
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2021 - 2022 Regular

Bill No: AB 1154
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Urgency: No
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Fiscal: Yes

SUBJECT: California Environmental Quality Act: exemption: egress route projects: fire safety

DIGEST: Exempts from CEQA, until January 1, 2029, egress route projects undertaken by a public agency to improve emergency access to and evacuation from a subdivision without a secondary egress route if the State Board of Forestry and Fire Protection has recommended the creation of a secondary access to the subdivision and certain conditions are met.

ANALYSIS:

Existing law:

- 1) The California Environmental Quality Act (CEQA), requires lead agencies with the principal responsibility for carrying out or approving a proposed discretionary project to prepare a negative declaration (ND), mitigated negative declaration (MND), or environmental impact report (EIR) for this action, unless the project is exempt from CEQA (CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA guidelines). (Public Resources Code (PRC) §21000 et seq.)
- 2) Existing law, the Planning and Zoning Law,
 - a) Requires cities and counties to prepare and adopt a general plan, including a safety element for the protection of the community from any unreasonable risks associated with, among other things, wildland and urban fires. (Government Code (Gov. C.) §65583)
 - b) Requires the safety element to address evacuation routes, military installations, peakload water supply requirements, and minimum road widths and clearances around structures as they relate to fire hazards.
- 3) Requires the State Board of Forestry and Fire Protection (Board), in consultation with the State Fire Marshall, to survey local governments to

identify existing subdivisions located in a state responsibility area (SRA, defined as areas of the state where the financial responsibility of preventing or suppressing fires has been determined by the Board to be the responsibility of the state) or locally-designated “very high fire hazard severity zone” (VHFHSZ) without a secondary egress route that are at significant fire risk and to develop recommendations to improve the subdivision’s fire safety. (PRC §4290.5) Authorizes the recommendations to include, but not be limited to, the following:

- a) Creating secondary access to the subdivision.
- b) Improvements to the existing access road.
- c) Other additional fire safety measures.

This bill:

- 1) Exempts from CEQA, until January 1, 2029, egress route projects to improve emergency access to and evacuation from a subdivision without a secondary egress route if the project meets all of the following:
 - a) The subdivision has been identified by the Board as a subdivision within a SRA high or very high fire hazard severity zone or locally-designated VHFHSZ, without a secondary egress route that are at significant fire risk.
 - b) The Board has recommended the creation of a secondary access to the subdivision.
 - c) The subdivision has insufficient egress routes, as determined by the lead agency.
 - d) The location of the project does not contain wetlands or riparian areas.
 - e) The project does not harm or take any species protected by the federal Endangered Species Act, the Native Plant Protection Act, the Guidelines for Implementation of CEQA, or the California Endangered Species Act.
 - f) The project does not cause the destruction or removal of any species protected by any applicable local ordinance.
 - g) The project does not affect known archaeological, historical, or other cultural resources.
 - h) The project is carried out by a public agency.
 - i) The lead agency determines that the primary purpose of the project is fire safety egress.
 - j) Any commercial timber harvest is incidental to the project’s primary purpose and complies with the Z’Berg-Nejedly Forest Practice Act.
 - k) If the project involves substantial tree removal, the entity carrying out the project has a registered professional forester or the forester’s designee onsite during the implementation of the project to assist with resource identification and protection.

- l) The entity carrying out the project employs the best management practices set forth in the Forest Practice Rules regulations, as specified, to ensure resource protection.
 - m) The lead agency determines that the project has obtained, or is able to obtain, all necessary funding and any federal, state, and local approvals, as specified.
 - n) All roads that comprise the egress route are publicly accessible to vehicular traffic at all times.
- 2) Before determining that a project is not subject to CEQA, requires the lead agency to hold a noticed public meeting on the project to hear and respond to public comments.
 - 3) Requires the lead agency, if the lead agency determines the project is exempt, to file a notice of exemption (NOE) with the Office of Planning and Research (OPR) and the county clerk in the county in which the project is located.

Background

- 1) Background on CEQA.
 - a) *Overview of CEQA Process.* CEQA provides a process for evaluating the environmental effects of a project, and includes statutory exemptions, as well as categorical exemptions in the CEQA guidelines. If a project is not exempt from CEQA, an initial study is prepared to determine whether a project may have a significant effect on the environment. If the initial study shows that there would not be a significant effect on the environment, the lead agency must prepare a ND. If the initial study shows that the project may have a significant effect on the environment, the lead agency must prepare an EIR.

Generally, an EIR must accurately describe the proposed project, identify and analyze each significant environmental impact expected to result from the proposed project, identify mitigation measures to reduce those impacts to the extent feasible, and evaluate a range of reasonable alternatives to the proposed project. Prior to approving any project that has received environmental review, an agency must make certain findings.
 - b) *What is analyzed in an environmental review?* An environmental review analyzes the significant direct and indirect environmental impacts of a proposed project and may include water quality, surface and subsurface hydrology, land use and agricultural resources, transportation and

circulation, air quality and greenhouse gas emissions, terrestrial and aquatic biological resources, aesthetics, geology and soils, recreation, public services and utilities such as water supply and wastewater disposal, and cultural resources. The analysis must also evaluate the cumulative impacts of any past, present, and reasonably foreseeable projects/activities within study areas that are applicable to the resources being evaluated. A study area for a proposed project must not be limited to the footprint of the project because many environmental impacts of a development extend beyond the identified project boundary.

