

**FINDING EMERGENCY
FOR
PROPOSED BUILDING STANDARDS
OF THE
OFFICE OF THE STATE FIRE MARSHAL
REGARDING THE 2007 CALIFORNIA BUILDING CODE (CBC)
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 2
WILDLAND-URBAN INTERFACE FIRE AREA BUILDING STANDARDS**

Government Code section 11346.1 mandates that any finding of emergency shall include a written statement which contains the information required by paragraphs (2) to (6), inclusive, of subsection (a) of Section 11346.5 and a description of the specific facts showing the need for immediate action.

FINDING OF EMERGENCY

The following information is evidence that the amendments to Title 24, Part 2, California Building Code (CBC), Section 701A.3.2 as proposed by the Office of the State Fire Marshal are necessary for the immediate preservation of the public peace, health and safety or general welfare of the public.

Assembly Bill 1216 was approved by the Governor on October 8, 2003 and filed with the Secretary of State on October 9, 2003. This act adds Section 51189 to the Government Code and amends Section 1308.5 of the Health and Safety Code relating to building construction in Wildland-Urban Interface Fire Areas.

The California Department of Forestry and Fire Protection (CAL FIRE) and the Office of the State Fire Marshal (OSFM) are proposing a revised mandatory effective date of July 1, 2008 for those areas where local government has responsibility for wildland fire protection (LRA) for the following reasons:

- CAL FIRE, is conducting a review and update of fire hazard severity zones pursuant to Public Resources Code Sections 4201 – 4204 and Government Code Sections 51175 – 51189. CAL FIRE has completed the initial public hearings for the adoption of Fire Hazard Severity Zones (FHSZ) for those areas of California where the state has fiscal responsibility for wildland fire protection, known as State Responsibility Areas (SRA). CAL FIRE's intent is to complete the SRA FHSZ adoption by December, 2007. CAL FIRE also intends to prepare recommendations for Very High Fire Hazard Severity Zones (VHFHSZ) in those areas where local government has responsibility for wildland fire protection (LRA) and transmit those recommendations to local agencies in early 2008.

During the SRA hearings, several local government officials asked for clarification of authorities and responsibilities associated with the adoption of these LRA VHFHSZ recommendations. Basic authorities and responsibilities for the LRA VHFHSZ are found in Government Code Sections 51175 – 51189. The purpose of this Government Code chapter is to classify lands in accordance with whether a very high fire hazard severity is present so that public officials are able to identify measures that will retard the rate of spread, and reduce the potential intensity, of

uncontrolled fires that threaten to destroy resources, life, or property, and to require that those measures be taken.

The Government Code chapter defines responsibilities for CAL FIRE and for the local agency. In summary, Section 51178 and 51181 defines the CAL FIRE Director's responsibility to identify very high fire hazard severity zones, transmit this information to local agencies, and to periodically review the recommendations. In part, Section 51178.5 and 51179 defines the local agency's responsibility to make the recommendation available for public review and to designate, by ordinance, very high fire hazard severity zones in its jurisdiction.

CAL FIRE is taking additional steps to ensure that the recommended very high fire hazard severity zones are as accurate as possible. Draft copies of the proposed VHFHSZ have been under field review and validation since January, 2007. An updated draft LRA recommendation will be made available in early fall, 2007. This update will also reflect the comments received during the SRA FHSZ public hearings that may impact LRA zones. Unit level CAL FIRE staff have been instructed to assist local agencies in the review of the draft recommendations.

CAL FIRE staff have been directed to develop a CCR Title 14 regulation to clarify an update and maintenance process for the fire hazard maps, both in the SRA and in the LRA. It is anticipated that this regulation will include update triggers initiated by CAL FIRE or by local agencies. Such triggers may be based on improvements in hazard mapping data or associated fire science, changes in land ownership (specifically conversions of federal land to private ownership), changes in land use of significant size to influence fire hazard, changes in wildland fire protection responsibility, or other significant factors.

