

# Changes Ahead? How a Changing Regulatory Landscape Will Impact New Development and Infrastructure Projects in California

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# California: Regulatory Developments → New Risks

## Major new regulatory developments involving climate change create new risks for development projects and infrastructure

1. Recent CA Supreme Court decision ≠ CEQA clarity
2. CARB 2017 Scoping Plan targets development to reduce GHGs
3. CARB ratcheting down SB 375 targets
4. “VMT” analysis coming to CEQA
5. Sea level rise in coastal jurisdictions
6. Water / stormwater issues
7. Transforming energy sector



# 1. California Supreme Court Decision

- In December 2015, the California Supreme Court overturned the EIR for a leading CEQA case on climate change grounds
- **Decision did not provide clear guidance** for how local governments and projects can comply with CEQA for analyzing GHG emissions
- **No proven roadmap provided by state agencies...**which means lead agencies typically will follow an **ad hoc, case-by-case approach**



## 2. CARB Scoping Plan Update: Ambitious Target for 2030

- SB 32 codified California's goal of reducing GHG emissions to **40% below 1990 levels by 2030.**

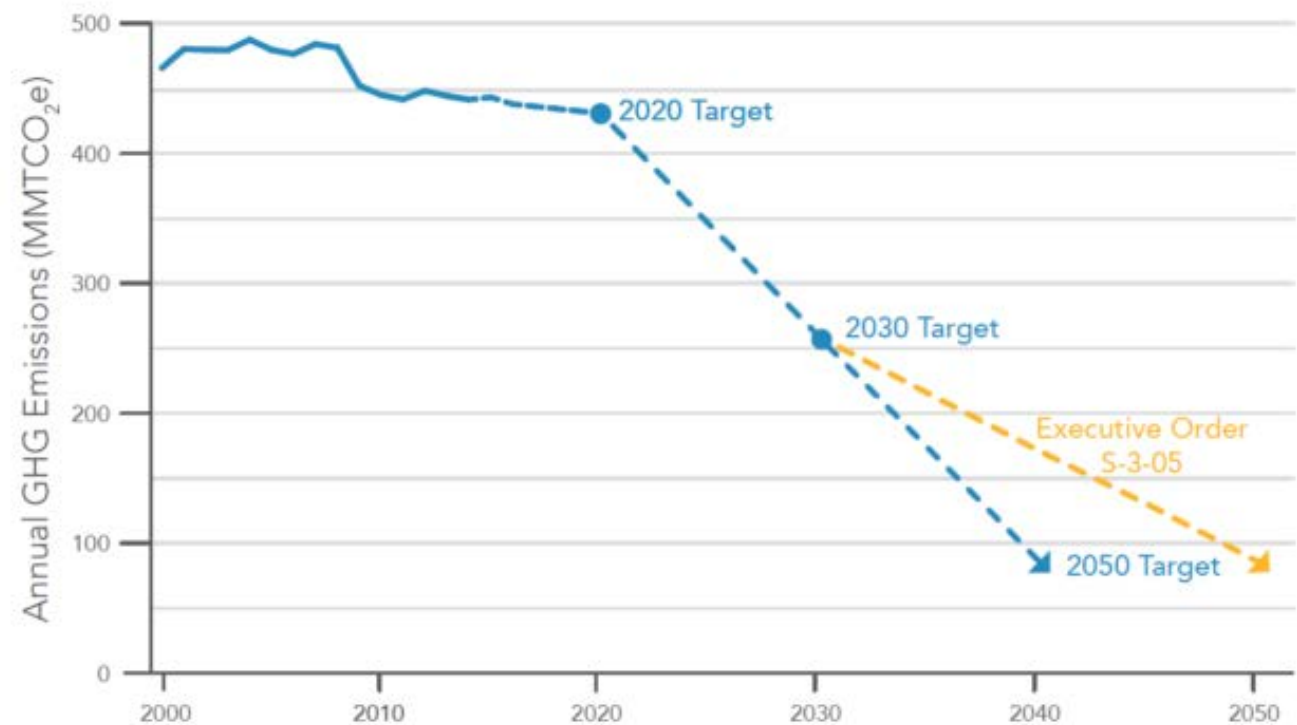
Per capita GHG emissions must **fall off a cliff** after 2020

1990: 15 metric tons of CO<sub>2</sub>-equivalent (MTCO<sub>2</sub>-e)



