

Laws that interfere with preparing for wildfires by reducing wildfire fuels to safer levels.

Local Laws

Local Law Issue 1

Monterey County's Protected Tree Ordinance (and similar policies and ordinances that may exist in other California local jurisdictions). The ordinance states it applies in inland/non-coastal areas.

https://library.municode.com/ca/monterey_county/codes/code_of_ordinances?nodeId=TIT21_ZO_CH21.64SPRE_21.64.260PROAOTPRTR and
<https://www.co.monterey.ca.us/Home/ShowDocument?id=53403> and
<https://www.co.monterey.ca.us/home/showpublisheddocument/38239/637096783274670000>

Agency: Monterey County Housing and Community Development/Planning Department.

Restrictions: Generally prohibits removal of protected trees over 6 inches in diameter unless requirements are complied with (apparently applied to dead trees the same as live trees, e.g., see Example below).

Requirements: Generally: If more than three trees are to be removed from a lot within a year, requires completed Use Permit application (including a site plan showing location of all trees (site plan requirements in this document <https://www.co.monterey.ca.us/Home/ShowDocument?id=37641>), preparation of a Forest Management Plan by a county-approved professional forester (Forest Management Plan requirements are in this document <https://www.co.monterey.ca.us/Home/ShowDocument?id=37641>), payment of Use Permit application fee, a public hearing, and an approved Use Permit. A Use Permit is a discretionary permit so triggers CEQA. If three or fewer trees are to be removed from a lot within a year, requires a [completed Administrative Permit application](#), including a site plan (site plan requirements are in this document <https://www.co.monterey.ca.us/Home/ShowDocument?id=37641>), a report prepared by a county approved tree consultant, and an approved administrative permit (which because it can be conditioned is a discretionary permit and triggers CEQA). Specific requirements are here https://library.municode.com/ca/monterey_county/codes/code_of_ordinances?nodeId=TIT16_EN_CH16.60PROAOTPRTR_16.60.040PERE

Cost: If over three trees are removed a Use Permit is needed -- application fee **\$5,500**. Added to that are costs to prepare the permit application, costs for preparation of a Forest Management Plan by a county-approved Registered Professional Forester, and preparing a site plan. If less than three trees are removed, a Tree Removal Administrative Permit is needed -- application fee **\$550**. Added to that are costs to prepare the permit application, prepare the site plan, and a report by county-approved professional.

<https://www.co.monterey.ca.us/home/showpublisheddocument/104780/637654177991770000>

Time: Days to months to fill out permit application and obtain site plan, report(s), Forest Management Plan if required, and permit.

Penalties: Any person who violates a Monterey County Code is subject to substantial fines and imprisonment. Details are here
https://library.municode.com/ca/monterey_county/codes/code_of_ordinances?nodeId=TIT1GEPR_CH1.20ENCO

Example: A CAL FIRE defensible space inspector told [REDACTED] [REDACTED] about a resident in Prunedale being fined \$1,000 by the County for dragging a dead, down, oak tree 30 feet away from their home without a permit.

Note 1: Monterey County has a tree removal process for wildfire mitigation, with no application fee, which allows removal of an unlimited number of trees, which requires a letter from a Fire Marshal, a completed tree removal application, and a site plan showing location of trees. It is unknown if that would allow removal of protected trees. Our understanding is there is no County Fire Marshal, though at least one local fire department has a Fire Marshal, possibly more. Such a letter would likely trigger requirement of CEQA analysis to write it (assuming the Fire Marshal is a government employee). Providing such letters in quantity could meet resistance due to workload.

Note 2: Monterey County applies to all wildfire fuel reduction work an inland 2010 General Plan policy that prohibits wildfire fuel reduction work from February 22 through August 1 (205 days/56 percent of the year) unless the applicant first: 1) hires a county-approved biologist to inspect the area near where work would take place for nesting birds and, 2) if found the expert recommends measures to avoid disturbing the birds, and 3) the recommendations are followed ([OS-5.25](#) and third bullet on first page of this document <https://www.co.monterey.ca.us/home/showpublisheddocument/38239/637096783274670000>).

Note 3: Monterey County may require replacement of any trees cut, either 1 to 1 or a higher ratio, with monitoring to ensure continued growth by a county-approved professional for a number of years (adding costs for buying, planting, and for monitoring).

Proposed Change: Amend state law to preclude local jurisdictions from requiring permits, studies or other requirements that may act to discourage or hinder public agencies and private individuals from reducing the density of wildfire fuels generally to the densities described in [CAL FIRE'S General Guidelines for Creating Defensible Space](#), not limited to the 100-foot minimum distance required by Public Resources Code section 4291, and not limited to work to protect structures but to also allow and facilitate work along roads and encourage "community-wide" defensible space as encouraged in the Guidelines, and also work to help

restore California's woodlands, forests, and brushlands to wildfire resilient condition.

Local Law Issue 2

Monterey County's Local Coastal Program (and similar coastal plans and ordinances that may exist in other California coastal jurisdictions)

<https://www.co.monterey.ca.us/government/departments-a-h/housing-community-development/planning-services/land-use-regulations> (click the red dots with + signs under headings "Coastal" "Land Use Plan Areas").

Agencies: Monterey County Housing and Community Development/Planning Department. California Coastal Commission where it retains jurisdiction, for permit appeals, and when certifying Local Coastal Programs and their updates.

Restrictions 1: Precludes reducing wildfire fuels that are environmentally sensitive areas (ESHA) or are in areas that are ESHA. ESHA is broadly defined in the Coastal Act (Public Resources Code section [30107.5](#)). Restrictions on what can happen in or near ESHA are exceedingly strict and inflexible, found at Public Resources Code section [30240](#). Disturbance of ESHA is allowed only when not allowing it would result in infringement of a Constitutional right (*McAllister v. California Coastal Com.*), or, when laws are suspended as when Governor Newsome [proclaimed a state of wildfire emergency and suspended laws](#) (including suspending the Coastal Act and CEQA) to allow work on 35 priority wildfire fuel reduction projects, at least one of which involved cutting of redwood tree ESHA in Monterey County's coastal zone.

Restrictions 2: Treats numerous tree species similar to if they were species protected by the County's Protected Tree Ordinance in inland areas.

<https://www.co.monterey.ca.us/Home/ShowDocument?id=53401>

Requirements: Requires a coastal development permit if more than three trees are to be removed on a lot within one year, which requires a site plan (site plan requirements in this document <https://www.co.monterey.ca.us/Home/ShowDocument?id=37641>), and hiring a county-approved professional forester to prepare a Forest Management Plan (Forest Management Plan requirements in this document <https://www.co.monterey.ca.us/Home/ShowDocument?id=37641>), and a public hearing. Obtain a permit waiver if three or fewer trees are to be removed on a lot within one year, which requires a completed administrative permit application, a site plan, and report by a County approved arborist.

Cost: If over 3 trees are to be removed from a lot in a year, application fee for a coastal development permit is **\$11,000**. Added to that are costs to obtain reports by experts as required by the County. If 3 trees or less in a year, application fee for a permit waiver is **\$550**. Added to that are costs to obtain reports by experts as required by the County. In Ventura

County it appears the county intends to charge **\$100,000+** ESHA mitigation fees to extend defensible space from the 100 foot minimum from structures required by Public Resources Code section 4291, to 200 feet. <https://www.vcstar.com/story/news/special-reports/outdoors/2018/08/24/santa-monica-mountains-homeowners-say-county-rules-lead-less-protection-against-wildfires/1025472002/>

Time: Days to months to years to obtain permits, reports by county-approved experts, and Forest Management Plan if more than 3 trees are to be removed.

Penalties: Any person who violates a Monterey County Code is subject to substantial fines and imprisonment. Details are here https://library.municode.com/ca/monterey_county/codes/code_of_ordinances?nodeId=TIT1GEPR_CH1.20ENCO Any person who violates a provision of the Coastal Act is subject to fines of \$30,000 or more. Details are here https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=PRC§ionNum=30820

Example 1: [REDACTED] must tell contractors to avoid ESHA during grant-funded fuel reduction projects in the coastal zone, leaving hazardous accumulations of wildfire fuels in place even when funding is available to thin them.

Example 2: A landowner was recently cited by County Code Enforcement for cutting tan oak trees his arborist told him were dead. The citation was revoked on the condition that the landowner retroactively apply for a permit to cut the dead trees (which [REDACTED] understands the landowner agreed to, though the applicable coastal plan does not require a permit to cut dead trees). Monterey County has hundreds of thousands perhaps millions of standing dead trees killed but not consumed by the Soberanes Fire, the Dolan Fire, the River Fire, and the Carmel Fire, which now threaten to act as kindling to kill trees that survived those fires, most of which should be removed as swiftly as possible (leaving a substantially lower density of dead trees for habitat).

Example 3: In 2019 Governor Newsom proclaimed a state of wildfire emergency and suspended all laws, including the Coastal Act and CEQA, to allow the 35 priority wildfire fuel reduction projects in [CAL FIRE's 45-day Report](#) to take place without delays. One of those projects was in the Palo Colorado area in the Big Sur Coastal Planning Area. The Governor's crews thinned a dense mass of small redwood trees that presented a fire hazard next to Palo Colorado Road, which is a dead end road that is the sole road in that area for evacuation from hundreds of homes and sole ingress for emergency equipment. In the past, [REDACTED] had to tell grant-funded fuel reduction contractors to leave those redwood trees untouched as the County interprets them to be ESHA. The stumps of those redwood trees cut by the Governor's crews are now resprouting like bushes and will grow to be a greater fire hazard than they were originally. Unless coastal policies are amended or again suspended, those resprouting redwood trees cannot be thinned again legally, and will grow to increase the threat of wildfires to fire fighters and evacuating residents.

Example 4: This news story demonstrates that the conflict between ESHA and defensible space is not limited to Monterey County <https://www.vcstar.com/story/news/special-reports/outdoors/2018/08/24/santa-monica-mountains-homeowners-say-county-rules-lead-less-protection-against-wildfires/1025472002/>

Note 1: Monterey County's Local Coastal Program contains language that was intended to enable landowners to maintain coastal woodlands, forests, and brushlands in wildfire resilient condition by allowing removal of certain vegetation without the need for a permit. That language was certified in the 1980s by the Coastal Commission as being consistent with the Coastal Act. The vegetation is listed in ordinances that say that removing the vegetation is "not removal of major vegetation," which removes it from the Coastal Act's [definition of "development,"](#) which removes it from the Coastal Act's requirement of needing a coastal permit. However, about 2009, Monterey County started to interpret that language to be "meaningless," apparently due to conflicts with coastal policies intended to protect ESHA. As a result, [REDACTED] has to tell grant funded fuel reduction contractors to not perform fuel reduction work in or near riparian areas (ESHA), not cut brush that may be central maritime chaparral (ESHA, though there is no agreed upon definition of exactly what that plant community is so it is uncertain where it is), to not thin dense groups of small redwood trees (redwoods are ESHA, though in the 1980s they could be cut legally if under a certain size (e.g., 12 inches in diameter in the Big Sur Coastal Planning Area), but now cannot be touched), etc.

Note 2: Monterey County applies to all wildfire fuel reduction work an inland 2010 General Plan policy that prohibits wildfire fuel reduction work from February 22 through August 1 (205 days/56 percent of the year) unless the applicant first: 1) hires a county-approved biologist to inspect the area where work would take place for nesting birds and, 2) if found the expert recommends measures to avoid disturbing the birds, and 3) the recommendations are followed ([OS-5.25](#) and third bullet on first page of this document <https://www.co.monterey.ca.us/home/showpublisheddocument/38239/637096783274670000>).

Note 3: Monterey County may require replacement of any trees cut, either 1 to 1 or a higher ratio, with monitoring to ensure continued growth by a county-approved professional for a number of years (adding costs for buying, planting, maintaining, and monitoring).

