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**Re: Comments on Meaning of an Approved Wildfire Mitigation Plan**

**Introduction**

On June 25, 2020, the Wildfire Safety Division (“WSD”) invited comments regarding the 2020 Safety Certification process. The WSD referenced a May 6, 2020 letter in which the WSD provided initial guidance outlining submission requirements for 2020 Safety Certification requests pursuant to Public Utilities Code §8389(f)(2)<sup>1</sup>.

In the June 25, 2020 letter, WSD provided supplemental guidance, set forth immediately below, and invited comments thereon within 14 days of the submission of a utility’s request for a 2020 Safety Certification or issuance of the June 25 letter, whichever is later. The supplemental guidance by the WSD regarding documentation to satisfy the requirements of §8389(e)(1) is as follows:

2.b. Commission ratification of the Wildfire Safety Division’s approval of an electrical corporation’s 2020 Wildfire Mitigation Plan, subject to the conditions specified in Appendix A of the ratifying resolution, constitutes documentation of an approved WMP pursuant to Pub. Util. Code § 8389(e)(1).

**Issuance of a Safety Certification Requires an Approved Wildfire Mitigation Plan**

Section 8389(e)(1) provides, in relevant part, that the Executive Director of the Commission shall issue a safety certification to an electrical corporation if it provides documentation that, among other things, it has an “approved wildfire mitigation plan.”

The WSD is tasked with the disposition of wildfire mitigation plans submitted by electrical corporations (*i.e.*, investor-owned utilities, or IOUs). Section 8386.3(a) provides, in relevant part:

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<sup>1</sup> All statutory references are assumed to be to the California Public Utilities Code unless specifically stated otherwise.

*The Wildfire Safety Division shall approve or deny each wildfire mitigation plan and update submitted by an electrical corporation within three months, unless the division makes a written determination, including reasons supporting the determination, that the three-month deadline cannot be met. \* \* \* Before approval, the division may require modifications of the plan.* After approval by the division, the commission shall ratify the action of the division. (Emphasis supplied.)

In the conditional approval issued by the WSD, a list of the conditions of approval were included in Appendix A. In ratifying the conditional approval by WSD, the Commission stated:

There are three possible actions for the WSD and Commission response to any electrical corporation's WMP: approval, denial, or approval with conditions.<sup>2</sup>

Does a conditional approval of a wildfire mitigation plan ("WMP") satisfy the statutory provision in Section 8389(e)(1) that requires an electrical corporation have an "approved wildfire mitigation plan" in order to receive a Safety Certificate? Using various principles of statutory construction outlined below, BVES believes it does.

### **Principles of Statutory Construction**

In a recent decision, the Commission briefly described the California Supreme Court standards for courts or agencies construing a statute, stating that the Commission must:

. . . look to the statute's words and give them their usual and ordinary meaning. The statute's plain meaning controls the court's interpretation unless its words are ambiguous. If the statutory language permits more than one reasonable interpretation, courts may consider other aids, such as the statute's purpose, legislative history, and public policy . . .

Where more than one statutory construction is arguably possible, our policy has long been to favor construction that leads to the more reasonable result. This policy derives largely from the presumption that the Legislature intends reasonable results consistent with the apparent purpose of the Legislature.<sup>3</sup>

Strict interpretation of the letter of the statute, however, yields to a more fundamental rule of statutory construction. In *Marina Village v. California Coastal Zone Conservation Commission* (1976) 61 Cal.App.3d 338, 392, the court stated:

The primary rule of statutory construction, to which every other rule as to interpretation of particular terms must yield, is that the intention of the Legislature must be ascertained if possible, and when once ascertained, will be given effect, even though it may not be consistent with the strict letter of the statute.

A related statutory construction rule is that the statute must be construed as a whole. "The meaning of a statute may not be determined from a single word or sentence." (*Lakin v. Watkins Associated*

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<sup>2</sup> See, for example, Resolution WSD-005 at p. 1.

<sup>3</sup> D.17-06-026 at pp. 4-5, citing *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4<sup>th</sup> 381, 387-388. See also, e.g., *People v. Canty* (2004) 32 Cal.4<sup>th</sup> 1266, 1276; and *Lungren v. Deukmejian* (1988) 45 Cal.3d 27, 735.