CAL FIRE staff have been directed to develop a model ordinance for the adoption of the very high fire hazard zones. This model ordinance will include optional sections for the adoption of other very high fire hazard zones, and/or wildland urban interface areas within the local jurisdiction and sample findings of substantial conformance.

The very high fire hazard severity zones trigger ignition resistant building standards, maintenance of defensible space, and natural hazard disclosure at the time of sale. Health and Safety Code 13108.5 (c) and GC 51179 (b) provide insight on flexibility local agencies may have to exclude these fire protection building standards and defensible space requirements once VHFHSZs are adopted. While these sections of law do not provide exemptions for adopting the maps, they may provide authority to exclude certain fire protection requirements otherwise triggered by the map designations.

- The FHSZ maps that determine the application of effective area are being widely vetted and adopted by both cities and counties. This additional time allows for a more widely accepted and understood maps in the LRA.
- During this delayed effectiveness period CAL FIRE and the OSFM will be providing training and education to the enforcing agencies, public, design professionals and building industry. These interested parties will also become educated on how to identify and work comfortably with performance based construction alternatives in their communities.
- These regulations contained in CBC Chapter 7A will not be mandatory in SRA FHSZ until January 1, 2008 and LRA FHSZ July 1, 2008, but voluntary and there will be a higher understanding that any new building constructed in a Wildland-Urban Interface Fire Area will be designed and constructed with the intent of lessening the vulnerability of a building to resist the intrusion of flames and burning embers projected during a conflagration or wildfire.

Background

On September 2, 2003, the California Legislature approved Assembly Bill (AB) 1216, Fire Safety Regulations with 74 ayes and 4 nos.

- Support for AB 1216 was as follows:
- California Fire Chiefs Association
- California Professional Firefighters
- California State Firefighters Association, Inc.
- CDF Firefighters
- City of Glendale, Fire Prevention Bureau
- Defenders of Wildlife Environment California
- Fire Districts Association
- Personal Insurance Federation
- Planning and Conservation League
- Sierra Club

“THE STORY,” California Fire Siege 2003

One month after the Governor signed Assembly Bill 1216, California was under siege by the most devastating wildland fire disaster in the state’s history. The facts surrounding this disaster are overwhelming somber.

- 24 people, including one fire fighter were killed
- 750,043 acres burned
- 3,710 homes were destroyed

In the aftermath of the fires, the loss of stabilizing vegetation and torrential rain storms created horrendous mudslides during flash floods in an area of San Bernardino County. Sixteen people perished there.

Tom Harbour, US Forest Service statement captures the spirit of these proposed emergency regulations, *“Predict the future by studying the past-look at what happened in 1980, 1993, and 2003.”*

The number of homes destroyed and the frequency of these fires are increasing;

- 584 homes – Berkeley 1923
- 484 homes – Los Angeles 1961
- 325 homes – San Bernardino 1980
- 641 homes – Santa Barbara 1990
- 3,403 homes – Oakland 1991
- 400 homes – Laguna Beach 1993
- 2,232 homes – San Diego (Cedar fire only) 2003¹

Many thousands of homes and other major buildings in California have been destroyed in a unique type of reoccurring conflagration where wildfires spread uncontrolled through rural and suburban developments and into urban environments. These massively destructive fires, called Wildland-Urban Interface (WUI) fires, have persisted throughout the twentieth-century despite attempts to prevent or suppress wildfires and the development of a modern well-organized system of statewide fire protection.²

¹ *“The Story” page 8, 9 & 72*

² *“The Story” page 7*

As important as the magnitude and frequency of losses are, these fires share extreme weather conditions as a common contributing factor that can neither be prevented nor mitigated. “**THE STORY**”... concluded, “massive fires in southern California typically coincide with offshore Santa Ana winds.”³ These warm, dry, and strong “Foehn winds” known throughout the state as Santa Ana’s, North Winds, or Mono Winds result from a Great Basin high pressure system forcing dry desert air over and down the lee side of mountain ranges where it invariably warms as it descends into the valleys below producing critical fire weather conditions.⁴

The significance of this weather pattern’s association with interface conflagrations coupled with the inability to stop these fires while the Foehn winds are blowing is the principle basis for immediate action in preserving the safety and welfare of the public.