Note 4: Monterey County has a tree removal process for wildfire mitigation, with no application fee, which allows removal of an unlimited number of trees, which requires a letter from a Fire Marshal, a completed tree removal application, and a site plan showing location of trees (site plan requirements in this document <https://www.co.monterey.ca.us/Home/ShowDocument?id=37641>). It is unknown if that would allow removal of protected trees. Our understanding is there is no County Fire Marshal, though at least one local fire department has a Fire Marshal, possibly more. Such a letter would likely trigger requirement of CEQA analysis to write it (assuming the Fire Marshal is a government employee). Providing such letters in quantity could meet resistance due to

workload.

Proposed Change: Amend the California Coastal Act to preclude local jurisdictions and the California Coastal Commission from enforcing restrictions (including ESHA restrictions) or requiring permits, studies or other requirements that may act to discourage or hinder public agencies and private individuals from reducing the density of wildfire fuels generally to the densities described in CAL FIRE's General Guidelines for Creating Defensible Space, not limited to the 100-foot minimum distance required by Public Resources Code section 4291, and not limited to work to protect structures, but to also allow and facilitate work along roads and for fuelbreaks, and encourage "community-wide" defensible space as encouraged in the Guidelines, and also work to help restore California's woodland, forests, and brushlands to wildfire resilient condition. Provide that existing Local Coastal Program policies that conflict with the amendment are nullified to the extent they do so. Make clear in the Coastal Act that the net benefit of reducing harm to ESHA from wildfires, by reducing wildfire fuels generally to the densities described in the Guidelines, far outweighs any harm to ESHA from performing wildfire fuel reduction work.

Local Law Issue 3

Monterey County's Design Review Policies (and similar policies in other California local jurisdictions) <https://www.co.monterey.ca.us/government/departments-a-h/housing-community-development/planning-services/application-process/design-approval>.

Agency: Monterey County Housing and Community Development/Planning Department/Land Use Advisory Committees.

Restrictions: Design review policies make it difficult and more costly to retrofit existing structures with more fire resistant materials.

Requirements: In design review areas, maintenance of structures must go through a design review process to ensure the replacement materials meet design requirements (e.g., materials, colors, aesthetics, etc.).

Cost: Design approval fees vary from **\$0 to \$3,300**.

Time: Can take several weeks or more to obtain approval.

Penalties: Any person who violates a Monterey County Code is subject to substantial fines and imprisonment. Details are here https://library.municode.com/ca/monterey_county/codes/code_of_ordinances?nodeId=TIT1GEPR_CH1.20ENCO

Example: Design review policies make it difficult and more costly to change a wood shingle or

shake roof to a Class A fire rated asphalt shingle roof.

Note 1: The type of ‘fire safe’ improvements mentioned above need to be exempt from any design review or permit requirements. In Monterey County, for example, homes in a ‘D’ or ‘Design Review’ district (such as Carmel Valley, Carmel Highlands, Pebble Beach) are typically required to submit fees for a Design Review, which also takes several weeks. These existing rules hinder property owners from upgrading their property to more fire resistant condition, a missed opportunity during regular required maintenance.

Note 2: Consider an incentive program for existing structures to help owners upgrade their home wildfire hardening.

Proposed Change: Amend state law to preclude state or local jurisdictions from requiring permits, design reviews, or other requirements that may act to discourage or hinder public agencies and private individuals from upgrading structures to be more resistant to wildfire by upgrading materials such as roofing materials, siding materials, deck materials, chimney materials, window materials, etc., to more fire resistant materials. This should include for example, a roof replacement to a Class A assembly roof, chimney modifications to meet current code, replacement of wood decking with fire resistant materials, replacement of wood siding/ wood soffits, upgrade to stronger windows, etc. Consider providing incentives to help landowners upgrade their existing home's wildfire hardening.

State Laws

State Law Issue 1

Porter-Cologne Water Quality Control Act and other laws intended to protect streams and rivers and wildlife dependant on them (e.g., https://leginfo.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=WAT&division=7.&title=&part=&chapter=&article=&nodetreepath=8)

Agency: State Water Resources Control Board, Regional Water Quality Control Boards, California Department of Fish and Wildlife, and others (and Monterey County/local government, pursuant to CEQA, see CEQA discussion below).

Restrictions: Simplest way to describe restrictions and requirements to perform wildfire fuel reduction work in riparian areas is to refer you to a brochure prepared by the California Association of Resource Conservation Districts, here <https://ucanr.edu/sites/csncce/files/57548.pdf>

Requirements: See Restrictions above.

Cost: See Example below.

Time: See Example below.

Example: [REDACTED] does not perform wildfire fuel reduction work in riparian areas, leaving hazardous accumulations of wildfire fuels in place, increasing the threat of wildfires to lives, property, and resources, including increasing the threat that wildfires will result in erosion and siltation of streams and rivers. That is because the regulatory restrictions, requirements, costs, and time required make doing wildfire fuel reduction work in riparian areas infeasible. [REDACTED] expects other entities working to solve the wildfire problem similarly avoid riparian areas.

Note 1: State clean water laws are biased against wildfire fuel reduction work in riparian areas much as air quality laws are biased against prescribed fire wildfire fuel reduction work (clean air laws consider smoke from prescribed fires an air contaminant, but not the immensely greater quantities of smoke from wildfires increased by lack of wildfire fuel reduction work, including lack of prescribed fires). Water laws consider silt to be a contaminant, but do not consider to be a contaminant the unfathomable quantities of silt released into creeks, rivers, lakes, and reservoirs due to hydrophobic soils caused by high-heat-intensity wildfires. An example of the quantity of silt release caused by wildfires is the BAER Report for the Soberanas Fire, a draft of which is here <https://www.co.monterey.ca.us/home/showdocument?id=14136> The Soberanes Fire burned 132,603 acres. Numbers in Table 2 on page 10 of the report show from 2.8 times to 21 times more silt runoff from burned areas compared to silt runoff before the fire.

Note 2: Silt runoff into reservoirs due to hydrophobic soils caused by high-heat-intensity wildfire fueled by accumulations of wildfire fuels lowers reservoir storage capacity contributing to California's water storage problems. For example, see Table 2 [in this study](#), showing loss of capacity of the Los Padres Reservoir in the winters of 1977 and 1978 due to silt runoff resulting from the 1977 Marble Cone Fire.

Note 3: The regulatory hindrances and problems clean water laws cause to wildfire fuel reduction work in riparian areas have been recognized for years. An example is this quote from the 2008 Emergency Tahoe Basin Fire Commission Report to the Governors of California and Nevada,

[Stream Environment Zones / riparian areas (SEZs)] in the Lake Tahoe Basin pose both extreme fire risks and extraordinary environmental challenges. In times of fire, such as both the November 2002 Pioneer Fire and the Angora Fire, the fires quickly changed from surface fires to crown fires because untreated SEZs allowed fire to quickly move through overstocked and insect diseased forested areas. Commentators have referred to the SEZs in these areas as operating like "candle wicks" during times of fire, advancing the severity of crown fires....

Proposed Change: Amend state water quality laws to preclude the need for state, regional, or local permits, studies, or other requirements that may act to discourage or hinder public agencies and private individuals from reducing the density of wildfire fuels in riparian and other areas generally to the densities described in CAL FIRE's General Guidelines for Creating Defensible Space, not limited to the 100 foot minimum distance required by Public Resources Code section 4291, and not limited to work to protect structures, but to also allow and facilitate work along roads, and encourage community-wide defensible space as encouraged in the Guidelines, and also fuel reduction work to help restore California's woodland, forests, and brushlands to wildfire resilient condition. Make clear in such laws that the net benefit to California's rivers, streams, ponds, lakes, and reservoirs from reducing erosion and siltation by performing wildfire fuel reduction work to reduce wildfire fuels generally to the densities described in the Guidelines far outweighs any harm to those resources from performing the work.

State Law Issue 2

California Endangered Species Act (CESA)

https://leginfo.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=FGC&division=3.&title=&part=&chapter=1.5.&article=

Agency: California Department of Fish and Wildlife (DF&W) (and Monterey County pursuant to CEQA, see CEQA discussion below).

Restrictions: On its face, the California Endangered Species Act prohibits a take of any California candidate, listed threatened or endangered species, with certain exceptions, defining "take" broadly at Fish & Game Code [section 86](#). An example of exceptions to that prohibition was touched on in the introduction to this list, which is explained in Attorney General Opinion 98-105, <https://oag.ca.gov/system/files/opinions/pdfs/98-105.pdf>. An example of a historic exception that allows take of California and federal listed species is demonstrated by a Memorandum of Understanding that allows a take of certain California and federally listed candidate, threatened, and endangered species to enable wildfire fuel reduction work in San Diego County, which is here <https://www.sandiegocounty.gov/dplu/docs/MemoofUnder.pdf> (the 1997 San Diego MOU remains in effect, though authority for the California Department of Fish and Wildlife to enter into additional such MOU agreements was removed after April 10, 1997 by the terms of Fish and Game Code [section 2081.1](#)).

Requirements: Important is that CESA does not require that experts be hired to survey for protected species before wildfire fuel reduction work can take place (however, see below for how CEQA changes that). CESA requires payment of substantial fees to obtain permits to take candidate, threatened, or endangered species, but, those fees need not be paid if none of the species CESA protects will be taken. A problem for wildfire fuel reduction work is that CESA

makes unlawful even an unintentional/accidental/incidental take of a protected species, threatening those who wish to undertake wildfire fuel reduction work with massive fines and jail time if they accidentally harm a protected species.

Cost: To the extent a discretionary permit is required to perform wildfire fuel reduction work, CEQA would then triggered, and there would be the cost to hire a qualified biologist to survey the area where work would be done to look for protected species and provide mitigation measures, which could amount to thousands of dollars depending upon the terrain, vegetation density, size of the area and mitigation required. CEQA is discussed in a separate issue below.

Time: Should a biological survey for protected species be required (e.g., by a permit requirement), there can be a delay of close to a year if protected species suspected in the area only appear during a certain time of year and that time recently passed.

Penalties: \$25,000 to \$50,000 for each violation of CESA, one-year imprisonment, or both fine and imprisonment (Fish & Game Code, [section 12008.1](#)).

Note 1: A problem for those who want to responsibly reduce wildfire fuels to help protect lives, property, and resources while avoiding harming protected species, is that information on where protected species are known to exist is not made available to the general public with specificity in the CDF&W's [California Natural Diversity Database QuickView Tool](#) (NDDQVT). Data is only at USGS Quad map level of specificity, that is, within an area of about 40 to 70 square miles). Also, the NDDQVT does not include photographs of protected species, making it difficult for lay people to identify protected species to avoid.

Note 2: Wildfires injure and kill vast quantities of wildlife, including threatened and endangered species. For example, <https://blog.nwf.org/2021/06/4-wildlife-species-that-need-your-help-this-wildfire-season/>, also <https://www.fws.gov/ventura/newsroom/release.cfm?item=457>

Here is quote from a World Wildlife Federation - Australia report on harm to species from Australia's Black Summer wildfires,

While the overall estimate that nearly 3 billion animals were in the path of the fires has not changed, scientists have drilled down to reveal the impact on some individual animal species and groupings of species.

It's estimated that nearly 40 million possums and gliders; more than 36 million antechinus, dunnarts, and other insectivorous marsupials; 5.5 million bettongs, bandicoots, quokkas, and potoroos; 5 million kangaroos and wallabies; 1.1 million wombats; and 114,000 echidnas were impacted. The report also estimates more than 60,000 koalas killed, injured or affected in some way.

It is highly unlikely even a small fraction of that number of individuals would have been harmed by wildfire fuel reduction work in that same area, and the threat of wildfire to

species would have been reduced.

