



Legislation Details (With Board Report)

File #: 19-0308 **Name:** Fire Regulations for Defensible Space
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Title: a. Receive a report on Regulations Governing Fire Fuel Reduction for Defensible Space
b. Provide direction to staff
(Board Referral No: 2019.01)

Sponsors:

Indexes:

Code sections:

Attachments: 1. Board Report, 2. Attachment A - Basic Defensible Space Handout, 3. Attachment B - Wildland-Urban Interface, 4. Attachment C - Fire Fuel Hazard Areas and WUI, 5. Attachment D - Summary of Key Accomplishments under the PSA, 6. 11. Completed Board Order

Date	Ver.	Action By	Action	Result
5/7/2019	1	Board of Supervisors	approved - rma land use and community development	

a. Receive a report on Regulations Governing Fire Fuel Reduction for Defensible Space
b. Provide direction to staff
(Board Referral No: 2019.01)

RECOMMENDATION:

It is recommended that the Board of Supervisors

- a. Receive a report on Regulations Governing Fire Fuel Reduction for Defensible Space
- b. Provide direction to staff

SUMMARY:

Referral 2019.01: *Request is for a presentation to the Board on the applicable State and County regulations that govern fire fuel reduction for defensible space on private property and consideration of whether any changes may be warranted in the County’s regulations in this current era of fire hazards. Request is to complete update to the information and resources available on the RMA web page on Removal of Trees & Vegetation & Fire Management, for example by adding links to other agencies and resources.* In response to this referral, staff prepared this report to advise the Board about regulations that govern fire fuel reduction for defensible space on private property, and to seek direction if staff is to allocate resources for further action. The report considers if any changes should be considered on how the County’s regulations are communicated to the public, and reports on the accomplishments to date of the contract between the County and the Resource Conservation District of Monterey County (RCD). If further action is desired, staff requests direction on the level of priority for allocating resources.

Defensible space is the area around a home where vegetation is required by law to be managed to protect the home from a wildfire. Both County staff and the public are often challenged by the many federal, state, and local regulations governing fire fuel management on private property. Some of these regulations are not consistent and in certain cases conflict. For example, State fire regulations have been amended to increase setback requirements within which property owners are required to manage trees and vegetation to reduce fire

fuels. Amendments to the California Public Resources Code (PRC) Section 4291 requiring a 100-foot fire setback intersect with other regulatory standards (e.g. County Zoning, Endangered Species Act, Coastal Act, etc.).

As a result, some properties may not be able to obtain fire insurance because property owners cannot manage vegetation outside their property boundary or the area is protected by an easement/regulation. It should be noted that this conflict does not exist in all cases, as sometimes minimal vegetation trimming which could be allowed in easements would be an appropriate fuel mitigation approach. However, in the majority of cases where complete removal of vegetation is required, there would almost certainly be a conflict. Older developments are based on a 30-foot fire setback, so while those homes meet zoning setback requirements, they cannot meet amended/increased fire setbacks. In cases where lots were created prior to the PRC section 4291 setbacks, most of those properties may not be able to meet a 100+ foot setback and still be able to develop.

The policy question for the Board is how much vegetation clearance for fire fuel reduction should County allow property owners to undertake without permits/additional local regulation, versus how much regulatory oversight is required to assure compliance with existing County and State fire codes and local zoning requirements.

In an effort to achieve a regulatory balance, the RMA, working with Cal Fire, created a one-page handout, The Basic Defensible Space and Vegetation Management Guidelines for Property Owners (Attachment A), which describes what property owners can do to meet federal, state, and local defensible space requirements on their properties without obtaining a permit. The Guidelines, that are posted on the RMA website, could be improved by more clearly stating when County permits are required to remove/manage shrubs and trees, especially in Environmentally Sensitive Habitat Areas (ESHA) in the Coastal Zone. In addition, RMA held a meeting with arborists and tree removal companies to explain protocols for removing hazardous trees. This information, including a permit waiver form, is also located on the RMA website.

