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The 2018 Environmental Legislative Recap: The End of an Era

By

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Introduction

The 2017-2018 legislative session marked the end of Governor Brown's 16th and final year as California's longest serving governor. As the legislative session began, California policymakers were preoccupied protecting California from regulatory roll backs from Scott Pruitt of the United States Environmental Protection Agency (USEPA) and Ryan Zinke of the Department of Interior. Governor Brown and the Legislature responded with a bounty of new environmental quality, land use, and natural resource laws designed to fortify California's legacy.

The legislative session was characterized by an array of polices aimed at preventing and managing wildfire risks; expanding housing stocks to tackle a dearth of housing statewide; a continued focus on water conservation, erecting barriers to offshore oil and gas drilling, promoting climate-friendly refrigerants, and enshrining wild and scenic river protections. Other noteworthy achievements include the most ambitious clean energy law in the nation along with a bevy of policies easing the path for Electric Vehicles (EVs) and roof top solar. Finally, the Legislature crafted policies to reduce plastic waste and ocean debris. Except for budget-related urgency new laws that passed by a supermajority (which became effective upon approval), newly enacted laws became effective on January 1, 2019.

Wildfire and Natural Disasters

The unprecedented, catastrophic wildfires of 2017 and 2018 along with the growing frequency, scale, and aggressiveness of devastating wildfires that scorched the Golden State are becoming the new normal. The cost in terms of lives and damage from the 2018 Paradise wildfire resulted in the loss of over 12,000 homes and claimed over 80 lives. The greenhouse gas (GHG) emissions generated from the Paradise fire were equivalent to the GHG emissions from all of the cars and trucks emitted in California in one week. With approximately one-third of California homes located on the wildland interface and with the visible effects of climate change aggravating the risk due to extended and more severe droughts, the Legislature was preoccupied with managing this looming risk. Climate change has contributed to increased frequency and intensity of wildfires by reducing humidity, drought, and increased temperatures.

The Legislature embarked on a comprehensive package fashioning new laws to manage wildfire prevention, response and recovery including, fuel reduction and forestry, wildfire mitigation plans, mutual aid, fire-hardening homes, evacuation, and cost recovery by electric corporations of damages caused by wildfire.

Several new laws were passed to improve local conditions and reduce the risk of recurring catastrophes. SB 465 authorizes, until January 1, 2029, the use of contractual assessments to finance the installation of wildfire safety improvements on residential, commercial, industrial, agricultural, or other real property in very high fire hazard severity zones in a manner similar to existing Property Assessed Clean Energy (PACE) programs. Such improvements include the installation of ember-resistant roofs, dual-paned windows, driveways, and various ignition-resistant products such as walls, decks, and patio covers on existing homes.

AB 2911 (Friedman) intends to improve fire safety by emphasizing fire safety planning, defensible space requirements, and vegetation clearance along electrical transmission and distribution lines. By January 31, 2020, this new law requires the State Fire Marshal to recommend building standards to reduce fire risk to protect structures and to prevent fires from spreading, including a list of low-cost retrofits to lower fire risks to structures. reduction. This new law empowers the State Board of Forestry and Fire Protection (Forestry Board) to consult with a county board of supervisors or a city council if it does not adopt

the Forestry Board's recommendations. This new law requires the Board to survey local governments and fire districts to every five years to identify areas without secondary egress routes that present a significant fire risk and to recommend and share fire safety improvements.

AB 1956 (Limón) creates a local assistance grant program administered by the Department of Forestry and Fire Protection (CAL FIRE) in an effort to improve fire prevention. Grants can be used for year-round fire prevention activities (e.g., mechanical vegetation management, grazing, igniting prescribed burns, creation of defensible space, and retrofitting of structures to increase fire resistance). The Governor sent a letter to President Trump asking for "increased cooperation" with the federal government along with increased federal aid to combat wildfires. He also signed two executive orders: one "directs agencies to consider the fire risks of low income, elderly and social isolated state residents. . . . . second, changes the way state agencies contract with private companies, with the goal of boosting collaboration on mapping risk and incorporate technology."

According to Assembly member Eggman, AB 2126 responds to an "unprecedented tree die-off in the Sierra caused by years of drought, higher temperatures and poor forest management . . . which has left trees vulnerable to bark beetle infestations." This new law will leverage California Conservation Corps (CCC) forestry expertise and requires the CCC to implement forest health projects and establish forestry corps crews. SB 901 (Dodd) aims to reduce fuel loading in its forests by emphasizing removal of small and mid-sized trees that are currently overstocked. This new law creates two new exemptions to the Forest Practices Act, which, among other things, timber operations for commercial purposes, unless a timber harvesting plan prepared by a registered professional forester. The first exemption addresses fuel reduction permits for cutting trees less than 26 inches in stump diameter; however no new road construction or reconstruction is permitted in connection with the tree removal. The second establishes the small timberland owner exemption, which exempts cutting or removing trees on property up to 100 acres that are located within a single planning watershed, permitting cutting to reduce flammable materials and maintaining a fuel break. This new law provides that cutting for defensible space that does not comply with Forest Practices Act may be determined to be a nuisance. This new law also permits removal of trees less than 16 inches in diameter at breast height from a firebreak or fuel break and now allows the removed trees to be processed into logs or lumber. This new law carves out an exemption to the California Environmental Quality Act (CEQA) for prescribed fire, thinning, or fuel reduction projects on federal lands to reduce the risk of "high-severity wildfire" that have been evaluated under the federal National Environmental Policy Act. In addition, state and local agency permits and approval for these fire, thinning, or fuel reduction projects are now exempt from CEQA.

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Under the Forest Practices Act, a working forest landowner or a nonindustrial tree farmer must file working forest management plans or nonindustrial timber management plans, with the CAL FIRE to achieve an uneven aged timber stand and sustained yield. This new law allows nonindustrial timber management plans to include multiple tree farmers up to 2,500 acres. This new law reduces the acreage requiring an approved working forest management plan for working forest landowners from less than 15,000 acres, to less than 10,000 acres and now allows for multiple working forest landowners within a single hydrologic area. This new law requires, the land owner of a conservation easement containing forest lands that was purchased with state funds to improve forest health invest in projects that provide "resilient, long-term carbon sequestration and net carbon stores as well as watershed functions, to provide for the retention of larger trees and a natural range of age classes, and to ensure the growth and retention of such larger trees over time." This new also law requires CAL FIRE to create a Wildfire Resilience Program to provide technical assistance to nonindustrial timberland owners for wildfire resilience efforts including shepherding applicants through the permitting process.

AB 1492 (Stats. 2012) created Timber Regulation and Forest Restoration Fund (TRFRF), which primarily supports efforts by staff to review timber harvest plans s (THPs). The April 2018 Legislative Analyst Office (LAO) identified the California Forest Improvement Program (CFIP) reimbursement-based structure as a barrier to the success of the program (see the LAO's report "Improving California's Forest and Watershed Management") because "many of these small landowners . . . do not have the necessary money, equipment, or personnel on hand to cover the full upfront [underscore added] costs of the work authorized by CFIP." SB 1079 authorizes CAL FIRE to advance funds and provide loans to landowners to upgrade the management, protection, and enhancement of their forestlands.

SB 901 (Dodd) increases that maximum penalty from $50,000 to $100,000 for public utility violations. Additionally, this new law prohibits electrical corporations from recovering fines or penalties from its ratepayers. However, an electrical corporation may recover costs and expenses arising from a catastrophic wildfire, to allow cost recovery if the California Public Utilities Commission (CPUC) determines that the costs and expenses are just and reasonable. In addition, SB 901 requires that compensation paid to electrical or gas corporation officers must be funded solely by its shareholders. Additionally, SB 901 requires that wildfire mitigation plans prepared by electrical utilities be independently evaluated to ensure compliance with its plan including a safety culture evaluation. Failure to comply could now result in CPUC issued penalties. Utilities must also prepare wildfire mitigation measures if their overhead electrical lines and equipment are located in areas of significant wildfire risk. SB 901 requires local publicly owned electric utilities and electrical cooperatives to prepare and annually update wildfire mitigation plans. Finally, SB 901 establishes a preference for electrical corporations to employ, as opposed to contract for, "highly skilled and apprenticed personnel" to perform fire safety and prevention, mitigation, or maintenance services in direct defense of utility infrastructure. Where an electrical corporation has contracted for private fire support services, the utility may only use those services for the direct defense of its infrastructure. Moreover, this new law requires electrical corporations to make maximum efforts to reduce or eliminate use of contracted private fire safety personnel for these purposes.

Two new laws tinker with timber harvesting plans. AB 1954 (Patterson) extends the sunset date for an exemption from the Z'berg-Nejedly Forest Practices Act's requirement for submitting a THP to CAL FIRE. The exemption at issue is applicable to the cutting or removal of trees between 150 and 300 feet of a legally permitted habitable structure, to create defensible space and removal of surface and ladder fuels that promote the spread of wildfire. This new law extends the sunset date for this exemption from January 1, 2019 to January 1, 2022. AB 2889 (Caballero) is intended to achieve more effective and accurate reviews of timber harvesting plans to increase uniformity and efficiency with the process. This new law specifically requires CAL FIRE to issue guidance and provide assistance to those submitting timber harvesting plans (THPs) with respect to the processes and procedures governing the filing, review, approval, required modification, completion, and appeal of decisions.

AB 2518 (Aguiar-Curry) requires the Forest Health Task Force to identify barriers to establishing mass timber and innovative forest products in California and to make recommendations for siting wood product manufacturing facilities. The new law requires CAL FIRE to collaborate with the public, labor, and educational institutions.

The Legislature engaged in heavy lifting on the subject of igniting prescribed burns addressing challenges to the dearth of experienced forest practitioners, permitting acquisition, burn windows, and liability concerns. The Little Hoover Commission's 2018 report—"Fire on the Mountain," concludes that "[o]ver a century of fire suppression has led to an overabundance of small diameter trees and other woody materials that increase surface fuels that feed fires. Among other approaches, the commission recommends increasing the pace and scale of forest

restoration and developing a long-term plan for forest materials management. Brush, dead trees, high densities of small diameter trees, and forest detritus known as duff are some of the primary contributors to high-intensity fires." AB 2551 (Wood) provides additional authority to the CAL FIRE for prescribed burning operations where low-intensity fires burn vegetation under optimum weather conditions in accordance with an approved burn plan. Under this new law, CAL FIRE is authorized to enter into agreements with nonindustrial landowners to engage in efforts to improve forests in exchange for sharing the cost of performing the work. Finally, AB 2091 (Grayson) is intended to increase the pace and scale of prescribed burning by reducing barriers to conducting private and cooperative burns including liability concerns. Accordingly, this new law requires the Forest Management Task Force, by January 1, 2020, to collaborate with the Department of Insurance to develop recommendations for an insurance pool directed at reducing the cost of prescribed burns.

SB 1260 (Jackson) is an omnibus fire prevention and forestry management law aimed at promoting "long-term forest health and wildfire resiliency." This new law provides opportunities for public and private land managers to mitigate wildfire risks and strengthens the role of CAL FIRE in collaborating with local governments in identifying wildfire hazards as part of the planning process for new housing and neighborhoods. This new law requires, before a local planning agency proposes to substantially amend its general plan, it must refer the action to the Board of Forestry and every local agency that provides fire protection to territory in the city or county. Before local agencies approve tentative maps, parcel maps for areas located in a state responsibility area or a very high fire hazard severity zone, this new law requires the local agency to make a finding that the subdivision is consistent with the Board of Forestry regulations governing structures or consistent with local ordinances. This new law authorizes the Board of Forestry to request a consultation with the board of supervisors or city council if the local agency decides not to adopt the board's recommendations to the local safety element of the general plan. This new law provides that compliance with the burn permit issued by the CAL FIRE on private lands constitutes prima facie evidence of due diligence with respect fire liability. This new law authorizes private burn permit holders to use fire to abate fire hazards pursuant to prescribed burning operations. The new law requires, to the extent feasible, the State Board of Forestry and Fire Protection's certified programmatic environmental impact report for Vegetation Treatment will govern prescribed burns.

