

MEMORANDUM

Office of the County Counsel
Rubin E. Cruse, Jr., County Counsel

TO: Members of the Board of Supervisors
Lawrence G. Lees, County Executive Officer

FROM: Rubin E. Cruse, Jr., County Counsel

DATE: August 21, 2018

RE: Building Standards for Limited Density Owner-Built Rural Dwellings

As requested by the Board of Supervisors, the following is a summary of the law relating to the establishment of building standards for "Limited Density Owner-Built Rural Dwellings."

Please note that the information provided is in very general terms. This memorandum should not be considered as being an exhaustive legal analysis of the law in this area.

Also, this memorandum is being provided for informational purposes. It should not be construed as a recommendation either for or against the adoption of building standards for "Limited Density Owner-Built Rural Dwellings."

I. GENERAL RULES REGARDING BUILDING STANDARDS

- A. The State Legislature has expressed its intent to fully occupy the field of building standards. "Consequently, a local government is precluded from enacting building standards that differ from state standards, unless a state statute specifically authorizes the local government to do so." *Building Industry Assoc. v. City of Livermore*, 45 Cal. App. 4th 719 (1996).
- B. The State has authorized alternative building standards for "limited density owner-built rural dwellings" that are somewhat more flexible than the current state standards for other structures. Health & Safety Code § 17958.2. These alternative building code standards can be found in California Code of Regulations, title 25, sections 74 *et seq* (25 CCR §§ 74 *et seq*.) I shall refer to these as the "State Building Standards for Limited Density Owner-Built Rural Dwellings." Specifically:
 - 1. The State Building Standards for Limited Density Owner-Built Rural Dwellings will become operative in a County when the County makes an express finding that the application of those standards within the County is reasonably necessary

because of local conditions and the County files a copy of that finding with the State Department of Housing & Community Development. Health & Safety Code § 17958.2 (a).

2. A County may make changes or modifications in the State Building Standards for Limited Density Owner-Built Rural Dwellings when it determines the changes or modifications are reasonably necessary because of local conditions and the County files a copy of the changes or modifications and the express findings for the changes or modifications with the State Department of Housing & Community Development. No change or modification shall become effective or operative until the findings and the change or modification is filed with the State Department of Housing & Community Development. Health & Safety Code § 17958.2(b).

II. THE STATE BUILDING STANDARDS FOR LIMITED DENSITY OWNER-BUILT RURAL DWELLINGS

A. Definitions

1. “Limited density, rural dwelling” – This is any structure consisting of one or more habitable rooms intended or designed to be occupied by one family with facilities for living and sleeping with use restricted to rural areas. 25 CCR § 78.
2. “Rural” means those unincorporated areas of the County designated and zoned by the County for the application of the State Building Standards for Limited Density Owner- Built Rural Dwellings. In defining “rural,” the County shall consider local geographical or topographical conditions, conditions of general development as evidenced by population densities and availability of utilities or services, and such other conditions that the agency deems relevant to its determination. 25 CCR § 78. Suitable areas may include those wherein the predominate land usage is forestry, timber production, agriculture, grazing, recreation, or conservation. 25 CCR § 78.
3. “Owner-Built” shall mean constructed by any person or family who acts as the general contractor for, or the provider of, part or all of the labor necessary to build housing to be occupied as the principal residence of that person or family, and not intended for sale, lease, rent, or employee occupancy. 25 CCR § 78.
4. Several counties, such as Butte County, Mendocino County, and Amador County, further define “owner-built” as constructed by a general contractor licensed to practice in the State of California for occupancy by the person or persons owning the property at the time construction is commenced, and not intended for sale, lease, rent, or employee occupancy. *See* Butte County Code § 26-63; Mendocino County Code § 18.23.033; Amador County Code § 15.10.050.
5. **A dwelling constructed under these standards may not be sold, leased, rented, or employee occupied for at least one year after issuance of a Certificate of Occupancy.** 25 CCR § 78. A County may impose a longer time period if it determines that such longer period is necessary to ensure compliance with the intent of this law. 25 CCR § 82. For example, Butte County and Amador County

prohibit such sale, leasing, renting, or employee occupancy for a period of three years after issuance of a Certificate of Occupancy, except in cases of unreasonable hardship. Butte County Code § 26-63(c); Amador County Code § 15.10.050(C).

