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## SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2023 - 2024 Regular

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**Bill No:** SB 1159

**Author:** Dodd

**Version:** 3/20/2024

**Hearing Date:** 4/3/2024

**Urgency:** No

**Fiscal:** Yes

**Consultant:** Brynn Cook

**SUBJECT:** California Environmental Quality Act: roadside wildfire risk reduction projects

**DIGEST:** This bill would require the Secretary of the Natural Resources Agency to consider creating a California Environmental Quality Act (CEQA) categorical exemption in the CEQA guidelines for roadside fire mitigation projects meeting certain criteria.

### ANALYSIS:

Existing law:

- 1) CEQA requires lead agencies with the principal responsibility for carrying out or approving a project to prepare a negative declaration (ND), mitigated negative declaration (MND), or environmental impact report (EIR) for the project, unless the project is exempt from CEQA. (Public Resources Code (PRC) § 21000 et seq.)
- 2) CEQA requires the Office of Planning and Research (OPR) to prepare and develop, and the Secretary of the Natural Resources Agency to certify and adopt, guidelines for the implementation of CEQA. CEQA requires the guidelines to include a list of classes of projects that have been determined not to have a significant effect on the environment and are exempt from the requirements of CEQA, commonly known as categorical exemptions. (PRC § 21083)
- 3) Requires the Office of Planning and Research and the Natural Resources Agency to periodically update the CEQA Guidelines. (PRC § 21083(f))
- 4) Establishes a categorical exemption for Existing Facilities which may apply to the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of

existing or former use. (California Code of Regulations Title 14 (C.C.R. Tit. 14) Article 19 §15301)

- 5) Establishes a categorical exemption for minor alterations to land which may apply to minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes. (C.C.R. Tit. 14 Article 19 § 15304)
- 6) Specifies that fire thinning or fuel reduction projects on federal lands, subject to the National Environmental Policy Act (NEPA), are exempt from CEQA. (PRC § 4799.05)

This bill:

- 1) Requires the Secretary of the Natural Resources agency to consider creating a categorical CEQA exemption for wildfire risk reduction near roadside projects. To be eligible for this potential exemption, projects cannot remove trees, lead to sedimentation, be located within 30 feet of a road, or be more than five miles from a municipality of census designated place.

## Background

- 1) *The A, B, C's of CEQA.* CEQA is designed to (a) make government agencies and the public aware of the environmental impacts of a proposed project, (b) ensure the public can take part in the review process, and (c) identify and implement measures to mitigate or eliminate any negative impact the project may have on the environment. CEQA is enforced by civil lawsuits that can challenge any project's environmental review. Nonprofits, private individuals, public agencies, advocacy groups, and other organizations can all file lawsuits under CEQA.

Under CEQA, projects (unless they have a specific exemption) must undergo environmental analysis. This process starts with an initial study which determines what level of further environmental review is needed for a given project. If a project has no significant effects on the environment, or if those effects can be fully mitigated, the project can move forward with a negative declaration (ND) or mitigated negative declaration (MND). If the initial study finds that the project has potential significant effects on the environment, then a full EIR is conducted.

- 2) *CEQA exemptions: statutory vs. categorical.* A project is exempt from CEQA if it is ministerial (i.e., it does not involve discretionary decisions), or if there is a specific statutory or categorical exemption that applies to the project. Statutory exemptions are created by the Legislature and apply even if a project has the potential to significantly affect the environment. In contrast, categorical exemptions, which are listed in the CEQA guidelines, generally do not apply if there are significant environmental impacts associated with the project. Categorical exemptions are developed by the Office of Planning and Research as part of the CEQA guideline process, and become part of the CEQA guidelines when they are certified and adopted by the Secretary of the Natural Resources Agency.
- 3) *Wildfire risk.* Wildfires have always shaped life in California, but as they have grown in size, severity, and overlap with the built environment, wildfires have become increasingly harmful to Californians. According to a study in 2023 by researchers at the University of Montana, the number of homes and structures destroyed by wildfires increased by 246% over the past two decades in the contiguous Western U.S. Since 2005, wildfires have destroyed more than 97,000 structures in California, requiring mass evacuations, and exacerbating the state's housing crisis. A study on the costs of wildfires to the State of California, conducted by the California Council of Science and Technology, found that the cost of wildfires averaged \$117.4 billion annually. This includes both direct costs of fighting and recovering from wildfires (an estimated \$5.0 billion annually was attributable to reduced tax revenues and increased wildfire response costs) and indirect costs such as the strain on healthcare systems for illnesses associated with wildfire smoke. Wildfires can also be deadly. Between 2000-2017, 84 civilians were killed in wildfires. In 2018, the Camp Fire in Paradise, the deadliest wildfire in California, killed 85 civilians.
- 4) The impacts of wildfires are inequitable. A study from 2010 finds that low income households are more likely to lose all of their assets in a wildfire and less likely to have adequate insurance to cover the cost of losses as compared to higher income households. Furthermore, numerous studies have identified that wildfire smoke can be more harmful to the elderly, children, people with pre-existing medical conditions, and people in disadvantaged communities where more systemic exposure to pollution and more limited access to healthcare increase risk of respiratory illnesses that can be exacerbated by wildfire smoke.
- 5) *Roads and wildfires.* Roads are one way that humans get access to wild lands. As such, roads increase the chance of human-caused fire ignition in those wild lands: this can be a significant wildfire risk since the majority of wildfires are

started by human activity (about 86% of wildfires in California between 1992 and 2020 according to the U.S. Forest Service).

