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## SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Mike McGuire, Chair

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### ***VERY HIGH FIRE HAZARD SEVERITY ZONE: STATE RESPONSIBILITY AREA: DEVELOPMENT PROHIBITION: SUPPLEMENTAL HEIGHT AND DENSITY BONUSES***

*Prohibits residential development in the VHFHSZ unless local agencies adopt a wildfire prevention strategy that mitigates significant risks of loss, injury, or death.*

#### **Background**

**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 (VHFHSZ). After the 1991 Oakland-Berkeley firestorm, the Legislature required CALFIRE to designate the VHFHSZ in the Local Responsibility Area (LRA). These maps must be updated every five years (current maps date to 2007).

Landowners in the SRA and the VHFHSZ 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, known as Chapter 7A standards. AB 2911 (Friedman, 2018) requires the State Fire Marshal to update these building standards to provide for comprehensive site and structure fire risk reduction by January 1, 2020.

**Planning and permitting.** 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, to reduce the compounding health risk of multiple environmental harms present in disadvantaged communities. 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.

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 tentative map and a 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.** 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 SRA and VHFHSZ (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; and
- 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, or explain to the board why they didn’t adopt them. . Local agencies must meet with the Board on its recommendations if the Board requests, but aren’t required to adopt the Board’s recommendations.

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.

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.

Public Resources Code 4290 (PRC 4290) requires the Board of Forestry to adopt minimum fire safety standards applicable to the perimeters and access to all residential, commercial, and industrial building construction within the VHFHSZ. These standards include:

- Road standards for fire equipment access.
- Standards for signs identifying streets, roads, and buildings.
- Minimum private water supply reserves for emergency fire use.
- Fuel breaks and greenbelts.

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.

**Fire hazard technical advisory.** To assist local governments with fire hazard planning, the Governor's Office of Planning and Research (OPR) issues a technical advisory series that includes best practices in land use and permitting for fire hazard planning. Additionally, AB 2911 (Friedman, 2018) made various changes to fire safety planning, including to direct OPR to update its fire hazard technical advisory and to require the Board to identify at-risk subdivisions not less than every 5 years. As of March 2021, OPR has produced a draft update to the fire hazard technical advisory; the current advisory dates to 2015.

**Wildfire and the California Environmental Quality Act.** The California Environmental Quality Act (CEQA) requires public agencies to analyze and, where feasible, mitigate the impacts of proposed projects on the environment. One category of impacts that must be analyzed are risks related to wildfire. The Natural Resources Agency publishes a CEQA checklist that many agencies use as the starting point for environmental analysis. Among the questions on the CEQA checklist are several questions on wildfire, if the project is located in or near the SRA or a VHFHSZ. Specifically, these questions ask whether the project would:

- Substantially impair an adopted emergency response plan or emergency evacuation plan;
- Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to, pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire;
- Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment; or
- Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes.

A public agency can't approve or carry out a project that would have one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:

- Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.
- Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

- Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

These findings must be supported by substantial evidence.

**March 13<sup>th</sup>, 2019, oversight hearing.** The Senate Governance & Finance Committee and the Natural Resources & Water Committee held an oversight hearing on March 13<sup>th</sup>, 2019, titled “Living Resiliently in the New Abnormal: The Future of Development in California’s Most Fire Prone Regions.” Among other topics, that hearing explored changes to land use approvals and permitting that may be needed to reduce the loss of life and property from wildfire. One conclusion from the hearing was that, while defensible space and building standards are incredibly important, community scale interventions, such as community layout and establishment of safe areas for the community to assemble during fires, can reduce the risk of wildfire losses. The hearing also discussed the need for more detailed information on the fire resilience of individual parcels and whether some parcels or areas should be identified as indefensible.