The next Foehn wind event in California will happen in the next several months. When it happens in an area where fuel moistures are low in close proximity to homes, the stage will be set for the next interface conflagration. In Southern California the distinctive combination of climate, topography, “...and fuel creates conditions favorable to major fires during every month of the year.”⁵ It is just a matter of probabilities whether the future fires will be in Southern California or whether past interface fires outside of Calistoga, Redding, Pebble Beach, Paradise, Oakhurst, Inverness, Nevada City, Mill Valley, or Santa Rosa, will predict the location of the next Wildland-Urban Interface conflagration in California.

This siege of 14 major fires was the subject of the report “**THE STORY**,” California Fire Siege 2003, which exhaustively chronicles the fires, the response, and the losses within the context of the history and fire environment of the interface fire problem. The problem was succinctly summarized in the report as “Wildfire and humanity are intertwined in the West. **Similar events will happen again.**”

“**THE STORY**,” California Fire Siege 2003 is the basis of the “Finding of Emergency” for these proposed emergency regulations.

Governor’s Blue Ribbon Fire Commission

Shortly after the completion of the “**THE STORY**,” then Governor Davis and Governor Schwarzenegger established the “Blue Ribbon Fire Commission” to examine and make recommendations on various operational, training and other matters. Along with those matters the Commission examined and made recommendations on the following:

- Updating the local building and planning regulations to include more stringent construction standards in threat zones
- Requirements for brush clearance and fuel modification, and land use planning techniques that protect property

The Commission made the following findings:

- The current minimum building standards and fire safety requirements are neither mandated nor consistently enforced in all communities Wildland-Urban Interface Fire Areas
- Most structural losses occurred where homes had little or no vegetation clearance or were built using combustible building materials, and were thus vulnerable to wildfires

³ “*The Story*” page 79

⁴ “*The Story*” page 98

⁵ “*The Story*” page 78

The Commission made the following State recommendations:

- The SFM to continue to conduct fire research, including development of fire test protocols for vents, radiant heat exposure for windows and other applicable areas to improve the ignition resist construction techniques
- Sound, effective fire safety and fire prevention practices, including fire safe building standards and codes, realistic and coordinated fuel reduction programs and the commitment of communities to participate in prevention

The Governor's "Blue Ribbon Fire Commission" report is the other foundation for these proposed emergency regulations. (This report is attached.)

"THE STORY" and the Governor's "Blue Ribbon Fire Commission" report call for immediate action with the development of a systems approach designed to mitigate the loss of life and property resulting from a conflagration.

A new systems approach can not rely on fire department's capabilities and their capacity to fight wildfires of these magnitudes. But it needs to examine the role of safe building construction codes, zoning requirements and vegetation management principles that further define the appropriate system in any Wildland-Urban Interface Fire Area. "Therefore a plan cannot be made to save houses and lives until there is an understanding of how they are being lost," Vito Babrauskas, Ph.D.

The California Department of Forestry and Fire Protection and the Office of the State Fire Marshal worked with an advisory committee and together developed Phase II as the materials provisions to this systems approach. This approach takes into consideration the "how they are being lost" by developing regulations for eaves, walls, doors, windows, vents, decking underfloor and appendage protection and ancillary buildings. These features have long been identified as contributors to the vulnerability of buildings in Wildland-Urban Interface Fire Areas because they allow the intrusion of flame and burning embers projected by a vegetation fire into or through these weak points of the building.

AUTHORITY AND REFERENCE

The CBSC proposes to adopt these building standards under the authority granted by Health and Safety Code Section 18949.2 (a)

The purpose of these building standards is to implement, interpret, and make specific the provisions of Health and Safety Code section 13143, 13108.5 (a) and 18949.2 (b) (c) and Government Code section 51189 relating to building materials and construction methods used in a Wildland-Urban Interface Fire Area.

