

BOARD OF FORESTRY AND FIRE PROTECTION

P.O. Box 944246
SACRAMENTO, CA 94244-2460
Website: www.bof.fire.ca.gov
(916) 653-8007



To: Resource Protection Committee
Chair Bruce Saito
Member Keith Gillless
Member Sue Husari

Date: September 25, 2014

Telephone: (916) 653-8007

Website: www.bof.fire.ca.gov

From: Edith Hannigan, Board Consultant

Subject: Safety Element Review Regulation

Dear Chair Saito, Member Gillless, and Member Husari,

Board Staff has been developing a framework to codify the Board's review of General Plan Safety Elements under Government Code §65302.5(b) in Title 14 California Code of Regulations. Before presenting a rulemaking package for consideration by the Board, there are several options and questions to consider that will shape the proposed rule text and the Safety Element review program. These options are not mutually exclusive, but are presented topically to help establish the alternatives and questions at hand.

Option 1: Timeline-focused

The attached draft rule text contains language from GC §65302.5(b) that codifies a very basic level of the review process timeline and what the Board may comment on and make recommendations regarding. Language added to the GC text allows for some flexibility in returning the Safety Elements to the local jurisdiction and also allows the Board to enlist the assistance of CAL FIRE unit staff in the review of the Safety Elements.

- a. What, if any, language regarding a pre-review should be included? What kind of timeline does (or does not) need to be included regarding a pre-review? How will the Board and Board staff be kept up to date on ongoing pre-reviews and should that be included in a regulation?

Option 2: Process-focused

The Board may choose to put the review process into regulation in more detail. Some options and questions to consider include

- a. If and how to incorporate a pre-review by the local Unit staff into the regulation – "Prior to review by the Board, the safety element will be reviewed by the local Unit"
 1. Who at the Unit?
 2. What will they comment on?
 3. How will this coordination take place?
 4. How will the Board and Board staff be kept apprised of pre-reviews?
- b. If and how to incorporate Chief Muñoa's land use planning staff into the regulation
 1. What role will these staffers play in pre-review? Will they lead the pre-review with local unit staff? Coordinate that interaction?

Option 3: Incorporating guidance documents into the regulation

- a. Should the *Fire Planning and the General Plan Handbook* be incorporated into the regulation?
- b. Should the *Safety Element Review Assessments* be incorporated into the regulation?
 1. Sample language – “The Department staff will review the Safety Elements according to the guidelines outlined in....”
- c. How is Chief Muñoa incorporating the handbook and assessments into his staff training?
- d. Are there other documents or resources Chief Muñoa is utilizing that should be incorporated into the regulation?

Option 4: Incorporating more detail regarding information that must be in the Safety Element

- a. To what extent should the regulation include language regarding the information that the GC requires in a Safety Element (GC §65302.5(g)(3) below).
 1. How does including this in 14 CCR influence guidance documents?
 2. Does including this limit what the Board can comment on at all? Does it limit input by the Unit or land use staff?

These questions are for your consideration and discussion as staff works on drafting rule text for this program.

GC §65302.5(g)(3):

(3) Upon the next revision of the housing element on or after January 1, 2014, the safety element shall be reviewed and updated as necessary to address the risk of fire for land classified as state responsibility areas, as defined in Section 4102 of the Public Resources Code, and land classified as very high fire hazard severity zones, as defined in Section 51177. This review shall consider the advice included in the Office of Planning and Research's most recent publication of "Fire Hazard Planning, General Technical Advice Series" and shall also include all of the following:

(A) Information regarding fire hazards, including, but not limited to, all of the following:

(i) Fire hazard severity zone maps available from the Department of Forestry and Fire Protection.

(ii) Any historical data on wildfires available from local agencies or a reference to where the data can be found.

(iii) Information about wildfire hazard areas that may be available from the United States Geological Survey.

(iv) General location and distribution of existing and planned uses of land in very high fire hazard severity zones and in state responsibility areas, including structures, roads, utilities, and essential public facilities. The location and distribution of planned uses of land shall not require defensible space compliance measures required by state law or local ordinance to occur on publicly owned lands or open space designations of homeowner associations.

(v) Local, state, and federal agencies with responsibility for fire protection, including special districts and local offices of emergency services.

(B) A set of goals, policies, and objectives based on the information identified pursuant to subparagraph (A) for the protection of the community from the unreasonable risk of wildfire.

