



# County of Monterey

Board of Supervisors  
Chambers  
168 W. Alisal St., 1st Floor  
Salinas, CA 93901

## Board Report

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**File #: 21-524, Version: 1**

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- a. Receive an update on proposed State Board of Forestry draft regulations amending State Minimum Fire Safe Regulations; and
- b. Approve and Authorize the Chair of the Board of Supervisors to sign and transmit a letter to the State Board of Forestry providing the County's comments on the draft amendments to the State Minimum Fire Safe Regulations.

### RECOMMENDATIONS

- a. Receive an update on proposed State Board of Forestry draft regulations amending State Minimum Fire Safe Regulations; and
- b. Approve and Authorize the Chair of the Board of Supervisors to sign and transmit a letter to the State Board of Forestry providing the County's comments on the draft amendments to the State Minimum Fire Safe Regulations.

### BACKGROUND

Wildfires are a serious risk to California communities in terms of health, safety, threat to life, loss of property, and impacts to the environment. These issues have gained a higher priority throughout the State after the destructive fires experienced over the past several years, including significant wildfires within Monterey County. Since 1991, lands located in the State Responsibility Area (SRA), an area where wildfire control responsibilities fall to the state, have been governed by regulations developed by the state Board of Forestry (BOF) and enforced by the California Department of Forestry and Fire Protection (CAL FIRE). These regulations largely address two issues: 1) on-site development (including defensible space, water supply, and driveways), and 2) access to the site (roads and bridges). The BOF staff have proposed modifications of these regulations, and County staff have been participating in the update process.

County staff recognize the serious threat that wildfires pose, and fully supports the underlying intent of State regulations to control development and mitigate wildfire impacts in high-risk zones. However, staff have identified issues with the State's impending draft regulations that would impact the County and private development.

The impending draft State Minimum Fire Safe Regulations impact current and future construction of public facilities and private development projects in the County. Private property owners and County roads are most likely to be affected. CAL FIRE has recently begun to strictly enforce existing BOF regulations for development in the SRA. Commencing July 1, 2021, per the passage of Senate Bill (SB) 901, the existing regulations will also apply to Very High Fire Hazard Severity Zones outside the SRA, which is referred to as the "local VHFHSZ." A figure showing the SRA and VHFHSZ in Monterey County is included as **Attachment A**.

### SUMMARY

The BOF is currently updating the regulations (**Attachment B-proposed regulations**) that would apply to the SRA and the VHFHSZ; the proposed updates would generally place greater restrictions on development than the current regulations. A State-mandated 45-day comment period for the proposed updates began on April 23, 2021. The BOF is accepting written comments on these regulations until June 22, when it will hold a

public hearing.

While the County supports the overall goal of providing safe development and evacuation in fire hazard areas, the current proposed rulemaking has many sections that are impractical, cause substantial burdens on local government, and could put the County in the position of denying private development projects resulting in exposure to takings litigation. Staff has worked in collaboration with RCRC (Rural County Representatives of California) and several counties to provide suggested edits to the regulations, which staff proposes that the Board convey along with a letter from the Board of Supervisors (**Attachment C**). The recommended changes would allow the regulations to be applied broadly, without a great number of exception requests, and would provide a set of regulations that protect the public while also providing significant improvement to regulations that can reduce fire risk and assist with safety during evacuation and firefighting.

### DISCUSSION

Since adoption of the regulations in 1991, CAL FIRE has not consistently enforced the regulations pertaining to site access, and the County could rely on locally adopted regulations, codified in Chapter 18.56 of the Monterey County Code, which had been certified by the Board of Forestry in the early 1990s. However, state regulations have been amended since the County's local ordinance was certified by the Board of Forestry, and recently, the state took the position that the state regulations superseded the local regulations to the extent the local regulations were not as stringent as the state's regulations. Many existing roads in the rural hillsides (both private and County-maintained) do not meet the road standards in the current regulations, such as road width and dead-end road length. The draft regulations are stricter than the existing regulations, and exacerbate that situation for any proposed development within the areas subject to the regulations.

