

2013

## Redevelopment Reimagined: A Proposal to Revive California's Redevelopment Agencies to Attain the Greenhouse Gas Reduction Targets of Senate Bill 375

Kyle D. Mott

Follow this and additional works at: <http://digitalcommons.chapman.edu/chapman-law-review>

---

### Recommended Citation

Kyle D. Mott, *Redevelopment Reimagined: A Proposal to Revive California's Redevelopment Agencies to Attain the Greenhouse Gas Reduction Targets of Senate Bill 375*, 17 CHAP. L. REV. 233 (2013).

Available at: <http://digitalcommons.chapman.edu/chapman-law-review/vol17/iss1/14>

This Article is brought to you for free and open access by the Fowler School of Law at Chapman University Digital Commons. It has been accepted for inclusion in Chapman Law Review by an authorized administrator of Chapman University Digital Commons. For more information, please contact [laughtin@chapman.edu](mailto:laughtin@chapman.edu).

## Redevelopment Reimagined: A Proposal to Revive California's Redevelopment Agencies to Attain the Greenhouse Gas Reduction Targets of Senate Bill 375

Kyle D. Mott\*

### INTRODUCTION

California's sea level rose a dramatic seven inches over the past century, eroding the shorelines and threatening critical infrastructure in the process.<sup>1</sup> California's mountain snowpack—the state's largest natural reservoir—is also decreasing.<sup>2</sup> A reduction in the snowpack translates into a decreased summer water supply, threatening California's agricultural output and overall economy.<sup>3</sup> Further, without a significant reduction in greenhouse gas emissions, it is predicted that over the next one hundred years California will experience a two-foot rise in sea levels, a doubling in the frequency of drought years, a fifty-five percent increase in the number of large forest fires, and an additional seventy-five percent loss in the snowpack.<sup>4</sup>

To curb these disturbing trends, California enacted the California Global Warming Solutions Act of 2006, better known as Assembly Bill 32 (AB 32), on September 27, 2006.<sup>5</sup> The legislation called for the reduction of statewide greenhouse gas

---

\* JD Candidate, Chapman University School of Law, May 2013; BBA, Gonzaga University, May 2008. I would like to thank Professor Larry Rosenthal and the members of the *Chapman Law Review* for their hard work and dedication to the advancement of this journal over the past year.

<sup>1</sup> Mary D. Nichols, *California's Climate Change Program: Lessons for the Nation*, 27 UCLA J. ENVTL. L. & POL'Y 185, 186 (2009) (citing CAL. CLIMATE CHANGE CTR., CAL. ENERGY COMM'N, OUR CHANGING CLIMATE: ASSESSING THE RISKS TO CALIFORNIA 12 (2006), available at <http://www.energy.ca.gov/2006publications/CEC-500-2006-077/CEC-500-2006-077.PDF>).

<sup>2</sup> *Id.* at 187.

<sup>3</sup> *Id.* at 186.

<sup>4</sup> *Id.* at 187. It is also predicted that \$2.5 trillion in real estate assets are at risk in California over the course of this century. CAL. AIR RES. BD., CAL. ENVTL. PROT. AGENCY, FACTS ABOUT CALIFORNIA'S CLIMATE PLAN (Sept. 25, 2010), available at [http://www.arb.ca.gov/cc/cleanenergy/clean\\_fs2.pdf](http://www.arb.ca.gov/cc/cleanenergy/clean_fs2.pdf).

<sup>5</sup> CAL. AIR RES. BD., CAL. ENVTL. PROT. AGENCY, FACTS ABOUT ASSEMBLY BILL 32: GLOBAL WARMING SOLUTIONS ACT (Dec. 7, 2009), available at <http://www.arb.ca.gov/cc/factsheets/ab32factsheet.pdf>.

emissions to 1990 levels by the year 2020.<sup>6</sup> To meet this challenge, the California Air Resources Board (CARB) was appointed to create a sector-by-sector plan that would enable the greenhouse gas emissions targets to be reached.<sup>7</sup>

The California Legislature subsequently passed the Sustainable Communities and Climate Protection Act of 2008,<sup>8</sup> popularly known as Senate Bill 375 (SB 375), to assist the transportation sector with the reduction of its emissions.<sup>9</sup> The legislation is complex, but its concept is simple: close the distance between homes, jobs, services, and transit so that there is less of a need to drive, and, as a result, greenhouse gas emissions are reduced.<sup>10</sup> While ambitious in terms of its vision, SB 375 lacks the funding and institutional leadership necessary for successful implementation. This Note proposes that California's redevelopment agencies (RDAs), which have years of experience

---

<sup>6</sup> Assemb. B. 32, 2005–06 Leg., Reg. Sess. (Cal. 2006), *available at* [http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab\\_0001-0050/ab\\_32\\_bill\\_20060927\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_0001-0050/ab_32_bill_20060927_chaptered.pdf)

<sup>7</sup> See generally CAL. AIR RES. BD., CLIMATE CHANGE SCOPING PLAN (Dec. 2008), *available at* [http://www.arb.ca.gov/cc/scopingplan/document/adopted\\_scoping\\_plan.pdf](http://www.arb.ca.gov/cc/scopingplan/document/adopted_scoping_plan.pdf). The greenhouse gas emissions from the U.S. transportation sector are larger than the overall emissions of any other nation except China and Russia. NEHA BHATT ET AL., SMART GROWTH AM. AND NAT'L RES. DEF. COUNCIL, GETTING BACK ON TRACK: ALIGNING STATE TRANSPORTATION POLICY WITH CLIMATE CHANGE GOALS 5 (2010), *available at* [http://www.nrdc.org/smartgrowth/files/GettingBackonTrack\\_report.pdf](http://www.nrdc.org/smartgrowth/files/GettingBackonTrack_report.pdf). Currently, the emissions from light trucks and cars account for thirty-two percent of the nation's greenhouse gas production. *Id.* at 2. Nearly an exact reflection of the national statistics, California's light cars and trucks account for thirty percent of the state's greenhouse gas emissions. INST. FOR LOCAL GOV., UNDERSTANDING AB 32 AND SB 375: A LEGAL ANALYSIS FOR LOCAL GOVERNMENT OFFICIALS, *available at* [http://www.ca-ilg.org/sites/main/files/file-attachments/resources\\_Sept\\_8\\_AB32-SB375\\_Webinar\\_Slides.pdf](http://www.ca-ilg.org/sites/main/files/file-attachments/resources_Sept_8_AB32-SB375_Webinar_Slides.pdf). The overall transportation sector accounts for nearly half of the energy consumed in California and represents about thirty-six percent of the state's GHG emissions. CAL. ENERGY COMM'N, INTEGRATED ENERGY POLICY REPORT UPDATE 12 (2010), *available at* <http://www.energy.ca.gov/2010publications/CEC-100-2010-001/CEC-100-2010-001-CMF.PDF>.

<sup>8</sup> S.B. 375, 2007–08 Leg., Reg. Sess. (Cal. 2008), *available at* [http://www.leginfo.ca.gov/pub/07-08/bill/sen/sb\\_0351-0400/sb\\_375\\_bill\\_20080930\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/07-08/bill/sen/sb_0351-0400/sb_375_bill_20080930_chaptered.pdf)

<sup>9</sup> Greg Greenway, *Getting the Green Light for Senate Bill 375: Public Engagement for Climate-Friendly Land Use in California*, 10 PEPP. DISP. RESOL. L.J. 433, 435 (2010) ("SB 375 is, in effect, the implementing legislation to achieve the AB 32 GHG [greenhouse gas] reduction targets for the transportation sector, the largest source of global warming pollution in the state."). When signing SB 375, Governor Arnold Schwarzenegger announced that "[w]hen it comes to reducing greenhouse gases, California is first in tackling car emissions, first to tackle low-carbon fuels, and now with this landmark legislation, we are the first in the nation to tackle land-use planning. What this will mean is more environmentally-friendly communities, more sustainable developments, less time people spend in their cars, more alternative transportation options and neighborhoods we can safely and proudly pass on to future generations." Press Release, Office of the Governor, Governor Schwarzenegger Signs Sweeping Legislation to Reduce Greenhouse Gas Emissions Through Land-Use (Sept. 30, 2008), *available at* <http://gov38.ca.gov/index.php?press-release/10697/>.

<sup>10</sup> Greenway, *supra* note 9, at 433.

in project development and financing, should be chosen to fill this critical void in the legislation.

California state law authorizes the creation and operation of redevelopment agencies.<sup>11</sup> Redevelopment is a process that allows city and county governments to “revitalize deteriorated and blighted areas in their jurisdictions.”<sup>12</sup> The process begins with a redevelopment agency developing a revitalization plan and providing the initial funding to begin the project.<sup>13</sup> As the area is rejuvenated through the injection of capital and development, private sector investment is attracted to the area that would not have occurred but for the redevelopment project.<sup>14</sup> The benefits derived from the revitalization include job creation, expanded business opportunities, improved housing and infrastructure, and the cleanup of contaminated areas.<sup>15</sup> While not entirely without controversy,<sup>16</sup> California’s redevelopment agencies possess a sizable portfolio of remarkably successful projects.<sup>17</sup>

Redevelopment agencies are uniquely suited to manage California’s efforts to curb climate change through SB 375.<sup>18</sup> Senate Bill 375’s goal of reducing greenhouse gas emissions through a reduction of vehicle-miles traveled necessarily requires alterations in city planning to create more walkable and public transit-friendly cities.<sup>19</sup> Redevelopment agencies have a wealth of experience in project planning and financing that could be utilized in this area.<sup>20</sup> Furthermore, under California law,

---

<sup>11</sup> CAL. HEALTH & SAFETY CODE §§ 33000–33855 (West 2012) (Community Redevelopment Law). At the time of writing, California has 398 active redevelopment agencies. Tracy Seipel, *California Supreme Court sets date for oral arguments in redevelopment lawsuit*, SAN JOSE MERCURY NEWS (Oct. 20, 2011, 6:18 AM), [http://www.mercurynews.com/bay-area-news/ci\\_19150986](http://www.mercurynews.com/bay-area-news/ci_19150986).

<sup>12</sup> CAL. REDEVELOPMENT ASS’N, FREQUENTLY ASKED QUESTIONS ABOUT REDEVELOPMENT IN CALIFORNIA, available at [http://www.calredevelop.org/tools/what\\_is\\_redevelopment.aspx](http://www.calredevelop.org/tools/what_is_redevelopment.aspx) (follow “FAQ” hyperlink).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> See *infra* Part II.B–C.

<sup>17</sup> See generally Sam Lubell, *Ransoming Redevelopment?*, THE ARCHITECT’S NEWSPAPER (July 11, 2011), (noting the success of the redevelopment of downtown San Diego); Leland T. Saito, *From “Blighted” to “Historic”: Race, Economic Development, and Historic Preservation in San Diego, California*, 45 URBAN AFFAIRS REV. 166 (2009) (detailing the successful use of redevelopment in San Diego); Jay Claiborne, *Rebuilding Downtown San Jose: A Redevelopment Success Story*, 15 PLACES, Winter 2003, at 4 (discussing the effective rebuilding of San Jose, California); Larry Rosen, *Redevelopment Has Track Record of Success in Novato*, NOVATO PATCH (Jan. 17, 2011), <http://novato.patch.com/articles/redevelopment-has-track-record-of-success-in-novato>.

<sup>18</sup> See *infra* Part III.A.

<sup>19</sup> See *infra* Part I.C.

<sup>20</sup> See *infra* Part II.C.

redevelopment agencies are authorized to use tax-increment financing.<sup>21</sup> This is a special type of financing that allows agencies to undertake projects that states or counties may not have the resources to complete on their own.<sup>22</sup> As no organization or entity is currently charged with implementing plans developed under SB 375,<sup>23</sup> redevelopment agencies are the best option to fill this role.