(C) A set of feasible implementation measures designed to carry out the goals, policies, and objectives based on the information identified pursuant to subparagraph (B) including, but not limited to, all of the following:

(i) Avoiding or minimizing the wildfire hazards associated with new uses of land.

(ii) Locating, when feasible, new essential public facilities outside of high fire risk areas, including, but not limited to, hospitals and health care facilities, emergency shelters, emergency command centers, and emergency communications facilities, or identifying construction methods or other methods to minimize damage if these facilities are located in a state responsibility area or very high fire hazard severity zone.

(iii) Designing adequate infrastructure if a new development is located in a state responsibility area or in a very high fire hazard severity zone, including safe access for emergency response vehicles, visible street signs, and water supplies for structural fire suppression.

(iv) Working cooperatively with public agencies with responsibility for fire protection.

(D) If a city or county has adopted a fire safety plan or document separate from the general plan, an attachment of, or reference to, a city or county's adopted fire safety plan or document that fulfills commensurate goals and objectives and contains information required pursuant to this paragraph.

(4) After the initial revision of the safety element pursuant to paragraphs (2) and (3), upon each revision of the housing element, the planning agency shall review and, if necessary, revise the safety element to identify new information that was not available during the previous revision of the safety element.

1 **SAFETY ELEMENT REVIEW REGULATIONS**

2 **14 CCR, Division 1.5, Chapter 7 Fire Protection, Subchapter 1**

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4 **Subchapter 1. Fire Protection (Reserved) General Plan Safety Element Reviews**

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6 **Article 1. Board of Forestry Review**

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8 **1265.01 Submitting the Safety Element to the Board**

9 The draft element of or draft amendment to the safety element of a county or a city's general
10 plan shall be submitted to the State Board of Forestry and Fire Protection and to every local
11 agency that provides fire protection to territory in the city or county at least 90 days prior to
12 either of the following:

13 (a) The adoption or amendment to the safety element of its general plan for each county that
14 contains state responsibility areas.

15 (b) The adoption or amendment to the safety element of its general plan for each city or
16 county that contains a very high fire hazard severity zone as defined pursuant to subdivision (i)
17 of Section 51177.

18 Note: Authority cited: Section 65302.5, Government Code. Reference: Section 65302.5,
19 Government Code.

20 **1265.02 Returning the Safety Element to the Planning Agency**

21 The State Board of Forestry and Fire Protection shall, and a local agency may, review the draft
22 or an existing safety element and recommend changes to the planning agency within 60 days of
23 its receipt, **or by a mutually agreed upon date,** regarding both of the following:

24 (a) Uses of land and policies in state responsibility areas and very high fire hazard severity
25 zones that will protect life, property, and natural resources from unreasonable risks associated

1 with wild land fires.

2 (b) Methods and strategies for wild land fire risk reduction and prevention within state
3 responsibility areas and very high fire hazard severity zones.

4 The State Board of Forestry and Fire Protection may enlist the assistance of local CAL FIRE
5 Unit staff and/or staff from the CAL FIRE Land Use Program in reviewing submitted safety
6 elements.

7 Note: Authority cited: Section 65302.5, Government Code. Reference: Section 65302.5,
8 Government Code.

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10 **1265.03 Response From Local Agencies**

11 Prior to the adoption of its draft element or draft amendment, the board of supervisors of the
12 county or the city council of a city shall consider the recommendations, if any, made by the
13 State Board of Forestry and Fire Protection and any local agency that provides fire protection to
14 territory in the city or county. If the board of supervisors or city council determines not to accept
15 all or some of the recommendations, if any, made by the State Board of Forestry and
16 Fire Protection or local agency, the board of supervisors or city council shall communicate in
17 writing to the State Board of Forestry and Fire Protection or the local agency, its reasons for not
18 accepting the recommendations.

19 Note: Authority cited: Section 65302.5, Government Code. Reference: Section 65302.5,
20 Government Code.

21 **1265.04 Unavailable Comments**

22 If the State Board of Forestry and Fire Protection's or local agency's recommendations are not
23 available **by the date agreed upon pursuant to Section 1265.02,** the board of supervisors or city
24 council may act without those recommendations. The board of supervisors or city council shall

1 take the recommendations into consideration the next time it considers amendments to the
2 safety element.

3 Note: Authority cited: Section 65302.5, Government Code. Reference: Section 65302.5,
4 Government Code.

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