

## **Board of Forestry and Fire Protection**

### **SUPPLEMENTAL STATEMENT OF REASONS**

#### **“State Minimum Fire Safe Regulations, 2021” Title 14 of the California Code of Regulations (14 CCR), Division 1.5, Chapter 7, Subchapter 2, Articles 1-5**

The Board of Forestry and Fire Protection (Board) intends this Supplement to the Initial Statement of Reasons (ISOR) to reflect changes that have been made to the 45-Day proposed rule text and Initial Statement of Reasons, which was distributed on April 23, 2021, and the 15-Day proposed rule text and Supplemental Statement of Reasons distributed on January 3, 2022.

**SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT OR REPEAL (pursuant to GOV § 11346.2(b)(1)) AND THE RATIONALE FOR THE AGENCY’S DETERMINATION THAT EACH ADOPTION, AMENDMENT OR REPEAL IS REASONABLY NECESSARY TO CARRY OUT THE PURPOSE(S) OF THE STATUTE(S) OR OTHER PROVISIONS OF LAW THAT THE ACTION IS IMPLEMENTING, INTERPRETING OR MAKING SPECIFIC AND TO ADDRESS THE PROBLEM FOR WHICH IT IS PROPOSED (pursuant to GOV §§ 11346.2(b)(1) and 11349(a) and 1 CCR § 10(b)).**

#### **Narrowed Purpose**

The proposed amendments narrow the scope of the proposed action as described within the Initial Statement of Reasons. The Board now intends to simply promote compliance with the revisions to PRC 4290 within SB 901 (Chapter 626, 2018), 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;
- Increase the flexibility offered to local jurisdictions in implementing the minimum standards provided in these regulations.

#### **Related Emergency Regulations**

It should be noted that a portion of the proposed action was affected by existing emergency regulations (OAL MATTER No.’s 2020-0720-01E, 2021-0430-02EE, and 2021-1124-02EE), but which was unrelated to the purpose and necessity of the proposed action. Since the time of the adoption and readoption of the emergency regulations, the Board failed to file a certificate of compliance on the action and the emergency regulations were repealed by operation of law on March 8, 2022. The proposed rule text reflects these changes in order to promote the accuracy of regulations, but does not itself propose any amendment, adoption, repeal, or modification of any kind related to those emergency actions.

#### **Universal Changes**

Subsections were re-numbered or re-lettered as necessary to reflect the movement, deletion, or addition of regulatory text.

Defined terms were capitalized.

“Authority Having Jurisdiction” or “AHJ” was universally replaced with “Local Jurisdiction.” AHJ is no longer a defined term.

Repeal 1270.01(a)

The definition of “access” was deleted as that term is no longer in that specific defined capacity in the rule text.

Amend 1270.01(a) (previously b)

The Board no longer proposes changes to this definition.

Repeal 1270.01(c)

The definition of “authority having jurisdiction” was deleted because that term is no longer used in the rule text.

Repeal 1270.01(f)

The definition of “building construction” was deleted because that term is no longer used in that specific defined capacity in the rule text.

Repeal 1270.01(h)

The definition of “clear width” was deleted because that term is no longer used in the regulations.

Repeal 1270.01(i)

The term “collector road” was deleted because that term is no longer used in the regulations.

Amend 1270.01(f) (previously k)

The Board no longer proposes changes to the definition of “defensible space.”

Amend 1270.01(j) (previously o)

The Board no longer proposes changes to the definition of “exception.”

Repeal 1270.01(p)

The Board proposes to delete the term “existing” as it is no longer used in this specific defined capacity in the regulations.

Repeal 1270.01(q)

The Board proposes to delete the term “existing road” as it is no longer used in this specific defined capacity in the regulations.

Repeal 1270.01(r)

The Board proposes to delete the term “finished grade” as it is no longer used in these regulations.

Amend 1270.01(l) (previously p)

The Board proposes to adopt the previously noticed definition of “fire authority.” The phrase “in the Local Jurisdiction” was added to that previously noticed definition to specify that the Fire Authority that holds certain responsibilities with the Local Jurisdiction in which is the subject of this definition and how it is implemented elsewhere within these regulations. This adds clarity and specificity for the regulated public.

Amend 1270.01(o) (previously u)

The phrase “agricultural lands” was deleted from the definition of “greenbelts” and replaced with the

phrase “other areas” to add greater flexibility to the definition of greenbelts. In addition, including “agricultural lands” within this definition implied that local jurisdictions may force existing agricultural land to serve as fuel breaks, when that is not the lands’ intended purpose. This change promotes clarity of the promoted flexibility.

The term “AHJ” was replaced by “Local Jurisdiction,” as previously noticed in the 45-day rule text.

The clause “that may function as Fuel Breaks” was moved for general written grammar.

Amend 1270.01(s) (previously w)

The Board no longer proposes changes to the definition of “local jurisdiction.”

Repeal 1270.01(z)

The term “Local Responsibility Area” was deleted, as it is no longer used in the regulations.

Repeal 1270.01(aa)

The term “Local Road” was deleted as it is no longer used in the regulations.

