



COUNTY OF DEL NORTE
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DATE: April 3, 2021

AGENDA DATE: April 13, 2021

TO: Del Norte County Board of Supervisors

FROM: Heidi Kunstal, Director of Community Development

SUBJECT: Proposed Rulemaking – State Minimum Fire Safe Regulations, 2021

RECOMMENDATION FOR BOARD ACTION: Authorize the Chair to sign comment letter to the Board of Forestry regarding revisions to the State Minimum Fire Safe Regulations, 2021 following the posting of the 45-Day Notice for Rulemaking.

SUMMARY/DISCUSSION: Del Norte County adopted the Del Norte Fire Safe Regulations (DN FSR) in July 2016 which were later certified by the California Board of Forestry as being in compliance with the State Fire Safe Regulations at the time. All development applications for projects located within the State Responsibility are screened to determine whether they are subject to the County's Regulations. If a project is not exempt, the property owner must comply with the regulations in order to receive approval to proceed with their project.

Wildfires have had a devastating impact on the State causing lawmakers to enact laws designed to help prevent and mitigate the impacts of wildfire. In response to deadlines established in part by SB 901 (Dodd, 2018), staff and consultants for the California Board of Forestry have actively prepared major revisions to the State Fire Safe Regulations in the form of three public drafts released on December 1, 2020, February 8, 2021 and March 15, 2021, respectively. The State Fire Safe Regulations have been renamed the State Minimum Fire Safe Regulations, 2021. County staff, Supervisor Howard, and Yana Valachovic, Forest Advisor and County Director for the University of California Extension – Humboldt and Del Norte Counties, have closely monitored each draft and provided input when the opportunity arose. Due to the significant changes between the drafts, it was staff's plan to wait until the final draft to consult with the Board of Supervisors for comments to be forward to the Board of Forestry prior to the rulemaking. Unfortunately, the Board of Forestry released the latest draft on the evening March 15th with an official comment period closing at noon on March 17th. The County clearly did not have time to respond as a full Board; however, Supervisor Howard sent a comment letter representing his District which is primarily located within the State Responsibility Area.

At the March 22, 2021, Board of Forestry meeting, close to 30 counties provided oral comments describing the impacts the draft regulations would have on local jurisdictions tasked with implementing the State Minimum Fire Safe Regulations, 2021. The State Minimum Fire Safe Regulations, 2021, as drafted will make development more restrictive and costly and in some cases, it may completely preclude development. Given the short timeframe to digest the lengthy draft and analyze it based on local land use patterns, a lot remains unknown as to the local impacts. The Board of Forestry was urged at the March 22nd meeting to slow down the process in order to allow more time for collaboration to occur between interested parties. Generally, local jurisdictions were supportive of the Board of Forestry's efforts to protect reduce the impacts of wildfire, but felt that the one-size-fit all approach for administering regulations over a diversely different state was a mistake. At the conclusion of the presentation on the

item, the Board of Forest and Fire Protection authorized a 45-day Notice for Rulemaking entitled "State Minimum Fire Safe Standards, 2021 (14 CCR §§ 1270.00 – 1276.07). A full copy of the March 22, 2021 Board of Forestry Agenda may be found at the following web address: <https://bof.fire.ca.gov/business/>.

As of the writing of this Report the Rulemaking have not been filed with the Office of Administrative Law but it is anticipated to be filed soon. Staff was informed that any letters sent outside of the 45-day rulemaking period would not be part of the record. Therefore, staff has taken the letter sent by Supervisor and revised it to represent the full Board of Supervisors. For reference, the County's Fire Safe Regulations may be found at the following web address: <http://ccode.dnco.org/?Title=19>. Additionally, attached to this Board Report is a 3-page overview from the Office of Administrative Law about the Regular Rulemaking Process and what commenters should expect as an outcome of providing public comment. We have been advised that there may be minor changes to the draft regulations upon filing. If that is the case, staff would like the ability to make changes that are consistent with the County's stance on the subject as reflected within the attached draft letter.

Staff request the Board authorize to sign the attached comment letter and that it be sent following notification of the 45-Rulemaking Period.

ALTERNATIVES: Decline to send a letter or suggest alternative language to be included in the letter.

FINANCING: Not applicable

CHILDREN'S IMPACT STATEMENT:

This section meets 2 of the following outcome measures for children in Del Norte County:

- ☐ Children ready for and succeeding in school.
- ☐ Children and youth are healthy and preparing for adulthood.
- ☐ Families are economically self-sufficient.
- ☐ Families are safe, stable and nurturing.
- ☒ Communities are safe and provide a high quality of life.
- ☐ No impact to Children as a result of this action.

