



March 18, 2021

The Honorable Mike McGuire, Chair
Senate Governance and Finance Committee
State Capitol, Room 408
Sacramento, CA 95814

**RE: SB 12 (McGuire) Local government: planning and zoning: wildfires – HOUSING KILLER
-- OPPOSE UNLESS AMENDED**

Dear Chairman McGuire:

The California Building Industry Association (CBIA), and the organizations listed below regret to inform you that we are Opposed Unless Amended to SB 12. The members of CBIA represent the state's approximately 3,000 homebuilders and land developers within the home construction industry who collectively produce 84% of all new homes built and sold annually in California, have designated Senate Bill (SB) 12 as a **Housing Killer**.

The purpose of CBIA's Housing Killer List is to identify legislation that will significantly further exacerbate the current housing crisis for Californians in dire need of affordable places for them and their families to live.

As currently drafted, SB 12 ignores the reality that there is no perfect place to build in California. Unfortunately, as we know all too well with the current crisis, the opposite is actually the case. Every year, state lawmakers enact a host of legislative measures myopically focused on specific objectives that directly or indirectly curtail housing production, whether pertaining to agricultural land preservation, toxics chemicals in the soil or air, gentrification, displacement, wetlands preservation, habitat conservation, sea level rise, seismic safety, flood prevention, federally owned lands, protecting tribal cultural resources, or a myriad of other concerns that legislators feel obliged to address. These new laws quickly become the tools of those opposed to housing for ulterior reasons such as NIMBYs. Unfortunately, failure to adequately consider the need that hardworking Californians have for housing that they can afford produces unbalanced and unreasonable results. This myopia is *precisely* what has produced the current housing crisis.

Wildfire Success Stories

SB 12 unfortunately ignores the evidence gathered from our experience in building fire resistant communities. We have developed master-planned communities which have received national recognition as the nation's leader in implementing fire protection strategies. One such master-planned community was fire tested in the Witch Creek Fire. Within the Rancho Santa Fe Fire Protection District, the Witch Creek Fire burned approximately 6,000 acres, destroyed 61 homes/outbuildings, another 23 homes/outbuildings were damaged, and 21,000 people were evacuated. However, there were NO structure losses within the master-planned communities of 4S Ranch, the Bridges, Cielo, The Crosby and Mount Israel.

Insurers recognize that measures like those employed in Rancho Santa Fe actually work. Insurers are *currently* offering discounts on homeowner policies in areas meeting any of the following:

1. A recognized Firewise USA community;
2. A Shelter in Place community; or
3. A community with active fuel mitigation efforts including burns or vegetation thinning to establish defensible space.

Location

One lesson learned from recent wildfires is that older homes located in largely infill areas have been the largest sector of damaged/destroyed structures. See, e.g., Coffey Park in Santa Rosa and the City of Ventura. In fact, newer built home communities (particularly those constructed after 2014) have performed well overall against the threat of wildfires, while older homes have been almost exclusively the victims of wildfires. The homes destroyed in Coffey Park were built between 1950 and 1990 without complying with current fire-resistant building codes, indoor fire sprinklers, or defensible space. The homes destroyed in the City of Ventura suffered from a similar deficiency. Fire officials say 484 of the 532 structures destroyed were in the City of Ventura – not in unincorporated ranchlands or hillside enclaves, but in the city proper. Much of the city was evacuated, including areas flat and urban.

Much has been said about building in the Wildland Urban Interface (WUI), but the historical reality is that all development in California was initially in a WUI. The WUI is simply the area where developed and undeveloped land meet. These conditions also occur in infill areas. A prohibition on development in the WUI, is just a NO HOUSING policy.

Building and Development Design

California's homebuilders are on the leading edge of design and technology that makes homes more energy efficient, water conserving, emissions reducing, and fire safe. The design that goes into new development and master planned communities is meticulous from every standpoint; including considerations in infrastructure (i.e., grading and drainage, streets, traffic, bicycle lanes), to defensible space enhanced by putting streets, irrigated landscaping, golf courses, fuel breaks and greenbelts around the periphery of the project that reduce fire risk, and lot design to avoid shading that would interfere with solar rooftop requirements, to name a few. Solar rooftops also increase the reliability of power during a planned power outage.

