



RURAL COUNTY REPRESENTATIVES  
OF CALIFORNIA

January 19, 2022

Board of Forestry and Fire Protection  
Attn: Edith Hannigan, Executive Officer  
P.O. Box 944246  
Sacramento, CA 94244-2460

Transmittal Via E-Mail: [PublicComments@BOF.ca.gov](mailto:PublicComments@BOF.ca.gov)


**RE: "State Minimum Fire Safe Regulations, 2021"  
15-Day Revisions Published January 3, 2022– Formal Comments**

Dear Chair Gilles and Board Members::

As you are doubtless aware, Rural County Representatives of California (RCRC) has commenced legal action in the Fresno County Superior Court challenging several aspects of the ongoing rulemaking process for the "State Minimum Fire Safe Regulations, 2021." As set forth in the *Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief*, a copy of which is attached, the Board has substantially and prejudicially failed to comply with the Administrative Procedure Act in several respects. Should the Board endeavor to proceed with the rulemaking, without remedying these defects (and those identified in our comment letter dated June 21, 2021), this will undermine their validity, and provide grounds for successful legal challenge.

Please make this correspondence and the attached Petition part of the rulemaking file for the "State Minimum Fire Safe Regulations, 2021," and we recommend their very careful consideration by the Board and Office of Administrative Law.

Sincerely,

  
\_\_\_\_\_  
ARTHUR J. WYLENE  
General Counsel

**Attachment: Petition for Writ of Mandate and Complaint for Injunctive  
and Declaratory Relief**

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9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF FRESNO**

12 **22CECG00123**

13 RURAL COUNTY REPRESENTATIVES OF  
14 CALIFORNIA,

Case No.

15 Petitioner and Plaintiff,

**VERIFIED PETITION FOR WRIT OF  
MANDATE AND COMPLAINT FOR  
INJUNCTIVE AND DECLARATORY  
RELIEF; EX PARTE APPLICATION  
FOR ALTERNATIVE WRIT**

16 v.

17 CALIFORNIA STATE BOARD OF  
18 FORESTRY AND FIRE PROTECTION;  
EDITH HANNIGAN, IN HER OFFICIAL  
19 CAPACITY AS EXECUTIVE OFFICER OF  
THE CALIFORNIA STATE BOARD OF  
20 FORESTRY AND FIRE PROTECTION; and  
21 DOES 1 through 100, inclusive;

22 Respondents and Defendants.  
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1 Petitioner and Plaintiff Rural County Representatives of California (“Petitioner” or  
2 “RCRC”) hereby submits its Petition for Writ of Mandate and Complaint for Injunctive and Declaratory  
3 Relief (“Petition”) under Code of Civil Procedure sections 1085 and 1094.5, directed to Respondents  
4 and Defendants California State Board of Forestry and Fire Protection (“Board”) and Edith Hannigan,  
5 in her official capacity as the Board’s Executive Officer (collectively, “Respondents”), and hereby  
6 complains as follows:

7 **I.**

8 **INTRODUCTION**

9 1. This Petition seeks an order directing Respondents to comply with their obligations under  
10 the Administrative Procedure Act, Government Code section 11340 et seq. (“APA”), and the Public  
11 Records Act, Government Code section 6250 et seq. (“PRA”) before the Board closes the public  
12 comment period for the “State Minimum Fire Safety Regulations, 2021” (the “Proposed Regulations”)  
13 or considers the Proposed Regulations for adoption.<sup>1</sup>

14 2. Petitioner has significant concerns regarding the Proposed Regulations. With the  
15 purported purpose of promoting fire safety, the Proposed Regulations would require county  
16 governments and recipients of even minor permits to construct new roadways and improve/widen  
17 existing roadways in foothill and mountain areas. While RCRC recognizes the need for fire safety  
18 regulations, the Proposed Regulations as currently formulated would place enormous costs on rural  
19 governments and residents and cause significant environmental effects. As a result, Petitioner has  
20 actively advocated for reasonable modifications to the Proposed Regulations, which to date have been  
21 largely ignored.

22 3. Petitioner has also sought documentation from Respondents concerning the assumptions  
23 and conclusions underlying the Proposed Regulations, many of which should be included in the  
24 rulemaking file under the APA. Petitioner first sought records from Respondents under the PRA in May  
25 2021. Despite making this request eight months ago, Respondents have yet to produce all the documents  
26 Petitioner has requested, or to include all required documents in the rulemaking file. Respondents have  
27 also refused to commit to make the documents available before the close of the public comment period  
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<sup>1</sup> Unless otherwise noted, all citations herein refer to the Government Code.

1 or the conclusion of the rulemaking process, even though the vast majority of records requested are  
2 plainly required to be included in the rulemaking file. Worse still, Respondents claim they have no duty  
3 to include records generated after Petitioner's original request, regardless of whether such records are  
4 required to be included in the rulemaking file. In sum, Respondents seek to shield documents relevant  
5 to the Proposed Regulation from the public until after Respondents have committed to the approval of  
6 the Proposed Regulation, thwarting the ability of Petitioner, and other interested parties, to fully  
7 comment on the Proposed Regulation.

8 4. As a result of Respondents' attempts to avoid their responsibilities under the PRA and  
9 the APA, Petitioner seeks an alternative writ of mandate directing Respondents (a) to immediately stay  
10 all proceedings regarding the Proposed Regulations, and to keep the public comment period open, until  
11 Respondents can demonstrate that they have assembled and made available a rulemaking file for the  
12 Proposed Regulations in accordance with the APA and complied with the PRA in connection with  
13 Petitioner's requests for records, or (b) to show cause at the earliest possible date before the close of the  
14 Proposed Regulations' public comment period on January 19, 2022, why a peremptory writ of mandate  
15 should not issue ordering such relief.

## 16 II.

### 17 PARTIES, JURISDICTION, & VENUE

18 5. Petitioner RCRC is, and at all times herein mentioned was, a California non-profit  
19 corporation with its principal place of business in Sacramento, CA. It is a service organization that  
20 supports and encourages policies on behalf of California's rural counties. Petitioner has no financial  
21 interest in the outcome of this action and is bringing the action solely to ensure Respondent is complying  
22 with State law.

23 6. Petitioner has performed any and all conditions precedent to the filing of this Petition.  
24 Petitioner has exhausted any and all administrative remedies required by law.

25 7. Respondent Board is, and at all times herein mentioned was, a government-appointed  
26 body within the Department of Forestry and Fire Protection responsible for developing the general forest  
27 policy of the state. Its administrative headquarters is located in Sacramento, CA.

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1           8.     Respondent Edith Hannigan is, and at all times herein mentioned was, the Board's  
2 Executive Officer.

3           9.     The true names and capacities of the parties fictitiously identified as Does 1 through 100  
4 are unknown to Petitioner, and therefore Petitioner sues them by fictitious names. Petitioner is informed  
5 and believes, and on that basis alleges, that Respondents and Does 1 through 100, inclusive, and each  
6 of them, are in some manner liable to Petitioner, or are otherwise responsible for the acts and omissions  
7 alleged herein. Whenever the terms "Board" or "Respondents" are used herein, said terms shall be  
8 construed as including Does 1 through 100, inclusive. Petitioner will amend this Petition to show the  
9 true names and capacities of Does 1 through 100 when the same are ascertained, as well as the manner  
10 in which each is responsible.

11          10.    This Court has jurisdiction over Petitioner's request for an alternative writ of mandate  
12 pursuant to sections 1085 and/or 1094.5 of the Code of Civil Procedure. This Court has jurisdiction  
13 over Petitioner's request for injunctive relief pursuant to sections 526 et seq. and 1060 et seq. of the  
14 Code of Civil Procedure.

15          11.    Petitioner has no plain, speedy, or adequate remedy in the course of ordinary law unless  
16 this Court grants the requested alternative writ of mandate. In the absence of such relief, Respondents'  
17 inaction will violate state law and Petitioner, Petitioner's members, and the public at large will be  
18 irreparably harmed. No money damages or legal remedy could adequately compensate for such harm.

19          12.    Venue in Fresno County Superior Court is proper pursuant to California Code of Civil  
20 section 401, subdivision (1), which provides that an action may be commenced in any county the  
21 Attorney General has an office whenever any law of the state provides that the action may be  
22 commenced in the County of Sacramento. The Attorney General has an office in Fresno County and  
23 this action may be commenced in the County of Sacramento pursuant to section 395 of the Code of Civil  
24 Procedure because Respondents' and Petitioner's administrative headquarters are located in Sacramento  
25 County and the records at issue are maintained in Sacramento County.

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1 **III.**

2 **GENERAL ALLEGATIONS**

3 13. Respondents are currently engaged in a rulemaking process for proposed regulations  
4 known as the “State Minimum Fire Safe Regulations, 2021” (the “Proposed Regulations”). Although  
5 the Proposed Regulations purport to include measures designed to promote fire safety, Petitioner has  
6 extensive concerns regarding the design specifications for new and existing roadways, which would  
7 adversely affect Petitioner’s members, natural resources, and California residents and businesses.

