

Allen Matkins**Land Use Alert**

Matthew R. Fogt
Orange County
(949) 851-5453

[mfogt@
allenmatkins.com](mailto:mfogt@allenmatkins.com)



William R. Devine
Orange County
(949) 851-5412

[wdevine@
allenmatkins.com](mailto:wdevine@allenmatkins.com)



Michael P. Durkee
Walnut Creek
(415) 273-7455

[mdurkee@
allenmatkins.com](mailto:mdurkee@allenmatkins.com)



John C. Condas
Orange County
(949) 851-5551

[jcondas@
allenmatkins.com](mailto:jcondas@allenmatkins.com)



Allen Matkins
#1 Real Estate Law Firm
in California
Chambers and Partners
2002 - 2008

New Green Plan Could Increase Cost of New Greenfield Housing

Despite the fact that AB 32 and SB 375 make no reference to indirect source rules ("ISRs") and despite assurances from Chairman Mary Nichols of the California Air Resources Board ("CARB") that the scoping plan implementing AB 32 (the "Scoping Plan") would not include ISRs, the recently released Proposed Scoping Plan that CARB will likely adopt at its December 11, 2008 meeting includes ISRs.

Based on experiences with ISRs, the development community is concerned that the use of ISRs will significantly increase the cost of development in greenfield areas, further reducing the supply of affordable housing in California.

On September 27, 2006, Governor Schwarzenegger signed the Global Warming Solution Act of 2006 ("AB 32"). AB 32 requires California to reduce its greenhouse gas emissions to 1990 levels by 2020. Two years later, on September 30, 2008, Governor Schwarzenegger signed Senate Bill 375 ("SB 375") to further implement AB 32. SB 375 purports to intertwine planning for transportation and housing, provide more certainty in rezoning to accommodate residential development, and streamline project approvals, including the CEQA process, for certain types of development.

AB 32 requires CARB to approve, on or before January 1, 2009, the Scoping Plan for achieving the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions by 2020. CARB recently released the Proposed Scoping Plan, **which it intends to adopt at its December 11, 2008 meeting.** The Proposed Scoping Plan includes ISRs as a potential measure to meet the regional target-setting and sustainable community processes required by the Proposed Scoping Plan.

ISRs require developers to (i) calculate indirect source pollution associated with a proposed development and either (ii) reduce pollution through on-site engineering or (iii) mitigate the pollution off-site, typically through the payment of fees to the local air resource board. As ISRs generally favor infill development, the costs and fees of ISRs primarily impact greenfield development in outlying areas. As greenfield development produces much of California's most affordable housing, ISRs could reduce both the availability and affordability of California housing. While the use of ISRs under the Proposed Scoping Plan is not mandatory, it is doubtful that any local air resources board would not implement this potentially lucrative revenue stream.

Neither AB 32 or SB 375 contains any reference to ISRs. Although the Draft Scoping Plan released by CARB in June of 2008 lists ISRs as one of several potential measures to achieve the goals of AB 32, Chairman Nichols later assured the development community that the Scoping Plan would not include ISRs. As such, many were surprised to find ISRs included in the list of suggested measures in the Proposed

Information in this alert directly affects all developers -- especially those with housing projects in greenfield areas.

Scoping Plan. Comments on the Proposed Scoping Plan are due by December 10, 2008, the day before CARB will likely adopt the Scoping Plan in its near present form at its December 11, 2008 meeting. **Please contact us to discuss how AB 32, SB 375 and the Scoping Plan will impact your proposed developments.**

Allen Matkins Land Use Attorneys

Orange County (949) 553-1313

Pamela L. Andes
Shanda M. Beltran
John C. Condas
William R. Devine
A. Kristine Floyd
Matthew R. Fogt
Thomas E. Gibbs
Steven B. Imhoof
Michael Joyce
Suzanne E. Skov

Los Angeles (213) 622-5555

Frederick L. Allen
John J. Allen
Isabel Birrueta
Patrick E. Breen
Alfred Fraijo Jr.
Michael Gonzales
Claudia Gutierrez
Mark R. Hartney
Michael J. Kiely
Kaylynn L. Kim
Emily Murray
Jerold B. Neuman
Anthony J. Oliva
Patrick A. Perry
Faith Pincus
Michael W. Shonafelt
Phillip M. Tate

San Francisco (415) 837-1515

James T. Burroughs
David D. Cooke
Lee Gotshall-Maxon
James L. Meeder
Sandi L. Nichols
Eileen M. Nottoli
Sonia J. Ransom
Robert Wyatt

San Diego (619) 233-1155

Jeffrey A. Chine
Thomas B. Crosbie
Jan S. Driscoll
Kecia R. Felton
Vernon C. Gauntt
David L. Osias
Heather S. Riley
Ellen B. Spellman

Walnut Creek (925) 943-5551

David H. Blackwell
Michael P. Durkee
Thomas P. Tunny
Derek S. van Hoften

© 2008 Allen Matkins Leck Gamble Mallory & Natsis LLP. All rights reserved.

This email is intended for general information purposes only and should not be construed as legal advice or legal opinions on any specific facts or circumstances. This email was sent by: Allen Matkins Leck Gamble Mallory & Natsis LLP, 515 S. Figueroa Street, 7th Floor, Los Angeles, California 90071. To stop receiving this publication, just reply and enter "unsubscribe" in the subject line.