*Industries* (1993) 6 Cal.4<sup>th</sup> 644, 659.) “[T]he words of a statute [must be construed] in context, . . . harmoniz[ing] the various parts of an enactment by considering the provision at issue in the context of the statutory framework as a whole.” (*Cummins, Inc. v. Superior Court*, (2005) 36 Cal.4<sup>th</sup> 478, 487.) Courts should avoid, if possible, a construction that renders any part of the statute meaningless or extraneous. (*Woosley v. State of California* (1992) 3 Cal.4<sup>th</sup> 758, 775-776.)

Applying these statutory construction rules, it is clear that conditional approval of WMPs is within the authority granted to the WSD and satisfies the requirement in Section 8389(e)(1) that an electrical corporation have an “approved wildfire mitigation plan” in order to receive a Safety Certificate.

### **The WSD Has Clear Statutory Authority to Modify a Wildfire Mitigation Plan.**

There can be no doubt that the WSD is given the authority to modify a wildfire mitigation plan. Section 8386.3(a) provides, in relevant part: “Before approval, the division may require modifications of the [wildfire mitigation] plan.” No interpretation is necessary. The words are unambiguous and meet the “plain meaning” statutory construction test.

Nor does Section 8386.3(a) state or imply any limitation on the scope or type of modifications the Division could require of a utility’s WMP. For example, the Legislature could have limited the scope or type of modification by including language such as “modifications of the objectives of the plan” or “modifications of the vegetation management program of the plan.” But the Legislature provided no such limitation on the WSD regarding the scope, extent or type of modifications it could require before approving a WMP. Indeed, after Section 8386(c) sets forth a long list of requirements that a utility must include in its plan, the Legislature granted the WSD the broad, discretionary authority to require that a WMP also include “any other information that the Division may require.”<sup>4</sup>

### **The Legislature Intended Approval of a WMP To Be Accomplished as Quickly as Practicable.**

As required by Section 8386(c), each utility’s WMP must include a substantial amount of information, resulting in WMPs that are quite lengthy and complex. In addition, Section 8386(d) requires the WSD to accept public comments on each plan. And finally, the Legislature requires the WSD to either approve or deny each plan within three months of its submission, unless the WSD makes a written determination of why the three-month deadline cannot be met.<sup>5</sup>

Notwithstanding the potential length and complexity of the large IOUs’ plans and the mandate to consider public comments, the Legislature required the entire review process to be completed relatively quickly. Clearly the Legislature intended that WMPs be reviewed and approved in as short a time period as administratively possible.

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<sup>4</sup> Section 8386(c)(22).

<sup>5</sup> Section 8386.3(a).

### Two Statutory Constructions of Achieving “Approval” Are Arguably Possible.

There are two sentences in Section 8386.3(a) that are central to the analysis of what constitutes “approval” of a WMP. They are: “The Wildfire Safety Division shall approval or deny each wildfire plan \* \* \* within three months \* \* \*.” and “Before approval, the division may require modifications of the plan.”

A literal reading of the first operative sentence, standing alone, could lead to the conclusion that the WSD has only two options regarding each WMP. Either approve it or deny it. However, that would render the second sentence, which grants the WSD the authority to require modifications of a WMP, meaningless. As noted above, the meaning of a statute may not be determined from a single sentence. It must be read in context, harmonizing the various parts of the statute (in this case, Section 8386.3(a)) in the context of the statutory framework as a whole. Construction of a statutory provision that renders any part of a statute meaningless or extraneous should be avoided, if possible.<sup>6</sup> Therefore, reading the two sentences together, it is clear that the first sentence of Section 8386.3(a) does not limit the Division to an “up or down” approval or denial of a WMP as submitted by an electrical corporation. The WSD may require modification of a WMP.

Focusing on the second operative sentence that reads “Before approval, the division may require modifications of the plan” the statutory construction focuses upon the phrase “Before approval”. How did the Legislature intend that phrase to be carried out?

There are two possible statutory constructions that are arguably possible here. First, it could be construed that the Legislature intended a two-step “before approval” process when the WSD requires modifications to a WMP. The first step would be requiring a utility to modify its WMP in accordance with WSD’s directions. Depending upon the complexity and scope of the required modifications, completing the required modifications and resubmitting the plan to the WSD for review could take several weeks, or possibly much longer. Under the two-stepped approval process, only after reviewing the modified WMP for compliance, which could take considerable time, could the WSD approve the WMP, as modified.

