

Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

“Safety Element Review, 2019”

**Title 14 of the California Code of Regulations (14 CCR),
Division 1.5, Chapter 7, Article 6.**

Amend

§ 1265.03. Safety Element Review Response.

INTRODUCTION INCLUDING PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS (pursuant to GC § 11346.2(b)(1))...NECESSITY (pursuant to GC § 11346.2(b)(1) and 11349(a))....BENEFITS (pursuant to GC § 11346.2(b)(1))

California Government Code Section 65302.5(b)(1) requires a draft element of or draft amendment to the safety element of a county or a city’s general plan to be submitted to the Board of Forestry and Fire Protection (Board) if that county or city contains State Responsibility Area (SRA) or Very High Fire Hazard Severity Zone (VHFHSZ), and Section 65302.5(b)(2) requires the Board to review the submitted safety elements for how well it addresses wildland fire risk reduction and mitigation in the planning area. In the 2017-2018 session of the California Legislature, Senate Bill 1260 (Jackson, 2018) added a new section to GC 65302.5 – 65302.5(b)(3) – that allows the Board to request a consultation with a local jurisdiction’s board of supervisors or city councilmembers if the jurisdiction did not accept the Board’s recommendations to improve wildland fire risk reduction and mitigation in the general plan safety element.

The **problem** is that this consultation is not in the regulations promulgated by the Board in 2017 that dictate the process of reviewing and making recommendations on a general plan safety element.

The **purpose** of the proposed action is to revise the Safety Element Review regulations to include the new consultation option now in statute.

The **effect** of the proposed action is to align the existing process in regulation with the changes in statute as a result of the passage of SB 1260.

The **primary benefit** of the proposed action is a clear, direct, and standardized review process that maximizes efficiency, provides transparency to the regulated public, and is utilized effectively to prevent property and life losses in the wildland-urban interface due to fire. As a result, this regulatory action will have a positive effect on the protection of public health and safety, worker safety, and the environment.

There is no comparable federal regulation or statute.

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT OR REPEAL (pursuant to GOV § 11346.2(b)(1)) AND THE RATIONALE FOR THE AGENCY'S DETERMINATION THAT EACH ADOPTION, AMENDMENT OR REPEAL IS REASONABLY NECESSARY TO CARRY OUT THE PURPOSE(S) OF THE STATUTE(S) OR OTHER PROVISIONS OF LAW THAT THE ACTION IS IMPLEMENTING, INTERPRETING OR MAKING SPECIFIC AND TO ADDRESS THE PROBLEM FOR WHICH IT IS PROPOSED (pursuant to GOV §§ 11346.2(b)(1) and 11349(a) and 1 CCR § 10(b)). *Note: For each adoption, amendment, or repeal provide the problem, purpose and necessity.*

The Board is proposing action to amend § 1265.03.

The problem is there are no regulations implementing the changes to GC 65302.5(b)(2) as a result of SB 1260 (Jackson, 2018).

The purpose of the proposed action is to provide unambiguous and transparent information about the safety element review standards and review process.

The below adoptions, amendments, and repeals are necessary to effectuate this purpose of this action.

Explanation for why the Proposed Action Duplicates and/or Rephrases Statute and Existing Rules

The proposed action duplicates or rephrases statute because that was the most efficient and clear way to implement the statutory authority given to the Board. The Board found that in some places, only minor changes to provide flexibility or further interpret or make specific the statutes were necessary to create these regulations.

The proposed action does not duplicate or rephrase existing rules.

Amend 1265.03 Safety Element Review Response.

The amendment to this section adds a new subsection (c) and reletters the existing subsection (c) to subsection (d).

The new text in subsection (c) rephrases statutory language in GC 65302.5(b)(3) regarding the ability of the Board to request a consultation with a local jurisdiction if the jurisdiction does not accept some or all of the Board's recommendations on their general plan safety element.

Subsection (c) restates the requirement that the Board may request a consultation with a local jurisdiction within 15 days of receiving a letter indicating that the jurisdiction will not be adopting some or all of the Board's recommendations. Statute is unclear regarding whether this is 15 calendar days or 15 business days, and this regulation specifies business days. 15 business days provides three full work weeks for Board staff to evaluate the letter, transmit it to the Board, and receive direction from the Board

regarding the need for a consultation. Establishing business versus calendar days in regulation provides the public with greater clarity regarding the timelines for which they can expect to hear back from the Board regarding a consultation.

Further subsections (c)(1), (2), and (3) continue to provide clarity regarding the occurrence of these consultations. Subsection (c)(1) rephrases the section of statute that places a required timeframe for when this consultation shall occur. Statute left open to interpretation whether the consultation, if requested, must occur within 30 business or 30 calendar days, and this subsection clarifies it must take place within 30 business days. This provides Board and local jurisdiction staff 6 full work weeks to find a date, time, and locale that is amenable to all involved. This timeline also provides Board staff sufficient time to notice the meeting as required under the Bagley-Keene Open Meeting Act, in the event Board members will be attending the meeting, and for a local jurisdiction to do any of their own required noticing under the Ralph M. Brown Act.