Repeal 1270.01(cc)

The term “New” was deleted as it is no longer used in that specific defined capacity in these regulations.

Repeal 1270.01(ff)

The term “perimeter” was deleted as it is no longer used in that specific defined capacity in these regulations.

Repeal 1270.01(gg)

The term “repair” was deleted as it is no longer used in these regulations.

Amend 1270.01(w) (previously hh)

The Board no longer proposes changes to the definition of “residential unit,” except for the deletion of the phrase “for the purposes of mandatory measures required in 14 CCR 1270.01(c).” The term “residential unit” is relevant to more sections of the code than just 1270.01(c), which has also been renumbered. The application of this defined term throughout the regulations will improve clarity and certainty of implementation.

Amend 1270.01(z) (previously hh)

The Board no longer proposes changes to the definition of “road or driveway structures.”

Amend 1270.01(aa)

The Board no longer proposes changes to the definition of “Same practical effect.”

Amend 1270.01(dd)

The Board proposes to add a definition of “strategic ridgeline” for clarity. The process for identification of strategic ridgelines is enumerated in § 1276.02 but without a specific definition of “strategic ridgeline” it was unclear the purpose and goals of the identification process. This definition provides additional context and clarity to the Local Jurisdiction and Fire Authority regarding the purpose of identifying ridgelines as strategic, which will improve compliance with these regulations.

Repeal 1270.01(nn)

The defined term “substantial compliance” is no longer used in the regulations.

Repeal 1270.01(oo)

The defined term “substantial evidence” is no longer used in the regulations.

Amend 1270.01(ii) (previous ss)

The definition for “undeveloped ridgeline” was changed back to the 45-day noticed rule text. Please see the Initial Statement of Reasons for purpose and necessity.

Amend 1270.02 Purpose

There are no revisions to the existing, operative rule text in subsection (a) proposed in this 15-Day Notice, except to add commas for general written clarity.

The previously proposed language in subsection (b) is deleted and the existing operative rule text from 1270.01(b) as it is currently published in the CCR is retained in its entirety.

Subsection (c) is revised to reflect the existing operative rule text from 1270.01(c) as it is currently published in the CCR. The only change the Board proposes to maintain in this section is to add “Fuel Breaks, Greenbelts, and measures to preserve Undeveloped Ridgelines.” This change was addressed in the Initial Statement of Reasons.

The previously proposed language in subsection (d) is retained. Please see the Initial and Supplemental Statements of Reasons for purpose and necessity statements.

Amend 1270.03 Scope

The Board proposes no changes to subsection (a), which is retained in entirety from 1270.02(a) as it is currently published in the CCR.

The Board proposes no changes to subsection (b) in this 15-Day Notice, but retains an existing revision that was addressed in the Supplemental Statement of Reasons.

The Board proposes no changes to subsection (c), which is retained in entirety from 1270.02(c) as it is currently published in the CCR.

The Board proposes no changes to subsection (d) in this 15-Day Notice, but retains an existing revision, which were addressed in the Supplemental Statement of Reasons.

Amend 1270.04 (previously 1270.03)

This language is existing, operative rule text that was proposed for deletion in the 45-day noticed rule text. The Board no longer proposes any changes to this section.

Amend 1270.05 (previously 1270.04)

There are no changes proposed to the previously noticed rule text. Please see the Initial and Supplemental Statements of Reasons for purpose and necessity.

Amend 1270.05 Inspections (now 1270.06)

The Board proposes no changes to subsection (a) other than the retention of certain provisions which had been described within the Initial Statement of Reasons.

The Board proposes no changes to subsection (b) other than the retention of certain provisions which had been described in the Initial and Supplemental Statements of Reasons.

The Board proposes no changes to subsection (c) other than the retention of certain provisions which had been described in the Initial and Supplemental Statements of Reasons. Subsection (f) is existing operative rule text from 1270.05(d) that was proposed for deletion in the 45-day noticed rule text. The Board is no longer proposing any changes to or deletion of this provision.

Amend 1270.06 Exceptions (now 1270.07)

The Board is no longer proposing changes to this section.

#### Repeal 1271.00 Definitions

This existing rule text was mistakenly not indicated as proposed for deletion in the 45-day or first 15-day noticed rule text. The Definitions section was moved to 1270.01, since many definitions in this section are used throughout Article 1, so moving the definitions to the beginning of Article 1 provides greater clarity to the regulated public.

#### Article 2

The Board no longer proposes changes to this Article except those described in “universal changes.”

#### Article 3

The Board no longer proposes changes to this Article except those described in “universal changes.”

#### Article 4

##### 1275.00

The Board no longer proposes changes to this section.

##### 1275.01

The Board no longer proposes changes to this section.

##### 1275.03

The Board proposes one change to the operative rule text, to delete the term “fire valve.” Fire valve is no longer a defined term, so its use does not provide additional clarity to the regulated public. The previous definition of “fire valve” referenced the definition of “fire hydrant,” and circular cross references do not provide additional clarity in the regulations.

##### 1275.04

The Board no longer proposes changes to this section.

##### 1275.05

The Board no longer proposes adopting this section.

