

From: [McAulay, Tracy](#)
To: [Key, Lori](#); [Vlahakis, Brenden](#)
Subject: FW: Ventura County Board of Supervisor's October 11, 2022 Board Meeting: Agenda Item 42 First Reading of the Proposed 2022 County of Ventura Building Code (VCBC)
Date: Tuesday, October 11, 2022 8:21:58 AM

Hi Lori and Brenden,

I don't see your names on this list so I wanted to make sure you received it and were aware. It does include a few supervisors and other county staff but nobody from the COB.

Thank you.

Tracy McAulay

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Sent: Tuesday, October 11, 2022 8:10 AM
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Subject: Ventura County Board of Supervisor's October 11, 2022 Board Meeting: Agenda Item 42
First Reading of the Proposed 2022 County of Ventura Building Code (VCBC)

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Greetings,

I oppose the proposed VCBC as commented on below.

INTRODUCTION AND BACKGROUND

In 1970 the California Legislature approved the creation of a statewide uniform building code. This is referred to as California Building Standards Law (CBSL) that along with State Housing Law (SHL) governs the California Building Standards Code (BSC) and the California Building Standards Commission (CBSC). The primary findings and purpose was to address the lack of and high cost of housing. Uniformity was to *Baum Electric Co. v. City of Huntington Beach* [Civ. No. 12371, 4th App. 1973] pertaining to regulations, that "uniformity of codes throughout the State ... is a matter of statewide interest and concern since it would reduce housing costs and increase the efficiency of private housing construction industry and its production. "(Stats. 1970, ch. 1436, § 7.) Changes by local jurisdictions were allowed only for unique local conditions that were "reasonably necessary".

Around 1980 the California Legislature required the Department of Housing and Community Development (HCD) to investigate and report over a five year period of time whether local jurisdictions were complying with SHL and CBSL and if local changes to the BSC based on the "reasonably necessary" standard was being abused. Presumably HCD found sufficient abuse that in 1984 the Legislature amended the "reasonably necessary" standard by restricting building standards changes to climatic, topographical or geological conditions that were unique to a jurisdiction. The Legislature also added authority for the CBSC to reject local ordinances that changed the BSC without providing express findings for climatic, topographical or geological conditions (hereafter "express findings").

The next CBSL milestone was the change from the Uniform Building Codes (UBC) to the International Code Conference Codes (ICC) in 2007. There were significant differences between these model codes. For example, the ICC Building Code and BSC Part 2 Appendix J Grading were greatly reduced in scope. VC ignored this change and "carried forward" the UBC (with VCBC changes) Appendix 33 Grading. Also VC significantly expanded this Appendix which was approximately ten times the BSC's word count. In addition to the changes "carried

forward” from prior codes, the VCBC filed with the CBSC described many building standard changes as *administrative*. Other changes were not expressly marked and/or not identified as a change to the BSC. The ICC International Property Maintenance Code is also included in the VCBC without justification by express findings and housing that is regulated under HCD and statutorily excluded from the BSC and local ordinances.

In early 2017 the CBSC rejected the VCBC for changing a fence height from 7’ to 6’. VC described the change as *administrative*. This may be the first local ordinance to be rejected by CBSC. The VCBC was not filed and accepted until the Spring of 2019. In early 2020, the CBSC once again rejected the VCBC for lack of express findings.

In 2019 Presidential Executive Order 13878 was issued with the purpose of “ELIMINATING REGULATORY BARRIERS TO AFFORDABLE HOUSING,” the same intent as the 1970 CBSL to eliminate idiosyncratic local building codes and replace them with a statewide uniform code. California is even more aggressive in eliminating barriers to housing that are a root cause of homelessness. There are few counties in the US that could surpass VC’s many regulatory barriers to affordable housing such as the VCBC.

Over the years the County of Ventura (VC) has routinely violated SHL and CBSL. One method use was to describe changes as previously justified by express findings and the change was being carried forward to the new code cycle. There is no evidence this occurred. Another method of circumventing SHL and CBSL is to describe changes as *administrative*. This type change is highly restricted and applies only to local enforcement and appeal procedures, penalties and violation remedies and remediation. The 2019 VCBC listed almost 500 changes and described approximately 90% of them as ADMINISTRATIVE. Several of the changes were to code sections that contained many extremely different subsections or a list of definitions such as those in the California Building Code Part 2 Appendix J Grading.

COMMENTS

(1) Letter from Ruben Becerra to Board of Supervisors: The sentence on Page 3: “The building code currently in effect for Ventura County is the 2019 VCBC, which was adopted by the Board of Supervisors on November 5, 2019.” is false. The VCBC was rejected by the CBSC and until it is accepted for filing the operative code is the BSC Parts 1-13. Another sentence on the same page: “The new standards and amendments are intended to...maintain uniformity with nearby cities and counties.” At best, this is misleading. Many VC cities have building codes with extremely few, if any, changes to the BSC. On the other hand, jurisdictions such as the City of LA, County of LA, Long Beach, etc. have mind-numbing differences in their building codes and have ignored the concept of uniformity established by the Legislature in 1970. VC should follow cities such as Simi Valley and San Francisco who follow the BSC. If there’s any city or county in California justified to claim “unique and severe climatic, topographical and

geological conditions,” it would be San Francisco, but it’s chosen to comply with the law. The sentence on Page 6: “The 2021 International Property Maintenance Code is necessary for the enforcement of provisions to mitigate substandard buildings and unsafe conditions.” has not been adopted by the CBSC. This is probably because based on SHL the 1997 Uniform Housing Code governs with the exception of the definition of *substandard building* which is defined in SHL. There are numerous conflicts between the IPMC and SHL and the UHC. Also at Page 6: “Additionally, the 2022 VCBC will continue previously adopted amendments to the State codes for grading, private sewage disposal systems,....” This is similar to prior code cycles that described this as amendments “carried forward.” This implies these amendments were justified with express findings in the past. There is no evidence of this and is a reason the CBSC requires *all* amendments to have express findings for the new code cycle. This has not occurred for numerous building standards. Examples are cited below.

