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Integrating Land Use and Transportation Policy in California: The Legislature's Response

Dave Jones[*]

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I. THE CHALLENGE

Accelerated climate change is the preeminent environmental and economic issue of our time. Unless we change course now, it will be the preeminent issue for the next generations also. Recognizing the situation, the Legislature passed Assembly Bill 32, California Global Warming Solutions Act of 2006.[1] This law put California at the forefront of taking action to combat global warming by establishing aggressive goals for reduction of greenhouse gas (GHG) emissions. The goal of AB 32 is to reduce our greenhouse gas emissions to 1990 levels by the

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1. Cal. Health & Safety Code §§ 38500–99 (2008).

year 2020. We cannot just slow down the rate at which GHGs are being emitted—we must go further and in effect turn back the clock.

When most people think of global warming, they picture factories and power plants belching pollution. However, a major factor in determining whether we will meet the goal of AB 32 has to do with something totally unrelated to lowering emissions from stationary sources—our driving patterns. Almost 40 percent of GHG emissions in California come from the transportation sector, specifically passenger cars and light trucks.[2] What have become "normal" driving patterns are contributing a substantial amount of the total tons of CO2 emitted from all activities and sources.

Calculating GHG emissions originating from everyday automobile use starts with measuring "vehicle miles traveled," or VMT. VMT have increased rapidly in the last twenty years, thus the contribution of GHGs from cars and light trucks has significantly grown since 1990 while the contribution from other sectors have stayed the same or only risen slightly.[3] Indeed, vehicle GHG emissions are supposed to increase further.[4]

Based on data from the U.S. Department of Energy, Energy Information Administration's *Annual Energy Outlook*, the rate of VMT is expected to outpace the rate of CO2 emissions over the next several decades.[5] For the most part, the reason people are driving more is because of growth patterns. In much of the state, because jobs are not located near housing, a commute to work of 30 or 40 miles is considered typical, and until the price of gas went over $3.00 per gallon, many of those commuters probably did not give much thought to alternatives to driving their car by themselves.

The California Air Resources Board (CARB) has divided up sources of GHG emissions into "sectors" such as agriculture, electricity, forestry, and land use.[6] Each sector will have a list of strategies and eventually regulations that will mandate reductions in GHG emissions as the state strives to meet the AB 32 goals. In the transportation sector, one strategy which is already being implemented is to change to low carbon fuels. Governor Schwarzenegger issued an Executive Order that

2. CALIFORNIA AIR RESOURCES BOARD, DRAFT CALIFORNIA GREENHOUSE GAS INVENTORY, ITEM 1A3 (Nov. 19, 2007), http://www.arb.ca.gov/cc/inventory/data/tables/rpt_Inventory_IPCC_Sum_2007-11-19.pdf.

3. *Id.* Emissions from car and light trucks have grown by over 50 percent, while the next highest sector, Industrial Processes and Products, has grown by less than 25 percent. *Id.*

4. UNION OF CONCERNED SCIENTISTS, BACKGROUNDER – CURRENT AND FUTURE ENERGY TRENDS, (Sept. 2005), http://www.ucsusa.org/clean_energy/renewable_energy_basics/offmen-energy-trends.html.

5. *Id.*

6. *See* CALIFORNIA AIR RESOURCES BOARD, DRAFT SCOPING PLAN (June 2008), http://www.arb.ca.gov/cc/scopingplan/document/draftscopingplan.pdf.

requires by 2020 changes in the formulation of fuels that will reduce the carbon intensity of California's passenger vehicle fuels by at least 10 percent.[7] In addition, if California can prevail in court against the Bush Administration, the state can begin to implement the California Climate Law, Assembly Bill 1493 which mandates reduction of GHGs from the tailpipes of automobiles.[8] But, it is critical to note that, using estimates from the U.S. Department of Energy and CARB, even if Congress were to adopt California's aggressive low-carbon fuel standards and the tailpipe standards of Assemblyman Pavley's AB 1493, the GHG emission from the expected rise in VMT will overwhelm the gains made from such regulatory measures.[9]

The Governor's Climate Action Team initially indicated that the "land use and intelligent transportation systems" sector will need to contribute about 10 percent of the reductions needed to bring GHG emissions down to 1990 levels.[10] The draft Scoping Plan for AB 32 just released by CARB, however, has unfortunately lowered that expectation—they assign only a one percent reduction of the total reductions needed to meet the goal of AB 32 to the land use sector.[11] The emphasis in the Draft Scoping Plan is on technological advances in automobiles, using low-carbon fuels and reduced tailpipe emissions. So, there remains an emphasis on reducing emissions from tailpipes or smokestacks instead of tackling the politically difficult issue of land use. Clearly, if we are to reach the goals of AB 32 and in particular the Governor's goal of 80 percent of 1990 emissions by 2050, CARB should place more emphasis on reducing GHG emissions associated with land use and include measures that address land use patterns and VMT.

