

A Crossroads for Cities and Counties: Where the Housing Crisis and Fire Safety Collide

California is at the crossroads of a significant public policy conflict: how do we facilitate construction of much-needed housing without creating risks to public health and safety in the inevitable event of a wildfire?

Development in the wildland urban interface (WUI) leaves people and property more vulnerable to wildfire and can increase the risk of ignition by humans. One recent paper summarizes the issue and its relationship to meeting California's housing goals:

A crucial issue for many of the major pathways for facilitating housing development in California--whether it is trying to develop CEQA exemptions for individual projects, supporting local government efforts to upzone across neighborhoods or cities to facilitate development more broadly, or having the state intervene to restrict local discretion in land-use regulation--is ensuring that the pathway actually produces housing where state officials want it, and not where they do not. . . . For example, as it stands, current state housing element law could require substantial housing production in jurisdictions that are located almost entirely in high fire hazard areas.¹

Densifying housing in urban and suburban hills may help with affordability, but some fear it could create a problem if disaster strikes, while others argue this is simply the new pet issue of wealthy NIMBYs. This paper will discuss the development of this conflict, potential implications, and what cities and counties can do to balance these important priorities.

The Housing Crisis

California is, indisputably, in the midst of a housing affordability crisis. Historically, many obstacles have stood in the way of housing production, including high construction costs, local land use control, and opposition to development, with the California Environmental Quality Act (CEQA) being frequently utilized by NIMBYs.

The State of California has spent the last decade trying to facilitate development of housing by usurping local land use control and removing obstacles that increase costs and delay. Significant housing legislation over the last five years includes SB 330, which streamlined housing projects and purported to remove administrative hurdles; SB 35, which created a streamlined, ministerial approval process for qualifying housing projects; SB 9, which required ministerial approval of urban lot splits for residential projects and facilitated construction of ADUs; and SB 10, which

¹ Eric Biber, Christopher Elmendorf, Nicholas Marantz, Moira O'Neill, *Just Look at the Map: Bounding Environmental Review of Housing Development in California*, 54 *Env'tl. L.* 221, 263 (2024), citing as an example, *Wildland Urban Interface*, Fire Safe Marin, <https://perma.cc/8UPZ-E76T>. "Specifically, these communities will shortly receive regional housing needs allocation (RHNA) quotas that require significant production of housing under state law, with a range of potential consequences that might occur if those quotas are not met, including the ability for developers to construct housing inconsistent with components of the local jurisdiction's zoning regulations. See Ass'n of Bay Area Gov'ts, Final Regional Housing Needs Allocation (RHNA) Plan: San Francisco Bay Area, 2023-2031, at 24, 26 tbl.4 (2021), <https://perma.cc/RLF7-P4X6> (requiring, in a draft proposal, the city of Mill Valley to produce 865 units between 2024 and 2031)." The study focused on three counties, finding that most of the proposed development that San Diego County in the study years was located in a very high- or high-risk fire hazard zone.

allowed, but did not require, a local jurisdiction to adopt an ordinance allowing for up to 10 units per parcel in transit-rich areas. However, some of this housing legislation authorizes a local government to establish objective criteria in evaluating housing projects, including criteria on fire protection.

The net effect of this effort has been increased zoning for and construction of dense housing in all parts of the state, including hilly and mountainous regions; streamlined review for housing where it meets certain criteria, potentially removing the requirement for review of wildfire impacts; and remedies against Cities and Counties who do not approve housing, even where there are potential concerns about wildfire.

Wildfire

Meanwhile, the State of California has faced an increase in the severity and frequency of extreme wildfires, culminating most recently in the Palisades fires, with caused immense destruction. A 2024 study by scientists from the University of California, Irvine, and the University of Utah found that the severity of California’s wildfires has rapidly increased over the last several decades as a result of human-driven climate change. According to Jon Wang, a professor at the University of Utah, “[a]s California’s climate has become warmer and drier, the severity of the average wildfire increased by 30 percent between the 1980s and 2010s.” And fires that begin in or spread into WUI areas put communities at risk and can result in extreme financial consequences, as we saw in Pacific Palisades. As a result, homeowners insurance companies are exiting many markets and cancelling policies, even as to long-time policyholders.

Challenges for Cities – Wildfire Risk Management and Evacuation Concerns

Given the established need for housing and the ever-increasing risk faced by wildfires, local governments face two major policy issues: (1) how to effectively manage and reduce wildfire risk; and (2) how to address evacuation issues in areas where development is occurring despite limited ingress/egress. For both issues, we will look at cases recently filed against public agencies in the Bay Area.

Orinda and Moraga are wealthy communities nestled in the East Bay hills on the other side of the Caldecott Tunnel from Oakland. Orinda is located directly on Highway 24 and the regional transit line, with a BART station in the middle of town, but the bulk of the homes in Orinda are located on the steep hillsides that flank Highway 24. Moraga is located roughly 7 miles from the freeway, in an isolated hilly area with very limited routes of egress. The local fire authority, the Moraga-Orinda Fire District (MOFD), is a client of both presenters.

