April 7, 2020

To: Board Members

From: Edith Hannigan, Land Use Planning Policy Manager

**Re: Sonoma County Request for Local Ordinance Certification pursuant to 14 CCR § 1270.04**

# Background

Under Public Resource Code Section 4290, the Board of Forestry & Fire Protection is required to “adopt regulations implementing minimum fire safety standards related to defensible space that are applicable to state responsibility area (SRA) lands under the authority of the department, and to lands classified and designated as very high fire hazard severity zones (VHFHSZ), as defined in subdivision (i) of Section 51177 of the Government Code.\* These regulations apply to the perimeters and access to all residential, commercial, and industrial building construction…approved after January 1, 1991...”

These regulations, known as the SRA Fire Safe Regulations, are in Title 14 of the California Code of Regulations, §§ 1270.00 *et seq*. These regulations have set a minimum standard, or “floor,” for the perimeters and access to development in the SRA since 1991 and for VHFHSZs beginning in July 2021. They were last updated by the Board in 2019, with an effective date of January 1, 2020.

While the SRA Fire Safe Regulations apply generally to construction approved after January 1, 1991, certain exemptions are provided. Roads that are “used solely for agricultural, mining, or the management and harvesting of wood products” are exempted under § 1270.02(c)(4). Additionally, the SRA Fire Safe Regulations do not apply to building permits or parcel or tentative maps approved prior to 1991, if the applicable permit or map imposes perimeter and access requirements for the buildings, as specified in § 1270.02(b). This latter exemption resulted from a 1993 Attorney General Opinion interpreting PRC § 4290 and the Board’s then-existing regulations. Subsequently, the Board amended its regulations in accordance with that opinion. The Board also eliminated the provision that stated that its regulations “do not apply to existing structures, roads, streets, and private lanes or facilities.” Thus, the only current exemptions from the SRA Fire Safe Regulations are set forth in Sections 1270.02(b) and 1270.02(c)(4).

Section 1270.04 provides that the Board may certify local ordinances relating to those standards adopted by the Board for perimeter and access. This certification confirms that the local ordinance meets or exceeds the minimum standards the Board adopted in the SRA Fire Safe Regulations when the local ordinance has the “same practical effect.” Counties may wish to take advantage of this certification process by submitting their ordinance to the Board so that one set of local development laws apply in the entire unincorporated county area, rather than one set of standards for the SRA and another for unincorporated LRA. Without certification by the Board, the SRA Fire Safe Regulations apply in the SRA and the local ordinance applies in the unincorporated LRA.

The term “same practical effect” is defined in § 1271.00 and means “an exception or alternative with the capability of applying accepted wildland fire suppression strategies and tactics, and provisions for fire fighter safety,” including access for fire equipment and safe civilian evacuation. The regulations provide further clarification regarding access for fire equipment and civilian evacuation in Sections 1273.00 *et seq*., requiring roads and driveways to provide for “safe access for emergency wildfire equipment and civilian evacuation concurrently” and to meet minimum road widths (§ 1273.01(a)).

# Sonoma County

In 2019, the Sonoma County Board of Supervisors approved changes to their local fire safety standards to align their local code with the updates to the SRA Fire Safe Regulations. Sonoma County officials submitted those revised local standards to the Board via email on November 20, 2019, under the process described above and in 14 CCR § 1270.04. Since that date, the Board has also received multiple written letters from the public regarding Sonoma County’s local standards. Those comments have been forwarded to Board members for review.

Sonoma County last submitted its ordinance for certification after the Board revised its regulations in 2016, and the Board certified that ordinance in early 2017.

The certification of Sonoma County’s revised local ordinance as “meeting or exceeding” the SRA Fire Safe Regulations is set for discussion at the Board’s Joint Committee Workshop on April 7, and if forwarded out of committee, may be a possible action at the Full Board Meeting on April 8.

# Staff Review

Board staff reviewed Sonoma County’s submitted ordinance, taking into consideration the written public comments received and consultation with Sonoma County officials. Staff identified the following areas where the local ordinance does not appear to strictly meet or exceed the SRA Fire Safe Regulations. A full analysis of the local ordinance (known informally as “the matrix”) follows this memo.