The recent adoption of "blueprint plans" by several of the state's councils of governments (COGs) is a positive sign.[12] The major goal of these regional plans is to use less land for the anticipated growth in COG territory. For example, the blueprint plan for the greater Sacramento area would have an urban footprint in the year 2050 that

7. Exec. Order No. S-01-07 (Jan. 18, 2007), http://gov.ca.gov/executive-order/5172/.

8. Cal. Health & Safety Code § 43018.5(a) (2008).

9. Reid Ewing, "Urban Development, Travel, Emission, and Smart Growth Policies" Presentation at Conference of the National Center for Smart Growth, University of Maryland (Mar. 8–9, 2007).

10. CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY CLIMATE ACTION TEAM, CLIMATE ACTION TEAM REPORT TO GOVERNOR SCHWARZENEGGER AND THE LEGISLATURE 57 Table 5-3 (March 2006), http://www.climatechange.ca.gov/climate_action_team/reports/2006report/2006-04-03_FINAL_CAT_REPORT.PDF.

11. CALIFORNIA AIR RESOURCES BOARD, DRAFT SCOPING PLAN 34 (June 2008), http://www.arb.ca.gov/cc/scopingplan/document/draftscopingplan.pdf.

12. *See* Sacramento Council of Governments, Sacramento Region Blueprint Transportation and Land Use Study, www.sacregionblueprint.org (last visited July 22, 2008); *see also* Southern California Council of Governments, Compass Blueprint, www.compassblueprint.org (last visited July 22, 2008).

occupies 350 square miles less land than if the general plans of all the applicable cities were carried out.[13] And, due to less VMTs, there would be a 15 percent reduction in CO2 emissions compared to existing plans. This happens to match up fairly closely to the estimate made by the Governor's Climate Action Team for the reduction needed from the land use sector to meet the goal of AB 32. The weakness in these plans is that they are voluntary, so unless CARB and the state Legislature act, the blueprint plans may not be implemented.

For California to meet this challenge there will have to be cooperation and innovation from the main players who influence policy and law in the land use sector – the building industry, local government, and environmental groups. There has been gridlock on the issue of growth management for several decades, with each interest group able to block significant legislation proposed by the other groups. Consequently, even while study after study points out the economic, social, and environmental costs of sprawl, the Legislature and Governor have been unable to come to agreement. Without major changes in land use and transportation policy, we will not succeed in our effort to reduce GHGs.

II. STATE LEGISLATURE TAKES THE LEAD ON GLOBAL WARMING AND LAND USE

In order to address the impacts of land use and transportation decisions on GHG emissions, a number of bills have been introduced this year and last. Before taking up a discussion of these bills, it is important to review AB 32 and CARB's implementation efforts related thereto.

A. AB 32: The Global Warming Solutions Act of 2006

Assembly Bill 32, co-authored by Assemblymember Fabian Núñez and Fran Pavley, addresses the issue that will eventually trump all others when it comes to land use and transportation planning—climate change.[14] AB 32 put California at the forefront of action to combat global warming by establishing aggressive goals for reducing GHG emissions. This law sets concrete standards, the most important of which says that by 2020 overall emissions of GHGs must be reduced to 1990 levels.[15] The statue allows, but does not mandate, market mechanisms such as the capping and trading of GHG emissions.[16] In

13. More information about the SACOG blueprint is available at The Project, Preferred Scenario Map, Blueprint Transportation/Land Use Study, http://www.sacregionblueprint.org/sacregionblueprint/home.cfm (last visited July 22, 2008).