Proposed Change 1: Amend the California Endangered Species Act to not apply to wildfire fuel reduction work intended to reduce wildfire fuels generally to the densities described in CAL FIRE's General Guidelines for Creating Defensible Space, not limited to the 100 foot minimum distance required by Public Resources Code section 4291, and not limited to work to protect structures, but to also allow and facilitate work along roads, and encourage community-wide defensible space as encouraged in the Guidelines, and also work to help restore California's woodland, forests, and brushlands to wildfire resilient condition. Make clear in such laws that the net benefit to California's candidate, threatened, and endangered species by reducing the threat of wildfires to them with wildfire fuel reduction work to reduce densities generally to the densities described in the Guidelines far outweighs any harm to those species from performing the fuel reduction work.

Proposed Change 2: To help those who perform wildfire fuel reduction work avoid harming protected species without having to hire biologists, enact a new law or amend existing law to direct DF&W to develop a readily accessible database with downloadable photographs of protected species (or add that feature to the existing QuickView Tool), to make it easier for lay people to identify and avoid protected species, including notes with characteristics that can be used to distinguish protected species from other similar looking unprotected species. This US Fish & Wildlife Service page, and the flickr.com page linked to on it, makes clear it is possible for an agency charged with protecting species to provide photographs of them <https://www.fws.gov/ventura/newsroom/release.cfm?item=457>, <https://flic.kr/s/aHskHZoy7n>

Proposed Change 3: New law to direct DF&W to develop a readily available database similar to the QuickView Tool (or change the existing QuickView Tool), that narrows down the location of protected species to a finer resolution than a USGS Quad map. [REDACTED] understands DF&W's concern about location information being subject to abuse by those who may want to illegally collect protected species. However, a search at the Quad map level likely returns many species that are not likely to exist in the wildfire fuel reduction work area. Perhaps species expected within a 1 mile radius around the work area would satisfy DF&W the data would not be abused (in which case the data would be generalized to somewhere within 2,010 acres). The point is to allow people who want to perform wildfire fuel reduction work without harming protected species to be able to inform themselves without having to hire/pay professional biologists (who currently are effectively the only people aside from government employees with access to accurate location data).

State Law Issue 3

California Environmental Quality Act (CEQA)

https://leginfo.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=FGC&division=3.&title=&part=&chapter=1.5.&article=

Agency: California Department of Fish and Wildlife (DF&W) and local government, e.g., Monterey County Housing and Community Development/Planning Department via CEQA.

Restrictions: If CEQA applies (see Note 1 below) it can result in mitigation measures that severely restrict wildfire fuel reduction projects and add much cost.

Requirements: CEQA can require that potential impacts be mitigated to avoid environmental impacts, which can be quantified only if experts are hired to perform surveys for such things as those listed in the CEQA Checklist

(<https://resources.ca.gov/CNRALegacyFiles/ceqa/docs/ab52/final-approved-appendix-G.pdf>).

Experts are also needed to quantify measures to mitigate impacts. For example, while the California Endangered Species Act does not require hiring experts to survey for endangered species, and does not require mitigating potential impacts on species, CEQA can require that, adding costs, time, restrictions, and requirements that discourage wildfire fuel reduction work from taking place.

Cost 1: Cost of complying with CEQA varies widely, from little money to many thousands of dollars, depending upon the level of CEQA review required (from an Initial Study, to a Notice of Exemption, to a Negative Declaration, to a Mitigated Negative Declaration, to an Environmental Impact Report). CEQA also adds potential for the cost of litigation with the attendant need to pay legal counsel to defend the validity of the CEQA review process for wildfire fuel reduction work performed by a public agency, and work for which a discretionary permit is required, work paid for in whole or in part with public funds, and work that government employees will participate in.

Cost 2: Additional cost from CEQA can be an award of attorney's fees to those who oppose a project, under California's Private Attorney General doctrine (Code of Civil Procedure [section 1021.5](#)), which can be awarded against a private permit applicant when the public agency that granted a permit is sued under CEQA for issuing the permit, for example, starting on page 63, <https://cases.justia.com/california/court-of-appeal/2020-b292246.pdf?ts=1584477066> Wildfire fuel mitigation was involved in that case by the need for defensible space around the permitted structures, with protected species within the areas where defensible space would be implemented. Another court opinion that touches on attorney fees by application of CCP 1021.5 to litigation involving wildfire fuel mitigation is here <https://cases.justia.com/federal/district-courts/california/candce/3:2017cv03461/313022/143/0.pdf> That opinion discusses the application of both CEQA and the National Environmental Policy Act to wildfire fuel reduction projects intended to help protect lives, property. See page 38 of that opinion, where the federal court agrees with a state court that the lawsuit, which blocked federal wildfire fuel reduction grants from being awarded and resulted in wildfire fuel reduction projects intended to help protect lives, property, and resources being abandoned, "...resulted in enforcement of important public rights and conferred a significant benefit on the public," thereby justifying award of attorney fees under CCP 1021.5.

Time: Time taken for CEQA review can also vary widely, from weeks to years. Example 1 below shows at least three years, perhaps more.

Penalties: Penalties for failure to comply with CEQA entails litigation, which is incentivized by CEQA's provisions that anyone can sue to enforce CEQA, and awards of attorney fees under the Private Attorney General Doctrine, codified at Code of Civil Procedure [section 1021.5](#)

Example 1: (Public agency affected by CEQA): CEQA was the legal basis used for a lawsuit blocking San Diego County in 2009 from using a \$7 million grant from the US Forest Service to reduce hazardous accumulations of wildfire fuels. [The Court's order is here](#). The grant was made after the Cedar Fire was started when a person lost in the Cleveland National Forest started a signal fire and a wind came up, which burned outside the forest, contributing to the Southern California Fire Siege of 2003, which killed 23 people and totally destroyed 3,710 homes (<https://nsjfire.org/wp-content/uploads/2014/04/Faces-20031.pdf>), and more homes were lost to wildfire in 2007. This 2012 San Diego County document describes the county's attempt to satisfy CEQA (unknown if litigation continued after this to continue to block the grant-funded fuel reduction work).

<https://bosagenda.sandiegocounty.gov/cob/cosd/cob/doc?id=0901127e8005dfa5>

Example 2: (Private individuals affected by CEQA): While not the main point of the case, *Save the Agoura Cornell Knoll v. City of Agoura Hills* (2020), a published decision, demonstrates how CEQA can act to hinder wildfire fuel reduction work when protected species may be in an area.

<https://cases.justia.com/california/court-of-appeal/2020-b292246.pdf?ts=1584477066>

Note 1: CEQA only applies to public agencies, not private individuals. However, if state or local government is involved in a private project (with personnel, or money, or by requiring a discretionary permit), unless the project is exempted by CEQA or excluded by the CEQA Guidelines, then CEQA is triggered and CEQA analysis must be performed on the project. Once triggered, CEQA pulls in a multitude of environmental issues that must be considered, which are listed in the CEQA Checklist, found here

<https://resources.ca.gov/CNRALegacyFiles/ceqa/docs/ab52/final-approved-appendix-G.pdf>.

CEQA analysis can include the need to hire experts to conduct surveys of the project area for the presence of such things as protected species, protected habitat, plant communities, archaeological sites, paleontological sites; and to prepare reports on the expert's findings, and write requirements to mitigate impacts. When such requirements are due to the need for a discretionary permit, the government agency requiring the permit typically places the cost of obtaining the surveys and reports on the private permit applicant. Those costs and the time it takes to obtain the surveys, reports, and permit are enough to discourage many private individuals from seeking a permit to perform wildfire fuel reduction work, leaving them in the difficult position of deciding if they should not do the work, or do it without a permit and risk fines and possibly jail.

Note 2: When a project is a government project, the agency that performs the CEQA analysis (called the lead agency) is the government agency that wants to perform the work, and is the

entity that pays the cost of CEQA analysis, and determines the depth of CEQA analysis required, which is often found to be the lowest level of analysis (resulting in a negative declaration). When government requires a discretionary permit from a private entity, the permitting government agency is the lead agency, which typically passes the cost of CEQA analysis onto the private permit applicant, and typically requires the private permit applicant to pay a private approved CEQA contractor to perform the CEQA analysis. The interest of the CEQA contractor is to perform a more in depth analysis, in order to obtain more pay and in order to maintain a good relationship with the permitting agency, resulting in higher costs to the permit applicant.

Note 3: CEQA is biased against wildfire fuel reduction work as it *does not consider* potential environmental impacts if a wildfire fuel reduction project does not take place. That is, CEQA does not consider in event of wildfire the increased potential for such adverse impacts as the following if the work is not done: The death of humans; destruction of structures and infrastructure; siltation and erosion of creeks, rivers, lakes, and reservoirs; smoke released/adverse air quality impacts by wildfires, including the toxins released when structures and vehicles burn; death and injury to wildlife, including threatened and endangered species; destruction of critical habitat; release of massive quantities of greenhouse gases contributing to global warming/climate change; trees and other vegetation not absorbing CO₂ in the future as they grow because they were killed by wildfire; all of which are real potential impacts if wildfire fuel reduction work is not done and a fire starts, but invisible to CEQA when the "no project" alternative is compared to the proposed project's impacts and impacts from project alternatives.

Note 4: [The CEQA checklist](#) includes the concept of protecting "plant communities" (at XVIII, Mandatory Findings Of Significance). Unlike listing of threatened and endangered species, for which there is a statutory listing process involving opportunity for public comments and peer reviews

(<https://govt.westlaw.com/calregs/Document/ID161BF00D48011DEBC02831C6D6C108E>), plant communities/plant alliances have no statutory process to ensure the group of plants actually have a relationship with each other, or require protection. Moreover, unlike individual species, which can be identified by DNA analysis, the location of plant communities cannot be known for a certainty as there is no formal process for experts to agree on the definition for any particular plant community. An example is the central maritime chaparral plant community, which the Coastal Commission declared to be ESHA during a coastal permit appeal hearing, while acknowledging in the hearing [staff report](#) at page 21 (bold added),

Coastal Commission staff also discussed the characterization and definition of maritime chaparral with Dr. Dean Taylor, Research Associate at the Jepson Herbarium, University of California, Berkeley. Dr. Taylor stated that in the United States, nomenclature of plant communities has by professional practice been an informal process, and that, by contrast, in Europe, phytosociology has a formal identification process for vegetation communities, and a formal code governing nomenclatural matters. He stated that the syntaxonomy of maritime chaparral

has not been formally studied, **hence arguments as to the identity of a particular stand of chaparral as either falling within or without such a category is subject to the vacillation of personal opinion.**

As a result, those who would perform wildfire fuel reduction work are left in a Catch 22 — they are to avoid impacts on plant communities, but cannot be sure where they are without hiring an expert, and even then a different expert may say they are somewhere else.

Note 5: The CEQA Guidelines currently contain a categorical exemption for fuel management activities (i.e., defensible space) at [14 CCR § 15304\(i\)](#). However, the exemption is out of date, and makes it harder to create defensible space, not easier. For example, the exemption does not acknowledge that Public Resources Code section 4291 was amended in 2005 and now requires a minimum of 100 feet of defensible space (the exemption only exempts 30 feet of defensible space, extending the exemption to 100 feet only "if the public agency having fire protection responsibility for the area has determined that 100 feet of fuel clearance is required due to extra hazardous fire conditions." Moreover, the exemption fails to acknowledge that California listed threatened and endangered species may be taken/killed for fire control and management purposes, as provided by the CESA and the Native Plant Protection Act (explained in Attorney General Opinion 98-105, <https://oag.ca.gov/system/files/opinions/pdfs/98-105.pdf>). Instead, the exemption effectively requires that experts be hired to prove the fuel reduction work will not disturb threatened or endangered species or result in erosion or sedimentation of surface waters, saying, "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." See the discussion above at State Law Issue 2 above for how CESA interferes with wildfire fuel reduction work and increases the threat of wildfires to protected species and habitat, and State Law Issue 1 for how laws intended to protect water quality from silt and erosion are now counter protective and add to siltation and erosion of creeks, rivers, lakes, and waterways to the extent they discourage or block wildfire fuel reduction work in riparian areas.

