



To: Members of the RCRC Board of Directors
From: Tracy Rhine, Senior Legislative Advocate
Date: April 26, 2021
Re: Board of Forestry State Fire Safe Regulations Update

Summary

This memo provides an update on the Board of Forestry (BOF) revisions to the State Fire Safe Regulations (Regulations), and RCRC's ongoing efforts to ensure that fire-prone areas of the state are not precluded from commercial, industrial, or residential development.

Background

The purpose of the Regulations is to set forth basic wildfire protection standards for development in lands designated as State Responsibility Area (SRA) and, beginning July 1, 2021, the Very High Fire Hazard Severity Zones of the Local Responsibility Area (LRA). As authorized in Public Resources Code Section 4290, the Regulations include minimum standards for private water supply, road access, signage, and fuel breaks. Senate Bill 901 (Chapter 626, Statutes of 2018), expanded the scope of the Regulations to include LRA, and required the BOF to include provisions "...to preserve undeveloped ridgelines to reduce fire risk and improve fire protection."

Fire safe standards outlined in the Regulations apply generally to all building construction in the specified fire-prone areas of the state and requires the BOF to certify that the local fire safe ordinances equal or exceed the minimum standards set forth in the state Regulations and that the ordinances have the same practical effect as the provisions set forth in the Regulations. Alternatively, a local jurisdiction may defer to the BOF standards. Each time the Regulations are revised, local jurisdictions must apply for BOF ordinance recertification to ensure that the "same practical effect" threshold is met.

Legislation directing BOF to establish the Regulations was enacted in 1987, and subsequent legislation made the standards applicable to all residential, commercial and industrial building construction after January 1, 1991. The statute exempts developments that are approved prior to the operative date if certain conditions are met.

Issue

In April 2020, the BOF proposed an emergency rulemaking to amend the Regulations to exempt from the fire safe standards the construction of Accessory Dwelling Units (ADUs) and residential wildfire rebuilds. The proposal was also intended to require all roads and driveways constructed before 1991 to meet current state fire safe standards whenever

new building construction is proposed on that existing infrastructure. RCRC expressed strong opposition to the proposal. Ultimately, the emergency regulations were narrowed to exempt ADUs and specified wildfire rebuilds from fire safe standards and did not make changes to provisions related to building construction on pre-1991 roads. Those emergency regulations are still in effect and the BOF intends to submit notice of re-adoption to the Office of Administrative Law (OAL) on April 30, 2021. Emergency regulations are usually effective for 180 days; however, Governor Newsom's Executive Order N-71-20, issued June 30, 2020, extended by 60 additional days the deadlines that affect state agency rulemaking actions under the Administrative Procedure Act.

In August 2020, the BOF began public discussions on a comprehensive proposal to update the fire safe standards. After numerous BOF-hosted webinars to receive board member and public feedback on staff proposed concepts, an initial draft of regulatory changes was released on December 1, 2020. This draft made expansive changes to the Regulations, most notably requiring upgraded road “access” when there is any modification to a parcel, driveway, road, or structure that increases the number of residential units, commercial service capacity, or number of people on the premises of an industrial site. This draft proposal defined “access” to mean the ability to enter or approach a structure, including all roads from the fire station to the structure. Under this draft, in order to build a single residential home or increase service capacity of a business located on preexisting infrastructure, all roads (public and private) to the parcel would need to meet the current fire safe standards for width, grading, curves, bridge capacity, etc. All required upgrades would be at the expense of the property owner.

Following public and board member feedback, BOF staff released a revised draft of the rulemaking proposal on February 8, 2021, which attempted to address some core issues, such as upgraded road standards for offsite roads (those beyond the parcel). As outlined in the county coalition comment letter submitted to the BOF on February 18th, this version of the proposed Regulations would have created “no-build” areas throughout the state, prohibiting any building construction, including wildfire rebuilds and ADUs, on roads that do not meet the minimum threshold standards.

On March 22, 2021, the BOF considered a further revised draft proposal that was released to the public on March 15, 2021. Supervisors and county staff from 20 RCRC member counties made oral comments during the BOF board meeting, unanimously requesting that the BOF delay moving the proposal forward until it convenes a multidisciplinary working group of local government planning and fire safety experts to collaborate on the rulemaking language. Ultimately, the BOF approved the draft regulations for submission to OAL in a six to two vote.

The proposed rulemaking was published in the OAL Regulatory Notice Register on April 23, 2021, marking the beginning of the 45-day public comment period. The BOF has scheduled a regulatory hearing for June 22, 2021. All public comments must be received by the conclusion of the regulatory hearing to be considered as part of the official rulemaking record.

Staff Recommendation

RCRC staff will analyze the new regulatory proposal and work with other interested organizations to make comments on behalf of our member counties. RCRC staff will continue to update the RCRC Board of Directors as the process moves forward.

Attachments

- Proposed Fire Safe Regulations Text (Dated April 23, 2021)
- Initial Statement of Reasons (Dated April 23, 2021)
- Notice of Proposed Action (Dated April 23, 2021)
- County Coalition Comment Letter (Dated February 18, 2021)