14. Cal. Health & Safety Code §§ 38500–99 (2008).

15. Cal. Health & Safety Code § 38550 (2008).

16. Cal. Health & Safety Code § 38570(a) (2008).

the course of preparing an implementation plan, consideration must be given to environmental justice concerns.[17] There is a tight implementation schedule—CARB must complete the basic plan of action, known as the Scoping Plan, by January 1, 2009.[18] . The implementation deadlines are as follows:

On or before January 1, 2011, the state board shall adopt greenhouse gas emission limits and emission reduction measures by regulation to achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions in furtherance of achieving the statewide greenhouse gas emissions limit, to become operative beginning on January 1, 2012.[19]

CARB has not historically focused on land use issues, and as such is looking for guidance from other agencies, NGOs, the business community, and the general public on how the land use sector will provide its contribution to GHG reductions. In response, the Climate Action Team formed a subcommittee called the Land Use Subcommittee of the Climate Action Team, or LUSCAT, which just issued a draft report of recommendations to CARB.[20] While the draft recommendations are useful, they do not go far enough to make sure that land use and transportation decisions reduce VMT and CO2 emissions.

It should be noted, however, that the California Transportation Commission (CTC), is attempting to make some progress at enacting implementation guidelines that account for the effects of transportation funding on land use. In their "Addendum to the 2007 Regional Transportation Plan Guidelines—Addressing Climate Change and Greenhouse Gas Emission During the RTP Process" the CTC has added guidance to the process whereby regional transportation plans take into account AB 32 and the goal of reducing VMT.[21] While much of the verbiage is peppered with "encourage" rather than "shall," this document nonetheless represents some modest progress. However, much more effort is going to be required if we expect to be successful in reducing VMT and CO2 emissions in the transport sector.

17. Cal. Health & Safety Code § 38591(a), (b) (2008).

18. Cal. Health & Safety Code § 38561 (a) (2008).

19. Cal. Health & Safety Code § 38562(a) (2008).

20. CALIFORNIA LAND USE SUBCOMMITTEE OF THE CLIMATE ACTION TEAM, DRAFT LUSCAT SUBMISSION TO CARB SCOPING PLAN (May 5, 2008), http://www.climatechange.ca.gov/luscat/documents/2008-05-14_meeting/DRAFT_LUSCAT_Submission_to_CARB.pdf.

21. CALIFORNIA TRANSPORTATION COMMISSION, ADDENDUM TO THE 2007 REGIONAL TRANSPORTATION PLAN GUIDELINES – ADDRESSING CLIMATE CHANGE AND GREENHOUSE GAS EMISSIONS DURING THE RTP PROCESS (May 29, 2008), http://www.dot.ca.gov/hq/tpp/offices/orip/rtp/index_files/Adopted_Addendum_to_the_2007_RTP_Guidelines.pdf.

For this reason, Senator Darrell Steinberg and I have introduced a number of bills to improve land use and transportation decision-making in order to reduce VMT and related CO2 emissions.

B. SB 375 (Steinberg): Regional Planning and Transportation [22]

Senate Bill 375 emphasizes regional plans implemented by the councils of governments (COGs) for the larger metropolitan areas of California to plan reductions in greenhouse gases. The bill does this by requiring larger regional transportation planning agencies to develop more sophisticated transportation planning models, and for those models to be used by the COGs to create "preferred growth scenarios."[23] These scenarios are in essence the same as what are known as Blueprint Plans, which are completed or being done by all of the large COGs in the state. A major purpose of the Blueprint Plans and SB 375 is to have more compact and efficient development, which is intended to reduce vehicle miles traveled. The California Air Resources Board is to set greenhouse gas emissions targets for each region and the preferred growth scenarios are to be designed to meet those targets.[24]

The bill also requires that most transportation projects funded beginning in 2009 be consistent with the regional transportation plans.[25] It provides an incentive to have sustainable communities plan by authorizing certain development projects within an eligible local jurisdiction to be exempted from specified California Environmental Quality Act (CEQA) requirements.[26] In order to receive the exemption, the local jurisdiction must have amended its general plan so that the land use, circulation, housing, and open space elements are consistent with the region's preferred growth scenario.[27]

Status: SB 375 passed the Senate in 2007. The bill is now in the State Assembly. Regrettably, there is still opposition to the bill from local government and real estate industry interests.

22. S.B. 375, 2007–2008 Leg. (Cal. 2008), current version available at http://www.leginfo.ca.gov/pub/07-08/bill/sen/sb_0351-0400/sb_375_bill_20080324_amended_asm_v91.pdf (last visited July 22, 2008).

