January 12, 2021

To: Board Members

From: Edith Hannigan, Land Use Planning Policy Manager

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**Re: Interpretation authority regarding Government Code § 65302(g)(5)**

# Background

Government Code **§ 65302(g)(3)** is existing law that specifies thecontents of the general plan safety related to wildfire hazard planning. An excerpt:

“…the safety element shall be reviewed and updated….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…

(v) Local, state, and federal agencies with responsibility for fire protection…

(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…

(iii) Designing adequate infrastructure if a new development is located in a state responsibility area or in a very high fire hazard severity zone…

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

Government Code **§ 65302.5** requires local jurisdictions with SRA or LRA VHFHSZ to send their safety element to the Board for review regarding their land uses and policies relating to wildfire safety, and their methods and strategies regarding wildland fire risk reduction and prevention. The Board has a regulatory program (14 CCR § 1265.00-1265.03) and a form (the “Safety Element Assessment”) that implements the process of reviewing safety elements, and interprets and makes specific appropriate policies, land use decisions, strategies, etc., that jurisdictions should incorporate into their safety element. If a jurisdiction has followed the Board-provided guidance in the regulations and Assessment, they likely have a safety element that satisfies the requirements in GOV § 65302(g)(3).

# New Statutory Requirement Has Generated Confusion

**Government Code § 65302(g)(5)**, added pursuant to **SB 99** (Nielsen 2019; effective January 1, 2020), requires local jurisdictions containing SRA or LRA VHFHSZ to identify in their safety element all “residential developments” located in “any hazard area identified in the safety element” which lack “at least two emergency evacuation routes.” There are no more specific parameters in that code section or elsewhere in statute dictating how local agencies should interpret these terms.

Board staff and staff at the CAL FIRE Land Use Planning Program (LUPP) have received a number of inquiries from local jurisdictions as they revise their safety elements to comply with the requirements in 65302(g)(5). These jurisdictions often conflate the safety element requirement in GC § 65302(g)(5) with the subdivision review program required in PRC 4290.5 and 14 CCR 1267.01, which mandates the Board to identify and survey subdivisions of 30+ homes without secondary egress. While 14 CCR 1267.01 provides specific parameters for identifying subdivisions and egress routes, the language in GC 65302(g)(5) is much more broad.

# Interpreting GC 65302(g)(5)

Board and CAL FIRE LUPP staff has offered informal guidance to local jurisdictions (see attached “Info Sheet”) as they contemplate how to comply with this code section, but the statute is somewhat unclear regarding the Board’s level of statutory authority to define these terms in our regulations or to create more formalized guidance.

The LUPP and Board staff have developed positive relationships with local jurisdictions across the state and are well-respected as experts in fire hazard planning. It is a high compliment, especially to the Land Use Planning Program, that this team was the first place local jurisdictions turned to for guidance in implementing 65302(g)(5). However, without direction from the Board, LUPP and Board staff are limited in the guidance and assistance they can provide. Staff have identified the following terms in 65302(g)(5) that could benefit from greater specificity in regulation or other documentation, and how that term is or is not used in PRC 4290.5:

