



A Tradition of Stewardship  
A Commitment to Service

**Planning, Building & Environmental Services**

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**David Morrison**  
Director

## MEMORANDUM

To: Board of Supervisors	From: Patrick Ryan – Deputy Director PBES
Date: May 16, 2022	Re: Correction to Comment Letter to BOF Administrative Item 11E – 22-1021 May 17, 2022, Agenda

Staff has found that additional clarification was needed to the comment letter relating to proposed rule changes to the State Minimum Fire Safe Regulation, Administrative Item 11E (22-1021), including grammatical and spelling errors found within the letter. As a result, staff amended portions of paragraph one (1) to provide more clarity and examples of impacts these draft regulations may create. Staff made additions to paragraph (2) to emphasize Napa County’s support of rules governing minimum fire safe regulations. In addition, revisions were made to correct grammatical and spelling errors found within the original letter.



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**Board of Supervisors**

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**Ryan Gregory**  
Chair

May 17, 2022

Chair J. Keith Gillless  
Member Mike Jani  
Member Rich Wade  
Member Katie Delbar  
Member Christopher Chase  
Member J. Lopez  
Member Elizabeth Forsburg Pardi  
State Board of Forestry and Fire Protection  
Post Office Box 944246  
Sacramento, CA 94244-2460

**RE: 15-Day Notice - State Minimum Fire Safe Regulations, 2021 [ver. April 29, 2022]**

Dear Chair Gillless and Board Members:

Thank you for the opportunity to once again comment on the latest modifications to the proposed State Minimum Fire Safe Regulations, 2021. While the scope of rule changes has been significantly narrowed from previous versions, the Napa County Board of Supervisors remains very concerned with the draft document released by the Board of Forestry and Fire Protection (BOFFP) for the 15-Day comment period. The Regulations as drafted will significantly change the rural landscape of Napa County by imposing unclear and cost prohibitive regulations. The proposed repeal of provisions providing relief from the regulations to construct Accessory Dwelling Units (ADUs) or reconstructing homes following wildfire will greatly impact affordable housing in lower and middle class communities. The imposed roadway standards may financially prohibit families from rebuilding or provide housing for family members, friends, students, the elderly, in-home health care providers, people with disabilities, and others. Additionally, the scope and application disproportionately impacts local agricultural processing and retail facilities, including wineries.

Napa County understands the importance for regulations establishing minimum wildfire protection standards. Napa County has experienced significant loss of life and property in recent years due to wildfire. Since 2017, nearly a dozen people have died in fires and over 10% of our housing in the unincorporated area has been destroyed. In 2020, over 40% of the County land area burned. There is a critical need to strengthen measures to ensure the safety of our residents, workers, and visitors. Thousands of homes and several communities are located within fire hazard areas. Approximately 73% of Napa County lies within the State Responsibility Area (SRA) and Local Responsibility Area (LRA) Very High Fire Hazard Severity Zone (VHFHSZ), and approximately 45% of Napa County falls within the boundary of a High or Very High Fire Hazard Severity Zone. However, we need to ensure that families displaced by wildfires are allowed to rebuild their homes, our existing neighborhoods and businesses are able to responsibly grow in the future, and our investment in the safe economic redevelopment of Lake Berryessa recreation is realized. Sensible standards are needed to protect the public while ensuring that new development greatly reduces the potential for widespread destruction.

Our specific comments on the draft regulations are as follows and are intended to provide recommendations and/or alternative language that would continue to provide for minimum wildfire

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District 1

**Ryan Gregory**  
District 2

**Diane Dillon**  
District 3

**Alfredo Pedroza**  
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District 5

protection standards, while allowing reasonable development to occur where protective measures can be taken:

1. Repealed Section 1270.01.(a) – Access:

The definition of “access” has been deleted as that term is no longer used in current draft Regulations. Although Napa County had concerns with the previous definition, not defining access at all would create inconsistent application throughout the State regarding which Roads would be evaluated when the Fire Safe Regulations are applied. To ensure consistency of application and provide reasonable requirements for safe ingress and egress the following alternative language is recommended.

Alternative Language:

§ 1270.01.(a) Access: The Roads on a route from a Building to the nearest Public Road or the Roads on a route from a Building to the nearest Road which is compliant with the standards provided in Article 2 or exempt pursuant to § 1270.03(b).