Proposed Change: Amend CEQA to provide a clear statutory exemption for wildfire fuel reduction work to reduce wildfire fuel density levels generally to the density levels described in CAL FIRE's General Guidelines for Creating Defensible Space, not limited to the minimum 100-foot distance required by Public Resources Code section 4291, and not limited to work to protect structures but to also allow and facilitate work along roads and encourage "community-wide" defensible space as encouraged in the Guidelines, and also work to help restore California's woodlands, forests, and brushlands to wildfire resilient condition.

State Law Issue 4

California Coastal Act

https://leginfo.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=PRC&division=20.&title=&part=&chapter=&article=&nodetreepath=42

Agency: Local government (city, county, or city and county) responsible for implementing a Local Coastal Program; and the California Coastal Commission to the extent it retains permit authority, hears permit appeals, and is responsible for certifying Local Coastal Programs are consistent with the Coastal Act.

Restrictions 1: Precludes reducing wildfire fuels that are in environmentally sensitive areas (ESHA) or that are ESHA. ESHA is exceedingly broadly defined in the Coastal Act (Public Resources Code section [30107.5](#)). Restrictions on what can happen in or near ESHA are exceedingly strict and inflexible, found at Public Resources Code section [30240](#). Disturbance of ESHA is allowed only when not allowing it would result in infringement of a Constitutional right (*McAllister v. California Coastal Com.*), or, when laws are suspended as when Governor Newsome [proclaimed a state of wildfire emergency and suspended laws](#) (including suspending the Coastal Act and CEQA) to allow work on 35 priority wildfire fuel reduction projects, at least one of which involved cutting of ESHA in the coastal zone.

Restrictions 2: Other restrictions depend upon the language of the Local Coastal Program. In Monterey County many varieties of trees are protected in the Local Coastal Program, some as ESHA, some simply restricted in the size or number that can be cut.

Requirements: The Coastal Act requires a coastal development permit for "harvesting or removal of major vegetation." This because the Coastal Act defines "development" to include harvesting or removal of major vegetation (Public Resources Code section [30106](#)), and requires a coastal development permit to do anything that is included in its definition of development (Public Resources Code section [30600\(a\)](#)). In the 1980s, Monterey County's Local Coastal Program removed certain vegetation removal from being considered "removal of major vegetation" to allow removal without the need for a coastal permit, but around 2009 the County interpreted that language to be "meaningless," apparently due to conflicts with ESHA policies.

Cost: In Monterey County if three or more trees are to be removed in the coastal zone, requirement is a coastal development permit, with a non-refundable application fee of **\$11,000**. If three or fewer trees are to be removed from a lot in a year a permit waiver is needed, with a non-refundable application fee of **\$550**. See discussion above at Local Laws Issue 2, Monterey County Local Coastal Program for additional costs. In Ventura County it appears the county plans to charge a **\$100,000+** ESHA mitigation fee for homeowners to extend defensible space from the minimum 100 foot distance required by Public Resources Code section 4291, to 200 feet. <https://www.vcstar.com/story/news/special-reports/outdoors/2018/08/24/santa-monica-mountains-homeowners-say-county-rules-lead->

[less-protection-against-wildfires/1025472002/](https://www.montereycounty.ca.gov/Planning/Coastal/less-protection-against-wildfires/1025472002/)

Time: Time to obtain coastal development permits can be days, to months, to years.

Penalties: Any person who violates a provision of the Coastal Act is subject to fines of \$30,000 or more. Details are here

https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=PRC§ionNum=30820. Any person who violates a Monterey County Code (i.e., its ordinances to implement its Local Coastal Program) is subject to substantial fines and imprisonment. Details are here

https://library.municode.com/ca/monterey_county/codes/code_of_ordinances?nodeId=TIT1_GEPR_CH1.20ENCO

Example 1: [REDACTED] must tell contractors to avoid ESHA during grant-funded fuel reduction projects in the coastal zone, leaving hazardous accumulations of wildfire fuels in place even when funding is available to thin them, increasing the threat of wildfire to lives, property, and resources.

Example 2: A landowner was recently cited by County Code Enforcement for cutting tanoak trees his arborist told him were dead, allegedly based on the Local Coastal Program. The citation was revoked on the condition that the landowner retroactively apply for a permit to cut the dead trees (which [REDACTED] understands the landowner agreed to, though the applicable coastal plan does not require a permit to cut dead trees).

Example 3: In 2019 Governor Newsom proclaimed a state of wildfire emergency and suspended all laws, including the Coastal Act and CEQA, to allow the 35 priority wildfire fuel reduction projects in [CAL FIRE's 45-day Report](#) to take place without delays. One of those projects was in the Palo Colorado area in the Big Sur Coastal Planning Area. The Governor's crews thinned a dense mass of small redwood trees that presented a fire hazard next to Palo Colorado Road, which is a dead end road that is the sole road in that area for evacuation from hundreds of homes and sole ingress for emergency equipment. In the past, [REDACTED] had to tell grant-funded fuel reduction contractors to leave those redwood trees untouched as the County interprets them to be ESHA. The stumps of those redwood trees cut by the Governor's crews are now resprouting like bushes and will grow to be a greater fire hazard than they were originally. Unless coastal policies are amended or again suspended, those resprouting redwood trees cannot be thinned again legally, and will grow to increase the threat of wildfires to fire fighters and evacuating residents.

Example 4: This news story demonstrates that the conflict between ESHA and defensible space is not limited to Monterey County <https://www.vcstar.com/story/news/special-reports/outdoors/2018/08/24/santa-monica-mountains-homeowners-say-county-rules-lead-less-protection-against-wildfires/1025472002/>

Note: Monterey County's Local Coastal Program contains language that was intended to

enable landowners to maintain coastal woodlands, forests, and brushlands in wildfire resilient condition by allowing removal of certain vegetation without the need for a permit. That language was certified in the 1980s by the Coastal Commission as being consistent with the Coastal Act. The vegetation is listed in ordinances that say that removing the vegetation is "not removal of major vegetation," which removes it from the Coastal Act's [definition of "development,"](#) which removes it from the Coastal Act's requirement of needing a coastal permit. However, about 2009, Monterey County started to interpret that language to be "meaningless," apparently due to conflicts with coastal policies intended to protect ESHA. As a result, [REDACTED] has to tell grant funded fuel reduction contractors to not perform fuel reduction work in or near riparian areas (ESHA), not cut brush that may be central maritime chaparral (ESHA, though there is no agreed upon definition of exactly what that plant community is so it is uncertain where it is), to not thin dense groups of small redwood trees (redwoods are ESHA, though in the 1980s they could be cut legally if under a certain size (e.g., 12 inches in diameter in the Big Sur Coastal Planning Area), but now cannot be touched), etc.

Proposed Change: Amend the California Coastal Act to preclude local jurisdictions and the California Coastal Commission from enforcing restrictions (including ESHA restrictions) or requiring permits, studies or other requirements that may act to discourage or hinder public agencies and private individuals from reducing the density of wildfire fuels generally to the densities described in CAL FIRE's General Guidelines for Creating Defensible Space, not limited to the 100-foot minimum distance required by Public Resources Code section 4291, and not limited to work to protect structures, but to also allow and facilitate work along roads and for fuelbreaks, and encourage "community-wide" defensible space as encouraged in the Guidelines, and also work to help restore California's woodland, forests, and brushlands to wildfire resilient condition. Provide that existing Local Coastal Program policies that conflict with the amendment are nullified to the extent they do so. Make clear in the Coastal Act that the net benefit of reducing harm to ESHA from wildfires, by reducing wildfire fuels generally to the densities described in the Guidelines, far outweighs any harm to ESHA from performing wildfire fuel reduction work.

State Law Issue 5

California Wilderness Act

https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=PRC&division=5.&title=&part=&chapter=1.3.&article=

Agency: California Department of Parks and Recreation (and possibly other agencies)

Restrictions: Forbids the following in state wilderness "...motor vehicles, motorized equipment, or motorboats, no landing or hovering of aircraft, no flying of aircraft lower than 2,000 feet above the ground, no other form of mechanical transport..." except under limited conditions that apparently do not include for the construction of fuelbreaks or firebreaks

before a wildfire starts.
Requirements: None, as the prohibitions are largely inflexible (see restrictions).
Cost: None, except for losses if a wildfire burns in state wilderness where it has not been prepared for wildfire in advance with fuelbreaks and/or firebreaks, or burns out of a state wilderness due to lack of preparation and into nearby communities.
Time: Waiting for a wildfire to start burning before allowing use of mechanized equipment in wilderness increases the threat of wildfires to both the wilderness and nearby communities
Penalties: Unknown penalties for using mechanized equipment in wilderness without complying with requirements.
Example: Henry W. Coe State Wilderness burned in the SCU Lightning Complex Fire; Limekiln State Park Wilderness burned in the Dolan Fire.
<p>Note 1: In 2001 the US Forest Service planned a series of 10 fuelbreak projects on the historic "peripheral fuelbreak" on the perimeter of the Los Padres National Forest. A wilderness advocacy group successfully lobbied for wilderness to be moved over 8 of those fuelbreak project areas in 2002, including over the location of the historic peripheral fuelbreak in one of the areas (the Little Sur Wilderness Addition, which was also the location of the historic firebreak that stopped the Marble Cone Fire in 1977 and was opened during the Kirk Fire in 1999). In 2008 the Basin Fire burned through the Little Sur 2002 wilderness addition when the historic firebreak was not opened in that area, heading for the greater Palo Colorado community.</p> <p>In 2010, the same wilderness advocacy group lobbied then-Assemblymember Monning to introduce a bill to create state wilderness in Andrew Molera State Park, a corner of which went over the same historic peripheral fuelbreak near the Little Sur Wilderness Addition. https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200920100AB2074 After learning that the state wilderness would interfere with maintenance of the historic peripheral fuelbreak, then-Assemblymember Monning withdrew his Andrew Molera Wilderness bill https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=200920100AB2074.</p> <p>It is not known where state wilderness has been designated that interferes with maintaining historic firebreaks and fuelbreaks with mechanical equipment, increasing the threat of wildfires to lives, property, and resources, including increasing the threat of wildfires to plants/habitat, wildlife, creeks, rivers, lakes, and other resources inside and outside wilderness.</p>
<p>Note 2: For fuelbreaks to be effective they must be wide enough to have a chance of working under adverse conditions. Here is a link to a US Forest Service Report on how effective fuelbreaks acted to protect communities from the Wallow Fire in 2011. https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5318765.pdf The report states</p>

at least one fuelbreak was 1/2-mile wide. A Los Angeles Times story critical of the effectiveness of fuelbreaks gave the Camp Fire and the town of Paradise as an example of how fuelbreaks don't work. However, that same story mentioned that the fuelbreak to protect the town of Paradise was only 100-feet wide.

Note 3: Computer modeling can help determine how wide fuelbreaks should be to be *effective*, for example, here is a link to a video on computer modeling of the Forest Service's Strategic Community Fuelbreak Improvement Project in the Monterey Ranger District of the Los Padres National Forest, on a portion of the historic peripheral fuelbreak, <https://drive.google.com/file/d/1RNDd1qXQEH7q0GSpYScP3rE3RaeGKFvD/view?usp=sharing> (You can jump to 24 minutes and 40 seconds to hear the discussion on the width needed when spotting is considered, which is about 4,000 feet based on the small mile scale at the bottom of the screenshot.)

Proposed Change: Amend the California Wilderness Act to allow use of mechanized equipment in wilderness before wildfires start, in areas that are topographically suitable for fuelbreaks and firebreaks to enable creation of the same, for such width/distance as will enable *effective* fuelbreaks to be created and maintained.