Over the past six months, the Resource Conservation District (RCD), in partnership with the RMA, has been very successful in leveraging County funds to obtain State and Federal grant funds for fire fuel reduction and prevention of forest fires, as well as, implement the objectives of the Community Wildfire Protection Plan (CWPP) and Cal Fire regulations. The Board approved funding for the RCD in August of 2018. The intent was to use the approved \$150,000 as seed funding for future year grant funding to sustain the program without general fund contribution. To date, nearly \$500,000 in grants have been awarded, and about \$90,000 of the County funding expended. These activities are summarized in Attachment D - RCD Summary of Key Accomplishments.

This report demonstrates that staff has been actively working to keep the public informed of defensible space management requirements. However, the complexity of government regulations require ongoing governmental oversight and communication. Potential conflict occurs over when, and where, people want to clear trees and forested areas without needing to involve government. Conflicts occur with resources and viewshed protection regulations at local, state and federal levels.

If the Board is seeking regulatory changes, development of new County regulations would add to the long range planning work program and/or involve legislative changes at the State and Federal level. Due to the complexity of the existing regulatory framework, drafting additional local regulations would also be a complex task. Staff recommends continuing as we have been doing to enhance the public's knowledge of fire fuel regulations on individual properties and to implement countywide fire management in an effective ecological manner.

DISCUSSION:

Background

Monterey County has a history of major wildfire events. Some more recent major events locally include:

2006 Rico Fire: 14,507 acres, one structure destroyed

2008 Basin Complex Fire: 162,818 acres, 58 structures destroyed

2008 Indians Fire: 81,378 acres

2008 Chalk Fire: 16,269 acres

2014 Pfeiffer Ridge Fire: 916 acres, 38 structures destroyed

2016 Chimney Fire (SLO/Monterey County): 46,344 acres, 78 structures destroyed

2016 Tassajara Fire: 1,086 acres, 20 structures destroyed, one fatality

2016 Soberanes Fire: 132,127 acres, 57 structures destroyed, one fatality

All fire fuel mitigation and wildfire prevention planning and programs are focused on preventing future wild fires and protecting lives, property and the natural ecosystem.

This discussion is divided into three sections:

- A. Federal, State, and County laws and regulations addressing fire fuel reduction and forest fires as applied to private property;
- B. How these regulations are applied to specific private properties and communicated via the RMA website;
- C. Outcomes to date and anticipated from the RMA/RCD contract to coordinate local, state and federal actions to reduce forest fires in the County.

REGULATIONS

Following is a brief summary of the relevant Federal, State and County regulations:

FEDERAL/STATE

Wildland-Urban Interface (WUI)

The WUI is the area where houses meet or intermingle with undeveloped wildland vegetation. It is a locus for human/environmental conflicts, such as destruction of homes by wildfires, habitat fragmentation, and biodiversity decline. Legally, the WUI is an area within or adjacent to an at-risk community that is identified in a Community Wildfire Protection Plan (CWPP). It also refers to areas not covered by the Monterey County Community Wildfire Protection Plan (MCCWPP) that extends ½ mile from the boundary of an at-risk community or 1 ½ miles from that boundary in areas of steep slopes, natural fire breaks or adjacent to evacuation routes. See **Attachment B** The Wildland-Urban Interface for a definition.

States and localities have adopted fire prevention regulations designed to reduce fire hazards within the WUI. These regulations focus on defensible space management around homes and enhanced building code construction requirements. Cal Fire has divided defensible space around homes into Zones 1 and 2. Zone 1 extends 30 feet out from buildings, structures, and decks.

In that area all dead vegetation is to be removed, live vegetation that could catch fire is to be removed from around and under decks and around lawn furniture and accessory structures.

Zone 2 extends out 100 feet from buildings, structures and decks. In this area, the property is to be managed to cut or mow grass to a maximum of 4 inches, create horizontal and vertical spacing between shrubs and trees, and remove fallen leaves, branches and needles. See **Attachment A -- Basic Defensible Space & Vegetation Management Guidelines for Property Owners**. Building Codes have been revised to require use of fire resistant materials. (CA Building Code Chapter 7A).

