

June 8, 2021

Chair J. Keith Gillless,
Vice Chair Darcy Wheelles
Member Mike Jani
Member Rich Wade
Member Susan Husari
Member Katie Delbar
Member Christopher Chase
State Board of Forestry and Fire Protection
Post Office Box 944246
Sacramento, CA 94244-2460

RE: Proposed Revisions to the State Minimum Fire Safe Regulations

Dear Chair Gillless and Board Members:

Thank you for the opportunity to comment on the proposed revisions to the State Fire Safe Regulations. At this time, the Napa County Board of Supervisors wish to register our strong concerns with the draft document being considered by the Board of Forestry and Fire Protection (BOFFP) on June 22, 2021.

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. Last year alone, over 40% of the County burned. We acknowledge the critical need to strengthen measures to ensure the safety of our residents, workers, and visitors. At the same time, we also need to ensure that our families displaced by wildfires are allowed to rebuild their homes, our existing communities and institutions are able to be maintained and allowed to responsibly grow in the future, and our investment in the safe economic redevelopment of Lake Berryessa recreation is realized. Reasonable standards are needed to both protect the public and reduce the potential for widespread destruction. Our specific comments on the draft regulations are as follows:

1. Section 1270.01.(a) – Access:

The use of distance to a Collector Road in the proposed definition of Access is highly burdensome for rural development and will trigger significant improvements to public roads, including historic access corridors that were established and accepted by the local jurisdiction decades before minimum fire safe regulations were in effect. Napa County has very few Collector Roads that meet the standards in the draft regulations. We request that Access be redefined as: “The Roads on a route from a Building to the nearest public Road.”

Requested Language:

§ 1270.01. Definitions

The following definitions are applicable to this Subchapter.

(a) Access: The Roads on a route from a Building to the nearest **Collector
Public** Road.

2. Section 1270.01.(II) – Substantial Compliance:

The definition of Substantial Compliance is vague and subjective, requiring the local jurisdiction to interpret the threshold of what constitutes “nearly complete.” We request deleting the term “nearly complete,” leaving the decision on determining consistency with the purpose of the applicable FSR to the Fire authority and/or local jurisdiction.

Requested Language:

§ 1270.01. Definitions

(II) Substantial Compliance: ~~Nearly complete-~~The Fire Authority shall determine the extent to which satisfaction of all material requirements have been substantially satisfied consistent with the purpose of the applicable State Minimum Fire Safe Regulations even though the formal requirements are not satisfied.

3. Section 1270.03 - Effective Date:

The draft regulations are currently anticipated to take effect on July 1, 2021, with no grace period or consideration for projects currently pending. We request that the requirements be applied only to new discretionary or ministerial applications submitted after the effective date, or alternatively that pending applications be provided a reasonable period of time in which to come into compliance.

Requested Language:

§ 1270.03. Scope.

(a) These regulations shall apply to:

(1) the Perimeters and Access to all residential, commercial, and industrial Building construction within the SRA approved after January 1, 1991 and those approved permit applications submitted after July 1, 2021 within the VHFHSZ, except as set forth below in subsections (b), (c), (d), and (e) below.

4. Section 1270.06.(d) – Appeals:

Any appeal of an Exception to Standards would require a consultation with the Inspection Entity before a decision could be made on the appeal. This would create an extra step in the County appeal process and introduces new evidence after the fact, which would be unknown to the maker of the decision being appealed. We request that any consultation be made prior to the decision and that the Findings become a part of the decision that is then heard upon appeal.

Requested Language:

§ 1270.06. Exceptions to Standards.

(d) Exception decisions may be appealed. The Local Jurisdiction may establish or utilize an appeal process consistent with existing local Building or planning department appeal processes.

(1) In addition to local requirements, the Local Jurisdiction shall consult with the inspection entity prior to making a ~~determination on an appeal~~ decision on an Exception.

(2) The inspection entity shall provide documentation demonstrating how the requested Exception does or does not substantially comply with the standards in this Subchapter.