The General Plan designates most of the high fire hazard areas for resource conservation or very low density uses, and has a number of policies that significantly limit the intensity of development allowed. Any road upgrades required by or resulting from the regulations could intensify real estate speculation for rural lot development and become growth inducing in areas that may otherwise be constrained.

Conversely, if these regulations are strictly enforced, new development in the affected areas would not be able to proceed without extremely costly off-site road improvements. Thus, the regulations could create a virtual moratorium on development in much of the rural hillsides, preventing certain expansions, prohibiting some new residential development, and limiting commercial development significantly. The hazardous fire zones tend to be mountainous areas where road construction is extremely expensive, has the potential to cause environmental damage, and would be costly to maintain even if the County could afford the construction costs. The road width standard, if enforced on new development on existing roads, would require that roads be widened to the new standards. While the latest draft of the regulations reduces staff's concern by including a new reduced "existing" road standard, instances would still remain where development would be precluded without significant improvements that are not affordable to individual property owners.

Staff has participated in BOF workshops on these draft regulations since they began last year. Some of the recent revisions to the draft regulations have eased some of staff's concerns. The earlier draft would have prohibited new development on lots served by existing roads less than 20 feet wide. Most county roads serving neighborhoods would not meet this requirement, causing property owners proposing development to either have to widen a public road or undergo an exception process. The current draft regulations

substantially improve this situation by requiring existing roads to meet only a 14 foot width standard. The earlier draft also reduced by half dead-end road length standards in place since 1991, which would have created a significant number of properties that meet the current standard but would not meet the proposed standard and render them potentially unbuildable.

The currently proposed regulations now establish a new standard for development proposed using an existing road and apply the dead-end road length standard only to new road construction. While these changes have made the proposed regulations more likely to be practical for use by local governments and fire authorities, the regulations still need clarification to reflect the stated Board of Forestry staff's intent, or could shift back to earlier draft language. As such, it is important that Monterey County provide comments supporting those changes and pointing out the practical problems with the current language. Additionally, the proposed standards for exception, for which the County would be the appeal authority, would be difficult to meet, which could result in exposure to litigation for either grant or denial of exceptions. RCRC and County support revision of the exception language to address this concern. In addition, the draft regulations still require changes throughout to ensure clarity and practical application at the local level.

The staff is concerned that implementation of the proposed amended fire safe regulations would have significant impacts upon the County road system and require developments to undertake improvements to existing roads disproportionate to the proposed development or potentially make development infeasible. Some of the more significant concerns that staff has identified with the proposed regulations are provided in the cover letter, and summarized here:

- The regulations should have an effective date that allows project applicants time to design their projects to the new regulations, rather than taking immediate effect.
- Application of the language as currently drafted could result in potential constitutional takings challenges related to proposed requirements for off-site road construction disproportionate to the impact of the development and prohibitions on development under certain circumstances. Staff has suggested text changes to address this concern.
- The exception process would create a substantial workload for county staff and local fire authorities, as well as cause significant uncertainty and costs for project applicants. The proposed exception standard could also result in exposure of the County to litigation. Staff has proposed changes that would significantly reduce the number of exceptions needed and make the exception standard more workable.
- The dead-end road standard is being reduced by half from the current regulations. The Board of Forestry has not provided any information that the existing regulations are ineffective. Changes would make any property that developed under the standard in effect since 1991 non-conforming and may have significant limitations for future development. Staff is suggesting that the current dead-end road length standards be retained.
- The strategic ridgelines section would not provide a useful process as drafted and, therefore, local jurisdictions would likely not identify strategic ridgelines. Staff recommends this provision be applicable only to new subdivisions so it can be designed into the project.
- Modified language suggested by county staff provides that environmental protection be considered in the review process.
- Where draft regulations were not clear, staff suggested modifications to clarify the intent of the regulation.

In addition to the above, a requirement that existing and proposed roads be no more than 50 percent native

material (unpaved) would cause properties along such roads to undergo an exception process. Monterey County has several areas where this requirement would affect new development, unless an exception were granted. If this category affects only a few properties, then perhaps using the exception process, if adopted as modified by county staff's recommendations, would be acceptable.