Monterey County Community Wildfire Protection Plan (MCCWPP)

The MCCWPP is the Board adopted (2010, updated in 2016) fire prevention policy plan developed by the Fire

Safe Council of Monterey (along with other partners) to create a planning tool for identifying and planning fire fuels projects in the County of Monterey and to help local communities reduce the risk from wildfire. It is derived from the Healthy Forests Restoration Act (2003), a federal law which, among other directions, prioritized and encouraged at-risk communities to develop such plans. The MCCWPP was written in a collaborative effort and features input and support from the United States Forest Service, the Bureau of Land Management, Monterey County Sheriff's Department, Monterey County Fire Chief's Association, CALFIRE and various regional, local and military fire agencies throughout the County. The Plan was adopted in 2010 and details several fire fuel hazard risk areas and reduction zones and geographically defines the WUIs for the County. See **Attachment C -- Fire Fuel Hazard Risk Areas and WUI**. It also details vegetation hazard reduction actions in defensible space across the County, as well as lists areas in the County that have or need fuel breaks, and strategic areas needing fuel/vegetation maintenance to reduce or potential for forest fires.

STATE/LOCAL

The State of California has recently amended state law to address forest fires and protect lives and property. In 2004 section 4291 of the Public Resources Code was amended to address defensible space. The 2004 amendment increased the minimum clearance (defensible space) requirement on properties in wildfire hazard areas from 30 feet to 100 feet, allowed jurisdictions to specify regulations beyond 100 feet, and allowed insurance companies to require homeowners to maintain firebreaks greater than 100 feet. The code exempts single trees, ornamental shrubbery or similar plants that would not transmit fire from native growth to a dwelling or structure.

These requirements were addressed in the CWPP and are summarized in **Attachment A**.

However, the California Coastal Act (CCA) (Public Resources Code section 30000 et seq) does not refer to PRC section 4291 or exempt fire fuel reduction actions from the Local Coastal Program designed to manage the conservation and development of the California coast. The CCA generally requires a coastal development permit (CDP) for all land development activities. The definition of "development" under the Coastal Act includes the removal or harvesting of major vegetation. The County has been delegated the CDP permitting authority through the Local Coastal Programs (LCP) adopted by the Board of Supervisors and certified by the Coastal Commission. The County's LCP divided its portion of the coastal zone into four separate coastal planning areas: Big Sur, North County, Carmel, and Del Monte Forest. Each coastal planning area has its own land use plan (LUP) and coastal implementation plan (CIP). Each has specific policies and requirements related to fire prevention and protection concerning tree and vegetation removal. Each policy also has language to protect visual resources at some level, which when analyzed against the potential for removal of large numbers of trees creates a potential policy conflict that must be weighed. Most specific, and restrictive of these scenic resource policies, is Section 3.2 of the Big Sur Land Use Plan - 'Scenic Resources'. The key policy of this section states that it is the County's policy to prohibit all future public or private development visible from Highway 1 and major public viewing areas (the critical viewshed), and to condition all new development in areas not visible from Highway 1 or major public viewing areas on the siting and design criteria set forth in Sections 3.2.3, 3.2.4, and 3.2.5 of the plan. This applies to all structures, the construction of public and private roads, utilities, lighting, grading and removal or extraction of natural materials. Generally, a CDP is not required for tree and vegetation removal if: the trees and vegetation are non-native, do not impact critical viewshed areas, pose a verifiable fire hazard, are less than 12" in diameter, and fire prevention actions do not disturb underlying soils. However, these determinations require verification and analysis for consistency with applicable plans and policies regarding scenic resources before an exemption from a CDP can be authorized.

California Endangered Species Act (CESA) and Native Plant Protection Act (NPPA)

These laws are designed to protect endangered animal or plant species. The NPPA grants authority to the Fish and Game Commission to adopt regulations to prevent the destruction of rare or endangered plant species. It

also provides exclusions from the NPPA regulation. Section 1912 of the Fish and Game Code states that the provisions of this chapter “shall not be applicable to emergency work necessary to protect life or property.” The NPPA also states: “The provisions of this chapter are not intended and shall not be construed as authorizing any public agency to mandate, prescribe or otherwise regulate management practices, including clearing of land for fire control measures.”(Section 1913).

California Environmental Quality Act (CEQA) (Public Resources Code sections 21000-21178)

A public agency must comply with CEQA when the agency undertakes an activity defined by CEQA as a "project." PRC section 21065 defines a "project" subject to CEQA as follows:

”Project’ means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following: (a) An activity directly undertaken by any public agency. (b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies. (c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.”