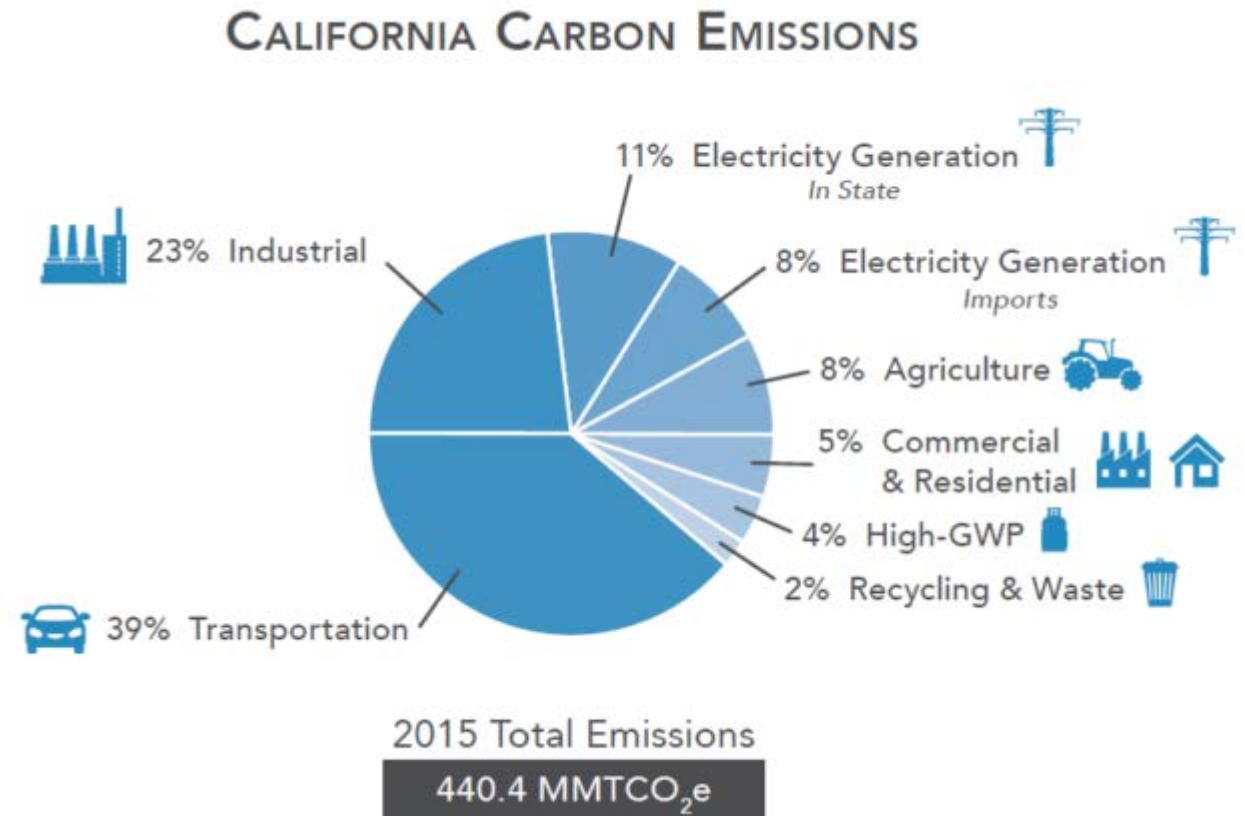
2050: below 2 MTCO<sub>2</sub>-e

FIGURE 5: PLOTTING CALIFORNIA'S PATH FORWARD



# Transportation Sector Is Largest Contributor of GHGs

- The majority of emissions reductions from the **transportation sector** will come from:
  1. Technological advancements
  2. Lower-carbon fuels
- Nevertheless, CARB is seeking greater reductions **and local co-benefits**



# Scoping Plan Targets Development Projects via CEQA

2017 Scoping Plan Update recommends that **local agencies** cut GHG emissions from real estate projects in **4 key ways**:

1. Local climate action plans with rigorous 2030 and 2050 targets
2. Greater VMT reductions – Even Beyond SB 375 Goals
3. CEQA Significance Thresholds
4. GHG Mitigation Strategies



### 3. New SB 375 Targets for SCAG, SANDAG

- **SB 375** requires SCAG, SANDAG and other “MPOs” to prepare “Sustainable Communities Strategies” → GHG reductions from transportation and land use sectors
- On March 22, 2018, CARB approved an updated target of **19% per capita** GHG reduction by 2035 in the **SCAG** region