This new law expands the authority of CAL FIRE to, within its discretion, authorize property owners to construct firebreaks or implement appropriate vegetation management techniques to protect life, property, and natural resources from "unreasonable risks associated with wild land fires." Under this new law, "persons" responsible for electrical transmission or distribution lines are authorized to traverse land owned by others, subject to specified due process, to prune trees to maintain clearances and to prune or remove hazardous, dead, rotten, diseased, or structurally defective live trees. Under this new law, by July 1, 2020, the Office of Planning and Research, must update its guidance document entitled "Fire Hazard Planning, General Plan Technical Advice Series" guidance. It also requires CAL FIRE to update publicly available guidance which, among other information, must include fire resistant or drought tolerant native species.

The Legislature was busy fashioning policies to upgrade technology and revise processes to enhance emergency alert systems. SB 833 (McGuire) is designed to revise statewide protocols for emergency alerts to improve emergency response by upgrading technology. This new law requires the Office of Emergency Services (OES), by July 1, 2019, to develop voluntary guidelines to alert the public of an emergency along with a program an alert and warning training program. AB 2380 (Aguiar-Curry) seeks to fine-tune the emergency response apparatus to "to enable the best firefighting and mutual aid systems for any and all emergency situations in the future." It attempts to accomplish this by codifying many public emergency response standards to be implemented for privately contracted fire fighters to "put an end to confusion and strengthen emergency aid to benefit all Californians." SB 821 (Jackson) attempts to close a gap in the law that prevented wider use of mobile phones with a mass notification system. According to Senator Jackson, "because registration of mobile phones is not automatic many jurisdictions struggle to get residents to sign up to receive alerts." This new law authorizes county emergency management officials to access contact information or resident accounts from a public utility in order to automatically enroll residents in county-operated emergency notification systems with an opt-out option.

The Governor signed four laws addressing several aspects of insurance coverage ranging from adjusting the statute of limitations to sue an insurer to clarifying the rights of a home owner to rebuild. SB 30 (Lara) requires the Insurance Commissioner to convene a working group to identify, assess and recommend strategies promoting investment in natural infrastructure to reduce the risks of climate change with respect to risks to public safety, property, utilities, and infrastructure. AB 1772 (Aguiar-Curry) is an urgency measure designed to assist homeowners, experiencing permitting delays and challenges with securing contractors with bandwidth to rebuild after a wildfire disaster. This new law allows homeowners to rebuild their homes despite these delays while receiving

full replacement cost benefits from their homeowner's insurance policy. This new law extends from 24 months to 36 months the period of time within which policyholders can collect full replacement fire insurance benefits resulting from a declared disaster. This new law clarifies the definition of "good cause" entitling policyholders to six-month time extensions, on top of the 36 months provided by this new law. "Good cause" includes, but is not be limited to, delays that are beyond the control of the policyholder. According to the bill analysis for AB 1800 (Levine), policyholders may choose to rebuild on a site other than the insured site and be covered by its replacement cost insurance policy. AB 1800 was introduced in response to "some insurers who [have] maintained that 'extended replacement cost' and 'building code upgrade' coverages do not transfer to a new location." AB 1800 (Levine) is an urgency law that attempts to clarify that an insurance policy holder has a right, after a total loss, to rebuild or replace at a location other than the insured location. AB 2594 (Friedman) extends the statute of limitations from 12 to 24 months for a homeowner to sue their insurer for losses associated with a declared state of emergency.

Land Use and Housing

In a burst of activity, the Legislature delivered a number of new laws designed to expedite building new housing to meet the critical shortage and to alleviate the plight of California's homeless population. The Governor signed several new laws directed at streamlining land use approvals including AB 2973 (Gray) which provides additional incentives to build housing by allowing developers to use previously approved subdivision maps. This new law permits local governments to extend, by 24 months, unexpired subdivision maps governing construction of single or multifamily housing. This will help prevent or minimize schedule impacts to building new housing. Prior to this new law, the Subdivision Map Act required approved tentative map or vesting tentative maps to expire 24 months after its approval. The extensions are only available to subdivision maps that were approved between January 1, 2006, and July 11, 2013 and that map was previously extended pursuant to provisions contained in AB 1303 (see Stats. 2015 [Gray]). AB 2973 also modifies the timeframes under the Permit Streamlining Act for subdividers who fail to meet conditions of their building permits. AB 2132 (Levine) is aimed at lowering building permit fees to accommodate the elderly who are on fixed incomes and more prone to injury and who suffer with disabilities. This new law authorizes cities and counties to waive or reduce building permit fees for senior citizens seeking to improve their home to accommodate a qualifying disability.

The Housing Accountability Act (HAA or "Anti-Nimby" law) prohibits local agencies from disapproving or requiring density reductions in housing for very low, low-, or moderate-income households or an emergency shelter. Specifically, local agencies are prohibited from disapproving these projects or placing conditions of approval that renders the housing development infeasible. However, the local agency is allowed to disapprove or condition a project by issuing written findings, based upon a preponderance of the evidence, that one or more conditions will result in an adverse impact to public health or safety.

SB 850 (Committee on Budget and Fiscal Review) is an urgency law that makes a number of statutory changes necessary to implement the housing policies captured in the Budget Act of 2018. Last year the Legislature approved a comprehensive housing package addressing new policies and financial resources to tackle the housing crisis. The Legislature advanced several other new laws addressing "housing affordability, density bonuses", and "Smart Growth." In an effort to expand the number of housing developments protected by the HAA, the Governor signed three new laws in 2017: AB 678 (Bocanegra) which modified the HHA burden of proof supporting a local agency's decision to disapprove or condition an approval in a manner rendering infeasible an affordable housing project. SB 167 (Skinner) increases the burden from ''substantial evidence'' to ''a preponderance of the evidence'' when making findings supporting disapproval of a housing development project and its conformity with land use plans. Finally, AB 1515 (Daly) modified the standard of judicial review providing that a housing development project must be ''deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity.'' AB 3194 (Daly) builds upon AB 1515 by extending the protections of the HAA to housing development projects that are inconsistent with the zoning where the local jurisdiction has not brought its zoning ordinance in line with the general plan. This new law prohibits a local government from requiring a rezoning if the project is consistent with the current objective general plan standards and criteria. The housing project, however, must comply with the zoning requirements which are consistent with the general plan.

SB 35 (Stats. 2017 [Wiener]) was a seminal law that provided a streamlined ministerial project exemption under CEQA for affordable multifamily housing projects serving people and families of very low, low, or moderate income. SB 850 clarifies the percentage of affordable units

required for a municipality to enjoy ministerial approval where it fails to meet both its moderate-income and low-income housing allocations. Specifically, the municipality must demonstrate that there were "both fewer units of affordable housing for persons of above moderate income and for persons making 80% of the area median income." SB 850 also clarifies the percentage of affordable units required for a project under CEQA to enjoy the ministerial exemption for state or local government decisions approving funding for affordable housing projects. AB 1771 (Bloom) brings an emphasis on empirical data to regional housing needs assessment (RHNA) distributions to combat concerns of regional politics driving the process for allocating housing need. This new law attempts to accomplish this by requiring COGs to consider data on overcrowding and the housing burden (i.e., the percentage of existing households paying more than 30% percent of their income on rent). This data essentially emphasizes housing need instead of data on the market demand for housing. This new law also requires the Council of Government (COG) methodology to further RHNA objectives instead of just being consistent with those objectives. It additionally requires the COGs to be transparent about how each of the factors is used to further RHNA objectives. Additionally, this new law requires local governments disagreeing with an RHNA allocation to provide a basis justifying why the proposed housing allocation is inappropriate. This new law also prohibits two local governments from agreeing to an alternative distribution of housing allocations between them pursuant to an appealed housing allocation. Finally, this new law requires COGs to consult with the Department of Housing and Community Development (HCD) when developing the methodology for the RHNA allocation in order to catch potential issues earlier in the process, rather than requiring COGs to consult with HCD in developing RHNA plans. Finally, this new law adjusts the land uses subject to a list of opportunities and constraints for developing additional housing. It now includes adding land located in an unincorporated area that is agriculturally zoned that is "subject to a local voter-approved ballot measure prohibiting or restricting its conversion to non-agricultural uses."

SB 828 (Wiener) is another effort to advance housing element reform and is premised on the notion that population forecasts fail to account for California's history of underproduction of housing. This new law is designed to codify the HCD methodology for calculating existing housing need as well as projected need. This new law attempts to accomplish this objective by adjusting vacancy rates that COGs must share with HCD for the "existing housing stock" and for a "healthy housing market." By using more accurate vacancy rates, COGs will be better able to understand the balance between housing supply and demand and its impact on housing prices. By setting the vacancy rate for a healthy housing market at no less than 5%, this new law aims to increase new housing to a level that drives down the vacancy rate to stabilize or lower the cost of housing. This new law establishes an appeal process whereby COGs consider public comments on appeal and render a final allocation plan. This new law provides that municipalities that underproduced housing in a prior cycle may not use this data to justify a reduction in its share of regional housing.

AB 2753 (Friedman) was introduced to address inconsistent implementation of the density bonus law by local jurisdictions where developers who commit to building affordable housing receive increased density, concessions, incentives, waivers, and reductions in some development standards. According to the bill analysis, some developers report significant delays in processing development applications for housing. This new law is intended to provide greater certainty to developers who pursue density bonuses by requiring cities and counties to notify the developer of the amount of density bonus and any parking ratios for which the development is eligible and whether the developer's application is complete.

AB 2372 (Gloria) allows cities and counties to use an alternative methodology for determining eligibility for density housing bonuses in lieu of housing density (i.e., the number of units allowed per unit of lot area). This new law allows municipalities to calculate a building intensity-based system or floor area ratio (FAR) which is the ratio of building's floor area to its lot area. According to the bill analysis, the FAR methodology "incentivizes the production of more units- particularly smaller and more economical units." This new law prohibits municipalities from establishing parking requirements for eligible housing developments that exceed specified ratios. This new law provides that qualifying developments providing at least 20% percent of pre-FAR bonus for affordable units will be eligible for the FAR bonus in lieu of the maximum density allowed. AB 2797 (Bloom) was introduced to supersede the California Appeals Court holding in Kalnel Gardens, LLC v. City of Los Angeles ([(2016) 3 Cal.App.5th 927], (2016) which held that the state density bonus law which that would otherwise entitle a developer to zoning concessions, incentives, and waivers (e.g., a height variance) is subordinate to the California Coastal Act of 1976 (Coastal Act). This new law requires municipalities to accommodate density bonus, concessions, incentives, waivers or reductions of development standards and parking ratios; however, it must also be in harmony with the California Coastal Act.

SB 961 (Allen), the Second Neighborhood Infill Finance and Transit Improvements Act, authorizes local

governments to issue debt to finance affordable housing near transit without voter approval. Under this new law, new enhanced infrastructure financing districts may be created within one-half mile of a rail transit station or within 300 feet of a transit-rich boulevard served by bus rapid transit or high-frequency bus service. Voter approval is not required as long as 40% percent of the revenues are spent on affordable housing and the remaining 60% percent is spent on transit infrastructure, neighborhood greening and other improvements and the sponsoring government entity solicits and responds to public comments on the proposal.

One of the most controversial legislative debates of 2018 centered on California's housing shortage and increasing roadway congestion. AB 2923 (Chiu) fueled the debate by authorizing the state to override zoning powers of local government in relation to housing development near mass transit hubs. Assembly member Chiu introduced his new law to help expand housing to meet the Bay Area's housing shortage by advancing the San Francisco Bay Area Rapid Transit District's (BART's) transit-oriented development (TOD) guidelines to build out the land it owns around its stations by 2040 and to generate over 20,000 new units of housing, of which 7,000 will be affordable, and 4,500,000 sq. ft. will be office and commercial space, including child care and educational facilities.