Subsection (c)(2) repeats statute verbatim. This language is included so that the regulated public has all of the information regarding safety element consultations in one place. This section of statute requires no interpretation or clarification in order to implement and so is repeated verbatim in regulation.

Subsection (c)(3) rephrases statute. It states that the local jurisdiction shall not approve their draft safety element or draft safety element amendment until after a requested consultation takes place. This section of statute requires no interpretation or clarification in order to implement, but is rephrased in order to fit more seamlessly into the regulations, versus the language in statute.

ECONOMIC IMPACT ANALYSIS (pursuant to GOV § 11346.3(b)(1)(A)-(D) and provided pursuant to 11346.3(a)(3))

The effect of the proposed action is unambiguous and transparent information about the safety element review standards and process required in GC 65302.5.

Creation or Elimination of Jobs within the State of California

The proposed action makes specific the Board's review of general plan safety elements required by GC 65302.5(b)(3). Because the regulation relies heavily on rephrasing or restating existing statute, it does not create or eliminate jobs within the state. Where the proposed action makes specific statute (such as by specifying business days versus calendar), it is of limited scope and not anticipated to sustain changes in the job market. The proposed action will not result in the creation or elimination of jobs within the state.

Creation of New or Elimination of Existing Businesses Within the State of California

The proposed action makes specific the Board's review of general plan safety elements required by GC 65302.5(b)(3). Because the regulation relies heavily on rephrasing or restating existing statute, it does not create or eliminate jobs or businesses within the state. Where the proposed action makes specific statute (such as by specifying business days versus calendar), it is of limited scope and not anticipated to sustain

business enterprises over the long term or result in the elimination of businesses. The proposed action will not result in the creation or elimination of businesses within the state.

Expansion of Businesses Currently Doing Business Within the State of California

The proposed action makes specific the Board's review of general plan safety elements required by GC 65302.5(b)(3). Because the regulation relies heavily on rephrasing or restating existing statute, it does not create or eliminate jobs or businesses within the state. Where the proposed action makes specific statute (such as by specifying business days versus calendar), it is of limited scope and not anticipated to result in the expansion of business. The proposed action will not result in the expansion of businesses within the state.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The proposed action will benefit the health and welfare of California residents, worker safety, and the State's environment by reducing the risk of wildfire to residents and businesses in the SRA and VHFHSZ. By consulting with the Board on how to best address and mitigate the wildfire risk to their communities, jurisdictions are reducing the potential for a catastrophic wildfire that would otherwise result in losses of life and property and impact smoke-sensitive populations. The proposed action benefits worker safety because the regulations repeat or rephrase statute that require jurisdictions consult with the Board when they disagree with the Board's recommendations to identify the local fire protection agencies for the planning area as well as the location of "critical facilities" such as fire and police stations, ensuring that fire stations are not overtasked and can provide adequate service to an area without compromising firefighter safety. In addition, the proposed action may improve the ecological health of the SRA and VHFHSZ landscape, leading to a more natural fire regime and an improved environment.

Business Reporting Requirement (pursuant to GOV § 11346.5(a)(11) and GOV § 11346.3(d))

The proposed regulation does not impose a business reporting requirement.

Summary

In summary, the proposed action:

- (A) will not create jobs within California;
- (A) will not eliminate jobs within California;
- (B) will not create new businesses,
- (B) will not eliminate existing businesses within California
- (C) will not affect the expansion or contraction of businesses currently doing business within California.
- (D) will yield nonmonetary benefits. For additional information on the benefits of the proposed regulation, please see anticipated benefits found under the "Introduction Including Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulation is Intended to Address."

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE (pursuant to GOV §§ 11346.3(a), 11346.5(a)(7) and 11346.5(a)(8))

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, by making it costlier to produce goods or services in California.

FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR OTHER EVIDENCE RELIED UPON TO SUPPORT INITIAL DETERMINATION IN THE NOTICE THAT THE PROPOSED ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS (pursuant to GOV § 11346.2(b)(5) and GOV § 11346.5(a)(8))

- Contemplation by the Board of the economic impact of the provisions of the proposed action through the lens of the decades of experience reviewing general plan safety elements for cities and counties in California that the Board brings to bear on regulatory development.
- Staff participation in the development of Governor's Office of Planning and Research *Fire Hazard Planning General Plan Technical Advice Series*, May 2015.
- Discussions with Department of Forestry and Fire Protection staff on implementation of the enabling statute, GOV § 65302.5.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENT RELIED UPON (pursuant to GOV SECTION 11346.2(b)(3))