(e) If an appeal Exception is granted, the Local Jurisdiction shall make written findings of the Exception’s Substantial Compliance, as defined § 1270.01 (Definitions), with the minimum standards in this Subchapter, supported by

Substantial Evidence. Such findings shall include a written statement of reasons for overriding declining the decision recommendation of the inspection entity, if necessary. A written copy of these findings shall be provided to the Board and the CAL FIRE unit headquarters that administers SRA fire protection in that Local Jurisdiction, or in the county in which the Local Jurisdiction is located.

5. Section 1273.(c) – Scope:

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. As written, that could be the addition of even one person, which then could require a disproportionate cost of 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. 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. Section 1273.08.(a).(3) – Dead-End Roads:

The maximum length of dead-end roads serving parcels zoned for more than five acres to 2,640 feet (one-half mile). This would vastly expand the number of existing dead-end roads and affect hundreds of landowners not currently subject to this requirement. We request that the current maximum length of 5,280 feet for dead-end roads serving parcels zoned for 20 acres or more be retained.

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 or larger - 2,640 feet.

(4) for Roads with parcels zoned 20 acres or larger - 5,280 feet.

7. Section 1273.12.(b) – Rebuilding After A Wildfire:

Section 1270.03.(c) of the proposed draft regulations exempts the reconstruction or repair of a building due to wildfire from these regulations, so long as the work complies

with all of the following: (1) setbacks are not encroached upon; (2) the use of the building does not change; (3) the damage was caused by a wildfire; and (4) the legal character of the building is not altered. However, Section 1273.12.(b) states that all structures rebuilt after a wildfire are required to provide a driveway at least 14 feet in width for a distance of 22 feet, at an interval of every 400 feet. Alternatively, opportunities for vehicles to pass each other must be provided at reasonable intervals. The two sections are clearly in conflict.

The proposed requirement will prevent hundreds of families from returning to their homes and businesses, 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 the number of users. Insurance is unlikely to cover the additional costs of access improvements and the proposed regulations will create another substantial barrier to bringing our residents home. We request that the internal consistency be corrected by clearly exempting reconstruction that complies with the requirements of Section 1270.03.(c). In addition, we also request that the reconstruction exemption be applied to all disasters, and not limited just to wildfire. 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.

Requested Language:

§ 1273.12 Standards for Existing Roads

(b) Unless otherwise exempted under § 1270.03.(c) (Scope), Access to Buildings after a Wildfire Damaged or Destroyed by a Declared Disaster shall provide for at least one (1) fourteen (14) foot Traffic Lane for a distance of at least twenty-two (22) feet at an interval of at least every 400 feet; provided, however, where such Traffic Lanes are not possible due to physical site limitations such as localized topography, slope stability or soil conditions, Access shall provide for locations for vehicles to pass each other at reasonable intervals.

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

These provisions require that local jurisdictions designate Strategic Ridgelines where most new building construction 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 ignitibility.
- 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.

Requested Language:

§ 1276.02. Ridgelines.

(a) Unless the Local Jurisdiction has previously prepared a Community Wildfire Protection Plan (CWPP), ~~t~~The Local Jurisdiction 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.

It is our understanding that the draft Fire Safe Regulations will likely become effective on October 1, 2021. We appreciate the need for urgent action. Large parts of California, including Napa County, are already classified in Exceptional Drought. CalFire has indicated that the State has already seen an increase of more than 400% in the number of acres burned compared to this same time last year. This year has the potential to be another long and devastating fire season, and steps need to be taken quickly to limit the effects of any future disasters.

Although action is imperative, it also 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 5th 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 does not oppose the need for stronger Fire Safe Regulations. However, the proposed rules as currently drafted are inconsistent, unclear, and inflexible. 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 take the time necessary to thoroughly review 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,

Alfredo Pedroza
Chair, Napa County Board of Supervisors

cc: Matt Dias, Executive Director, Board of Forestry and Fire Protection
Wade Crowfoot, Secretary, Natural Resources Agency

Rhys Williams, Senior Advisor on Emergency Preparedness and Management, Office of the Governor
Edith Hannigan, Land Use Policy Planning Manager, Board of Forestry and Fire Protection
Senator Bill Dodd
Assembly member 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