23. Cal. Gov't Code § 65080(b)(1)(F)(2) (2008).

24. Cal. Gov't Code § 65080(b)(1)(F)(2)(A) (2008).

25. Cal. Gov't Code § 65080(b)(J) (2008).

26. S.B. 375 § 9, 2007–2008 Leg. (Cal. 2008).

27. S.B. 375 § 10, 2007–2008 Leg. (Cal. 2008).

C. AB 842 (Jones): Using State Bond Money to Encourage Less Vehicle Miles Traveled[28]

The 2006 Infrastructure Bond Acts (Propositions 1B, 1C, 1D, 1E and 84) provide $42 billion in infrastructure funding.[29] This funding provides a tremendous opportunity to link state funding with improved local land use and transportation planning and decision-making to reduce VMT and associated CO2 emissions.

Proposition 1C provides funding for infill housing projects and for infrastructure associated with infill and transit oriented development. However, the number of units that these monies will help to fund is a drop in the bucket compared to the number of low density, sprawling housing units that will otherwise be developed, if California continues to follow the development pattern of the last three decades.

The real opportunity provided by the bond funding is to use it to encourage local governments to adopt land use and transportation plans that reduce VMT and associated CO2 emissions.

AB 842 uses Proposition 1C funding as an incentive to encourage local governments to adopt land use and transportation plans that reduce VMT.[30] AB 842 requires the Department of Housing and Community Development to give certain projects priority under Proposition 1C's Urban Infill program and the Transit Oriented Development program. Prioritized projects are located in a city or a county that has a general plan that will reduce VMT by at least 10%; or in a region covered by a council of governments that has a regional transportation plan or regional blueprint plan that will reduce VMT by at least 10%. In addition, AB 842 requires the California Transportation Commission to update its guidelines governing the preparation of regional transportation plans (RTPs). The guidelines would have to include a requirement that each RTP provide for a 10% reduction in the growth increment of vehicle miles traveled.[31]

Status: AB 842 was introduced in 2007, passed the Assembly in January 2008, and passed the Senate Transportation and Housing Committee in June 2008. It awaits action by the fiscal committee. Support has swelled as more groups realize that reducing VMT is critical and that how we plan our land use and transportation systems is key. Supporters range from environmental groups to health groups to large utilities.

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28. A.B. 842, 2007–2008 Leg. (Cal. 2008), current version available at http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_0801-0850/ab_842_bill_20080624_amended_sen_v95.pdf (last visited July 22, 2008).

29. Proposition 1B, 1C, 1D, 1E, 84, 2007–2008 Leg. (Cal. 2008).

30. A.B. 842, 2007–2008 Leg. (Cal. 2008).

31. *Id.*

D. AB 2596 (Jones): Local Greenhouse Gas Inventories[32]

As first introduced, AB 2596 provided that if CARB establishes a cap and trade system for allocating CO2 credits, then local governments that adopted and implemented land use and transportation plans reducing VMT by 25% could trade the associated CO2 reductions into the cap and trade system. The idea was simply to give local governments another incentive to reduce VMT through better land use and transportation plans. The bill as introduced did not mandate cap and trade, but merely provided that if CARB elects to implement a cap and trade system then cities and counties could participate based on reductions in CO2 due to reductions in VMT.

Due to the ongoing and unsettled debate in the Legislature about cap and trade, AB 2596 was amended in the Assembly Natural Resources Committee.[33] Instead of permitting local governments to trade CO2 reductions from reduced VMT, AB 2596 was amended to require CARB to prepare a baseline inventory of CO2 emissions as of 2009 associated with land use and transportation for each city and county with less than populations 50,000 in population. As amended, AB 2596 also directed CARB to prepare a computer model that cities and counties could use to analyze CO2 emissions associated with different land use and transportation decisions, so that cities and counties could track the increases or decreases in CO2 emissions related to their land use and transportation decisions.

As amended, AB 2596 would provide useful information to local decision makers to assist them in deciding how best to reduce CO2 emissions through land use and transportation decisions. A baseline inventory of land use and transportation related CO2 emissions is needed to allow cities and counties to determine what impacts new land use and transportation decisions have on CO2 emissions.

Status: AB 2596 was held in the Assembly Appropriations Committee because it was anticipated it would cost $500,000 to implement. Most bills with budget costs were held in the Assembly Appropriations Committee due to the state's current budget crisis.

CARB released its draft Scoping Plan for AB 32 in late June. Portions of this paper have been amended to reflect the current thinking on how changes in land use planning will contribute towards meeting

32. A.B. 2596, 2007-2008 Leg. (Cal. amended April 22, 2008), current version at http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_2551-2600/ab_2596_bill_20080422_amended_asm_v97.pdf (last visited July 22, 2008).