(2) EXHIBIT 2 The VCBC: At Page 8: Section 101.1.1.4 Amendments the sentence “In order to distinguish the amendments in the VCBC from the language in the model codes and the California codes, the Ventura County amendments have been shown in italicized font. This does not comply with SHL and CBSL that requires amendments to be “expressly marked.”

First, amendments are both additions and deletions. Italicized font only works for additions. Deletions, typically shown with a strike out line, are not shown. Deletions called out in Exhibit 3 do not comply with expressly marked and many deletions are not called out in Exhibit 3. For example, on Page 58 CBC Appendix J Grading Section J101.3 Special Flood Hazard Areas conceals deleted text related to significant issues such as the prohibition against fills in FLOODWAYS, etc. There are also errors in regular font for the State code and italicized font used for additions in the VCBC. Given the time consuming and tedious nature of uncovering these errors or intentional concealments, examples are all that time allows. The County must correct these errors throughout the VCBC.

(3) At Page 10 “Section 101.5 Authority. This Code is adopted pursuant to the statutory authority of Health and Safety Code Section 17910 et seq., known as the “State Housing Law.” It is further adopted in conformity with the provisions of Sections 50022.1 to 50022.10, inclusive, of the Government Code relating to the adoption of codes by reference.” This so called VCBC authority ignores the authority and required compliance with CBSL and in particular what building standards are. This by itself nullifies this Section. This is confirmed by the intent of Gov. Code Section 50022.2 and in *Deerings Government Code* Page 295 Cities and Counties, NOTES OF DECISIONS “1. Generally The State Housing Law expressly requires cities and counties to adopt its MINIMUM building standards, including those regarding grading and excavation. Cities and counties are required to adopt the Uniform Building Code and the California Building Standards Code, except that they may make such changes or modifications in the requirements of the CBSC as they determine are reasonably necessary because of local climatic, geological and topographical conditions. The legislature has clearly 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. *Leslie v. Superior Court* (1999, Cal App 2d Dist) 73 Cal App 4th 1042....”

It is shocking that in VC’s Board’s Resolution this very case is cited as its legal authority. Even more shocking is the fact that this case was centered on the very building code challenged herein. Finally, while this case did not fault the VCBC, the grading code was based on the more extensive UBC Appendix 33 Grading and was a shadow of the greatly expanded 2007 VCBC Appendix J Grading and proposed 2022 Appendix for Grading. The *Leslie* case also raises and/or establishes many other legal issues such as duplicating or contradicting general law (examples cited below), limits on police powers, “Local governments must adopt the UBC and CBSC pursuant to state law. They do not enact building codes pursuant to the constitutional grant of police powers.” Automatic application of the UBC (now the ICC) and CBSC when a local ordinance is not filed or in this case the rejection of the 2016 and 2019 VCBC, etc. *Briseno v. City of Santa Ana* (1992) addresses the same and other violations of SHL and CBSL such as the State adopted Uniform Housing Code and the lack of reasonable express findings at FN 3 and possible violations of federal fair housing laws by attempting to “pass another ordinance under the guise of local climatic, geological or topographical conditions....” The County must bring its VCBC into compliance with all applicable statutes and regulations.

(4) Exhibit 3 Express Findings of Need for Adoption of Local Amendments to the State Codes:

This Exhibit begins with four “express findings.” They are not in any way shape or form EXPRESS but rather GENERIC with the exception of the reference to the 1995 and 2005 La Conchita events. Parenthetically, the La Conchita geological condition cited is a perfect example of a unique condition that warrants increased minimum building standards for that specific area. However, such standards should not be applied to the entire VCBC jurisdiction. Such an approach would turn geological minimum standards into maximum standards for the entire County unincorporated area. Other than the tiny La Conchita area there is nothing remarkable about Ventura County compared to all the coastal counties and other than the coastline all counties in California. The BSC provides adequate minimum standards for extreme conditions that exceed those conditions found in VC. The only exception is the La Conchita area and the catastrophic 2005 event that is listed in the top 100 greatest landslides that have occurred over millions of years. Describing severe climatic, geological and topographical conditions one time and applying these to hundreds of extremely different building standards cannot possibly meet the legal standard of an EXPRESS finding(s). To the contrary they are generic and have been used to justify maximum standards. This has preempted the traditional role of architects and engineers to design buildings and structures based on specific project needs that often results in projects that far exceed minimum standards. In VC bureaucrats have usurped that role to the detriment of the public. VC needs to prepare specific express findings that apply to specific building standards that are reasonably necessary. This will greatly reduce the number of changes required if any.

PRELIMINARY CONCLUSION

The above is an overview of the most egregious violations of SHL and CBSL. This will be followed by additional comments over the next three weeks and prior to the second reading on November 1, 2022.

Regards,

Wayne Fishback