growth management laws gutted



Kratovil Conference

Sustainable Development Controls

## INTRODUCTION

- A TIDAL WAVE OF “GREEN” LAND USE LAWS NOW SWEEPING STATE AND LOCAL GOVTS.
- NEW LOCAL LAND USE CONTROLS ADDRESS CLIMATE CHANGE, RENEWABLE ENERGY, RECYCLING, URBAN AG—A NOT-SO-QUIET REVOLUTION
- CASE LAW DEVELOPING AT ALL LEVELS—FEDERAL/STATE/LOCAL
- BACKLASH BEGINNING



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## Sustainable Communities...

...meet the needs of the present while ensuring that future generations have the same or better opportunities. *Brundtland Commission 1987*

**SUSTAINABLE COMMUNITIES ARE ABOUT PRESERVING CHOICES—ENVIRONMENTAL, ECONOMIC, AND SOCIAL**



## AMERICA'S BABY BOOMERS = THE **SKI** GENERATION

**SKI** =  
**S**PENDING the  
**K**ID'S  
**I**NHERITANCE



## A SUSTAINABLE WORLD???

- **Fuel:** Oil production to peak in next 5-10 years...while world oil consumption increases by 50% by 2030.
- **Food:** China will demand more food in 2030 than the entire world produces today.
- **Health:** 34% of U.S. population obese--25% of Hawaiian men. Obesity in children has tripled in last 3 decades. Costs the nation \$147 billion in weight-related hospital bills.
- **Climate:** Last decade--hottest on record; 99% of glaciers in Alaska in retreat; 5-foot sea level rise
- **Biodiversity:** Habitat destruction...ocean acidification = 6<sup>TH</sup> major species extinction event looming??

## FEDERAL DEVELOPMENTS SUPPORTING LOCAL SUSTAINABLE CODE UPDATES

- **Federal Stimulus Legislation Makes Millions In Funding To Local Governments For Sustainable Code Amendments**
  - Many communities utilizing grants to update development codes: St. Louis County, Tulsa, Omaha, Hamilton County, OH, Salt Lake City, Tucson, Miami-Dade County, Hartford region
- **US EPA New Sustainable Communities Office-- Offering sustainable code review technical assistance and funding in partnership with HUD and DOT**
- **U.S. Supreme Court Upholds EPA Regulation Of Greenhouse Gas Emissions**



## STATE LEGISLATIVE & ADMINISTRATIVE DEVELOPMENTS

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

- **32 states** have climate action plans
- **16 states** have established statewide GHG reduction targets (5 mandatory)

CENTER FOR CLIMATE CHANGE STRATEGIES--  
summary of state plans  
[www.climatestrategies.us](http://www.climatestrategies.us)



## STATE LEGISLATIVE & ADMINISTRATIVE DEVELOPMENTS: EXECUTIVE ORDERS

### FLORIDA

- **Executive Orders 07-126 and 127:** Immediate Actions to Reduce GHG Emissions TO 1990 LEVELS BY 2025
- Revisions in Florida Code for Building Construction to increase energy performance by at least 15%
- Rules to increase efficiency of consumer products by 15%
- Rules to require utilities to produce 20% of electricity from renewable sources
- Directed state agencies to reduce GHG emissions by 40% by 2025
- So far, exec. orders not repealed by new Gov. Scott, although Scott has proposed cutting office that administers state solar rebates and abolishing the Florida Energy and Climate Commission



## STATE LEGISLATIVE DEVELOPMENTS: MANDATORY PLAN ELEMENTS

**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.

**OREGON** - Energy conservation is statewide planning goal No. 13. Must manage land use to maximize conservation of all forms of energy.

**FLORIDA** - HB 697 requires local plan elements (land use, transportation, housing, conservation) to address energy and greenhouse gas reduction. New state law authorizes climate adaptation element in local plans.

**CALIFORNIA** – AB 32 requires Air Resources Board to adopt regulations to reduce GHG emissions to 1990 levels by 2020. SB 375 requires regional MPOs to develop Regional Transportation Plans with Sustainable Community Strategies and Alternative Planning Strategies to reduce GHGs from cars and light trucks.



## STATE LEGISLATIVE DEVELOPMENTS: ENVIRONMENTAL QUALITY ACTS

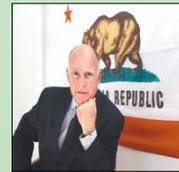
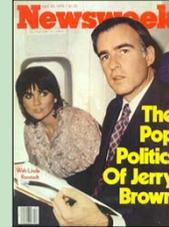
### LITTLE NEPAs

#### 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.

#### CALIFORNIA (CEQA)

- Then Attorney General (now Governor) Jerry Brown 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.