Table 5: 2035 Target

MPO	2035			
	Current Target	Current SCS Anticipated Performance	MPO Recommended Target	CARB Recommended Target
MTC/ABAG	-15%	-15.5% <sup>d</sup>	-18%	-19%
SACOG	-16%	-16%	-18%	-19% <sup>a</sup>
SANDAG	-13%	-18% <sup>c</sup>	-18%	-19%
SCAG	-13%	-16% <sup>c</sup>	-18%	-19%
Fresno COG	-10%	-10% <sup>c</sup>	-13%	-13% <sup>b</sup>
Kern COG		-13% <sup>c</sup>	-13%	-15% <sup>b</sup>
Kings CAG		-12% <sup>c</sup>	-12%	-13% <sup>b</sup>
Madera CTC		At least -10%	-15 to -20%	-16% <sup>b</sup>
Merced CAG		-12.7% <sup>c d</sup>	-12.7%	-14% <sup>b</sup>
San Joaquin COG		14% <sup>c</sup>	-14 to -15%	-16% <sup>b</sup>
Stanislaus COG		14% <sup>c</sup>	-14 to -15%	-16% <sup>b</sup>
Tulare CAG		15% <sup>c</sup>	-15 to -16%	-16% <sup>b</sup>
AMBAG	-5%	-6%	-6%	-6%
Butte CAG	1%	-7%	-7%	-7%
San Luis Obispo COG	-8%	-10.9%	-4 to -8%	-11%
Santa Barbara CAG	0%	-17%	-17%	-17%
Shasta RTA	0%	-0.5%	-3.5%	-4%
Tahoe MPO	-5%	-5% <sup>d</sup>	-5%	-5%

## 4. VMT-based Traffic Assessments

- **OPR** has proposed **updating the CEQA Guidelines** to require lead agency to analyze traffic impacts using “VMT” instead of congestion metrics
- Cal. Resources Agency initiated the rulemaking process. Decision expected in 2018
- **VMT rules, as proposed, would apply statewide in 2020**





## 5. Sea Level Rise in Coastal Jurisdictions

CARB's 2017 Scoping Plan Update: GHG emissions could cause **sea levels to rise by 1-6 feet** by 2100

The CA Ocean Protection Council updating **Sea-Level Rise Guidance:**

1. Mapping various sea-level rise scenarios
2. Protect coastal resources and infrastructure
3. Needs of vulnerable communities
4. Risks from large storms and other extreme events



## 6. Water / Stormwater

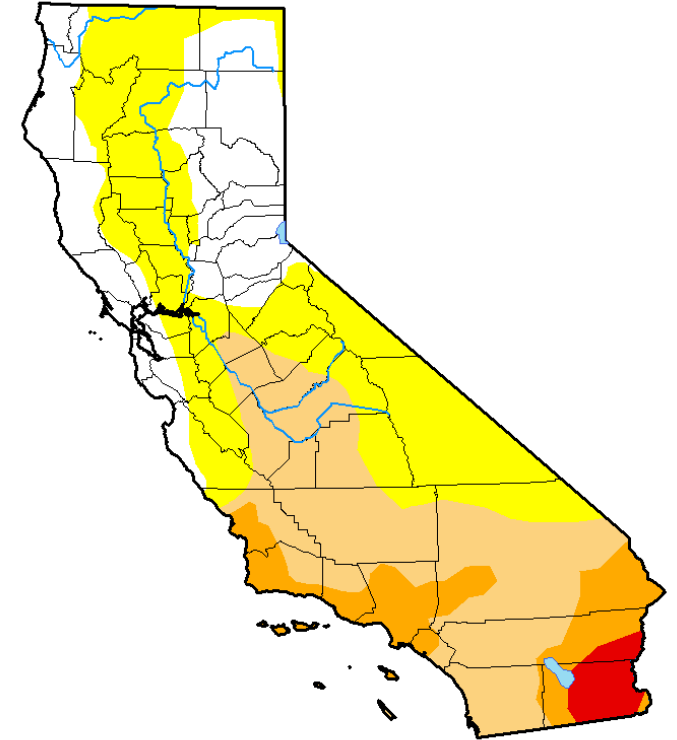
### CEQA requires analysis of water supply

- On April 7, 2017 Gov. Brown lifted drought emergency measures for most of California
- However, climate change and potential return of extreme drought conditions may strain CA supplies

