



## Board Report

---

File #: 22-014, Version: 1

---

- a. Receive an update on proposed State Board of Forestry and Fire Protection 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 and Fire Protection 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 and Fire Protection 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 and Fire Protection providing the County's comments on the draft amendments to the State Minimum Fire Safe Regulations. (REF210021)

### 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 in which wildfire control responsibilities fall to the state, have been governed by state Board of Forestry and Fire Protection (BOF) regulations, which have been enforced by the California Department of Forestry and Fire Protection (CAL FIRE). These regulations largely address two issues: 1) on-site development (including structures, defensible space, water supply, and driveways), and 2) access to the site (roads and bridges). BOF staff have proposed modifications of these regulations (14 CCR 1270.00 et seq.); 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 current set of draft regulations, currently noticed for a 15-day comment period, that would impact the County and private development.

The impending draft State Minimum Fire Safe Regulations, 2021, impact current and future construction of public facilities and private development projects in the County. Private property owners and County roads are likely to be significantly 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 also apply to Very High Fire Hazard Severity Zones outside the SRA and within the Local Responsibility Area (LRA) ("local VHFHSZ in the LRA"). A figure showing the SRA and VHFHSZ in Monterey County is included as **Attachment A**.

Earlier versions of the draft regulations were provided to local governments. BOF staff have modified the draft regulations in response to over 300 comment letters provided during that round of review, including comments from the Monterey County Board of Supervisors. The Board of Supervisors authorized sending a letter on the March 2021 draft regulations in June of last year. (See **Attachment B**.)

## SUMMARY

The BOF is currently updating the regulations (**Attachment C-proposed regulations**) that would apply to both the SRA and the Very High Fire Hazard Severity Zone in the LRA; the proposed updates would generally place greater restrictions on development than current regulations. A state-mandated 45-day comment period for the proposed updates began on April 23, 2021 and concluded in June 2021. The BOF is accepting written comments on the latest draft with a new minimum 15-day comment period from January 3 through January 19, 2022. It is not clear from the notices provided when the BOF will conduct a hearing on the proposed regulations.

While the County supports BOF's goal of providing for safe development and evacuation in fire hazard areas, the current proposed rulemaking has many sections that are impractical, lack clarity, would substantially burden local government and/or private property, and/or could put the County in the position of denying all private development projects. Staff has collaborated with Rural County Representatives of California (RCRC) and several individual counties throughout the amendment process to provide suggested edits to the regulations. Staff now proposes that the Board support these proposed revisions by signing a letter to the BOF (**Attachment D**). The letter recommends changes that would result in clear, clean application of the regulations, obviating the need for most exception requests. The changes would also protect the public by potentially reducing fire risk and assisting with safety during evacuation and firefighting.

## DISCUSSION

Since adoption of the regulations in 1991, CAL FIRE has not consistently enforced their site access provisions. However, the County could safely rely on locally adopted regulations, codified in Chapter 18.56 of the Monterey County Code, which were certified by the BOF in the early 1990s. However, the BOF has amended its regulations since it certified the County's local ordinance, 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 current BOF road standards, such as road width and dead-end road length. Further, the draft regulations exacerbate this issue because they are stricter still and pose significant barriers to proposed development in the affected areas.

The Monterey County General Plan already designates most of the high fire hazard areas for resource conservation or very low density uses. The Plan also includes several policies that significantly limit the intensity of development allowed. Staff is concerned that implementation of the proposed amended fire safe regulations would have significant impacts upon the County road system and require development to improve existing roads disproportionate to the proposed development or even, in some cases, make development infeasible.

Some of the recent revisions to the draft regulations (2021) have eased some of these concerns. But other revisions have increased staff concerns by being opaque, requiring off-site improvements, and not providing sufficient due process. It is important that Monterey County provide comments supporting changes and point out the practical problems with the current language, both for our property owners and to protect our rural environment. Any road upgrades required by or resulting from the draft regulations could intensify real estate speculation for rural lot development and become growth inducing in areas that may otherwise be constrained.

If, as expected, these draft regulations (2021) are strictly enforced, most new development in the affected

areas, even construction of a single family dwelling on a vacant parcel, 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, prevent certain expansions, prohibit some new residential development, and significantly limit commercial development.

The latest draft of the regulations reduces staff's concern by including a new reduced "existing" road width standard that no longer requires widening of off-site roads for any development. However, that section is incomplete; it must be clarified to understand how this section is consistent with other sections of the proposed regulations. The draft regulation also may result in many instances in which development would be precluded without significant off-site road improvements that may be unaffordable for individual property owners. The hazardous fire zones tend to be hilly and 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. Additionally, the proposed road weight standard for existing roads, if enforced, would require that roads be reconstructed to the new standards.

The draft regulations also reduce by half dead-end road length standards in place since 1991. Although revised to apply only to new roads, this regulation would apply to all non-residential development that meet the current standard but would not meet the proposed standard and render those parcels potentially unbuildable or unable to expand.

The proposed standards for exception, for which the County may be the appeal authority (unclear in this draft), would be difficult to meet, which could result in exposure to litigation for either granting or denying exception requests. A new term, "Authority Having Jurisdiction," will cause uncertainty and disagreement about which entity is responsible for addressing appeals and for enforcing certain aspects of the revised regulations. In some cases, the use of the term makes sense, such as in Article 4, Water Supply. However, most of the other sections suffer from BOF's failure to clearly identify which agency oversees the implementation.

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

Staff has prepared a draft letter for Board of Supervisors' consideration (**Attachment D**). In addition to the concerns stated above, the letter identifies a lack of clarity in specific regulations, objects to the elimination of the exemption for all agriculture (now limited to harvesting of plants, while most of the area affected by these regulations is rangeland), and suggests improvements to internal consistency pertaining to development allowed on existing roads that would not meet proposed requirements.

Staff recommends that the Board of Supervisors request County participation in a land use working group, organized through RCRC, to work with BOF to finalize these draft regulations. The draft regulations could generally provide for safer neighborhoods through proper design of new construction and fuel reduction measures on more properties. New construction would meet significant site design requirements and conform to current fire resistant construction standards. Additionally, 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. Off-site improvements required for new construction must be proportional to the development proposed.

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. Information used to prepare the draft letter has been developed in consultation with other counties, including organizations such as California State Association of Counties, the California County Planning Directors Association, and Rural County Representatives of California. 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 may have to provide any proposed revisions to the regulations from other agencies, if any are provided, through the supplemental agenda.

#### FINANCING:

Staff time related to analyzing the draft regulations and preparing this letter are included in the Fiscal Year 2021-22 Adopted Budget in HCD General Fund Appropriation Unit HCD002, Unit 8543 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.

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

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

Approved by: Erik V. Lundquist, AICP, Director of Housing and Community Development

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

- Attachment A - Fire Hazard Severity Zones & State Responsibility Area and Local Responsibility Area
- Attachment B - Board of Supervisor Comment Letter sent in June 2021
- Attachment C - Proposed Regulations from Board of Forestry and Fire Protection
- Attachment D - Draft letter from Board of Supervisors to State Board of Forestry and Fire Protection  
Concerning Draft State Minimum Fire Safe Regulations

cc: Gerry Malais, Monterey County OES; Kevin Kamnikar, Monterey County Regional Fire District; 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; Craig Spencer, HCD; Michael Waxer, AIA Monterey Bay; Permit Streamlining Task Force; Arthur Wylene, RCRC