



Napa County

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Legislation Text

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TO: Board of Supervisors
FROM: David Morrison - Director PBES
REPORT BY: Patrick Ryan - Deputy Director PBES
SUBJECT: 15-Day Notice for Public Comment - State Minimum Fire Safe Regulation, 2021

RECOMMENDATION

Director of Planning, Building and Environmental Services and County Fire Chief request approval of and authorization for the Chair to sign written comments relevant to the proposed regulatory action by the California State Board of Forestry and Fire Protection to adopt the State Minimum Fire Safe Regulations, 2021.

EXECUTIVE SUMMARY

On May 5, 2022, the California State Board of Forestry and Fire Protection (BOF) voted to publish its revised draft State Minimum Fire Safe Regulations (Regulations) for a 15-day public comment period, beginning on May 10 and ending on May 27, 2022. The modified text, released as part of the board meeting materials, is significantly narrowed from the previous version discussed by the BOF in January, largely limiting its focus to those specific items outlined in Senate Bill 901 (Chapter 626, Statutes of 2018), such as development requirements for fuel breaks, greenbelts, and ridgelines.

Procedural Requirements

1. Staff Report
2. Public Comment
3. Motion, second, discussion and vote on item.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact? No
County Strategic Plan pillar addressed: Effective and Open Government

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

Following a year of debate and review, on May 5, 2022, the California State Board of Forestry and Fire Protection (BOF) voted to publish its revised State Minimum Fire Safe Regulations proposal for a 15-day public comment period. The proposed changes to the Fire Safe Regulations have largely been drafted at the State level, with limited outreach over the past year to cities and counties who will be implementing the new requirements.

The proposed amendments narrow the scope of the proposed Regulations. The BOF now intends to limit changes to those needed to comply with the revisions to Public Resource Code (PRC) 4290 as amended by Senate Bill 901 (Dodd) and to improve the clarity of certain administrative processes within Article 1 of the existing regulations. The narrowed purpose of the proposed action is to:

- Establish standards for fuel breaks and greenbelts near communities;
- Establish measures for the preservation of undeveloped ridgelines;
- Improve clarity regarding the inspection and enforcement agencies;
- Promote local jurisdiction compliance with the Fire Safe Regulations and to clarify the process by which that occurs; and
- Increase the flexibility offered to local jurisdictions in implementing the minimum standards provided in the regulations.

By narrowing the revised draft Regulations, the BOF has eliminated several areas of concern raised by staff in earlier versions. However, the new changes have also eliminated many of the beneficial draft provisions that had been strongly supported by Napa County. As a result, this latest draft remains problematic. If adopted as currently drafted, the proposed action will have significant consequences for communities throughout the County and will create additional construction costs and potential environmental impacts.

Napa County has experienced extensive loss of life and property in recent years due to wildfires and staff acknowledges the critical need to strength measures to ensure the safety of our residents, workers, and visitors. Reasonable standards are needed to protect the public and reduce the potential for widespread destruction. At the same time, we also need to ensure that families displaced by wildfires are allowed to rebuild their homes without overly burdensome requirements and ensure that our existing communities and institutions can

continue and thrive in the future. Staff does not oppose the need for stronger Fire Safe Regulations; however, the proposed rule changes and the repeals of certain provisions do not provide the clarity or flexibility that should be expected from a year-long rule making process.

The following is a summary of the changes currently being proposed in the latest draft.

1. Section 1270.01.(a):

The definition of “access” has been deleted in its entirety. Although, staff 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. Where roads cross County boundaries, applicants and the public may receive conflicting direction from the two jurisdictions. Instead, staff recommends that roads be defined as the access route from a new building to the nearest public road or private road that meets standards.

2. Section 1270.03.(c):

This provision that exempted the construction of new accessory dwelling units (ADUs) has been eliminated. This would require that any owner seeking to provide affordable housing options for family members, friends, students, the elderly, in-home health care providers, people with disabilities, and others would have to comply with the Fire Safe Regulations. This may result in the need for potentially expensive driveway and roadway improvements, which may be financially prohibitive if not impossible in some cases. Staff recommends that this section be amended back into the draft Regulations to exempt ADUs.

3. Section 1270.03.(c):

The section that defines which activities are subject to the Fire Safe Regulations is very vague and subjective, requiring each local jurisdiction to make the determination of which permits are subject to the Regulations and under what circumstances. 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. Establishing the minimum threshold for when these Regulations apply should be straight-forward, so that applicants, neighbors, the community and local government all clearly understand when and how the Regulations should be applied. Staff recommends that the language be revised to provide needed clarity, by providing a specific list of activities where the Regulations are applicable.

4. Section 1270.08:

The section exempting the rebuilding of homes destroyed by wildfire has been eliminated. The repeal of this provision providing relief to fire victims will prevent many of these families from returning to 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. Staff recommends that the Regulations be amended to allow for the reconstruction of homes destroyed by all disasters, not just wildfire.

5. Section 1273.00.(b):

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. 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 extensive road improvements. Staff recommends 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, which would be defined as exceeding 40 Average Daily Trips (ADT).

6. Section 1273.08.(a):

The language as drafted regarding dead-end roads is confusing and may be extremely restrictive for future development along an existing dead-end road that already exceeds the maximum length. It would apply the dead-end road standards from the new building all the way to the nearest public road designated as a “collector” in the General Plan. This places the burden of improving access on private roads that may cross other properties as well as public roads on a single landowner. For consistency and not to overburden individual landowners, staff recommends that this language be amended to refer only to new dead-end roads as proposed in previous drafts.

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

These provisions require that the Local Jurisdiction designate Strategic Ridgelines where most new buildings would be prohibited. This will require significant amendments to the County Zoning Code to implement. 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. 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. 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. Staff recommends that the 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.

RECOMMENDATION

Only correspondence received during the public comment period, which runs from May 10 through May 27, will be accepted into the administrative record. Staff has prepared a draft letter from the Board of Supervisors to the State Board of Forestry regarding the proposed changes to the Fire Safe Regulations. The letter discusses the potential impacts that may be created by the new rules, as well as requested amendments to the draft regulations that would address some of Napa County’s specific concerns. Staff request approval of and authorization for the Chair to sign the draft letter and send it to the State Board of Forestry so that it may become part of the administrative record.