But redevelopment agencies may not get the opportunity to lead SB 375 implementation. Governor Jerry Brown, tasked with fixing California's perennial budget crisis,<sup>24</sup> believes that the elimination of redevelopment programs could be part of the solution.<sup>25</sup> The governor signed Assembly Bill 1X27 (AB 1X27),<sup>26</sup> creating an "Alternative Voluntary Redevelopment Program," in which city and county redevelopment agencies can participate if they pay the legislatively established price.<sup>27</sup> Despite the "voluntary" label attached to the buy-in program, the companion bill, Assembly Bill 1X26 (AB1X 26), requires the dissolution of those redevelopment agencies that choose not to take part in the program created by AB 1X27.<sup>28</sup> The overall plan has little to do with the merits of redevelopment agencies, but instead is focused upon taking their money and repurposing it.<sup>29</sup> In fact, critics of the plan have declared that the money requested by the state is nothing more than ransom payments.<sup>30</sup>

---

<sup>21</sup> CAL. CONST. art. XVI, § 16(b).

<sup>22</sup> See *infra* Part II.C.

<sup>23</sup> See *infra* Part III.

<sup>24</sup> In January of 2011, California had a projected \$25 billion budget deficit. LEGIS. ANALYST'S OFFICE, THE 2011–12 BUDGET: OVERVIEW OF THE MAY REVISION 3 (May 19, 2011), available at [http://www.lao.ca.gov/reports/2011/bud/may\\_revise/may\\_revise\\_051911.pdf](http://www.lao.ca.gov/reports/2011/bud/may_revise/may_revise_051911.pdf). In May of 2011, the state revised this deficit estimate to \$9.6 billion mainly as a result of expenditure reductions, fund shifting, and higher than expected state tax collections. *Id.*

<sup>25</sup> Lubell, *supra* note 17. Governor Brown's spokesman said that "[g]iven our challenging economic circumstances and our massive deficit the governor believes now is not the time to be subsidizing private developers while our public services are being bulldozed." *Id.*

<sup>26</sup> Assemb. B. 27, 2011–12 Legis., 1st Ex. Sess. (Cal. 2011) (enacted).

<sup>27</sup> *Id.* Each RDA's required payment is based on the average of two ratios: that RDA's share of statewide net tax increment (with deductions for payments to certain taxing agencies) during the 2008/2009 fiscal year and its share of the statewide gross tax increment (without the deductions). The resulting ratio is then applied to \$1.7 billion to determine each RDA's share of the total payment to be made during the 2011/2012 fiscal year. *Id.*

<sup>28</sup> Assemb. B. 26, 2011–12 Legis., 1st Ex. Sess. (Cal. 2011) (enacted).

<sup>29</sup> Michael J. Mishak, *California Gov. Jerry Brown defends cutting redevelopment agencies*, L.A. TIMES (Jan. 27, 2011), <http://articles.latimes.com/2011/jan/27/local/la-me-jerry-brown-20110127>.

<sup>30</sup> See, e.g., Stacie Chan, *Council Would Pay \$5 Million 'Ransom' to Keep Redevelopment Funds*, REDWOOD CITY PATCH (Aug. 24, 2001), <http://redwoodcity.patch.com/articles/council-would-pay-5-million-ransom-to-keep-redevelopment->

The California Redevelopment Association, the League of California Cities, and the cities of San Jose and Union City have joined together to challenge the constitutionality of the two bills.<sup>31</sup> The case, *California Redevelopment Association. v. Matosantos*, S194861, (Cal. 2011), is now pending before the California Supreme Court and may very well decide the fate of many Californian redevelopment agencies. The California Supreme Court agreed to hear the case on an expedited basis and issued a stay on the AB 1X27 payments until making its decision.<sup>32</sup> Without speculating on how the court will rule on the constitutionality of AB 1X26 and AB 1X27, the case is bringing California's redevelopment agencies and the powers they wield to the forefront of public thinking yet again.

This Note discusses California's efforts to reduce greenhouse gases through SB 375 and how redevelopment agencies could play an effective role in the implementation of the legislation. Part I discusses the greenhouse gas reduction goals established by AB 32, its relationship to SB 375, and the current progress being made to reach those goals. Part II of this Note addresses the use of eminent domain, the history of California's redevelopment agencies, and their current strengths and weaknesses. Part III concludes with a proposal to give redevelopment agencies the lead role in SB 375 implementation.

---

funds#; James Brasuell, *LA Votes to Pay \$97 Million, Keep Its Redevelopment Agency Alive*, CURBED L.A. (Aug. 10, 2011), [http://la.curbed.com/archives/2011/08/la\\_votes\\_to\\_pay\\_97\\_million\\_keep\\_its\\_redevelopment\\_agency\\_alive.php](http://la.curbed.com/archives/2011/08/la_votes_to_pay_97_million_keep_its_redevelopment_agency_alive.php); Alexis Fitts, *City, State Dispute \$1.7 Million "Ransom" Payment*, SONOMA VALLEY PATCH (Aug. 17, 2011), <http://sonomavalley.patch.com/articles/city-postpones-redevelopment-decision-disputes-17-million-ransom-payment>; Emil Marzullo, *Opinion: In redevelopment, negotiate a deal both sides can live with*, CAPITOL WEEKLY (Sept. 29, 2011, 12:00 AM), <http://capitolweekly.net/article.php?xid=1012w6yfwxtltf6>.

<sup>31</sup> See generally *Pet. for Writ of Mandate, Cal. Redevelopment Ass'n. v. Matosantos*, S194861, (Cal. 2011), available at <http://www.courts.ca.gov/documents/1-s194861-pets-pfwom-07-18-11.pdf>. They allege that the volunteer payments for the AB 1X27 program are required by AB 1X26, contradicting the will of the voters by way of Proposition 22 (codified at Article XIII, Section 25.5(a)(7)(A) of the California State Constitution) which prevents the legislature from requiring "a community redevelopment agency (A) to pay, remit, loan, or otherwise transfer, directly or indirectly, taxes on ad valorem real property and tangible personal property allocated to the agency pursuant to Section 16 of Article XVI to or for the benefit of the State, any agency of the State, or any jurisdiction . . ." *Id.* at 14, 21. "Jurisdiction" was defined as "a local agency, school district, community college district, or county superintendent of schools," and Section 95(a) in turn defined "local agency" as "a city, county, and special district." *Id.* at 21. Thus, the cities and redevelopment agencies contend the payment, whose express purpose is to support public services and agencies, is unconstitutional. See *id.* at 5–6, 10–24.

<sup>32</sup> News Release, Judicial Council of Cal., California Supreme Court to Decide Redevelopment Case (Aug. 11, 2011), available at <http://www.courts.ca.gov/documents/nr39-11.pdf>.

## I. GLOBAL WARMING, GREENHOUSE GASES, AND CALIFORNIA'S HISTORIC FIGHT AGAINST AIR POLLUTION

### A. Sources of Greenhouse Gas Emissions

Over the last two decades, national greenhouse gas emission rates rose twenty-seven percent.<sup>33</sup> The “multiplicative combination” of vehicle emissions per mile and vehicle-miles traveled<sup>34</sup> result in the transportation sector’s especially large quantity of greenhouse gas emissions.<sup>35</sup> Despite the reduction in greenhouse gas emissions from advancements in technology that have led to vehicles with increased fuel efficiency and the development of lower-emission fuels, the projected fifty percent increase in vehicle-miles traveled will erase any of the savings from those advancements.<sup>36</sup> Also, and not at all surprising, urban sprawl is a major contributing factor to the production of greenhouse gases as it necessitates vehicle travel.<sup>37</sup>

Currently, vehicle-miles traveled are increasing three percent each year in California, handily outpacing the population growth rate of the state by almost fifty percent.<sup>38</sup> The number of vehicle-miles traveled annually results substantially from land use practices.<sup>39</sup> Accordingly, better land use projects at the local and regional level could provide significant reductions in

---

<sup>33</sup> BHATT ET AL., *supra* note 7, at 2.

<sup>34</sup> RESEARCH AND INNOVATIVE TECH. ADMIN. BUREAU OF TRANSP. STATISTICS, U.S. HIGHWAY VEHICLE-MILES TRAVELED, *available at* [http://www.rita.dot.gov/bts/publications/multimodal\\_transportation\\_indicators/2013\\_02/system\\_performance/us\\_highway\\_vehicle\\_miles](http://www.rita.dot.gov/bts/publications/multimodal_transportation_indicators/2013_02/system_performance/us_highway_vehicle_miles). Vehicle-miles traveled (VMT) is a form of data that is a commonly used measurement of roadway use. *Id.* “VMT are often used in estimating congestion, air quality, and potential gas-tax revenues, and can provide a general measure of the level of the nation’s economic activity.” *Id.*

<sup>35</sup> Joanna D. Malaczynski & Timothy P. Duane, *Reducing Greenhouse Gas Emissions from Vehicle Miles Traveled: Integrating the California Environmental Quality Act with the California Global Warming Solutions Act*, 36 *ECOLOGY L.Q.* 71, 78 (2009). Vehicle emissions per mile are calculated using data of both combustion efficiency of the vehicle, and the greenhouse gas intensity of its fuel source. *Id.* In 2002, AB 1493, the Pavley Bill, was passed into law and regulates the greenhouse gas emissions rates of vehicles sold in California and provides an indirect regulation of fuel efficiency. *Id.* at 78–79 (citing CAL. HEALTH & SAFETY CODE § 43018.5 (West 2008)).

<sup>36</sup> BHATT ET AL., *supra* note 7, at 2.

<sup>37</sup> Margot Roosevelt, *Legislature takes aim at urban sprawl*, L.A. TIMES (Aug. 21, 2008), <http://articles.latimes.com/2008/aug/21/local/me-sprawl21>. Sprawl also helps to explain the reported increases in average trip length, trips per capita, and the proportion of drivers traveling alone. BHATT ET AL., *supra* note 7, at 2. Vehicle-miles traveled are not directly subject to regulation by either California or the federal government. Malaczynski & Duane, *supra* note 35, at 79.

<sup>38</sup> Malaczynski & Duane, *supra* note 35, at 80 (citing CAL. ENERGY COMM’N, THE ROLE OF LAND USE IN MEETING CALIFORNIA’S ENERGY AND CLIMATE CHANGE GOALS: FINAL STAFF REPORT 9 (2007)).

<sup>39</sup> *See generally id.*

emissions from the transportation sector.<sup>40</sup> Researchers have determined that mixed-use development projects, the availability of alternative transit, and even landscape and building design can influence driving behavior.<sup>41</sup> In addition, lower-density and single-use areas encourage longer and more frequent car trips<sup>42</sup> as many necessities are out of reach for the average pedestrian.<sup>43</sup> Mixed-use communities with higher population densities, on the other hand, allow pedestrians to reach a wider number of places without resorting to vehicular travel.<sup>44</sup> In addition to allowing for walking and biking, these types of communities generally provide for efficient public transportation as well.<sup>45</sup>

#### B. Curbing Greenhouse Gas Emissions Through Assembly Bill 32

California has a long and proud history of leading the nation when it comes to efforts taken to reduce harmful gas emissions. California was the first state to establish automobile emissions restrictions in 1961, and, in 1975, became the first state to use catalytic converters and limit the lead in gasoline.<sup>46</sup> Former Governor Arnold Schwarzenegger sought to continue California's leadership in the area of emissions reduction, and take a strong stand in the fight against global warming, through his issuance of Executive Order S-3-05 in June 2005.<sup>47</sup> The order called for a

<sup>40</sup> REID EWING ET AL., URBAN LAND INSTITUTE, GROWING COOLER: THE EVIDENCE ON URBAN DEVELOPMENT AND CLIMATE CHANGE 13 (2007), *available at* <http://www.smartgrowthamerica.org/documents/growingcoolerCH1.pdf>. A national report states that even modest changes to land use (such as increasing dwelling unit density per acre) could reduce vehicle-miles traveled by thirty percent nationwide. *Id.* at 9.

