
SENATE COMMITTEE ON NATURAL RESOURCES AND WATER

Senator Dave Min, Chair
2023 - 2024 Regular

Bill No:	SB 1159	Hearing Date:	April 23, 2024
Author:	Dodd		
Version:	March 20, 2024 Amended		
Urgency:	No	Fiscal:	Yes
Consultant:	Catherine Baxter		

Subject: California Environmental Quality Act: roadside wildfire risk reduction projects

SUMMARY

This bill would direct the Governor's Office of Planning and Research (OPR) to evaluate, and the California Natural Resources Agency (CNRA) secretary to consider, creating a categorical exemption from the California Environmental Quality Act (CEQA) for roadside projects no more than five road miles from a municipality or census designated place that are undertaken solely for the purpose of wildfire risk reduction.

BACKGROUND AND EXISTING LAW

Background

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, a project must undergo an environmental analysis unless it qualifies for a specific exemption. 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 or mitigated negative declaration. If the initial study finds that the project has potential significant effects on the environment, then a full environmental impact report (EIR) is conducted.

CEQA exemptions: statutory vs. categorical. A project is exempt from CEQA if it is ministerial (i.e., it does not involve a discretionary decision), 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 OPR as part of the CEQA guideline process, and become part of the CEQA guidelines when they are certified and adopted by the CNRA secretary.

Wildfires and roads. Catastrophic and devastating wildfires have occurred repeatedly in the state in recent years. Nine of the 20 largest and seven of the 20 most destructive wildland fires in state history occurred in 2020 and 2021 when almost seven million acres burned. The 2020 August Complex Fire in northern California – the largest fire in California’s modern history – burned over one million acres while the 2021 Dixie Fire burned almost one million acres. Two wildland fires in recent years burned over the crest of the Sierras, which had not been previously observed. In the last several years, tens of thousands of structures – mostly homes – have been destroyed from wildland fire, insured losses incurred are in the billions of dollars, prime habitat has been destroyed or damaged, and, tragically, hundreds of lives have been lost. In addition, millions of Californians have been exposed to unhealthy air quality due to the wildfires.

Wildfires can originate from both natural sources such as lightning, and human ignitions such as those started by accident or set intentionally by arsonists. 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. The Department of Forestry and Fire Protection (CalFire) estimates 95% of wildfires are human caused. Roadways can increase the chance of human-caused fire ignition, particularly in the Wildland-Urban Interface. A 2021 study in Scientific Reports notes that proximity to roads, alongside other variables like grass cover, temperature, and vapor pressure deficit, were significant predictors of wildfire risk in California. According to CalFire, at least seven large fires (300 acres or greater) were started by vehicles¹ in 2022 in the state.

The deadly Carr Fire in 2018 started along a highway. The fire ignited near the Carr Powerhouse Road along Highway 299 in the Whiskeytown National Recreation Area. The official cause of the fire was a flat tire of a vehicle trailer in 100-degree weather. The wheel is thought to have contacted the pavement sending sparks into the highway median and forest habitat gradient. The fire burned almost 230,000 acres, resulted in eight fatalities, four of whom were first responders, destroyed 1,079 residences, and devastated a widespread area in the Redding, California region. According to a ProPublica article, the California Department of Transportation (CalTrans), which owns and manages Highway 299, spent a week in 2016 pruning trees and clearing vegetation along the narrow state right of way. Once the highway crossed over national forest and parkland, CalTrans reached out to Whiskeytown officials to continue the work on federal land outside of CalTrans’ right-of-way. For a variety of reasons, the work did not happen, leaving the risk unaddressed.

The *California’s Wildfire and Forest Resilience Action Plan (Action Plan)* released by the Wildfire and Forest Resilience Task Force (Task Force) in 2021 notes that a fire-safe state highway system is vital to reducing wildfire ignitions and ensuring emergency evacuation routes. Over 5,000 centerline miles of state highways are built in rural settings, including forestland, chaparral, and grasslands. CalTrans estimates 2,600 centerline miles of California’s highway system need fuel reduction treatment within and alongside the CalTrans-owned right of way. Hazardous fuels reduction along roadways can reduce fire hazards and risks by creating a break in horizontal and vertical fuel continuity that can modify future wildfire behavior and improve community protection efforts.