##### 1275.06

The Board no longer proposes adopting this section.

##### 1275.07

The Board no longer proposes adopting this section.

#### Article 5

##### Amend 1276.00

The Board proposes to add “strategic fuel modification, parcel siting and setback, and the protection of undeveloped ridgelines” to the existing, operative rule text, but otherwise make no other changes to this section. This added language reflects the adoption of regulations for fuel breaks, greenbelts (both covered by “fuel modification”) and ridgelines, all required by SB 901, and include the previously-omitted parcel siting and setbacks, which are also covered in this Article. This adds greater clarity and consistency to the regulations.

##### Amend 1276.01

Subsection (b)(4) was amended to allow the local jurisdiction to require, rather than request, the most

protective measures provided in the California Building Code. As this option is presented as an alternative to subsection (a), which is the requirement for 30 foot setbacks, it is appropriate that the local jurisdiction be given the authority to require the most protective measures rather than request in order to establish minimum fire safety standards. This promotes clarity regarding implementation to the regulated public.

#### Amend 1276.02

The phrase “to reduce fire risk and improved fire protection” was added to subsection (a). This phrase is provided for in the authorizing statute, PRC 4290, and specifies the purpose of preserving undeveloped ridgelines. Adding this language to the regulations provides increased clarity to the regulated public regarding the purpose of the regulations and greater consistency with statute.

A new subsection (a)(4) was added to specify that when determining strategic ridgelines, the Local Jurisdiction may consider whether construction activities and mass grading will alter the topography such that the ridgeline-related fire risks are eliminated. This was necessary because there are large construction projects, such as master-planned communities, that are constructed after ridgelines are graded (i.e., the movement of earth by mechanical means alters the gross topography so the topographical features are fundamentally changed and the ridgeline no longer exists). If the ridgeline no longer exists, the enhanced fire risk presented by the ridgeline no longer exists and the ridgeline does not qualify as either strategic or undeveloped. The previous proposed rule text did not accommodate situations where the ridgeline did pose a fire risk but construction would eliminate that risk. This provides greater flexibility and clarity to local agencies and the regulated public.

Subsection (c) was revised to reflect the rule text noticed in the initial 45-day notice period. The purpose and necessity statements for that change can be found in the Initial Statement of Reasons.

Subsection (c)(2) was revised for greater clarity regarding the types of infrastructure that is allowable on undeveloped ridgelines. The intention of this section was to allow, among other structures, telecommunications equipment, and the previously proposed language was not specific enough to clearly identify that equipment was allowable. Adding the relevant specific sections of Government Code describing this equipment adds greater clarity to the regulations.

Subsection (c)(3) was added to specifically allow a Local Jurisdiction to approve Buildings on ridgelines where mass grading eliminates the ridgeline risks. This specific language allows for situations where a ridgeline may have been designated as strategic, but construction that will result in mass grading will eliminate the ridgeline fire risks is proposed for that ridgeline. Since that construction would eliminate the fire risk associated with ridgelines, the ridgeline no longer needs to be preserved as undeveloped. This amendment is necessary to promote clarity to local agencies and the public regard how these certain activities may be approved on strategic ridgelines in a fashion which is not in conflict with the balance of the regulations and authorizing statute.

#### Amend 1276.03

Subsection (a) was revised to reflect the 45-day noticed rule text. Please see the Initial Statement of Reasons for purpose and necessity statements.

Subsections (b) and (c) were revised to require the Local Jurisdiction to consult with the Fire Authority regarding fuel breaks. The Local Jurisdiction is a broader term that may encompass a variety of government agencies, depending on the mechanics of project approval in any given jurisdiction, and the Fire Authority has specific, relevant experience regarding the design, location, and requirements of fuel breaks that the Local Jurisdiction should be incorporated into their decisions regarding fuel

breaks. This also provides consistency with subsection (a).

Subsection (d)(1) was revised to direct the reader to the definition of defensible space found in 14 CCR § 1299.02. This term is being used differently than how it is defined in 1270.01, so a cross reference to the specific definition used in this section was necessary. The purpose of this provision is to address connectivity between existing specific fuel modification requirements around certain structures and the amendment achieves clarity in this regard. The definition of Defensible Space as provided by section 1270.01 of these regulations does not clearly promote these ideas and is not suitable for use here. This amendment is necessary to provide appropriate clarity to the provision.

#### Amend 1276.04

The phrase “as part of a New Building Construction” was deleted from this section. The term “new building construction” is no longer a defined term, so this phrase no longer provides additional information to the regulated public.

Subsection (b) is proposed to be deleted. It was determined this provision was non regulatory in nature and therefor would create confusion among the regulated public.

#### Amend 1276.05

This section was amended to require the Local Jurisdiction to consult with the Fire Authority regarding the disposal of flammable vegetation and fuels caused by site construction. The Local Jurisdiction is a broader term that may encompass a variety of government agencies, depending on the mechanics of project approval in any given jurisdiction, and the Fire Authority has specific, relevant experience regarding how to best manage flammable vegetation that needs to be disposed of and the applicable rules and procedures which the Local Jurisdiction should incorporate into their disposal plans.