OTHER AGENCY INVOLVEMENT: California Board of Forestry

SIGNATURE REQUIRED: Chairperson of Board of Supervisors

ADMINISTRATIVE SIGN-OFF:

- ☐ AUDITOR:
- ☐ COUNTY ADMINISTRATIVE OFFICER:
- ☐ COUNTY COUNSEL:
- ☐ PERSONNEL:
- ☐ OTHER DEPARTMENT:

PRINTING ACCOUNT:

- ☒ Planning 101-258-20221

BOARD OF SUPERVISORS LETTERHEAD

DATE – TBD following filing of 45-Day Rulemaking

Sent Via Email

Chair J. Keith Gilles, Chair
Vice Chair Darcy Wheelles
Member Mike Jani
Member Rich Wade
Member Susan Husari
Member Marc Los Huertos
Member Katie Delbar
Member Christopher Chase

State Board of Forestry and Fire Protection
Attn: Eric Hedge, Regulations Program Manager
Post Office Box 944246
Sacramento, CA 94244-2460

RE: 45-Day Rulemaking for Revisions to the State Minimum Fire Safe Regulations,
2021

Dear Chair Gilles and Board Members:

On behalf of the Del Norte County Board of Supervisors, I wish to register our continued concern about the process to update to the Board of Forestry's (BOF) Fire Safe Regulations (State Minimum fire Safe Regulations, 2021). The new regulations proposed by BOF staff will have significant consequences for many communities throughout the state, effectively prohibiting residential construction and business expansion in large parts of our county. In February 2021, our Community Development Department submitted written comments which voiced our concerns about the February 2021 draft regulations. Many of the concerns still exist in the March 15th draft as pointed out in the comments provided at the March 22nd Board Meeting on behalf of other California counties.

Our specific comments are as follow:

- The draft regulations are to take effect immediately on July 1, 2021, per Section 1270.02. The regulations provide no grace period or guidance for projects that are currently in the review process. For clarity, we recommend that the requirements apply to projects submitted on or after that date. Many applications already being processed have been designed based upon the current standards. Requiring changes during mid review would be an additional burden to property owners.
- The use of a distance to a Collector Road in the proposed definition is problematic for rural development. It will trigger significant improvements to public roads, including roadways established and accepted by the local jurisdiction decades before minimum fire safe regulations were in effect. County

staff agrees with the text revision proposed by Napa County and supported by Humboldt County which request that the definition of Access be modified as follows:

“The Roads on a route from a Building to nearest public Road.”

- The development thresholds listed in Section 1273.(c) require upgrades to existing roads, or driveway whenever three or more parcels are created, or there is a change in zoning or use permit that increases intensity or density. The County is supportive of revising the language as suggested by Napa County to define the measure of the effectiveness of the standard (e.g., level of service), or the desired outcome so that the de minimum increases in intensity or density may be exempted from the regulations.
- As pointed out in Del Norte County’s previous comments, having adequate land available for housing is a top mandate from another state regulatory agency that must be met. Our County does not have sufficient dataset of road conditions, including road widths to determine what impacts the regulations will have on infill development which is the primary current means for meeting our regional housing needs. This is a grave concern to Del Norte County as over 80% of our land is in public ownership. A significant share of the remaining land is either timberland, agricultural, or sensitive habitat areas that are not suitable for development. Additional time and inclusion of more commonly used metrics would help us evaluation the impacts if we are going to meet the needs of our community and other State mandates.
- In addition to the potential loss of developable land, the implementation of the regulations will make it more costly to develop at a time when local jurisdictions are being tasked with finding solutions to the housing crisis. The proposed regulations would summarily deem many miles of existing public roads throughout the state “substandard” and would require immense, costly upgrades as a condition of building or rebuilding a single residential unit - at the property owner’s expense. Even more onerous – and often infeasible – improvement requirements would apply to the creation of even a single new parcel, no matter how large, or any change to a use permit or zoning, no matter how minor. Such requirements will certainly affect the state’s ability to address the housing crisis, especially in more rural, less economically advantaged parts of California. We remain concerned that with this expedited timeline and the 45-day review process commencing, BOF or our County staff have not been able to estimate the number of housing units these regulations will affect – but it will unquestionably be large, given that these restrictions apply to an area containing approximately one-quarter of California’s housing stock.

- Del Norte County is rich in natural resources. We are concerned about the environmental impacts of changing the width or grade of a road that have not been considered during the BOF's process. Additionally, even if upgrading a road is feasible and not environmentally damaging, the costs are extraordinary and unreasonable for a small business or property owner to bear. BOF staff has repeatedly stated that the full impacts of the regulations are unknown, and that additional information is needed, but the process has been nonetheless rushed forward. There is clearly a need to broaden the drafting discussion to include the full range of subject matter experts with "on-the-ground" experience in local land use planning and administration throughout California. It is critical if rural Del Norte can meet the ever-growing demand housing.