Authority:

- Health and Safety Code Sections 13143, 13108.5 (a) and 18949.2 (b) (c)
- Government Code Sections 51189 and 51182
- Public Resource Code Section 4291

Reference:

- Health and Safety Code Sections 13143, 13108.5 (a) and 18949.2 (b) (c)
- Government Code Sections 51176, 51177, 51178, 51179 and 51189, and Public Resource Code Sections 4201 through 4204 and 4291

INFORMATIVE DIGEST

Summary of Existing Laws

Health and Safety Code §13143 – Existing law requires the State Fire Marshal to prepare and adopt regulations establishing minimum requirements for the prevention of fire and for the protection of life and property against fire and panic in any building or structure used or intended for use as an asylum, jail, mental hospital, hospital, home for the elderly, children's nursery, children's home or institution, school, or any similar occupancy of any capacity, and in any assembly occupancy where 50 or more persons may gather.

Health and Safety Code §13108.5 (a) – Existing law requires the State Fire Marshal, in consultation with the Director of Forestry and Fire Protection and the Director of Housing and Community Development, shall, propose fire protection building standards for roofs, exterior walls, structure projections, including, but not limited to, porches, decks, balconies, and eaves, and structure openings, including, but not limited to, attic and eave vents and windows of buildings in fire hazard severity zones, including very high fire hazard severity zones designated by the Director of Forestry and Fire Protection.

(b) These building standards shall also apply to buildings located in very high fire hazard severity zones and other areas as designated by a local agency following a finding supported by substantial evidence in the record that the requirements of the building standards adopted pursuant to this Section are necessary for effective fire protection within the area.

(c) These building standards shall also apply to buildings located in urban wildland interface communities. A local agency may, at its discretion, include in or exclude from the requirements of these building standards any area in its jurisdiction following a finding supported by substantial evidence in the record at a public hearing that the requirements of these building standards are necessary or not necessary, respectively, for effective fire protection within the area. Changes made by a local agency to an urban wildland interface community area following a finding supported by substantial evidence in the record shall be final and shall not be rebuttable.

Health and Safety Code § 18949.2 (b) – This law provides that the State Fire Marshal shall remain the state agency responsible for the developing building standards to implement the state's fire and life safety policy.

(c) This section of Health and Safety Code § 18949.2 provides that the state's fire and life safety building standards, as developed by the State Fire Marshal and adopted by the Commission, shall be continued to be based on the state's fire and life safety policy goals and mandates.

Government Code § 51176 – Existing law requires that public officials are to be able to identify measures to retard the rate of spread, and reduce the potential intensity, of uncontrolled fires that threaten to destroy resources, life, or property, and to require that those measures be taken in a very high fire hazard zone.

Government Code § 51177 – Existing law defines the terms used in various statutes regarding:

(a) "Director" means the Director of Forestry and Fire Protection.

(b) "Very high fire hazard severity zone" means an area designated by the director pursuant to Section 51178 that is not a state responsibility area.

(c) "Local agency" means a city, county, city and county, or district responsible for fire protection within a very high fire hazard severity zone.

(d) "Single specimen tree" means any live tree that stands alone in the landscape so as to be clear of buildings, structures, combustible vegetation, or other trees, and that does not form a means of rapidly transmitting fire from the native growth to any occupied dwelling or structure.

(e) "State responsibility areas" means those areas identified pursuant to Section 4102 of the Public Resources Code.

Government Code § 51178 – Existing law requires the director to identify areas in the state as very high fire hazard severity zones based on consistent statewide criteria and based on the severity of fire hazard that is expected to prevail in those areas. Very high fire hazard severity zones shall be based on fuel loading, slope, fire weather, and other relevant factors.

Government Code § 51179 – Existing law permits a local agency to designate, by ordinance, very high fire hazard severity zones in its jurisdiction within 120 days of receiving recommendations from the director pursuant to subdivisions (b) and (c) of Section 51178.

(b) A local agency may, at its discretion, exclude from the requirements of Section 51182 an area identified as a very high fire hazard severity zone by the director within the jurisdiction of the local agency, following a finding supported by substantial evidence in the record that the requirements of Section 51182 are not necessary for effective fire protection within the area.

