

Board of Forestry and Fire Protection

NOTICE OF PROPOSED ACTION

“State Minimum Fire Safe Regulations, 2021”

**Title 14 of the California Code of Regulations (14 CCR),
Division 1.5, Chapter 7
Subchapter 2, Articles 1-5**

[Notice Published in the Notice Register April 23, 2021]

NATURE OF PROCEEDING

Notice is hereby given that the California State Board of Forestry and Fire Protection (Board) is proposing to take the action described in the Informative Digest.

PUBLIC HEARING

The Board will hold a public hearing on June 22, 2021, at 9:30am, via GoToWebinar. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a written summary of their statements. Additionally, pursuant to **Government Code (GOV) § 11125.1(b)**, writings that are public records pursuant to **GOV § 11125.1(a)** and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person.

[Hearing Registration Webpage](#)¹

Call in information (audio only): +1 (562) 247-8321; access code: 695-151-027

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at the conclusion of the public hearing on June 22, 2021.

The Board will consider only written comments received at the Board office by that time and those written comments received at the public hearing, including written comments submitted in connection with oral testimony at the public hearing. The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

¹ <https://attendee.gotowebinar.com/register/3650384515941113867>

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: Edith Hannigan
Land Use Planning Program Manager
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
Room 1506-14
1416 9th Street
Sacramento, CA 95814

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

PublicComments@BOF.ca.gov

AUTHORITY AND REFERENCE (pursuant to GOV § 11346.5(a)(2) and 1 CCR § 14) 14 CCR § 1122)

Authority cited: Section 4290, Public Resources Code. Reference: Sections 4102, 4126, 4127 and 4290, Public Resources Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW (pursuant to GOV 11346.5(a)(3)(A)-(D))

Pursuant to Public Resources Code (PRC) 4290, the Board is required to "...adopt regulations implementing minimum fire safety standards related to defensible space" applicable to "the perimeters and access to all residential, commercial, and industrial building construction." In 2018, the Legislature passed and the Governor signed SB 901 (Dodd), which expanded the applicability of the regulations promulgated under PRC 4290 to land in the Local Responsibility Area (LRA) Very High Fire Hazard Severity Zone (VHFHSZ). SB 901 also revised PRC 4290 to require the Board to more frequently update regulations relating to fuel breaks and greenbelts near communities, and to preserve undeveloped ridgelines to reduce fire risk and improve fire protection.

The regulations set certain minimum standards for structures, subdivisions and developments in State Responsibility Area (SRA) and LRA VHFHSZ and provide for

basic emergency access and perimeter wildfire protection, as well as standards for fuel breaks, greenbelts, and measures to protect undeveloped ridgelines. This proposed action amends the existing regulations for the purposes of addressing the general applicability of these standards; regulating fuel breaks and greenbelts near communities; including measures to protect undeveloped ridgelines; and improving regulatory clarity and ensuring the uniform implementation of wildfire protection standards association with residential, commercial, and industrial building construction.

The **problem** is that the regulations currently do not include measures to protect undeveloped ridgelines or standards for fuel breaks and greenbelts near communities. In addition, the regulations require updates for internal consistency and clarity. Processes for city and county compliance with the Fire Safe Regulations require amendments to address applicability, enforcement, and compliance in the LRA VHFHSZ. The regulations require greater specificity where and when local jurisdictions have flexibility when applying the Fire Safe Regulations in their communities and improvements to their general clarity.

The **purpose** of the proposed action is to

- Establish standards for fuel breaks and greenbelts near communities;
- Establish measures for the preservation of undeveloped ridgelines;
- Accurately reflect the applicable areas of the state where development may be subject to these regulations;
- Provide greater clarity regarding the types of development that may be subject to these regulations;
- Specify the conditions under which an existing road is subject to these minimum fire safety requirements;
- Reorganize the Fire Safe Regulations to reduce confusion and improve technical implementation and consistency;
- Reduce confusion regarding the inspection and enforcement agencies;
- Ensure definitions for these regulations are relevant, up to date, and consistent with their usage in the regulations;
- Promote local jurisdiction compliance with the Fire Safe Regulations and to clarify the process by which that occurs;
- Apply field-tested methods and industry-accepted computer-aided modeling to ingress and egress requirements; and
- Increase the flexibility offered to local jurisdictions in implementing the minimum standards provided in these regulations.