If the activity does not meet the definition of a "project" above, CEQA does not apply and CEQA analysis is not required. Even if the activity qualifies as a project, CEQA analysis may not be required if it is statutorily exempt or categorically exempt. For example, PRC section 21080(b)(4) and section 15269(c) of the CEQA Guidelines provide a statutory exemption for specific actions necessary to prevent or mitigate an emergency.

Class 4 categorical exemption, i.e., minor alteration to land, consists of minor public or private alterations in the condition of land, water, and/or vegetation. (CEQA Guidelines sec. 15304.) As relevant to fuel mitigation activities, subsection (i) of Class 4 states as follows: “Fuel management activities within 30 feet of structures to reduce the volume of flammable vegetation, provided that the activities will not result in the taking of endangered, rare, or threatened plant or animal species or significant erosion and sedimentation of surface waters. This exemption applies to fuel management activities within 100 feet of a structure if the public agency having fire protection responsibility for the area has determined that 100 feet of fuel clearance is required due to extra hazardous fire conditions.”

LOCAL

2010 General Plan

The 2010 General Plan recognizes the high risk of fire in Monterey County and the need to minimize that risk. To assure that the County is prepared to anticipate, respond and recover from fire emergencies, Monterey County adopted Policy S-5.1, which states as follows: “The County shall participate in developing emergency plans that provide preparation for, as well as a coordinated and effective response to, emergency and disaster events. Plans include, but are not limited to, a multi-jurisdictional Local Hazard Mitigation Plan (LHMP) and Community Wildfire Protection Plans (CWPPs).” The MCCWPP was drafted in anticipation of and pursuant to this policy.

Fire Hazards are addressed in Section S-4 of the Safety Element of the Plan through 33 policies. Of specific import to individual properties, the following policies state:

S-4.31 “A zone that can inhibit the spread of wildland fire shall be required of new development in fire hazard areas. Such zones shall consider irrigated greenbelts, streets, and/or Fuel Modification Zones in addition to other suitable methods that may be used to protect development. The County shall not preclude or discourage a landowner from modifying fuel within the Fuel Modification Zone, or accept any open space easement or other

easement over land within a Fuel Modification Zone that would have that effect.”

S-4.32 “Property owners in high, very high, and extreme fire hazard areas shall prepare an overall Fuel Modification Zone plan in conjunction with permits for new structures, subject to approval and to be performed in conjunction with the CDFFP and/or other fire protection agencies in compliance with State Law.”

S-4.33 “Where new developments are required to provide for fuel modification zones, the cost of such construction shall be borne by the developer. Future maintenance of such fuel modification zones shall be in accordance with the fire defense standards adopted by the State of California. Homeowners shall be responsible for said maintenance.”

In the Coastal zone, the certified Local Coastal Program, together with the Monterey County General Plan of 1982, are the governing General Plan.

Local Coastal Plan (LCP) - Resource protections provide for exceptions from coastal development permits for tree and vegetation removal for fire fuel management. Small (less than 12 inches in diameter) and large dead trees can be removed. (See previous CCA discussion). However, these practices result in slow erosion of the forest resource by removing seedlings and endangering future forestation, and potentially conflicting with scenic resource policies as discussed above.

APPLICATION OF THE REGULATIONS

Land use project which require land use entitlements, such as coastal administrative permits, coastal development permits, and use permits, depending on their location and use, require Landscape/Fuel Management Plans, Forest Management Plans, and Biological reports. Their intent is to manage the forest ecology in lieu of tree removal and replacement; while implementing all the various federal, state, and local regulations. However, these reports tend to focus on the immediate impact of the proposed development project, versus providing a long-term plan for on-going maintenance. Historically, these plans have been required as a condition of project approval where issues are addressed at each stage of the project. A more effective approach is the current practice of requiring forest management reports as a part of the development application, incorporating their recommendations into the project plans.

Concerning defensible space, the following procedures have been implemented by the RMA, and are posted on the RMA website for public information and guidance.