### LA County **stormwater parcel tax** proposal

- Increase housing costs
- May create a new trend

### CA Drought as of March 27, 2018

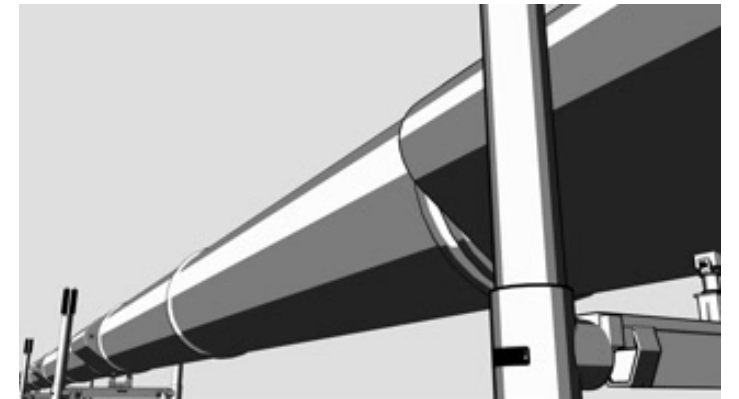


**March 2018: abnormal dryness and drought affect approximately 29 million Californians or about 80% of the state's population.**

# 7. Transforming Energy Sector

**Rapidly evolving energy has changed “need” equation for “traditional” energy projects**

- Natural gas power plants
- Gas pipelines
- Gas storage
- Transmission lines
- Demonstrating the need for such projects in a low carbon future



# Counter Trend → New Development Opportunities

## New energy economy

- “Preferred resources” energy technologies
- Maturation of solar as major force – utility scale and distributed
  1. Proposed 100% clean energy standard may create new opportunities for utility scale
- Explosion in storage – utility scale and distributed
- GHG credits
- LCFS credits

...and the hits keep coming...



# Counter Trend → New Development Opportunities (cont.)

## CEQA streamlining

- CEQA streamlining and the Easter bunny...but maybe real this time?
- Large uptick in CEQA streamlining opportunities, particularly involving:
  1. Housing
  2. Major showcase projects (stadiums, high-speed rail)



# Trump Administration Infrastructure - MOU

- April 10<sup>th</sup> – Trump signed a MOU to increase inter-agency coordination of federal infrastructure permitting decisions. Signed by the heads of a dozen agencies
  - Implements the “One Federal Decision” directive in President Donald J. Trump’s Executive Order No. 13807 (issued August 15, 2017)
  - Establishes the lead NEPA agency
  - Sets a permitting timeline < 2 years from NOI publication to one ROD
- The agencies “will use the NEPA scoping process to agree on the relevant analyses, studies and engineering design that will be needed in order for each agency to be able to sign a single – ROD and for all the authorization decisions to be issued within 90 days after the ROD is signed”

# Trump Administration Infrastructure – Legislative Proposal on Permit Streamlining

- Sent to the legislature on February 12<sup>th</sup>
- Stated goal is to constrain environmental review, permitting, and approval processes to < less than 2 years
- Extend and expand existing permitting streamlining processes (FAST, MAP-21), enhance the role of states, change environmental review processes, constrain judicial review of projects
- Statute of limitations to file legal challenge to federal permit decision would be changed from either 6 or 2 years to 150 days
- Projects could only be enjoined under “exceptional circumstances”

# Increased Delegation of NEPA Authority to the States

- Currently, the Surface Transportation Project Delivery Program, also known as “NEPA Assignment Program,” is primarily used to delegate authority of the Federal Highway Administration and Federal Transit Administration responsibilities
- President Trump wants to expand the NEPA Assignment Program to include all other state agencies
  - Claims it would:
    - Return decision-making authority to state and local governments that know the needs of their communities best
    - Shave years of time and millions of dollars off of projects
  - Granted, CEQA already has stringent standards of its own for project development which could help or hurt significant delegation of authority in California



# Federal NEPA Guidance

- February Infrastructure Proposal also directs CEQ to rewrite its NEPA guidance for the first time since 1978, with the goal of streamlining.
- Many agencies have changed their NEPA implementation policies. For instance, at DOI:
  - A project permitting task force has been set up, dedicated to streamlining the Department's permitting process across all bureaus
  - Reforming the ESA is now a top priority
- CEQ regulations and the 150 page limit – How to enforce?
  - The current regulations state that EIS documents “shall normally” be fewer than 150 pages, and fewer than 300 for unusually complex projects
  - On August 31, Dep. Secretary Bernhardt directed the Department's EISs “shall not be more than 150 pages or 300 pages for unusually complex projects”