8 14. Specifically, Petitioner believes the Proposed Regulations would (1) hinder private  
9 investment and development and diminish the property values in rural communities; (2) impose  
10 substantial costs on private development within “State Responsibility Areas” and “Very High Fire  
11 Hazard Severity Zones within Local Responsibility Areas”; (3) negatively impact local businesses by  
12 interfering with year-round customers, members of the workforce, and the local construction industry;  
13 and (4) cause significant environmental impacts due to increased vehicle miles traveled, induced growth,  
14 and increased criteria pollutant and greenhouse gas emissions.

15 15. On April 23, 2021, the Board published a notice announcing a 60-day public comment  
16 period, which closed on June 22, 2021. Petitioner believes the Proposed Regulations should be modified  
17 substantially and has actively participated in the rulemaking process, including by submitting technical  
18 comments during the 60-day comment period and by seeking to obtain relevant information through  
19 requests under the PRA, such as those at issue in this proceeding.

20 16. As a member of the public and an entity that represents the interests of rural California  
21 counties that would be heavily impacted by the Proposed Regulations, Petitioner desires to submit  
22 additional technical comments based on all relevant information, including information required to be  
23 maintained as part of the rulemaking file pursuant to the APA.

24 17. Consequently, on May 12, 2021, Petitioner submitted a request to Respondents  
25 requesting thirteen categories of records. On May 21, 2021, Respondents made records available to two  
26 categories, requested clarification on four categories, and stated it was not in possession of responsive  
27 records for two categories. For the remaining categories, Respondents stated they would make records  
28 available on June 21, 2021 and December 21, 2021, as applicable.

1 18. Over the next six months Petitioner and Respondents exchanged correspondence  
2 regarding the outstanding categories of records. Petitioner submitted additional or modified requests on  
3 June 22, 2021, December 2, 2021, December 5, 2021 and December 10, 2021.

4 19. Respondents made further responses to Petitioner's requests on June 8, 2021, July 1,  
5 2021, December 13, 2021, December 16, 2021, December 20, 2021 and December 21, 2021.  
6 Respondents' December 13 and December 21, 2021 responses proposed to make available several  
7 categories of records in mid-January of 2022 and others in February 25, 2022—more than a month after  
8 the close of the Proposed Regulations' public comment period on January 19, 2022.

9 20. On December 23, 2021, Petitioner sent a letter to Edith Hannigan, the Board's Executive  
10 Officer, explaining Petitioner's frustrations with the delay in production of documents. Petitioner  
11 explained that Respondents' failure to make the requested records available violated the APA and the  
12 PRA because the delays unreasonably interfered with Petitioner's ability to comment on the Proposed  
13 Regulations, as the estimated dates of production were either dangerously close to, and in some cases  
14 even after, the close of the public comment period.

15 21. On January 3, 2022, Petitioner received two letters from Respondents. In one of the  
16 letters, Respondents acknowledged Petitioner's claim that Petitioner's December 5, 2021 request sought  
17 records required to be maintained as part of the rulemaking file under the APA and that failing to provide  
18 these records until the comment period was nearly closed violated the APA and the PRA. Respondents'  
19 stated that staff "has been searching and reviewing records responsive" to Petitioner's December 5, 2022  
20 request and would provide any non-exempt and non-privileged records by January 7, 2022.

21 22. In the second letter, Respondents acknowledged that numerous categories of requests  
22 remained outstanding and stated that it would provide responses to the Subject Requests on January 7,  
23 12, and 13, as applicable, and "provide additional responsive documents as it is reasonably able to."  
24 Respondents also stated that because Petitioner's requests were made pursuant to the PRA that it would  
25 only provide responsive records that "existed at the time each request was made to the Board."  
26 Regarding Petitioner's claims that Respondents' actions violated the APA, Respondents stated that it  
27 disagreed with Petitioner's conclusion.

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23. On January 4, 2022, Petitioner sent a detailed email to Respondents explaining their duties under the APA and how Respondents were failing to adequately discharge those duties. Petitioner also submitted several requests seeking records requested in Petitioner’s May 12, 2021 correspondence to the extent such records were generated after Petitioner’s original request on May 12, 2021.

24. On January 6, 2022, the Board published a notice announcing a supplemental 15-day public comment period due to proposed revisions, which closes on January 19, 2022.

25. On January 7, 2022, Petitioner received two additional letters from Respondents responding to Petitioner’s May 12, 2021 and December 5, 2021 request. These responses provided responsive records for one of Petitioner’s May 12, 2021 requests, but claimed that no responsive, non-exempt records existed for several others. On January 11, 2022, Petitioner responded to Respondents’ correspondence of January 7, 2022, encouraging Respondents to supplement or revise its response, as it appeared inaccurate or incomplete in several significant respects.

26. On January 12, 2022 Petitioner received one additional letter from Respondents, which provided records in response to Petitioner’s December 2, 2021 request.

27. As of the date of this Petition, Petitioner has requested twenty-one categories of records from Respondent. Of the requests at issue in this case, five were made on May 12, 2021, three were made on December 2, 2021, one was made on December 5, 2021, and three were made on January 4, 2022 (“Subject Requests”). A summary describing the relevant facts for each of the Subject Requests is provided below. True and correct copies of Petitioner’s requests are attached hereto as **Exhibit “A.”**

**Table A – Subject Requests**

Date & No.	Request	Status
5/12/21 No. 4	Any and all records pertaining to the representative government costs identified within current state materials referenced on page 47 of the Initial Statement of Reasons for the “State Minimum Fire Safe Regulations, 2021.”	<ul style="list-style-type: none"> <li>• 5/21/21 Board provided responsive records</li> <li>• 1/3/22 Board indicated additional records were located but did not estimate when records would be made available</li> </ul>
5/12/21 No. 7	Any and all records pertaining to the Board of Forestry’s compliance with, or exemption from, the California Environmental Quality Act in connection with the proposed “State Minimum Fire Safe Regulations, 2021.”	<ul style="list-style-type: none"> <li>• 5/21/21 Board indicated no responsive records</li> <li>• 5/28/21 Petitioner clarified request</li> <li>• 6/8/21 Board determined responsive records exist and estimated available by 12/21/21</li> </ul>



