Date: November 8, 2021

To: **Mike Richwine**, State Fire Marshal

 **Mia Marvelli**, Executive Director, California Building Standards Commission

From: Chris Ochoa and Robert Raymer, California Building Industry Association

RE: Industry Concerns with SFM 15-Day Language

1. SFM Rulemaking File #04-21 (Part 2 California Building Code)
	* **Item 7A-10 Chapter 7A, Section 702A Definitions “Fire Hazard Severity Zones”**
2. SFM Rulemaking File #05-21 (Part 2.5 California Residential Code)
	* **Item 3-10 Chapter 3 Definitions “Fire Hazard Severity Zones”**
3. SFM Rulemaking File #06-21 (Part 9 California Fire Code)
	* **Item 49-1 Requirements for Wildland-Urban Interface Fire Areas: User Note**
	* **Item 49-3 Purpose**
	* **Item 49-22 Establishment of Limits**

The California Building Industry Association (CBIA) is a statewide trade association representing over 3,100 member companies involved in residential and light commercial construction. CBIA member companies are responsible for over 85% of the new homes built in California each year. Please be advised that CBIA has a concern that, while well-intended, the State Fire Marshal may be prematurely amending code to incorporate specific provisions of SB 63 (Stern), legislation recently signed into law by Governor Newsom.

**Background:**

CBIA, along with the fire service, strongly supported the passage of SB 63. Relating to building in the Wildland-Urban Interface, this bill directs the Office of the State Fire Marshal to complete fire hazard severity zone maps for “moderate” and “high” fire severity zones (GC 51178). Once the SFM completes this task, the maps will be forwarded to local jurisdictions for certification. Once a local jurisdiction has received the maps from the SFM, the local jurisdiction shall have 300-days to make the maps available for public comment (GC 51178.5).

Also, new language was added to Health & Safety Code 13108.5 which states:

*(2) Upon identification by the Director of Forestry and Fire Protection pursuant to Section 51178 of the Government Code of high fire hazard severity zones and by a local agency pursuant to Section 51179 of the Government Code, the Office of the State Fire Marshal and the Department of Housing and Community Development shall propose, and the California Building Standards Commission shall adopt, expanded application of the building standards adopted pursuant to this section to* ***high*** *fire hazard severity zones during the next* ***triennially occurring code adoption cycle****.*

*(3) The State Fire Marshal and the Department of Housing and Community Development shall, after consulting with interested stakeholders, including local fire officials, consider if it is appropriate to expand application of the building standards adopted pursuant to this section to* ***moderate*** *fire hazard severity zones. If it is found appropriate, the State Fire Marshal and the Department of Housing and Community Development shall, pursuant to Section 18930, recommend expanding the application of the building standards adopted pursuant to this section to moderate fire hazard severity zones.*

**Industry Policy regarding SB 63:**

SB 63 takes effect on January 1, 2022. Once the maps are completed and certified by the local jurisdictions, CBIA will support the expansion of the WUI building standards to High Fire Severity Zones during the next regularly occurring code adoption cycle. Depending on when the SFM completes the maps and forwards them to the local jurisdictions, this could come as early as the code that becomes effective in July of 2024.

Also, CBIA looks forward to working with the SFM and HCD to determine if the WUI building standards should be expanded to the moderate fire severity zones during some future code adoption cycle. But, for now, we have no idea where these “moderate” areas are and how their implementation will affect housing production, including affordable housing production.

**Industry Concern with the SFM 15-Day Language:**

Simply put: the maps are not done yet. And they won’t be done by the time the Building Standards Commission considers these building standards for adoption in either December or January.

As such, the SFM proposed language would be referring to areas of the state which are not discretely defined and readily available to the public (including designers, industry, and building officials).

At a minimum, this would create an application provision that is “vague and ambiguous,” a violation of Criteria #4 {H&S 18930(a)(4)}.

Also, it creates a potential for building standards to inadvertently become applicable to a specific project without the six-month preparation period afforded to industry and building officials as required by Health & Safety Code §18941.5. In the view of industry, this would be unreasonable as industry and local building officials have long had at least six months to prepare for the implementation of new building standards. Put differently, not knowing when and where a building standard will apply seems unreasonable. CBIA’s legal counsel has similar concerns and indicated this also appears to be violation of due process (a constitutional right).  The issuance of building permit is a quasi-judicial act (applying law to specific facts) and not knowing “what” is applicable “where” is a problem.

Lastly, CBIA realizes the SFM has little time to propose 15-Day language, but it seems odd that the SFM WUI Working Group was not apprised of this substantive change in the regulation. Over recent years, this SFM working group has met dozens of times. The fact is, the SFM has been conducting a highly open administrative process for years. The Working Group should have had the opportunity to review and comment on the proposed five changes identified in the subject line of this letter for comment before the SFM issuing 15-Day Language. Its highly possible that a great many participants in the SFM Working Group are unaware of these changes.

CBIA respectfully requests the SFM withdraw these five changes from the 2021 Triennial Code Adoption Cycle and reconsider them in a subsequent rulemaking when all the maps are completed and certified by local jurisdictions. Once the maps are done and certified by locals, you can count on CBIA support for expansion of the WUI Building Standards to High Fire Severity Zones.

We appreciate your consideration.

**CC: Greg Anderson**, Chief of Code Development & Analysis, Office of the State Fire Marshal

 **Crystal Sujeski**, Deputy State Fire Marshal III, Office of the State Fire Marshal

**Michael Nearman**, Assistant Executive Director, California Building Standards Commission

 **Kyle Krause**, Deputy Director, Codes and Standards, Housing & Community Development