<sup>41</sup> Malaczynski & Duane, *supra* note 35, at 80–81 (citing Interview with Elizabeth Deakin, Professor of City and Regional Planning, U.C. Berkeley, in Berkeley, Cal. (Feb. 8, 2008)).

<sup>42</sup> TODD LITMAN, VICTORIA TRANSPORT POLICY INSTITUTE, LAND USE IMPACTS ON TRANSPORT 13 (July 26, 2012), *available at* <http://www.vtpi.org/landtravel.pdf>.

<sup>43</sup> A pedestrian's reach is considered to be a destination found within a quarter-mile radius. REID EWING, SMART GROWTH NETWORK, PEDESTRIAN- AND TRANSIT-FRIENDLY DESIGN: A PRIMER FOR SMART GROWTH 5 (1999), *available at* [http://www.epa.gov/dced/pdf/ptfd\\_primer.pdf](http://www.epa.gov/dced/pdf/ptfd_primer.pdf).

<sup>44</sup> Malaczynski & Duane, *supra* note 35, at 81.

<sup>45</sup> LITMAN, *supra* note 42, at 13.

<sup>46</sup> Mary Ellen Hogan, *California Climate Change Initiatives Leading the West and the Nation*, 22 NAT. RESOURCES & ENV'T 14, 15 (2008). Congress first recognized CARB's efforts in 1967 when it waived federal preemption of California's stricter motor vehicle standards. Nichols, *supra* note 1, at 191.

<sup>47</sup> Gov. Arnold Schwarzenegger, Exec. Order S-3-05, Office of the Governor (June 1, 2005), *available at* <http://www.dot.ca.gov/hq/energy/ExecOrderS-3-05.htm>. Governor Schwarzenegger cited the negative impacts of increasing temperatures on air quality and personal health, and the threat of rising sea levels to California's valuable coastline as reasons for issuing the order. Hogan, *supra* note 46, at 16. Governor Schwarzenegger gave a speech regarding his Executive Order at the United Nations World Environment Day Conference, stating that "[t]oday, California will be a leader in the fight against global



reduction of greenhouse gas emissions to year 2000 levels by 2010, 1990 levels by 2020, and then to eighty percent below 1990 levels by 2050.<sup>48</sup> But after the first progress report was issued, it became clear that the targets would not be reached as they lacked the enforceability of statute.<sup>49</sup> Accordingly, the California Legislature, led by Assembly Speaker Fabian Nuñez (D-Los Angeles), passed Assembly Bill 32 (AB 32), the California Global Warming Solutions Act of 2006.<sup>50</sup>

Through AB 32, the legislature sought to continue California's "tradition of environmental leadership by placing California at the forefront of national and international efforts to reduce emissions of greenhouse gases."<sup>51</sup> The legislature's findings conclude that global warming poses a serious threat "to the economic well-being, public health, natural resources, and the environment of California."<sup>52</sup> Similar to Executive Order S-3-05 issued by Governor Schwarzenegger, the overall goal of AB 32 is to reduce California's greenhouse gas emissions to 1990 levels by the year 2020.<sup>53</sup> The bill requires the California Environmental

---

warming . . . I say the debate is over. We know the science, we see the threat and we know the time for action is now." Darren A. Prum & Sarah L. Catz, *Greenhouse Gas Emission Targets and Mass Transit: Can the Government Successfully Accomplish Both Without a Conflict?*, 51 SANTA CLARA L. REV. 935, 947-48 (2011) (citing Kevin Heckkopf, *Arnold Targets Global Warming*, CBS NEWS (June 2, 2005), <http://www.cbsnews.com/stories/2005/06/02/tech/main699281.shtml>).

<sup>48</sup> Exec. Order S-3-05, *supra* note 47. The order required the Secretary of the California Environmental Protection Agency to issue a biennial report to the state legislature discussing the impacts of global warming according to known science, although this responsibility was later delegated to the California Energy Commission's Climate Action Change Center. Hogan, *supra* note 46, at 16. A Climate Action Team was formed to formulate the ways and means of reaching the emissions reduction targets. *Id.* The Climate Action Teams consists of a variety of agencies, boards, departments, and commissions, each having specific responsibilities in the development and implementation of plans to meet the emissions targets. Nichols, *supra* note 1, at 195 (citing CAL. ENVTL. PROT. AGENCY, CLIMATE ACTION TEAM REPORT TO GOVERNOR SCHWARZENEGGER AND THE LEGISLATURE (Mar. 2006), *available at* [http://www.climatechange.ca.gov/climate\\_action\\_team/reports/2006report/2006-04-03\\_FINAL\\_CAT\\_REPORT.PDF](http://www.climatechange.ca.gov/climate_action_team/reports/2006report/2006-04-03_FINAL_CAT_REPORT.PDF)).

<sup>49</sup> Hogan, *supra* note 46, at 16.

<sup>50</sup> *Id.*

<sup>51</sup> CAL. HEALTH & SAFETY CODE § 38501(c) (West 2012); *see also* NAT'L RESEARCH COUNCIL OF THE NAT'L ACADS., STATE AND FEDERAL STANDARDS FOR MOBILE-SOURCE EMISSIONS 264-65 (2006), *available at* <http://books.nap.edu/openbook.php?isbn=0309101514> (explaining why "California should continue its pioneering role in setting mobile-source emissions standards. The role will aid the state's efforts to achieve air quality goals and will allow it to continue to be a proving ground for new emissions-control technologies that benefit California and the rest of the nation.").

<sup>52</sup> CAL. HEALTH & SAFETY § 38501(a).

<sup>53</sup> INST. FOR LOCAL GOV., *supra* note 7. In order to meet the 2020 emissions targets, California must reduce its yearly greenhouse gas emissions from "business as usual" by 169 million metric tons of carbon dioxide. Malaczynski & Duane, *supra* note 35, at 80. To reach the emissions targets, the equivalent of 33.8 million cars must be removed from the road. *Id.*

Protection Agency's Air Resources Board (CARB) to be responsible for monitoring and reducing statewide greenhouse gas emissions while requiring the preexisting Climate Action Team to coordinate efforts around the state.<sup>54</sup> While AB 32 has many different facets,<sup>55</sup> its foundation is the requirement of a "scoping plan."<sup>56</sup> The scoping plan creates the "framework of measures, policies and approaches for every sector of the economy to achieve the emission reductions sufficient to meet the 2020 target and to set California on course for much deeper, sustained reductions well into the future."<sup>57</sup> CARB issued the Climate Change Scoping Plan in October 2008 that detailed its intended execution of AB 32,<sup>58</sup> and then formally approved the plan two months later.<sup>59</sup>

### C. Senate Bill 375 and the Reduction of Emissions in the Transportation Sector

Unfortunately, California was not going to be able to attain the ambitious goals of AB 32 without improved land use and transportation policies.<sup>60</sup> Thus, Senate Bill 375 (SB 375), passed

<sup>54</sup> CAL. AIR RES. BD., CAL. ENVTL. PROT. AGENCY, FACTS ABOUT ASSEMBLY BILL 32 (Dec. 7, 2009), available at <http://www.arb.ca.gov/cc/factsheets/ab32factsheet.pdf>. Even though CARB is the lead agency overseeing the implementation of AB 32, the enormity of the effort requires resources across state government to come together. Nichols, *supra* note 1, at 195.

<sup>55</sup> The first step required by AB 32 was to develop an inventory of all greenhouse gas emissions, and establish an emissions baseline based on 1990 levels from which reduction plans could be developed and measured. *Id.* at 199 (citing California Global Warming Solutions Act of 2006, CAL. HEALTH & SAFETY CODE § 38550 (West 2006)). An inventory of emissions sources was developed and included nearly 1,000 separate emitters of greenhouse gases. See *California Greenhouse Gas Emissions Inventory*, CAL. AIR RES. BD., CAL. ENVTL. PROT. AGENCY, <http://www.arb.ca.gov/cc/inventory/inventory.htm> (last visited Mar. 21, 2013) (displaying the emissions inventory). In addition to other mandates, AB 32 requires CARB to adopt an emissions cap for 2020, adopt mandatory reporting rules, adopt a plan to reach the established goals, and conduct impact studies prior to implementing any mandates or measures. FACTS ABOUT ASSEMBLY BILL 32, *supra* note 54.

<sup>56</sup> Nichols, *supra* note 1, at 200 (citing California Global Warming Solutions Act of 2006, CAL. HEALTH & SAFETY CODE § 38561(a) (West 2006)). The 122-page scoping plan details recommended actions and timelines for achievement. See CAL. AIR RES. BD., CAL. ENVTL. PROT. AGENCY, CLIMATE CHANGE SCOPING PLAN (Dec. 2008), available at [http://www.arb.ca.gov/cc/scopingplan/document/adopted\\_scoping\\_plan.pdf](http://www.arb.ca.gov/cc/scopingplan/document/adopted_scoping_plan.pdf).

<sup>57</sup> Nichols, *supra* note 1, at 200 (citing California Global Warming Solutions Act of 2006, CAL. HEALTH & SAFETY CODE § 38561 (West 2006)).

<sup>58</sup> Malaczynski & Duane, *supra* note 35, at 86.

<sup>59</sup> CAL. AIR RES. BD., CLIMATE CHANGE SCOPING PLAN, RESOLUTION 08-47 (2008), available at [http://www.arb.ca.gov/cc/scopingplan/document/final\\_sp\\_resolution.pdf](http://www.arb.ca.gov/cc/scopingplan/document/final_sp_resolution.pdf).

<sup>60</sup> S.B. 375, 2007–08 Legis., Reg. Sess. (Cal. 2008). By 2025, the United States population is expected to reach 350 million, an increase of 67 million people over the year 2000. Robert H. Freilich & Neil M. Popowitz, *The Umbrella of Sustainability: Smart Growth, New Urbanism, Renewable Energy and Green Development in the 21<sup>st</sup> Century*, 42 URB. LAW 1, 2–3 (2010) (citing Arthur C. Nelson, *Leadership in a New Era: Comment on 'Planning Leadership in a New Era,'* 72 J. AM. PLAN. ASS'N 393, 394 (2006)). This increase

in 2008,<sup>61</sup> essentially became the implementing legislation to achieve the greenhouse gas reduction targets established by AB 32 for the transportation sector.<sup>62</sup> Traditionally, communities have planned their land uses—whether they be residential, industrial, business-oriented, or open space—and then looked to transportation plans that would serve the uses most effectively.<sup>63</sup> But SB 375 works to integrate these “disjointed planning activities and provid[e] incentives for local governments and developers to follow new conscientiously-planned growth patterns.”<sup>64</sup> The legislation also requires regional agencies to find a balance “between a ‘top down’ and ‘bottom up’ approach toward implementation, one that effectively involves local decision makers without undermining regional imperatives.”<sup>65</sup>

Under SB 375, CARB is required to set regional greenhouse gas emissions targets for each of the state’s eighteen Metropolitan Planning Organizations (MPOs).<sup>66</sup> MPOs are federally mandated transportation policy-making organizations comprised of members from local governments, state agencies, and transportation authorities.<sup>67</sup> Prior to the passage of SB 375, MPOs were charged with developing long-term regional transportation investment plans; however, after the passage of SB 375, the MPOs must each create Sustainable Communities Strategies that aim to achieve the emissions reduction targets that have been established by CARB’s goal-setting sub-committees.<sup>68</sup> If the Sustainable Communities Strategies

---

in population will require 35 million new housing units, and another 17 million must be rebuilt, replaced or substantially renovated. *Freilich & Popowitz*, 42 URB. LAW 1, 3 (2010) (citing Nelson, 72 J. AM. PLAN. ASS’N at 398–99 (Tables 5 & 6)). Furthermore, the increase in population will require the United States to add about 26 million jobs, which will require an additional 15 billion square feet of nonresidential space and another 63 million square feet of nonresidential space must be replaced, rebuilt, or substantially renovated. *Id.* If this expansion of residential and nonresidential space is built under sprawl development patterns, “exponential and unsustainable burdens on the environment and public infrastructure services, the loss of environmentally sensitive, open space, and agricultural lands will become intolerable.” *Id.*

<sup>61</sup> S.B. 375, 2007–08 Legis., Reg. Sess. (Cal. 2008).