2. Repealed Section 1270.03.(c) – Applicability to ADUs

This provision had provided relief from the Regulations for the creation of accessory dwelling units (ADUs) that comply with Government Code section 65852.2 or 65852.22. Its repeal is now in conflict with State law to allow accessory dwelling units in applicable zoning to provide affordable housing options for family members, friends, students, the elderly, in-home health care providers, people with disabilities, and others. The result of omitting this exemption from the draft Regulations requires property owners to construct potentially expensive driveway and roadway improvements, which may be financially prohibitive if not impossible in some cases. The County strongly recommends that this section be amended back into the draft Regulations to exempt ADUs.

3. Amended Section 1270.03.(c) – Affected activities:

This provision is vague and subjective, requiring the local jurisdiction to interpret the threshold of affected activities. This approach will lead to inconsistent application across the state, and could lead to lengthy efforts regarding various interpretations in the courts, in the Legislature, and/or Board of Forestry staff to resolve in the years to come. Where public or private roads cross County lines, proposed development may face conflicting direction and requirements. Establishing the minimum threshold for when these Regulations apply should be straightforward so that both the public and local governments understand how they are to be applied. The current draft represents a step backward. This is fundamental; all other portions of the Regulations rely on when and how they may be applied. We strongly urge the Board of Forestry to adopt revised language to provide needed clarity.

Requested Language:

§ 1270.03.(c) The provisions of Article 2 and Article 3 shall apply to the following types of Building construction and development activities:

1. Permitting or approval of new parcels, excluding lot line adjustments as specified in Government Code (GC) section 66412(d);
2. Application for a building permit for new construction not related to an existing structure, excluding applications to rebuild a legally entitled structure following a natural disaster and/or new Accessory Dwelling Units;
3. Application for a change in use permit which proposes to increase use intensity or density that results in a change of 40 Average Daily Trips (ADT) or less; and
4. Road Construction including construction of a road that does not currently exist, or extension of an existing road.

4. Repealed Section 1270.08.– Reconstruction and Repair After a Fire:  
A total of 1,329 homes have been destroyed in Napa County by wildfire since 2017. To date, over 900 owners of destroyed homes have not yet filed an application to rebuild. The repeal of this provision providing relief to fire victims will prevent many of these families from rebuilding their homes and businesses. The minimum road requirements placed on wildfire survivors imposes additional financial burden on an already impacted community. In addition, the repealed section creates significant new obstacles to disaster-stricken areas struggling to recover, and could financially devastate community water, fire, and wastewater services that depend on re-establishing their customer base. Napa County strongly encourages the board to reconsider the repeal of this section and requests that the reconstruction exemption be applied to all disasters. Owners of structures that are devastated by earthquake, flood, landslide, or other event should have the same opportunity to rebuild as those affected by wildfire.

5. Section 1273.00.(b) – Purpose and Application :  
The new standards would apply to existing roads or driveways whenever there is a change in zoning or use permit that increases intensity or density in the High and Very High Fire Severity Hazard Zones. Voter adopted initiatives in Napa County already place strict limitations on the intensity of development within agriculturally zoned land, which makes up the vast majority of designated fire hazard areas.

The proposed Fire Safe Regulations do not define how to measure an increase in intensity or density. As currently written, the draft Fire Safe Regulations could be interpreted to mean that the addition of even one person, whether an employee or a visitor, or the construction of a new restroom facility would constitute an increase in density which then could require disproportionate and expensive road improvements. We request that the language be revised to define a de minimus threshold for intensity and density, such as equivalency equal to the four residences currently exempted in the draft regulations (the creation of two new parcels each of which may contain two new residences).

Requested Language:

§ 1273.00. Purpose and Application.

(c) The provisions of this Article and Article 3 (Signing and Building Numbering) shall further apply to any Existing Road, Driveway, or Road or Driveway Structure that provides Access to Building construction which includes

- (1) the permitting or approval of three (3) or more new parcels, excluding lot line adjustments as specified in Government Code (GC) section 66412(d); or
- (2) an application for a change of zoning which proposes to increase in zoning intensity or density that results in a change of 40 Average Daily Trips (ADT) or less; or
- (3) an application for a change in use permit which proposes to increase use intensity or density that results in a change of 40 Average Daily Trips (ADT) or less.

6. Amended Section 1273.08.(a) – Dead-End Roads:  
The language as drafted is confusing and would restrict future development along an existing dead-end road that already exceeds the maximum length. It would in essence institute a permanent moratorium along existing public and private roads that do not meet the maximum length standards. For consistency and not to overburden development on existing properties, it is recommended that this language be amended and include only new dead-end roads as proposed in previous drafts.