1		<ul style="list-style-type: none"> <li>• 12/21/21 Board revised estimated availability date to 2/25/22</li> <li>• 1/3/22 Board again revised estimated availability date to 1/7/22</li> <li>• 1/7/22 Board determined no responsive records exist</li> </ul>	
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5	5/12/21 No. 11	Any and all powerpoint presentations, descriptive memos, or similar materials, prepared by the Board of its staff relating to the “State Minimum Fire Safe Regulations, 2021.”	<ul style="list-style-type: none"> <li>• 5/21/21 Board estimated responsive records available by 6/21/21;</li> <li>• 1/3/22 Board indicated additional records were located but did not estimate when records would be made available</li> </ul>
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8	5/12/21 No. 12	Any and all other records pertaining to the formal or informal drafting, creation, development, or consideration of the “State Minimum Fire Safe Regulations, 2021,” including without limitation any internal or external correspondence, analysis, documentation, emails, or other records related to such efforts – excluding only those materials subject to the attorney-client privilege	<ul style="list-style-type: none"> <li>• 6/8/21 Board estimated responsive records available by 12/21/21</li> <li>• 12/21/21 Board estimated responsive records available by 2/25/22</li> <li>• 1/3/22 Board estimate responsive records available 1/7/22</li> <li>• 1/7/22 Board provided some responsive records, noted review is ongoing and additional records may be forthcoming</li> </ul>
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15	5/12/21 No. 13	Any and all communications, including emails, between the Board of Forestry and the California Natural Resources Agency, the California Department of Forestry and Fire Protection, or the Governor’s office, pertaining to the proposed “State Minimum Fire Safe Regulations, 2021.”	<ul style="list-style-type: none"> <li>• 6/8/21 Board estimated responsive records available by 12/21/21</li> <li>• 12/21/21 Board estimated responsive records available by 2/25/22</li> <li>• 1/3/22 Board estimated responsive records available by 1/7/22</li> <li>• 1/7/22 Board determined: <ul style="list-style-type: none"> <li>(1) no responsive, non-exempt records in relation to Natural Resources Agency, citing ACP/AWP;</li> <li>(2) no responsive, non-exempt records in relation to Department of Forestry and Fire Protection, citing §§ 6255, 6254(a);</li> <li>(3) no responsive records in relation to Governor’s office</li> </ul> </li> </ul>
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26	12/2/21 No. 1	Copies of all written comments or other correspondence relating to the “State Minimum Fire Safe Regulations, 2021” submitted after the 45-day comment period through the present date.	<ul style="list-style-type: none"> <li>• 12/13/21 Board estimated responsive records available by 1/12/22</li> <li>• 1/12/22 Board provided some responsive records</li> </ul>
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1 2 3 4	12/2/21 No. 2	All records included or to be included in the rulemaking file for the “State Minimum Fire Safe Regulations, 2021,” to the extent that such records were generated after June 8, 2021 or were otherwise not included among the materials you provided on that date.	<ul style="list-style-type: none"> <li>• 12/13/21 Board estimated responsive records available by 1/12/22</li> <li>• 1/12/22 Board provided some responsive records</li> </ul>
5 6 7 8 9	12/2/21 No. 3	Any and all records pertaining to the Board of Forestry’s compliance with the Administrative Procedures Act, including without limitation the economic impact assessment requirements thereof, in connection with the proposed “State Minimum Fire Safe Regulations, 2021,” to the extent that such records were generated after June 8, 2021 or were otherwise not included among the materials you provided on that date.	<ul style="list-style-type: none"> <li>• 12/13/21 Board estimated responsive records available by 1/12/22</li> <li>• 1/12/22 Board provided some responsive records</li> </ul>
10 11 12 13 14	12/5/21 No. 1	All correspondence, e-mails, or other records pertaining to consultation with the California Department of Food and Agriculture as referenced in the Supplemental Statement of Reasons, “Amend § 1270.03” (p. 8).	<ul style="list-style-type: none"> <li>• 12/16/21 Board estimated responsive records available by 1/14/22</li> <li>• 1/3/22 Board estimate responsive records available by 1/14/22</li> <li>• 1/7/22 Board determined no responsive, non-exempt records, citing ACP/AWP and § 6254(k)</li> </ul>
15 16 17 18	1/4/22 No. 1	Any and all records pertaining to the Board of Forestry’s compliance with, or exemption from, the California Environmental Quality Act in connection with the proposed “State Minimum Fire Safe Regulations” to the extent that such records were generated after May 12, 2021.	<ul style="list-style-type: none"> <li>• No response to date</li> </ul>
19 20 21 22 23 24	1/4/22 No. 2	Any and all other records pertaining to the formal or informal drafting, creation, development, or consideration of the “State Minimum Fire Safe Regulations, 2021,” including without limitation any internal or external correspondence, analysis, documentation, emails, or other records related to such efforts—excluding only those materials subject to the attorney-client privilege—to the extent that such records were generated after May 12, 2021.	<ul style="list-style-type: none"> <li>• No response to date</li> </ul>
25 26 27 28	1/4/22 No. 3	Any and all communications, including emails, between the Board of Forestry and the California Natural Resources Agency, the California Department of Forestry and Fire Protection, or the Governor’s office, pertaining to the proposed “State Minimum Fire Safe Regulations, 2021” to the extent that such records were generated after May 12, 2021.	<ul style="list-style-type: none"> <li>• No response to date</li> </ul>

1           28.     These records are necessary for Petitioner to have a meaningful opportunity to comment  
2 on the Proposed Regulations. For instance, Petitioner’s May 12, 2021 request (No. 4) seek records  
3 related to Respondents’ compliance with the APA, including Respondents’ analysis of the financial  
4 impact the Proposed Regulations would have on Petitioner’s members (No. 4), the financial impact the  
5 Proposed Regulations would have on business, which impacts economic conditions for Petitioner’s  
6 members (No. 6), and the technical justification for the features of the Proposed Regulations Petitioner  
7 believes to be problematic (No. 2). Request No. 7 seeks information related to Respondents’ compliance  
8 with the California Environmental Quality Act, Public Resources Code section 21000 et seq., which is  
9 relevant to understanding how the Proposed Regulations will impact the natural environment of  
10 Petitioner’s members. Nos. 11, 12, and 13 seek agency communications concerning the Proposed  
11 Regulations, including internal agency communications (No. 11) and external communications  
12 regarding the need for and development of the Proposed Regulations (Nos. 12 and 13). Similarly,  
13 Petitioner’s December 2, 2021 request (Nos. 1, 2, 3, 4) and December 5, 2021 request (No. 1) all seek  
14 records that are directly relevant to Respondents’ compliance with the APA or otherwise obviously  
15 required to be maintained as part of the Proposed Regulations’ rulemaking file.

16           29.     Respondents’ failure to comply with the APA and the PRA has caused, and will continue  
17 to cause, Petitioner, and the public generally, irreparable harm by denying Petitioner and the public of  
18 their rights to access public information and to have a meaningful opportunity to comment on the  
19 Proposed Regulations in light of all relevant information, including information required by law to be  
20 maintained and made available throughout the rulemaking process. Additionally, because Respondents  
21 have proposed to close the Proposed Regulations’ public comment period on January 19, 2022, which  
22 will occur before Respondents have made all records required to be maintained in the Proposed  
23 Regulations’ rulemaking file available, Petitioner seeks immediate relief to avoid suffering irreparable  
24 harm to its rights, the public’s rights, and to the integrity of the rulemaking process.

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1 IV.

2 CAUSES OF ACTION

3 FIRST CAUSE OF ACTION

4 **Writ of Mandate – Violation of the Administrative Procedure Act**

5 **(All Respondents)**

6 30. Petitioner realleges and incorporates by reference the preceding paragraphs 1 through 29  
7 in their entirety as though fully set forth herein.

8 31. “[T]he APA is designed to provide a procedure whereby people to be affected may be  
9 heard on the merits of the proposed rules and to ensure meaningful public participation in the adoption  
10 of administrative regulations by state agencies.” (*Sims v. Department of Corrections & Rehabilitation*  
11 (2013) 216 Cal.App.4th 1059, 1073 [internal quotations and citations omitted]; see *Armistead v. State*  
12 *Personnel Board* (1978) 22 Cal.3d 198, 204; *California Optometric Assn. v. Lackner* (1976) 60  
13 Cal.App.3d 500, 506; *Voss v. Superior Court* (1996) 46 Cal.App.4th 900, 908.) Public participation in  
14 the rulemaking process is “meaningful” “*only if the interested public has timely received all available*  
15 *information that is relevant to the proposed regulations.*” (*Sims, supra*, 216 Cal.App.4th at 1073  
16 [emphasis added].) Thus, failing to include documents required to be maintained in the rulemaking file  
17 and failing to make the rulemaking file available for public inspection constitute a substantial failure to  
18 comply with the APA and warrant invalidating the regulation at issue. (*Id.* at 1074–75 [affirming trial  
19 court’s invalidation of regulation where agency failed to make available records required to be  
20 maintained in rulemaking file until three weeks before the close of the public comment period].)

21 32. Section 11347.3, subdivision (a) provides that “[e]very agency shall maintain a file of  
22 each rulemaking that shall be deemed to be the record for that rulemaking proceeding.” Additionally,  
23 the agency “shall make the file available to the public for inspection and copying during regular business  
24 hours” “[c]ommencing no later than the date that the notice of the proposed action is published . . . and  
25 during all subsequent periods of time that the file is in the agency’s possession.” (See *POET, LLC v.*  
26 *State Air Resources Bd.* (2013) 218 Cal.App.4th 681, 745 [“The public-availability requirement is in  
27 effect *throughout the rulemaking proceedings.*”] [emphasis in original].) The purpose of section  
28 11347.3 is “to promote meaningful public participation in agency rulemaking.” (*Id.*)

1           33.     Section 11347.3, subdivision (b) requires the rulemaking file to include, inter alia, “[a]ll  
2 data and other factual information, any studies or reports, and written comments *submitted to the agency*  
3 in connection with the adoption, amendment, or repeal of the regulation;” “[a]ll data and other factual  
4 information, technical, theoretical, and empirical studies or reports, if any, on which *the agency is*  
5 *relying* in the adoption, amendment, or repeal of a regulation;” and “[a]ny other information, statement,  
6 report, or data that *the agency is required by law to consider or prepare* in connection with the adoption,  
7 amendment, or repeal of a regulation.” (Govt. Code, § 11347.3, subd. (b)(6), (7), (11); see *POET, supra*,  
8 218 Cal.App.4th at 746 [“Under [subdivision (b)], the rulemaking file must include certain materials  
9 that were (1) *submitted* to the agency, (2) *relied upon* by the agency, or (3) *required by law to be*  
10 *considered* by an agency.”] [emphasis in original].) Significantly, an agency’s interpretation of the APA’s  
11 requirements is not entitled to deference. (*Id.* at 748.) Additionally, failure to properly maintain a  
12 rulemaking file can constitute a substantial failure to comply with the APA justifying invalidation of the  
13 regulation at issue. (*Id.* at 755; see Govt. Code, § 11350 [“The regulation . . . may be declared to be invalid  
14 for a substantial failure to comply with this chapter.”].)