<sup>62</sup> Greenway, *supra* note 9, at 435.

<sup>63</sup> Nichols, *supra* note 1, at 207.

<sup>64</sup> Freilich & Popowitz, *supra* note 60, at 20 (citing Press Release, California Office of the Governor, Governor Signs Sweeping Legislation to Reduce Greenhouse Gas Emissions through Land Use (Sept. 30, 2008)).

<sup>65</sup> Greenway, *supra* note 9, at 435; see also Malaczynski & Duane, *supra* note 35, at 75 (noting that Governor Schwarzenegger declared in his signing statement that SB 375 “approaches the task with incentives rather than top-down regulatory mandates”).

<sup>66</sup> See CAL. GOV’T CODE § 65080(b)(2)(a)(i) (West 2012); see also *The Basics of SB 375*, INST. FOR LOCAL GOV’T, <http://www.ca-ilg.org/post/basics-sb-375> (last visited Mar. 23, 2013) (discussing the development of MPO targets).

<sup>67</sup> Freilich & Popowitz, *supra* note 60, at 21.

<sup>68</sup> CAL. GOV’T CODE § 65080(b)(2)(I) (West 2012); James Temple, *New Land Use*

plan cannot reasonably meet the reduction targets, an alternative planning strategy must be developed showing how the targets will be met through alternative development patterns, infrastructure, or other transportation measures.<sup>69</sup>

Senate Bill 375 did not give CARB or the MPOs authority to require any specific land use or development plans to achieve reduction targets.<sup>70</sup> The law instead relies on its provision of incentives for projects built near transit stations by easing the environmental review standards established by the California Environmental Quality Act (CEQA).<sup>71</sup> There are two types of projects that qualify under the CEQA incentive.<sup>72</sup> The first kind includes residential projects that, if implemented, CARB agrees will help in the attainment of the emissions targets for the region.<sup>73</sup> The other type of qualifying projects are called Transit Priority Projects (TPPs), which receive full or partial exemption depending upon the ratio of residential and commercial usages and the distance from major transit.<sup>74</sup> Among other provisions, every eight years local governments are required to submit plans that identify areas that can accommodate predicted growth in the

---

*Law's Message: Build Near Transit*, S.F. CHRON. (Nov. 28, 2008, 4:00 AM), <http://www.sfgate.com/green/article/New-land-use-law-s-message-build-near-transit-3259950.php>.

<sup>69</sup> CAL. GOV'T CODE § 65080(b)(2)(I); Nichols, *supra* note 1, at 207.

<sup>70</sup> Malaczynski & Duane, *supra* note 35, at 84.

<sup>71</sup> CENTER FOR A SUSTAINABLE CALIFORNIA, UNIV. OF CAL., BERKELEY, MAKE IT WORK: IMPLEMENTING SENATE BILL 375 18–19 (Oct. 2009) [hereinafter MAKE IT WORK], available at <http://sustainablecalifornia.berkeley.edu/pubs/SB375-POLICYBRIEF.pdf>. Decisions of California state and local government officials regarding land use decisions are subject to review under the California Environmental Quality Act. CAL. PUB. RES. CODE §§ 21000–21177 (West 2012). CEQA affects both public agencies and private developers whose plans call for a significant change to be made upon the existing landscape, and although it directly regulates only the actions of public agencies, the reach of CEQA extends to the projects of private parties inasmuch as they seek public approval or funding, or require any kind of public agency participation in the project. Malaczynski & Duane, *supra* note 35, at 82 (citing Guidelines for Implementation of the California Environmental Quality Act, CAL. CODE REGS. tit. 14, § 15002(c) (2008)). Interestingly, CEQA's definition of environmental impact requiring review was given a broad interpretation by the courts to include state and regional considerations, leading to inactivity on the part of the state government to adopt substantive state or regional planning measures. Freilich & Popowitz, *supra* note 60, at 15 (citing CORTESE-KNOX-HERTZBERG LOCAL GOVERNMENT REORGANIZATION ACT, CAL. GOV'T CODE § 56000 et. seq. (2009)).

<sup>72</sup> Prum & Catz, *supra* note 47, at 954.

<sup>73</sup> *Id.*

<sup>74</sup> CAL. PUB. RES. CODE §§ 21155, 21159.28. Under the TPP classification, a project may qualify for either full or partial exemption. See PUB. RES. § 21155(a). To qualify for full exemption, the project must contain at least fifty percent residential use, have a minimum floor area ratio of 0.75 for commercial uses, a minimum net density of twenty units per acre, and a location within one-half mile of a "major transit stop" or "high quality transit corridor" recognized by a Regional Transportation Plan (RTP). Prum & Catz, *supra* note 47, at 954.

region, while still maintaining consistency with the Sustainable Community Strategies.<sup>75</sup> The local governments then have three years to rezone the land to reflect these plans, providing a strong incentive to build dense, transit-oriented developments.<sup>76</sup>

Notwithstanding the incentives offered under SB 375, the bill itself does not generate any new funding.<sup>77</sup> As a result, public agencies will continue to finance their own transportation-related land use projects.<sup>78</sup> To successfully implement SB 375, more state money needs to reach transit-related land use projects,<sup>79</sup> as the incentives under SB 375 alone may be too weak to entice the scale of smart development needed.<sup>80</sup> This is where redevelopment agencies, with their land use experience and tax increment financing abilities, should be called upon to lead SB 375 implementation efforts.

## II. REDEVELOPMENT AGENCIES AND THE POWERS THEY WIELD

### A. California's Redevelopment Agencies and the Blight Requirement

The California Redevelopment Act was enacted in 1945 to address the rising problem of urban blight.<sup>81</sup> The legislation authorized any city or county to create a redevelopment agency to combat blight.<sup>82</sup> “[A]n area is blighted, and hence eligible for redevelopment, if it is predominantly urban and if it is adversely affected by economic and physical conditions too serious to be cured by private or governmental enterprise, thus necessitating redevelopment.”<sup>83</sup> Today, redevelopment agencies must make a

---

<sup>75</sup> Temple, *supra* note 68.

<sup>76</sup> *Id.* Once the new zoning is in place, it becomes difficult for government or residents to block builders from pursuing whatever projects are allowed in that particular zone. *Id.*

<sup>77</sup> Malaczynski & Duane, *supra* note 35, at 75–76.

<sup>78</sup> *Id.* at 75.

<sup>79</sup> MAKE IT WORK, *supra* note 71, at 6.

<sup>80</sup> *Id.* at 4.

<sup>81</sup> Evans v. City of San Jose, 27 Cal. Rptr. 3d 675, 678 (Cal. Ct. App. 2005).

<sup>82</sup> PUB. POLICY INST. OF CALIFORNIA, RESEARCH BRIEF, REDEVELOPMENT AND THE PROPERTY TAX REVENUE DEBATE, (Feb. 1998), available at [http://www.ppic.org/content/pubs/rb/RB\\_298MDRB.pdf](http://www.ppic.org/content/pubs/rb/RB_298MDRB.pdf). To succeed in their mission, these redevelopment agencies are authorized to divert property taxes that otherwise would have gone to the state or other government entities; they may use public funds to subsidize private development; and they may utilize the power of eminent domain. Neilson v. City of California City, 53 Cal. Rptr. 3d 143, 150–51 (Cal. Ct. App. 2007).

<sup>83</sup> Cnty. of Los Angeles v. Glendora Redevelopment Project, 111 Cal. Rptr. 3d 104, 110 (Cal. Ct. App. 2010) (quoting Cnty. of Riverside v. City of Murrieta 76 Cal. Rptr. 2d 606, 609 (Cal. Ct. App. 1998)). The conditions demonstrating the existence of blight that the redevelopment agency must find before beginning a project are found in sections

finding that a project area is indeed blighted before beginning the redevelopment project.<sup>84</sup> A state court, through a validation action, can review a redevelopment agency's finding of blight.<sup>85</sup> If there is insufficient evidence of blight, the court must issue a judgment invalidating the redevelopment plan.<sup>86</sup> Indeed, California courts have invalidated a number of redevelopment projects due to a finding that blight was absent in the project area.<sup>87</sup>

Redevelopment has proved to be an invaluable tool for local governments to accomplish important but expensive projects.<sup>88</sup> Redevelopment has also allowed local governments to utilize infill development on a number of projects.<sup>89</sup> Infill development is the process of developing unused or underutilized areas of land in areas that are already urbanized.<sup>90</sup> This process results in more efficient use of land and pre-existing infrastructure systems as well as higher density communities.<sup>91</sup> The use of infill development is recognized as a method that can support sustainable development.<sup>92</sup> Redevelopment agencies also have experience in transforming brownfields into useful and productive areas.<sup>93</sup> Brownfields are basically contaminated properties that go unused or underutilized due to the intensive efforts and high costs associated with cleaning up the area for

---

33030 and 33031 of the California Health and Safety Code. CAL. HEALTH & SAFETY CODE §§ 33030(b), 33031 (West 2012).

<sup>84</sup> *Evans*, 27 Cal. Rptr. 3d at 680.

<sup>85</sup> *Boelts v. City of Lake Forest*, 25 Cal. Rptr. 3d 164, 166 (Cal. Ct. App. 2005).

<sup>86</sup> *Id.*

<sup>87</sup> See, e.g., *Sweetwater Valley Civic Ass'n v. National City*, 555 P.2d 1099, 1104 (Cal. 1976); *Glendora Redevelopment Project*, 111 Cal. Rptr. 3d at 110; *Boelts*, 25 Cal. Rptr. 3d at 179; *Beach-Courchesne v. City of Diamond Bar*, 95 Cal. Rptr. 2d 265, 279 (Cal. Ct. App. 2000); *Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency*, 98 Cal. Rptr. 2d 334, 366 (Cal. Ct. App. 2000); *Cnty. of Riverside v. City of Murrieta*, 76 Cal. Rptr. 2d 606, 614 (Cal. Ct. App. 1998).

<sup>88</sup> *WUF Westside Mayors Panel: Just Leave Redevelopment Alone!*, PLAN. REP. (Sept. 22, 2011), <http://www.planningreport.com/2011/09/22/wuf-westside-mayors-panel-just-leave-redevelopment-alone> (panel discussion of California mayors discussing various successful projects that were accomplished through redevelopment).

<sup>89</sup> See *Brownfields Redevelopment and Land Revitalization*, ENVTL. PROT. AGENCY, <http://www.epa.gov/SoCal/redevelopment/brownfields.html> (last visited Mar. 28, 2013). The Anaheim Redevelopment Agency was able to transform a brownfield that used to be the home of a manufacturing factory into 340 affordable housing units. *Id.*

<sup>90</sup> *Infill Development in Plain English*, MUN. RESEARCH AND SERVS. CTR. OF WASH., (June 2010), <http://www.mrsc.org/subjects/planning/lu/infill.aspx>.

<sup>91</sup> *Id.*

<sup>92</sup> See generally ETHAN N. ELKIND, REMOVING THE ROADBLOCKS: HOW TO MAKE SUSTAINABLE DEVELOPMENT HAPPEN NOW (Aug. 2009), available at [http://www.law.berkeley.edu/files/Removing\\_the\\_Roadblocks\\_August\\_2009.pdf](http://www.law.berkeley.edu/files/Removing_the_Roadblocks_August_2009.pdf).