- c) *CEQA provides a hub for multi-disciplinary regulatory process.* An environmental review provides a forum for all the described issue areas to be considered together rather than siloed from one another. It provides a comprehensive review of the project, considering all applicable environmental laws and how those laws interact with one another. For example, it would be prudent for a lead agency to know that a proposal to mitigate a significant impact (i.e. alleviate temporary traffic congestion, due to construction of a development project, by detouring traffic to an alternative route) may trigger a new significant impact (i.e. the detour may redirect the impact onto a sensitive resource, such as a habitat of an endangered species). The environmental impact caused by the proposed mitigation measure should be evaluated as well. CEQA provides the opportunity to analyze a broad spectrum of a project's potential environmental impacts and how each impact may intertwine with one another.
- 2) *Local planning.* Cities and counties are required to adopt a comprehensive general plan with various elements including a safety element for protection of the community from unreasonable risks associated with various hazards, including wildfires. Land use planning incorporates safety element requirements for SRA and VHFHS zones; requires local general plan safety elements, upon the next revision of the housing element on or after January 1, 2014, to be reviewed and updated as necessary to address the risk of fire in the SRA and VHFHS zones; requires each safety element update to take into account the most recent version of OPR's "Fire Hazard Planning" document; and requires OPR to include a reference to materials related to fire hazards or fire safety.

The planning of communities in a way that reduces fire risk can be achieved through ensuring evacuation routes exist, identifying locations where fire breaks can be put in, and ensuring an adequate water supply exists are

important steps to protecting communities from fire risks.

Many developments in the SRA and VHFHS zones were constructed prior to building standards and the fire prevention regulations developed by the Board, including limits on dead end roads. These older nonconforming developments are not required to take proactive steps to reduce their fire risk.

Comments

- 1) *Purpose of Bill.* According to the author, “California continues to see a rise in deadly wildfires, with the 2021 season being the second worst fire season in the state’s history. In 2018, the Board of Forestry was tasked with identifying communities at high risk of experiencing a wildfire who also lack sufficient egress (exit) routes from their communities. AB 1154 builds upon this process by exempting from CEQA these critical projects that are identified by the Board. By doing so, the Legislature will be appropriately expediting projects that could prove vital to saving lives in future fires.”
- 2) *Available alternatives.* CEQA already provides alternatives to comprehensive environmental review for minor projects, including road maintenance, which could be applicable to AB 1154 egress route projects.
 - a) *Categorical exemption for work on existing facilities* where there is negligible expansion of an existing use, specifically including "(e)xisting highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities," (CEQA Guidelines, Section 15301(c)).
 - b) *Negative Declaration or Mitigated Negative Declaration May Apply.*
If an exemption does not apply, then it should be noted that not all projects subject to CEQA are required to do an EIR. In fact, based on the number of documents submitted to the State Clearinghouse, data shows that most projects do not trigger an EIR.

If the initial study shows that there would not be a significant effect on the environment, a lead agency prepares an ND and no EIR is required. If the initial study shows potentially significant impacts but the applicant revises the project, which would avoid or mitigate those impacts, the lead agency could prepare a MND. These types of environmental reviews tend to be less expensive and time-consuming than an EIR.

- c) *Development projects consistent with a general plan.* A road project that has been considered in a local planning EIR would be subject to

abbreviated review, or possibly exemption, depending on the project's potential to have a significant effect on the environment (PRC §21083.3).

- 3) *Look before you leap.* Often groups will seek a CEQA exemption to expedite construction of a particular type of project and reduce costs. Providing an exemption, however, can overlook the benefits of environmental review: to inform decisionmakers and the public about project impacts, identify ways to avoid or significantly reduce environmental damage, disclose to the public reasons why an agency approved a project if significant environmental impacts are identified, and increase public participation in the environmental review and planning processes.

CEQA is a process. It does not dictate the outcome of a project but rather is a disclosure mechanism that guarantees public involvement and transparency in the project approval process. "CEQA operates, not by dictating pro-environmental outcomes, but rather by mandating that 'decision makers and the public' study the likely environmental effects of contemplated government actions and thus make fully informed decisions regarding those actions. ... In other words, CEQA does not care what decision is made as long as it is an informed one." (Citizens Coalition Los Angeles v. City of Los Angeles (2018) 26 Cal. App. 5th 561, 577.)

While the focus of this bill is to ensure that subdivisions have adequate egress routes in the event of an emergency, CEQA takes into consideration all environmental impacts of a project and ensures that informed decision making takes place. If an egress route project is subject to CEQA, or abbreviated environmental review, responsible agencies will consult with the lead agency on the preparation of the environmental review document. The responsible agency may help identify significant environmental impacts and how to avoid or mitigate those impacts. Without CEQA, such consultation may not take place.