The Basic Defensible Space & Vegetation Management Guidelines for Property Owners found in Attachment B, provides guidance on what a property owner must do to protect the property from wildfires. The Guide also states that further vegetation management activities, including those required by insurance companies, may require prior approval from the Planning Department when activities involve tree removal, impacts on sensitive habitat, and activities that may cause soil erosion. Permit requirements for these activities are also provided on the RMA website.

In order to facilitate resolution of various vegetation management issues, RMA has developed a Fuel Management Plan that can be processed quickly over the RMA public counter, similar to a Landscape Plan. This plan allows staff to assess if the proposed vegetation changes are in conflict with the various regulations and policies as well as any use permits or conditions of approval on the property. Tree Waivers also allow over-the-counter issuance of a permit to remove hazardous trees. A letter from the local fire authority or an arborist completing a hazard assessment can determine if the tree qualifies as a hazard. RMA established a policy where the arborist cannot work for the company removing the tree because of the potential conflict of interest, motivated by the cost to remove trees. Staff has experienced challenges with some arborist reports where the arborist contends that a tree leaning downhill is a threat to a structure located a long distance up hill from the tree. Staff has also authorized removal of hazardous trees using photos sent electronically through a tree waiver after-the-fact permit - used in cases where County offices are closed. Staff uses a Hazardous Tree Assessment

Form checklist to determine if the trees in question are truly hazardous.

RCD Contract

In August of 2018 the Board of Supervisors approved a \$150,000 contract with the Resource Conservation District of Monterey County to provide staff and services to address a wide range of fire fuel mitigation issues and objectives. The contract was the culmination of many years of effort by the Fire Safe Council and other fire agencies to obtain resources necessary to implement the MCCWPP. The Fire Fuel Mitigation Coordinator was hired by the RCD in December of 2018 after an extensive search for appropriate personnel. The coordinator and additional RCD management are tasked by the contract to undertake a wide range of forest fire vegetation management programs to reduce the incidence of forest fires. These include coordination with the County Fire Safe community, fire fuel reduction project facilitation, grant writing and fund raising to enhance fire prevention, among other tasks.

To date the RCD, using matching funds from the County of \$150,000, has been awarded \$190,000 over three years from the USDA for forestry assistance. Several grants from Cal Fire in the amount of \$282,591 for fire prevention has just been awarded, and additional State Department of Conservation grants in excess of \$100,000 are anticipated. RCD has also partnered with RMA-Public Works in a LiDAR mapping (laser mapping) grant and right of way vegetation management grant applications of approximately \$1,000,000. The intent of the grant was to use the \$150,000 as seed funding for future year grant funding to sustain the program without general fund contribution. Contract activities as mentioned are successfully fulfilling the grant objectives. A list of detailed accomplishments is found in **Attachment D -- Summary of Key Accomplishments** under the PSA with Monterey County Resources Management Agency.

OTHER AGENCY INVOLVEMENT:

RMA- Planning

Resource Management District of Monterey County

Cal Fire

- Captain Gene Potkey - Land Use Planning
- Captain Kevin Lindo - Land Use Planning

FINANCIAL ANALYSIS:

Funding for staff time associated with bringing this resolution to the Board is included in the FY2018-19 Adopted Budget for RMA-Planning. The Board of Supervisors approved a \$150,000 contract with the Resource Conservation District of Monterey County to provide staff and services to address a wide range of fire fuel mitigation issues and objectives.

BOARD OF SUPERVISORS STRATEGIC INITIATIVE:

This action represents the next step in establishing robust policies regarding regulations that govern fire fuel reduction for defensible space on private property through vegetation removal. These policies will protect residents of Monterey County while balancing the intent of current land use policies surrounding scenic resources and habitat. This action benefits the safety, health, and well-being of Monterey County residents while also allowing for thoughtful management of natural resources in accordance with adopted regulations.

Check the related Board of Supervisors Strategic Initiatives:

Economic Development

Administration

Health & Human Services

Infrastructure

X Public Safety

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Approved by: Carl P. Holm, AICP, RMA Director

The following attachments are on file with the Clerk of the Board:

Attachment A - Defensible Space Handout

Attachment B - Wildland Urban Interface

Attachment C - Fire Fuel Hazard Areas and WUI

Attachment D - Summary of Key Accomplishments under the PSA