<sup>93</sup> See *Brownfields Redevelopment and Land Revitalization*, *supra* note 89.

safe use.<sup>94</sup> The rehabilitation of these areas has been found to promote both economic development and sustainability.<sup>95</sup>

#### B. The Financing of California's Redevelopment Agencies

Following the acquisition of property, California's redevelopment agencies work with the local city council or a county board of supervisors to create development plans.<sup>96</sup> The agencies are prohibited from raising or collecting taxes.<sup>97</sup> Instead, to get the project off the ground, the agencies may issue bonds to provide initial project funding.<sup>98</sup> To pay back any bonds that are issued, redevelopment agencies are authorized to use a funding method called tax increment financing.<sup>99</sup> Tax increment financing allows the redevelopment agencies to receive a portion of the property tax revenues generated when property values rise as a result of investment.<sup>100</sup> Before a project begins, the property taxes existing at the time become the basis,<sup>101</sup> and as investment flows into the project area, property taxes are expected to rise; the amount between the original taxes and the increased property taxes is called the "increment."<sup>102</sup> The agencies then are able to pledge the tax increment so that they can repay bonds or other debt used to initiate the project.<sup>103</sup> Even when a redevelopment project area is established, other taxing jurisdictions continue to receive property taxes based on the

---

<sup>94</sup> *Brownfields Reuse*, CAL. DEP'T OF TOXIC SUBSTANCES CONTROL, <http://www.dtsc.ca.gov/sitecleanup/brownfields/> (last visited Mar. 28, 2013).

<sup>95</sup> *Id.*

<sup>96</sup> FREQUENTLY ASKED QUESTIONS ABOUT REDEVELOPMENT IN CALIFORNIA, *supra* note 12.

<sup>97</sup> See *Huntington Park Redevelopment Agency v. Martin*, 695 P.2d 220, 225 (Cal. 1985) (holding that redevelopment agencies are prohibited from levying taxes); FREQUENTLY ASKED QUESTIONS ABOUT REDEVELOPMENT IN CALIFORNIA, *supra* note 12 (noting same).

<sup>98</sup> *General Finance Information: Financing Redevelopment Projects*, SAN JOSE REDEVELOPMENT AGENCY, <http://www.sjredevelopment.org/FinancingRedevel.htm> (last visited Mar. 28, 2013); see also CAL. HEALTH & SAFETY CODE § 33641 (West 2012).

<sup>99</sup> CAL. CONST. art. XVI, § 16; HEALTH & SAFETY § 33670; *Marek v. Napa Cmty. Redevelopment Agency*, 761 P.2d 701, 709 (Cal. 1988); SAN JOSE REDEVELOPMENT AGENCY, *supra* note 98. California's redevelopment agencies can retain tax increments only for repayment of obligations. HEALTH & SAFETY § 33670(b). Obligations which may utilize the increment include paying the principal and interest on loans, money advancements, indebtedness incurred in financing or refinancing the redevelopment project, and honoring contracts so as to avoid breach. See CAL. CONST. art. XVI, § 16; HEALTH & SAFETY §§ 33670, 33675. The redevelopment agencies have a maximum of forty years to pay off any indebtedness. HEALTH & SAFETY § 33333.6(a).

<sup>100</sup> HEALTH & SAFETY § 33670.

<sup>101</sup> See FREQUENTLY ASKED QUESTIONS, *supra* note 12.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*; HEALTH & SAFETY § 33671; CAL. CONST. art. XVI, § 16.

assessed value of the properties before the project began.<sup>104</sup> Only after the debts have been paid off, or the time limit for the project has been reached, do the other taxing jurisdictions begin to receive the increased property taxes.<sup>105</sup>

A redevelopment agency prefers that it start producing tax increments beginning the year after the project boundaries are established.<sup>106</sup> If the project does not immediately produce a tax increment, the agency must be paid from local general funds in order to meet its obligations.<sup>107</sup> To avoid becoming a burden to the city or county, redevelopment agencies search for sites, usually a vacant or easily cleared area, which will likely produce a sizeable tax increment.<sup>108</sup> Consequently, redevelopment agencies recognize that despite their power to acquire property for use in projects, they still need to attract profit-minded developers to the project area.<sup>109</sup> In general, developers will not be enticed to the worst parts of cities, leading redevelopment agencies to search for “the blight that’s right”—places blighted enough to qualify for redevelopment, but good enough to attract developers.<sup>110</sup> The lack of oversight of redevelopment agencies and their blight designations has created problems; indeed, some redevelopment agencies’ blight designations have been overturned by reviewing courts.<sup>111</sup>

Tax increment financing has proven to be “irresistibly attractive” to cities and counties that lack the funds to finance the projects from their own coffers.<sup>112</sup> However, this reliance on the tax increment financing method becomes problematic when property tax revenue declines in a project area, as they have in many areas over the course of the recent recession.<sup>113</sup> In fact,

---

<sup>104</sup> HEALTH & SAFETY § 33670.

<sup>105</sup> *Id.*

<sup>106</sup> George Lefcoe, *Finding the Blight That’s Right for California Redevelopment Law*, 52 HASTINGS L.J. 991, 1003 (2001).

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.* at 994.

<sup>110</sup> *Id.* at 994–95 (citing BERNARD J. FRIEDEN & LYNNE B. SAGALYN, DOWNTOWN, INC.: HOW AMERICA REBUILDS CITIES 23 (MIT Press, 1990)).

<sup>111</sup> Dakota Smith, *CRA Audit Finds Other Cities Look Worse than LA*, CURBED L.A. (Mar. 7, 2011), [http://la.curbed.com/archives/2011/03/cra\\_state\\_audit.php](http://la.curbed.com/archives/2011/03/cra_state_audit.php) (noting that state controller’s audit of eighteen redevelopment agencies exposed that a 4.5-star Palm Desert golf course and an area of multi-million dollar beachfront homes in Coronado were deemed blighted in redevelopment plans).

<sup>112</sup> Lefcoe, *supra* note 106, at 998. To place a check on the use of tax increment financing on redevelopment projects, the law requires that agencies prepare a report for affected taxing agencies describing the proposed projects and how they expect to remedy the blighting conditions found in the preliminary project report. See CAL. HEALTH & SAFETY CODE § 33344.5 (West 2012).

<sup>113</sup> Stan Humphries, *No Respite From Housing Recession in First Quarter*, ZILLOW



more than two-dozen redevelopment districts in California had annual debt payments that exceeded or nearly exceeded their annual tax revenue in the fiscal year ending June 2009 as a result of plunging property-tax collections from redevelopment projects.<sup>114</sup> If a city is forced to default on bond debt, its credit rating is adversely affected, which leads to increased costs of borrowing and may even eliminate the ability to obtain financing.<sup>115</sup>

### III. UTILIZING REDEVELOPMENT AGENCIES TO REACH EMISSIONS TARGETS

#### A. How Redevelopment Agencies Can Help Attain SB 375 Goals

As previously noted, California boasts a history of forward-thinking and progressivity when it comes to taking measures to reduce greenhouse gas emissions.<sup>116</sup> The leadership in California's public and private sectors "has empowered public servants, stakeholders from community groups and nongovernmental organizations, businesses, the scientific and academic community, and everyday individuals to develop creative and cost-effective policy solutions that are grounded in fact and science."<sup>117</sup> California should continue its national leadership in this arena by granting its redevelopment agencies, which have over a half-century's worth of experience in fighting blight and curbing urban sprawl, a lead role in the pursuit to attain the goals of SB 375.

---

REAL ESTATE RESEARCH (May 8, 2011), <http://www.zillow.com/blog/research/2011/05/08/no-respite-from-housing-recession-in-first-quarter/>.

<sup>114</sup> Justin Scheck & Bobby White, *Blight Cures Drain City Coffers*, WALL ST. J. (Apr. 9, 2011), <http://online.wsj.com/article/SB10001424052748704843404576251103140821350.html>. For example, the town of Hercules, California, sold \$260 million in redevelopment bonds to purchase land that would be used to revitalize the economically-depressed area. *Id.* However, lower-than-expected property values caused by the recession eliminated any chance to collect tax increment gains. *Id.* Consequently, Hercules has been forced to cut police salaries, trim its parks budget, and tap reserve funds to make bond payments. *Id.*

<sup>115</sup> *Id.* In fact, some cities default, with credit-rating company Standard & Poor's reporting that 110 U.S. municipal-bond issues totaling \$2.65 billion defaulted in 2010. *Id.* The largest number of defaults "came from the type of debt issued by redevelopment agencies, representing 36% of defaults." *Id.* California's redevelopment agencies reported approximately \$29 billion in debt outstanding in June 2009, representing a large portion of California's overall municipal debt of \$182 billion. *Id.* Recently, in March of 2011, Moody's Investors Service downgraded the redevelopment debt of Oakland and Riverside County, as a result of poor tax revenues. *Id.* Standard and Poor's also downgraded the redevelopment debt of Lancaster to junk status and Fitch gave similar ratings to the redevelopment debt of Banning and Pittsburg, California, where property values fell by over 15% over the last year. *Id.*

<sup>116</sup> See *supra* Part I.B. (discussing some of California's environmental achievements).

<sup>117</sup> Nichols, *supra* note 1, at 193.

Redevelopment agencies and SB 375 are a logical pairing. For example, “SB 375 is essentially the only state law with an influence over local planning decisions, and redevelopment is the only state-sponsored funding scheme for local development.”<sup>118</sup> By allowing redevelopment agencies to head the implementation of SB 375, they would be able to use their unique experiences working with local officials and community organizations to efficiently initiate and complete projects. In essence, the redevelopment agencies would continue with the work they have been accustomed to doing over the years, but projects would be focused around the achievement of SB 375 objectives. Furthermore, a realignment of the mission of redevelopment agencies towards SB 375 implementation would also help to quell some of the criticisms regarding redevelopment in its current form. While redevelopment agencies have “frequently been criticized for straying from [their] mission to fight blight—often by defining blight too liberally for some tastes—many say that SB 375 provides the ideal impetus for saving redevelopment.”<sup>119</sup>

To reduce greenhouse gas emissions, SB 375 encourages new development in urban areas.<sup>120</sup> Redevelopment agencies have a vast amount of knowledge and experience when it comes to infill and brownfield development, both of which take place in urbanized areas.<sup>121</sup> The use of both infill and brownfield development have been found to help to create higher density mixed-use developments and reduce the number of vehicle-miles traveled.<sup>122</sup> This type of development also attracts people to those areas that were previously unused or underutilized, and these people, according to city planners “are just the sort who will leave their cars behind, if given access to transit and walkable amenities.”<sup>123</sup> Thus, after recognizing the strengths of redevelopment agencies and the goals and requirements of SB 375, the ability of redevelopment agencies to lead in achieving those goals becomes apparent.

An Environmental Protection Agency (EPA) study lends support to the proposal to allow redevelopment agencies to take a

<sup>118</sup> Josh Stephens, *Fight Over Redevelopment Could Stifle Efforts to Curb Climate Change*, CAL. PLAN. & DEV. REP. (Feb. 28, 2011, 10:57 PM), <http://www.cp-dr.com/node/2890>.

<sup>119</sup> *Id.*

<sup>120</sup> Freilich & Popowitz, *supra* note 60, at 19–20.

<sup>121</sup> See *Brownfields Redevelopment and Land Revitalization*, *supra* note 89.

<sup>122</sup> LAUREN C. HEBERLE, CONNECTING SMART GROWTH AND BROWNFIELDS REDEVELOPMENT 4–5 (Nov. 2006), available at <http://louisville.edu/cepm/Connecting%20Smart%20Growth%20and%20Brownfields%20Redevelopment.pdf>.