The new law requires BART to adopt new TOD zoning standards for each of its stations with minimum requirements as to height, density, parking, and floor area ratio applicable to TOD project on BART owned land located within a half mile of most existing or planned BART station entrances. This new law is designed to "help expedite the production of well designed, mixed-use development adjacent to transit." At least 50 percent of the floor area of a TOD project must be dedicated to residential use. The law requires affected local jurisdictions to adopt a local zoning ordinance that conforms to the TOD zoning standards and becomes operative within two years of the date that the TOD zoning standards are adopted by the BART Board for a station, or by July 1, 2022, if the BART board has not adopted TOD zoning standards for the station.

Adoption of TOD zoning standards is subject to CEQA review (with BART as lead agency); but an eligible TOD project qualifies for streamlined ministerial approval (no additional CEQA review) if it meets certain standards related to height, floor area ratio (except projects that have specified adverse environmental impacts). After July 1, 2022, BART's TOD zoning standards will override inconsistent local zoning for BART-owned land. TOD developers must adhere to any applicable local design standards if not inconsistent with TOD zoning standards. Thirty percent of residential housing units in TOD projects must be affordable housing and construction of the TOD project must comply with specified labor requirements. When BART enters into an exclusive negotiating agreement with a developer for an eligible TOD project, that agreement confers vested rights to proceed.

With 25% percent of the homeless population in the country, the Legislature focused on tackling its chronic homeless challenge. AB 2162 (Chiu) attempts to streamline "supportive housing" which is now a use by right for multifamily and mixed projects. Developers must provide the local planning agency with a plan for providing supportive services. These local governments must not impose minimum parking requirements for these units for those developments located within half mile of a public transit stop. Because supportive housing permit applications are uses by right, they are now subject to the ministerial exemption under CEQA. SB 765 (Wiener) makes various changes to SB 35 (discussed above) and to AB 932 (Ting, Statutes of 2017), which allows local governments to include homeless shelters pursuant to a declaration of a housing emergency under the Shelter Crisis Act. This new law additionally provides an exemption from CEQA for state or local agency efforts to lease, convey or encumber government land for a development approved for very low, low, or moderate-income families. Further, local government must not impose automobile parking standards for these developments.

SB 1227 (Skinner) was inspired by studies revealing that an estimated 762,585 college students suffer housing insecurity or homelessness. This new law provides developers a 35% percent density bonus for constructing housing for students enrolled full-time at a Western Association of Schools and Colleges accredited college or university with at least 20% percent of the total units for lower-income student housing developments. These units are subject to a recorded affordability restriction for 55 years. SB 1012 (Delgado) is designed to avoid duplication of services in support of homeless populations. This new law permits city staff that established a homeless adult and family multidisciplinary personnel team (MDT) to seek county participation in its MDT.

Other new laws pertain to building permits like AB 565 (Bloom) which requires the HCD to update the California Building Code and Residential Building Code with respect to construction of live/work units. SB 1226 (Bates) is another new law pertaining to building permits. This new law is aimed at clarifying whether local jurisdictions may apply historical building standards to residential units when there is no record of a historical building permit. This new law makes clear that local land use authorities

have discretion to determine when the unit was constructed for purposes of retroactively applying the building standards that were in effect when the unit was determined to be constructed. This new law requires the HCD to draft building standards effectuating this new law. AB 2913 (Wood) harmonizes provisions governing extension of building permits for both "site-built" residential construction and manufactured homes. Prior to this new law, building permits would expire within six months if construction was not begun for site-built homes and three years for manufactured homes. This new law allows a building permit holder to seek up to two extensions for up to 180 days each for "justifiable cause" for site-built projects.

AB 2598 (Quirk) is a "thirty-thousand mile" checkup on adjusting the fines for ordinance violations which have not been updated since 1983. Sponsored by the League of California Cities and the California Association of Code Enforcement Officers, this new law increases the fines counties and cities may levy for local building and safety code violations. Specifically, this new law increases the fine for an infraction for a first violation from $100 to $130 for violations of a local building and safety code. It raises the fine for a second violation of the same ordinance within one year from $500 to $700. It also increases the fine of $1,000 to $1,300 for each additional violation within one year of the first violation. Finally, this new law establishes a $2,500 fine for each additional violation of the same ordinance within two years of the first violation for specified commercial property violations. This new law also requires the municipality to grant a hardship waiver to lower the amount of the fine.

Governor Brown issued two executive orders designed to boost Zero emission vehicles (ZEVs) in California respectively calling for 1.5 million ZEVs by 2025 5 million ZEVs by 2030. The Governor accordingly set a goal of installing 250,000 ZEV chargers by 2025. Senator Allen introduced SB 1016 to clear obstacles to install EV charging stations in condominiums. Unlike single family homeowners, condominium owners face the challenge of installing the EV infrastructure and meters in common areas which requires permission from the home owner's association (HOA). Prior to this new law, an HOA was prohibited from unreasonably hindering a residents' ability to install an EV charging station. Nonetheless, SB 1016 is designed to ease the availability of EV charging infrastructure by prohibiting an HOA from restricting the resident from installing the attendant meter infrastructure. Many energy efficiency programs remain out-of-reach of the millions of California renters in multiunit housing. Landlords have little incentive to invest in EV charging stations because they do not enjoy the upside benefit. Moreover, because renters are unable to take the EV infrastructure with them, they have little incentive to invest in EV infrastructure. SB 1016 (Allen) prohibits any unreasonable restriction that effectively prohibits or restricts the installation or use of an EV-dedicated time-of-use meter in common interest developments.

The controversial 2017 Tax Reform law (HR 1) ushered in significant changes to the federal income tax law. Among these changes, the law allows governors to designate certain census tracts in their states as Opportunity Zones where individuals can make investments in these zones and defer or eliminate federal taxes on capital gains. Governor Brown designated a total of 879 census tracts which qualified because they experienced poverty rates of at least 20% percent or have median family incomes of no more than 80% percent of statewide or metropolitan area family income. Assembly member Reyes introduced AB 1445 to "assure there is clear and transparent communication to communities by investors utilizing public lands [under the newly created opportunity zones program to help mitigate concerns that this strategy of using tax incentives to spur economic development may hurt the communities that these new capital investments are meant to benefit. . .. as it relates to the impact of the sale or lease of city or county owned property." AB 1445 requires that cities and counties leasing or selling property to qualified opportunity zone funds collect information on the timeline to complete the investment activity on the property and information on employment, and the local workforce.

The disastrous Napa fires in 2017 revealed a need to reform policies affecting how local agencies plan for and manage disasters "after the fact." Among other things, AB 2238 (Aguiar-Curry modifies to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 regarding the assumptions and methodology HCD must use in projecting regional housing needs and requires the COGs to adjust assumptions regarding housing availability within the region to include the loss of housing units from a state of emergency. This data must include the lost housing not yet rebuilt for the planning period immediately preceding the relevant revision of the housing element. This new law requires the Local Agency Formation Commission (LAFCO) to identify land subject to fire hazard for purposes of evaluating a proposal for a change of organization or a reorganization. In its review, the LAFCO must review relevant information contained in local hazard mitigation plans, the safety element of a general plan, and maps identifying high fire hazard zones. SB 1035 (Jackson) requires cities and counties to regularly update their general plan safety element with respect to climate adaptation and resiliency information. This must occur at least every eight years during the

scheduled update for its housing element or local hazard mitigation plan. This provision was accidentally removed in the 2016 legislative session. This new law restores this requirement.

AB 1943 (Waldron) responds to challenges mobile home owners face who sought to rebuild their homes that were destroyed in the Lilac Fire in San Diego County in 2017. These homeowners were unable to secure traditional loans because the HCD did not consider these homes "real property" because they were not considered permanently affixed to a foundation and able to obtain a building permit. Assembly member Waldron introduced AB 1943 to cure this gap in the law which provides that a registered owner of a manufactured home or mobile home in a mobile home park that is converted to a resident-owned park may provide written evidence of ownership as proof of their ownership in the mobile home park.

SB 850, discussed above, clarifies the Federal Emergency Management Agency (FEMA) standards that determine whether land use decisions governing housing located in a flood plain are subject to ministerial approval under CEQA. Prior to this new law, FEMA land use standards restricted sites within specified flood plains unless the development received a FEMA no-rise certificate. This new law acknowledges revised FEMA standards restricting developments in a floodplain. Under the new standard, development projects proposed within special flood hazard area subject to inundation (by the 1% annual chance flood) must not be approved. However, this new law restricts local governments from denying an application of a multifamily housing development that meets all FEMA qualifying criteria described above and is otherwise eligible for streamlining. This new law additionally establishes the California Emergency Solutions and Housing Program which provides one-time funding of $500 million for emergency aid block grants for "flexible solutions to address homelessness." This new law also requires the HCD to approve migrant farm labor center proposals that provide housing for migratory and nonmigratory farm workers. Up to 50% percent of the units must be available for nonmigratory farmers with school-age children.

CEQA

The Legislature approved several new CEQA exemptions to expedite land use approvals for residential or mixed-use housing, affordable housing, and "supportive housing." As explained more fully above, AB 2162 (Chiu) aims to streamline "supportive housing" for multifamily and mixed projects by allowing a ministerial exemption under CEQA. SB 765 (Wiener) exempts state or local agency efforts to lease, convey or encumber government land for a development approved for streamlining to house very low, low, or moderate-income families. SB 850 (Committee on Budget and Fiscal Review) clarifies the percentage of affordable units required for a ministerial exemption under CEQA. Finally, AB 1804 (Berman) establishes a CEQA exemption for residential or mixed-use housing projects located in unincorporated areas of a county meeting certain requirements.

AB 987 (Kamlager-Dove) and AB 734 (Bonta) allow CEQA streamlining for the proposed new Clippers basketball arena in Inglewood and A's baseball stadium at the Howard Terminal in Oakland, respectively. The new laws authorize the Governor to certify the projects for streamlining if the projects meet outlined conditions including LEED gold certification and adoption of transportation demand management programs to reduce vehicle traffic. Streamlining of CEQA provides for an expedited public process and the resolution of all litigation, including appeals, within 270 days.

AB 2782 (Friedman) authorizes CEQA lead agencies, in describing and evaluating a proposed project in a CEQA document, to consider both the specific economic, legal, social, technological, or other benefits—including region-wide or statewide benefits—of the proposed project, as well as the negative impacts of denying the project. Such considerations must be based on substantial evidence in light of the whole record.

Pursuant to AB 2341 (Mathis), which sunsets in January 1, 2024, a CEQA lead agency is no longer required to assess the aesthetic effects of a housing project that is primarily surrounded by "qualified urban uses" (currently defined to include any residential, commercial, public institutional, transit, and/or retail uses) and involves the rehabilitation or replacement of a building that is abandoned, dilapidated, or vacant for more than one year. Moreover, for such a project, any aesthetic effects of such a project must not be considered significant effects on the environment under CEQA. However, this partial exemption does not apply where: (1) the new structure "substantially" exceeds the height of the prior structure; (2) the project creates a new source of "substantial" light or glare; or (3) the project creates potentially significant aesthetic effects on an official state scenic highway or on historical or cultural resources.

Water Quality Water Supply

Legislative policy making this session focused on dam safety water use restrictions and efficiency, measures to restrict offshore oil and gas development, protecting California's wild and scenic rivers, and improving drinking water quality. The Governor and the Legislature have developed a number of policies since the last major

drought and in light of the anticipated increased frequency of severe droughts predicted by climate change models. In 2015, Governor Brown issued the first executive order in California history requiring the State Water Resources Control Board (SWRCB) to impose mandatory water restrictions to achieve a 25% percent statewide reduction in urban potable use from a 2013 baseline of usage. SWRCB further required urban water suppliers to ensure a three-year water supply during drought conditions pursuant to a localized "stress test."

