This is the second in a series of four blog posts discussing the issue of development in the wildland-urban interface in California, the current legal structures addressing the issue, and our research on how those legal frameworks are being applied on the ground in key counties in the state. These blog posts summarize our recent article in Ecology Law Quarterly, coauthored with my collaborator Moira O'Neill. In this blog post, we'll summarize the relevant law. The first blog post is here.

The legal framework

The state has taken a range of steps to try and reduce development in the WUI (the wildland-urban interface): The state has mapped Very High Fire Severity Hazard Zones (VHFSHZ). In these areas, a range of regulatory measures try to reduce risk. For instance, building owners must take steps to remove vegetation near structures, new development projects must be built to building codes designed to reduce fire risk, and new projects must provide for access for evacuation and fire response. In addition, the state has required local governments, when they are developing their general plans that control land-use and development, to account for the risk of fire. Since local governments are the primary regulatory body for approving new development, including residential development, requiring them to consider fire risk in their planning process may have an impact on development patterns in the WUI.

There is another legal tool in California that might provide constraints on development within the WUI: the California Environmental Quality Act (CEQA). CEQA generally requires disclosure and feasible mitigation of significant environmental impacts from government-approved development projects in the state. Might CEQA require local governments to avoid, or at least mitigate, development in the WUI?

CEQA's role in reviewing development in the WUI was significantly limited by the California Supreme Court in 2015 when it held that the risks to a new project from the environment are not the kinds of impacts that CEQA covers. This excludes the first major risk from WUI development – the risk caused by putting more people and property into high fire hazard areas. But the other two risks – the increased risk of ignition and the reduction of the use of prescribed fire – involve impacts caused by the project that might affect others. These risks also involve exacerbating the risks of fire on the project itself – the kind of impact that the court held could be considered under CEQA.

Local control over land-use regulation, and CEQA's application to local approval over development projects, is a central component of how the state's policy to managing development in the WUI works. But understanding whether and how these legal structures actually work requires on-the-ground data about how local governments are approving projects, and applying CEQA to their approval processes. We turn to that question in our next blog post.