



A Tradition of Stewardship
A Commitment to Service

Board of Supervisors

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Alfredo Pedroza
Chair

March 17, 2021

(via email)

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Member Rich Wade
Member Susan Husari
Member Marc Los Huertos
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:

On behalf of the Napa County Board of Supervisors, we wish to register our strong opposition to the March 15, 2021, draft of the Board of Forestry's (BOF) proposed Fire Safe Regulations revisions. The new regulations proposed by BOF staff will have dire consequences for many communities throughout the state, effectively prohibiting residential construction and business expansion in large parts of our counties.

Our specific comments on the draft regulations are as follows:

Section 1270.02: The draft regulations take effect immediately on July 1, 2021, with no grace period or consideration for projects currently pending. We recommend the requirements be applied only to new projects submitted after July 1 or that pending applications be provided a reasonable period of time in which to come into compliance.

Section 1270.03.(a).(1): 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 recommend that Access be redefined as: "The Roads on a route from a Building to the nearest public Road."

Section 1270.06.(b).(1): The definition of Substantial Compliance is vague and subjective, requiring the local jurisdiction to interpret the threshold of what constitutes "nearly complete." We recommend 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.

Section 1270.06.(d).(1): 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.

Section 1273.(c).(2) and (3): 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 recommend the language be revised to define a de minimus threshold for intensity and density, such as the Level of Service of the access serving the site, or an equivalency equal to the four residences currently exempted in the draft regulations.

Section 1273.12.(b): All buildings rebuilt after destruction due to a wildfire would be required to have driveways of 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 proposed requirement will prevent families from returning to their homes and businesses, impair recovery, and reduce the property tax base for community needs and services. We recommend that the fire rebuilds be allowed without improvements to the existing road or driveway where they meet the following requirement: “The Fire Authority has determined access was not a contributing factor in delaying or prohibiting emergency responders from accessing the original structure or for safe evacuation during the disaster and ensures reasonable ingress, egress, and capacity for evacuation and emergency response during future emergencies.”

Section 1273.08.(a).(3): 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 currently not subject to this requirement. We strongly recommend that the current maximum length of 5,280 feet for dead-end roads serving parcels zoned for 20 acres or more be retained.

Section 2773.13.(a): The requirement for secondary access on existing roads is unclear. We recommend that this language be redrafted to indicate under what circumstances an applicant may be required to develop a secondary access.

Section 1276.02.(a) and (b): These provisions require that local jurisdictions designate Strategic Ridgelines where most new building construction would be prohibited. Napa County has strict viewshed regulations to protect the open space vistas that our residents and visitors both highly value. The movement of new construction away from ridgelines to lower elevations will require changes in the County Code which may result in greater visual and aesthetic impacts. The prohibition of new residential or commercial construction over broad swaths of the County also raises the potential for takings claims.

Section 1276.03.(a).(3): Where a use permit proposes increasing use intensity or density the local jurisdiction must determine the need and location for fire breaks, in close proximity to structures, roads, and Hazardous Land Uses. Napa County strictly regulates grading and vegetation removal to prevent impacts to downstream water quality and wildlife. The expanded use of fire breaks will have to be reconciled with the County requirements to ensure that streams, reservoirs, drinking water supplies, and the environment are adequately protected.

In recent years, the Legislature has focused on creating progressive fire safe and wildfire risk reduction policies for the state. These efforts have consistently recognized both the important role of local planning processes in achieving fire safe communities, and the need to balance these important goals with the equally critical – and often competing – housing needs of our residents. Governor Newsom reiterated that point in his veto message for major fire planning legislation last year (Senate Bill 182), urging that “wildfire resilience must become a more consistent part of land use and development decisions. However, it must be done while meeting our housing needs.”

The proposed regulations would summarily deem many miles of existing public roads throughout the state “substandard,” and would require immensely costly upgrades as a condition of building or even rebuilding a single residential unit - at the property owner's expense. Prohibiting homebuilding in certain areas, or on certain roads, will

constrain housing production, unfairly burden individual property owners, and create substantial regulatory takings exposure. Napa County has lost over 1,300 homes in the past four years due to wildfire, over 10% of the unincorporated area's housing stock. Many of these owners are retired, with limited economic assets. The draft regulations would prevent hundreds of owners from ever returning home. In small communities, this would create a cascade effect, as the permanent loss of residents will drastically reduce operating revenues for sewer and water systems, leaving districts financially bankrupt and potentially displacing existing homeowners who were unaffected by the fire. As rural areas depopulate, they will also reduce funding for local fire stations, and eliminate participants in volunteer fire fighting and planning organizations, such as Fire Wise Councils. Contrary to their intent, the draft regulations will result in significantly impairing fire response in these areas, rather than enhancing it.