Routinely implemented design aspects of all new communities include the undergrounding of infrastructure and indoor fire sprinklers. Indoor fire sprinklers can prevent new homes from being the cause of a wildfire. There are multiple benefits from undergrounding infrastructure: (1) they eliminate the possibility of powerline ignition points caused by the new development; (2) provide improved reliability during storms; and (3) are more aesthetically pleasing and provide improved street safety. Solar roofs also protect homeowners from planned power shutoffs so they are not so dependent on the grid for power. All this is in addition to complying with Fire-Resistant Building Codes found in Chapter 7A.

Density is also being used as a growing fire safety community design tool to reduce wildfire risk, and SB 12 rightly calls for this in adding Government Code section 65012(a)(2)(B)(i):

(i) A development layout that reduces wildfire risk to the greatest extent practicable, through measures that may include, but are not limited to, clustering of structures in the lowest risk areas on the property, while still requiring all structures to be separated by a safe distance to avoid the spread of fires from structure to structure, the use of natural and manmade features as fire breaks, and the establishment of community protection fire breaks on the perimeter of the property.

Yet, SB 12 also opens the door to an avalanche of new regulation, which, in turn, will place new burdens on housing development at the same time the state is suffering a housing crisis. And while SB 12's new burdens will ultimately render some new projects infeasible, we also believe safety of our residents is paramount which is why CBIA's opposition is focused *solely* on addressing SB 12's bureaucratic overreach, which forces the State Fire Marshal (SFM) to incorporate the Office of Planning and Research's (OPR's) Fire Hazard Planning-General Plan Technical Advice Series into SFM's statewide, one-size-fits-all standards for developments of 100 or more residential units. Doing so would give the OPR excessive control over the state's decision-making process with regards to planning for future housing needs.

The following is a partial list of why the bill's OPR provisions are troubling:

- **THE OPR TECHNICAL ADVICE SERIES IS EXACTLY THAT: ADVICE.**

- SB 12 vests OPR with new powers the Legislature did not intend. This is one reason why the recommendations in the Technical Advice do not easily fit into legal mandates on a statewide, one-size-fits-all basis. In fact, OPR's own disclaimer states:

*This document should not be construed as legal advice, nor is the Governor's Office of Planning and Research enforcing or attempting to enforce any part of the recommendations contained herein. (Government Code [GC] § 65035 [“**It is not the intent of the Legislature** to vest in the Office of Planning and Research any direct operating or regulatory powers over land use, public works, or other state, regional, or local projects or programs.”].)*

- **THE IMPORT OF THE OPR TECHNICAL ADVICE SERIES RENDERS SB 12 INTERNALLY INCONSISTENT.**

- SB 12 is focused solely on very-high fire severity zones and SRA zones. The incorporation of the Technical Advice will broaden SB 12's robust regulatory scheme into high fire severity zones. This expansion could upend developments that make sense to build from a climate change perspective. Given the systemic underproduction of housing, it is wholly inappropriate to give another state agency a command-and-control lever over housing.

- **THE OPR TECHNICAL ADVICE IS INCONSISTENT WITH OTHER EXISTING LAWS IN STATE STATUTE.**

- As drafted, SB 12 runs afoul and directly conflicts with existing general plan law. Government Code 65302 (g)(3) states:

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 Plan Technical Advice Series”

Under current law, local governments have the ability review and assess what *advice* makes the most sense for them to incorporate from the Technical Advice Series. This is the appropriate place for the Technical Advice to be applied, and the Technical Advice was developed with this use in mind – not as a statewide, one-size-fits-all mandate.

- Government Code section 65302(g)(3)(C) with respect to wildfire provides:

“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.

There is no limitation or prerequisite that minimizing wildfire hazards could only be considered if avoidance was infeasible (as the Technical Advisory recommends and SB 12 would require).