<sup>123</sup> See Stephens, *supra* note 118.

lead role in the reduction of greenhouse gas emissions. After surveying projects in Charlotte, Denver, and Boston, the EPA issued a finding that redirecting jobs and households to brownfield and other infill sites reduces overall travel, congestion, and emissions from cars.<sup>124</sup> In Boston, infill development was examined in a small portion of the metropolitan area. The study tested how changing growth patterns in one corridor could improve the air quality outlook of the region as a whole. Denver examined the overall region to see how focused development in a few large urban and suburban centers would compare to current development and expansion trends. Charlotte instead focused on the impact of infill development concentrated around a new light-rail transit line.<sup>125</sup> Each of the studies concluded that the redirection of development to more walkable, transit-accessible areas reduces driving and emissions. A shift of five to ten percent of a region's homes and jobs to infill locations was estimated to produce two to five percent less vehicle travel and a three to eight percent reduction in emissions.<sup>126</sup> By directing new growth into reclaimed brownfield and infill sites, redevelopment agencies can help meet the need for growth while simultaneously addressing regional air quality issues.<sup>127</sup>

#### B. Financing the Expanded Mission of California's Redevelopment Agencies

To assist with the high costs of implementing SB 375, local redevelopment agencies could utilize tax increment financing if given the opportunity to lead in the implementation.<sup>128</sup> Tax increment financing is the only program in California that allows local officials to incur long-term debt without voter approval, which undoubtedly increases their attractiveness to local governments.<sup>129</sup> However, tax increment financing faces difficulties when there are declines in property values that eliminate the positive tax increment.<sup>130</sup>

---

<sup>124</sup> ENVTL. PROT. AGENCY, MEASURING THE AIR QUALITY AND TRANSPORTATION IMPACTS OF INFILL DEVELOPMENT 1 (Nov. 2006), *available at* [http://www.epa.gov/dced/pdf/transp\\_impacts\\_infill.pdf](http://www.epa.gov/dced/pdf/transp_impacts_infill.pdf).

<sup>125</sup> *Id.* at 7.

<sup>126</sup> *Id.* at 11.

<sup>127</sup> *Id.* at 12.

<sup>128</sup> CAL. CONST. art. XVU, § 16.

<sup>129</sup> RESTRUCTURING REDEVELOPMENT: REVIEWING THE GOVERNOR'S BUDGET PROPOSAL, SENATE COMMITTEE ON GOVERNANCE & FINANCE 17 (Feb. 9, 2011) (the summary report from the legislative oversight hearing), *available at* [http://senweb03.senate.ca.gov/committee/standing/GOVERNANCE/Summary%20report%20PDF02\\_09\\_2011.pdf](http://senweb03.senate.ca.gov/committee/standing/GOVERNANCE/Summary%20report%20PDF02_09_2011.pdf).

<sup>130</sup> *See supra* note 114 (discussing the situation faced by the city of Hercules, CA).

To alleviate the concerns regarding tax increment financing that developed as a result of the recent nationwide decline in property values, it may be possible to lower the amounts of tax increment required by combining its use with other forms of bonds available to local officials. Cities and counties can utilize general obligation bonds requiring two-thirds voter approval that are repaid by imposing an ad valorem property tax rate in addition to the standard one percent property tax rate.<sup>131</sup> Because property tax revenue backs these bonds, they are considered low-risk and thus possess low interest rates.<sup>132</sup> Limited obligation bonds present another viable option to cities and counties, again requiring two-thirds voter approval.<sup>133</sup> These bonds, commonly used to finance public works projects, are repaid by dedicating a fraction of the municipality's general fund revenue and involve slightly higher interest rates.<sup>134</sup> Finally, assessment bonds may be appropriate in projects that will provide special benefits for those in the project area.<sup>135</sup> Here, each property owner pays in direct proportion to the benefit received from the project.<sup>136</sup> To utilize this form of bond, a vote must be held where property owners in the assessment area receive weighted votes according to their proposed assessments.<sup>137</sup> While any combination of these financing options does not unequivocally solve redevelopment-related financing concerns, it does present options that can and should be explored to lessen the impact on the state budget.

Should redevelopment agencies be called upon to lead the state's efforts in greenhouse gas emissions, another option that deserves a lot of consideration is the public-private partnership (PPP). A PPP is:

[a] contractual agreement formed between public and private sector partners, which allow more private sector participation than is traditional. The agreements usually involve a government agency contracting with a private company to renovate, construct, operate, maintain, and/or manage a facility or system. While the public sector usually retains ownership in the facility or system, the private party will be given additional decision rights in determining how the project or task will be completed.<sup>138</sup>

---

<sup>131</sup> RESTRUCTURING REDEVELOPMENT, *supra* note 129, at 17.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.* at 17–18.

<sup>135</sup> *Id.* at 18.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> Seth Eaton & William D. Locher, *Give PPPs a Chance*, L.A. LAW., Jan. 2009, at

A PPP reduces the time and public expense normally required by a public-only project.<sup>139</sup> These partnerships have already been utilized nationwide to complete such projects as mixed-use developments, urban renewal projects, and affordable housing.<sup>140</sup> Public agencies are able to leverage their public assets and increase their control over the development project.<sup>141</sup> In return for their efforts, the private entity—usually a for-profit professional developer or investor—receives steady income by leasing the improvement to the public entity for a predetermined amount of time and can also be allowed revenues gain from the improvement, such as tolls or user fees.<sup>142</sup> For example, if a partnership was entered into to help finance an SB 375-related project, the private partner could be given a share of public transportation fares for a given amount of time in return for initial capital investment in the project. Redevelopment agencies could be encouraged to utilize these partnerships to not only reduce the amounts borrowed under tax increment financing, but also to gain more popular support.

### C. Modifying the Charter of California's Redevelopment Agencies

In order for redevelopment agencies to pursue the targets established under AB 32 and SB 375, their charter needs to be expanded. Currently, Section 33131 of the Health and Safety Code allows redevelopment agencies “[f]rom time to time [to] prepare and carry out plans for the improvement, rehabilitation, and redevelopment of blighted areas.”<sup>143</sup> The agencies are already allowed to “[p]repare applications for various federal programs and grants relating to housing and community development.”<sup>144</sup> Thus, it is proposed that the section be modified to eliminate the blight requirement that guided redevelopment agencies for most of the last century, and instead require the redevelopment agencies to coordinate and implement development, redevelopment, and overall land use policies that are tied to the achievement of the goals established by AB 32 and SB 375.

---

20–24, *available at* <http://www.lacba.org/Files/LAL/Vol31No10/2552.pdf>.

<sup>139</sup> *Id.* at 24.

<sup>140</sup> MARY BETH CORRIGAN ET. AL., TEN PRINCIPLES FOR SUCCESSFUL PUBLIC/PRIVATE PARTNERSHIPS, at v (2005), *available at* [http://www.uli.org/wp-content/uploads/ULI-Documents/TP\\_Partnerships.ashx\\_.pdf](http://www.uli.org/wp-content/uploads/ULI-Documents/TP_Partnerships.ashx_.pdf). The city of Chattanooga, Tennessee, has successfully utilized public-private partnerships to improve regional growth patterns and reduce air pollution problems. *Id.* at 6.

<sup>141</sup> *Id.* at vi.

<sup>142</sup> Eaton & Locher, *supra* note 138, at 24.

<sup>143</sup> CAL. HEALTH & SAFETY CODE § 33131(a) (West 2012).

<sup>144</sup> HEALTH & SAFETY § 33131(c).

## CONCLUSION

As the rates of industrialization and consumerism climb while natural resources are irreversibly depleted, the earth's climate is threatened with permanent alteration.<sup>145</sup> The popular awareness of this looming crisis is sparking calls for change at all levels of society, and is leading governments, industries, and individuals to reexamine and reduce their own environmental impacts through adoption of sustainable measures.<sup>146</sup> California has already made substantial steps in an attempt to curb the emissions of greenhouse gases that contribute to global warming. AB 32 and SB 375 are pieces of ambitious legislation that need to be aggressively pursued in order for their targets to be reached. By employing California's redevelopment agencies to oversee the implementation of land use policies and projects that will reduce the emissions of greenhouse gases, California would again be leading the nation in the fight against global warming.

---

<sup>145</sup> Freilich & Popowitz, *supra* note 60, at 2 (citing JAMES A. KUSHNER, GLOBAL CLIMATE CHANGE AND THE ROAD TO EXTINCTION: THE LEGAL AND PLANNING RESPONSE (2009)); *see also* Jesse W. Abair, *Green Building: What It Means to Be "Green" and the Evolution of Green Building Laws*, 40 URB. LAW. 623, 623 (2008).

<sup>146</sup> Freilich & Popowitz, *supra* note 60, at 2.

## Addendum

February 24, 2013

The main portion of this Note was written during the fall semester of 2011. Over the past year and a half, much has transpired in the realm of California redevelopment. To bring readers up to date, this Addendum will first address the decision in the case of *California Redevelopment Association v. Matosantos*, and then will consider the subsequent effect on redevelopment agencies and sponsoring municipalities. The Addendum will also provide an updated theory on how the goals of SB 375 can still be met through a resurrection, and slight reincarnation, of redevelopment agencies. Finally, the Addendum will provide an update on the progress made thus far in the implementation of SB 375.

### *CALIFORNIA REDEVELOPMENT ASSOCIATION V. MATOSANTOS*

In *Matosantos*,<sup>147</sup> the California Supreme Court considered (1) whether redevelopment agencies, once established, have a protected right under the state constitution to exist that immunizes them from statutory dissolution under AB 1X26; and (2) whether redevelopment agencies and their sponsoring municipalities have a protected right not to make the pay-to-play payments required under AB 1X27.<sup>148</sup>

The court issued its decision on December 29, 2011.<sup>149</sup> In a unanimous vote, the court ruled that AB 1X26, the bill abolishing redevelopment, was constitutional.<sup>150</sup> The court found the dissolution measure to be a valid exercise of the legislature's constitutionally granted power.<sup>151</sup> The legislature's power "includes the authority to create entities, such as redevelopment agencies, to carry out the state's ends and the corollary power to dissolve those same entities when the Legislature deems it necessary and proper."<sup>152</sup> The required dissolution did not violate Proposition 22 because Proposition 22 did not attempt to restrict the legislature's power to dissolve redevelopment agencies.<sup>153</sup>

---

<sup>147</sup> Cal. Redevelopment Ass'n v. Matosantos, 267 P.3d 580 (Cal. 2011).

<sup>148</sup> *Id.* at 587–88.

<sup>149</sup> *Id.* at 580.

<sup>150</sup> *Id.* at 588, 611.

<sup>151</sup> *Id.* at 588.

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

But in a surprising 6-1 vote, the court struck down AB 1X27 as violative of Proposition 22.<sup>154</sup> The court found that “Proposition 22 (specifically Cal. Const., art. XIII, § 25.5, subd. (a)(7)) expressly forbids the Legislature from requiring such [pay-to-play] payments.”<sup>155</sup> Because the bill did not contain a severability clause, the bill had to be invalidated in its entirety.<sup>156</sup>

Thus, the court’s holding not only upheld the mandated dissolution, but also struck down their option to make payments in order to stay in business.<sup>157</sup> Both parties found themselves unprepared for this outcome.<sup>158</sup> Steven L. Mayer, a lawyer for the redevelopment agencies in the case, declined to second guess the legal strategy used in seeking the invalidation of both AB 1X26 and AB 1X27, stating, “Hindsight is always 20-20, isn’t it?”<sup>159</sup> Governor Brown, on the other hand, expressed his satisfaction with the result of the case, saying that it “validates a key component of the state budget and guarantees more than a billion dollars of ongoing funding for schools and public safety.”<sup>160</sup> Long-time redevelopment opponent Assemblyman Chris Norby (R-Fullerton)<sup>161</sup> was also pleased with the result, saying that the redevelopment agencies “should have shut up” rather than suing to overturn the laws.<sup>162</sup> However, Chief Justice Tani Cantil-Sakauye had a much more appreciative view of the now-defunct redevelopment agencies:

Although the system of redevelopment in this state has been far from perfect, it certainly is worth noting redevelopment projects like the restored Public Market Building in downtown Sacramento, the Bunker Hill project in downtown Los Angeles, Horton Plaza and the Gaslamp Quarter in downtown San Diego, HP Pavilion in San Jose, and Yerba Buena Gardens in downtown San Francisco. When

---

<sup>154</sup> *Id.* at 588, 611.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.* at 607.

<sup>157</sup> James Nash, *Defaults May Loom on California Redevelopment Agency Debt*, BLOOMBERG (May 31, 2012), <http://www.bloomberg.com/news/print/2012-05-31/defaults-may-loom-on-california-redevelopment-agency-debt.html>.

