

# CALIFORNIA LEGISLATURE

STATE CAPITOL  
SACRAMENTO, CALIFORNIA  
95814

## SENATE COMMITTEES ON GOVERNANCE & FINANCE AND NATURAL RESOURCES & WATER

March 13<sup>th</sup>, 2019

### *Committee Background*

This background paper prepares the members of the Senate Governance & Finance Committee and the Senate Natural Resources & Water Committee for the March 13, 2019, informational hearing titled “**Living Resiliently in the New Abnormal: The Future of Development in California’s Most Fire Prone Regions.**” This hearing will examine how local communities can rebuild in the aftermath of fire and how best to improve local planning and development approvals to mitigate fire and fire losses. The hearing will also seek an informed perspective on the question of whether the state should do more to regulate development in fire prone areas.

### **Recent Wildfire Trends in California**

The past two decades have seen a marked increase in wildfire severity. According to the State Board of Forestry and Fire Protection’s “2018 California Fire Plan,” twice as many acres burned on average each year after 2000 relative to the annual average in the 1960s, and large fires are becoming increasingly more common.

In 2017, California experienced what was then the largest and most destructive wildfire season in its history. Nearly 9,000 wildfires ignited across the state, burning 1.2 million acres of land, destroying more than 10,800 structures, and killing at least 46 people. Five of California’s most destructive wildfires on record occurred in 2017, including the Thomas Fire, which became the

largest recorded fire in California history at the time, and the Tubbs Fire, which destroyed 5,643 structures to make it the most destructive fire in California history—until 2018.

The 2018 wildfire season eclipsed 2017 as the most destructive and deadliest year for wildfires in California. The Mendocino Complex Fire in July 2018 nearly doubled the size of the Thomas Fire and alone burned 459,123 acres to become the largest fire in California history. Even more devastating, the Camp Fire in November 2018 became California’s most destructive and deadliest wildfire, which caused the deaths of 86 people and destroyed nearly 19,000 structures.

## **Fire Hazard Severity Zones**

The California Department of Forestry and Fire Protection (CALFIRE) provides wildland fire protection on non-federal lands outside cities. To meet this duty, the State Board of Forestry and Fire Protection (Board) designates the State Responsibility Area (SRA) every five years. Within SRA lands, the Director of CALFIRE designates moderate, high, and very high fire hazard severity zones. After the 1991 Oakland-Berkeley fire storm, the Legislature required CALFIRE to designate very high fire hazard severity zones (VHFHSZs) in the Local Responsibility Area (LRA). These maps must be updated every five years (current maps date to 2007).

Landowners in the SRA and VHFHSZs must follow specified fire prevention practices and meet standards developed by the Board (AB 337, Bates, 1992). These practices and standards include maintaining defensible space of 100 feet around structures, performing certain activities to reduce the amount of flammable material near and on structures, and meeting specific building standards developed by CALFIRE and the Department of Housing and Community Development that help a structure withstand ignition and reduce fire risk. AB 2911 (Friedman, 2018) requires the State Fire Marshal to update these standards to provide for comprehensive site and structure fire risk reduction by January 1, 2020.

## **Planning and Permitting Are Primarily Local Activities**

**General Plans.** Every county and city must adopt a general plan with seven mandatory elements: land use, circulation, housing, conservation, open space, noise, and safety. General plans must also either include an eighth element on environmental justice, or incorporate environmental justice concerns throughout the other elements. Most of cities’ and counties’ major land use decisions—subdivisions, zoning, public works projects, use permits—must be consistent with their general plans. Development decisions must carry out and not obstruct a general plan’s policies.

**Subdivision Approvals.** The Subdivision Map Act regulates how local officials approve the conversion of larger parcels into marketable lots. Major subdivisions—more than four lots—require a discretionary tentative map and a ministerial final map. Minor subdivisions—four or

fewer lots, called “lot splits”—usually require a single, discretionary parcel map. In some communities, minor subdivisions require a tentative parcel map and a final parcel map, similar to major subdivisions.