33. A.B. 2596, 2007–2008 Leg. (Cal. 2008), original version at http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_2551-2600/ab_2596_bill_20080222_introduced.pdf (last visited July 22, 2008).

the goal of reducing GHG emissions to 1990. My disappointment in the approach embodied in the draft plan is mentioned above.

E. AB 2093 (Jones): Climate Change Considerations in the General Plan[34]

Each city and county must have a general plan that guides long range development.[35] The general plan addresses issues concerning industrial development, new road construction, logging, and housing density. Because each of these activities and projects has a "carbon footprint," there is little doubt that CARB will look to general plans as one of the tools for successfully implementing AB 32. In addition, CEQA lawsuits have already been filed against cities and counties for Environmental Impact Reports (EIRs) done for general plans based on a claim that the EIRs failed to adequately address climate change. The most widely known of these cases is that of Attorney General Jerry Brown suing the County of San Bernardino over their newly adopted general plan.[36] It has become clear that a local government opens itself to litigation unless the general plan addresses climate change.

In anticipation of requirements to implement AB 32 and in light of recent litigation, AB 2093 would have local governments incorporate climate change analysis and policies the next time they do a general plan update, or when their next housing element update is due. There is now available a proliferation of information on crafting policies regarding land use and climate change—a quick internet search will reveal a number of model approaches for improved planning policies. And, local governments have already begun to do exactly what AB 2093 would require; a number of recent general plans have been adopted that lay out policies that do exactly what AB 2093 aims for.[37]

Status: AB 2093 passed two policy committees, the Appropriations Committee, and the Assembly Floor. However, it failed passage in the Senate Local Government Committee. See the postscript to this paper for further discussion. The main opposition to this measure has been the League of California Cities. In general, they object to any new

34. A.B. 2093, 2007–2008 Leg. (Cal. 2008), current version available at http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_2051-2100/ab_2093_bill_20060217_introduced.pdf (last visited July 22, 2008).

35. *Id.*

36. For the San Bernardino County settlement agreement with the Attorney General of California, *see* http://ag.ca.gov/cms_pdfs/press/2007-08-21_San_Bernardino_settlement_agreement.pdf (last visited July 22, 2008).

37. For a list of cities and counties addressing climate change, *see* STATE OF CALIFORNIA GOVERNOR'S OFFICE OF PLANNING AND RESEARCH, CITIES AND COUNTIES ADDRESSING CLIMATE CHANGE (10 July 2008), http://opr.ca.gov/ceqa/pdfs/City_and_County_Plans_Addressing_Climate_Change.pdf.

mandate from the State, and they argue that this bill is premature because CARB is still figuring out what obligations, if any, the cities will have under AB 32.[38] My response is that we would waste two or three years if we wait to see what CARB will require the cities to do; general plan analysis of GHG emissions is critical to an overall effort to reduce GHG emissions; and many cities and counties are already beginning to analyze individual projects' impact on GHG emissions. The bill's support includes Green California, a large coalition of environmental groups, and the Health Officers Assoc. of California.

III. POSTSCRIPT

After passing the Assembly, AB 2093 failed in the Senate Local Government Committee on June 25, 2008 on a vote of 2-3. The League of California Cities and the California State Association of Counties were the primary opponents to the bill, as well as the Building Industry Association. Opponents' arguments that the bill was premature fly in the face of the fact that many cities and counties already are accounting for climate change in their general plan policies. The other bills discussed in this paper have yet to be enacted or dismissed.

There continues to be very little political will to reform land use practices by cities and counties. Contrarily, many officials in local governments desire to preserve open spaces and efficiently deliver infrastructure services by concentrating development efforts in urban and existing suburban areas. Nevertheless, California's cities and counties—the League of California Cities and the California State Association of Counties—along with the building industry, so far have been able to exert pressure on decision makers in Sacramento to assure that business as usual will continue.

With climate change being the preeminent issue of our time, water shortages looming, loss of prime soils accelerating, and with increasing encroachment into important habitats, the paradigm of how we grow must be changed. We should not lose the opportunity presented by AB 32 to make needed reform.

38. STAFF OF THE CAL. S. COMM. ON ENV'T QUALITY, 2007-2008 LEG., BILL ANALYSIS FOR A.B. 2093 4 (Comm. Print June 18, 2008), http://info.sen.ca.gov/pub/07-08/bill/asm/ab_2051-2100/ab_2093_cfa_20080613_153521_sen_comm.html.