The Del Norte County Board of Supervisors appreciate the BOF's desire to move forward with all deliberate speed, and understand that the current Fire Safe Regulations will become applicable to portions of the Local Responsibility Area on July 1, 2021. Many counties have been administering those regulations in the State Responsibility Area for years and can apply those well-known rules in the LRA for a few more months without difficulty. We recognize that existing provisions could indeed benefit from updating, but no provision of the governing law, nor any state policy mandates that BOF act in haste. The proposed changes to the Fire Safe Regulations are lengthy, complex, and far-reaching, yet the BOF is poised to make a decision on a proposal that was first released in draft form December 1, 2020, less than four months ago. Per Section 11346.8 of California Government Code, we urge the BOF to hold a public hearing on the proposed rulemaking action in order to consider revisions to the fire safe standards to achieve effective public safety protection along with environmental stewardship and economic development.

Sincerely,

Chris Howard, Chair

CC: Matt Dias, Executive Officer, Board of Forestry
Wade Crowfoot, Secretary, Natural Resources Agency
Rhys Williams, Senior Advisor on Emergency Preparedness and Management,
Office of the Governor
Edith Hannigan, Land Use Planning Manager, Board of Forestry
Senator Mike McGuire
Assemblymember Jim Wood
Graham Knaus, California State Association of Counties
Tracy Rhine, Rural County Representatives of California

About the Regular Rulemaking Process

Why do agencies adopt regulations?

Are agencies required to involve the public in preliminary rulemaking activities?

What documents are needed to start the formal rulemaking process?

When does the formal rulemaking process begin?

How may the public comment on a proposed regular rulemaking action?

What if the agency makes changes to the proposed text or rulemaking documents?

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When does an approved regulation become effective?

Why do agencies adopt regulations?

All regulations are prompted by the identification of a “problem” that needs to be addressed by the agency through the adoption, amendment, or repeal of regulations in order to enforce or administer a statute. For example, when the Legislature enacts a new program or changes statutes governing existing programs, the Legislature often leaves it up to the agency administering the program to implement the statutory changes. In order to do so, the agency must usually adopt, amend, or repeal regulations in order to avoid use of prohibited “underground regulations.”

Are agencies required to involve the public in preliminary rulemaking activities?

Once a state agency decides to conduct a regular rulemaking action, it engages in preliminary rulemaking activities wherein the agency typically researches and gathers materials and information necessary to develop the documents required to conduct a formal APA rulemaking proceeding. Generally, the rulemaking agency has discretion whether to include the public during this stage of the rulemaking process. If a proposed rulemaking action involves complex proposals or a large number of proposals that cannot easily be reviewed during the comment period, the agency shall involve parties who would be subject to the proposed regulations. This requirement, however, is not subject to OAL or judicial review. (Government Code section 11346.45.)

What documents are needed to start the formal rulemaking process?

An agency uses the materials and information gathered during the preliminary rulemaking stage to develop at least four documents that are needed to initiate the formal rulemaking process. These include:

Express Terms: The text of the proposed regulation will clearly identify any changes to the California Code of Regulations. Proposed additions to regulatory text will appear as underlined and proposed deletions will be appear in strike-through format. The Authority and Reference citations that follow the text of each regulation section identify the statutes on which the section is based.

Notice of Proposed Action: The notice of proposed action contains a variety of information about the nature of the proposed regulatory changes including various findings, determinations, statutory authority and the law(s) being implemented. The notice of proposed action also contains procedural information, such as deadlines for submitting comments, scheduling of hearings (if any), and where copies of the express terms, initial statement of reasons, and any other supporting information can be obtained.

Initial Statement of Reasons: The initial statement of reasons is a document that explains the reasons why the agency is making the proposed regulatory changes. This includes an explanation of the problem being addressed, the purpose of and necessity for, and benefits of the proposed changes. The initial statement of reasons also identifies the factual material upon which the agency relies in proposing the regulations. The initial statement of reasons includes a number of the required determinations, findings and analyses including either the economic impact assessment (for non-major regulations) or standardized regulatory impact analysis (for “major regulations”).

Economic and Fiscal Impact Statement (Form STD. 399): The Form STD. 399 is a Department of Finance form that an agency is required to complete and have signed by the rulemaking agency's highest ranking official or that official's delegate. The Form STD. 399 includes information on the estimated economic (private) and fiscal (governmental) monetary impacts of the proposed regulation. Rules governing the Form STD. 399 can be found in the State Administrative Manual, sections 6600 through 6615.