15           34.     In this case, Petitioner submitted several requests for records required to be maintained  
16 as part of the rulemaking file pursuant to section 11347.3. However, Respondent was unwilling or  
17 unable to make these records available in accordance with the APA.

18           35.     Specifically, Petitioner’s December 2, 2021 request (Nos. 1, 2, 3, and 4), December 5,  
19 2021 request (No. 1), and January 4, 2022 request (Nos. 1, 2, and 3) exclusively sought records required  
20 to be maintained in the rulemaking file pursuant to section 11347.3, subdivision (b). However, despite  
21 acknowledging that responsive records exist for some or all of these requests, Respondents did not make  
22 all responsive records available to Petitioner, or the public generally, in accordance with the APA.

23           36.     In addition, Petitioner’s May 12, 2021 request (Nos. 2 4, 6, 7, 11, 12, and 13)  
24 encompassed records required to be maintained in the rulemaking file pursuant to section 11347.3,  
25 subdivision (b). However, despite acknowledging that responsive records exist for some or all of these  
26 requests, Respondents did not make all responsive records available to Petitioner, or the public  
27 generally, in accordance with the APA.

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1 37. Respondents' failure to make all records required to be maintained as part of the  
2 rulemaking file available in accordance with section 11347.3 constitutes a substantial failure to comply  
3 with the APA.

4 38. On information and belief, Respondents have refused to make all records required to be  
5 maintained as part of the rulemaking file available because Respondents have failed to maintain a  
6 rulemaking file in accordance with section 11347.3.

7 39. Respondents failure to maintain, and make available, a rulemaking file constitutes a  
8 substantial failure to comply with the APA.

9 40. Respondents have a clear, present, and ministerial duty to comply with section 11347.3's  
10 requirements to maintain a rulemaking file for the Proposed Regulations and to make the rulemaking  
11 file available to Petitioner, and the public generally, throughout the rulemaking process, and Petitioner  
12 has a clear, present, and beneficial right to Respondents' performance of that duty.

13 41. No other adequate legal remedy exists to redress the harm to Petitioner caused by  
14 Respondents' unlawful conduct.

15 **SECOND CAUSE OF ACTION**

16 **Writ of Mandate – Violation of the Public Records Act**

17 **(All Respondents)**

18 42. Petitioner realleges and incorporates by reference the preceding paragraphs 1 through 41  
19 in their entirety as though fully set forth herein.

20 43. The Legislature has declared that access to information concerning the conduct of the  
21 people's business is a fundamental and necessary right of every person in this state. (See Govt. Code,  
22 § 6250.) Accordingly, section 6253, subdivision (b) provides that "each state or local agency, upon a  
23 request for a copy of records that reasonably describes an identifiable record or records, shall make the  
24 records *promptly available* to any person . . . ." (Emphasis added.) If an agency determines that a  
25 responsive record is exempt from disclosure, it must "justify withholding any record by demonstrating  
26 that the record in question is exempt under express provisions of this chapter . . . ." (Govt. Code, § 6255,  
27 subd. (a); see *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 476 [stating that "records must be  
28 disclosed unless they come within one or more of the categories of documents exempt from compelled

1 disclosure” and that “the burden is on the public agency to show that the records should not be  
2 disclosed”). Pursuant to section 6253, subdivision (d) “nothing in [the PRA] shall be construed to  
3 permit an agency to delay or obstruct the inspection or copying of public records.”

4 44. Section 6258 provides that “[a]ny person may institute proceedings for injunctive or  
5 declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to  
6 inspect or to receive a copy of any public record or class of public records under [the PRA].”  
7 Additionally, it states that “[t]he times for responsive pleadings and for hearings in these proceedings  
8 shall be set by the judge of the court with the object of securing a decision as to these matters at the  
9 earliest possible time.”

10 45. Respondent Board is a state agency subject to the PRA.

11 46. All of the Subject Requests reasonably describe identifiable records subject to disclosure  
12 under the PRA. Additionally, all of the records required to be maintained as part of the Proposed  
13 Regulations’ rulemaking file constitute non-exempt public records under the PRA. However, despite  
14 acknowledging that responsive records exist for some or all of the Subject Requests, Respondents have  
15 not made all responsive, non-exempt records promptly available to Petitioner and have instead construed  
16 the PRA to delay or obstruct the inspection of public records.

17 47. By consistently and unreasonably refusing to make responsive, non-exempt records  
18 available, including records that Respondent is required to maintain as part of the Proposed Regulations’  
19 rulemaking file and make available throughout the rulemaking process, for more than six months, and  
20 proposing to produce such records near, or after, the close of the Proposed Regulations’ public comment  
21 period, Respondents have failed to make records “promptly available” upon request in violation of  
22 section 6253, subdivision (b).

23 48. By relying on a purported rule that the PRA applies “only to records existing at the time  
24 of the request” to deny access to records that Respondent is required to maintain as part of the Proposed  
25 Regulations’ rulemaking file and make available throughout the rulemaking process, and proposing to  
26 produce such records near, or after, the close of the Proposed Regulations’ public comment period,  
27 Respondents have construed the PRA to “delay or obstruct the inspection or copying of public records”  
28 in violation section 6253, subdivision (d).

1 49. Finally, Respondents have failed to adequately justify their withholding of certain  
2 records claimed to be exempt from disclosure. Respondents' January 7, 2022 correspondence claimed  
3 that records responsive to Petitioner's May 12, 2021 request (No. 13) were exempt from disclosure  
4 pursuant to section 6255 and 6254, subdivision (a). However, while both of these exemptions require  
5 the agency to demonstrate that the public interest in withholding the requested records clearly outweighs  
6 the public interest in disclosure, Respondents provided no explanation whatsoever to demonstrate its  
7 application of the exemptions was justified.

8 50. Petitioner has a clear, present, and beneficial right to the performance of Respondent's  
9 duties under the PRA, and Respondents have a clear, present, and ministerial duty to comply with the  
10 PRA.

11 51. No other adequate legal remedy exists to redress the harm to Petitioner caused by  
12 Respondents' unlawful conduct.

13 **THIRD CAUSE OF ACTION**

14 **Writ of Mandate – Waste of Taxpayer Funds (Code Civ. Proc., § 526a)**

15 **(All Respondents)**

16 52. Petitioner realleges and incorporates by reference the preceding paragraphs 1 through 51  
17 in their entirety as though fully set forth herein.

18 53. Section 526a, subdivision (a) of the Code of Civil Procedure provides that “[a]n action  
19 to obtain a judgment, restraining and preventing any . . . waste of . . . funds . . . of a local agency, may  
20 be maintained against any officer thereof . . . by a corporation, who is assessed for and is liable to pay,  
21 or, within one year before the commencement of the action, has paid, a tax that funds the defendant local  
22 agency, including, but not limited to, . . . a sales and use tax or transaction and use tax initially paid by  
23 a consumer to a retailer . . .”

24 54. Petitioner is a California non-profit corporation that is liable for, or has paid within one  
25 year of the commencement of this action, a sales and use tax or transaction and use tax initially paid by  
26 a consumer to a retailer.

27 55. Respondent Edith Hannigan is the Board's Executive Officer and constitutes an “officer”  
28 within the meaning of section 526a, subdivision (a) of the Code of Civil Procedure.



1       56. California courts have liberally construed section 526a to be applicable to state agencies  
2 such as the Board. (See *Collins v. Thurmond* (2019) 41 Cal.App.5th 879, 910 [“Although the statutory  
3 language authorizes a taxpayer action only as to local governmental units and their officers, courts have  
4 extended section 526a’s reach to state agencies.”].) Therefore, the Board is a “local agency” within the  
5 meaning of section 526a, subdivision (a) of the Code of Civil Procedure.

6       57. Respondents’ failure to maintain a proper rulemaking file and to make that file available  
7 to the public throughout the rulemaking proceedings constitutes a substantial failure to comply with the  
8 APA. Consequently, any action by Respondents to adopt or approve the Proposed Regulations would  
9 be subject to invalidation pursuant to section 11350, subdivision (a). (See Govt. Code, § 11350, subd.  
10 (a).)

11       58. By continuing to expend public funds in connection with the approval or adoption of the  
12 Proposed Regulations without first complying with the APA’s requirements concerning the rulemaking  
13 file, Respondents are committing a waste of public funds, as any such action will be subject to  
14 invalidation as a result of Respondents’ substantial failure to comply with the APA.

15       59. To avoid committing a waste of public funds, Respondents must comply with the APA’s  
16 requirements concerning the rulemaking file prior to taking any further action to approve or adopt the  
17 Proposed Regulations.

18       60. Petitioner has a clear, present, and beneficial right to the prevention of Respondents’  
19 waste of public funds and Respondents have a clear, present, and ministerial duty to avoid committing  
20 such waste.

21       61. No other adequate legal remedy exists to redress the harm to Petitioner caused by  
22 Respondents’ unlawful conduct.

