



# New Tools & Sweeping Changes Proposed in Draft Wildfire Commission Report

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The Commission on Catastrophic Wildfire Cost and Recovery (Commission) has released a draft report assessing the issues surrounding catastrophic wildfires in California and recommending major changes to the law (Draft Report). The Draft Report builds upon the concepts to address wildfire risk previously outlined in the Wildfires and Climate Change: California's Energy Future report by Governor Gavin Newsom's wildfire strike force. The Commission is set to discuss, consider, and hear public comment on the Draft Report at its June 7, 2019 meeting in Sacramento, CA.

The Commission was established last year by Senate Bill 901 (Dodd) and is required to provide a report to the Legislature and the Governor containing its assessment of the issues surrounding catastrophic wildfire costs and damages, and making recommendations for changes to law that would ensure equitable distribution of costs among affected parties on or before July 1, 2019. The Governor has previously called for wildfire legislation to be passed before lawmakers take a month-long summer recess on July 12, 2019.

The Draft Report consists of an executive summary compiled by Commission staff and three individual workgroup reports (each prepared by a different pair of Commissioners) focused on (1) utility wildfire liability, (2) wildfire funding mechanisms, and (3) homeowners insurance and wildfire mitigation issues. The Draft Report makes the following major recommendations for consideration before entire Commission at the June 7 meeting:

- **Inverse Condemnation Standard** – The Draft Report recommends changing the current strict liability standard under the doctrine of inverse condemnation for electric and water utilities to a fault-based negligence standard. However, the Draft Report does not address previous concerns regarding the constitutionality of any such legal change from the Legislature or how it would be accomplished. Additionally, the Governor and some Legislators have already expressed hesitations since the release of the Draft Report regarding whether they will take up the recommendation to change the current strict liability framework at this time.

- **Prudent Manager Standard** – The Draft Report presents three options for reforming the prudent manager standard applied by the California Public Utilities Commission in evaluating cost recovery applications for wildfire costs: (1) shifting the burden of proof for showing prudent management, (2) refining and shifting the weighting of existing factors for cost recovery, or (3) creating a limitation on shareholder liability if shareholders make an upfront contribution to a Wildfire Victims Fund.
- **Electric Utility Wildfire Board** – The Draft Report proposes to establish an Electric Utility Wildfire Board which consolidates governance of all utility catastrophic wildfire prevention and mitigation into a single entity separate from the California Public Utilities Commission. This entity would set and enforce safety standards, and implement, administer and adjudicate fault-based standards for both investor-owned utilities and publicly-owned utilities.
- **Wildfire Victims Fund** – Absent changes to the strict liability application of inverse condemnation, the Draft Report recommends establishing a large and broadly sourced Wildfire Victims Fund (Fund) to socialize wildfire costs more quickly and equitably and maintain the health of the state’s utilities. The Draft Report recommends that participation in the Fund be voluntary, with the Fund paying claims in excess of the mandated, combined commercial insurance and deductible, up to a cap. The claims paying capacity of the Fund would be structured as a layer-cake or tower of different forms of claims paying capacity.
- **Insurance** – The Draft Report makes a number of insurance-related recommendations, including to preserve the State’s risk-based approach to pricing insurance, improve the California FAIR Plan, and increase the claims cap for the California Insurance Guarantee Association. The Draft Report also makes several recommendations to create new or extended requirements for insurers and the California Department of Insurance with respect to wildfire risk, including the enactment of new data gathering obligations.
- **Wildfire Mitigation** – The Draft Report makes several recommendations regarding wildfire mitigation, including: (1) establishing a Wildfire Vulnerability Risk and Reduction Coordinator within the Governor’s Office of Planning and Research, (2) increasing State investment in wildfire prevention and mitigation efforts, (3) making private property maintenance laws more consistent, (4) clarifying the responsibility of local firefighting capacity when local governments approve new developments, and (5) establishing a development fee for new construction in the wildland-urban interface.

We will continue to follow the Commission’s recommendations and provide further updates as details are provided and the report is finalized. Please contact one of Nossaman’s attorneys or policy advisors if you have any questions about the Commission’s Draft Report, inverse condemnation, or the legislative efforts underway around the State to address wildfire risk.