Equally onerous – and often infeasible – improvement requirements would apply to any change to a use permit or zoning if it involves even a minor increase in density or intensity. Hundreds of existing businesses in Napa County will be prevented from adding one new employee or adding even one customer, without facing hundreds of thousands of dollars in new driveway and public road improvements. Placing these extensive new costs and restrictions on small family-owned businesses, already reeling from the impacts of wildfire and the pandemic, will severely impact struggling owners, their employees, and other supply chain companies that rely on the continued future success of these businesses. BOF staff have not provided any assessment of the number of small businesses jeopardized by this proposal, but it is substantial, affecting nearly half of the wineries in Napa County.

More broadly, this regulatory proposal ignores the realities on the ground. There are unacknowledged environmental impacts of changing the width or grade of a road that have not been meaningfully considered at any point during the BOF's process. Increased storm water runoff, erosion, tree removal, loss of riparian areas, impacts to special status species, noise, traffic disruption, and even the temporary interruption or closure of evacuation routes are all effects resulting from the recommended regulations. There is clearly a need to broaden the drafting discussion to include the full range of subject matter experts with "on-the-ground" experience in local land use planning and administration.

BOF staff have repeatedly stated that the full impacts of the regulations are unknown, and that additional information is needed, but have nonetheless rushed this process forward. The March 15, 2021, draft was released at 5:30 PM. To be considered by the BOF, written comments have to be submitted by 12:00 PM on March 17, 2021. Interested parties have been provided less than 48 hours to analyze the extensive changes included in this latest revision and submit their thoughts and contributions to be heard by the BOF. We are told that comments can also be submitted during the 45-day rulemaking period, after the BOF has taken action to forward the regulations. Severely limiting the public's opportunity to review and express their detailed concerns about far-ranging rules that will adversely affect homeowners and businesses throughout California is not meaningful engagement, nor is it reflective of good governance.

Unfortunately, it appears the BOF lacks real interest in considering the concerns of those most involved and impacted by the regulations at the local level. At the March 3rd meeting, numerous representatives of local governments, local fire officials, and statewide associations all called on the Board to slow the process down, and engage in constructive stakeholder conversations before moving forward. The BOF ignored these requests, and directed staff to schedule a special meeting for the sole purpose of expediting Board action on the proposal. We hope the BOF reconsiders moving forward in this manner.

The draft Fire Safe Regulations will become applicable to portions of the Local Responsibility Area on July 1, 2021. We appreciate the need for urgent action. Large parts of California, including Napa County, are already classified in Extreme Drought. The state has already seen nearly a dozen fire events since January 1. Only yesterday, there was a 40-acre wildfire in neighboring Lake County. 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.

Many counties have been administering those regulations in the State Responsibility Area for years, and can apply those well-known rules in the LRA for a few more months without difficulty. Those existing provisions could indeed benefit from updating, if done in a deliberate fashion – but no provision of the governing law, nor any state policy mandates that BOF act in haste. The proposed changes the Fire Safe Regulations are lengthy, complex, and expansive, yet the Board is poised to make a decision on a proposal that was first released in draft form December 1, 2020, less than four months ago. We urge BOF take the necessary time to truly partner with local governments, and allow a robust discussion with all interested parties to ensure the development of balanced and responsible fire measures designed to protect our vulnerable communities rather than eliminate them.

Sincerely,



Alfredo Pedroza
Chair, Napa County Board of Supervisors

cc: Matt Dias, Executive Director, Board of Forestry
Wade Crowfoot, Secretary, Natural Resources Agency
Rhys Williams, Senior Advisor on Emergency Preparedness and Management, Office of the Governor
Edith Hannigan, Land Use Planning Manager, Board of Forestry
Senator Bill Dodd
Assembly member Cecilia Aguiar-Curry
Members, Napa County Board of Supervisors
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