

Date of Hearing: April 23, 2024

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Diane Papan, Chair

AB 2330 (Holden) – As Amended April 1, 2024

SUBJECT: Endangered species: incidental take: wildfire preparedness activities

SUMMARY: Authorizes various local agencies to submit to the Department of Fish and Wildlife (DFW) for approval, a voluntary program to conduct wildfire preparedness activities in a fire hazard severity zone (FHSZ) to minimize impacts to wildlife. Specifically, **this bill:**

- 1) Allows a city, county, city and county, special district, or other local agency (local agencies) to submit locally designed voluntary program (program) to conduct wildfire preparedness activities on land designated as a FHSZ that minimizes impacts to wildlife and habitat for candidate, threatened, and endangered species (listed species), and does all of the following:
 - a) Protects communities from the threat of wildfire through vegetation management practices that, to the maximum extent practicable, avoid and minimize the take of listed species, while encouraging the enhancement of habitat;
 - b) Incorporates the best available scientific information for both wildfire preparedness and conservation practices; and
 - c) Provides sufficient flexibility to maximize participation and to gain the maximum protection of life and property from the threat of wildfire without compromising wildlife benefits.
- 2) Requires an application submitted for the program to contain the following:
 - a) The name and contact information of the participating local agency;
 - b) A brief description of the planned wildfire preparedness activities, including a description of the lands within the FHSZ;
 - c) The approximate dates for which wildfire preparedness activities are proposed to occur; and
 - d) A description of how the local agency is compliant with the California Environmental Quality Act (CEQA) and any planned environmental mitigation or conservation measures the local agency plans to take.
- 3) Requires DFW to approve or deny the application and notify the local agency of the approval or denial within 90 days of receipt of the application.
- 4) Requires DFW to provide the applicant with the terms and conditions within 30 days of approval to initiate the locally designed voluntary program, in lieu of an incidental take permit (ITP), which shall include all of the following:
 - a) A description of the vegetation management activities to be conducted;

- b) A description of listed species within the program area and measures to avoid their take;
 - c) Procedures that allow the local agency to notify DFW 15 days before vegetation management practices take place and an opportunity for DFW to respond within 15 days; and
 - d) A provision that identifies that the local agency shall have the ability to cease participation in a program without penalty at any time.
- 5) Describes the process for resubmission to DFW if the application is denied and allows a local agency to seek technical assistance from the State Board of Forestry and Fire Protection (Forestry Board) within the Department of Forestry and Fire Protection (CAL FIRE).
 - 6) Requires DFW to make a standard application form and template terms and conditions available on its website and post a summary of submissions on its website, as described, starting January 1, 2026.
 - 7) Requires DFW to automatically renew the authorization for locally designed voluntary programs every 10 years.
 - 8) Requires DFW in consultation with the Office of the State Fire Marshal (Fire Marshal) to develop maps identifying critical habitats within lands designated as FHSZ with existing data, make those maps available to local agencies for wildfire planning and preparedness, and update the map at least once every five years.

EXISTING LAW:

- 1) Provides that fish and wildlife resources are held in trust for the people of California by and through DFW [Fish and Game Code (FGC) § 711.7].
- 2) Provides, under the California Endangered Species Act (CESA), for the listing and protection of species determined through biological scientific analysis to be endangered or threatened with extinction (FGC § 2070–2079.1).
- 3) Prohibits the taking of listed species pursuant to CESA unless DFW authorizes the taking of the listed species under an ITP and if the taking is incidental to an otherwise lawful activity, the impacts are minimized and fully mitigated, and the issuance of the permit would not jeopardize the continued existence of the species (FGC § 2081; 2084).
- 4) Defines “take” as to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill (FGC § 86).
- 5) Requires the Fire Marshal, by regulation, to designate FHSZ and assign to each zone a rating reflecting the degree of severity of fire hazard that is expected to prevail in the zone [Public Resources Code (PRC) § 4203].
- 6) Requires the Forestry Board to represent the state’s interest in the acquisition and management of state forests pertaining to forestry; protect the state’s interests in forest resources on private land; determine, establish, and maintain adequate forest policy; and formulate guidance policies for CAL FIRE (PRC § 740).