State Law Issue 6

Z'Berg-Nejedly Forest Practice Act and other laws that may interfere with commercializing wildfire fuel reduction work by such means as converting cuttings to biochar, pellets, or other commercial products that can be sold to help pay the cost of wildfire fuel reduction work.

Agency: California Board of Forestry, California Resources Agency, and possibly others.

Restrictions: Unknown but likely substantial if the Forest Practice Act or other related laws apply to commercialized wildfire fuel reduction work.

Requirements: Unknown but likely substantial if the Forest Practice Act or other related laws apply to commercialized wildfire fuel reduction work.

Cost: Unknown but likely substantial for commercialized wildfire fuel reduction work covered by the Forest Practice Act or other related laws.

Time: Unknown but likely substantial time currently needed for approval of commercialized wildfire fuel reduction work that may be covered by the Forest Practice Act or other related laws.

Penalties: Unknown but likely substantial penalties for violation of the Forest Practice Act or other related laws.

Note: California is in a wildfire state of emergency due to hazardous accumulations of wildfire fuels that have been accumulating since the national policy to put out wildfires as quickly as possible was put in place after the Great Fire of 1910. [REDACTED] experience is that the cost to pay contractors to reduce wildfire fuels is approximately \$1,000 to \$3,000 per acre, depending upon conditions and equipment that can be used. The most effective way to reduce accumulations of wildfire fuels to safe levels in the shortest time possible is to find a way to commercialize the work, so it helps pay for itself, ideally so an industry develops to sustain the work over time. California's legislature has acknowledged this reality by enacting Public Resources Code [section 717](#), which authorizes a working group to explore "expanding wood product markets that can utilize woody biomass, especially biomass that is removed from high hazard zones, as determined by the department. These markets include, but are not limited to, animal bedding, biochar, cross-laminated timber, mulch, oriented strand board, pulp, post, shredding, and veneer products." However, the Legislature has not removed regulatory hindrances that interfere with such work taking place and such markets being developed. Biochar would seem to have great potential for helping solve the wildfire fuel accumulation problem in Monterey County given the vast accumulations of wildfire fuels, and the apparent ready market for biochar in the agricultural community in the Salinas Valley. For example, <https://www.farmprogress.com/miscellaneous/biochar-emerges-soil-amendment-agriculture>

Proposed Change: Amend the Z'Berg-Nejedly Forest Practice Act and all other laws that have potential to discourage, hinder, or block expanding wood product markets that can utilize woody biomass, especially biomass that is removed from high wildfire hazard zones to instead allow and facilitate such wood product markets. These markets include, but are not limited to, animal bedding, biochar, cross-laminated timber, mulch, oriented strand board, pulp, post, shredding, and veneer products.

State Law Issue 7

California Private Attorney General Doctrine, codified at Code of Civil Procedure, section [1021.5](#)

Agency: California Courts

Restrictions: See Requirements below.

Requirements: A court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any.

Cost: Cost can be many thousands of dollars, both for costs defending against an award of attorney's fees, and for paying them if awarded.

Time: Litigation can take from months to years, and briefs/hearings/etc. on appropriateness of an award of attorney's fees under CCP [1021.5](#) can cost much money and take much time.

Penalties: Technically there are no fines, however, an award of attorney's fees pursuant to CCP 1021.5 can amount to many thousands of dollars

Example 1: If an entity applies for a discretionary permit from a government entity to perform wildfire fuel reduction work then CEQA applies/is triggered. In Monterey County, the [administrative tree removal permit application](#) states, "All tree removal permits approved by the County are subject to conditions of approval." As a result, in Monterey County, all tree removal permits are discretionary permits so trigger CEQA. If an agency issuing a discretionary permit is sued for not complying with CEQA when issuing the permit, and if upon conclusion of the case the court finds the requirements of CCP 1021.5 for award of attorney fees are met, the court can award attorney's fees, which typically amount to thousands of dollars, **and order that the permit applicant pay the attorney's fees.** For example, see this case (which in part turned on defective CEQA review of impacts on protected species from required wildfire fuel mitigation work that would result from the permit, and defective CEQA review of ongoing impacts from maintaining the fuel mitigation work into the future (e.g., pages 46-47)), <https://cases.justia.com/california/court-of-appeal/2020-b292246.pdf?ts=1584477066>

Example 2: Another court opinion involving wildfire fuel mitigation that touches on attorney fees by application of CCP 1021.5 is here <https://cases.justia.com/federal/district-courts/california/candce/3:2017cv03461/313022/143/0.pdf>. That opinion (one of a number in that controversy) discusses the application of both CEQA and the National Environmental Policy Act to wildfire fuel reduction projects intended to help protect lives and property in the East Bay Hills, by (initially, before being modified to try to comply with CEQA) removing "non-native trees (including all eucalyptus, Monterey pine, and acacia trees) to convert the area into a forest of native California species that would be more resistant to fire." Interestingly, to award attorney fees under CCP 1021.5 the state trial court found that the "case resulted in enforcement of important public rights and conferred a significant benefit on the public." Apparently, courts consider enforcing compliance with CEQA's detailed and difficult-to-comply-with process to be a greater benefit to the public than reducing the threat of wildfires to help protect lives, property, and resources.

Note: Awards of attorney's fees under the California Private Attorney General Doctrine incentivizes lawsuits, especially CEQA lawsuits, including lawsuits intended to hinder or block wildfire fuel reduction work. The highest priority of law and the courts should be the protection of human lives and property, not ensuring Ts are crossed and Is are dotted in the detailed and difficult-to-comply-with CEQA review process.

Proposed Change: Amend the California Private Attorney General Doctrine, codified at Code

of Civil Procedure section [1021.5](#), to not apply to awards of attorney's fees in cases that involve wildfire fuel reduction work, at least to the extent the attorney's efforts/the litigation acted to delay, discourage, hinder, or block wildfire fuel reduction work.

State Law Issue 8 – New Law

New state law to establish a new program similar to the existing California Disaster Service Worker Volunteer Program, to provide Workers' Compensation Insurance and protection from liability to those who volunteer to perform wildfire fuel reduction work to help reduce the threat of wildfires to lives, property, or resources.

Agency: Preferably local fire agencies would oversee the program in their area of interest.

Restrictions: As few as possible.

Requirements: As few as possible.

Cost: Little cost to the State compared to the cost of the State paying contractors to do the fuel reduction work (typically \$1,000 to \$3,000 per acre, with many millions of acres needing the work).

Time: The goal is to *shorten the time* and *lower the cost* it will take to provide all Californians *effective* defensible space (including people who cannot do the work themselves), to make all roads safe to drive during a wildfire, to create and maintain effective community fuelbreaks around California's communities, to restore California's woodlands, forests, and brushlands to safer more wildfire resilient conditions.

~~Penalties~~ **Incentives:** No penalties. No threats. This program should provide incentives, and make clear to Californians the state needs their help to help solve the wildfire fuel accumulation problem by reducing wildfire fuel densities to safe levels, and restore California's woodlands, forests, and brushlands to more wildfire resilient condition.

Example 1: California currently has a Disaster Service Worker Volunteer Program that is designed to encourage people to volunteer to participate when disasters strike, and help mitigate the effects of the disaster; because it is likely public agencies will be overwhelmed and unable to handle the disaster on their own. <https://www.caloes.ca.gov/cal-oes-divisions/administrative-services/disaster-service-worker-volunteer-program> The program has a simple [one page signup form](#) to register to become a Disaster Service Worker, to make it as easy as possible for people to register as volunteers. The program provides Workers' Compensation Insurance and protection from liability to those who volunteer and register to work to mitigate a disaster. That program is administered by the California Office of Emergency Services and local Offices of Emergency Services; however, it is rarely used and

apparently does not significantly rely on private individual volunteers as opposed to the more limited number of government employees, and is not specific to wildfire fuel reduction work.

Note 1: California is currently undergoing a wildfire disaster, more urgent than climate change given that increasingly destructive wildfires are contributing to climate change by releasing massive quantities of sequestered greenhouse gases into the atmosphere. It is clear that the State is overwhelmed by the problem, and is not capable of reducing wildfire fuels to safe levels at the scale needed. Wildfire fuels are accumulating faster than we are reducing them. It is time for the State to acknowledge that though climate change contributes to the wildfire problem, climate does not burn, only fuel burns, and fuel is the only wildfire factor we are capable of controlling at this time, and the State government needs help from Californians to help solve the problem.

Note 2: [REDACTED] envisions this volunteer program to enable and facilitate small communities, neighborhoods, HOAs, and other groups of people joining together to perform wildfire fuel reduction work, with neighbors helping neighbors. Some of our board members have seen that happening in their communities. In 2020, Monterey County had zero/0/no National Fire Protection Association recognized Firewise USA communities, and now with support from [REDACTED] six Firewise USA communities have been recognized in Monterey County, and 12 more are in the process of applying for recognition and working on fulfilling requirements. Recently, during drafting of this letter, during a [REDACTED] Firewise USA zoom meeting, people expressed concern about inability to find insurance to cover medical costs in event of injury, or protection from liability, when neighbors join together to perform wildfire fuel reduction work. **This proposed program is intended to alleviate those concerns.**

Note 3: Government does not have enough money to fund the amount of wildfire fuel reduction work that needs to be done. Government needs the help of California's private residents and landowners. As stated on the [Little Hoover Commission's website](#), "A lawmaker told staff that even if the entire state budget were spent solely on forest management, it still wouldn't be enough to fund treatment of all the state's overgrown forests." And as stated in a [report to President Clinton](#) in 2000, *Managing the Impact of Wildfires on Communities and the Environment*, AKA the National Fire Plan, "Implicit in the Administration's policy is the understanding that reversing the effects of a century of aggressive fire suppression will be an evolutionary process, and not one that can be completed in a few short years." Though that report was in 2000, California has not yet started to reduce wildfire fuels at the scale needed. Fuels are accumulating faster than we are reducing them and wildfires are growing in intensity, size, and harm as a result. Volunteers could help solve the fuel accumulation problem, if concerns about insurance for injuries and liability are addressed, and they are allowed to do the work.

Proposed Change: New law that acknowledges that California is in a wildfire state of emergency due to hazardous levels of wildfire fuels that have been accumulating for over 100 years since the beneficial policy to put out wildfires as quickly as possible was put in place

after the [Great Fire of 1910](#); that though climate change contributes to the wildfire problem climate does not burn, only fuel burns, and fuel is the only wildfire factor we can control at this time; that government does not have sufficient funds to pay to have the quantity of work done that needs doing and wildfire fuels are accumulating faster than we are reducing them; that it is time for the State to allow and facilitate Californians to help reduce wildfire fuels to safe levels, and one way the State can do that is to provide volunteers working to help address the wildfire state of emergency Workers' Compensation Insurance and protection from liability as they help with this critical work.

State Law Issue 9 – New Law

New state law to allow nearby private property owners to reduce wildfire fuels on local, state, and regional government-owned land, generally to the density levels described in the Guidelines, not limited to the 100 foot minimum distance of defensible space required by Public Resources Code section 4291, and not limited to only protecting structures but also to allow work along roads and for community fuelbreaks, if the public agency does not perform that work to help protect nearby communities from wildfires. Provide Workers' Compensation Insurance and protection from liability for those private individuals doing this work.

Agency: Preferably local fire agencies would oversee the program in their area of interest.

Restrictions: As few as possible.

Requirements: As few as possible.

Cost: Little cost to the State compared to the cost of the State paying contractors to do the fuel reduction work (typically \$1,000 to \$3,000 per acre, with millions of acres needing the work).

Time: The goal is to *shorten the time* and *lower the cost* it will take to provide all Californians *effective* defensible space (including people who live near local, state, and regional public lands), to make all roads safe to drive during a wildfire, to create and maintain effective community fuelbreaks around California's communities, to restore California's woodlands, forests, and brushlands to safer more wildfire resilient conditions.