SB 606 (Hertzberg) is a comprehensive reform package that responds to criticism of these policies for not recognizing previous water conservation achievements along with concern that the 2016 "stress test" is an insufficient approach to prevent shortages during another significant period of drought. This new law is designed to capture the recommendations from a bipartisan legislative working group that shifts the policy focus from water conservation to efficiency. This new law replaced the concept of "urban water use targets" with "urban water use objective" which means "an estimate of aggregate efficient water use for the previous year based on adopted water use efficiency standards and local service area characteristics for that year." This new law clarifies that local urban water suppliers have primary responsibility to achieve the standards-based water use targets while having discretion to develop water supply. This new law also empowers the SWRCB to issue penalties to urban water suppliers that fail to meet their urban water use objectives. The new law requires public and private urban water supplier's urban water management plans to additionally include drought risk assessments addressing water shortage risks for drought lasting five consecutive years. The water suppliers must also include in their urban water management plans a water shortage contingency. Urban water suppliers must perform annual water supply and demand assessments as well that address, among other things, anticipated shortages, response actions, and communication protocols.

AB 1668 (Friedman) requires the SWRCB, in coordination with the Department of Water Resources (DWR), to establish water efficiency standards and performance measures for commercial, industrial, and institutional water use. The standards must provide for per capita daily indoor residential water use limits of 55 gallons per capita daily, beginning January 1, 2025, 52.5 gallons beginning January 1, 2030, and 50 gallons per capita daily beginning January 1, 2030. DWR must also, by January 1, 2020, develop recommendations and guidance to assist counties in developing countywide drought and water shortage contingency plans and to identify small water suppliers and rural communities that may be at risk of drought and water shortage vulnerability by January 1, 2020. Additionally, agricultural water suppliers must submit to DWR an annual report summarizing "aggregated farm-gate delivery data using best professional practices." This new law requires agricultural water suppliers to revise the components of the agricultural water management plan to provide an annual water budget (based on the quantification of all inflow and outflow components for the service area) and a drought plan addressing how the water supplier will manage drought preparedness and response. The DWR's independent technical panel 2016 report on water demand management measures and technologies addressing water efficiency (titled "Recommendations Report to the Legislature on Landscape Water Use Efficiency.")

AB 2371 (Carrillo) was introduced to leverage these recommendations and requires the updated model water efficient landscaping ordinance to require that plants established at new landscapes must be labeled with their plant description at the time of inspection. This new law additionally authorizes a home inspection report for dwellings with an in-ground landscape irrigation system to include inspection fields including whether the system is defective or otherwise limited in functionality.

Prior to AB 747 (Caballero), administrative water rights in California were comprised of three entities managing water quality (SWRCB), water quantity (DWR) and the Department of Fish and Wildlife (DFW) and groundwater (primarily at the local level). This new law authorizes the SWRCB to establish an Administrative Hearings Office to serve as an independent entity to adjudicate water rights. By July 1, 2019, this new office must be staffed by attorneys qualified to act as hearing officers in adjudicative proceedings involving water rights matters including alleged water use and diversion violations and water-related cannabis enforcement matters.

AB 1270 (Gallagher) modifies the provisions governing DWR inspections of California's 1,250 dams and reservoirs and related infrastructure. Impoundments classified as high hazard and significant hazard must now be inspected annually instead of periodically. Low hazard dams must be inspected at least every two years. The new law also requires dam owners to annually operate critical outlet and spillway control features to demonstrate full operability. JR 38 (Mathis) urges Congress to implement revised dam safety and inspection requirements for all federally operated and regulated dams and reservoirs.

AB 2975 (Friedman) responds to efforts by the Trump Administration and the United States Congress to weaken protection of wild and scenic rivers in California. The Secretary of Natural Resources must take actions to add a river or segment to the state wild and scenic rivers system if he or she determines the federal government has removed or delisted a California river or river segment

protected under the federal Wild and Scenic Rivers Act and is not otherwise protected by the California Wild and Scenic Rivers Act. If he or she makes this determination, he or she must take action to add the river or river segment to the California wild and scenic river system.

Despite a recent Public Policy Institute of California poll showing 69% percent of Californians oppose drilling off the California Coast, the Trump Administration plans to lift the moratorium for new leases in federal waters off the California's coast. Assembly member Muratsuchi erected a barrier to the infrastructure allowing transport of the crude oil and gas for processing and refinement. AB 1775 (Muratsuchi) prohibits the State Lands Commission (SLC) or a local trustee from issuing new oil and gas right-of-way leases or renewing existing leases connected to infrastructure upon tidelands and submerged land leases issued after January 1, 2018, within state waters if it will increase oil or natural gas production from federal waters.

In response to the role of the California Coastal Commission (Coastal Commission) in the 2015 Refugio Beach oil spill, AB 2864 (Limón) requires that for oil spills affecting coastal resources, the administrator for oil spill response efforts, as designated by the Governor, must invite the Coastal Commission or the San Francisco Bay Conservation and Development Commission to participate in the natural resource damage assessment process regarding injuries to coastal resources and potential restoration and mitigation measures. SB 1147 (Hertzberg) was introduced in response to recent incidents whereby an off-shore oil and gas company "sought bankruptcy protection the day before the SLC considered terminating its lease at a hearing." This new law directs the State Oil and Gas Supervisor (SOGS) to coordinate with the SLC to help pay to decommission offshore oil and gas wells in the event of a bankruptcy. This new law authorizes the SLC to seek additional financial assurance (e.g., infrastructure bonding) when negotiating for offshore oil and gas leases. This will help the state in managing the costs associated with maintaining safe operations at oil and gas wells that are plugged and abandoned along with facility decommissioning. SB 1147 (Hertzberg) changes the requirements related to calculating and collecting security that must be given by oil and gas operators to the state SOGS or their wells located in submerged lands offshore. First, the Supervisor must allow oil and gas operators the opportunity to submit a cost estimate prior to a decision being made on the amount of security to be collected by the Supervisor that will ensure the full costs of plugging and abandoning all of the operator's wells is available. Additionally, the SLC must also include infrastructure bonding or other financial assurance when lease terms are negotiated or renegotiated so as to ensure sufficient protection against unfunded cleanup liabilities.

In an alarming report, The World Economic Forum, The New Plastics Economy: Rethinking the Future of Plastics (2016), the authors predict that "by 2050, plastics in the ocean will outweigh fish pound for pound if society keeps producing and failing to properly manage plastics at predicted rates." By July 1, 2020, SB 1422 (Portantino) requires the SWRCB to define microplastics in drinking water and by July 1, 2021 to adopt a methodology to detect microplastics in drinking water. This new law also directs the SWRCB to test and report the results. SB 966 (Wiener) directs the SWRCB to issue a comprehensive risk-based framework for use by local communities for developing oversight and management programs to manage non-potable water systems in multi-family residential, commercial, and mixed-use buildings. Local jurisdictions electing to establish non-potable water systems would be required to include the risk-based water quality framework. Finally, this new law requires the HCD to propose potentially applicable building standards governing the risk-based water quality standards by December 1, 2023. SB 1263 (Portantino) represents an initial step to understand the scale and risks of microplastics in the ocean so that the Ocean Protection Council can implement a Statewide Microplastics Strategy. This new law requires the Ocean Protection Council to establish a Statewide Microplastics Strategy. The Council is empowered to hire marine research institutes to assist in the research supporting this strategy.

Solid Waste

According to the Coastal Commission, the main source of plastic marine debris is from litter. AB 1884 (Calderon) is a much-heralded new law that responds to alarming evidence of the exponential growth in plastics accumulating in the Great Pacific Garbage Patch. The plastic eventually breaks down into microplastic which is finding its way in marine organisms and drinking water. According to the Coastal Commission, plastic straws are among the top 10 items most commonly found on Coastal Cleanup Day. This new law prohibits full-service restaurants from providing single-use plastic straws to consumers unless requested by the consumer. A second violation is an infraction subject to a $25 fine for each day of violation up to $300.

According to Senator Allen, "Non-recycled, single-use food packaging contributes to the nearly $500 million communities must spend annually to manage litter and prevent it from running off into California's surface waters." A California Department of Transportation study found that, approximately 15 percent of the storm drain litter is polystyrene. SB 1335 (Allen) created the Sustainable Packaging for the State of California Act of 2018 and follows the lead of over hundred jurisdictions

limiting Styrofoam and other forms of non-recyclable packaging. This new law prohibits food service concessionaires located in a state-owned facility from dispensing prepared food in packaging unless using approved food service packaging that are reusable, recyclable, or compostable. The Department of Resources Recycling and Recovery (CalRecycle) is required to identify approved food service packaging and make that information available on its internet website.

Agricultural operations have historically managed their own organic food materials outside of the solid waste management system and thus bypassing the landfill. For example, wineries have operated on-site operations to compost trimmings and return the compost to the soil. In other cases, agricultural compost has been converted to animal feed and mulch. AB 3036 (Cooley) responds to accounts where some solid waste local enforcement agencies, in an effort to comply with California's organics recycling requirements (Stats. 2016, SB 1383 [(Lara]) have resulted in agricultural compost ending up in a landfill. This new law is intended to clarify how to manage agricultural material. It prohibits local governments from including in their solid waste franchise agreements the handling of byproducts from food processing or beverages.

AB 2411 (McCarty) was inspired by the mudslides that occurred during the rainy season shortly after the Thomas fire of 2017. This is designed to develop additional markets for finished compost for short-term construction site management (e.g., erosion control and slope stabilization). This new law requires CalRecycle to implement a plan to maximize the use of compost in concert with removing debris from wildfires for slope stabilization. This new law also requires CalRecycle to work with Caltrans to cost-effectively deploy compost along California's roadways.

California's Bottle Bill (California Beverage Container Recycling and Litter Reduction Act) has been the most successful bottle new law in the country, achieving a recycling rate of 80% percent. The Bottle Bill is designed to create a financial incentive combined with convenience to recycle beverage containers. The law is premised on consumers initially paying a deposit to retailers, the California Refund Value (also known as the "CRV"), on each beverage container. Consumers are refunded their deposit when they return the empty beverage container to the recycler. AB 2493 (Bloom) allows beverage distributors pursuant to the California Bottle Bill to make payments electronically for handling fees, redemption payments, processing. This new law additionally allows recycling centers that use reverse vending machines or unmanned automated equipment to accept empty beverage containers and no longer must have employees present during operating hours. However, recycling centers must have an attendant available to accept all types of empty beverage containers for at least ten hours per week. In addition, the facility must be operable and properly functioning for at least 70 hours per week.

Hazardous Waste

Used oil must be managed as a hazardous waste in California unless it is recycled and meets specifications for recycled oil (i.e., low levels of heavy metals and halogenated solvents). Prior to AB 2928 (Chen), businesses generating used oil and used oil collection centers were obligated to comply with relevant requirements for generators of hazardous waste. Assembly member Chen introduced AB 2928 to provide regulatory and cost relief for "highly controlled generators" of used oil (e.g., trucking companies, railroads, utilities, and refineries). This new law offers an alternative route for highly controlled used oil to recycle their used oil more directly. These highly controlled generators own, manage, and maintain vehicle fleets. This new law authorizes these highly controlled generators of used oil to annually test their used oil to determine if it qualifies as hazardous waste. This new law allows these generators to avoid having to manage their used oil as hazardous waste if the oil does not exhibit hazardous waste characteristics or is contaminated with halogenated solvents. The generator must include in each used oil shipment a signed certification statement claiming the used oil is exempt from hazardous waste requirements. In addition, the used oil generator must maintain records of the tests supporting the certification.