- **SB 12 GIVES OPR THE AUTHORITY TO PLAY BOTH ADVOCATE AND DECISION-MAKER.**
 - The state’s housing policy is too important to give immense power to a single state agency that can essentially write-off large swaths of developable and appropriate land for housing. Much of the land that our members develop abuts existing communities and associated infrastructure, as these locations are more affordable for middle class Californians. California’s developed footprint accounts for less than six percent of the state’s total land mass, and housing is only a subset of that total. Given where the state is in meeting its responsibility to facilitate the production of housing in a timely manner, SB 12 will only further exacerbate this already untenable situation.

PROPOSED AMENDMENTS:

On February 4, 2021, CBIA offered to the author reasonable amendments that we believe would give greater weight and consideration to OPR’s Technical Advice than currently exists, as well as additional amendments to require both the State Fire Marshal and Board of Forestry to consider changes to building standards and design guidelines. Those amendments have been provided below.

SB 12 (McGuire) – Suggested Amendments

- 1) Remove from the bill all references to the OPR Technical Advice guidance as they currently exist.
- 2) Regarding the WUI building standards contained in Title 24, Part 2, Chapter 7A and Title 24 Part 2.5 Chapter 3, Section R337:

Add a new subsection (e) to **Health and Safety Code 13108.5:**

13108.5(e) *When developing updates to the wildland-urban interface building standards adopted pursuant to subsection (a), the Office of the State Fire Marshal and the Department of Housing and Community Development shall consider relevant recommendations contained in the Fire Hazard Planning Technical Advisory -General Plan Technical Advice guidance document published by the Governor’s Office of Planning and Research that will apply to developments that include 100 or more residential dwelling units.*

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3) Regarding the Fire Safe Development regulations adopted by the Board of Forestry contained in Title 14, Division 1.5, Chapter 7, Subchapter 2:

Add a new subsection (e) to **Public Resources Code 4290**:

4290(e) When developing updates to the regulations adopted pursuant to subsection (a), the board shall consider relevant recommendations contained in the Fire Hazard Planning Technical Advisory -General Plan Technical Advice guidance document published by the Governor's Office of Planning and Research that will apply to developments that include 100 or more residential dwelling units.

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In conclusion, CBIA strongly believes that before the state embarks on imposing new regulatory hurdles to the production of housing, there first needs to be data and rigorous analysis presented to demonstrate that the existing regulatory regime, including the 2014 amendments to the safety element, is not working in a substantial way. Absent such data and rigorous analysis, we see SB 12 is merely a “solution” in search of a problem.

California has actively and aggressively striven to incorporate the very best in fire standards and technologies into our new communities. These actions have shown tangible and real progress, and we should build upon that progress by continuing with actions that improve building design, mitigate appropriately, and enforce defensible space. Together, these critical elements comprise the best solution for protecting life and property in all of parts of California that interface with nature.

For these reasons, we have determined that SB 12 is a **Housing Killer**, and we respectfully request a no vote on SB 12 unless CBIA's suggested amendments are adopted.

Please contact me at (916) 340-3338 or Nick Cammarota at (916) 340-3304 if you have any questions about our position.

Sincerely,



Michael A. Gunning
Senior Vice President of Legislative Affairs
California Building Industry Association



Timothy Murphy, CEO
California Builders Alliance



Rich Gordon, President
California Forestry Association



Damon Conklin, Director of Government Affairs
Sacramento Regional Builders Exchange



*Matthew Hargrove, Senior Vice President
of Governmental Affairs*
California Business Properties Association



Adam J. Regele, Policy Advocate
California Chamber of Commerce

United Chamber Advocacy Network (UCAN)

El Dorado County Chamber of Commerce

El Dorado Hills Chamber of Commerce

Elk Grove Chamber of Commerce

Folsom Chamber of Commerce

Rancho Cordova Chamber of Commerce

Roseville Area Chamber of Commerce

Yuba Sutter Chamber of Commerce

cc: Senator Mike McGuire
Members, Senate Governance and Finance Committee
Colin Grinnell, Staff Director, Senate Governance and Finance Committee
Ryan Eisberg, Consultant, Republican Office of Policy