## STATE LEGISLATIVE DEVELOPMENTS: ENERGY FACILITY SITING PREEMPTION

### Some states are preempting or eroding local government authority over energy facilities

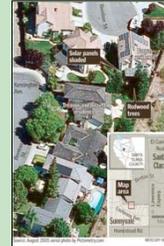
- **NEVADA/NEW JERSEY** - Restrict local govt. power to prohibit or "unreasonably" restrict solar and wind energy facilities.
- **CONNECTICUT/CALIFORNIA** - Partially preempt local authority over energy facilities in historic districts. (Conn. Gen. Stat. Sec. 7-147f(a) 2007)
- **WASHINGTON** - State Energy Facility Site Evaluation Council has authority to certify sites for alternative energy facilities over county objection. (RCW 80.50.060)
- **COLORADO/CALIFORNIA/ARIZONA** - Preempts private covenants that prohibit solar energy systems (CA AB 1982), clothes lines ("right-to-dry"). (CO HB 09-1149)



## STATE LEGISLATION: PROMOTION OF SUSTAINABLE DEVELOPMENTS

Increasing number of state laws promote sustainable development:

- **CALIFORNIA** - Solar shade control act protects solar systems from shading by trees or shrubs (AB 2321)
- **10 NORTHEAST STATES** - **Regional Greenhouse Gas Initiative (RGGI)** - a 10-state regional agreement to reduce GHGs. Nation's first cap and trade law for electric utilities.
- **ARIZONA** - Performance standards to accommodate greywater recycling (Ariz. Admin. Code Sec. R18-9-711 et seq. 2007)
- **MASSACHUSETTS** - State policy to adopt minimum solar power requirements for big box retail buildings



**BUT...**

Some states also erecting roadblocks...often restricting local govts. from adopting green building codes.

## Local Sustainability Programs

Typical Focus:  
Gov't  
Operations

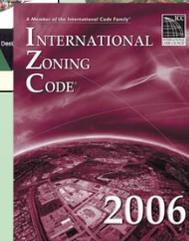
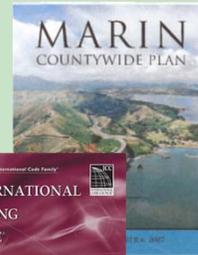
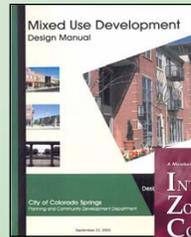
- Hybrid fleets
- Compact fluorescent bulbs
- Mass transit
- Plant street trees
- Green city buildings
- Purchase renewable power
- Recycling programs



## Local Sustainability Programs

### WHAT'S MISSING??

- Little focus on:
  - Development patterns/ private development
  - Development code barriers to “green” projects
  - Code incentives



## WHY DO DEVELOPMENT PATTERNS AND CODES MATTER??

- 100 MILLION MORE OF US BY 2043!!
- 70 MILLION NEW HOUSING UNITS



## How Can a Development Code Support Sustainability?

- Development codes CAN help address critical issues:
  - CLIMATE CHANGE/CARBON EMISSIONS
  - RENEWABLE ENERGY
  - FOOD SUPPLY
  - HEALTH
  - WATER CONSERVATION
  - MOBILITY
  - HOUSING CHOICES
  - AND OTHERS



## THREE PATHS TO SUSTAINABILITY

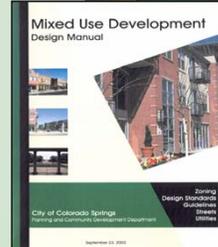
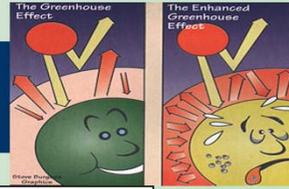
### THINK B-I-G!!

- **BARRIERS**
  - > Allow mixed-use development by right without special hearings or conditions
- **INCENTIVES**
  - > Offer more flexible development standards for infill development.
- **GAPS**
  - > Fill regulatory gaps ~ water-efficient landscaping



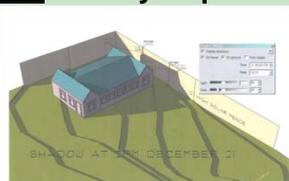
## Sustainable Code: Climate Change

- **Remove Barriers**
  - Create mixed-use zone districts and help reduce reliance on automobile (Colo. Spngs)
  - Allow solar panels by right and .... clothes lines (Salt Lake City)
- **Create Incentives**
  - Green building expedited permitting (Miami-Dade County)
  - Open space credit for green roofs (Miami)



## Sustainable Code: Climate Change

- **Fill Regulatory Gaps:**
  - Require green/cool roofs (Chicago)
  - Adopt tree protection standards (PG County, MD, Thousand Oaks, CA)
  - Enact solar access protection provisions (Boulder, Laramie)
  - Codify minimum density requirements (Ft. Collins)



## Sustainable Code: Other Issues

- Urban agriculture
- Public health
- Climate adaptation
- Recycling



## THE TIME IS RIPE: PEOPLE ARE READY!!!

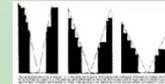
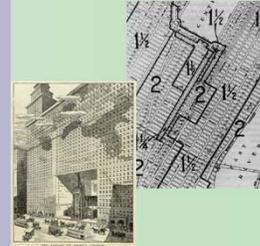


# CAN WE REVOLUTIONIZE ZONING???



## EUCLIDEAN ZONING MILESTONES:

- 1916—New York City adopts city wide zoning scheme. Only 48 cities by 1921
- 1921—Standard State Zoning Enabling Act
- 1926—Upheld by U.S. Supreme Court
- 1926—425 zoned cities=1/2 U.S. population



## WWW.LAW.DU.EDU/RMLUI



### Sustainable Community Development Code

A Code for the 21<sup>st</sup> Century

Beta Version 1.1



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# THE FUTURE???