¹ This category includes multiple vehicle-related sources, including from exhaust, chaff, or mechanical sources.

In many cases, the thinning of vegetation along road corridors will cross federal, state, or local boundaries. For example, 3,000 miles of road cross federal lands. According to the *Action Plan*, CalTrans is establishing a framework for collaborative fuels reduction projects to protect roadway travelers, communities along highways, and to reduce roadside ignitions along primary and secondary emergency evacuation routes. CalTrans also commits in the *Action Plan* to partnering with adjacent landowners to treat priority areas along its 2,600 miles of high-risk roadways and to develop a statewide Good Neighbor Agreement with the U.S. Forest Service to treat adjacent federal lands.

California Vegetation Treatment Program (CalVTP). In response to concerns raised by communities that the CEQA process was slowing down their ability to launch critical wildfire fuel reduction projects, the Board of Forestry and Fire Protection (Board) adopted the CalVTP. The CalVTP provides a CEQA compliance tool to expedite the implementation of wildfire resilience projects. The CalVTP EIR covers 20.3 million acres of fire-prone land in the state responsibility area. Under the CalVTP, a project proponent could implement prescribed burning, mechanical treatments, manual treatments, herbicide application, and prescribed herbivory to reduce hazardous vegetation around communities in the Wildland-Urban Interface, to construct fuel breaks, and to promote ecological restoration. To utilize the CalVTP, a project proponent must complete a site-specific environmental analysis. Once approved, it is valid for up to 10 years, allowing multiple rounds of vegetation treatment and maintenance using the same environmental document.

Existing federal law:

- 1) Establishes the federal Endangered Species Act of 1973 (FESA) which prohibits, without a permit, the take or possession of any endangered species of fish and wildlife and prohibits the removal of any endangered species of plants. *16 USC §§1531 et seq.*

Existing state law:

- 1) Establishes the California Endangered Species Act (CESA), which generally prohibits, without a permit, a person or public agency from importing, exporting, or taking, possessing, purchasing, or selling any endangered or threatened species, or any part or product thereof, or attempting any of those acts. *Fish and Game Code §2080.*
- 2) Establishes the Governor's Office of Planning and Research (OPR) under the control of the director of OPR. OPR serves the Governor and the Governor's Cabinet as staff for long-range planning and research, and constitutes the comprehensive state planning agency. *Government Code (GOV) §65037 and §65040, respectively.*
- 3) Establishes CNRA under the control of the CNRA secretary, with oversight of natural resources-related departments, boards, and conservancies. *GOV §12805.*
- 4) Establishes a local assistance grant program for fire prevention and home hardening education activities in California. This program, known as the Fire Prevention Grant Program, is administered by CalFire and funds vegetation

management along roadways and driveways to reduce fire risk, among other fire prevention activities. *Public Resources Code (PRC) §4124.5.*

- 5) Establishes the California Environmental Quality Act (CEQA), which requires a lead agency with the principal responsibility for carrying out or approving a project to prepare a negative declaration, mitigated negative declaration, or EIR for the project, unless the project is exempt from CEQA. *PRC §§21000 et seq.*
 - a) Requires OPR to prepare and develop, and the CNRA secretary to certify and adopt, guidelines for the implementation of CEQA. *PRC §21083.*
 - b) 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 §21084.*
 - c) Establishes statutory exemptions from CEQA, including the following:
 - i) Prescribed fire, reforestation, habitat restoration, thinning, or fuel reduction projects on federal lands that have been reviewed under National Environmental Policy Act (NEPA) if certain conditions are met. *PRC §4799.05.*
 - ii) Until January 1, 2025, a project to conserve, restore, protect, or enhance, and assist in the recovery of California native fish and wildlife, and the habitat upon which they depend. *PRC §21080.56.*
 - iii) Until January 1, 2025, a project to restore or provide habitat for California native fish and wildlife. *PRC §21080.56.*

Existing regulation:

- 1) Establishes categorical exemptions from CEQA, including the following:
 - a) Class 1 exemption: 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. This includes existing highways and streets, including road grading for the purpose of public safety. *California Code of Regulations Title 14 (14 CCR) §15301.*
 - b) Class 4 exemption: 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 and agricultural purposes. This includes fuel management activities within 30 feet of structures to reduce the volume of flammable vegetation, provided that the activities will not result in the taking of endangered, rare, or threatened plant or animal species or significant erosion and sedimentation of surface waters. *14 CCR §15304.*

PROPOSED LAW

This bill would:

- 1) By January 1, 2026, direct OPR to evaluate, and the CNRA secretary to consider, creating a categorical exemption under CEQA for roadside projects no more than

five road miles from a municipality or census designated place that are undertaken solely for the purpose of wildfire risk reduction.