The Board relied on the following list of technical, theoretical, and/or empirical studies, reports or similar documents to develop the proposed action:

1. Excerpts from Government Code (GOV), 2016: 65302 and 65302.5
2. Excerpts from Public Resources Code (PRC), 2016: 4102, 4111, 4112, 4113, 4114, 4740, 4741, 4290, and 4291
3. Senate Bill 1260 (Jackson, 2018)P
4. Excerpts from California Code of Regulations Title 14: 14 CCR §§ 1265 et seq

REASONABLE ALTERNATIVES TO THE PROPOSED ACTION CONSIDERED BY THE BOARD, IF ANY, INCLUDING THE FOLLOWING AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES (pursuant to GOV § 11346.2(b)(4)(A) and (B)):

- **ALTERNATIVES THAT WOULD LESSEN ANY ADVERSE IMPACTS ON SMALL BUSINESS AND/OR**
- **ALTERNATIVES THAT ARE LESS BURDENSOME AND EQUALLY EFFECTIVE IN ACHIEVING THE PURPOSES OF THE REGULATION IN A MANNER THAT ENSURES FULL COMPLIANCE WITH THE AUTHORIZING**

STATUTE OR OTHER LAW BEING IMPLEMENTED OR MADE SPECIFIC BY THE PROPOSED REGULATION

Pursuant to 14 CCR § 15252 (a)(2)(B), alternatives are not required because these regulations will not have any significant or potentially significant effects on the environment. Additionally, pursuant to 14 CCR § 1142(c), the discussion (of alternatives) may be limited to alternatives which would avoid the significant adverse environmental effects of the proposal. Consequently, the alternatives provided herein are provided pursuant to the APA (**GOV § 11346.2(b)(4)**) exclusively.

The Board has considered the following alternatives and rejected all but the “Proposed Action” alternative.

Alternative 1: No Action Alternative

The Board considered taking no action, since the statutory language added to GC 65302.5 is rather prescriptive in nature and requires little to no interpretation or clarification. However, as there are regulations implementing the rest of GC 65302.5, the Board was concerned about creating confusion among the regulated public as they went back and forth between regulations and statute in order to find all the necessary requirements for submitting and consulting on general plan safety element reviews.

Alternative 2: Copying Statute Verbatim

The Board considered copying statute verbatim into regulation. However, the Board noted a few places that could use further clarification.

Alternative 3: Proposed Action

The Board has chosen to adopt the proposed action presented in this Initial Statement of Reasons because the Board believes the proposed action is the most cost-efficient, equally or more effective, and less burdensome alternative. The proposed action makes specific GC 65302.5(b)(3) enough to provide clear guidance to the Board and local jurisdictions in requesting and conducting consultations, but does not establish overly burdensome requirements for such consultations.

There is no alternative that would be more effective or equally effective while being less burdensome or impact fewer small businesses than the proposed action.

Prescriptive Standards versus Performance Based Standards (pursuant to GOV §§11340.1(a), 11346.2(b)(1) and 11346.2(b)(4)(A)):

Pursuant to **GOV §11340.1(a)**, agencies shall actively seek to reduce the unnecessary regulatory burden on private individuals and entities by substituting performance standards for prescriptive standards wherever performance standards can be reasonably expected to be as effective and less burdensome, and that this substitution shall be considered during the course of the agency rulemaking process.

The proposed action does not mandate the use of specific technologies or equipment, but does prescribe specific actions or procedures. The proposed action is only as prescriptive as necessary to ensure Board consultations are requested and occur within

a timely manner. This creates a consultation process that is transparent. Performance based standards were not reasonably expected to be as effective and less burdensome in achieving the purpose of the proposed action.

Pursuant to **GOV § 11346.2(b)(1)**, the proposed action does not mandate the use of specific technologies or equipment.

Pursuant to **GOV § 11346.2(b)(4)(A)**, Alternatives 1 and 2 were considered and ultimately rejected by the Board in favor of the proposed action. The proposed action does not mandate the use of specific technologies or equipment, but does prescribe specific actions or procedures. Neither Alternatives 1 and 2 considered by the Board require fewer specific actions or procedures.

DESCRIPTION OF EFFORTS TO AVOID UNNECESSARY DUPLICATION OR CONFLICT WITH THE CODE OF FEDERAL REGULATION (pursuant to GOV § 11346.2(b)(6))

The Code of Federal Regulations has been reviewed and based on this review, the Board found that the proposed action neither conflicts with, nor duplicates, Federal regulations. There are no comparable Federal regulations for development and defensible space on private lands.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS

The California Environmental Quality Act (CEQA) requires review, evaluation and environmental documentation of potentially significant environmental impacts from a qualified project. The Board's rulemaking process was determined to be categorically exempt from environmental documentation in accordance with 14 CCR 1153(b)(4), Declaration of Categorical Exemptions.