A 2019 study in Scientific Reports found that proximity to roads, alongside other variables like grass cover, were significant predictors of wildfire risk in California. Another study in the eastern cascade mountains of Washington State found that human-caused ignitions were concentrated close to roads, in high road density areas.

While roads pose a fire risk, they can also act as fuel breaks that slow fires and allow fire suppression crews quick access to fires. Roads are most effective at controlling fire when they are cleared of vegetation. However, a Caltrans Wildfire Vulnerability Analysis prepared in 2019 and repeated in 2020 confirmed that a significant portion of the state highway network is vulnerable to wildfire.

- 6) *Wildfire mitigation through CalVTP*. In California, the Board of Forestry and Fire Protection (CAL FIRE) regulates forestry activities throughout the state and develops policies to prevent fires. In December 2019, CAL FIRE developed and approved a program, the California Vegetative Treatment Program (CalVTP) to reduce hazardous vegetation around communities in the Wildland-Urban Interface (WUI), to construct fuel breaks, and to restore healthy ecological fire regimes. Vegetative treatment involves removing plants that can act as a fuel for wildfires. In forested areas, underbrush can also act as a ladder leading up into the tree canopy, leading to larger, more devastating fires. There are numerous methods of vegetative treatment, including applying herbicides, prescribed herbivory (like goats), prescribed burns, and mechanical fuel thinning.

CalVTP stitches together a series of individual vegetation treatment projects to prevent wildfires over larger areas. Projects are sited in State Responsibility Areas, which represent a small fraction of forested areas in the state. To streamline CalVTP projects, CAL FIRE simultaneously created a Program EIR (PEIR) for CalVTP projects. A PEIR is an umbrella EIR that provides environmental analysis that can be used for multiple related projects.

According to CAL FIRE, as of 2021, approximately 750,000 acres of California's forests are treated with mechanical or prescribed burns annually. The state has coordinated with federal officials to expand these efforts: in August 2020, California and the U.S. Forest Service committed to vegetation treatment and maintenance on a million acres of federal, state, and private forest and wildlands annually by 2025.

## Comments

- 1) *Purpose of Bill.* According to the author, “Many fires are caused by sparks and burning debris from cars that ignite dry brush near our roads. We must make it easier for firefighters to clear this vulnerable land and remove these flammable materials. It will help keep the public safe and defend our exposed forests. This legislation aims to streamline the process for roadside vegetation management projects, crucial for wildfire risk reduction. By considering these projects for categorical exemption from the California Environmental Quality Act (CEQA), we seek to expedite essential preventative measures while minimizing bureaucratic hurdles.”
- 2) *Are these projects already exempt?* Roadside vegetation treatment projects to mitigate wildfires may by-and-large already be exempt from CEQA. A search of the term “fuels reduction and roadside” on CEQAnet, the State’s database of filed notices for certain CEQA projects, finds dozens of examples of fuel thinning projects along roadsides since 2020. The majority of these projects use either an “existing facilities” or a “minor alterations to land” categorical exemptions currently established in the CEQA guidelines.

If fuel thinning projects near roadways are already eligible for existing categorical exemptions, then adding a new, more specific categorical exemption could cause confusion rather than clarity. Stop-back language in the bill specifies that if CNRA adopts a new exemption in the CEQA guidelines pursuant to this legislation, that new exemption would not prevent the use of existing exemptions. This keeps the door open for lead agencies to use whatever exemption works best for them as they manage vegetation along roads for fire prevention.

- 3) *Pulling in the experts.* Because categorical exemptions are developed by OPR and adopted by CNRA, categorical exemptions provide an opportunity to bring in OPR’s expertise and stakeholder input in crafting the guardrails needed to ensure that this proposed CEQA exemption does not result in unintended harm to the environment. In asking OPR and CNRA to consider creating a new categorical exemption, SB 1159 proposes a new approach to creating CEQA exemptions to take advantage of state agencies’ expertise.

## DOUBLE REFERRAL:

If this measure is approved by the Senate Environmental Quality Committee, the do pass motion must include the action to re-refer the bill to the Senate Natural Resources and Water Committee.

**Related/Prior Legislation**

AB 1554 (Patterson, 2023) would have expressly exempts from CEQA a project for the reduction of fuels in areas within moderate, high, and very high fire hazard severity zones. This bill died in the Assembly Committee on Natural Resources.

AB 1951 (Fong, 2024) would exempt from CEQA a project for wildfire prevention within 50 feet of either side of a roadway. The bill is awaiting hearing in the Assembly Committee on Natural Resources.

AB 267 (Valladares, 2022) would have extended the sunset from January 1, 2023, to January 1, 2026, for a CEQA exemption for prescribed fire, thinning, or fuel reduction projects undertaken on federal lands to reduce the risk of high-severity wildfire that have been reviewed under NEPA. This bill died on the Senate inactive file.

SB 632 (Galgiani Chapter 411, Statutes of 2019) requires the State Board of Forestry and Fire Protection, as soon as practicably feasible, but no later February 1, 2020, to complete its environmental review under CEQA and certify a specific final PEIR for a vegetation treatment program.

**SOURCE:** Fire Chief Dave Winnacker

**SUPPORT:**

Associated General Contractors  
California Building Industry Association  
California Fire Chiefs Association  
Contra Costa County  
Contra Costa County Fire Chiefs  
County of Sonoma  
Humboldt Redwood Company LLC  
Pacific Forest Trust  
Rural County Representatives of California (RCRC)  
San Diego Gas and Electric Company  
Wine Institute

**OPPOSITION:**

None received

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