- a) Direct OPR to consider appropriate eligibility criteria for this type of categorical exemption, including, among others, the distance from the edge of an improved road or surface, any disturbance to soil and resultant impacts on sedimentation, protection of natural resources such as trees, and potential impacts to wildlife.
- b) Provide that an exemption for this type of project does not limit any other statutory or categorical exemption that may otherwise apply to roadside projects undertaken to reduce wildfire risk.

ARGUMENTS IN SUPPORT

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.”

According to the sponsor, “Roadside ignitions pose a significant threat to our communities and are made worse by the presence of dry vegetation capable of carrying fast moving fire. Implementing vegetation management along roadsides, in addition to prescribed burns, strategic fuel breaks, and home hardening, is essential for reducing the spread of wildfires and protecting both built and natural environments.”

“Current CEQA requirements for roadside vegetation management projects are time-consuming and expensive, limiting the scale of necessary wildfire risk reduction efforts. SB 1159 addresses this challenge by recognizing roadside vegetation management as a legislative priority and advocating for its inclusion on the list of categorically exempt projects under CEQA guidelines.”

According to the Pacific Forest Trust, “Roads are a very common place for wildfires to start and are a logical place to focus fire risk reduction projects. Despite the broad consensus around this need the existing mechanisms for environmental compliance are less than clear. SB 1159 offers a responsible pathway for streamlining priority projects with *de minimis* impacts.”

According to Contra Costa County, “Roadside wildfire risk reduction projects contribute to creating safer working conditions for firefighters by reducing fuel loads and improving access for firefighters to reach and respond to wildfires more effectively.”

According to Napa County, this bill “may have a positive impact on our ability to improve fire breaks and evacuation routes. Effective fire breaks and evacuation routes are critical to the process of mitigating the risk a wildfire poses to a community: residents need to have confidence that main roads will act effectively as fire breaks and that they can be efficiently evacuated from danger.”

According to San Diego Gas & Electric, “Roadside wildfire risk reduction projects are a critical component of our work as they help to reduce the spread of wildfires and property damage. Roadways are used for ingress and egress during emergencies and the longer an ingress/egress route can be free of fire, the longer it can be used for evacuation purposes and to facilitate assistance by emergency personnel.”

ARGUMENTS IN OPPOSITION

According to Livable California (LC), “Projects that reduce wildfire risk in roadside areas, such as by tree removal or brush clearance, can be beneficial. However, roadside areas within forests or areas of chaparral may also be important as wildlife habitat. For example, the Alameda whipsnake, a federally listed endangered species, uses chaparral, and particularly rock outcroppings and flat, sunny rock surfaces, as part of its preferred habitat. While the bill includes potential impacts to wildlife in factors to be considered, more is required.”

“Any CEQA exemption for wildfire prevention projects along roadways should explicitly exclude areas that have been identified as habitat or potential habitat for sensitive wildlife species – either plant or animal. The exemption should also not apply to fire roads, which often go through sensitive habitat areas and can have an important function as wildlife migration corridors.”

COMMENTS

Dual referral. This bill was referred to the Senate Environmental Quality Committee and this Committee. The former Committee passed the bill unanimously on April 3, 2024, without amendments. Elements of the bill under that Committee’s jurisdiction were discussed before that Committee and are included here for completeness and context only.

The need for the bill. According to the author, sponsor, and supporters, CEQA compliance can be costly and time consuming, delaying important vegetation management projects along roadsides. The CalVTP, however, offers one route to achieve CEQA compliance in a less costly and time-consuming manner. Based on a quick search of the CalVTP database, it appears that some entities are using the CalVTP process to support roadside fuel reduction work. Further, according to the Rural County Representatives of California (RCRC), which writes in support of the bill, “CalFire, the Department of Parks and Recreation, and many counties, cities, and special districts have used existing categorical exemptions for roadside fuel reduction work. These exemptions include the Class 1 (Existing Facility) and Class 4 (Minor Alterations to Land) categorical exemptions.”