- 7) Requires the Fire Marshal to identify areas in the state as moderate, high, and very high FHSZ based on consistent statewide criteria and based on the severity of fire hazard that is expected to prevail in those areas, fuel loading, slope, fire weather, and other relevant factors (Government Code § 51178).
- 8) Requires a local agency to designate by ordinance, moderate, high, and very high FHSZ in its jurisdiction within 120 days of receiving recommendations from the Fire Marshal, among other things (Government Code § 51179).

FISCAL EFFECT: Unknown. This bill is keyed fiscal.

COMMENTS:

- 1) **Purpose of this bill.** This bill provides an alternative pathway for a local agency to conduct wildfire preparedness activities that protect communities and minimize wildlife impact. According to the author, “[This bill] is designed to help expedite permits for fuel management activities, particularly those areas that are located near [FHSZ] that are adjacent to urban areas. The goal of this bill is to find a balance between public safety and environmental protection.”
- 2) **Background.** Wildfires are a common and natural occurrence in many ecosystems around the world and can provide numerous ecological and societal benefits. However, wildfires can also cause significant loss of lives, infrastructure, and critical ecosystem services. The losses associated with wildfires are predicted to worsen with climate change and an expanding wildland urban interface (WUI). In California’s recorded history, the top eight largest wildfires and nearly all of the top 20 most destructive wildfires have occurred in the last seven years.

Wildfire management. In response to wildfire, society engages in a variety of prevention, mitigation, and management actions in an effort to reduce the losses and increase the benefits of wildfire. While wildfire prevention activities focus on actions taken to prevent wildfires from occurring, mitigation refers to actions taken in order to manage the losses of wildfires when they do occur. Mitigation encompasses a wide variety of activities ranging from fire suppression to vegetation management to managing the built and social environments in which wildfires take place. Mitigation actions are designed to manage numerous components—the fire intensity, the burn probability, and the possible damages to human health and physical or ecological assets.

Wildfire management areas are divided into two main categories: state responsibility areas (SRA) and local responsibility areas (LRA). SRA is a legal term defining the area where the state has financial responsibility for wildland fire protection and prevention. Incorporated cities and federal ownership are not included. Within the SRA, CAL FIRE is responsible for fire prevention and suppression. There are more than 31 million acres in SRA, with an estimated 1.7 million people and 800,000 existing homes. LRA are incorporated cities, urban regions, agriculture lands, and portions of the desert where the local government is responsible for wildfire protection. This is typically provided by city fire departments, fire protection districts, counties, and by CAL FIRE under contract.

FHSZ Mapping. FHSZ for SRA and LRA reflect potential wildfire hazard across the state. Specifically the Moderate, High, and Very High FHSZ are where more intense wildfire is

likely to occur and impact people or physical assets (buildings, utilities, watersheds, timber, etc.). The assessment of FHSZ does not include the effects of any mitigation actions, such as a strong fire suppression response, well-managed fuel breaks, hardened homes, evacuation routes, defensible space, community education, spaced housing, or any number of actions that reduce fire impact. While a severe fire may be very likely to occur in a certain place, the impact of that fire is not measured for these maps. It is also important to note that the FHSZ maps do not include areas that are already urbanized. Therefore, many potentially fire-prone neighborhoods that are somewhat close to WUI are not given a FHSZ classification.

FHSZ maps for both SRA and LRA are available on Fire Marshal's website.¹ As noted above, FHSZ maps evaluate "hazard," not "risk". They are like flood zone maps, where lands are described in terms of the probability level of a particular area being inundated by floodwaters, and not specifically prescriptive of impacts. "Hazard" is based on the physical conditions that create a likelihood and expected fire behavior over a 30 to 50-year period. FHSZ maps are developed using a science-based and field-tested model that assigns a hazard score based on the factors that influence fire likelihood and fire behavior. Many factors are considered such as fire history, existing and potential fuel (natural vegetation), predicted flame length, blowing embers, terrain, and typical fire weather for the area. The Office of the State Fire Marshal adopted the final maps for SRA on January 31, 2024, which became effective April 1, 2024.

ITPs. CESA was enacted to prevent the extinction of fish, wildlife, plant, and invertebrate species by relying on scientific analysis to determine which species face extinction and impose protections for those species that are in peril. The overarching intent of CESA is to regulate and impose mitigation on activities that could contribute to the extinction of species. Species are referred to as "listed" if they have been designated as "threatened" or "endangered" under CESA. When a new species is proposed to be listed, it benefits from the same protections as listed species during its candidacy period. CESA prohibits the "take" of a listed species. "Take" means to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.