(c) A local agency may, at its discretion, include areas within the jurisdiction of the local agency, not identified as very high fire hazard severity zones by the director, as very high fire hazard severity zones following a finding supported by substantial evidence in the record that the requirements of Section 51182 are necessary for effective fire protection within the area.

(d) Changes made by a local agency to the recommendations made by the director shall be final and shall not be rebuttable by the director.

(e) The State Fire Marshal shall prepare and adopt a model ordinance that provides for the establishment of very high fire hazard severity zones.

(f) Any ordinance adopted by a local agency pursuant to this Section that substantially conforms to the model ordinance of the State Fire Marshal shall be presumed to be in compliance with the requirements of this Section.

(g) A local agency shall post a notice at the office of the county recorder, county assessor, and county planning agency identifying the location of the map provided by the director pursuant to Section 51178. If the agency amends the map, pursuant to subdivision (b) or (c) of this Section, the notice shall instead identify the location of the amended map.

Government Code § 51182 (7) Prior to constructing a new dwelling or structure that will be occupied or rebuilding an occupied dwelling or occupied structure damaged by a fire in such zone, the construction or rebuilding of which requires a building permit, the owner shall obtain a certification from the local building official that the dwelling or structure, as proposed to be built, complies with all applicable state and local building standards, including those described in subdivision (b) of Section 51189, and shall provide a copy of the certification, upon request, to the insurer providing course of construction insurance coverage for the building or structure. Upon completion of the construction or rebuilding, the owner shall obtain from the local building official, a copy of the final inspection report that demonstrates that the dwelling or structure was constructed in compliance with all applicable state and local building standards, including those described in subdivision (b) of Section 51189, and shall provide a copy of the report, upon request, to the property insurance carrier that insures the dwelling or structure.

Government Code § 51189 – Existing law declares that space and structure defensibility is essential to effective fire prevention. This defensibility extends beyond the vegetation management practices required by this chapter, and includes, but is not limited to, measures that increase the likelihood of a structure to withstand intrusion by fire, such as building design and construction requirements that use fire resistant building materials, and provide protection of structure projections, including, but not limited to, porches, decks, balconies and eaves, and structure openings, including, but not limited to, attic and eave vents and windows.

(b) No later than January 1, 2005, the State Fire Marshal, in consultation with the Director of Forestry and Fire Protection and the Director of Housing and Community Development, shall, recommend building standards that provide for comprehensive space and structure defensibility to protect structures from fires spreading from adjacent structures or vegetation and vegetation from fires spreading from adjacent structures.

Public Resource Code §4201 - The classification of lands within state responsibility areas are to be in accordance with the severity of fire hazard present for the purpose of identifying measures to be taken to retard the rate of spreading and to reduce the potential intensity of uncontrolled fires that threaten to destroy resources, life, or property.

Public Resource Code § 4202. The director shall classify lands within state responsibility areas into fire hazard severity zones. Each zone shall embrace relatively homogeneous lands and shall be based on fuel loading, slope, fire weather, and other relevant factors present.

Public Resource Code § 4203. (a) The director shall, by regulation, designate fire hazard severity zones and assign to each zone a rating reflecting the degree of severity of fire hazard that is expected to prevail in the zone.

(b) No designation of a zone and assignment of a rating shall be adopted by the director until the proposed regulation has been transmitted to the board of supervisors of the county in which the zone is located at least 45 days prior to the adoption of the proposed regulation and a public hearing has been held in that county during that 45-day period.

Public Resource Code § 4204. The director shall periodically review zones designated and rated pursuant to this article and, as necessary, shall revise zones or their ratings or repeal the designation of zones. Any revision of a zone or its rating or any repeal of a zone shall conform to the requirements of Section 4203. In addition, the revision or repeal of a zone may be petitioned pursuant to Sections 11340.6 and 11340.7 of the Government Code.

Public Resource Code § 4291 (g). Prior to constructing a new building or structure or rebuilding a building or structure damaged by a fire in such an area, the construction or rebuilding of which requires a building permit, the owner shall obtain a certification from the local building official that the dwelling or structure, as proposed to be built, complies with all applicable state and local building standards, including those described in subdivision (b) of Section 51189 of the Government Code, and shall provide a copy of the certification, upon request, to the insurer providing course of construction insurance coverage for the building or structure.