# Federal NEPA Guidance

- CEQ, on June 20, 2018, announced it is considering updates to its implementing regulations under NEPA
  - Environmental groups such as Earthjustice asked for extension of comment period from the standard 30 days, to a 90 day period
  - CEQ extended the comment period by 31 days until August 20, 2018
- House Committee on Natural Resources
  - Held hearing on April 25, 2018 titled, “*The Weaponization of the National Environmental Policy Act and the Implications of Environmental Lawfare*”

# Trump Administration Infrastructure – Executive Actions

- **ESA** – July 19, 2018 proposed revisions
  - Designations of Critical Habitat Will Require Added Considerations
  - Listing a Species Will Require “Probable” Future Conditions
  - Delisting a Species Will Use Same Standard as Listing a Species
  - Blanket Protections for Threatened Species Will Be Rescinded
  - Interagency Consultations Will Be Streamlined
  - The Proposed Revisions May Lessen the Restrictive Effects of the ESA on Industry
  - The Proposed Revisions Have Already Generated Controversy
- **Oil & Gas** –
  - 1.4 M acre mineral withdrawal rescinded in the CA desert
  - New program will place 90% of the OCS in the leasing program; right now, 94% is out of the leasing program

# Other Agency Actions to Streamline NEPA

- **Bureau of Land Management**
  - Published Instruction Memorandum outlining document processing procedures for NEPA analyses
    - Purpose of document processing memorandum is to meet the guidance of Interior Deputy Secretary David Bernhardt
  - Published Information Bulletin on NEPA efficiencies for oil and gas development
- **Federal Communications Commission**
  - Published a final rule exempting small and unobtrusive cell towers used for 5G wireless networks from permitting under NEPA

# NEPA Litigation: Frequency and Outcomes

<b>Year</b>	<b>Number of NEPA cases filed</b>	<b>Number of injunctions/remands</b>
<b>2007</b>	<b>86</b>	<b>49</b>
<b>2008</b>	<b>132</b>	<b>35</b>
<b>2009</b>	<b>97</b>	<b>23</b>
<b>2010</b>	<b>87</b>	<b>16</b>
<b>2011</b>	<b>94</b>	<b>21</b>
<b>2012</b>	<b>88</b>	<b>10</b>
<b>2013</b>	<b>96</b>	<b>14</b>

# CEQA Amendments & Other Legislation

- Failed
  - SB 827 (Wiener) – would have allowed for apartments and condos within ½ mile of transit stops; killed in Housing and Transportation Committee
  - AB 890 (Medina) – would have limited initiative power on land use actions; vetoed by Governor for “piecemeal approach”
- Proposed
  - SB 1340 (Glazer) – 270 days to rule on challenges to housing projects
  - SB 1341 (Glazer) – require petitioners to disclose identities
  - AB 2586 (Melendez) – limit work stoppages on housing projects
  - AB 1804 (Berman) – expand infill exemption to unincorporated areas
  - AB 3027 (Chávez) – limit attorneys’ fees to certain classes of petitioners
  - AB 2341 (Mathis) – streamline refurbishment of dilapidated buildings

# California Infrastructure Programs

- Last year, California officials proposed a list of 51 infrastructure projects totaling \$100 billion for possible federal funding.
  - Trump's plan has since been scaled back to \$200 billion, lacks a funding source, reduces the federal share from 50 to 20 percent, focuses on block grants for rural states, and proposes a cap on any one state's funding.
- California's 2018 Five-Year Infrastructure Plan.
  - Proposes to invest \$61 billion over the next five years.
  - Prioritizes climate change pursuant to Executive Order B-30-15.
  - Emphasis on pay-as-you-go financing.

# California Infrastructure Programs

- SB1
  - Raised the state's gas tax and vehicle registration fees; \$52 billion for roads and transit, split between state and local improvements; \$15 billion for "fix it first" projects to address \$130 billion repairs backlog
  - \$2.4 billion announced for dozens of transit projects on April 26; supplemented by \$1.9 billion from climate fund
  - Prop 69: a constitutional amendment to guarantee that money raised by SB1 is used for intended purposes passed, June 5, 2018
  - SB1 repeal initiative has qualified for November Ballot
- SB5
  - Approved Prop 68 on June 5, 2018, to raise \$4 billion for parks, water, and climate.
- Veterans and Affordable Housing Bond Act (November 2018): \$4 billion for housing and home ownership for veterans



# Potential Impacts of a new California Governor

Candidate	Gas Tax / Vehicle Fees	High-Speed Rail	Prop 3 water bond	CEQA
Gavin Newsom	Pro	Pro	No public stance yet	Pro
John Cox	Against	Against	Pro	Against



Gavin Newsom

John Cox

# Questions?

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