When does the formal rulemaking process begin?

To initiate a formal rulemaking action, an agency publishes a notice of proposed action in the California Regulatory Notice Register. The agency must also mail the notice of proposed action to those persons who have requested notice of regulatory actions, and post the notice of proposed action, express terms, and initial statement of reasons on the agency's website. (Government Code section 11346.5.) Once the notice of proposed action is published in the California Regulatory Notice Register, the APA rulemaking process is officially started and the agency has one year within which to complete the rulemaking process and submit the completed rulemaking file to OAL.

How may the public comment on a proposed regular rulemaking action?

The APA requires a minimum 45-day period for the public to comment to the agency in writing on the proposed regulation. The notice of proposed action specifies the rulemaking agency name, contact person and address where the comments must be directed and the date the written comment period closes. Members of the public should not submit written comments on regular rulemaking actions to OAL.

Under the APA, a rulemaking agency has the option whether to hold a public hearing on a proposed rulemaking action. If an agency does not schedule a public hearing, any interested person can submit a written request for a hearing to be held. The written request for a hearing must be submitted at least 15 days prior to the close of the written public comment period. If timely requested, the agency must hold a public hearing. (Government Code section 11346.8.) If a public hearing is held, the hearing must be scheduled for a date at least 45 days after the notice of proposed action was published. At the public hearing, both written and oral comments must be accepted.

What if the agency makes changes to the originally proposed text?

After the initial public comment period, a rulemaking agency will often decide to change its initial proposal either in response to public comments or on its own. The agency must then decide whether a change is nonsubstantial, substantial and sufficiently related, or substantial and not sufficiently related.

Nonsubstantial changes do not alter the regulatory effect of the proposed provisions; therefore, no further notice is required.

Substantial changes alter the meaning of the regulatory provisions and require further notice to the public. Substantial changes that are sufficiently related (i.e., reasonably foreseeable based on the notice of proposed action) must be made available for public comment for at least 15 days. Therefore, before a rulemaking agency adopts such a change, it must mail a notice of opportunity to comment on proposed changes along with a copy of the text of the proposed changes to each person who has submitted written comments on the proposal, testified at the public hearing, or asked to receive any notices of proposed modification. The agency must also post this notice on its website. No public hearing is required. The public may comment only on the proposed modifications in writing. The agency must then consider any comments received during the 15-day comment period that are directed at the proposed changes. An agency may conduct more than one 15-day opportunity to comment before the final version is adopted.

If a change is substantial, but not sufficiently related to the original proposal (i.e. not reasonably foreseeable based on the notice of proposed action), the agency must then publish another 45-day notice in the California Regulatory Notice Register similar to the original notice of proposed action. These changes are uncommon.

What if the agency adds documents to the rulemaking record?

A rulemaking agency must specifically identify any material the agency is relying upon for the proposed rulemaking in the initial statement of reasons. If during a rulemaking proceeding an agency decides to rely on material that the agency did not identify in the initial statement of reasons, the agency must make the document available for comment for 15 days. This notice and comment process is similar to the 15-day notice for substantial, sufficiently related changes to the regulation text.

What does the rulemaking agency do with public comments?

A rulemaking agency must summarize and respond to timely comments that are directed at the proposal or at the procedures followed by the agency during the rulemaking action. For each comment, the agency must include either an explanation of how the proposed action has been changed to accommodate the comment or state the reasons for rejecting the comment. In summarizing and responding to public comments, the agency must demonstrate that it understood and considered the comment. The summary and response to comments is included as part of the rulemaking file in a document called a Final Statement of Reasons. (Government Code section 11346.9.)

What does OAL do in reviewing a regular rulemaking action?

A rulemaking agency must transmit a rulemaking action to OAL for review within one year from the date that the notice was published in the California Regulatory Notice Register. Once submitted, OAL has 30 working days to conduct a review of the rulemaking record to ensure that the agency satisfied the requirements of the APA and OAL's regulations. OAL will then either approve the rulemaking action and file the proposed regulation with the Secretary of State or disapprove the rulemaking action.

When does an approved regulation become effective?

Generally, regulations become effective on one of four quarterly dates based on when the final regulations are filed with the Secretary of State: January 1, if filed between September 1 and November 30; April 1, if filed between December 1 and February 29; July 1, if filed between March 1 and May 31; and October 1, if filed between June 1 and August 31. Effective dates may vary, however, if a different effective date is provided for in statute or other law, if the adopting agency requests a later effective date, or if the agency demonstrates good cause for an earlier effective date.