B. Purpose and Intent

1. **It is the purpose and intent of the State Building Standards for Limited Density Owner-Built Rural Dwellings (this “Article”) to permit the use of ingenuity and preferences of the builder, and to allow and facilitate the use of alternatives to the specifications prescribed by the uniform technical codes to the extent that a reasonable degree of health and safety is provided by such alternatives, and that the materials, methods of construction, and structural integrity of the structure shall perform in application for the purpose intended.** To provide for the application of this Article, it shall be necessary for the enforcement agency to exercise reasonable judgment in determining the compliance of appropriate structures with the general and specific requirements of this Article. 25 CCR § 124.
2. **Except as otherwise required by the State Building Standards for Limited Density Owner-Built Rural Dwellings, dwellings and appurtenant structures need not conform with the construction requirements prescribed by the latest applicable editions of the Uniform Building, Plumbing, and Mechanical Codes, the National Electrical Code, or other applicable technical codes; however, it is not the intent of this section to disregard nationally accepted technical and scientific principles relating to design, materials, methods of construction, and structural requirements for the erection and construction of dwelling and appurtenant structures as are contained in the uniform technical codes. Such codes shall be a basis for approval.** 25 CCR § 126.

C. Requirements in the State Building Standards for Limited Density Owner-Built Rural Dwellings

1. General Requirements

Each structure shall be constructed in accordance with applicable requirements in the State Building Standards Code that apply to Limited Density Owner-Built Rural Dwellings. Each structure shall be maintained in a sound structural condition to be safe, sanitary, and to shelter the occupants from the elements. 25 CCR § 122.

2. Construction Requirements

California Residential Code § R301.1.1.1 establishes the following construction requirements:

To meet compliance with the requirements of this code, provisions of Section R301.1.1.1, Items 1 through 5 may be utilized for limited-density owner-built rural dwellings when the materials, methods of construction, or

appliances are determined appropriate or suitable for their intended purpose by the local enforcing agency.

1. A limited-density owner-built rural dwelling may be of any type of construction which will provide for a sound structural condition. Structural hazards which result in an unsound condition and which may constitute a substandard building are delineated in Section 17920.3 of the Health and Safety Code.
2. There shall be no requirements for room dimensions as required in Chapter 3, provided there is adequate light and ventilation and means of egress.
3. There shall be no specified requirement for heating capacity or for temperature maintenance. The use of solid-fuel or solar heating devices shall be deemed as complying with the requirements of Chapter 3. If nonrenewable fuel is used in these dwellings, rooms so heated shall meet current installation standards.
4. Pier foundations, stone masonry footings and foundations, pressure-treated lumber, poles or equivalent foundation materials or designs may be used provided that bearing is sufficient.
5. Owner-produced or used materials and appliances may be utilized unless found not to be of sufficient strength or durability to perform the intended function. Owner-produced or used lumber, or shakes and shingles may be utilized unless found to contain dry rot, excessive splitting or other defects obviously rendering the material unfit in strength or durability for the intended purpose.

3. Mechanical Requirements

Fireplaces, heating and cooking appliances, and gas piping installed in buildings, shall be installed and vented in accordance with the applicable requirements contained in the California Mechanical Code, Part 4, Title 24, California Code of Regulations. 25 CCR § 128.

4. Electrical Requirements

- a. No dwelling shall be required to be connected to a source of electrical power, or wired, or otherwise, fitted for electrification, except as outlined below. 25 CCR § 130.
- b. Where electrical wiring or appliances are installed, the installation shall be in accordance with the applicable requirements contained in the California Electrical Code, Part 3, Title 24, California Code of Regulations. 25 CCR § 132.

- i. Exceptions to Installation Requirements. In structures where electrical usage is confined to one or more rooms of a structure, the remainder of the structure shall not be required to be wired or otherwise fitted for electrification unless the enforcement agency determines the electrical demands are expected to exceed the confinement and capacity of that room(s). In these instances, the enforcement agency may require further electrification of the structure.
- ii. It is the intent of this subsection to apply to buildings in which there exists a workshop, kitchen, or other single room which may require electrification, and where there is no expectation of further electrical demand. The enforcement agency shall, at the time of a permit application or other appropriate point, advise the applicant of the potential hazards of violating this section.

5. Plumbing Requirements

Plumbing equipment and installation shall be in accordance with the applicable requirements contained in the California Plumbing Code, Part 5, Title 24, California Code of Regulations applicable to the construction of limited density owner-built rural dwellings. 25 CCR § 134.