<sup>158</sup> Seth Merewitz & Ethan J. Walsh, *Redevelopment After RDAs*, L.A. LAW., Feb. 2013, at 26, available at <http://www.lacba.org/Files/LAL/Vol35No11/3003.pdf>.

<sup>159</sup> Maura Dolan et al., *California high court puts redevelopment agencies out of business*, L.A. TIMES (Dec. 29, 2011), <http://articles.latimes.com/2011/dec/29/local/la-me-redevelopment-20111230>.

<sup>160</sup> *Id.*

<sup>161</sup> Assemblyman Norby is the founder and director of Municipal Officials for Redevelopment Reform (MORR), “a growing network of elected officials and volunteer groups, all of whom are concerned about rising redevelopment abuses.” *About, MUNICIPAL OFFICIALS FOR REDEVELOPMENT REFORM*, <http://www.redevelopment.us/about/> (last visited Mar. 28, 2013).

<sup>162</sup> Dolan et al., *supra* note 159.



faithfully administered and thoughtfully invested in the interests of the community, a redevelopment agency can successfully create jobs, encourage private investment, build local businesses, reduce crime and improve a community's public works and infrastructure.<sup>163</sup>

#### A. The Process of Dismantling Redevelopment Agencies

Under AB 1X26, "successor agencies" were to be created following the closure of the redevelopment agencies and tasked with managing the dissolution process.<sup>164</sup> AB 1X26 designates the municipality that authorized the redevelopment agency as the successor agency.<sup>165</sup> However, the local governing body has the option of declining this appointment, and instead, an "applicable local agency" can elect to become the successor agency.<sup>166</sup> Finally, if no agency elects to become the successor agency, the governor can appoint a three-member "designated local authority" to take on the duties of the successor agency.<sup>167</sup> Among a host of other duties,<sup>168</sup> these agencies must submit payment schedules every six months to oversight boards and the California Department of Finance,<sup>169</sup> and if approved, the successor agencies will be allocated a small amount of property tax revenue to make the payments and cover the obligations that once belonged to the redevelopment agency.<sup>170</sup> Governor Brown's aides believe that \$30 billion in outstanding redevelopment debt will now have to be paid by the cities' and counties' successor agencies.<sup>171</sup>

---

<sup>163</sup> Cal. Redevelopment Ass'n v. Matosantos, 267 P.3d 580, 623 (Cal. 2011).

<sup>164</sup> Merewitz & Walsh, *supra* note 158, at 26.

<sup>165</sup> CAL. HEALTH & SAFETY CODE § 34171(j) (West 2012).

<sup>166</sup> HEALTH & SAFETY § 34173(d)(1)–(2) (defining a "local agency" as "any city, county, city and county, or special district in the county of the former redevelopment agency").

<sup>167</sup> HEALTH & SAFETY § 34173(d)(3)(A).

<sup>168</sup> See HEALTH & SAFETY § 34177 (listing the duties of the successor agency).

<sup>169</sup> HEALTH & SAFETY § 34177(l). An oversight board consists of seven local officials appointed by different local stakeholders. HEALTH & SAFETY § 34179(a)(10). The varied duties of the oversight board are also established by statute. See HEALTH & SAFETY § 34181 (listing the actions that the oversight board must direct the successor agency to undertake).

<sup>170</sup> HEALTH & SAFETY § 34188. There is a dispute between successor agencies and the Department of Finance as to what obligations are enforceable. Merewitz & Walsh, *supra* note 158, at 26. To clear up the confusion the legislature passed AB 1484, but it has not provided the intended clarification. *Id.* at 26–27. The successor agencies are also subject to independent audits. *Id.* at 27. After a review by the Department of Finance, additional payments may be required. See *id.* If the agency does not make the required payments, the amount can be taken out of the sales or property taxes that would otherwise go to the municipality that originally formed the redevelopment agency. *Id.* Over two dozen lawsuits involving over fifty jurisdictions have already been filed challenging AB 1484. *Id.*

<sup>171</sup> Nash, *supra* note 157.

Local officials see this as another “raid on their coffers” as they still must pay down redevelopment debt, but can only use a fraction of the tax-increment revenue that the redevelopment agencies could have used.<sup>172</sup> In fact, around one hundred municipalities that elected to create their own successor agencies may not get the tax revenue that they expected to use to make the payments.<sup>173</sup>

The elimination of tax increment financing from the municipalities’ revenue-creating arsenals unfortunately occurred while many local economies were looking for capital infusions.<sup>174</sup> The loss of tax increment financing, coupled with reductions in state and federal grants, forced local governments to make difficult financial decisions.<sup>175</sup> For example, the elimination of redevelopment in Oakland has caused the city \$28 million in losses and resulted in the termination of more than one hundred city workers.<sup>176</sup> Rancho Cucamonga has been forced to delay a major transportation project following the loss of financing.<sup>177</sup> In Monrovia, the successor agency missed an \$11.75 million note payment and went into default.<sup>178</sup>

Culver City is searching for a way to make up \$7.5 million a year in lost revenue following the end of redevelopment agencies.<sup>179</sup> After declaring a state of fiscal emergency, the city asked voters to raise the sales tax by half a cent for the next ten years to generate \$8 million each year.<sup>180</sup> Jeff Muir, the city’s chief financial officer explained, “Unfortunately, the economy is still slumping and the state was once again successful in pushing its budget issues onto the backs of local government and we have a very significant and real problem.”<sup>181</sup>

---

<sup>172</sup> Jim Christie, *Loss of redevelopment adds to pain for California cities*, REUTERS (Oct. 9, 2012), <http://www.reuters.com/assets/print?aid=USL1E8L93OK20121009>.

<sup>173</sup> Nash, *supra* note 171.

<sup>174</sup> Merewitz & Walsh, *supra* note 158, at 24.

<sup>175</sup> *Id.*

<sup>176</sup> Pamela M. Prah, *Redevelopment in California: The Program That Disappeared*, STATELINE: THE DAILY NEWS SERVICE OF THE PEW CHARITABLE TRUSTS (Sept. 19, 2012), <http://www.pewstates.org/projects/stateline/headlines/redevelopment-in-california-the-program-that-disappeared-85899418135#>.

<sup>177</sup> *Id.*

<sup>178</sup> Christie, *supra* note 172.

<sup>179</sup> Alison Vekshin, *Brown Redevelopment Fund Seizure Pushes City Tax Increase*, BLOOMBERG BUSINESSWEEK (Aug. 8, 2012), <http://www.businessweek.com/news/2012-08-08/brown-redevelopment-fund-seizure-pushes-city-tax-increase>. Of the \$7.5 million in lost funds, approximately \$3.3 million paid for twenty-four employees in housing and redevelopment positions, and \$1.2 million helped pay for police, code enforcement, and graffiti removal. *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Id.* David White, the City of Fairfield’s director of finance and deputy city manager had similar sentiments: “They ended redevelopment to secure funds to deal with their

The elimination of redevelopment is one reason why the city of Atwater declared a fiscal emergency and nearly filed Chapter 9 bankruptcy.<sup>182</sup> While Atwater eventually averted bankruptcy,<sup>183</sup> the same could not be said for Stockton, San Bernardino, and Mammoth Lakes.<sup>184</sup> Referring to the decision to declare bankruptcy, the loss of redevelopment funds “was the straw that broke the camel’s back,” said San Bernardino City Attorney James Penman.<sup>185</sup>

In Los Angeles, the designated local authority has “very specific goals and instructions: to complete the unwinding as expeditiously as possible and to maximize value.”<sup>186</sup> Many projects that were in the planning phases prior to the forced closure of the redevelopment agencies are now faced with uncertain futures.<sup>187</sup> Los Angeles Councilman Tony Cardenas called the *Matosantos* decision “a major blow to the City of Los Angeles and its ability to recover from this economic recession.”<sup>188</sup>

The total effect of the fallout following the elimination of redevelopment agencies are not yet known, but if the experiences addressed above are any indication, the closure of over four hundred redevelopment agencies will have a dramatic impact on municipal financing and development.

---

budget mess . . . . The impact for us has been an organization that’s gone through four to five years of budget cuts and the prospect of future cuts that threaten the life and character of this community.” *Id.*

<sup>182</sup> Christie, *supra* note 172.

<sup>183</sup> See Michael B. Marois, *California’s Atwater Steps Back From Bankruptcy Push*, BLOOMBERG BUSINESSWEEK (Nov. 14, 2012), <http://www.businessweek.com/news/2012-11-14/california-s-atwater-steps-back-from-bankruptcy-push> (noting that the city suspended bankruptcy talks “after winning concessions from unions that will pare labor costs”).

<sup>184</sup> Christie, *supra* note 172.

<sup>185</sup> Vekshin, *supra* note 179.

<sup>186</sup> Terry Pristin, *An Uncertain Fate for Urban Projects in California*, N.Y. TIMES, Apr. 11, 2012, at B10, available at <http://www.nytimes.com/2012/04/11/realestate/commercial/an-uncertain-fate-for-urban-projects-in-california.html?adxnnl=1&adxnnlx=1361746177-+/RHDeuV0QS/07L25cpXJQ> (quoting Nelson Rising, one of the three people appointed to the designated local authority by Governor Brown).

<sup>187</sup> See *id.* (discussing the uncertainty surrounding the transformation of Santa Barbara Plaza into Marlton Square in South Los Angeles).

<sup>188</sup> Dolan et al., *supra* note 159. Councilman Cardenas said by growing up in a blighted area, he was able to watch firsthand “how a community can be revitalized with the right kind of redevelopment, like what we’ve seen with Pacoima Plaza, the NoHo Arts District and Bunker Hill. . . . Without redevelopment agencies I am afraid we won’t see the kind of investment our neediest communities deserve.” *Id.*

### B. Resurrecting and Reimagining Redevelopment Agencies to Meet the Goals of Senate Bill 375

The same day that the decision in *Matosantos* was handed down by the California Supreme Court, the *Los Angeles Times* noted that “[a]dvocates for the agencies are expected to return to the Legislature to ask lawmakers to recreate them, probably under some sort of revenue-sharing agreement.”<sup>189</sup> The biggest push for re-creation actually came from within the legislature, and it came in the form of Senate Bill 1156 (SB 1156).<sup>190</sup> Senate President Pro Tempore Darrell Steinberg (D-Sacramento) introduced the bill.<sup>191</sup> SB 1156 was to give municipalities the ability to use a variety of development and housing tools through the creation of a Community Development and Housing Joint Powers Authority (JPA).<sup>192</sup> The JPAs would have carried out the preexisting redevelopment law provisions, but, notably, JPAs would not have been required to make a finding of blight as previously understood.<sup>193</sup> Rather, the JPAs would have adopted a redevelopment plan for a project area that, when redeveloped, would have essentially worked to achieve the goals of SB 375.<sup>194</sup>

SB 1156 stated that if within an MPO, project areas could include transit priority areas where a transit priority project may be constructed or “small walkable communities” located outside of MPOs.<sup>195</sup> The bill also allowed for redevelopment project areas

<sup>189</sup> *Id.*

<sup>190</sup> S.B. 1156, 2011–12 Legis., Reg. Sess. (Cal. 2012), available at [http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb\\_1151-1200/sb\\_1156\\_bill\\_20120831\\_enrolled.pdf](http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_1151-1200/sb_1156_bill_20120831_enrolled.pdf). For a short summary of the bill, see Office of President pro Tempore Darrell Steinberg, *SB 1156 (Steinberg) As Amended March 30, 2011 Community Development and Housing Joint Powers Authority: “Redevelopment 2.0”*, available at <http://www.climateplan.org/wp-content/uploads/2012/04/1156-fact-sheet1.pdf>.