**Historic levels of wildfire.** In the past decade, California wildfires have grown in size and destructiveness. According to a Los Angeles Times analysis published on September 15, 2020:

- The 2020 wildfire season burned more than 4.2 million acres, making it by far the largest in California history;
- 8 out of the 10 largest wildfires in California history occurred in the past ten years, including the August Complex Fire, which burned over 1 million acres in September 2020, making it the state’s first “giga-fire”;
- 7 of the 10 most destructive fires in California history occurred in the past five years, meaning single years had multiple massive conflagrations; and
- 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.

Despite the existing planning requirements and worsening wildfire severity, some local governments continue to approve large developments in the VHFHSZ that some consider imprudent. For example, so far in 2021, the Attorney General filed motions to intervene in lawsuits challenging the environmental review performed on two large developments that are largely in the VHFHSZ:

- Otay Ranch, which is a 23,000 acre mixed use development that will contain 3,000 homes. The Otay Ranch development is located in San Diego County on a site that partially burned during wildfires as recently as 2007.
- Guenoc Valley Mixed Use project, which is a 16,000 acre development in Lake County that will include 1,400 homes. The Guenoc Valley project site has partially burned during wildfires four times since 2014.

**Density Bonus Law.** Given California’s high land and construction costs, it can be difficult for developers to provide housing units that are affordable to low- and moderate-income households. In order to improve the financial viability of developments that provide housing at a cost below the market rate, the Legislature enacted the Density Bonus Law (DBL) in 1979, which allows a

development that meets certain criteria to include more total units in a project than would otherwise be allowed by local zoning. Each city and county must adopt an ordinance that provides concessions and incentives to developers that seek a density bonus. Failure to adopt an ordinance does not mean a city or county does not have to comply with the law.

Density bonus law requires cities and counties to grant a density bonus when an applicant for a housing development of five or more units seeks and agrees to construct a project that will contain at least one of the following:

- 10 percent of the total units of a housing development for lower-income households;
- 5 percent of the total units of a housing development for very low-income households;
- A senior citizen housing development or mobile home park that limits residency based on age;
- 10 percent of the units are for sale in a common interest development (CID) for moderate-income households;
- 10 percent of the total units for transitional foster youth, disabled veterans, or homeless persons; or
- 20 percent of the total units for lower-income students in a student housing development.

These affordable housing units must remain affordable for at least 55 years.

Developers that meet the requirements in density bonus law receive several other benefits in addition to higher allowable densities, including “incentives or concessions,” such as regulatory exemptions that result in cost reductions, and waivers of development standards that would physically prevent the development from being constructed. These benefits are intended to support the inclusion of affordable housing units in a project, which otherwise might not be financially feasible. Developments that include higher percentages of moderate-, low-, or very low-income households get higher allowable housing densities and other benefits. These benefits increase to a maximum of a 50% density bonus for developments with 24% low-income, or 15% very low-income units, or 44% moderate-income units for sale within a CID.

The author wants to reduce development in the VHFHSZ and instead increase it in other parts of California.

### **Proposed Law**

**Development requirements.** Senate Bill 55, notwithstanding any law and in furtherance of state housing production, sustainability communities strategies, greenhouse gas reduction, and wildfire mitigation goals under specified state laws, prohibits local agencies, including charter cities, from approving a new development in a VHFHSZ or the SRA unless there is substantial evidence that the local agency has adopted a comprehensive, necessary, and appropriate wildfire prevention and community hardening strategy to mitigate significant risks of loss, injury, or death.

The wildfire prevention and community hardening strategy may include, but is not limited to, any of the following:

- Chapter 7A building standards;

- Requirements for structure hardening for critical infrastructure and other existing development in the fire hazard severity zone or state responsibility area;
- Emergency response plans;
- Emergency evacuation plans; and
- Resiliency and hazard mitigation plans related to flood, landslide, air quality, and other climate risks related to wildfire.

SB 55 defines development to mean a project containing residential dwellings, including, but not limited to, mobilehomes, accessory dwelling units, and junior accessory dwelling units, of one or more units, or a subdivision of land for the purpose of constructing one or more residential dwelling units.