The **effect** of this proposed action is to establish standards for fuel breaks and greenbelts that protect communities; preserve undeveloped ridgelines; create clear, specific standards for where and when the regulations apply; amend the requirements for fire safe development for consistency and clarity; provide clearer lines of authority

and implementation processes; and create standards that reflect modern firefighting apparatus dimensions and fire prevention policy.

The primary **benefit** of the proposed action is the continued protection of new and existing development in the SRA and LRA VHFHSZ from wildfire. These protection measures will increase the safety of people and property by providing minimum fire safety standards related to defensible space that may allow them to escape an oncoming wildfire; allow firefighters to find, defend, and protect their property from a wildfire; prevent the ignition of property due to flying embers or structure-to-structure ignition; and to protect natural resources and the environment. The proposed action will also increase government efficiency through the reduction of duplicative or inconsistent regulations. The action will improve regulatory compliance through considering stakeholder feedback to clarify the standards and requirements.

There is no comparable Federal regulation or statute.

Board staff conducted an evaluation on whether or not the proposed action is inconsistent or incompatible with existing State regulations pursuant to **GOV § 11346.5(a)(3)(D)**. State regulations related to the proposed action were, in fact, relied upon in the development of the proposed action to ensure the consistency and compatibility of the proposed action with existing State regulations. Otherwise, Board staff evaluated the balance of existing State regulations related to defensible space for new construction in the SRA and LRA VHFHSZ and found no existing State regulations that met the same purpose as the proposed action. Based on this evaluation and effort, the Board has determined that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. The proposed regulation is entirely consistent and compatible with existing Board rules.

Statute to which the proposed action was compared: Sections 730, 4111, 4117, 4290, 4291, Public Resources Code; Sections 18001.8, 18007, 18008, 19970, 19971, 19976.1, Health and Safety Code.

Regulations to which the proposed action was compared: Article 3, Subchapter 3, Chapter 7, Division 1.5, Title 14, California Code of Regulations; Part 9, Title 24, California Code of Regulations.

Five documents are incorporated by reference in these regulations:

1. California Manual of Uniform Traffic Control Devices 2017 Revision 2
2. American Association of State Highway and Transportation Officials (AASHTO). 2018. A Policy on Geometric Design of Highways and Streets, 7th Edition.
3. National Fire Protection Association (NFPA), Standard 1142, "Standard on Water Supplies for Suburban and Rural Fire Fighting", 2017 ed.
4. US Federal Highway Administration "Highway Functional Classification Concepts, Criteria, and Procedures," 2013 Edition

5. American Association of State Highway and Transportation Officials (AASHTO) Standard Specifications for Highway Bridges, 17th Edition, published 2002

MANDATED BY FEDERAL LAW OR REGULATIONS

The proposed action is not mandated by Federal law or regulations.

The proposed action neither conflicts with nor duplicates Federal regulations.

There are no comparable Federal regulations related to defensible space requirements for protection of communities from wildfire in the SRA, LRA VHFHSZ, or otherwise. No existing Federal regulations meeting the same purpose as the proposed action were identified.

OTHER STATUTORY REQUIREMENTS (pursuant to GOV § 11346.5(a)(4))

There are no other matters as are prescribed by statute applicable to the specific State agency or to any specific regulation or class of regulations.

LOCAL MANDATE (pursuant to GOV § 11346.5(a)(5)).

The proposed action imposes a mandate on local agencies which is not reimbursable under Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

FISCAL IMPACT (pursuant to GOV § 11346.5(a)(6))

There is no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

A local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by the act, within the meaning of Section 17556 of the Government Code.

The proposed action will result in the imposition of other non-discretionary costs to local agencies, which can be financed from fees or revenues authorized by Section 66000 of the Government Code. The proposed action may result in savings to local agencies by slowing or stopping wildfire, through increased government efficiency, and the reduction of duplicative or inconsistent regulations.