Overall, with our suggested modifications, the draft regulations would generally provide for safer neighborhoods through new construction and fuel reduction measures on more properties. New construction would meet significant site design requirements, construct to current fire resistant construction standards, more property owners would be in the area to reduce fuel load, more water supply would be provided, as would better ingress and egress, and potentially more safe locations for fighting fires would be in place.

Staff has attended all the public workshops held by the Board of Forestry over the last few months and has been working with several groups, including RCRC, to discuss issues common to development in unincorporated areas of the State. These groups have identified revisions to the draft regulations that would provide for health and safety, but avoid the need for a large number of exceptions, create more feasible -while still protective -- standards for new development, and reduce County's litigation exposure.

Staff has drafted a letter for Board consideration, **Attachment C**, which includes comments and recommended edits to the BOF's proposed amendments to the State Minimum Fire Safe Regulations to address these major areas of concern. Staff is recommending that the Board of Supervisors attach the revisions recommended from RCRC, which includes modifications by, and has concurrence from, Monterey County staff, as an exhibit to Monterey County's letter to the Board of Forestry. The letter requests that the regulations be written and implemented in a manner that allows judicious and proportionate improvements to existing roads to ensure safe access without the unintended consequences of growth inducement or a moratorium on development. Changes recommended by the Board of Supervisors, through today's actions, would provide regulations that meet public safety goals for property owners, the public, and first responders, avoid substantial expenses by property owners to improve public, off-site infrastructure or apply for exceptions, and reduce a significant staffing burden and potential liability placed by the proposed draft regulations on local government.

#### OTHER AGENCY INVOLVEMENT

Review of the draft regulations involved staff from Monterey County HCD, PWFP, Monterey County Regional Fire District, and the Office of the County Counsel. The draft letter (**Attachment C**) includes an exhibit with recommended modifications to the draft State Minimum Fire Safe Regulations (**Exhibit 1**), which has been developed in consultation with other counties, including organizations such as California State Association of Counties, the California County Planning Directors Association, and RCRC. Due to the coordination with these entities on proposed revisions to the regulations, the short length of the public comment period, and the board report preparation process, staff will provide the proposed revisions to the regulations (**Exhibit 1**) through the supplemental agenda.

#### FINANCING:

Staff time related to analyzing the draft regulations and preparing this letter are included in the Fiscal Year 2020 -21 Adopted Budget in the former Resource Management Agency General Fund Appropriation Unit RMA110 and County Counsel General Fund Appropriation COU001.

#### BOARD OF SUPERVISORS' STRATEGIC INITIATIVES:

If approved, the recommended action supports the Board of Supervisors' Strategic Initiatives for Economic Development, Infrastructure, and Health and Human Services. This action represents effective, timely response

to Housing and Community Development customers. The suggested modifications to the regulations would allow protection for the public safety, a significant reduction in potential infrastructure costs and environmental damage in mountainous areas, while allowing a minimal amount of development on existing property.

- Economic Development
  - Administration
  - Health & Human Services
- Infrastructure
- Public Safety

Prepared by: John Dugan, FAICP and Mike Novo, AICP

Approved by: Mike Novo, AICP, Interim Director of Housing and Community Development

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

**Attachment A** - Figure showing State Responsibility Area and Very High Fire Hazard Severity Zone (existing regulations applicable after July 1, 2021)

**Attachment B** - Draft Regulations from Board of Forestry

**Attachment C** - Draft letter from Board of Supervisors to State Board of Forestry Concerning Draft State Minimum Fire Safe Regulations

Exhibit 1 - Detailed revisions to State Minimum Fire Safe Regulations (prepared in collaboration with RCRC); provided by Supplemental Agenda.

cc: Gerry Malais, Monterey County OES; Dorothy Priolo, Monterey County Regional Fire District; Wendy Strimling, County Counsel; Robert Brayer, County Counsel; ; John Dugan, FAICP, HCD; Mike Novo, AICP, HCD; Erik Lundquist, AICP, HCD; Randy Ishii, PWFP; Chad Alinio, PWFP; Josh Bowling, HCD; Armando Fernandez, HCD; Erik Lundquist, HCD; Craig Spencer, HCD; Michael Waxer, AIA Monterey Bay; Permit Streamlining Task Force; Arthur Wylene, RCRC