<sup>191</sup> S.B. 1156, 2011–12 Legis., Reg. Sess. (Cal. 2012), available at [http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb\\_1151-1200/sb\\_1156\\_bill\\_20120831\\_enrolled.pdf](http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_1151-1200/sb_1156_bill_20120831_enrolled.pdf).

<sup>192</sup> *Id.* (proposing the addition of CAL. HEALTH & SAFETY CODE § 34191.20); S. Governance & Fin. Comm., S.B. 1156 B. Analysis, at 2 (Cal. 2012), available at [http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb\\_1151-1200/sb\\_1156\\_cfa\\_20120412\\_133808\\_sen\\_comm.html](http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_1151-1200/sb_1156_cfa_20120412_133808_sen_comm.html).

<sup>193</sup> See S.B. 1156, 2011–12 Legis., Reg. Sess., at 6 (Cal. 2012), available at [http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb\\_1151-1200/sb\\_1156\\_bill\\_20120831\\_enrolled.pdf](http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_1151-1200/sb_1156_bill_20120831_enrolled.pdf); *id.* at 5 (adding HEALTH & SAFETY § 34191.12, which declares that problems created through development patterns are a form of blight); *id.* (adding HEALTH & SAFETY § 34191.13, which states: “This new program shall use tax increment revenue to fight blight as it is understood in the contemporary setting without including those aspects of the former redevelopment program that created so much controversy . . .”).

<sup>194</sup> See *id.* at 8 (adding HEALTH & SAFETY § 34191.25, which details what can constitute a Sustainable Communities Investment Area).

<sup>195</sup> *Id.* at 8–9 (proposing the addition of HEALTH & SAFETY § 34191.25). A “small walkable community” is defined by the bill as “a project that is located in a small walkable community project area.” *Id.* at 18 (proposing amendments to CAL. PUB. RES.

to include sites that have approvals or restrictions limiting their use to clean energy manufacturing, or are otherwise consistent with the SCS if within an MPO.<sup>196</sup> The bill also allowed for the use of tax increment financing provided that the local government adopted a number of provisions regarding transit priority project areas.<sup>197</sup>

Madeline Janis, a Senior Fellow at the UCLA School of Public Affairs, called SB 1156 “one of the most important job creation and environmental bills in recent memory.”<sup>198</sup> Lauding the legislation, Janis stated, “Senate Bill 1156 would create jobs and affordable housing, and promote a vision of health and sustainability that we can be proud of.”<sup>199</sup>

Yet, despite passage in both the assembly and the senate,<sup>200</sup> Governor Brown vetoed SB 1156 and five other bills that would have given a range of economic development powers back to municipalities.<sup>201</sup> Although Brown vetoed SB 1156, his veto message did provide a glimmer of hope. The message stated: “The planning and investment that is envisioned by this bill would help to develop and redevelop a California that is sustainable and thriving. I prefer to take a constructive look at implementing

---

CODE § 21094.5). A “small walkable community project area” means an area within an incorporated city that is not within an MPO and meets a variety of density and area restrictions. *Id.* The bill prohibited a redevelopment plan from designating more than one “small walkable community” project area with a city. *Id.* at 9.

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> Madeline Janis, *Sustainable Communities Bills Sent to Governor Brown*, CAL. PROGRESS REP. (Sept. 13, 2012), <http://www.californiaprogressreport.com/site/print/10395>.

<sup>199</sup> *Id.*

<sup>200</sup> See *Bill Votes, SB-1156 Sustainable Communities Investment Authority*, CAL. LEGIS. INFO., <http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml> (listing senate and assembly votes for SB 1156).

<sup>201</sup> Gov. Jerry Brown vetoes replacements for redevelopment agencies, L.A. TIMES (Sept. 29, 2012, 3:57 PM), <http://latimesblogs.latimes.com/california-politics/2012/09/replacements-redevelopment-agencies-vetoed.html>. Among the rejected bills was AB 2144 by Assembly Speaker John Perez (D-Los Angeles). *Id.* The bill would have allowed cities to create “infrastructure and revitalization financing districts” if approved by fifty-five percent of voters. *Id.* Perez desired cities to be able to use property tax and bond revenue to buy and develop land or renovate existing buildings. *Id.* In his veto message, Governor Brown stated: “This measure would likely cause cities to focus their efforts on using new tools provided by the measure instead of winding down redevelopment. This would prevent the state from achieving the General Fund savings assumed in this year’s budget.” *Id.* The other vetoed bills included AB 2144 (“Local government: infrastructure and revitalization financing districts”); AB 2551 (“Infrastructure financing districts: renewable energy zones”); SB 214 (“Infrastructure financing districts” and repeal of voter approval); and SB 1030 (“Redevelopment Property Tax Trust Fund allocations: excess Education Revenue Augmentation Fund moneys”). Josh Stephens, *Brown Adds Insult to Injury with Redevelopment Vetoes*, CAL. PLAN. & DEV. REP. (Sept. 30, 2012, 10:12 AM), <http://www.cp-dr.com/node/3268>.

this type of program once the winding down of redevelopment is complete and General Fund savings are achieved.”<sup>202</sup>

Bill Fulton, a nationally renowned urban planner and former mayor of Ventura, CA,<sup>203</sup> suggested two likely reasons why Governor Brown vetoed SB 1156.<sup>204</sup> First, he said, there is “still bad blood between [Governor Brown] and the cities. And second, he doesn’t want to do anything that would stimulate the revival of a redevelopment lobby in Sacramento.”<sup>205</sup> Fulton also called SB 1156 “a pretty solid piece of legislation,” but noted that it did not contain any state oversight.<sup>206</sup> He further opined that despite what cities might desire, state oversight is going to have to be included in any bill involving tax-increment financing.<sup>207</sup>

Thus, redevelopment as we once knew it is over, and is likely not coming back. But given Governor Brown’s comments and the swift action taken by the legislature to revive major aspects of redevelopment, it seems probable that redevelopment will emerge again—albeit in a new-and-improved form. Next time, as demonstrated by SB 1156, there will hopefully be a major emphasis on achievement of SB 375 objectives.

### C. Senate Bill 375: Four Years of Progress

Four years after the passage of SB 375, the MPOs covering Southern California, Sacramento, and San Diego have become the first three metropolitan regions in America to adopt transportation plans that were individually tailored to reduce greenhouse gas emissions.<sup>208</sup> As envisioned under SB 375, these metropolitan areas developed Sustainable Community Strategies

<sup>202</sup> Letter from Edmund G. Brown, Jr., Governor of Cal., to Members of the California State Senate (Sept. 29, 2012), *available at* [http://gov.ca.gov/docs/SB\\_1156\\_Veto\\_Message.pdf](http://gov.ca.gov/docs/SB_1156_Veto_Message.pdf). Seven months before Governor Brown vetoed SB 1156, Sen. Alex Padilla (D-Los Angeles), speaking at a conference at UCLA, said legislators were contemplating how redevelopment could be replaced, but believed “the biggest obstacle” would be the governor. Josh Stephens, *Padilla: Governor May Be Biggest Obstacle to Redevelopment 2.0*, CAL. PLAN. & DEV. REP. (Feb. 22, 2012, 1:51 PM), <http://www.cp-dr.com/node/3135>.

<sup>203</sup> *Smart Growth America welcomes Bill Fulton, Mayor of Ventura, CA and urban planning expert, to staff*, SMART GROWTH AMERICA (Nov. 28, 2011), <http://www.smartgrowthamerica.org/2011/11/28/smart-growth-america-welcomes-bill-fulton-mayor-of-ventura-ca-and-urban-planning-expert-to-staff/>.

<sup>204</sup> Bill Fulton, *Saving Redevelopment One Project at a Time*, CAL. PLAN. & DEV. REP. (Oct. 23, 2012, 10:53 AM), <http://www.cp-dr.com/node/3278>.

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

<sup>207</sup> *Id.*

<sup>208</sup> AMANDA EAKEN & JUSTIN HORNER, A BOLD PLAN FOR SUSTAINABLE CALIFORNIA COMMUNITIES: A REPORT ON THE IMPLEMENTATION OF SENATE BILL 375 2 (2012), *available at* <http://www.nrdc.org/globalwarming/sb375/implementation-report/files/implementation-report.pdf>.

(SCSs) consisting of a custom mix of policies, land use decisions, and transportation investments.<sup>209</sup> These SCSs “lay the foundation for smarter, more efficient growth and healthier communities.”<sup>210</sup> A report by the Natural Resources Defense Council praised the efforts of these regions and noted a plethora of benefits that these plans derive.<sup>211</sup> For example, the Sacramento region has allowed for a thirty-nine percent increase in population by 2035, while actually planning a reduction in traffic congestion.<sup>212</sup> This will be achieved by investments in new housing and jobs in walkable neighborhoods near transit.<sup>213</sup>

To ensure effective implementation of the plans, the report recommended redevelopment reform that “encourages SB 375-friendly planning, eliminates abuses, and keeps schools funded.”<sup>214</sup> Thus, there is still an imbalance between what targets SB 375 requires, and the tools that are required to meet those targets.<sup>215</sup> While coordination between transportation and land use planning will allow for the MPOs to implement their SCSs successfully, the MPOs have no true authority over land use.<sup>216</sup> Achievement of the state’s climate goals is unlikely unless MPOs are allowed much more control over resources and municipalities are encouraged, through mandates or incentives, to plan their development in accordance with the SCSs.<sup>217</sup>

Without redevelopment agencies and their ability to utilize tax increment financing, it will be more costly for communities to develop SB 375-oriented projects, and there will be less revenue to cover their costs.<sup>218</sup> But PPPs remain a very viable vehicle of project financing.<sup>219</sup> In fact, “public-private arrangements will become critical to funding public infrastructure, development, and commercial and industrial projects.”<sup>220</sup> However, as previously noted in the main body of this Note, the success of

---

<sup>209</sup> *Id.*

<sup>210</sup> *Id.*

<sup>211</sup> *Id.* at 32.

<sup>212</sup> *Id.* at 3.

<sup>213</sup> *Id.*

<sup>214</sup> *Id.* at 27.

<sup>215</sup> Elisa Barbour & Elizabeth A. Deakin, *Smart Growth Planning for Climate Protection*, 78 J. AM. PLAN. ASS’N 70, 75 (2012), available at [http://www.des.ucdavis.edu/faculty/handy/TTP220/BarbourDeakin\\_SB375Eval\\_SmartGrwothClimateProtection\\_JAPA\\_2012.pdf](http://www.des.ucdavis.edu/faculty/handy/TTP220/BarbourDeakin_SB375Eval_SmartGrwothClimateProtection_JAPA_2012.pdf) (stating that SB 375, “in spite of ambitious goals, provides few new resources or mandates for either plan development or implementation”).

<sup>216</sup> *Id.* at 72, 83.

<sup>217</sup> *Id.* at 83.

<sup>218</sup> Merewitz & Walsh, *supra* note 158, at 24.

<sup>219</sup> *Id.* at 27.

<sup>220</sup> *Id.*

PPP financing is unlikely unless the parties are able to align their interests and allocate risk effectively.<sup>221</sup>

The results of the NRDC study are encouraging as they demonstrate that the SCSs required under SB 375, if properly implemented, will lead to smarter development and will reduce greenhouse gas emissions. But, as was the problem when redevelopment agencies were active, total achievement of SB 375's goals is improbable unless the proper financing, tools, and leadership are organized.

#### CONCLUSION

Redevelopment was not perfect, nor did anyone seriously contend that it was. But over time it will become evident that the benefits of redevelopment—job creation, economic revitalization, and affordable housing—outweighed its shortcomings.<sup>222</sup> Yet, if SB 1156 is any indication, the foundation underlying California's former redevelopment is going to be continually explored and reworked in the future. Also, as exemplified in SB 1156, any iteration of redevelopment agencies that may be conceived in the future should emphasize sustainable development and air quality—the focal points of SB 375—to preserve California and provide an example to the rest of the nation that smart development can achieve economic and environmental objectives.

---

<sup>221</sup> *Id.*

<sup>222</sup> *Id.* at 28.