The proposed action will not result in costs or savings in Federal funding to the State.

The proposed action will result in costs to State agencies which are absorbable in existing staff resources. The proposed action may result in savings to State agencies by slowing or stopping wildfire, increased government efficiency, and the reduction of duplicative or inconsistent regulations.

HOUSING COSTS (pursuant to GOV § 11346.5(a)(12))

The proposed action does not impact housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE (pursuant to GOV §§ 11346.3(a), 11346.5(a)(7) and 11346.5(a)(8))

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states (by making it costlier to produce goods or services in California).

FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR OTHER EVIDENCE RELIED UPON TO SUPPORT INITIAL DETERMINATION IN THE NOTICE THAT THE PROPOSED ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS (pursuant to GOV § 11346.2(b)(5) and GOV § 11346.5(a)(8))

Contemplation by the Board of the economic impact of the provisions of the proposed action through the lens of the decades of contemplating fire safe development in California that the Board brings to bear on regulatory development.

STATEMENTS OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT (EIA)

The results of the economic impact assessment are provided below pursuant to **GOV § 11346.5(a)(10)** and prepared pursuant to **GOV § 11346.3(b)(1)(A)-(D)**. The proposed action:

- Will not create jobs within California (GOV § 11346.3(b)(1)(A)).
- Will not eliminate jobs within California (GOV § 11346.3(b)(1)(A)).
- Will not create new businesses (GOV § 11346.3(b)(1)(B)).
- Will not eliminate existing businesses within California (GOV § 11346.3(b)(1)(B)).
- Will not affect the expansion or contraction of businesses currently doing business within California (GOV § 11346.3(b)(1)(C)).
- Will yield nonmonetary benefits (GOV § 11346.3(b)(1)(D)). For additional information on the benefits of the proposed regulation, please see anticipated benefits found under the “Introduction Including Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulation is Intended to Address.”

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS (pursuant to GOV § 11346.5(a)(9))

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. These regulations represent minimum standards for fire safe development and to not compel any action on the part of a representative person or business.

BUSINESS REPORT (pursuant to GOV §§ 11346.5(a)(11) and 11346.3(d))

The proposed action does not impose a business reporting requirement.

SMALL BUSINESS (defined in GOV 11342.610)

Small businesses, within the meaning of GOV § 11342.610, are not expected to be affected by the proposed action.

Small business, pursuant to 1 CCR § 4(a):

- (1) Is legally required to comply with the regulation;
- (2) Is not legally required to enforce the regulation;
- (3) Does not derive a benefit from the enforcement of the regulation;
- (4) May incur a detriment from the enforcement of the regulation if they do not comply with the regulation.

ALTERNATIVES INFORMATION

In accordance with **GOV § 11346.5(a)(13)**, the Board must determine that no reasonable alternative it considers, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the Initial Statement of Reasons, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection
Attn: Edith Hannigan
Land Use Planning Program Manager
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 653-8007

The designated backup person in the event Ms. Hannigan is not available is Matt Dias, Executive Officer for the Board of Forestry and Fire Protection. Mr. Dias may be contacted at the above address or phone.

AVAILABILITY STATEMENTS (pursuant to GOV § 11346.5(a) (16), (18))

All of the following are available from the contact person:

- 1. Express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion.
- 2. Initial Statement of Reasons, which includes a statement of the specific purpose of each adoption, amendment, or repeal, the problem the Board is addressing, and the rationale for the determination by the Board that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem for which it is proposed.

3. The information upon which the proposed action is based (pursuant to **GOV § 11346.5(b)**).
4. Changed or modified text. After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who testified at the hearings, submitted comments during the public comment period, including written and oral comments received at the public hearing, or requested notification of the availability of such changes from the Board of Forestry and Fire Protection. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

FINAL STATEMENT OF REASONS

When the Final Statement of Reasons (FSOR) has been prepared, the FSOR will be available from the contact person on request.

INTERNET ACCESS

All of the material referenced in the Availability Statements is also available on the Board web site at:

<https://bof.fire.ca.gov/regulations/proposed-rule-packages/>