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February 5, 2020

*Sent via email ([edith.hannigan@bof.ca.gov](mailto:edith.hannigan@bof.ca.gov))*

California Board of Forestry and Fire Protection  
Resource Protection Committee  
P.O. Box 944246  
Sacramento, CA 94244

Re: **March 3, 2020**  
**County of Sonoma's Request for Recertification of its Fire Safe Standards**  
**Pursuant to 14 CCR §1270.04**

Dear Honorable Board of Forestry Members:

On January 21, 2020, the County of Sonoma was scheduled to request re-certification of its fire safe standards pursuant to 14 California Code of Regulations section 1270.04. In advance of that meeting, the Board of Forestry staff notified us that they were not prepared to proceed with certification because they had received public comments and the Board of Forestry staff were researching the scope of these regulations. The agenda item was temporarily postponed.

The County of Sonoma needs to protect our community with our local fire safe ordinance. We need to move forward with our additional fire safety protections. The public comments that halted this review have no merit. They support a change in interpretation that has been in place for 29 years. They argue the fire safe regulations should reach back retroactively to pre-1991 access roads and driveways that were in place before the original adoption of these laws. They argue that all new construction and development (including new residences and accessory dwelling units) would require pre-1991 access roads to be redesigned and rebuilt to modern regulations – including 20 foot widths.

This new interpretation would put an effective moratorium on new home and accessory dwelling unit development on many legal parcels in the state responsibility area throughout California. Many legal parcels in the state responsibility area do not have private road rights of way or easements that would meet modern regulations, especially 20 foot widths. This is not the direction of our Legislature. This would violate AB 68's and SB 330's mandates.

This new interpretation would also run afoul of the implementing statute. Public Resources Code section 4290 states, “these regulations do not apply . . . to parcel or tentative maps or other developments approved prior to January 1, 1991.” Public Resource Code §4290(a). Old roads and driveways that existed prior to 1991 are “other developments approved prior to January 1, 1991”. The Legislature has made it clear – pre-1991 roads and driveways are exempt from the Board of Forestry’s fire safety regulations.

Perhaps most significantly, this new interpretation would violate U.S. Constitutional protections. Forcing legally constrained pre-1991 roads and driveways to meet updated regulation standards would effectively prevent any future residential development beyond the point where the road or driveway no longer meets the standards. Property owners would have to try to make legal parcels developable by accessing new easements or rights of ways to expand old private roads to a 20 foot width. Retroactively applying these 20 foot road width regulations to pre-1991 roads could render these legal parcels undevelopable. If the Department of Forestry accepts this new interpretation, it must comply with procedural due process requirements by notifying all counties and the property owners in the state responsibility area about its new restrictions. The statewide impact would be profound.

The members of the public who have raised this new interpretation rely on an old 1993 Attorney General opinion to support their claim. 76 Cal. Atty. Gen. Ops. 19. Yet, that Attorney General opinion is not in dispute. That opinion made it clear that new development must comply with the fire safe standards. Of course it does. When an applicant seeks new residential, commercial or industrial development, the new construction must comply with modern regulations. The Attorney General opinion was issued two years after the new law took effect and it clarified at the time that new construction must comply with new standards for fire equipment access, standards for signs identifying streets, roads and buildings, private water supply reserves for emergency fire use and fuel breaks. However, the Attorney General opinion does not contradict the statute – it does not require “developments approved prior to January 1, 1991” to be redesigned and rebuilt to meet modern regulations. The Attorney General does not opine that developments approved prior to January 1, 1991 must be redesigned and rebuilt up to modern standards.

Fire protection is a top priority in our community. Our local ordinance goes above and beyond the State’s laws by ensuring year round unobstructed access for fire engines –even on old private roads. We require emergency water supplies. We require vegetation management. Sonoma County prioritizes protection of our fire fighters, fire prevention, emergency water supplies and safe civilian evacuation. Our local ordinance provides numerous additional protections for fire safety in our community. It is of critical importance in our community that the State Board of Forestry allow us to move forward with our local fire safety protections.

We believe the existing statute is clear. We do not believe it is necessary to further clarify the Legislature’s intent regarding this issue to certify Sonoma County’s local fire safe standards. Two years ago, in 2017, the Board of Forestry certified Sonoma County’s local fire safety standards, including the pre-1991 road and driveway exemptions, and determined this met or exceeded state standards. State law regulations do not supercede local regulations which equal or exceed minimum regulations adopted by the state. Public Resources Code §4290(c).

The County of Sonoma's exemptions have not changed. We respectfully request re-certification of our local fire safe standards to protect our community. If the Board of Forestry is not prepared to certify Sonoma County's local fire safe ordinance, please let us know the next steps to obtain this certainty.

Simultaneously, if the Board of Forestry believes it would be useful to seek additional clarification from the Legislature, we would be willing to coordinate with the Board of Forestry, County Counsel's Association of California and other interested counties to consider support for a bill to help clarify the scope of existing law. We are prepared to join with other interested counties who are ready to help draft and support a bill to clarify the scope of existing law.

We request that this issue be placed on the March 3 agenda to re-certify the County of Sonoma's local fire safe standards. If the Board of Forestry believes new legislation is required to clarify that these modern regulations do not retroactively apply to old road and driveway developments that had been approved prior to 1991, we request the Board notify all counties. That notice would help increase the attendance at the meeting to explain the impact this new interpretation would have statewide.

Please feel free to call me at (707) 565-3742 if you have any questions or need additional information.

Best regards,



Linda D. Schiltgen  
Deputy County Counsel

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