Upon completion of the construction or rebuilding, the owner shall obtain from the local building official, a copy of the final inspection report that demonstrates that the dwelling or structure was constructed in compliance with all applicable state and local building standards, including those described in subdivision (b) of Section 51189 of the Government Code, and shall provide a copy of the report, upon request, to the property insurance carrier that insures the dwelling or structure.

Summary of Existing Regulations in the 2007 CBC

Section 701A.3.2 New Building Located in any Fire Hazard Severity Zone. This existing section, as approved by the Commission on September 1, 2005 under emergency rulemaking action, specifically addresses the effective date of implementation for the minimum standards for building materials, systems and or assemblies used in the exterior design of new buildings located in a Wildland-Urban Interface Fire Area for all areas located in certain Fire Hazard Severity Zones.

Summary of Effect to the 2007 CBC

Section 701A.3.2 New Building Located in any Fire Hazard Severity Zone. The SFM is proposing this revised section that specifically requires that on or after July 1, 2008 any new application for a building permit is submitted, that is located in Local Responsibility Area Fire Hazard Severity Zones shall be subject to the requirements of this Chapter. This revised section does not change the effective date for State Responsibility Area Fire Hazard Severity Zones.

Effect: This amendment provides the necessary time for local agency's to make the recommendation available for public review and to designate, by ordinance, very high fire hazard severity zones in their jurisdiction after the CAL FIRE maps for LRA VHFHSZ have been completed.

Comparable Federal Statute or Regulation

The OSFM has determined that there are not comparable federal regulations or statutes addressing the building material's ignitability, construction methods and vegetation management for such matters Federal lands in Wildland-Urban Interface Fire Areas. However, the Bureau of Land Management, Department of the Interior, United States Department of Agriculture, Forest Service, Department of the Interior, and the One Hundred and Eighth Congress of the United States, Healthy Forest Restoration Act have developed extensive studies, reports, models, etc. that are presented to states for support and substantiation of those states Wildland-Urban Interface Fire Area's matters.

Policy Statement Overview

The broad objective of the Wildland-Urban Interface Fire Area Building Standards are to establish minimum standards for materials and material assemblies and provide a reasonable level of exterior wildfire exposure protection for buildings in Wildland-Urban Interface Fire Areas. The use of ignition resistant materials and design to resist the intrusion of flame or burning embers projected by a vegetation fire (wildfire exposure) will prove to be the most prudent effort California has made to try and mitigate the losses resulting from our repeating cycle of interface fire disasters.

The specific objective of these regulations is to establish a systematic approach to reducing the loss of lives and fire fighters, the built environment and natural resources in Wildland-Urban Interface Fire Areas in the event of a conflagration.

The Wildland-Urban Interface Fire Area Building Standards will continue to be voluntary for 2008, and then mandatory on July 1, 2008. After consulting with the Director of CAL FIRE and key stakeholders both internally and externally, OSFM has concluded that this appropriate action to take to keep us on schedule with the Fire Hazard Severity Zone Map rollout and provide enough time for developers, builders, and building officials to know where and how the codes apply.

This will not change any project timelines; it merely lets those jurisdictions that are ready to adopt locally on January 1, 2008 to do so and the other jurisdictions have adequate time to prepare and adopt after the FHSZ maps are finalized and published.

MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY OR TO ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS

The SFM has determined that there are no other matters prescribed by statute applicable to the agency or to any specific regulation or class of regulation.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The SFM has determined that the proposed regulatory action would not impose a mandate on local agencies or public school districts.

FISCAL IMPACT STATEMENT

- A. Cost or Savings to any state agency: **No**
- B. Cost to any local agency required to be reimbursed under Part 7(commencing with Section 17500) of Division 4: **No**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **No**
- D. Other non-discretionary cost or savings imposed on local agencies: **No**
- E. Cost or savings in federal funding to the state: **No**