~~Penalties~~ **Incentives:** No penalties. No threats. This program should provide incentives, and make clear to Californians the state needs their help to help solve the wildfire fuel accumulation problem on local, state, and regional government-owned public lands by reducing wildfire fuel densities to safe levels, and restore California's woodlands, forests, and brushlands to more wildfire resilient condition.

Example 1: Vast areas of public lands owned or managed by such entities as California Department of Parks and Recreation (DP&R), various regional park districts, city and county parks departments, and other entities, are loaded with hazardous accumulations of wildfire fuels and a threat to lives and property in nearby communities in event of wildfire.

Example 2: Some agencies say their enabling legislation does not allow reducing wildfire fuels to help protect nearby communities, and does not allow granting permission to private individuals to enter their land to perform defensible space work.

Note: California is currently undergoing a wildfire disaster. It is time for the State to acknowledge that local, state, regional, and federal public lands are a large part of the problem and that extraordinary problems require extraordinary measures, like allowing private individuals to perform wildfire fuel reduction work on public lands if the public agency does not do the work itself (not including federal lands, but encouraging Congressional Representatives to amend federal law to allow and facilitate similar ability for private individuals to do wildfire fuel reduction work on federal lands).

Proposed Change: New law that acknowledges that California is in a wildfire state of emergency due to hazardous levels of wildfire fuels that have been accumulating for over 100 years since the beneficial policy to put out wildfires as quickly as possible was put in place after the [Great Fire of 1910](#); that much of those hazardous accumulations of wildfire fuels are on public lands; that overgrown public lands increase the threat of wildfires to nearby communities; and that amends pertinent local, state, and regional government agency enabling legislation to ensure private landowners and residents are allowed to enter the public land the agencies manage to reduce wildfire fuels generally to the densities described in the General Guidelines for Creating Defensible Space, not limited to the minimum 100 foot distance from structures required by PRC 4291, and not limited to protecting structures, but also to allow and facilitate work along roads, work on community fuelbreaks, and work to allow maintaining California's woodlands, forests, and brushlands in wildfire resilient condition, and help encourage that work by providing Workers' Compensation Insurance and protection from liability for those doing this critical work.

State Law Issue 10 – New Law

New state law to allow and facilitate construction and placement of wildfire shelters not over 100 square foot inside floor area or over 1,000 cubic foot inside volume, which meet performance standards similar to standards for Bushfire Bunkers in Australia.

Agency: Preferably local fire authority.

Restrictions: As few as possible.

Requirements: As few as possible.
Cost: No regulatory cost (that is, only cost is cost to purchase and install, or construct, the shelter). Concept is to allow and facilitate construction and placement of wildfire shelters.
Time: The goal is to enable construction and placement of as many effective wildfire shelters as possible in the shortest time possible.
Penalties Incentives: No penalties. No threats. This program should provide incentives, and make clear to Californians the state wants people in wildfire prone areas to construct shelters that will protect them from wildfires in case they are not able to evacuate safely.
<p>Example 1: Australia has developed standards for what they call Private Bushfire Bunkers to help people construct or place effective shelters to protect themselves and their family from a wildfire. Rather than require specific designs, Australia decided instead to develop performance standards that provide direction for such things as the distance between the shelter and the associated dwelling, the surface of the pathway between the dwelling and shelter (e.g., non-combustible, minimum width of 1 meter), designed duration of occupancy, materials of construction and avoidance of inside air toxicity, etc.). An example of such Bushfire Bunker standards is here https://www.abcb.gov.au/sites/default/files/resources/2021/Performance-Standard-Private-Bushfire-Shelters.pdf</p>
<p>Note 1: Helpful information included in that Bushfire Bunker standards document is that the limiting factor for occupancy of a sealed wildfire shelter is not oxygen consumption, but instead, accumulation of CO₂. At Table 3.4.3 – Theoretical Duration of Occupancy, on page 40 in that document, is a chart showing the theoretical duration a sealed bushfire shelter of a given volume is safe for occupancy by a given number of people. That table shows that a sealed fire shelter with a volume of 1,000 cubic feet (10' x 10' x 10'), which is equivalent to about 28 cubic meters, would be safe for a family of 4 to shelter in for over 20 hours while sealed tight from outside air.</p>
<p>Note 2: CAL FIRE emphasizes evacuation, for example, its Ready, Set, Go program. However, there is not always time to evacuate, especially when wildfires approach at night when people are sleeping, and even when there is time roads may be gridlocked with fleeing vehicles. Both of those possibilities are demonstrated by the town of Paradise and the Camp Fire, where some people trying to evacuate were burned in their cars. This document contains some of the harrowing stories of people trying to escape from fires during the Southern California Fire Siege of 2003, some dying in their cars while trying to flee, https://nsifire.org/wp-content/uploads/2014/04/Faces-20031.pdf Some 23 people died and over 3,500 homes were destroyed by those wildfires in 2003.</p>
<p>Note 3: Local jurisdiction permitting processes are known to be costly, time consuming, and otherwise burdensome. To facilitate construction of accessory dwelling units in California to</p>

help address the state's homelessness problem and need for more affordable housing, the California Legislature over-rode local jurisdiction permitting processes to fast track construction of accessory dwelling units. The need for wildfire shelters in California is at least as critical as the need for housing, yet fire shelters are not likely to be built in significant numbers if permitting can be required by local jurisdictions. For example, in Monterey County a coastal development permit is required for construction of structures on the coastal zone, with a permit application fee of \$11,000, plus substantial added costs. Legislation is needed to bypass local jurisdictions to allow and facilitate substantial numbers of wildfire shelters to be constructed as quickly as possible.

Note 4: In Australia, establishment of Bushfire Bunker standards has resulted in both home-constructed bushfire shelters, and for those who can afford them, prefab bushfire shelters, for example <https://wildfiresafetybunkers.com.au/bunkers.html>.

Note 5: Until such time as California can develop its own standards for wildfire shelters, California should use the [standards developed by Australia](#) (it took many years for Australia to develop its Bushfire Bunker standards, and it will likely take California many years to develop its own standards if needed, and we do not have time to wait, as many more wildfire shelters are needed in California *now*).

Proposed New Law: [REDACTED] proposes a new law that allows and facilitates construction and placement of wildfire shelters under a certain size ([REDACTED] proposes inside volume of 1,000 cubic feet) and that are built to easy-to-understand and inexpensive-to-implement standards, without the need for permits or other requirements that may add costs or delays. The law should acknowledge that California is in a wildfire state of emergency due to hazardous levels of wildfire fuels that have been accumulating for over 100 years since the beneficial policy to put out wildfires as quickly as possible was put in place after the [Great Fire of 1910](#); that as a result wildfires are growing in intensity and difficulty to control; that there is not always time to evacuate before a wildfire reaches homes, and that even when there is time, roads can become deathtraps when gridlock from mass evacuations make them impassible and people are trapped in their vehicles or forced to get out and run to flee flames on foot.

State Law Issue 11 – New Law

New state law to expand and improve upon California's rapid wildfire detection systems

Agency: Existing ALERTWildfire participating entities, Silicon Valley tech companies, perhaps paired with a technologically savvy state agency.

Restrictions: As few as possible

Requirements: That the rapid wildfire detection systems are technologically sound and problem and error free as practical and implemented in the shortest time possible.

Cost: Likely substantial, but also likely far less costly than the billions of dollars spent every year on wildfire suppression costs on wildfires that could have been readily stopped when small, but grew to much larger size due to lack of early detection systems.

Time: These improvements are needed as quickly as possible, and are worthy of a Manhattan Project type effort to get them in place as quickly as possible.

Example: Essentially every unwanted wildfire starts out very small. The sooner an unwanted wildfire is detected and efforts to get to them and suppress them begin the lower the cost in harm to human lives and resources, and the lower the cost of suppression.

Note 1: The existing ALERTWildfire camera system is an excellent system that could benefit substantially from improvements. You can read about how it started and has grown, and the inspiring story of how a group of young adults got it going as a school project here <http://www.alertwildfire.org/about.html>

The concept was to put cameras where they could watch forests, wirelessly connect the cameras to the Internet, and have the public monitor the cameras via the Internet/social media to watch for wildfires (initially called Forest Guard).

You can see the current iteration of the system in the United States here <http://www.alertwildfire.org/> and the current cameras for California's central coast here <http://www.alertwildfire.org/centralcoast/index.html>

has been working to have more ALERTWildfire cameras installed in Monterey County. Here is part of a screenshot of a prescribed burn on the Santa Lucia Preserve visible from the Pinyon Peak camera in Carmel Valley (on the right, with its view area indicated in pink).



A problem is, the more ALERTWildfire cameras that are installed, the less likely it is someone will be monitoring a particular camera.

understanding is ALERTWildfire is working on getting artificial intelligence to monitor the cameras, which could be done for all cameras 24/7/365. Those efforts could likely benefit and be hastened with funding from the state of California.

Note 2: A satellite based wildfire early warning system similar to ALERTWildfire would provide an additional way to obtain early warnings of wildfires in California.

██████ proposes that the State fund, investigate, and act on opportunities to partner with entities that have real-time access to satellite data, such as the Department of Defense and possibly San Francisco based Planet (<https://www.planet.com/>), or other companies, to implement a satellite based wildfire early warning system monitored by artificial intelligence, that monitors all of California 24/7/365 for wildfire starts.

Proposed New Law 1: New law to provide funding to expand the ALERTWildfire camera system to as many locations as needed to provide complete coverage, where feasible, of all areas subject to wildfires in the state (lands in both state and federal jurisdiction). ██████ understands the cost is about \$30,000 per camera for the camera itself, plus other related costs. ██████ expects the wildfire suppression costs saved by detecting wildfires earlier than they are detected under the present system would pay for the costs of installing cameras many times over in short order, and would continue saving money into the future. For example, suppression cost for the 2016 Soberanes Fire was \$260 million. Experts say actual costs of wildfires are from 2 to 30 times, or more, than suppression costs, for example this study showing the total costs of California's 2018 wildfires being approximately **\$146 billion** (https://discovery.ucl.ac.uk/id/eprint/10119102/3/Guan_Maintext.pdf)

Proposed New Law 2: New law to provide funding to develop and implement use of artificial intelligence to monitor all ALERTWildfire cameras for potential wildfires and report apparent wildfires to CAL FIRE and pertinent local fire districts and fire departments, connecting the system to early warning alert systems similar to A!ert Monterey County (<https://member.everbridge.net/453003085611217/login>), and display warnings on the Internet.

The funding should be provided to the entity identified by those listed as contacts on the ALERTWildfire About Us page, here <http://www.alertwildfire.org/about.html>

Proposed New Law 3: New law to provide funding to develop satellite monitoring of California for the purpose of detecting suspected wildfire starts as soon as possible by use of artificial intelligence, and report apparent wildfires to CAL FIRE and pertinent local fire districts and fire departments, connecting the system to early warning alert systems like A!ert Monterey County (<https://member.everbridge.net/453003085611217/login>), and displaying wildfire starts on the Internet available to the public in as close to real time as technologically feasible.

State Law Issue 12 – New Law

Amend state laws to better enable prescribed fire.
supports changes to law to provide regulatory relief for the "bureaucratic obstacles" to prescribed burns described in the letter to your office from Devii Rao of the University of California Cooperative Extension, dated 9/9/2021.
Note 1: understanding is each year Fort Hunter Liggett conducts prescribed burns on about 20,000 to 30,000 acres of the fort's approximately 165,000 acres, or about 12 to 18 percent of its land area. understanding is FHL is able to do that in large part because of regulatory relief and coverage for liability it receives by being part of the Department of Defense (and sparsity of structures in the burn areas, and largely single ownership of its acreage, and military funding).
Note 2: California recently enacted SB 332 to protect prescribed burn bosses from liability for prescribed fires that cause damage so long as certain requirements are followed, with the exception that no protection from liability is provided if the conduct constituted gross negligence.
Proposed New Law 1: Amend existing law or enact new law to remove the regulatory hindrances to prescribed burns described in the letter from Devii Rao.
Proposed New Law 2: Enact new law to establish a program/pool of money to be used to compensate those who may lose homes, businesses, or entail other losses due to a prescribed fire that escapes, including but not limited to if due to gross negligence.