Requested Language:

§ 1273.08. Maximum Lengths of New Dead-end Roads

(a) The maximum length of a New Dead-end Road, shall not exceed the following cumulative lengths:

- 1) for Roads with parcels zoned not to exceed one (1) acre - 800 feet;
- 2) for Roads with parcels zoned-up to 4.99 acres - 1,320 feet;
- 3) for Roads with parcels zoned for 5 acres to 19.99 - 2,640 feet.
- 4) for Roads with parcels zoned 20 acres or larger - 5,280 feet.

7. Section 1276.02.(a) and (b) – Ridgelines:

These provisions require that the Local Jurisdiction designate Strategic Ridgelines where most new buildings would be prohibited. Earlier this year, the Napa Community Firewise Foundation completed an extensive process for developing a Community Wildfire Protection Plan (CWPP), in accordance with Federal Emergency Management Agency (FEMA) and US Fire Administration guidelines. Specifically, the CWPP does the following:

- Identifies areas of high hazard in which topography, fuel and weather create the potential for extreme fire behavior regardless of socio-political boundaries.
- Identifies where there is interest, willingness to participate and resources for preparedness and mitigation activities.
- Addresses structure ignitability.
- Protects at-risk communities and essential infrastructure.
- Prioritizes fuel reduction and recommends types and methods of treatment.
- Contributes to effective strategies for community outreach and education.

As indicated in the proposed regulations, not all ridgelines are strategic. Similarly, there are other areas in addition to ridgelines that provide important fire breaks and where fuel management is critical. Creating a new assessment of ridgelines appears redundant, when there is already a countywide plan that was prepared with dozens of stakeholders and has received millions of dollars in County funding to implement. We request that a CWPP be considered as fulfilling the requirement of identifying strategic ridgelines and that Local Jurisdictions that have prepared a CWPP be exempted from this provision.

Alternative Language:

§ 1276.02. Ridgelines.

(a) Unless the Local Jurisdiction has previously prepared a Community Wildfire Protection Plan (CWPP), the LJ shall identify strategic Ridgelines, if any, in consultation with the Fire Authority. Strategic Ridgelines shall be identified through an assessment of the following factors:

- (1) Topography;
- (2) Vegetation;
- (3) Proximity to any existing or proposed residential, commercial, or industrial land uses;
- (4) Ability to support effective fire suppression; and
- (5) Other factors, if any, deemed relevant by the Local Jurisdiction and Fire Authority.

Completion of the process to update the Fire Safe Regulations is long overdue. California is in its third year of severe drought and the fire danger in many parts of the state is already critical. Over 6,700 acres have already burned in 2022. It is imperative that the Board of Forestry take action, but it must be balanced and deliberate. California residents face a wide range of potential natural disasters, including: wildfire, earthquake, flood, landslide, tsunami, wind shear, lightning, snow storm, and tornado. In each of these cases, development standards have been created based on sound science and engineering to ensure the protection of nearly 40 million residents and to meet the needs of the world's 5<sup>th</sup> largest economy. These efforts have consistently recognized both the important role of local planning processes in achieving safe communities, and the need to balance these important goals with the equally critical – and often competing – housing and economic needs of the public.

Napa County supports the need for both greater protections under the revised Fire Safe Regulations and the ability of local government to take unique local conditions into account as a part of sensible and reasonable decision making. However, the proposed rules as currently drafted do not accomplish that goal. They remain inconsistent, unclear, and inflexible. While the need for timely action is acute, further amendments are needed to provide a better process that can be successfully implemented by landowners, local jurisdictions, and State agencies. We strongly urge the Board of Forestry and Fire Protection to expedite review of our recommendations and consider incorporating our requested changes into the draft Fire Safe Regulations before adoption.

Once again, thank you for the opportunity to offer our suggestions and comments on this extremely important issue.

Sincerely,

Ryan Gregory  
Chair, Napa County Board of Supervisors

cc: Wade Crowfoot, Secretary, Natural Resources Agency  
Edith Hannigan, Executive Director, Board of Forestry and Fire Protection  
Rhys Williams, Senior Advisor on Emergency Preparedness and Management, Office of the Governor  
Senator Bill Dodd  
Assemblymember Cecilia Aguiar-Curry  
Members, Napa County Board of Supervisors  
Minh Tran, Napa County Executive Officer  
Paul Yoder & Karen Lange, Shaw, Yoder, Antwih, Schmelzer, and Lange  
California State Association of Counties  
Rural County Representatives of California