Given these options, a key question for the Committee is: Why is this new categorical exemption needed? According to sponsor, the Class 1 and Class 4 categorical exemptions are less than clear regarding their applicability to vegetation management work alongside roadways to reduce wildfire risk. Some project proponents may be hesitant to use these exemptions given concerns over potential CEQA challenges. To clear up any ambiguity, this bill would direct OPR to evaluate, and the CNRA secretary to consider adopting, a new categorical exemption for roadside projects undertaken solely for the purpose of wildfire risk reduction within five road miles of a municipality or census designated place.

It is worth noting that RCRC supports the bill, although it has some requests for amendments discussed further bill, in part because the bill states that the proposed categorical exemption, if adopted, would *not limit the use of any other statutory or categorical exemption that may otherwise apply to roadside projects undertaken to reduce wildfire risk*. Without that provision of the bill, RCRC was concerned the proposed categorical exemption would have supplanted the authority of state and local governments to use the existing categorical exemptions.

FESA and CESA concerns. These two laws provide a framework to list threatened and endangered species and to conserve and protect these species and their habitats. Both laws generally prohibit the “taking” of any listed species without a permit from the appropriate agency. The lead agencies for implementing FESA are the U.S. Fish and Wildlife Service and the U.S. National Oceanic and Atmospheric Administration Fisheries. The California Department of Fish and Wildlife (CDFW) is the state’s lead agency for granting permits under CESA when necessary for the take of CESA listed species.

The EIR prepared under CEQA provides the necessary information and analysis to determine whether a project will significantly impact a listed species and what measures might be adopted to avoid or mitigate those impacts. CDFW uses the EIR to inform its decision-making regarding the necessity for and conditions of a CESA permit. If, pursuant to this bill, the CNRA secretary adopted a new categorical exemption for roadside projects undertaken solely for the purpose of wildfire risk reduction within five road miles of a municipality or census designated place, it would make it more difficult to assess a project’s potential impact on listed species and to enforce CESA and FESA prohibitions on the take of listed species.

It is worth noting that this bill does not exempt a project from CESA rules and requirements. It also does not (and could not) exempt a project from FESA. If a project proponent secured the proposed categorical exemption for a roadside fuel reduction project, and then, in the course of work discovered listed species within the project site or nearby that would be impacted by the project, existing law would require the project proponent to stop work and start the CEQA process. In other words, the categorical exemption would no longer apply. However, it would be exceedingly difficult for CDFW to enforce this.

Livable California raises similar concerns in an oppose letter regarding the bill’s potential impacts to listed species, arguing that “any CEQA exemption for wildfire prevention projects along roadways should explicitly exclude areas that have been identified as habitat or potential habitat for sensitive wildlife species – either plant or animal.”

A key consideration for this Committee is how to balance the need to quickly implement fuel reductions projects along roadways to protect communities and ecosystems from catastrophic wildfires with the need to protect threatened and endangered species from the potential impacts of these projects.

Committee amendments. Should the bill move forward, the Committee may wish to consider amending the bill to seek to address these concerns. In particular, this would include amendments to:

- Require OPR to evaluate a categorical exemption for roadside fuel reduction projects and consider appropriate eligibility criteria for these projects *in consultation with CDFW and any other relevant state agencies, as specified.* **(See Amendment 1)**
- Expand the list of eligibility criteria that OPR must consider when evaluating the proposed categorical exemption to include *protection of sensitive, rare, threatened, or endangered plants, and considerations for lands under conservation easement or identified for conservation in an adopted natural community conservation plan, habitat conservation plan, or other adopted natural resource protection plan, as specified.* **(See Amendment 2)**
- Clarify that *a project must comply with all requirements otherwise imposed by law, including CESA and FESA, among others.* **(See Amendment 3)**

Further, the Committee may wish to consider adopting a technical amendment to refer to the potential categorical exemption as a class of an exemption, which is how categorical exemptions are generally named and discussed. **(See Amendment 4)**

Other issues for consideration. Multiple letters identified other issues that the author may wish to consider as the bill moves forward. This includes identifying the scope of roads to which the proposed categorical exemption would apply. The bill calls out “roadside projects” and, in the eligibility criteria, uses the term “improved road or surface.” It is unclear what types of roads this might include and the issue generally falls outside of the jurisdiction of this Committee. However, to make clear the author’s intent for the bill, the author may wish to clarify which roads would be eligible for the proposed categorical exemption.