State Law Issue 13 – New Law

New state law to fund and implement eradication of flammable invasive species.
Agency: Funding from State. Implementation by multiple agencies depending upon land ownership (e.g., implementation on state park land by Department of Parks and Recreation, implementation on private land funded to and through fire safe councils or local fire departments, Resource Conservation Districts, etc.). Ideally overseen by CAL FIRE and local fire agencies, which will likely need funding for staff to provide oversight.
Note 1: Invasive species are being found to have more detrimental effects than simply crowding out native species. Just one example, invasive grasses are being blamed for loss of Joshua Trees to wildfires in desert areas that historically have not burned because there was not sufficient fuel to carry wildfire, but now there is in the form of invasive Cheatgrass and other invasives https://janemming.com/2019/06/28/nevadagascar-the-link-between-invasive-weeds-and-wildfires-in-the-joshua-tree-forests-of-the-mojave-desert/

Note 2: In Monterey County highly flammable invasive plants are taking hold in vast areas. A few examples are *Genista monspessulana* (French broom), *Cortaderia jubata* (Jubata grass), *Eucalyptus globulus* (Blue gum eucalyptus), even *Pinus radiata* (Monterey Pine) where it is not native. Those and many more invasive species are spreading every day, increasing the threat of wildfires. The longer we wait to start containing them the worse the problem will become, and the harder it will be to contain them.

Proposed New Law 1: Enact new law to provide funding and to direct implementation for removing invasive species.

Federal Laws

California cannot amend federal laws. However, when allowed by federal law, California government entities can decide to not help the federal government enforce federal laws. For example, some California law enforcement agencies do not help the federal government enforce federal marijuana laws. And, [under varying conditions](#), California and some California cities and counties do not help the federal government enforce federal immigration laws, by not honoring Immigration and Customs Enforcement (ICE) detainer requests to hold undocumented aliens in custody for ICE pickup.

And, as discussed below, California can amend state law in ways that may convince Congress to amend federal laws to remove federal regulatory hindrances to wildfire fuel reduction work on private, local government, state, and federal lands.

To the extent allowed under federal law, [REDACTED] proposes a new state law to direct local, regional, and state government agencies to not assist federal agencies enforce federal laws that can act to discourage, hinder, or block wildfire fuel reduction work to reduce wildfire fuels generally to the density levels described in the Guidelines, not limited to the minimum 100 feet from structures required by Public Resources Code section 4291, and not only to protect structures, but to also allow and facilitate work to make roads safe to drive during wildfires, to allow work on community fuelbreaks, and work to restore California's woodlands, forests, and brushlands to safe more wildfire resilient condition.

Federal laws that act to interfere with wildfire fuel work include but are not limited to:

The Migratory Bird Treaty Act (MBTA) <https://www.fws.gov/le/USStatutes/MBTA.pdf>

The MBTA was enacted after passenger pigeons, which numbered in the millions, were [made extinct by market hunters](#) in the late 1800s and early 1900s, who often shot and poisoned them where they congregated at huge nesting sites, killing them in mass.

MBTA provides,

[E]xcept as permitted by regulations made as hereinafter provided in this subchapter, it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird, any part, nest, or eggs of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof, included in the terms of the conventions between the United States and [various other nations].

Important is that the MBTA's prohibitions do not appear to prohibit accidental disturbance of nesting migratory birds, and MBTA does not require hiring experts to survey areas where wildfire fuel reduction activities take place to look for nesting migratory birds, and does not appear to prohibit work that may disturb nesting migratory birds during times of the year when migratory birds may be nesting.

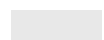
Monterey County's inland 2010 General Plan contains a policy apparently intended to help enforce the MBTA at [policy OS-5.25](#). The policy expressly states it applies to wildfire fuel reduction work, saying, "This policy shall apply for tree removal that addresses fire safety planning, since removal can be scheduled to reduce impacts to migratory birds and raptors."

As implemented in the County's [Tree Removal Permit Process Procedures document](#) (third bullet on page 1), which the County apparently applies county-wide, tree removal is prohibited between February 22 through August 1 (205 days/56 percent of the year) unless the permit applicant first: 1) hires a county-approved expert to inspect the area near where work would take place for nesting birds and, 2) if found, a county-approved biologist is to recommend measures to avoid disturbing the birds, and 3) the expert's recommendations are followed.

Neither the MBTA nor [the CEQA Guidelines](#) prohibit tree removal for wildfire fuel reduction work (or for any other purpose) for a portion of the year unless surveys for nesting birds are first conducted by professionals looking for nesting birds and their recommendations to avoid nesting birds are followed.

It is not known how many other counties in California have similar restrictions on tree removal for wildfire fuel reduction work.

There is not time to wait for Monterey County to amend its policies. The County took over 10 years to update its General Plan, and is has not yet finished updating its Local Coastal Program, which it started updating in 2004.

 advocates that a new state law be enacted to preclude State and local government from enforcing the MBTA or otherwise regulating tree removal during bird nesting season in a way that has potential to discourage, hinder, or block wildfire fuel reduction work to reduce wildfire

fuels generally to the density levels described in the Guidelines, not limited to the minimum 100 feet from structures required by Public Resources Code section 4291, and not only to protect structures, but to also allow and facilitate work to make roads safe to drive during wildfires, to allow work on community fuelbreaks, and work to restore California's woodlands, forests, and brushlands to safe more wildfire resilient condition.

The Wilderness Act https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd645666.pdf

The Wilderness Act states in its section on prohibitions, with limited exceptions (bold added), "[T]here shall be no temporary road, **no use of motor vehicles, motorized equipment** or motorboats, no landing of aircraft, **no other form of mechanical transport**, and no structure or installation within any such area."

In 1968 the United States Department of Agriculture (USDA) prepared a report to then-President Johnson on creation of the proposed Ventana Wilderness, to be designated in the Monterey Ranger District of the Los Padres National Forest in Monterey County.

Because of the Wilderness Act's prohibition on use of mechanized equipment in wilderness, and to ensure that the historic "peripheral fuelbreak" around the perimeter of the Monterey Ranger District could be maintained with mechanized equipment, the USDA's report recommended that the wilderness area be limited to about 98,000 acres of the Monterey Ranger District's 300,000+ acres, and that the wilderness boundary leave out of wilderness an area 250 feet in elevation below ridgelines on the perimeter of the proposed wilderness. That USDA report to President Johnson is here,

<https://drive.google.com/uc?export=download&id=1CSVdN-ZV5KRuih4WtNLTOQ87vRuIUUDE>

You can search the report for the term peripheral to find some of its language on the need to leave the peripheral fuelbreak out of wilderness. Here are some quotes from the report,

The boundary of this proposed Wilderness is very important and has been intentionally established wherever possible to allow the construction of peripheral fuelbreaks, and fire control access.

Approximately 70 percent of the boundary of this area would be located 250 feet below the crest of the ridge to permit the machine construction of effective fuelbreaks. ...

This 357 acre addition would establish the boundary on a prominent ridge, and would permit the continuance of the planned peripheral fuelbreak on this strategically located ridge. ...

The northeasterly boundary of this 35,107 acre addition is a prominent ridge just east of Tassajara Creek. This ridge would be used to continue the necessary peripheral fuelbreak planned to begin in area A.

In its report, USDA made clear its intent to leave out of wilderness most places where wilderness would interfere with maintaining the peripheral fuelbreak, saying for example in the portion of the report that explains why some areas would be *left out* of wilderness,

The north and east boundaries of Area F are predominantly section lines crossing canyons and ridges. Such a boundary does not lend itself to the construction of an adequate peripheral fuelbreak. ...

The prime objective on the easterly boundary of this Wilderness proposal is to establish and maintain adequate continuous peripheral fuelbreaks on key ridges to protect the area from sweeping conflagrations. The [eastern] boundary as proposed is on such a key ridge 20.5 miles in length. To include Areas F and G in this proposal would cancel this objective.

The USDA report concludes its discussion on the Ventana Wilderness boundaries and need to enable mechanized maintenance of the peripheral fuelbreak by saying (bold added),

"Therefore, all of the land having Wilderness qualities within logical Wilderness boundaries has been included in this proposal."

President Johnson and Congress respected those USDA observations, as when the Ventana Wilderness was created in 1969 it was approximately 98,000 acres, and its eastern boundary left the 20.5-mile-long ridge and other fuelbreak locations out of wilderness, with the exception of a west to east portion of the historic fuelbreak at the north end of the forest.

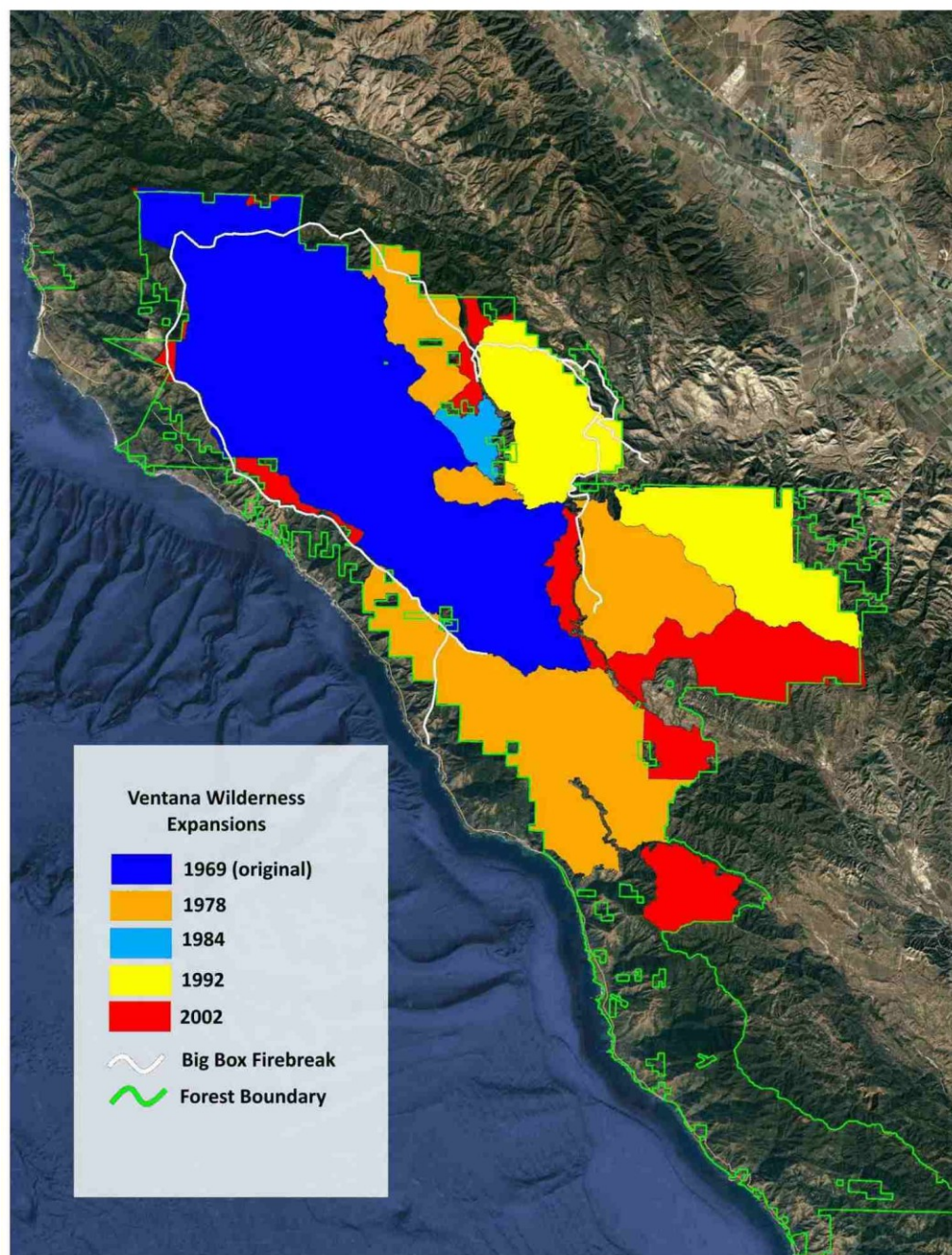
However, since the Ventana Wilderness was created it has been expanded multiple times, now encompassing approximately 240,000 acres. The map on the next page shows Ventana Wilderness expansions in relation to the historic peripheral fuelbreak around the Monterey Ranger District in Monterey County.