All ZEVs and hybrid vehicles use lithium-ion batteries which must be managed as either universal or hazardous waste after use/at the end of life. Occupational Knowledge International projects that approximately eight million kilotons of waste Lithium-ion batteries will be generated from ZEVs. By April 1, 2019, AB 2832 (Dahle) requires CalEPA to convene the Lithium-Ion Car Battery Recycling Advisory Group charged with reviewing and advising the Legislature on policies to recover and recycle lithium-ion batteries sold with motor vehicles in the state.

Senator Jackson introduced SB 212 to manage improperly disposed pharmaceutical drugs and medical sharps. This new law establishes an industry-managed and funded program administered by CalRecycle, that provides convenient locations for safe disposal of unused prescriptions and other medical waste. This new law requires California manufacturers or distributors of covered drugs or sharps that sell drugs or sharps to implement a statewide "home-generated drug stewardship plan," or a "home-generated sharps waste stewardship plan", or both to collect and dispose of home-generated drug and sharps waste.

Hazardous Materials and Tanks

The California Legislature tweaked several aspects of the Aboveground Petroleum Storage Act (APSA) to bring about clarity including extending the statute of limitations for enforcement. Other new laws involved managing lead exposures to children, alerting salon workers of their occupational exposures to chemicals in cosmetics, and increasing penalties for California Accidental Release Prevention program (CalARP), and restrictions on flame retardants in furniture.

The APSA regulates tanks or containers with 55 gallons or more of petroleum storage capacity that is substantially or totally above the surface of the ground. Owners or operators of nonexempt tanks and containers must, among other things, prepare and implement a spill prevention control and countermeasure plan. AB 2902 (Committee on Environmental Safety and Toxic Materials) is one of two new laws that tinker with programs governing above and below ground tanks. This new law revises the definition and provides an exclusion from that definition of a regulated tank by excluding tanks in an underground area with a petroleum storage capacity of less than 55 gallons which has secondary containment and is inspected on a monthly basis. This new law also exempts tanks in an underground area holding hydraulic fluid for a "closed loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, or other similar devices, if it is a heating oil tank, or if the tank is a sump, separator, clarifier, catch basin, or storm drain." This new law expands the "emergency generator tank system" exemption from storing diesel to now include underground storage tank (UST) systems that store kerosene and are used solely to provide power supply in the event of a commercial power failure. This new law allows the SWRCB to affix a red tag to a UST indicating a notice of significant violation and to direct noncompliant UST owners or operators to empty noncompliant underground storage tanks. In addition, this new law prohibits delivery of hazardous substances into or withdrawal from, a red tagged UST. Prior to this new law, only local agencies had this authority. This new law prohibits local agencies from issuing or renewing a permit to operate USTs to which a red tag is currently affixed or to a facility that is currently subject to an enforcement action.

The new law also empowers a CUPA to issue a new permit or a renewal of a UST during a pending enforcement action while under appeal. This new law expands the scope of the information that regional water quality control boards, or the SWRCB may require of owners or operators of USTs to furnish and expands obligation to provide the required information under penalty of perjury to all persons.

In sponsoring AB 1980 (Quirk), the Alameda County District Attorney's Office states that "it typically takes a year or more to investigate and prepare cases supporting APSA violations" not counting the time it would take for the district attorney (DA), city attorney, or Attorney General to prosecute the violation. This new law harmonizes the APSA statute of limitations with the other CUPA regulatory programs (i.e., USTs, aboveground tank management, hazardous materials management, risk management plans, hazardous waste management and treatment) for civil enforcement from one year to five years. This new law now requires the immediate report of an actual release of a hazardous substance, (in addition to hazardous materials) to the unified program agency and to OES.

AB 3138 (Muratsuchi) increases civil and administrative penalties for violations under the CalARP for refineries and other facilities that handle highly toxic or flammable chemicals raising the maximum civil and administrative penalty from $2,000 to $5,000 per violation per day penalty.

AB 2775 (Kalra) requires a professional cosmetic manufactured on or after July 1, 2020, for sale in California to label containers in compliance with the federal Sherman Food, Drug, and Cosmetic Law governing retail cosmetic products to commercial products. This new law is premised on the notion that, unlike cosmetic products sold to the public for lifestyle consumption, professional salon employees are exposed to cosmetic products for up to eight hours daily. This new law provides chemical transparency for salon workers in line with similar standardized for food, cleaning, and retail cosmetics.

Medical studies suggest that flame retardant chemicals cause cancer, endocrine and thyroid disruption, immune system impacts, and reproductive toxicity. By January 1, 2020, AB 2998 (Bloom) prohibits the manufacture, sale, or distribution of reupholstered furniture or any new juvenile products, mattresses, or upholstered furniture containing covered flame-retardant chemicals at levels above 1,000 parts per million. This new law also prohibits a custom upholsterer from repairing upholstered furniture or reupholstered furniture using replacement components that contain covered flame-retardant chemicals at or above these limits.

Two new laws aim to improve managing testing, notification, and reporting of lead test results to better protect children along with testing drinking water for lead. Assembly member Holden introduced AB 2370 "to protect our children from the irreversible damage caused by lead . . . [and to] expand lead testing to child care facilities because we know younger children absorb more lead and there is no cure to the harm it causes." AB 2370 requires licensed child day care facilities to provide parents and guardians written information on the risks and effects of lead exposure, blood lead testing recommendations and

requirements, along with options for obtaining blood lead testing. It also requires licensed child day care center facilities constructed before January 1, 2010, to test its drinking water for lead contamination and to notify parents or legal guardians of those children enrolled of the requirement to test the drinking water and the test results. When elevated levels of lead are detected, the day care centers must immediately make the affected fountains inoperable, terminate their use, and provide an alternative potable source for water. Finally, this new law expands the training required for personnel operating family day care facilities to expand the health and safety training curriculum to include prevention of lead exposure by July 1, 2020. According to the Senator Leyva, nearly three-fourths of children on Medi-Cal are not being tested for lead poisoning. SB 1041 (Leyva) requires health care providers who periodically perform health assessments for children to inform the parents and guardians about the health risk of childhood lead exposure and blood lead screening tests. Children enrolled in Medi-Cal must receive blood screening tests.

AB 1877 (Limón) was prompted by data showing that "44% of Californians over the age of five speaking a language other than English at home." This new law is intended to ensure that emergency communications are understood in "linguistically diverse communities." Under this new law, state and county emergency services communications must be made accessible to linguistically diverse communities. Specifically, this new law requires OES to create a library of translated emergency notifications and a translation style guide. Alerting authorities must consider using these tools when issuing emergency notifications to the public. Under the California Emergency Services Act, cities and counties are authorized to proclaim a local emergency and to determine whether a local emergency still exists. AB 2898 (Gloria) extends from 30 to 60 days a governing body of a local agency must review the need to continue a local emergency.

SB 1481 (Hill) is an omnibus law that makes a variety of changes to the Structural Pest Control Act (SPBA) designed to improve oversight of its regulated community. Among other things, this new law allows an aggrieved person whose license or registration has been disciplined to petition the SPCB for reinstatement or to have the penalty modified. This new law deputizes county agricultural commissioners to enforce the SPCA. Finally, this new law changes the minimum penalties for pesticide violations to be no less than $50 and no more than $5,000.

Air Quality and Transportation

The Legislature was preoccupied with several new laws promoting EVs and EV infrastructure, tackling new paradigms to fund the state's roadways, and adjusting which cars enjoy the privilege of using the high-occupancy vehicle (HOV) lanes.

SB 1328 (Beall) is premised on the notion that a fuel excise tax is becoming unsustainable owing to the advancements in drive train technology which is resulting in a less equitable funding source to maintain California's transportation infrastructure. According to the bill analysis, a "Toyota Prius driver [pays] less than half the gas tax of a driver of a typical car and less than one-quarter of the gas tax of the driver of a Chevy Suburban, assuming both drive the same number of miles ... [and] electric vehicles pay no gas tax at all." This new law extends the authorization for the Road Usage Charge Technical Advisory Committee (TAC) another four years. This will allow the TAC to continue its efforts to evaluate the viability of a potential "road charge system" as an alternative method of raising revenue road maintenance revenues.

California has invested vast sums of money into alternative fuels and vehicles through an array of programs over the last decade, with a particular focus on EVs. AB 2145 (Reyes) is one of several new laws aimed at advancing ZEVs. This new law helps advance California's efforts under the California Clean Truck, Bus, and Off-Road Vehicle and Equipment Technology Program (established in 2014) to support beneficial integration of heavy and medium EVs into the state's electric system. AB 2145 also modified the state's Alternative and Renewable Fuel and Vehicle Technology Program (established in 2007) to, among other things, emphasize funding, development and the deployment of technology and infrastructure supporting EV charging—with a focus on medium and heavy-duty vehicles.

AB 2127 requires that the State Energy Resources Conservation and Development Commission (CEC), working with the ARB and the CPUC, and with stakeholder input, to prepare an analysis every other year evaluating EV charging infrastructure (i.e., chargers, make-ready electrical equipment, supporting hardware and software, vehicle, port and airport electrification, etc.) needed to meet the statewide goal of having at least 5 million ZEVs on California roads by 2030 and of reducing GHG emissions to 40% percent below 1990 levels by 2030.

California has an interim goal of 1.5 million ZEVs by 2025, and one million electric cars, trucks, and buses on California's roads by 2023. To accomplish these goals, the Clean Vehicle Rebate Program was established to help reduce the up-front costs to purchase new vehicles. Since low-income communities are the most impacted by climate change and have the highest economic barriers to purchasing new vehicles, and thus have the most to gain, AB 2885 (Rodriguez) requires the ARB to, through

the start of 2022, provide additional outreach to low-income households and low-income communities. These efforts are intended to increase consumer awareness of the rebate project and prioritize rebate payments to low-income applicants.

To support the retention of electric and fuel cell vehicles on the road, AB 193 (Cervantes) establishes the Zero Emissions Assurance Project for the purpose of rebates solely for the replacement of a battery, fuel cell, or related components for an eligible used vehicle, or for the vehicle service contract for the battery, fuel cell, or components.

AB 1796 makes it harder for lessors of residential buildings to deny requests by their tenants to install electric vehicle charging stations at parking spaces. The new law also enshrines tenant rights to install charging stations on residential properties even when those properties are subject to rent control. In some areas of the state where a large portion of rental units are subject to rent control, AB 1796 is expected to significantly increase access to residential charging.

To ensure maximum access to publicly funded charging infrastructure and maximize the benefit of EV adoption across the California energy system, SB 1000 takes a multi-faceted and multi-agency approach to electric vehicle charging and integration. First, SB 1000 prohibits cities and counties from restricting which types of vehicles can access publicly funded passenger vehicle charging stations. This new law also requires the CEC, as part of the funding made available through the Alternative and Renewable Fuel and Vehicle Technology Fund to assess and ensure that charging station infrastructure is not disproportionately deployed. Finally, SB 1000 requires the CPUC to implement rulemaking activities that facilitate the development of technologies that promote grid integration, (including sub metering), explore policies that support technology development, look at rate designs that can reduce the effects of demand charges, and adopt a tariff specific to heavy-duty electric vehicle fleets or electric trucks and buses that encourages the use of charging stations when there is excess grid capacity.

SB 1403 (Lara) adds new planning elements to the state ARB's current 3-year investment strategy plan for zero- and near-zero-emission heavy-duty vehicles and equipment—including assessments of the role that public investments can have in supporting advanced technologies, evaluation of available funding and the investment needed, and a description of investments available from the ARB. The new law also requires the ARB to include the efficacy of school bus programs in its planning efforts to inform additional investments in lower-emissions school buses in California.

To help ease the restrictions impeding the deployment of near-zero-emission or zero-emission heavy duty vehicles on California roads, AB 2061 (Frazier) increased the maximum allowable weight of near-zero-emission or zero-emission vehicles on the state's highways from 80,000 pounds to 82,000 pounds. By making this change, the new law is aimed at reducing the burden that is placed on truck owners associated with needing to carry extra weight associated with installing natural gas fuel tanks or battery packs to reduce the emissions of their vehicles.