ITPs are granted as exceptions under CESA to enable the prohibited take of listed species during otherwise lawful activity. Examples of "lawful activities" for which an ITP may be issued include infrastructure development, housing development, transportation, and scientific research. DFW may not approve an ITP for a listed species if the activity for which the permit is sought would jeopardize the continued existence of the species. Impacts to listed species must be minimized and fully mitigated and those mitigation measures must be roughly proportional to the extent of the impact. CEQA compliance is necessary for receipt of an ITP.

California Vegetation Treatment Program (CalVTP). CalVTP, developed by the Forestry Board, is a critical component of the state's multi-faceted strategy to address California's wildfire crisis. The CalVTP includes the use of prescribed burning, mechanical treatments, manual treatments, herbicide application, and prescribed herbivory as tools to reduce hazardous vegetation around communities in the WUI, to construct fuel breaks (shaded or non-shaded), and to promote ecological restoration. The CalVTP Program Environmental Impact Report provides a powerful CEQA compliance tool to expedite the implementation of

¹ [Fire Hazard Severity Zones.](#)

wildfire resilience projects. CalVTP is available for SRA and can only be used on LRA if fuel breaks from SRA extend on to LRA.

Species mapping. DFW maintains a variety of maps in its Biogeographic Information and Observation System (BIOS). BIOS is designed to enable the management, visualization, and analysis of biogeographic data collected by DFW and its partner organizations. BIOS includes the California Natural Diversity Database (CNDDDB).² CNDDDB is an inventory of the status and locations of rare plants and animals in California. This dataset is updated monthly, but is not considered a public database to prevent the revealing the exact locations of rare species. The concern is that, while it is important that the CNDDDB information is available to those whose job it is to conserve species, there is the very real possibility that some people will use the detailed location information to do harm to a species or its habitat. The CNDDDB QuickView Tool presents CNDDDB data in a generalized manner to protect species.

- 3) **Proposed committee amendments.** Local agencies responsible for fire management activities do not necessarily have access to CalVTP and, according to the sponsor of this bill, have a difficult time knowing if an ITP is needed for planned fire preparedness activities and then deal with long permitting delays. To improve this communication and expedite permitting while maintaining the standards of CESA and an ITP, the Committee may wish to ask the author to accept the following amendments:

Amendment 1 – modify the route proposed in the bill to be a mechanisms for inquiry regarding the need for an ITP and remove the ITP exemption:

(a) A city, county, city and county, special district, or other local agency may submit to the department a locally designed voluntary program *application* to conduct wildfire preparedness activities on land designated as a fire hazard severity zone, pursuant to subdivision (a) of Section 51179 of the Government Code or Section 4203 of Public Resources Code, that minimizes impacts to wildlife and habitat for candidate, threatened, and endangered species., ~~and does all of the following:~~ *The locally designed voluntary program shall include all of the following:*

(1) Protects communities from the threat of wildfire through vegetation management practices that, to the maximum extent practicable, avoid and minimize the take of candidate, endangered, and threatened species, while encouraging the enhancement of habitat.

(2) Is supported by the best available scientific information for both wildfire preparedness and conservation practices.

(3) Is designed to provide sufficient flexibility to maximize participation and to gain the maximum protection of life and property from the threat of wildfire without compromising wildlife benefits.

(b) An application submitted pursuant to subdivision (a) shall include all of the following:

² [CNDDDB Maps and Data](#)