Further, multiple letters requested allowing the proposed categorical exemption to apply to projects that have multiple purposes, rather than “solely for the purpose of wildfire risk reduction” and to eliminate the five road mile limitation on where the proposed categorical exemption could be used. Both suggestions would dramatically expand the scope of the proposed categorical exemption and require careful consideration of how the Legislature intends to balance the need for fuels management to protect communities and ecosystems from catastrophic wildfires with the need to protect threatened and endangered species.

Related/Prior legislation.

AB 1951 (Vince Fong, 2024) would exempt a project for wildfire prevention, including the removal of trees and brush, within 50 feet of either side of a roadway, from CEQA. *This bill is pending review in the Assembly Natural Resources Committee.*

AB 2643 (Wood, 2024), among other things, would make the CEQA exemption permanent for projects to conserve, restore, protect, or enhance, and assist in the recovery of California native fish and wildlife, and the habitat upon which they depend; and to restore or provide habitat for California native fish and wildlife. *This bill is pending review in the Assembly Water, Parks and Wildlife Committee.*

AB 211 (Committee on Budget, Chapter 574, Statutes of 2022) extended the sunset from January 1, 2023, to January 1, 2028 for the CEQA exemption for prescribed fire,

thinning, or fuel reduction projects undertaken on federal lands that have been reviewed under the National Environmental Policy Act, as specified; and expanded this exemption for reforestation and habitat restoration projects undertaken on federal lands that have been reviewed under the National Environmental Policy Act, as specified.

AB 297 (Gallagher, 2021) would have exempted from CEQA projects or activities related to forest health and fuel reduction, including, but not limited to, projects undertaken pursuant to the federal Good Neighbor Authority, that involve thinning overgrown brushes or trees 10 inches or less in diameter by mechanical thinning, pile burning, prescribed fire, and grazing. *This bill was not heard in the first policy committee.*

SUGGESTED AMENDMENTS

AMENDMENT 1

In proposed PRC 21084.4(a)(1) and (2), amend as follows:

(a) (1) On or before January 1, 2026, the Office of Planning and Research, in consultation with the Department of Fish and Wildlife, the Department of Forestry and Fire Protection, the State Water Resources Control Board, and any other relevant state agencies, shall evaluate, and the Secretary of the Natural Resources Agency shall consider ...

(2) The Office of Planning and Research, in consultation with the Department of Fish and Wildlife, the Department of Forestry and Fire Protection, the State Water Resources Control Board, and any other relevant state agencies, shall consider appropriate eligibility criteria ...

AMENDMENT 2

In proposed PRC 21084.4(a)(2), amend as follows:

(2) ... shall consider appropriate eligibility criteria for a roadside project subject to paragraph (1), including, among others, the distance from the edge of an improved road or surface, any disturbance to soil and resultant impacts on sedimentation, protection of natural resources such as trees, and sensitive, rare, threatened, or endangered plants, and potential impacts to wildlife, and considerations for lands under conservation easement or identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.

AMENDMENT 3

In proposed PRC 21084.4, add new paragraph (3) under subdivision (a), as follows:

(3) A project shall comply with all requirements otherwise imposed by law, including, but not limited to, the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the

Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), and any other applicable state and federal laws.

AMENDMENT 4

In proposed PRC 21084.4, amend subdivision (b), as follows:

(b) An exemption for projects ~~described~~ in this section class shall not limit any other statutory or categorical exemption that may otherwise apply to roadside projects undertaken to reduce wildfire risk.

SUPPORT

California Fire Chiefs Association (sponsor)
Associated General Contractors
California Building Industry Association
California Farm Bureau Federation
California State Council of Laborers
Contra Costa County Fire Chiefs
County of Contra Costa
County of Napa
County of Sonoma
County of Yolo
Humboldt Redwood Company LLC
Mendocino Redwood Company LLC
Pacific Forest Trust
Rural County Representatives of California
San Diego Gas and Electric Company
Wine Institute

OPPOSITION

Livable California

-- END --