## 23                   **FOURTH CAUSE OF ACTION**

### 24                   **Injunctive Relief**

25                   **(All Respondents)**

26       62. Petitioner realleges and incorporates by reference the preceding paragraphs 1 through 61  
27 in their entirety as though fully set forth herein.

28 ///



1 comes into compliance with the APA, and that any action by Respondents to adopt or approve the  
2 Proposed Regulations before coming into compliance with the APA constitutes a waste of public funds.  
3 On information and belief, Respondents contend to the contrary.

4 68. Therefore, Plaintiff desires a judicial determination of Respondents' obligations under  
5 the APA and the PRA, including declarations that:

- 6 (i) Respondents have violated the APA by failing to maintain a proper rulemaking file  
7 for the Proposed Regulations in accordance with section 11347.3;
- 8 (ii) Respondents have violated the APA by failing to make the rulemaking file for the  
9 Proposed Regulations available throughout the rulemaking process in accordance  
10 with section 11347.3;
- 11 (iii) Respondents' actions with respect to the Proposed Regulations' rulemaking file  
12 constitute a substantial failure to comply with the APA within the meaning of section  
13 11350;
- 14 (iv) any action by Respondents to approve or adopt the Proposed Regulations before  
15 Respondent comes into compliance with the APA is subject to invalidation pursuant  
16 to section 11350;
- 17 (v) Respondents have violated the PRA by failing to make all non-exempt records  
18 responsive to Petitioner's requests promptly available in accordance with section  
19 6253, subdivision (b);
- 20 (vi) Respondents have violated the PRA by construing its provisions to delay or obstruct  
21 the inspection or copying of public records in violation section 6253, subdivision  
22 (d); and
- 23 (vii) any action by Respondents to adopt or approve the Proposed Regulations before  
24 Respondent comes into compliance with the APA constitutes a waste of public funds  
25 under section 526a of the Code of Civil Procedure.

26 69. Such declarations are necessary and appropriate at this time because Respondent has  
27 failed and refused to comply with its obligations under the APA, the PRA, and section 526a of the Code  
28 of Civil Procedure, and such failure irreparably harms Petitioner, and the public, by depriving them of

1 their right to access public records and of their right to a meaningful opportunity to comment on the  
2 Proposed Regulations, and will continue to harm Petitioner, and the public, until such time as such  
3 declarations are made.

4 70. No other adequate legal remedy exists to redress the harm to Petitioner caused by  
5 Respondents' unlawful conduct.

6 **PRAYER FOR RELIEF**

7 **WHEREFORE**, Petitioner prays that judgment be entered against Respondents as  
8 follows:

9 1. As to the First, Second, and Third Causes of Action, Petitioner requests an alternative writ  
10 of mandate directing Respondents (a) to immediately stay all proceedings regarding the Proposed  
11 Regulations, and to keep the public comment period open, until Respondents can demonstrate that they  
12 have assembled and made available a rulemaking file for the Proposed Regulations in accordance with  
13 the APA and complied with the PRA in connection with Petitioner's requests for records, or (b) to show  
14 cause at the earliest possible date before the close of the Proposed Regulations' public comment period  
15 on January 19, 2022, why a peremptory writ of mandate should not issue ordering such relief.

16 2. As to the First, Second, and Third Causes of Action, Petitioner requests that a peremptory  
17 writ of mandate issue directing Respondents to immediately stay all proceedings regarding the Proposed  
18 Regulations, and to keep the public comment period open, until Respondents can demonstrate that they  
19 have assembled and made available a rulemaking file for the Proposed Regulations in accordance with  
20 the APA and complied with the PRA in connection with Petitioner's requests for records.

21 3. As to the Fourth Cause of Action, Petitioner requests an order enjoining Respondents from  
22 taking any action to approve or adopt the Proposed Regulations, and commanding Respondents to keep  
23 the Proposed Regulations' public comment period open, until Respondents can demonstrate that they  
24 have assembled and made available a rulemaking file for the Proposed Regulations in accordance with  
25 the APA and complied with the PRA in connection with Petitioner's requests for records.

26 4. As to the Fifth Cause of Action, judicial declarations as set forth in Paragraph 63 of this  
27 Petition.

28 ///

1           5.     For an award of Petitioner's fees and costs as authorized under Code of Civil Procedure  
2 section 1021.5 and Government Code section 6259, subdivision (d).

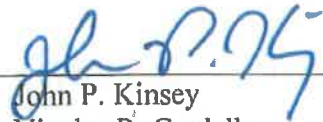
3           6.     That this Court retain jurisdiction over this matter until such time as the Court has  
4 determined that Respondents have fully and properly complied with this Court's orders.

5           7.     For such other and further relief as may be just and appropriate.  
6

7 Dated: January 13, 2021

WANGER JONES HELSLEY PC

8  
9 By: \_\_\_\_\_

  
John P. Kinsey  
Nicolas R. Cardella  
Garrett R. Leatham  
Attorneys for Petitioner and Plaintiff  
RURAL COUNTY REPRESENTATIVES OF  
CALIFORNIA

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**VERIFICATION**

I, Arthur J. Wylene, declare:

1. I am General Counsel of Rural County Representatives of California, the Petitioner in this action. I make this verification of my own knowledge. I hereby verify that the factual matters stated in this VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF; EX PARTE APPLICATION FOR ALTERNATIVE WRIT are known to me personally and that they are true or that I believe them to be true.

2. I declare under penalty of perjury under the laws of California that the foregoing is true and that this verification was executed in SACRAMENTO, California, on January 18, 2022.

By:  \_\_\_\_\_  
Arthur J. Wylene

# **EXHIBIT "A"**



May 12, 2021

Matt Dias  
Executive Officer  
California State Board of Forestry and Fire Protection  
Post Office Box 944246  
Sacramento, CA, 94244-2460  
matt.dias@bof.ca.gov

**RE: California Public Records Act Request**

Dear Mr. Dias:

To assist our review and response to the "State Minimum Fire Safe Regulations, 2021" recently proposed by the Board, we are requesting the following records under the California Public Records Act:

- All records included or to be included in the rulemaking file for the "State Minimum Fire Safe Regulations, 2021," to the extent that such records exist on the date of your response.
- Each and every technical, theoretical, and/or empirical study, report or similar document identified on pages 47-49 of the Initial Statement of Reasons for the "State Minimum Fire Safe Regulations, 2021."
- Any and all records supporting the assertion, on page 47 of the Initial Statement of Reasons for the "State Minimum Fire Safe Regulations, 2021", that "[t]he Board relied upon its extensive knowledge and experience related to the development of minimum fire safety regulations," including without limitation any records pertaining to the extent or content of the asserted "extensive knowledge and experience related to the development of minimum fire safety regulations."
- Any and all records pertaining to the "representative government costs identified within current state materials" referenced on page 47 of the Initial Statement of Reasons for the "State Minimum Fire Safe Regulations, 2021."

1215 K Street, Suite 1650, Sacramento, CA 95814 | [www.rcrcnet.org](http://www.rcrcnet.org) | 916.447.4806 | Fax: 916.448.3154



- Any and all other records pertaining to the Board of Forestry's compliance with the Administrative Procedures Act, including without limitation the economic impact assessment requirements thereof, in connection with the proposed "State Minimum Fire Safe Regulations, 2021."
- Any draft or final form STD. 399, and any other communications, including emails, between the Board of Forestry and the Department of Finance, pertaining to the proposed "State Minimum Fire Safe Regulations, 2021."
- Any and all records pertaining to the Board of Forestry's compliance with, or exemption from, the California Environmental Quality Act in connection with the proposed "State Minimum Fire Safe Regulations, 2021."
- Any and all records included or to be included in the record of proceedings, as defined in Public Resources Code section 21167.6, subdivision (e), for the "State Minimum Fire Safe Regulations, 2021," to the extent that such records exist on the date of your response.
- Any and all records pertaining to the "Fire Chiefs Working Group" referenced in the Initial Statement of Reasons for the "State Minimum Fire Safe Regulations, 2021," including records of communications with members of the Group, notes or minutes of any Group meetings or calls, and materials presented to or received from the Group.
- Any and all records pertaining to the Fire Chiefs Working Group survey referenced on page 48 of the Initial Statement of Reasons for the "State Minimum Fire Safe Regulations, 2021," including complete copies of all responses.
- Any and all powerpoint presentations, descriptive memos, or similar materials, prepared by the Board or its staff relating to the "State Minimum Fire Safe Regulations, 2021."
- Any and all other records pertaining to the formal or informal drafting, creation, development, or consideration of the "State Minimum Fire Safe Regulations, 2021," including without limitation any internal or external correspondence, analysis, documentation, emails, or other records related to such efforts – excluding only those materials subject to the attorney-client privilege
- Any and all communications, including emails, between the Board of Forestry and the California Natural Resources Agency, the California Department of Forestry and Fire Protection, or the Governor's office, pertaining to the proposed "State Minimum Fire Safe Regulations, 2021."