6. Temporary Occupancy

The use and occupancy of a portion or portions of a dwelling or appurtenant structure prior to the completion of the entire structure shall be allowed, provided that approved sanitary facilities are available at the site and that the work completed does not create any condition to an extent that endangers life, health or safety of the public or occupants. The occupants of any such uncompleted structure shall assume sole responsibility for the occupancy of the structure or portion thereof. 25 CCR § 118.

7. Change or Modification of These Requirements

The County may make changes or modifications in the State Building Standards for Limited Density Owner-Built Rural Dwellings when it determines the changes or modifications are reasonably necessary because of local conditions and the County files a copy of the changes or modifications and the express findings for the changes or modifications with the State Department of Housing & Community Development. No change or modification shall become effective or operative until the findings and the change or modification is filed with the State Department of Housing & Community Development. Health & Safety Code § 17958.2(b).

III. STATE REQUIRED STANDARDS GENERALLY NOT SUBJECT TO CHANGE OR MODIFICATION

There are several state imposed standards that are generally not subject to change or modification. While every attempt was made to locate such standards, it is possible there may be additional state standards not mentioned that also must be satisfied.

A. Fire Safety Standards

1. State Responsibility Areas, Very High Fire Hazard Areas Designated By the County, and Urban Wildland Interface Communities

- a. The construction of dwellings located in State Responsibility Areas shall comply with the “Materials and Construction Methods for Exterior Wildfire Exposure” found in California Building Code Chapter 7A and California Residential Code § 337. Public Resources Code § 4291(a)(7); Health & Safety Code § 13108.5. These requirements generally relate to roofing, exterior covering, and defensible space.
- b. The construction of dwellings located in areas identified by the County as “Very High Fire Hazard Severity Zones,” pursuant to Government Code § 51179, shall also comply with the “Materials and Construction Methods for Exterior Wildfire Exposure” found in California Building Code Chapter 7A and California Residential Code § 337. Government Code § 51182. As previously stated, these requirements generally relate to roofing, exterior covering, and defensible space.

“Very High Fire Hazard Severity Zones” are those areas outside the State Responsibility Area that Cal Fire has identified as “Very High Fire Hazard Severity Zones.” The County is required to designate, by ordinance, such identified areas as “Very High Fire Hazard Severity Zones.” Government Code § 51179(a).

The County may, however, exclude from these building code requirements in Government Code § 51182 an area identified as a Very High Fire Hazard Severity Zone, following a finding supported by substantial evidence in the record that those requirements are not necessary for effective fire protection within the area. Government Code § 51179(b).

- c. The construction of dwellings in “Urban Wildland Interface Communities” shall also comply with the “Materials and Construction Methods for Exterior Wildfire Exposure” found in California Building Code Chapter 7A and California Residential Code § 337. Health & Safety Code § 13108.5. As previously stated, these requirements generally relate to roofing, exterior covering, and defensible space.

An “Urban Wildland Interface Community” means a community listed in “Communities at Risk of WildFires,” produced by Cal Fire. Health & Safety Code § 13108.5.

A local agency may, at its discretion, exclude from the requirements of these building standards an Urban Wildland Interface Community in its jurisdiction following a finding supported by substantial evidence in the record at a public hearing that the requirements of these building standards are not necessary for effective fire protection within the area. Changes made by a local agency to an urban wildland interface community area following a finding supported by substantial evidence in the record shall be final and shall not be rebuttable. Health & Safety Code § 13108.5.

2. Fire Sprinklers

There does not appear to be a requirement that Fire Sprinklers be installed in new construction for “Limited Density Owner-Built Rural Dwellings.”

For example, both Mono County and Mendocino County specifically stated that “residential fire sprinklers shall not be required in limited density owner built rural dwellings.” Mono County Code § 15.50.140; Mendocino County Code § 18.23.345.

Also, Butte County only required fire sprinklers in limited density owner-built rural dwellings for residential structures greater than 1,200 square feet and exempted manufactured homes from this requirement. Butte County Code § 26-89.

B. Sanitation Standards

Onsite wastewater treatment systems are required to comply with the standards outlined in Health & Safety Code §§ 5410 *et seq.* and Water Code §§ 13290 *et seq.* The County may adopt and enforce additional regulations that do not conflict with these state law requirements relating to the disposal of sewage or other waste. Health & Safety Code § 5415; Water Code § 13291(d).

C. Well Construction Standards

The County is required to adopt a well construction ordinance “that meets or exceeds the standards” contained in Bulletin 74-81 from the State Department of Water Resources. Water Code § 13801.