SB 55 exempts construction required to maintain, repair, reconstruct, restore, or rebuild an existing residential dwelling or a development that is involuntarily damaged or destroyed by fire or other catastrophic event. The bill limits “rebuild” to mean a new structure of the same or smaller size as, and in place of, an existing structure or a structure that is destroyed by fire or other catastrophic event.

**Density bonus.** SB 55 also provides an additional density bonus of 20%, as well as a height increase of 10 feet or 20% of the height limit that would otherwise apply, to a project that qualifies for a density bonus where the site meets all of the following conditions:

- Is not located in the moderate, high, or very high fire hazard severity zone;
- Is located in an urbanized area or urban cluster, or in a city where some portion of the city encompasses an urbanized area or urban cluster; and
- At least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses.

SB 55 defines additional terms and includes findings and declarations to support its purposes.

### **State Revenue Impact**

No estimate.

### **Comments**

1. **Purpose of the bill.** According to the author, “California is in the midst of intersecting economic, housing, and climate crises. As the state works to increase the supply of housing and reduce its climate risks, the State’s growth strategy must recognize the intersection of development and climate in the key area of fire risk. SB 55 sets California on a path of fire-safe growth by both prohibiting further residential development in the very high fire hazard severity zones unless stringent building, hardening, and emergency response mitigation plans are met. SB 55 is not intended to operate in a vacuum. It will also provide a height bonus of 10 feet and a 20% density bonus for residential developments built outside of the moderate, high, and very high fire hazard severity zones. By incentivizing development outside of the wildland urban interface (WUI), it will encourage transit-oriented, affordable, green and infill housing. Efforts that will not only reduce exorbitant housing costs – they will also help California achieve its

climate goals. This bill will ensure new housing development projects will not inadvertently put more Californians in harm's way."

2. Implementation challenges. SB 55 prohibits all residential development in the VHFHSZ unless the local agency has adopted a strategy to mitigate significant risks of loss, injury, or death from wildfire, which appear to track the mitigation requirements for wildfire in CEQA. However, there are several concerns with the standard established in the bill:

- CEQA requires adopting *feasible* mitigation measures. Per the CEQA guidelines, "feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors. SB 55 won't allow development if the needed measures to reduce a risk to insignificance are infeasible, potentially having sweeping impacts on development.
- SB 55 requires the local agency to develop a wildfire prevention and community hardening strategy, but it is unclear whether this strategy must only apply to the proposed development, and if so, why the requirement would be placed on the local agency to develop this strategy instead of on the developer. If the strategy must cover the entire community, it is unclear why new developments, which may be able to adopt adequate mitigation measures, need be stalled.
- On the other hand, SB 55 only requires a strategy to be *adopted* before development can be permitted: it doesn't explicitly require implementation. Cities and counties that wanted to thwart the requirements in the bill may adopt plans but never implement them, and even well-meaning local governments may have the best intentions but be unable to follow through on their plans due to lack of funding or other challenges. As a result, SB 55's mandate may have little tangible effect for developments in the jurisdiction of local agencies unwilling or unable to implement its strategies.
- Finally, without a clear understanding of the impacts of SB 55's development prohibition, it is difficult to determine whether an enhanced density bonus would produce enough housing to offset any housing production resulting from the bill's prohibition.

3. Charter city. The California Constitution allows cities that adopt charters to control their own "municipal affairs." In all other matters, charter cities must follow the general, statewide laws. Because the Constitution doesn't define "municipal affairs," the courts determine whether a topic is a municipal affair or whether it's an issue of statewide concern. SB 55 says that its statutory provisions apply to charter cities. To support this assertion, the bill includes a legislative finding that the prohibition on the creation or approval of a new development within a zone of high fire danger is a matter of statewide concern.