Mr. Matt Dias  
California Public Records Act Request  
May 12, 2021  
Page 3

To enable us to make timely comments on the proposed regulations, please provide copies of the foregoing records to this office as quickly as possible, within the time provided by law. We would prefer to receive electronic copies of these records by email, to avoid duplication costs – and if any records are maintained only in paper format, we would respectfully request that the Board waive any copying fees in light of our inability to inspect and copy these records ourselves at the Board's offices due to the COVID-19 pandemic. Thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. J. Wylene', with a long horizontal flourish extending to the right.

ARTHUR J. WYLENE  
General Counsel  
awylene@rcrcnet.org

cc: Edith Hannigan, Land Use Planning Program Manager

## Arthur J. Wylene

---

**From:** Arthur J. Wylene  
**Sent:** Tuesday, June 22, 2021 5:04 PM  
**To:** Public Comments@BOF  
**Cc:** Dias, Matt@BOF; Slaton, Jeffrey@BOF  
**Subject:** New Public Records Act Request

In accordance with the California Public Record Act, please promptly provide the following:

- (1) Copies of all written comments submitted during the 45-day comment period for the "State Minimum Fire Safe Regulations, 2021."
- (2) Any audio or video recording of the June 22, 2021 Board of Forestry meeting, including the public hearing, regarding the "State Minimum Fire Safe Regulations, 2021," and the Board member, staff, and public comments before and after the hearing.

-Arthur J. Wylene  
General Counsel  
Rural County Representatives of California (RCRC)  
1215 K Street, Suite 1650  
Sacramento, CA 95814  
(916) 447-4806  
awylene@rcrcnet.org

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-----Original Message-----

**From:** Public Comments@BOF <PublicComments@bof.ca.gov>  
**Sent:** Tuesday, June 8, 2021 11:35 AM  
**To:** Arthur J. Wylene <AWylene@rcrcnet.org>  
**Subject:** Public Records Act Response - RCRC 06\_08\_2021

Dear Mr. Wylene,  
On behalf of Executive Officer Dias, enclosed please find the Board of Forestry's response to your May 28, 2021, clarifications to your Public Record Act request dated May 12, 2021.  
Thank you.

## Arthur J. Wylene

---

**From:** Arthur J. Wylene  
**Sent:** Thursday, December 2, 2021 4:24 PM  
**To:** Slaton, Jeffrey@BOF  
**Cc:** Public Comments@BOF; Hannigan, Edith@BOF  
**Subject:** Supplemental Public Records Act Request

Dear Mr. Slaton:

In accordance with the California Public Record Act, please promptly provide all of the following:

- Copies of all written comments or other correspondence relating to the "State Minimum Fire Safe Regulations, 2021" submitted after the 45-day comment period through the present date.
- All records included or to be included in the rulemaking file for the "State Minimum Fire Safe Regulations, 2021," to the extent that such records were generated after June 8, 2021 or were otherwise not included among the materials you provided on that date.
- Any and all records pertaining to the Board of Forestry's compliance with the Administrative Procedures Act, including without limitation the economic impact assessment requirements thereof, in connection with the proposed "State Minimum Fire Safe Regulations, 2021," to the extent that such records were generated after June 8, 2021 or were otherwise not included among the materials you provided on that date.
- Any draft or final form STD. 399, and any other communications, including emails, between the Board of Forestry and the Department of Finance, pertaining to the proposed "State Minimum Fire Safe Regulations, 2021," to the extent that such records were generated after June 8, 2021 or were otherwise not included among the materials you provided on that date.

Also, your response to our 5/12/21 Public Record Act request indicated that certain records would be produced by 5:00 P.M. on December 21, 2021. (See attached.) We assume that this will include all responsive records in those categories through the date of production. Please let us know if this is not your intention. Thank you in advance.

-Arthur J. Wylene  
General Counsel  
Rural County Representatives of California (RCRC)  
1215 K Street, Suite 1650  
Sacramento, CA 95814  
(916) 447-4806  
awylene@rcrcnet.org

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**From:** Arthur J. Wylene  
**Sent:** Tuesday, June 22, 2021 5:04 PM

To: Public Comments@BOF <PublicComments@bof.ca.gov>  
Cc: Dias, Matt@BOF <Matt.Dias@bof.ca.gov>; Slaton, Jeffrey@BOF <Jeffrey.Slaton@bof.ca.gov>  
Subject: New Public Records Act Request

In accordance with the California Public Record Act, please promptly provide the following:

- (1) Copies of all written comments submitted during the 45-day comment period for the "State Minimum Fire Safe Regulations, 2021."
- (2) Any audio or video recording of the June 22, 2021 Board of Forestry meeting, including the public hearing regarding the "State Minimum Fire Safe Regulations, 2021," and the Board member, staff, and public comments before and after the hearing.

-Arthur J. Wylene  
General Counsel  
Rural County Representatives of California (RCRC)  
1215 K Street, Suite 1650  
Sacramento, CA 95814  
(916) 447-4806  
awylene@rcrcnet.org

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To: Arthur J. Wylene <AWylene@rcrcnet.org>  
Subject: Public Records Act Response - RCRC 06\_08\_2021

Dear Mr. Wylene,

On behalf of Executive Officer Dias, enclosed please find the Board of Forestry's response to your May 28, 2021, clarifications to your Public Record Act request dated May 12, 2021.



PRA Response  
06\_08\_2021.pdf

Thank you.

## **Arthur J. Wylene**

---

**From:** Arthur J. Wylene  
**Sent:** Sunday, December 5, 2021 2:00 PM  
**To:** 'Slaton, Jeffrey@BOF'  
**Cc:** 'Public Comments@BOF'; 'Hannigan, Edith@BOF'  
**Subject:** Second Supplemental Public Records Act Request

In addition to the previously-referenced records, please also provide the following, in accordance with the Public Records Act:

All correspondence, emails, or other records pertaining to consultation with the California Department of Food and Agriculture as referenced in the Supplemental Statement of Reasons, "Amend § 1270.03" (p. 8).

-Arthur J. Wylene  
General Counsel  
Rural County Representatives of California (RCRC)  
1215 K Street, Suite 1650  
Sacramento, CA 95814  
(916) 447-4806  
[awylene@rcrcnet.org](mailto:awylene@rcrcnet.org)

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---

**From:** Arthur J. Wylene  
**Sent:** Thursday, December 2, 2021 4:24 PM  
**To:** Slaton, Jeffrey@BOF <Jeffrey.Slaton@bof.ca.gov>  
**Cc:** Public Comments@BOF <PublicComments@bof.ca.gov>; Hannigan, Edith@BOF <edith.hannigan@bof.ca.gov>  
**Subject:** Supplemental Public Records Act Request

Dear Mr. Slaton:

In accordance with the California Public Record Act, please promptly provide all of the following:

- Copies of all written comments or other correspondence relating to the "State Minimum Fire Safe Regulations, 2021" submitted after the 45-day comment period through the present date.
- All records included or to be included in the rulemaking file for the "State Minimum Fire Safe Regulations, 2021," to the extent that such records were generated after June 8, 2021 or were otherwise not included among the materials you provided on that date.
- Any and all records pertaining to the Board of Forestry's compliance with the Administrative Procedures Act, including without limitation the economic impact assessment requirements thereof, in connection with the

proposed "State Minimum Fire Safe Regulations, 2021," to the extent that such records were generated after June 8, 2021 or were otherwise not included among the materials you provided on that date.

- Any draft or final form STD. 399, and any other communications, including emails, between the Board of Forestry and the Department of Finance, pertaining to the proposed "State Minimum Fire Safe Regulations, 2021," to the extent that such records were generated after June 8, 2021 or were otherwise not included among the materials you provided on that date.

Also, your response to our 5/12/21 Public Record Act request indicated that certain records would be produced by 5:00 P.M. on December 21, 2021. (See attached.) We assume that this will include all responsive records in those categories through the date of production. Please let us know if this is not your intention. Thank you in advance.

-Arthur J. Wylene  
General Counsel  
Rural County Representatives of California (RCRC)  
1215 K Street, Suite 1650  
Sacramento, CA 95814  
(916) 447-4806  
awylene@rcrcnet.org

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From: Arthur J. Wylene  
Sent: Tuesday, June 22, 2021 5:04 PM  
To: Public Comments@BOF <PublicComments@bof.ca.gov>  
Cc: Dias, Matt@BOF <Matt.Dias@bof.ca.gov>; Slaton, Jeffrey@BOF <Jeffrey.Slaton@bof.ca.gov>  
Subject: New Public Records Act Request

In accordance with the California Public Record Act, please promptly provide the following:

- (1) Copies of all written comments submitted during the 45-day comment period for the "State Minimum Fire Safe Regulations, 2021."
- (2) Any audio or video recording of the June 22, 2021 Board of Forestry meeting, including the public hearing regarding the "State Minimum Fire Safe Regulations, 2021," and the Board member, staff, and public comments before and after the hearing.