In January, the San Francisco Chronicle called these two communities “the Bay Area’s Pacific Palisades,” stating that they are most at risk for an urban firestorm.² The article featured MOFD Chief Jeff Isaacs, who, along with his predecessor, takes an aggressive and innovative approach to managing wildfire risk in the area.

² <https://www.sfchronicle.com/politics/article/orinda-moraga-fire-risk-20036253.php>

Vegetation Management – *Sandia Pearson v. Moraga-Orinda Fire District*³

In 2023, MOFD’s Board passed the Fuel Break Ordinance that required property owners within the District to manage vegetation to reduce wildfire intensity and spread potential. The Ordinance built on previous regulations related to parcels over one-acre, increasing the required perimeter fuel break. After some pushback from the project opponents, they revised the ordinance and eventually approved it pursuant to the statutory CEQA exemption for emergency projects and two categorical CEQA exemptions for regulatory actions to protect or enhance natural resources and the environment. The ordinance mirrored the State Fire Safe Regulations, requiring common-sense management of vegetation around homes and 100-foot buffers on the borders of large parcels.

Petitioners alleged that the ordinance should have required preparation of an EIR, arguing that the ordinance required “clear-cutting” of vegetation that could be harmful to the environment. Specifically, they alleged that:

- Measures to prevent fire ignition and spread were not actions taken to protect the environment
- The ordinance presented unusual circumstances due to habitat and topography
- The ordinance could have unintended significant impacts, particularly as to large areas required as fire breaks

The court ruled in favor of MOFD, finding the Ordinance was exempt from CEQA under categorical exemptions for regulatory actions protecting natural resources and the environment, as well as the statutory emergency exemption. The court found expert opinions and technical data on wildfire risks provided substantial evidence supporting the District’s position that the Ordinance is necessary to reduce wildfire risks, protect public safety, and the environment. The court noted the Ordinance includes provisions to address environmental concerns, such as a modification process for properties with sensitive habitats. Petitioners did not appeal, but MOFD incurred litigation costs unnecessarily.

Wildfire Evacuation Analysis – *Orindans for Safe Emergency Evacuation (OSEE) v. City of Orinda*⁴

Residents challenged a Program Environmental Impact Report (EIR) for “Plan Orinda,” a local land use plan intending to increase density near the town center and BART station. The City of Orinda flanks Highway 24 and the yellow BART line, with a town center adjacent to the freeway and the Town rising up slopes on both sides. Most homes are on narrow residential streets, many of which wind through the hills and provide limited access. The EIR found impacts to evacuation to be significant and unavoidable, and the City approved the plan and certified the EIR.

Petitioners challenged the plan on the basis that it did not effectively evaluate evacuation risk, and the court agreed. The court found that “Because the EIR provides ambiguous information on the impacts on evacuation in WFR-1 [Wildfire Risk-1] and does not provide the public and

³ *Pearson v. MOFD*, Case No. N23-2201, Superior Court of California, Contra Costa County.

⁴ *OSEE v. Orinda*, Case No. N23-0579, Superior Court of California, Contra Costa County.

decision-makers with sufficient information to understand the magnitude of the impacts of the Project on evacuation in the face of wildfire hazards, the City did not have sufficient information to balance the benefits of the Project against its adverse impacts, after mitigation, and the City’s Statement of Overriding Considerations is therefore not supported.” The court also found flaw in a mitigation measure requiring “shelter in place” development standards and a Wildfire Hazard Assessment Plan.

The Town ultimately recirculated the EIR and re-approved the Project, including a new threshold of significance—whether the project would substantially increase emergency evacuation constraints—and imposing new mitigation measures for situations where sheltering in place was necessary, including vegetation management, fire sprinklers, and fire safe construction.

Wildfire Evacuation Analysis – *SAFE Moraga v. Town of Moraga*⁵

Petitioners challenged approval of a 66-unit housing project, including affordable units, alleging the Town violated CEQA by failing to adequately analyze wildfire risk, specifically, wildfire evacuation safety. The project was approved as consistent with the Comprehensive Advanced Planning Initiative (CAPI) Programmatic EIR previously prepared by the Town. The programmatic EIR considered addition of 1,118 units of housing to Moraga, where there are currently about 6,000 homes. This case is currently on hold because the developer has represented that it is considering an alternative project.

2025 Legislation and Regulatory Updates

The Legislature has begun to acknowledge this tension between the need to build housing and the imperative to avoid putting more people and property at risk of catastrophic wildfire. For example, several provisions of the CEQA reform bills do not allow certain exemptions to apply to very high fire hazard severity zones. Others allow exemptions to apply in these areas as long as the site has adopted fire hazard mitigation measures.

AB 130 (Budget Trailer Bill) – Signed into Law 6/30/25, Effective Immediately

This is a CEQA exemption for urban infill housing projects that meet the requirements in Government Code Section 65913.4(a), including 65913.4(a)(6). To qualify for the exemption, among other requirements, the project must meet the standards in siting criteria, which generally prohibits projects in environmentally sensitive areas, including areas of high wildfire risk.