4. Mandate. The California Constitution requires the state to reimburse local governments for the costs of new or expanded state mandated local programs. Because SB 55 adds to the duties of local officials, Legislative Counsel says that the bill imposes a new state mandate. SB 55 disclaims the state's responsibility for providing reimbursement by citing local governments' authority to charge for the costs of implementing the bill's provisions.

5. Related legislation. SB 12 (McGuire) imposes numerous fire hazard planning responsibilities on local governments and requires cities and counties to make specified findings on fire standards prior to permitting residential development in the VHFHSZ. Although both bills apply

to residential developments in the VHFHSZ and require local agencies to make certain findings prior to approving development, SB 12:

- Includes greater detail on the specific standards that must be met prior to approving development.
- Establishes three categories of development and scales the stringency of the standards to each category such that increasing risk from larger developments is balanced by increased mitigation requirements.
- Requires the standards to be feasible and achievable for the majority of developments in each category.
- Requires local agencies to do more planning efforts upfront and also adopt a comprehensive retrofit strategy to take steps to improve existing development.

### **Support and Opposition** (4/12/21)

**Support:** 350 Santa Barbara; Abundant Housing LA; Action for Animals; Biodiversity First!; Brentwood Alliance of Canyons & Hillside; California Chaparral Institute; California Institute for Biodiversity; California Native Plant Society; California Native Plant Society - San Diego Chapter; California Wildlife Foundation; Center for Biological Diversity; Central California Environmental Justice Network; Citizens for Los Angeles Wildlife; Defenders of Wildlife; Endangered Habitats League; Escondido Neighbors United; Extinction Rebellion Sf Bay; Federation of Hillside and Canyon Associations; Friends of Ballona Wetlands; Friends of Griffith Park; Friends of Harbors, Beaches and Parks; Green Foothills; Greenbelt Alliance; Greenspace - the Cambria Land Trust; Hills for Everyone; International Fund for Animal Welfare; Laurel Canyon Land Trust; Los Angeles Audubon Society; Los Angeles Waterkeeper; Los Padres Forestwatch; Mountain Lion Foundation; Move LA; National Wildlife Refuge Association- SoCal Urban Program; Ohlone Audubon Society, INC.; Palos Verdes/south Bay Audubon; Poison Free Agoura; Poison Free Malibu; Preserve Our Rural Communities - San Benito County; Preserve Wild Santee; Project Coyote; Raptors are The Solution; San Diego Audubon Society; San Pasqual Valley Preservation Alliance; Santa Barbara Audubon Society; Santa Clara Valley Audubon Society; Santa Susana Mountain Park Association; Sc Wildlands; Sierra Club California; Socal 350 Climate Action; Social Compassion in Legislation; The Urban Wildlands Group; Theodore Payne Foundation for Wild Flowers & Native Plants; Ventana Wilderness Alliance; Western Watersheds Project.

**Opposition:** American Council of Engineering Companies; American Wood Council; Associated California Loggers; Associated General Contractors; Bay Area Builders Exchange; Builders Exchange of Stockton; Building Industry Association of Fresno and Madera Counties; Building Industry Association of Orange County; Building Industry Association of San Diego; Building Industry Association of Southern California, Baldy View Chapter; Building Industry Association of Southern California, Los Angeles & Ventura Chapter; Building Industry Association of The Bay Area; Building Industry Association of Tulare/kings County, INC.; Building Owners and Managers Association of California; California Apartment Association; California Association of Realtors; California Builders Alliance; California Building Industry Association; California Building Officials; California Business Properties Association; California Business Roundtable; California Chamber of Commerce; California Fire Chiefs Association; California Forestry Association; California Retailers Association; California State Association of Counties; Fire Districts Association of California; Home Builders Association of The Central Coast; Nevada



County Contractors Association; North Coast Builders Exchange; North State Building Industry Association; Orange County Local Agency Formation Commission; Placer County Contractors Association; Rural County Representatives of California; Sacramento Regional Builders Exchange; Shasta Builders Exchange; Valley Builders Exchange; Ventura County Contractors Association.

**-- END --**