-Arthur J. Wylene  
General Counsel  
Rural County Representatives of California (RCRC)  
1215 K Street, Suite 1650  
Sacramento, CA 95814  
(916) 447-4806  
awylene@rcrcnet.org

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-----Original Message-----

From: Public Comments@BOF <PublicComments@bof.ca.gov>

Sent: Tuesday, June 8, 2021 11:35 AM

To: Arthur J. Wylene <AWylene@rcrcnet.org>

Subject: Public Records Act Response - RCRC 06\_08\_2021

Dear Mr. Wylene,

On behalf of Executive Officer Dias, enclosed please find the Board of Forestry's response to your May 28, 2021, clarifications to your Public Record Act request dated May 12, 2021.

Thank you. << File: PRA Response 06\_08\_2021.pdf >>



## Arthur J. Wylene

---

**From:** Arthur J. Wylene  
**Sent:** Friday, December 10, 2021 5:16 PM  
**To:** Slaton, Jeffrey@BOF  
**Cc:** Public Comments@BOF; Hannigan, Edith@BOF  
**Subject:** Further Public Records Act Request

In addition to the foregoing items, please provide copies of the following:

- (1) Any audio or video recording of the December 7, 2021 Resource Protection Committee meeting.
- (2) Any audio or video recording of the December 8, 2021 Board of Forestry meeting.

-Arthur J. Wylene  
General Counsel  
Rural County Representatives of California (RCRC)  
1215 K Street, Suite 1650  
Sacramento, CA 95814  
(916) 447-4806  
[awylene@rcrcnet.org](mailto:awylene@rcrcnet.org)

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**From:** Arthur J. Wylene  
**Sent:** Sunday, December 5, 2021 2:00 PM  
**To:** 'Slaton, Jeffrey@BOF' <Jeffrey.Slaton@bof.ca.gov>  
**Cc:** 'Public Comments@BOF' <PublicComments@bof.ca.gov>; 'Hannigan, Edith@BOF' <edith.hannigan@bof.ca.gov>  
**Subject:** Second Supplemental Public Records Act Request

In addition to the previously-referenced records, please also provide the following, in accordance with the Public Records Act:

All correspondence, emails, or other records pertaining to consultation with the California Department of Food and Agriculture as referenced in the Supplemental Statement of Reasons, "Amend § 1270.03" (p. 8).

-Arthur J. Wylene  
General Counsel  
Rural County Representatives of California (RCRC)  
1215 K Street, Suite 1650  
Sacramento, CA 95814  
(916) 447-4806  
[awylene@rcrcnet.org](mailto:awylene@rcrcnet.org)

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**From:** Arthur J. Wylene  
**Sent:** Thursday, December 2, 2021 4:24 PM  
**To:** Slaton, Jeffrey@BOF <[Jeffrey.Slaton@bof.ca.gov](mailto:Jeffrey.Slaton@bof.ca.gov)>  
**Cc:** Public Comments@BOF <[PublicComments@bof.ca.gov](mailto:PublicComments@bof.ca.gov)>; Hannigan, Edith@BOF <[edith.hannigan@bof.ca.gov](mailto:edith.hannigan@bof.ca.gov)>  
**Subject:** Supplemental Public Records Act Request

Dear Mr. Slaton:

In accordance with the California Public Record Act, please promptly provide all of the following:

- Copies of all written comments or other correspondence relating to the "State Minimum Fire Safe Regulations, 2021" submitted after the 45-day comment period through the present date.
- All records included or to be included in the rulemaking file for the "State Minimum Fire Safe Regulations, 2021," to the extent that such records were generated after June 8, 2021 or were otherwise not included among the materials you provided on that date.
- Any and all records pertaining to the Board of Forestry's compliance with the Administrative Procedures Act, including without limitation the economic impact assessment requirements thereof, in connection with the proposed "State Minimum Fire Safe Regulations, 2021," to the extent that such records were generated after June 8, 2021 or were otherwise not included among the materials you provided on that date.
- Any draft or final form STD. 399, and any other communications, including emails, between the Board of Forestry and the Department of Finance, pertaining to the proposed "State Minimum Fire Safe Regulations, 2021," to the extent that such records were generated after June 8, 2021 or were otherwise not included among the materials you provided on that date.

Also, your response to our 5/12/21 Public Record Act request indicated that certain records would be produced by 5:00 P.M. on December 21, 2021. (See attached.) We assume that this will include all responsive records in those categories through the date of production. Please let us know if this is not your intention. Thank you in advance.

-Arthur J. Wylene  
General Counsel  
Rural County Representatives of California (RCRC)  
1215 K Street, Suite 1650  
Sacramento, CA 95814  
(916) 447-4806  
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-----Original Message-----

From: Arthur J. Wylene

Sent: Tuesday, June 22, 2021 5:04 PM

To: Public Comments@BOF <PublicComments@bof.ca.gov>

Cc: Dias, Matt@BOF <Matt.Dias@bof.ca.gov>; Slaton, Jeffrey@BOF <Jeffrey.Slaton@bof.ca.gov>

Subject: New Public Records Act Request

In accordance with the California Public Record Act, please promptly provide the following:

(1) Copies of all written comments submitted during the 45-day comment period for the "State Minimum Fire Safe Regulations, 2021."

(2) Any audio or video recording of the June 22, 2021 Board of Forestry meeting, including the public hearing regarding the "State Minimum Fire Safe Regulations, 2021," and the Board member, staff, and public comments before and after the hearing.

-Arthur J. Wylene

General Counsel

Rural County Representatives of California (RCRC)

1215 K Street, Suite 1650

Sacramento, CA 95814

(916) 447-4806

awylene@rcrcnet.org

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-----Original Message-----

From: Public Comments@BOF <PublicComments@bof.ca.gov>

Sent: Tuesday, June 8, 2021 11:35 AM

To: Arthur J. Wylene <AWylene@rcrcnet.org>

Subject: Public Records Act Response - RCRC 06\_08\_2021

Dear Mr. Wylene,

On behalf of Executive Officer Dias, enclosed please find the Board of Forestry's response to your May 28, 2021, clarifications to your Public Record Act request dated May 12, 2021.

Thank you. << File: PRA Response 06\_08\_2021.pdf >>

## Arthur J. Wylene

---

**From:** Arthur J. Wylene  
**Sent:** Tuesday, January 11, 2022 8:11 AM  
**To:** 'Slaton, Jeffrey@BOF'; 'Hannigan, Edith@BOF'  
**Cc:** 'Public Comments@BOF'; 'Jessica.morse@resources.ca.gov';  
'mark.tollefson@gov.ca.gov'; 'gilless@berkeley.edu'; 'shusari@comcast.net';  
'darcy@ceaconsulting.com'; 'miranda.flores@resources.ca.gov'; 'mjani@mendoco.com';  
Tracy Rhine; 'John Kinsey'; 'Nicolas Cardella'  
**Subject:** RE: Further Response to Public Records Act Request Dated May 12, 2021  
**Attachments:** joint-2-presentation-fire-safe-regs-final\_v4\_ada.pdf; Fire Safe Regulations Team Call Agenda\_Dec 17 2020.docx

Dear Ms. Hannigan:

We strongly suggest that you consider supplementing your January 7th responses, as they appear incomplete or inaccurate in several respects, including:

- The Supplemental Statement of Reasons for the proposed State Fire Safe Regulations states that certain determinations were made "in consultation with the Department of Food and Agriculture," and oral presentations to the Board's Resource Protection Committee asserted that these determinations were "workshopped" with CDFA. However, if your January 7th correspondence is to be credited, no such consultation or "workshop" actually occurred, or you kept no record of it whatsoever. This would represent a substantial dereliction of the Board's duty to prepare complete and accurate regulatory materials, which requires further explanation.
- Likewise, if the assertions in your correspondence are accurate, and the Board truly has not even begun to consider the potential environmental impacts of the proposed regulations, this would constitute an immense oversight and critical failure by all concerned. However, there are numerous indications in the documents produced and otherwise publicly available that the Board has, in fact, been engaged in such consideration for some time. (See e.g., Presentation, pages 3, 4, and 10; and Team Call Agenda, page 2 (attached).) The suggestion that this months-long effort has generated not a single written or electronic record appears highly implausible.
- More broadly, the records provided with your January 7th response are plainly incomplete, and we have still been provided with no serious guarantee regarding when, if ever, full production will be made – even for those records which are mandatory components of the rulemaking file.