1. **“Residential Development”** – “Development” is defined in [Government Code § 66418.1](https://gcc02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fleginfo.legislature.ca.gov%2Ffaces%2Fcodes_displaySection.xhtml%3FsectionNum%3D66418.1.%26lawCode%3DGOV&data=04%7C01%7CClaire.McCoy%40bof.ca.gov%7C87faadebfa1f4bcb566608d8a2164495%7C447a4ca05405454dad68c98a520261f8%7C1%7C0%7C637437563806733527%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=xHH0Md0zDeiIOIOMi4GyZjSUhmaFgPEkAzdBc5NQucI%3D&reserved=0) (the Subdivision Map Act) as “the uses to which the land which is the subject of a map shall be put, the buildings to be constructed on it, and all alterations of the land and construction incident thereto.” There are a few other definitions for “development” in other sections of Government Code. [Public Resources Code § 4290.5](https://gcc02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fleginfo.legislature.ca.gov%2Ffaces%2Fcodes_displaySection.xhtml%3FsectionNum%3D4290.5.%26lawCode%3DPRC&data=04%7C01%7CClaire.McCoy%40bof.ca.gov%7C87faadebfa1f4bcb566608d8a2164495%7C447a4ca05405454dad68c98a520261f8%7C1%7C0%7C637437563806743477%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=IZXJ2Y4TiVx3KrKBbHrUI5Kdt5ghj8f2gatEyM7g4CE%3D&reserved=0) (the subdivision review statute) defines a “subdivision” as “an existing residential development of more than 30 dwelling units.” Neither PRC 4290.5 nor the regulations in [14 CCR 1267.00-.03](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fgovt.westlaw.com%2Fcalregs%2FBrowse%2FHome%2FCalifornia%2FCaliforniaCodeofRegulations%3Fguid%3DI6B69B424B90F452CB9B7DC844AE544E4%26originationContext%3Ddocumenttoc%26transitionType%3DDefault%26contextData%3D(sc.Default)%26bhcp%3D1&data=04%7C01%7CClaire.McCoy%40bof.ca.gov%7C87faadebfa1f4bcb566608d8a2164495%7C447a4ca05405454dad68c98a520261f8%7C1%7C0%7C637437563806743477%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=eMQbaEmGbzUvTiNWVuB%2B9hHCXK521l7ZpIbmM0YHOBU%3D&reserved=0) define the term “residential development.” While the Subdivision Map Act and other planning and land use statutes specifically define “development” for the purposes of those statutes, the term “development” is frequently used colloquially to generally refer to groups of homes and/or businesses. There is no guidance in SB 99 regarding a specific definition for “residential development.”
2. **“In any hazard area”** – Given this phrase does not specify fire hazard areas, it can be assumed that residential developments in fire, flood, earthquake, and other hazard areas identified in the planning area must be identified under GC 65302(g)(5). PRC 4290.5 only requires the identification and survey of subdivisions “that are at significant fire risk.”
3. **“Without two emergency evacuation routes”** – This language differs from PRC 4290.5, which requires a survey of subdivisions of >30 homes without a “secondary egress route.” PRC 4290.5 does not establish any definitions or requirements for “secondary egress route,” so the Board used its authority under the statute to establish requirements for what qualified as an adequate secondary access in 14 CCR 1267.01. “Emergency evacuation routes” may be the same as “access,” as contemplated by the Board, but not necessarily.

# Question for the Board:

What role, if any, does the Board want to play in defining these terms or providing some kind of formalized guidance for local agencies wishing to comply with GC § 65302(g)(5)?

In Board staff’s opinion, it would be appropriate to provide some level of formal guidance to local jurisdictions. Providing some parameters for satisfactory compliance with (g)(5) in the Safety Element Assessment would be in line with similar parameters provided in the Assessment for compliance with (g)(3). Another option would be to provide a non-regulatory informational document, similar to the existing “Info Sheet,” that could be assist local jurisdictions in determining how best to locate the communities described in (g)(5).

# Guiding Questions for Interpretation

Board staff have provided the following guiding questions to local jurisdictions to assist them in making their own interpretive decisions. Contemplation of these questions by the Board may also assist in determining what, if any, regulatory or policy guidance the Board would like to formalize:

1. What is a “residential development?” How big or small an area do they want each “residential development” to contain, and do they want to define those areas by geographic size (perhaps square acres?) or the number of dwelling units (as in PRC 4290.5)? Do they want to define each development by the subdivision map? What about developments that were not part of a map?
2. What hazard areas are identified in their safety element? Does the local jurisdiction want to identify residential developments only in medium, high, and very high fire hazard zones, or in all hazard/risk areas?
3. What is an “emergency evacuation route?” What are the standards for road quality? If a development has a paved, two lane bidirectional road and a gated, locked, overgrown one lane dirt road, is the local jurisdiction comfortable saying that development has an emergency evacuation route, and not identifying it in the safety element? How distinct should these routes be – if two neighborhood roads both funnel people to the same minor collector road, is that enough to call them two emergency evacuation routes?

We hope this memo provides sufficient background and context for a productive conversation on this topic at the January 12 RPC workshop.

Thank you.