For example, the California Department of Fish and Wildlife (CDFW) could help identify wildlife connectivity areas and help ensure that the project does not interfere with those areas. Consultation with CDFW could help determine if certain seasonal considerations apply, or provide a deeper, more nuanced assessment of the project site than simply avoiding wetlands or riparian areas. If a project is exempt from CEQA, project proponents may not know about potential environmental impacts or how to avoid them.

Additionally, according to some stakeholders, while the addition of a secondary egress route can help improve safety measures, building an

additional road can also induce growth. However, the sponsors argue that because the focus of the exemption is addressing wildfire risk, whether the project can lead to growth inducement is harder to assess.

The committee may wish to amend the bill to require the public agency carrying out the project to consult with the California Department of Fish and Wildlife during project development.

- 4) *Take two.* In 2019, the Legislature passed a nearly identical bill, AB 394 (Oberholte). The differences between this bill and AB 394 are: (1) AB 1154 requires the Board to recommend the creation of a secondary access, whereas AB 394 required the Board to recommend a specific road project; and (2) AB 1154 sunsets the exemption in 2029, whereas AB 394 would have sunset the exemption in 2025.

AB 394 passed this committee with a vote of 4-0. The bill was ultimately vetoed by Governor Newsom with the following message:

“This bill exempts from the California Environmental Quality Act (CEQA), until January 1, 2025, egress route projects or activities undertaken by a public agency. The affected projects include those that are specifically recommended by the State Board of Forestry and Fire Protection to improve the fire safety of an existing subdivision when certain conditions are met.

“California’s devastating wildfires of 2017 and 2018 amplified the urgent imperative to mitigate risk and build robust community emergency plans, especially for our most vulnerable in the Wildland-Urban Interface (WUI). However, the CEQA exemption provided in this bill is premature and may result in unintended consequences. Without better information on the number, location, and potential impacts of future fire safety road construction projects, it is not clear whether statutory changes are needed. Furthermore, it is important that we build solutions around the unique and targeted needs of each community.”

Since AB 394, the Board has begun to identify subdivisions that are within SRA and locally-designated VHFHSZs. However, it is unclear if the bill, in its current form, addresses the Governor’s direction to build solutions around the unique and targeted needs of each community.

- 5) *Committee amendments. Staff recommends the committee adopt the bolded amendments contained in comment 3 above.*

Related/Prior Legislation

SB 632 (Galgiani, Chapter 411, Statutes of 2019) requires the State Board of Forestry and Fire Protection to complete the CEQA review of, and certify, a specified program environmental impact report for a vegetation treatment program by June 30, 2020.

AB 394 (Oberholte, 2019), a bill nearly identical to this bill, proposed to exempt from CEQA an egress route project specifically recommended by the State Board of Forestry and Fire Protection that improves fire safety of an existing residential subdivision if specified conditions are met. AB 395 was vetoed by Governor Newsom.

AB 2911 (Friedman, Chapter 641, Statutes of 2018) made various changes to fire safety planning efforts, defensible space requirements, and electrical transmission or distribution lines' vegetation clearance requirements with the intent to improve the fire safety of California communities.

SOURCE: Rural County Representatives of California

SUPPORT:

California Association of Realtors
California Fire Chiefs Association
California Special Districts Association
Forest Landowners of California
Humboldt and Mendocino Redwood Company LLC
Madera County
Mariposa County Board of Supervisors
Mono County Board of Supervisors
Sierra Resource Conservation District
Tuolumne County Board of Supervisors

OPPOSITION:

California Native Plant Society
Defenders of Wildlife
Endangered Habitats League
Planning and Conservation League

ARGUMENTS IN SUPPORT: According to Rural County Representatives of California, the sponsors of the bill, "AB 1154 builds upon the foundation laid by AB 2911 by exempting from the California Environmental Quality Act (CEQA)

fire safety egress projects where the Board has suggested creation of a secondary egress route. Aside from expediting construction of new roads recommended by the Board, AB 1154 also helps implement the Board's suggestions to remove barriers and improve existing exit routes.

“While CEQA provides public disclosure and environmental mitigation benefits, it can also add considerable costs and delay project completion, especially if the project's compliance is challenged through litigation. Many communities lacking secondary egress routes are located in rural counties where scarce resources are needed for project construction. Furthermore, the increasing risk of catastrophic wildfires justifies expediting projects that may be vital for saving lives in future fires.”

ARGUMENTS IN OPPOSITION: According to the Planning and Conservation League, “New roads, like railroads and interstate highways before them, are the very essence of growth inducing infrastructure. AB 1154, as currently drafted, is a literal “invitation” for road projects to be “cloaked” in public safety language but primarily intended to facilitate growth either along and/or at the ends of the new segment in high and very high risk wildfire areas. Hence, you will have ironic situations where the growth inducement effects of the new road will lead to more population growth and more lives being put at risk when the inevitable wildfire comes through the area. More population then leads to proposals for more “egress” evacuation routes.

“For these reasons we recommend a more constrained streamlined approach that thoroughly justifies the need for new emergency access and egress, and requires the analysis and mitigation of VMT inducement and growth inducement the new road could capacitate.”

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