The rulemaking process requires good faith commitment to transparency and open public dialogue. The foregoing anomalies are obvious to any reasonable observer, and demand explanation. Please clarify or correct your January 7th responses immediately, or we will be compelled to seek the aid of the courts in obtaining the straight answers to which the public is entitled.

-Arthur J. Wylene  
General Counsel  
Rural County Representatives of California (RCRC)  
1215 K Street, Suite 1650  
Sacramento, CA 95814  
(916) 447-4806  
[awylene@rcrcnet.org](mailto:awylene@rcrcnet.org)

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**From:** Arthur J. Wylene

**Sent:** Tuesday, January 4, 2022 8:24 AM

**To:** Slaton, Jeffrey@BOF <Jeffrey.Slaton@bof.ca.gov>; Hannigan, Edith@BOF <edith.hannigan@bof.ca.gov>

**Cc:** Public Comments@BOF <PublicComments@bof.ca.gov>; Jessica.morse@resources.ca.gov; mark.tollefson@gov.ca.gov; gilless@berkeley.edu; shusari@comcast.net; darcy@ceaconsulting.com; miranda.flores@resources.ca.gov; mjani@mendoco.com; Tracy Rhine <trhine@rcrcnet.org>; John Kinsey <jkinsey@wjhattorneys.com>

**Subject:** RE: Further Response to Public Records Act Request Dated May 12, 2021

Dear Ms. Hannigan:

Thank you for your responses to our May 12, 2021 and December 5, 2021 Public Records Act requests. We appreciate your stated commitment to make meaningful production of documents by January 7, 2022 - earlier than originally proposed. We will review any records provided by that date, and determine if legal action remains necessary to compel compliance with the Public Records Act and Administrative Procedure Act.

With regard to your second point, as you may recall, our June 21, 2021 letter (attached for your reference) detailed several aspects of the Board's ongoing failure to comply with the applicable requirements of the Administrative Procedure Act. In addition to those concerns, the Board's refusal to make public all materials "that were (1) *submitted to* the agency, (2) *relied upon* by the agency, or (3) *required by law to be considered* by the agency" in connection with the adoption of the State Fire Safe Regulations, 2021, during the entirety of the applicable comment period(s), actively and prejudicially violates Government Code section 11347.3. (*POET, LLC v. State Air Resources Bd.* (2013) 218 Cal. App.4th 681, 746.) Specifically:

- Failure to make "available to the public for inspection" any emails or other writings pertaining to the "consultation with the Department of Food and Agriculture" referred to on Page 13 of the Supplemental Statement of Reasons unambiguously violates Section 11347.3, subdivision (b)(6). (*POET, supra*, 218 Cal.App.4th at p. 754.)
- Failure to produce any documents relating to CEQA compliance violates Section 11347.3, subdivision (b)(11), which mandates public availability of "[a]ny other information, statement, report, or data that the agency is required by law to consider or prepare in connection with the adoption, amendment, or repeal of a regulation" during the entirety of the comment period on the regulation. As acknowledged in the Initial Statement of Reasons, the Board is "required by law to consider" information pertaining to CEQA compliance in connection with this rulemaking, and such documents are thus mandatory components of the rulemaking file that must be "available to the public for inspection."

The Board is obligated to complete the rulemaking file by inclusion of these materials before the comment period is closed, and we demand that you do so. As you are likely aware, approval of the regulation without a complete rulemaking file would result in the invalidation of the regulation. (See *POET, supra*, 218 Cal.App.4th at p. 755.).

Finally, in accordance with the California Public Record Act, please promptly provide all of the following, to the extent that such records were generated after May 12, 2021. As the Board is presently in the process of compiling these very same materials for the period prior to May 12<sup>th</sup>, we anticipate that production of these incremental documents will not be unduly delayed – a matter of days, not more months.

- Any and all records pertaining to the Board of Forestry's compliance with, or exemption from, the California Environmental Quality Act in connection with the proposed "State Minimum Fire Safe Regulations, 2021."
- Any and all other records pertaining to the formal or informal drafting, creation, development, or consideration of the "State Minimum Fire Safe Regulations, 2021," including without limitation any internal or external correspondence, analysis, documentation, emails, or other records related to such efforts – excluding only those materials subject to the attorney-client privilege.
- Any and all communications, including emails, between the Board of Forestry and the California Natural Resources Agency, the California Department of Forestry and Fire Protection, or the Governor's office, pertaining to the proposed "State Minimum Fire Safe Regulations, 2021."

Thank you for your prompt consideration and response.

-Arthur J. Wylene  
 General Counsel  
 Rural County Representatives of California (RCRC)  
 1215 K Street, Suite 1650  
 Sacramento, CA 95814  
 (916) 447-4806  
[awylene@rcrcnet.org](mailto:awylene@rcrcnet.org)

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**From:** Slaton, Jeffrey@BOF <[Jeffrey.Slaton@bof.ca.gov](mailto:Jeffrey.Slaton@bof.ca.gov)>  
**Sent:** Monday, January 3, 2022 8:41 AM  
**To:** Arthur J. Wylene <[AWylene@rcrcnet.org](mailto:AWylene@rcrcnet.org)>  
**Cc:** Hannigan, Edith@BOF <[edith.hannigan@bof.ca.gov](mailto:edith.hannigan@bof.ca.gov)>; Slaton, Jeffrey@BOF <[Jeffrey.Slaton@bof.ca.gov](mailto:Jeffrey.Slaton@bof.ca.gov)>  
**Subject:** Further Response to Public Records Act Request Dated May 12, 2021

Dear Mr. Wylene,  
 On behalf of Executive Officer Hannigan, enclosed please find the Board of Forestry's supplemental response to your Public Records Act request dated May 12, 2021.

Thank you.

Jeff Slaton, Senior Board Counsel  
 Board of Forestry and Fire Protection

**From:** Arthur J. Wylene <[AWylene@rcrcnet.org](mailto:AWylene@rcrcnet.org)>  
**Sent:** Thursday, December 23, 2021 1:26 PM  
**To:** Slaton, Jeffrey@BOF <[Jeffrey.Slaton@bof.ca.gov](mailto:Jeffrey.Slaton@bof.ca.gov)>; Hannigan, Edith@BOF <[edith.hannigan@bof.ca.gov](mailto:edith.hannigan@bof.ca.gov)>  
**Cc:** Public Comments@BOF <[PublicComments@bof.ca.gov](mailto:PublicComments@bof.ca.gov)>; Morse, Jessica@CNRA <[Jessica.Morse@resources.ca.gov](mailto:Jessica.Morse@resources.ca.gov)>; [mark.tollefson@gov.ca.gov](mailto:mark.tollefson@gov.ca.gov); [gilless@berkeley.edu](mailto:gilless@berkeley.edu); [shusari@comcast.net](mailto:shusari@comcast.net); [darcy@ceaconsulting.com](mailto:darcy@ceaconsulting.com); Flores, Miranda@CNRA <[Miranda.Flores@resources.ca.gov](mailto:Miranda.Flores@resources.ca.gov)>; [mjani@mendoco.com](mailto:mjani@mendoco.com); Tracy Rhine <[TRhine@rcrcnet.org](mailto:TRhine@rcrcnet.org)>; John Kinsey <[kinsey@wjhattorneys.com](mailto:kinsey@wjhattorneys.com)>  
**Subject:** RE: Further Response to Public Records Act Request Dated May 12, 2021

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Dear Ms. Hannigan and Mr. Slaton:

Please see the attached response to your December 21<sup>st</sup> correspondence. Your attention is particularly directed to the final sentence: "It should not be necessary to file a lawsuit to secure timely public disclosure of records integral to the rulemaking process, but if RCRC has to do so, it will."

-Arthur J. Wylene  
General Counsel  
Rural County Representatives of California (RCRC)  
1215 K Street, Suite 1650  
Sacramento, CA 95814  
(916) 447-4806  
[awylene@rcrcnet.org](mailto:awylene@rcrcnet.org)

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**From:** Slaton, Jeffrey@BOF <[Jeffrey.Slaton@bof.ca.gov](mailto:Jeffrey.Slaton@bof.ca.gov)>  
**Sent:** Tuesday, December 21, 2021 4:31 PM  
**To:** Arthur J. Wylene <[AWylene@rcrcnet.org](mailto:AWylene@rcrcnet.org)>  
**Cc:** Public Comments@BOF <[PublicComments@bof.ca.gov](mailto:PublicComments@bof.ca.gov)>; Hannigan, Edith@BOF <[edith.hannigan@bof.ca.gov](mailto:edith.hannigan@bof.ca.gov)>  
**Subject:** Further Response to Public Records Act Request Dated May 12, 2021

Dear Mr. Wylene,  
On behalf of Executive Officer Hannigan, enclosed please find the Board of Forestry's supplemental response to your Public Records Act request dated May 12, 2021.

Thank you.

**Jeff Slaton, Senior Board Counsel  
Board of Forestry and Fire Protection**