As a way to help ensure that California's movement toward 1.5 million electric vehicles by 2025 benefits low-income and disadvantaged communities, AB 2006 creates new requirements on the State ARB to ensure that agricultural vanpool programs actually serve disadvantaged and low-income communities, while also mandating that at least 25% percent of state money going to these programs go to vanpools serving low-income communities.

To help foster the market for used zero emissions vehicles and increase their purchase by lower income Californians, SB 957 allows vehicle owners who make less than 80% percent of the median income level in California to obtain a Clean Air Vehicle sticker even if their used car had one in the past. Vehicles with these stickers will be able to use the high-occupancy vehicle lanes in the state, though the stickers will expire on January 1, 2024.

SB 848 (Committee on Budget and Fiscal Review) is an urgency "trailer" new law that makes several statutory adjustments to implement the Budget Act of 2018 more effectively. Among many other things, this new law amends AB 544 (Stats. 2017 [Bloom]), extends the use of the HOV lanes which were scheduled to expire on January 1, 2019 valid until January 1, 2022 for super ultra-low emission vehicles (SULEV), advanced technology partial zero-emission vehicles (ATPZEV), or transitional zero-emission vehicles(TZEV).

In the wake of the Volkswagen emissions scandal, the Legislature crafted several initiatives to enhance the state's ability to detect and penalize cheaters. AB 2381 (Carillo) requires the Air Resources Board (ARB) to enhance its certification, audit, and compliance activities for new motor vehicles to detect defeat devices or other software used to evade emissions testing—just as was the case with Volkswagen. To fund this program, manufacturers of new motor vehicles must now pay a fee (collectively of up to five million dollars per year) which is deposited in a new fund named the Certification and Compliance Fund. Additionally, the ARB is authorized to impose penalties on the manufacturers of new motor vehicles for failure to pay the fee.

AB 2564 establishes a new civil penalty of $25,000 per violation for operators of heavy-duty trucks that use glider

kits and who violate California air quality emissions regulations. Since some trucks with glider kits may have older model year engines, the emissions rate of trucks with glider kits may be significantly above the standards established for new trucks. As a result, this exacerbates negative air quality and places truck owners who use and install compliant equipment at a competitive disadvantage. AB 2564 (Rodriguez) is meant as a deterrent against the use of polluting glider kits and an incentive to comply with existing air quality standards.

SB 1502 is a procedural new law that updates requirements at local air districts for notifying the public about hearings, maintaining mail and email addresses, and sending mail to designated people about hearings and workshops.

Unlike California Department of Transportation (Caltrans) (and other state agencies like the UC system), the High-Speed Rail Authority (HSRA) must follow a lengthy, multi-step process to acquire property. SB 1172 (Beall) is designed to streamline the property acquisition and allow the HSRA authority to acquire rights-of-way with eminent domain. According to Senator Beall "There should be parity in the process equitable to other state agencies that carry out large multi-parcel projects in the state…. this change is long overdue, makes sense, and will help create a more efficient pathway forward." Specifically, this new law exempts the HSRA from the Property Acquisition Law.

SJR 30 (McGuire) responds to the Trump Administration's 2019 budget proposal to cut funding for National Railroad Passenger Corporation (Amtrak) National Network of passenger trains. SJR 30 urges "Congress and the President of the United States to support the retention of, and investment in, the Amtrak National Network of passenger trains … as vital components of the state's rail program" and would also urge "Congress to reject President Trump's proposed Fiscal Year 2019 federal budget cuts to Amtrak and restore full funding for the Amtrak National Network through the appropriations process."

AB 3124 (Bloom) authorizes installation of bicycle carriers to the front of 60-foot long articulated buses or trolleys that are designed to hold three bicycles instead of two. Any agency wishing to install one of these bike racks must make a determination of which routes are suitable for the safe operation of a bus or trolley using them before installation.

To encourage improving air quality in schools, AB 2453 (Eduardo Garcia) authorized using updated air filtration systems for school modernization projects pursuant to the Leroy F. Greene School Facilities Act of 1998. This new law also authorized schools and school districts to work with local air pollution control districts to identify facilities needing air quality improvement and to financially help those sites obtain grants pursuant to the AB 617 (Stats. 2017 [(Cristina Garcia]) community emissions reduction program.

Climate Change

Two earth shaking reports released in the fall of 2018 underscore the urgency of tackling climate change with undivided attention and vigor. The International Panel on Climate Change issued a dire forecast of approaching a point of no return if worldwide emissions do not achieve the Paris Agreement target by 2030 and drop to levels that warm the earth less than 1.5 degrees Celsius. The fourth, federally mandated National Climate Assessment was released with input from 13 federal agencies with input from hundreds of leading scientists. It forecasts devastating impacts that would cripple the economy of the United States and result in losing over ten percent of gross domestic product, by 2100, in the worst-case scenario. As California comes to terms with a climate constrained future impacted with more frequent and severe droughts and wild fires, the Legislature approved and the Governor signed policies to reduce natural gas consumption, promoting the use of biomethane.

As California takes an even more aggressive stance to combat climate change, new approaches are being developed to cut fossil fuel dependency across the economy—in particular in the area of natural gas. In 2018, a trio of new laws were adopted that made significant headway toward creating a more comprehensive approach to natural gas going forward. AB 2195 (Chau) requires the ARB to include, within the statewide inventory for GHG emissions for accounting purposes, a quantification of the amount of natural gas emissions from venting and flaring that occurs for gas imported into California, prior to it reaching the state. This accounting will go alongside the accounting for emissions that occur from natural gas transport and use in-state, creating a clearer picture of the total footprint of the state's natural gas dependency. Working alongside AB 3187 (Grayson), SB 1440 (Hueso) aims to increase the generation and use of biomethane within the natural gas system in California by requiring the CPUC to consider adopting a biomethane procurement target or goal for each gas corporation in California. If the CPUC adopt a target or goal, SB 1440 requires the target be a cost-effective way to reduce climate pollution, be consistent with the state's organic waste disposal reduction goals, and the capture or production of biomethane directly results in at least one of the several specified environmental benefits. Together with SB 1440 (Hueso), AB 3187 (Grayson) is intended to

increase the collection and treatment of biomethane across California by requiring the CPUC to pursue in a formal proceeding, authorization for utilities to make investments in the procurement and installation of utility infrastructure necessary to connect the natural gas transmission and distribution pipeline network and biomethane generation and collection equipment, and provide for the installation of utility infrastructure to achieve interconnection with facilities that generate biomethane.

As a complement to the state's carbon dioxide reduction efforts to fight climate change, a series of successful legislative enactments have occurred over the past three years to limit emissions from the broad class of short-lived climate pollutants, also known as "super pollutants." SB 1013 (Lara) targets certain types and classes of refrigerants and sets California on a path toward limiting the use of fluorinated gases (F-gases) in refrigeration. First, SB 1013 codifies prohibitions on certain refrigerants such as ozone depleting substances and f-gases adopted by the USEPA, meaning that any vacated federal prohibitions will remain active in California. SB 1013 also mandates a series of mechanisms to create better market drivers for climate friendly refrigerants that serve as alternatives to f-gases, including requiring the CPUC to look at strategies for including climate friendly refrigerants in energy efficiency programs, for the CEC to find opportunities to evaluate the energy performance of climate friendly refrigerants in appliances and equipment, and for the Department of Community Services and Development to look for ways to integrate climate friendly refrigerants into its energy efficiency programs such as the Energy Efficiency Low-Income Weatherization Program. SB 1013 also establishes a new program at the ARB known as the Fluorinated Gases Emission Reduction Incentive Program, to promote the adoption of new refrigerant technologies.

Two new laws are aimed at managing wildfire risk. AB 1981 (Limón) adds CAL FIRE to the list of CalEPA departments comprising the Forest Management Task Force. This task force is charged with reducing GHG emissions by at least five million metric tons per year. SB 901 requires the ARB to consult with CAL FIRE to standardize a methodology to quantify direct carbon emissions and decay resulting from wildfire management activities designed to reduce forest fuel. This approach must establish a historic baseline of GHG emissions reflecting conditions before the era of modern fire suppression. These data will be used for accounting requirements of the Greenhouse Gas Reduction Fund expenditures. SB 1119 makes it easier for transit agencies to obtain and spend money dispersed through the GHG reduction fund from the state's cap-and-trade program when that money is spent on new or expanded transit service that connects disadvantaged or low-income communities, fare subsidies and network and fare integration technology improvements, or the purchase of zero-emission transit buses and supporting infrastructure.

AB 1933 (Maienschein) expands the projects that are eligible to receive grants from CalRecycle and the GGRF to include those projects that improve waste diversion and recycling, including the recovery of food for human consumption and food waste prevention. AB 3012 (Gallagher) is another grant-related bill that directs the Coastal Conservancy to prioritize issuing grants to projects that reduce flood risk and enhance fish and wildlife habitat, including projects that transfer excavated material to shorelines impacted by climate change.

Within California, several grant programs have been established to direct money into disadvantaged and low-income communities—in particular around building sustainable communities to combat climate change. Many community groups, however, continue to lack the structure and organization to compete for these grant opportunities. In response, SB1072 establishes a regional climate collaborative program within the California Strategic Growth Council to provide funding to disadvantaged and low-income communities that form collaboratives meeting specific conditions so they may receive capacity-building and technical assistance that helps increase competitiveness and sophistication in the grant seeking process.

With the continued growth of companies like Uber and Lyft, and the now clearly delineated regulatory oversight maintained by the CPUC for these companies as transportation network companies, SB 1014 established a new program—the California Clean Miles Standard and Incentive Program—to cut GHG pollution from ride-hailing segment of the transportation system. In implementing the new law, the state ARB must first establish a baseline of emissions for companies involved in the ride-hailing business, followed by the development of emissions reduction targets that must be met by each company though the development and implementation of a GHG emissions reduction plan. When implemented, SB 1014 is expected to significantly expand the use of zero emissions vehicles in these companies.

Energy

Notwithstanding the projections for dramatic growth in renewables, forecasted phase out of coal in China and India, and "global oil used for cars will peak by the mid-2020's" we are not adopting renewable energy quickly enough to meet what scientists believe is necessary to forestall the impacts of climate change. In response to the recognized need to cut climate pollution from all sectors of the economy and the significant opportunity to do so in the electric sector, California passed SB 100

(De León)—the most ambitious clean energy law in the nation. SB 100 establishes a statewide policy requiring 100% percent of all electricity sold in California by the year 2050 to end-use customers, and 100% percent of all electricity procured by state agencies must be from renewable energy and zero-carbon resources by December 31, 2045. As part of the pathway to achieving the 100% percent target, SB 100 increases existing statutory mandates that require retail sellers and local publicly owned electric utilities (POUs) to procure a minimum quantity of electricity from eligible renewable energy resources. These new standards require that electricity products sold to retail end-use customers must be at least 44% percent renewable by December 31, 2024, 52% percent by December 31, 2027, and 60% percent by December 31, 2030—based on the total kilowatt-hours sold.

Other renewable energy programs approved this legislative session address the California Renewables Portfolio Standard (RPS) Program; efforts to expand rooftop solar systems; advancing development of microgrids; and energy reliability. Under the RPS, the CPUC annually procures eligible renewable energy to meet its procurement targets including 125 megawatts of cumulative rated generating capacity from bioenergy projects that use certain types of forest feedstock. SB 901 (Dodd) expands the fuels and feedstocks that are eligible to meet wildfire risk reduction fuel and feedstock requirements for the three largest electrical corporations in California. Under this new law, the CPUC is empowered to allow bioenergy facilities to report fuel or feedstock used. SB 1110 (Bradford) allows POUs very limited, additional flexibility to comply with CA's RPS in cases where the POU financed a natural gas powerplant in response to the electricity crisis and for which they still have public bonded indebtedness. The additional flexibility applies only if the RPS increases to more than 50 percent and where a POU's gas-fired powerplant would operate at less than 20% percent of capacity due to mandated purchase of renewable energy. The local POUs must show that it has attempted to mitigate against the reduction in generation capacity by selling the powerplant or attempting to sell that power. This new law only applies to gas-fired powerplants located inside California, that are owned by and serve the electrical demands of a single local POU, and where operating below 20% percent capacity factor may result in the loss of employment of a powerplant employee who receives a prevailing wage. At the time of passage, three powerplants located in Santa Clara, Roseville, and Redding CA were expected to be able to meet the criteria in the law.