## **Fire-Specific Planning Requirements**

***Safety Element Identifies and Plans for Fire and Other Climate Risks.*** The Planning and Zoning Law says that the safety element’s purpose is to protect the community from unreasonable risks from geologic hazards, flooding, and wildland and urban fires. In 2012, the Legislature expanded the safety elements’ contents for fire risks on land classified as SRAs and VHFHSZs (SB 1241, Kehoe, 2012). SB 1241 required safety elements to contain:

- Specified information about fire hazards.
- Based on that information, a set of comprehensive goals, policies, and objectives to protect against unreasonable fire risks.
- To carry out those goals, a set of feasible implementation measures.

Cities and counties must also submit a draft of any safety element amendments to the Board and to local fire protection agencies at least 90 days before adopting it. The Board must review and recommend changes to the draft safety element within 60 days of receiving it. If the Board provides recommendations within this timeframe, local governments must consider its recommendations. If they don’t adopt the Board’s recommendations, local governments have to explain why they didn’t to the Board. Local agencies must meet with the Board on its recommendations if the Board requests.

The safety element must also include similar information about risks due to climate change and goals, policies, objectives, and implementation measures to protect against those risks.

***Local Hazard Mitigation Plans.*** Many local governments have also adopted a local hazard mitigation plan (LHMP) to identify all of the natural hazards that threaten a community and strategies to mitigate those hazards. The Federal Emergency Management Agency (FEMA) reviews and approves every LHMP, and the LHMP expires five years after it’s approved, unless amended and recertified. Local governments with a compliant LHMP are eligible for proactive hazard mitigation grants from the federal government, as well as additional post-disaster assistance. In 2006, the Legislature enacted AB 2140 (Hancock), which was designed to promote the adoption of LHMPs that meet specified federal standards. AB 2140 prohibited the state share for repair or restoration of local agency infrastructure due to a declared emergency from exceeding 75% of total state eligible costs unless the local agency is located within a city,

county, or city and county that has adopted an LHMP in accordance with federal standards as part of the safety element of its general plan.

***Subdivision Approvals in Fire Prone Areas.*** Before a city council or county board of supervisors can approve a tentative map or final map in the SRA or VHFHSZ, it must make findings supported by substantial evidence that:

- The subdivision is consistent with the Board's applicable regulations or local ordinances certified by the Board as meeting or exceeding the state regulations; and
- A local agency or CALFIRE, under contract, will provide structural fire protection and suppression services to the subdivision.

Upon making these findings, the city or county must send them, along with the subdivision maps, to the Board.

## **Recent Legislative Efforts on Wildfire**

In 2018, the Legislature took important actions to improve wildfire planning and safety. Notable bills include the following:

SB 901 (Dodd, 2018) establishes a comprehensive framework to address and prevent catastrophic wildfires including prevention and planning by the state's electric utilities; management of the state's forests, chaparrals, and other lands to prevent and defend against wildfires; and standards to stabilize electrical corporations in the event of extensive liability resulting from claims under inverse condemnation. SB 901 also appropriated \$200 million per year through the 2023-24 budget for forest health and fire prevention.

SB 1260 (Jackson, 2018) made various changes related to local fire planning, prescribed fire requirements, and broader fire prevention efforts, including to require that:

- Local safety elements reflect best practices contained in OPR's technical guidance for fire hazard planning;
- Cities and counties meet with the Board on their draft safety elements at the request of the Board; and
- Cities and counties transmit any fire-related findings made under the Subdivision Map Act to the Board.

AB 2911 (Friedman, 2018) made various changes to fire safety planning, including to: require local agencies to submit ordinances adopting VHFHSZ to the Board; direct OPR to update its technical guidance for fire and land use planning; and require the Board to identify at-risk subdivisions not less than every 5 years.

AB 1956 (Limón, 2018) requires CAL FIRE to establish a local grant program and establishes the criteria for those grants.

SB 465 (Jackson, 2018) expands, until January 1, 2029, Property Assessed Clean Energy (PACE) financing to allow cities and counties in VHFHSZs to allow contractual assessments for property owners to finance wildfire safety improvements.

### **Next Steps**

Building on the strong efforts of last year, the Legislature may wish to consider additional action to reduce exposure to fire hazards in fire-prone areas. These measures might include to: bolster local planning efforts to design more resilient communities; condition development approvals to ensure that structures and communities are adequately protected from fire; or encourage development out of harm's way. This hearing should help to inform the Committees on how to strike an appropriate balance between the hazard posed by fire and considerations such as community viability, cost of mitigation measures, and property rights.