Although this two-step “before approval” process described above is consistent with the literal words of the statute, it runs counter to the Legislature’s desire to have the approval process completed in a relatively compressed time frame. Requiring a two-step process would increase the likelihood that the WSD would fail to meet the Legislature’s intent to complete the entire process within three months.

In addition, the longer the approval process takes, the longer the “old” WMP would remain in effect, and the longer it would be before the utility was bound by the “new” (presumably, improved) WMP.<sup>7</sup> This potential delay in approving a new, modified and improved WMP runs

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<sup>6</sup> *Woosley v. State of California*, supra.

<sup>7</sup> Section 8386.3(a) requires that the “old” approved plan shall remain in effect until the WSD approves a subsequent WMP.



counter to the Legislature's clear intent that the approval and implementation process of a new WMP be completed as quickly as possible.

A second possible statutory construction of the phrase "Before approval, the division may require modifications" is that the process is a one-step approval process, that contemplates two legal steps. That is, the WSD issues a conditional approval of a WMP. As a legal matter, the modification and approval is a two-step process. The utility must complete the required modifications (the first legal step) before the WSD approval is legally valid (the second legal step).

This one-step (conditional approval) approval process (but two-step legal process) achieves the same goal (approval of a modified WMP) as the two-step approval process, but does so in a manner that is more likely to accomplish the intent of the Legislature to complete the entire process within the statutorily-mandated three-month period. It also allows the "new" (modified) WMP to begin to be implemented sooner by the utility while simultaneously modifying its WMP in accordance with WSD's directions. This one-step approval process for a "new" WMP increases the likelihood that wildfire risks are being reduced sooner and more effectively than under the "old" WMP that must remain in effect until modifications are made, reviewed and finally approved under the two-step approval process.

Not only is the result of the one-step (conditional approval) process consistent with the Legislature's intent to complete the approval process as quickly as possible, it also is good public policy to promptly approve and implement new and improved WMPs to reduce the risks of wildfires as quickly as possible. Needlessly delaying the approval and implementation of enhanced WMPs would clearly be inconsistent with the intent of the Legislature.

### **Allowing Conditional Approval Is the Proper Statutory Construction**

Following the well-established statutory construction rules, the better interpretation of Section 8386.3(a) is that a WMP that has received conditional approval by the WSD satisfies the requirement of Section 8389(e)(1) requiring an "approved" Wildfire Mitigation Plan in order for a Safety Certificate to be issued.

Where, as here, there is arguably more than one statutory construction possible, the construction that leads to a more reasonable result<sup>8</sup> is the one that permits a "one-step" conditional approval process.

In addition, the statutory language indicating that the WSD shall "approve or deny" each WMP cannot be properly interpreted as excluding the authority of the WSD to conditionally approve a WMP because that interpretation would render another part of the same statute expressly allowing the WSD to modify a plan meaningless. The words of a statute must be construed in context, harmonizing the various parts of a statute.<sup>9</sup> The meaning of a statute may not be determined from a single sentence.<sup>10</sup>

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<sup>8</sup> Statutory construction should lead to the more reasonable result, when available. *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 387-833.

<sup>9</sup> *Cummins, Inc. v. Superior Court*, (2006) 39 Cal4th 478, 487.

<sup>10</sup> *Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 659.

And finally, the ultimate statutory construction rule is to determine, wherever possible, the intention of the Legislature and, once ascertained, interpret the statute in a manner that will give effect to the Legislature's intent even though it may not be consistent with the strict letter of the statute. Section 8386.3(a) clearly evidences the intent of the Legislature to grant plenary power in the WSD to modify and approve a WMP, but to do so in a timely fashion. Construing Section 8386.3(a) to grant the WSD authority to conditionally approve a WMP that would satisfy the requirements of Section 8389(e)(1) for an "approved wildfire mitigation plan" is the most reasonable way of construing these statutory provisions to effectuate the Legislature's clear intent.

### **Conclusion**

For the reasons set forth above, Bear Valley supports the Commission's position that the Wildfire Safety Division and the Commission have three possible actions to any electrical corporation's wildfire mitigation plan: approval, denial, or approval with conditions. A well-reasoned statutory construction supports the conclusion that a WMP conditionally approved satisfies the statutory requirement in Section 8389(e)(1) for an electrical corporation to have an "approved wildfire mitigation plan" for the purposes of receiving a Safety Certificate.

Respectfully submitted,

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