In support of the state's effort to maximize the growth of renewables and remove obstacles to additional adoption, AB 1414 (Friedman) makes changes to existing law governing permit fees for rooftop solar energy systems and by extending the protections in law so that landowners using new technology can maintain access to sunlight. Related to permit fees, this new law prohibits cities and counties from charging a fee that exceeds the estimated cost of providing the permitting service for photovoltaic (PV) rooftop solar systems and caps the total fee at $450 for residential rooftop solar energy systems. AB 1414 also caps commercial rooftop solar systems and solar thermal systems at $1,000, though cities or counties can receive an exemption for either the residential or commercial cap if they have substantial evidence that a higher fee is necessary. Related to the right of access for sunlight, AB 1414 expands the type of systems that are covered under the state's Solar Right Act to include technology integrated into buildings such as PV windows, siding, and roofing shingles or tiles.

The Property Assessed Clean Energy (PACE) program has helped ease the transition to solar power in California. It allows property owners to enter into voluntary contractual assessments to finance the installation of distributed generation renewable energy sources or energy or water efficiency improvements (with repayment of the cost over 20 years via an assessment on the property tax new law bill). PACE program administrators must make a reasonably good faith determination that the property owner has a reasonable ability to pay the PACE assessment. This law strengthens oversight of PACE administrators by requiring that processes for enrolling, promoting, and evaluating PACE solicitors and solicitor agents be acceptable to the Commissioner of Business Oversight. AB 2063 (Aguiar-Curry) tightens consumer protections under the California Financing Law regarding: (1) licensing requirements and procedures of program administrators under the PACE program; and (2) criteria for approval of PACE assessment contracts. These include provisions to clarify, correct, and clean up the PACE law in response to rising default rates which can lead to foreclosure causing property owners to lose their homes. These modifications seek to ensure that property owners do not enter into an assessment contract they cannot afford. This new law also liberalizes criteria for approval of a PACE assessment contract. It shortens the period within which an applicant must: (1) not be a party to any bankruptcy proceeding (from 7 years for to 4 years); and (2) be current on all mortgage debt on the subject property (from 12 months to 6 months immediately preceding the application date). It also authorizes a program administrator to consider the income of a property owner's legal spouse through marriage or domestic partnership who is not on title to the property. The new law also requires such a person's name to be recorded in the assessment documents. The law requires, that if the PACE administrator is responsible to pay the difference

between the amount determined and the actual amount financed, the PACE administrator must provide a written explanation as to how the ability to pay was determined. This new law makes minor changes to procedural and reporting requirements, including provisions relating to: recording of oral confirmation of the key terms of an assessment contract; annual reports by program administrators and Commissioner of Business Oversight; and, property owner obligation to inform insurance companies and to determine whether the improvements financed by the PACE assessment are covered by the property owner's insurance plan. Finally, AB 2063 prohibits a person from engaging in the business of a PACE solicitor unless that person is enrolled with a program administrator. This new law clarifies that persons who only solicit a property owner to enter into an assessment contract are not a "PACE solicitor" and "PACE solicitor agent" and therefore not required to be licensed under the PACE program.

AB 3232 (Friedman) changes the way buildings are evaluated by the CEC for emissions control, in particular for emissions from natural gas consumption. Prior to this new law, as part of the regular process for developing and updating building design and construction standards, and energy and water conservation standards for new residential and nonresidential buildings, the CEC was required to focus its efforts on reducing wasteful, uneconomic, inefficient, or unnecessary consumption of energy. Under AB 3232, by January 1, 2021, the CEC must also assess the potential to reduce GHG emissions from the state's residential and commercial building stock, with a goal of 40% percent reductions below 1990 levels by January 1, 2030. The assessment must be included in the state's integrated energy policy report and is likely to serve as the basis for new standards on residential and commercial buildings for GHG control.

SB 1477 (Stern) creates a pair of new programs funded by the state's cap-and-trade regulation for $50 million per year, to be overseen by the CPUC for the purpose of reducing GHG emissions in buildings—primarily through reduced natural gas use. The first program named the TECH (Technology and Equipment for Clean Heating) Initiative is aimed at developing the state's market for low-emission space and water heating equipment for new and existing residential buildings. As part of this program, the CPUC must identify and target key low-emission space and water heating equipment technologies that are in an early stage of market development and that would assist the state in achieving its GHG emissions reduction goals. The second program, named the BUILD (Building Initiative for Low-Emissions Development) program, requires gas utilities to provide incentives for near-zero-emission building technologies that significantly reduce the emissions of GHGs from buildings.

SB 700 (Wiener) extends the sunset date for the state's $166 million per year Self-Generation Incentive Program (SGIP) by five years—with a new end date of January 1, 2026. In so doing, SB 700 requires the CPUC to adopt requirements for storage systems to ensure that they reduce GHG emissions, and it prohibits generation technologies using non-renewable fuels from obtaining SGIP incentives as of January 1, 2020. By modifying the SGIP program at the same time it is extended, the new program is expected to be more certain to result in reduced emissions of GHGs through energy storage and energy generation.

To increase the opportunity for hydrogen made from electrolysis using renewable resources to qualify for programs and incentives aimed at promoting energy storage, SB 1369 (Skinner) requires the CPUC, ARB, and California Energy Commission to consider green electrolytic hydrogen as an eligible form of energy storage and consider other potential uses of green electrolytic hydrogen.

The Legislature advanced several new laws aimed at achieving energy efficiency. SB 1131 (Hertzberg) responds to concerns that industrial electric and gas customers have been discouraged from participating in utility energy efficiency programs. It streamlines the state's energy efficiency programs for agricultural and industrial customers (one-fifth of all electricity use and nearly one-third of natural gas use statewide). Specifically, these allow industrial and agricultural customers to use normalized metered energy consumption approaches to plan and verify energy efficiency savings (including operational, behavioral, and retro-commissioning activities reasonably expected to produce multiyear savings). The law is expected to increase access to existing industrial ratepayer energy efficiency funds, improve transparency in vetting projects at the CPUC and to clarify eligibility criteria for industrial and agricultural facilities seeking to participate in energy efficiency programs.

The Governor signed two new laws modifying CPUC outreach and internal communication. AB 2831 (Limon) requires the CPUC to take steps to increase awareness of the demand side management programs that are available to small businesses in California through the Energy Upgrade California Program. To accomplish this, the AB 2831 requires changes to the Energy Upgrade California website and increased marketing and outreach efforts to small businesses. As a follow-up to legislation passed in 2016 to change the transparency and decision-making processes of the CPUC, SB 1358 (Hueso) was enacted to further improve the efficiency and transparency of the CPUC. This new law changes the quiet period which prohibits oral or written ex parte communications with the CPUC prior to the CPUC meeting to consider a proposed decision.

SB 782 (Skinner) expands the types of buildings included in CEC regulations on energy use benchmarking and disclosure to include parcels that have multiple buildings with the same owner of record and with five or more active utility accounts. Under this change, the CEC may classify these buildings as a single building for the purposes of benchmarking and disclosure and include a customer's incremental and monthly meter-specific electricity data within their disclosure documents. SB 782 expands consumer data privacy protections to make sure commercial and personal energy data are protected. Working together, the new law ensures confidential and proprietary information are protected while enabling a greater number of building owners to obtain data about their properties.

In addition to promoting renewable energy and energy efficiency policies, the Legislature approved two new laws addressing the energy supply in California. SB 1090 (Monning) requires Pacific Gas & Electric to identify free resources to replace the electric output of the closing Diablo Canyon. It's 2.2 gigawatts of energy and capacity must be replaced with a portfolio of GHG-free energy. SB 1339 (Stern) and SB 1076 (Hertzberg) respond to concerns that California's electric grid is vulnerable to "solar storms" or "solar wind shock waves" (resulting from disturbances in the Earth's magnetosphere). Responding to inaction at the federal level, SB 1076 requires the OES to evaluate risks from electromagnetic pulse attack, geomagnetic storm and extreme weather events, wildfires, and other potential causes of long-term electrical outages. OES must conduct in-depth research on system vulnerabilities and identify cost-effective and feasible measures to lessen risks from those hazards, including hardening the critical infrastructure of electrical utilities. The evaluation and risk reduction measures must be included in the next update of the State Hazard Mitigation Plan. This new law adds to the range of transmission and distribution planning and investment being imposed under CPUC orders to increase utility systems' resilience to impacts of climate change. The CPUC will likely be expected to require electric utilities to assess how compliance costs might be reduced through capital investments or operation changes that can meet both sets of mandates.

The Legislature served up other new policies addressing energy reliability. SB 1338 (Hueso) changes the standards for providing energy to people who need it to sustain their life because they are being treated for a life-threatening illness or a compromised immune system or to prevent deterioration of their medical condition. This new law now includes physician's assistants within the set of people that can certify to utilities that energy, heating, or cooling allowances are medically necessary, thus triggering requirements that the utility deliver both increased amounts of energy and prohibiting them from disconnecting gas and electric service. AB 1879 (Santiago) requires the CPUC to provide a report, with specific information to the Legislature and the affected gas utility if it determines that a moratorium on new natural gas service connections is necessary to prevent substantial and imminent harm or to ensure gas system reliability. If a moratorium is ordered, AB 1879 requires a gas utility to notify potential or current customers that may experience a service impact as a result of the proposed suspension.

The California Legislature passed new laws to boost microgrid development and to reduce interconnection delays. A microgrid is an interconnected system of loads and energy resources (including distributed energy resources, energy storage, demand response tools) located in a building or campus that can act as a single, controllable entity, and can connect to, disconnect from, or run in parallel with, larger portions of the electrical grid, or be isolated to maintain electrical supply to critical infrastructure during emergencies that disrupt the larger electric gird. SB 1135 (Hertzberg) creates new considerations in the state's approach to establishing requirements for resource adequacy (RA) to maintain reliable electric service by load serving entities (LSE) and the grid operator in California. LSE's include investor owned utilities, electric service providers, and community choice aggregators. Modifications required through SB 1135 are made in response to the significant changes in the ramping needs within the state's energy system in the past several years and requires the CPUC, in establishing RA requirements, to ensure the reliability of electrical service while advancing goals for clean energy, reducing air pollution, and reducing climate pollution. SB 1139 further requires the CPUC to ensure the RA program facilitates the development of new generating, non-generating, and hybrid capacity while also requiring LSEs to maintain enough generating or demand response capacity to achieve electrical service system flexibility beyond currently required reliability conditions. In achieving these goals, the CPUC must determine and authorize the most efficient and equitable means to minimize the need for backstop procurement to meet RA requirements by the California Independent System Operator (CAISO). Among other things, this new law requires the CPUC (by December 1, 2020), in consultation with the CEC and the CAISO to facilitate the commercialization of microgrids for distribution customers of large electrical utilities. This new law requires the governing boards of local POUs to develop a standardized interconnection process for customer-supported microgrids, including separate electrical rates and tariffs, as necessary. This must occur within 180 days of the first request from a customer or developer to establish a microgrid. With some exceptions, the law prohibits compensation to a customer for the use of diesel backup or natural gas generation.

SB 1374 (Hueso) removes requirements for the CEC Integrated Energy Policy Report by repealing a mandate for the CEC to report on strategies to maximize the benefits obtained from natural gas as an energy source, and to report on energy industry efforts to enter foreign markets, international energy market prospects, the CEC's export promotion activities, and recommendations for state government initiatives to foster competition in world markets.