1. Sec 13-25 Exemptions, page 49, specifically 13-25(f) on page 50
   1. Sec 13-25(f) allows “any existing road that provides year-round, unobstructed access to conventional drive vehicles, including sedans and fire engines, which was constructed and serving a legal parcel prior to January 1, 1991…” to be exempt from the standards in the SRA Fire Safe Regulations. Sec 13-25(f) does require defensible space around existing roads, and requires that if an existing road is extended, reconstructed, or improved, that part of the road that is extended, reconstructed, or improved must meet the SRA Fire Safe Regulations.
   2. Staff analysis:
      1. The SRA Fire Safe Regulations are applicable to the perimeters and access of all construction in the SRA with minimal exceptions. An explicit road exemption exists in 14 CCR § 1270.02(d) for roads which are used exclusively for agricultural, mining, or timber harvesting. And, in accordance with the 1993 Attorney General Opinion, the SRA Fire Safe Regulations do not apply in connection with a building permit or parcel map approved prior to January 1, 1991, as specified in 14 CCR § 1270.02(b).
   3. Board Determination
      1. The Board may determine that the Sonoma County exemption falls within the scope of the exemptions set forth in the SRA Fire Safe Regulations, in which case the Sonoma County provision would be exempt from application of the SRA Fire Safe Regulations.
      2. Sonoma County Sec 13-25(f) appears to exceed the scope of the exemptions provided for in the SRA Fire Safe Regulations. Sec 13-25(f) is not limited solely to roads described in 14 CCR § 1270.02(d) (*i.e.*, solely for agriculture, mining or timber use), nor is it associated with a building permit or parcel map approved prior to January 1, 1991, in which the approved document provides for the conditions relating to the perimeters and access to the buildings. While an existing road in connection with construction satisfying the conditions of 14 CCR § 1270.02(d) might also satisfy the conditions of 13-25(f), the opposite cannot be said. A road meeting the requirements in 13-25(f) may not necessarily meet the requirements of 14 CCR §§ 1270.02(b) or (d).
      3. Alternatively, the Board may determine that the Sonoma County requirements for existing roads in Sec 13.25(f) provides for the same practical effect of the Board’s road standards. 
         1. The Board’s road standards are in 14 CCR §§ 1273.00 through 1273.09. Specifically, 14 CCR § 1273.00 states: *Roads and driveways, whether public or private, unless exempted under 14 CCR § 1270.02(d), shall provide for safe access for emergency wildfire equipment and civilian evacuation concurrently, and shall provide unobstructed traffic circulation during a wildfire emergency consistent with 14 CCR §§ 1273.00 through 1273.09.*
         2. The sections following 14 CCR § 1273.00 lay out the minimum construction requirements for different components of the road network (roads, driveway, gates, etc) that the Board has determined best meet the intent of 14 CCR § 1273.00. These minimum construction standards are phrased as mandatory as opposed to optional requirements, as they uniformly state that the particular standard “shall” apply.
   4. Sec 13-25(f) does not appear to satisfy the minimum requirements set forth in 14 CCR §§ 1273.00, *et seq*. For example, Sec 13.25(f) does not require concurrent access for fire equipment and civilian evacuation, nor does it address the minimum road widths prescribed in 14 CCR § 1273.01(a).
   5. It should be noted that when the Board certified Sonoma’s ordinance in 2017, the ordinance contained this exemption. However, this previous action does not preclude the Board from considering new information regarding this exemption in 2020.
2. Sec 13-25 Exemptions (g) and (h), page 50
   1. Sec 13-25(g) and (h) address roads and driveways.
   2. Staff analysis:
      1. Sec 13-25(g) and (h) appear to suffer from flaws similar to those in 13-25(f). These exemptions appear to exceed the scope of the specific exemptions in 14 CCR § 1270.02, and do not appear to satisfy the minimum requirements set forth in 14 CCR §§ 1273.00, *et seq*.
3. Sec 13-34 Two-way Roads, page 56, specifically 13-34(a)-(d)
   1. Sec 13-34(a) allows an exception to the road standards described in Sec 13-34 whereby a subdivision, when permitted and approved by the appropriate county departments, may have a two-way road that is narrower than the stated requirement in Sec 13-34. The width requirement in Sec 13-34 matches the width requirement for two-way roads in the SRA Fire Safe Regulations.
   2. Staff Analysis:
      1. 14 CCR § 1273.01(a) do not allow two-way roads to be less than two, ten-foot wide traffic lanes, excluding shoulders and striping. However, that section continues on to state: *These traffic lanes shall provide for two-way traffic flow to support emergency vehicle and civilian egress, unless other standards are provided in this article or additional requirements are mandated by local jurisdictions or local subdivision requirements.*
   3. Board Determination
      1. The Board may determine that the requirements in Sec 13-34(a), for two-way roads that are approved to have only one lane, constitute “additional requirements” and with these additional requirements Sec 13-34(a) meets or exceeds as providing the same practical under the SRA Fife Safe Regulations. These include approval by relevant county departments for the exception as well as additional turnouts and turnarounds.
   4. Sec 13-34(a)-(d) does not appear to satisfy the minimum requirements set forth in 14 CCR §§ 1273.01. The Board regulations do not specifically allow the use of turnouts or turnarounds to compensate for having fewer than two traffic lanes.
   5. It should be noted that when the Board certified Sonoma’s ordinance in 2017, the ordinance contained this exception. However, this previous decision does not preclude the Board from considering new information regarding this exemption in 2020.