The exemption cannot be used for projects within CAL FIRE designated very high fire hazard severity zones pursuant to Government Code Section 51178, or within the state responsibility area. However, this exclusion does not apply where sites have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

⁵*SAFE Moraga v. Town of Moraga*, Case No. N25-0416, Superior Court of California, Contra Costa County

It also implements a six- year freeze of California Building Standards Code, freezing local amendments applicable to housing projects until 2031, with limited exceptions. Exceptions for this provision include changes or modifications related to home hardening, building standards related to home hardening and proposed for adoption by a fire protection district, and where the Building Standards Commission deems changes or modifications necessary as emergency standards to protect health and safety.

This law also increases HCD enforcement authority over methodology for RHNA, adding factors for developing methodology that allocates regional housing, including “Emergency evacuation route capacity, wildfire risk, sea level rise, and other impacts caused by climate change.”

It also includes Permit Streamlining Act amendments, including ministerial approval process for ADUs and one junior accessory dwelling units can only be used where certain criteria are met, including that the “side and rear setbacks are sufficient for fire and safety.”

Finally, it amends Starter Home Revitalization Act of 2021 (SB 684/ SB 1123) to allow a ministerial approval process for subdividing a parcel can only be used where the lot to be subdivided is not within a very high fire hazard severity zone. For this provision (unlike the infill CEQA exemption), there is no exception to the fire hazard severity zone prohibition even if specified fire hazard mitigation measures have been adopted.

SB 131 (Budget Trailer Bill) – Signed into Law 6/30/25, Effective Immediately

This new law creates a narrower CEQA analysis for “near miss” housing projects with a single impact. Housing projects that would be exempt from CEQA but for a single unsatisfied condition only need to undertake environmental review of impacts related to that condition. While the narrower CEQA analysis does not apply to projects located on natural and protected lands, it *may* apply to a project located in a very high fire hazard severity zone.

It also creates a CEQA exemption for certain rezoning projects undertaken to implement an approved Housing Element that has already gone through CEQA are exempt from CEQA. This provision does not apply to rezoning sites designated as "natural and protected lands," which may include sites in very high fire severity zones.

SB 131 also requires the Governor’s Office of Land Use & Climate Innovation (LCI, formerly OPR) to map eligible urban infill sites statewide by 2027. This assessment will help identify areas where development on the site will help accomplish state goals, including reducing the distance people need to travel and reducing conversion of open space for new development. It seems likely that this assessment would focus new development on areas not within the wildland urban interface. These are not the same “infill” sites that are used to qualify for the infill exemption.

The bill additionally creates a CEQA exemption for certain wildfire risk reduction projects and other community-serving infrastructure, including:

- Prescribed fire or fuel reduction projects to reduce wildfire risk. Projects must consult with the Department of Fish and Wildlife, may not exceed 50 contiguous acres, and must be located within one-half mile of a subdivision with at least 30 units.
- Defensible space fire clearance up to 100 feet for public roadways identified as egress or evacuation routes to remove flammable vegetation or trees under 12 inches in diameter. Applies to subdivisions or communities with 30 or more dwelling units.
- Establishment or enhancement of residential home hardening or defensible space for wildfire risk reduction within 200 feet of a legal structure in a high- or very high-fire severity zone; and
- Fuel breaks up to 200 feet from structures, including clearing flammable vegetation and trees under 12 inches in diameter.

AB 100 (Gabriel) – Signed into Law 4/14/2025

This law aims to expedite fire reduction projects and allocates over \$10 million to support wildfire response and resiliency and \$170 million in funding to conservancies for forest and vegetation management across California. It was signed into law along with an [Executive Order](#) to expedite implementation of these projects by authorizing state agencies to streamline or suspend State statutory and regulatory requirements for fuels reduction projects.

SB 79—Passed but Not Yet Signed

[SB 79](#) would create a ministerial approval process for housing development projects located within a certain distance of transit-oriented development stops. According to Cal Cities, under the bill, transit agencies would have the power to determine nearly all aspects of the development, including height, density, and design, without any regard to local zoning or planning.

Practical Advice and Conclusion

While legislators may have begun to recognize the potential for development to exacerbate wildfire risk—both as to ignition and evacuation, the momentum in Sacramento to facilitate construction of housing has not slowed. Local government officials and planners will continue to face the dilemma of being required to zone for and approve housing projects, despite concerns about wildfire and evacuation—whether valid or just perceived by local residents.

In preparing a defensible CEQA evacuation analysis, it is advisable to rely on experts, including local fire officials, model evacuation scenarios (including potentially adopting significance thresholds for evacuation times), and, where possible, quantify the impact on evacuation times. In terms of addressing these policy issues more broadly, local governments should talk to state legislators about the need to balance housing and wildfire safety, look for ways to improve access, ingress, and egress, aggressively fund and undertake fuel management, and consider establishing related impact fees.

It will be critical that local agencies employ aggressive tactics to reduce the risk of wildfire, explore options for improving ingress and egress in the event of an emergency, and push Sacramento to allow local governments to deny projects that create unreasonable risk.