Clean Up

AB 1914 (Flora) is a safety-oriented new law that responds to data that reveals there is damage to buried utility lines every nine minutes due to failures to implement safety measures before excavation. This new law expands upon reforms established in 2016 by the Dig Safe Act of 2016 (SB 661 ([Hill]), which made a number of changes to the "call before you dig" law. Among other things, that law prohibited the use of many "effective soil excavation tools" during subsurface installations. According to the author, this has resulted in the reduction of efficiency and impacts to worker safety. AB 1914 requires the California Underground Facilities Safe Excavation Board, by July 1, 2020, to adopt regulations allowing excavators to use power-operated or boring equipment before identifying locations for subsurface installations. By allowing hand tools under certain conditions, this new law is expected to result in more precision compared to hand tools such as a pick shovel. This is intended to also improve safety by avoiding ergonomic stress (e.g., from human bending, lifting, twisting, and thrusting of tools).

Natural and Historic Resources

SB 473 (Hertzberg) contains a number of revisions to the California Endangered Species Act. Significantly, the new law adds definitions for key terms in the Act, clarifies that public agencies are covered by the Act, requires listings of endangered/threatened species to be based solely on the best available scientific information, allows DFW to develop and implement recovery plans for threatened/endangered species, and requires the Department to post each new incidental take permit on its website within 15 days of the effective date of the permit. AB 2470 (Grayson) establishes the Invasive Species Council of California ("Council"), prescribes its membership and mandates its duties. The Council is charged with: (1) helping to coordinate a comprehensive effort to prevent introduction of invasive species in California; (2) advising state agencies on how to facilitate coordinated, complementary and cost-effective control or eradication of invasive species already in California; and (3) coordinating with state and local public agencies, educational institutions and other stakeholders to develop a plan to suppress diseases associated with the spread of shot hole borers, an invasive beetle species which attacks native and landscape trees. This new law also creates the Invasive Species Account, which the Council may recommend expenditure of for certain invasive species projects. Prior law authorized the Fish and Game Commission to approve experimental gear permits to encourage the development and testing of new types of commercial fishing gear.

Two new laws are designed to protect aquatic organisms. AB 1573 (Bloom) repeals the experimental gear permit provisions and, in their place, authorizes the Fish and Game Commission to approve experimental fishing permits to promote a collaborative and cooperative fisheries research program that is aligned with overarching state fishery management goals. AB 2369 (Gonzalez Fletcher) amends the Marine Life Protection Act to broaden the scope of misdemeanor liability, and adds further sanctions related to licensing, for persons violating the Act who hold a commercial fishing license or operate a boat or vessel licensed as a commercial passenger fishing boat. SB 1017 (Allen) adopts measures to encourage the shark and swordfish commercial fishing fleet to transition from drift gill nets to lower impact gear. The DFW is directed to establish a voluntary permit transition program whereby a permittee can receive a specified payment for voluntarily surrendering his or her drift gill net permit.

SB 1249 (Galgiani) makes it unlawful for a manufacturer to import for profit, sell, or offer for sale in California, any cosmetic developed or manufactured using an animal test conducted or contracted for on or after January 1, 2020. Violations of SB 1249 are punishable by an initial fine of $5,000 and an additional fine of $1,000 for each day the violation continues.

AB 2421 (Stone) establishes a Monarch Butterfly and Pollinator Rescue Program administered by the Wildlife Conservation Board. The program will assist with the recovery of monarch butterfly populations by awarding grants for the restoration and improvement of monarch butterfly breeding, overwintering, and seasonal habitat.

Winter flooding of agricultural rice lands in the Central Valley provides high-quality waterfowl habitat. In recent years, the amount of rice lands flooded in the winter has decreased. AB 2348 (Aguiar-Curry) establishes the California Winter Rice Habitat Incentive Program, under which the DFW may enter into contracts with land owners to maintain winter flooding for an initial term of three years. Under these contracts, the use of the land will be restricted for waterfowl conservation and habitat purposes in a manner that allows for their continued use for rice farming.

AB 2615 (Carillo) aims to improve pedestrian and bicyclist access to California parks. It requires the Department of Transportation, to the extent possible and where feasible and cost effective, to partner with appropriate public agencies (including federal, regional, and local entities) to develop plans to improve access for bicycles and pedestrians in federal, state, regional, and local parks adjacent to or connected to the state highway system.

SB 615 (Hueso) amends the Salton Sea Restoration Act to allow creation of berms and levees to support fish and wildlife by specifying that: (1) barriers erected within the Salton Sea below a certain elevation must not be considered dams; and (2) the construction of facilities designed to separate fresh from highly saline water for purposes of restoration must not be subject to California Water Code provisions related to the regulation of dams and reservoirs. SB 615 also contains a provision affirming the Legislature's recognition that the restoration plan is "best served and effectuated" through the SWRCB's continuing jurisdiction over the plan and restoration efforts.

AB 3257 (Committee on Natural Resources Recommend Omission) makes several very minor changes to the Surface Mining and Reclamation Act and Forest Practices Act.

AB 2836 (Gloria) was introduced to bring consistent standards and best practices to better comply with federal and state laws addressing repatriation of human remains and cultural items. This new law requires the Regents of the University of California to establish and support a system-wide Native American Graves Protection and Repatriation Act (NAGPRA) Implementation and Oversight Committee. In addition, any campus subject to the federal Native American Graves Protection and Repatriation Act (NAGPRA) must establish a campus implementation committee. AB 2263 (Friedman) responds to the financial burden of providing parking for projects designated as historic resources. This new law is premised on the cost and the notion that municipal rules requiring minimum parking for housing developments do not always reflect the demand for tenant parking or that some projects are close to transit. This new law amends the State Historical Building Code to require local agencies to provide reduced parking requirements when a development project seeks to convert or adapt a historical structure to residential use within one-half mile of major transit or to non-residential use.

Health and Safety

AB 2605 (Gipson) is an urgency law designed to protect worker and public safety. It responds to the recent ruling in California Supreme Court in Augustus v. ABM Security Services, Inc., [(2016) 2 Cal.5th 257], which prohibits on-duty rest periods for employees. That law specifically found "that 'on-call' or 'on-duty' rest periods do not satisfy an employer's obligation to relieve employees of all work-related duties and employer control." This new law provides that the requirement to relieve employees of all duties during rest periods does not apply to petroleum facility employees in: (1) "safety-sensitive positions" where the employee may be called upon to "respond to emergencies" and "is required to carry and monitor a communication device" or (2) the employee is "required to remain on employer premises to monitor and respond to emergencies", and who are among other things, entitled to regular and overtime wages, and rest periods pursuant to a collective bargaining agreement. Under this new law, when the employee is required to interrupt his or her rest period for an emergency, he or she must be allowed another rest period in a "reasonably prompt manner." In the event that the employee is not provided the rest period, the employer must pay the employee one hour of pay to compensate for the missed rest period.

The United States Department of Labor's Occupational Safety and Health Administration (OSHA) published a Notice of Proposed Rulemaking to relax an employer's obligation to report to the United States Department of Labor's Occupational Safety and Health Administration (OSHA) workplace injuries and illnesses. AB 2334 (Thurmond) authorizes the Department of Industrial Relations (DIR), Division of Occupational Safety and Health to monitor the federal rulemaking actions of OSHA's electronic submissions of workplace injuries and illness data implementation rule (i.e., the Improve Tracking of Workplace Injuries and Illnesses rule regarding the electronic submission of workplace injury and illness data). In the event that OSHA eliminates or substantially diminishes the requirements of this rule, DIR must evaluate how to protect the objectives of the Improve Tracking of Workplace Injuries and Illnesses rule.

Environmental Education

SB 720 (Allen) is premised on research demonstrating that garden-based learning and environmental service-experiences promotes critical thinking and collective problem-solving skills. Senator Allen introduced SB 720 to strengthen state public education curricula pertaining to environmental education for elementary and secondary school. The new law encourages the State Board of Education, the Superintendent of Public Instruction to cooperate with CalEPA, CalRecycle, and the Natural Resources Agency in revising environmental principles and concepts for students to ensure that the environmental principles and concepts are integrated into educational content standards and curriculum frameworks. This new law also adds

climate change concepts and makes adjustments to environmental principles and concepts.

Looking Ahead

Reflecting on his tenure as governor, Jerry Brown dismissed references to his legacy stating: "I'm not here about some cockamamie legacy. . .. . ..this isn't for me. I'm going to be dead. It's for you." Despite signing close to 18,000 laws over his four terms, he believes that "not every human problem deserves a law. . .The Legislature exists, in their minds to produce more laws. . .. Many of the laws are stupid. Many of them are not warranted. But in order to get along with the Legislature, you've got to sign bills that aren't needed." [San Francisco Chronicle January 6, 2019]. Nonetheless the Legislature passed and Governor Brown signed approximately 7,000 new laws during his two recent terms as Governor. Many of these laws focused on big ideas like saving the planet from climate change, ushering in millions of new EVs, and building a bullet train to connect the San Francisco Bay Area with southern California. Brown also appointed a majority of the California Supreme Court justices during this time. During his recent Gubernatorial tenure, he is also credited with helping turn a $27 billion deficit into a $30 billion surplus by championing a voter-approved tax increase while parking $14.8 billion in a rainy-day fund.

For the first time since the late nineteenth century, a Democratic governor will be handing the keys to the Governor's Mansion to a governor of the same party. Governor Newsom takes the helm enjoying a flush budget with a net surplus of $15 billion, an approval rating north of 60% percent, Democratic dominance in both houses of the Legislature, and control of every state constitutional office.

In contrast, California Republicans are becoming an endangered party with just seven of California's 53 seats in the House of Representatives. Their status in the California State House is no better as Democrats enjoy supermajorities in the upper and lower chambers. Democrats have 29 of 40 Senate seats with two votes beyond a supermajority and an ultra-super majority in the Assembly with 60 of 80 seats. This offers Democrats a veto-proof majority and an opportunity to pass a budget without needing Republican votes.

Nonetheless, the California Legislature is comprised of factions ranging from liberal to moderate, business-friendly Democrats who often vote with Republicans as each member must hew to the ideology of his or her district. With the prospect of a weakening economy and pressures to spend the budget surplus, the progressive Governor will be challenged to steer the ship of state amid gathering financial headwinds and pressures from his own party to increase spending on pet projects.

In his 2019 State-of-the-State remarks, Governor Newsom nonetheless declared: "We will prepare for uncertain times ahead. We will be prudent stewards of taxpayer dollars, pay down debt and meet our future obligations. . ..but let me be clear: We will be bold. We will aim high and we will work like hell to get there."

Newsom's bold vision for the future of California includes building 3.5 million housing units by 2025; tackling California's homelessness crisis; offering free childhood education and child care; universal health care; and funding to meet the growing challenges of wildfire. Lawmakers are already testing his promise as a fiscal steward having introduced bills that would increase spending by more than $50 billion.

Although Newsom is blessed with a store of political capital and a healthy economy, he cannot count on marshalling support from a supermajority of Democrats during lean times as moderate colleagues would likely defect. Governor Newsom may need to find bipartisan support along the way spending some political capital to appease the moderate Democrats. His legacy will be ultimately defined by the tough choices he will inevitably face as he navigates his first term as Governor of California.

ADMINISTRATIVE LAW AND ENVIRONMENTAL LITIGATION

Cases

Agency Documents Partially Exempted from Disclosure Under Deliberative Process Privilege

Sierra Club, Inc. v. United States Fish & Wildlife Serv.,
No. 17-16560, 9th Cir.
2018 U.S. App. LEXIS 36151
December 21, 2018

Plaintiff filed a suit seeking records generated during the Environmental Protection Agency's (EPA's) rule-making process concerning cooling water intake structures, which allegedly had been improperly withheld by the U.S. Fish and Wildlife