- (1) The name and contact information of the participating local agency.
 - (2) A brief description of the planned wildfire preparedness activities, including a description of the lands within the fire hazard severity zone.
 - (3) The approximate dates for which wildfire preparedness activities are proposed to occur.
 - (4) A description of how the local agency is compliant with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), and any planned environmental mitigation or conservation measures the local agency plans to take.
- (c) (1) Within 90 days of receipt of the application, the department shall ***notify the local agency if an incidental take permit or other permits are needed, or if other considerations, exemptions, or streamlined pathways, such as the Board of Forestry's California Vegetative Treatment Program, are available for the wildfire preparedness activities to move forward.*** ~~approve or deny the application and notify the local agency of the approval or denial.~~
- (2) ***In its notification, the department shall provide the local agency with the following, as applicable:*** ~~The department shall provide an approved applicant with the terms and conditions within 30 days of approval to initiate the locally designed voluntary program, in lieu of an incidental take permit, which shall include all of the following:~~
- ~~(A)~~ ~~A description of the vegetation management activities to be conducted.~~
 - ~~(B)~~ ~~A description of candidate, endangered, and threatened species within the program area.~~
 - ~~(C)~~ ~~(B) Reasonable measures to avoid or minimize, ***minimize, and fully mitigate*** the take of candidate, endangered, and threatened species during ~~vegetative management~~ practices under the program.~~
 - ~~(D)~~ ~~Procedures that allow the local agency to notify the department 15 days before vegetation management practices take place and an opportunity for the department to respond within 15 days.~~
 - ~~(E)~~ ~~A provision that identifies that the local agency shall have the ability to cease participation in a program without penalty at any time.~~
- (3) ***The department shall consult with the Board of Forestry under the California Natural Resources Agency if technical assistance is needed.***
- (3) ~~(A) If an application is denied, the department shall provide the local agency with 30 days to address any deficiencies and resubmit the application to the department for review. The department shall, within 30 days, review the resubmission to evaluate if the local agency addressed the deficiencies and notify the local agency if the resubmission is approved or denied.~~

~~(B) If a resubmission is approved, the department shall follow the procedures of paragraph (2).~~

~~(C) If a resubmission is denied, the local agency may seek technical assistance support from the State Board of Forestry and Fire Protection within the Department of Forestry and Fire Protection. The local agency shall not be precluded from resubmitting an application.~~

~~(4) A local agency and the department may mutually agree to an extension of any time limit provided under this subdivision.~~

(d) This section does not preclude a local agency and the department from mutually agreeing to an extension of the timeline under subdivision (c). The local agency shall not be precluded from resubmitting an application, if necessary, following the procedures described in subdivision (c).

~~(e) The department shall make publicly available on its internet website a standard application form and template terms and conditions.~~

(f) (1) If the department determines activities in an application require an incidental take permit, the department shall approve or deny an incidental take permit, consistent with Fish and Game Code Section 2081, within 45 days of receiving a complete incidental take permit application.

(2) Locally designed voluntary programs shall receive an incidental take permit term of no less than five years and shall be eligible for a permit renewal authorization by the department.

~~(e) The department shall automatically renew the authorization for locally designed voluntary programs every 10 years.~~

~~(f) Commencing January 1, 2026, the department shall annually post a summary of the locally designed voluntary program **application** submissions on its internet website, including, but not limited to, the status of the locally designed voluntary programs **applications** submitted, including **and** from which regions of the state, the date when the application was approved or denied and the date when the application can be renewed, if applicable. **submitted and the number of incidental take permits issued, and a summary of the other considerations, exemptions, or streamlined pathways advised to applicants to use to advance wildfire preparedness activities.**~~

Amendment 2 — include the CalVTP lands in the maps:

(a) (1) The department, by January 1, 2026, in consultation with the Office of the State Fire Marshal, and using existing data and information collected by the department and the office, **including land under the Board of Forestry's California Vegetative Treatment Program**, shall develop maps identifying critical habitats within lands designated as fire hazard severity zones, pursuant to subdivision (a) of Section 51179 of the Government Code or Section 4203 of Public Resources Code.

(2) The department shall update the maps at least once every five years.

(b) The maps shall be made available to a city, county, city and county, special district, or other local agency for wildfire planning and preparedness purposes in order to protect life and property.

- 4) **Arguments in support.** Numerous cities and other organizations write in support of this bill. They reference the devastation of wildfire and their duty to prioritize wildfire preparedness activities and public safety while upholding environmental laws. The sponsors indicate that local agencies “have experienced long delays spanning multiple fire seasons when trying to accelerate these types of wildfire preparedness efforts on LRAs” and that the consultation with DFW ensures any potential harm to species can be avoided. These entities indicate that maps that overlay critical habitat and [FHSZ] would provide “a shared understanding of the critical habitat and species DFW is monitoring and to ensure environmental protections are in place for wildfire preparedness activities to occur.”

REGISTERED SUPPORT / OPPOSITION:

Support

League of California Cities (Sponsor)
City of Torrance
California Association of Winegrape Growers
City of Bradbury
City of La Verne
City of Monrovia
City of Pasadena
City of San Luis Obispo
City of Thousand Oaks
City of Vista
East Bay Regional Park District
El Dorado Irrigation District
Los Angeles Area Fire Chiefs Association
Wine Institute

Opposition

None on file

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