As you can see on the map on the following page, some of those Ventana Wilderness additions moved wilderness up to and over the historic peripheral fuelbreak (the location of the fuelbreak is the white line on the map, called the Big Box Firebreak in the map legend, which is the term used for it during wildfires by fire agencies like CAL FIRE). Not shown is the 20.5 mile portion of the historic fuelbreak that made up most of the eastern boundary of the original wilderness shown in blue.

In 2001, the Forest Service planned 10 fuelbreak projects on the peripheral fuelbreak, which it called the Monterey Defensible Fuel Profile Zone (MDFPZ). Those fuelbreak projects were to be 2,000 feet wide, and were all outside wilderness. You can read the Forest Service's 2001 National Environmental Policy Act (NEPA) scoping letter on the MDFPZ project here <https://drive.google.com/uc?export=download&id=1wm2YxD-PriEsO2SBShvq6N4FogA705Um>

However, in 2002 wilderness advocates successfully lobbied for legislation that moved wilderness over 8 of the 10 MDFPZ project areas (red areas on the map). As a result, the Forest Service abandoned those 8 fuelbreak projects. You can download an excerpt from the Forest Service's NEPA Record of Decision letter effectively saying that (leaving only the 2 projects wilderness was not moved over), here

<https://drive.google.com/uc?export=download&id=1IEOa2yqZNBKOyPHTAiJWUIN0AoSmgyWo>



In 2008, the Basin Fire started in the national forest and burned toward communities in Big Sur. *On the next page* is a modified Forest Service map showing the Basin Fire burning over the historic peripheral firebreak location through one of the 2002 wilderness additions, the Little Sur addition. The green line shows the unused portion of the historic firebreak.

The xxxxxx lines on that map show where bulldozers worked, turning off the historic firebreak on the south end of the yellow 2002 wilderness addition, allowing the Basin Fire to burn out of the national forest toward the Palo Colorado community of Big Sur. The fire was stopped on private land, in state jurisdiction, outside the national forest, at the last topographically viable location for a firebreak before burning through the Palo Colorado community.

My understanding is that wilderness-caused delays also increased the threat of the Basin Fire to other communities, including the Pine Canyon community on the east side of the national forest.

Here is a link to a video clip of former CAL FIRE BEU Unit Chief Rick Hutchinson telling the Monterey County Board of Supervisors how the Forest Service's "slow bureaucratic process of approval" during the Basin Fire made it so fire agencies could not do their job fighting the fire, increasing the Basin Fire's danger to firefighters, communities, individuals, and the environment, https://drive.google.com/file/d/14TFrW1S-pSx9ScK59mhxWULbNP_51tWs/view?usp=sharing

In 2012, the Forest Service issued a NEPA scoping letter on a fuelbreak project on portions of the historic peripheral fuelbreak, which it calls the Strategic Community Fuelbreak Improvement Project (SCFIP). In the same areas the MDFPZ projects were to be 2,000 feet wide, the SCFIP projects are a maximum of 150 to 300 feet wide, depending upon location.

You can read the Forest Service's SCFIP NEPA scoping letter here <https://drive.google.com/file/d/1INTNDDAB4cZi58cHUVX9lyf3c84Ph0ME/view?usp=sharing>

In 2015, the Forest Service purchased a 120-acre property in the Cachagua area, with about 1/2-mile of the historic peripheral fuelbreak on it. The Forest Service then designated the property wilderness, precluding the fuelbreak from being maintained with mechanized equipment.

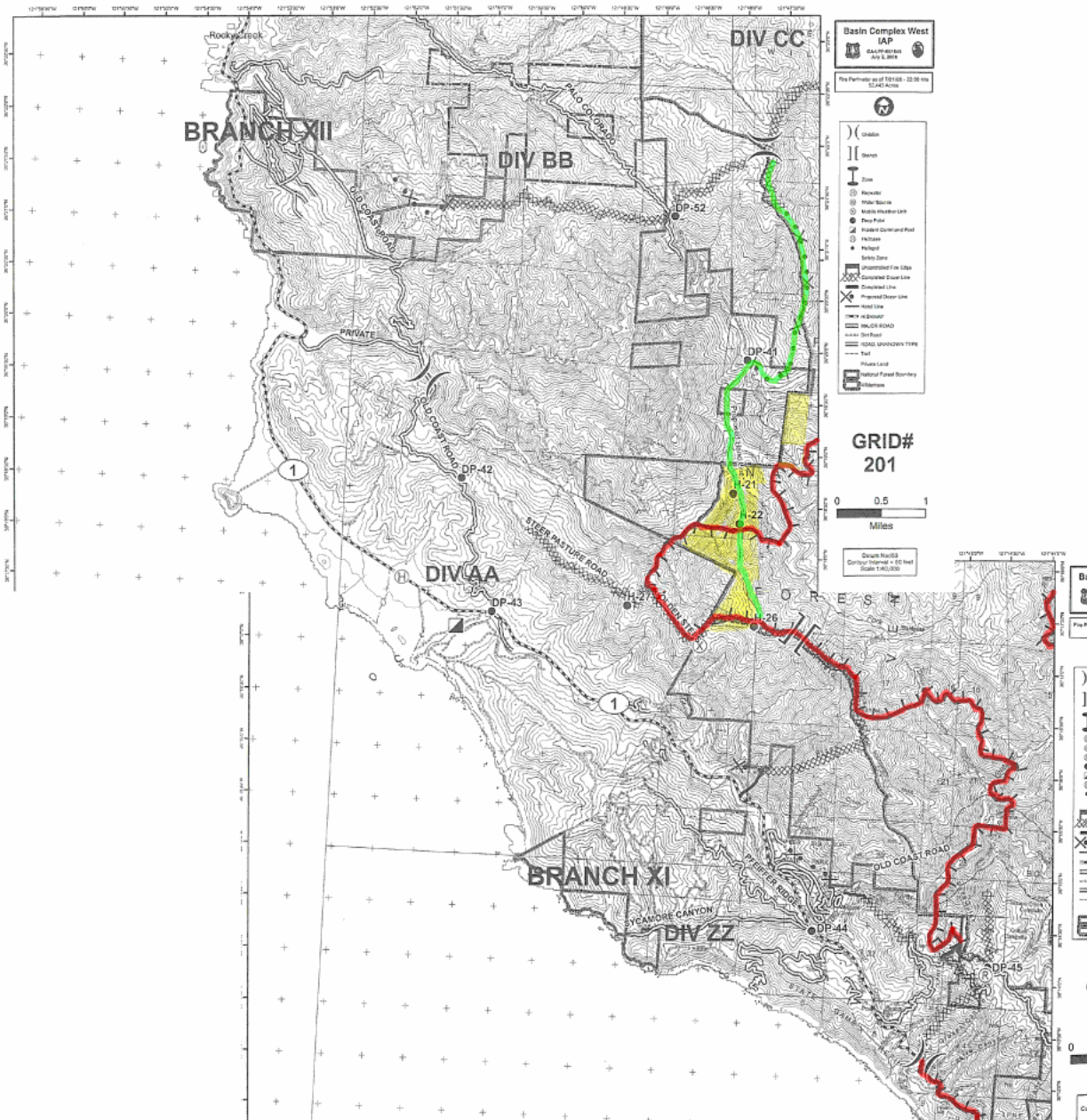
In Monterey County, and likely in other places, federal wilderness increases the threat of wildfires to nearby communities by prohibiting use of mechanized equipment to maintain historic fuelbreaks or to open firebreaks during wildfires without delays.

Moreover, the federal government owns about half of California, and over 20 percent of California is owned by the US Forest Service.

Just as most land in state jurisdiction in California is hazardously overgrown, most land in federal jurisdiction is as well, as evidenced by recent mega-wildfires on federal land.

Basin Fire Perimeter as of 7/01/08 - 22:00 Hrs

- Basin Complex / Gallery Perimeter
- Unused Historic Skinner Ridge Firebreak
- 2002 Little Sur Wilderness Additions



Though California cannot amend federal law, it may be possible, by amending state law, to motivate Congress to remove historic fuelbreak and firebreak locations from wilderness and otherwise amend federal laws to allow and facilitate wildfire fuel reduction work on land in federal and state jurisdiction.

The Forest Service Manual states that the primary land acquisition authority for the Forest Service to acquire land is the Weeks Law of 1911 (AKA the Weeks Act). You can read that at section 5420.11a on page 4 of this portion of the manual,

<https://www.fs.fed.us/im/directives/fsm/5400/FSM5420%20-%20purchase%20and%20donations.doc>.

That provision of the Weeks Law is codified at 16 United States Code [section 515](#).

As required by the Weeks Law, California has granted the Forest Service permission to acquire land in California under authority of the Weeks Law/Weeks Act.

proposes that the State repeal that grant of authority for the Forest Service to acquire land in California until such time as Congress amends federal law to allow the Forest Service and other federal land management agencies to maintain effective fuelbreaks and firebreaks, including with mechanized equipment in wilderness, and otherwise amends federal law as proposed in this letter to allow and facilitate public land managers and private residents and landowners of non-federal land to reduce wildfire fuels generally to the densities described in the Guidelines, not limited to 100 feet from structures, and not limited to protecting structures only, but also to allow work along roads, and for community fuelbreaks, and to enable restoring California's woodlands, forests, and brushlands to wildfire resilient condition, without interference by federal law. Some of those federal laws that currently interfere with that critical work follow.

The National Environmental Policy Act (NEPA)

<https://www.fws.gov/r9esnepa/relatedlegislativeauthorities/nepa1969.pdf>

NEPA is the federal government's version of CEQA. Like CEQA it is difficult for federal agencies to comply with NEPA in a way that is not subject to litigation. And, similar to California's Private Attorney General Doctrine, the federal Equal Access to Justice Act incentivizes lawsuits against federal agencies wanting to perform wildfire fuel reduction projects, by awarding attorney fees and costs to successful plaintiffs.

The (literally) multi-billion-dollar question is, is it more important that Ts be crossed and Is be dotted with regard to the NEPA process and laws that were intended to protect species, habitat, creeks, rivers, lakes, and air quality, or is it more important that wildfire fuel reduction projects be allowed to take place to help protect those very resources from wildfires fueled by accumulations of fuel?

██████ believes the answer to that question is that federal laws, including NEPA, should be amended to remove regulatory hindrances that empower litigation and otherwise act to delay and block critically needed wildfire fuel reduction work, increasing the threat of wildfires to lives, property, and resources, and proposes that NEPA be among the laws California asks be amended before California restores authority for further acquisition of California land under the Weeks Law of 1911 (assuming the Legislature agrees to conditionally revoke that authority).

Among other federal laws ██████ proposes California requires be amended to allow and facilitate, without federal regulatory hindrance, wildfire fuel reduction work by local, state, and federal agencies, and private individuals, before restoring California's permission for the Forest Service to acquire land in California with Weeks Law authority are:

- **The Clean Air Act**
- **The Clean Water Act**
- **The Endangered Species Act, and**
- **The Equal Access to Justice Act**