December 4, 2020

To: Board Members

From: Edith Hannigan, Land Use Planning Policy Manager

Re: Amending 14 CCR §§ 1270.00-1276.04, “Fire Safe Regulations”

# Update on permanent rulemaking

## Stakeholder Engagement

Prior to the release of the December 1 strikeout/underline draft regulatory changes, the Wildfire Planning International team and Board staff had numerous meetings with a variety of stakeholders. These included technical experts, such as firefighters who work on implementing the Fire Safe Regulations across the state; the general public, during two public workshops held in November as well as individual comment letters and conversations; and public officials and their representatives, such as the California County Planning Directors Association and California State Association of Counties.

This outreach will continue over the next few weeks as we seek to refine the proposed changes in response to feedback we’ve received since December 1, including and especially at the Joint Committee meeting on December 8. Those wishing to view the public workshops from November 18 and 24 can do so at <https://bof.fire.ca.gov/regulations/>.

## General Notes on the Proposed Changes

This is not intended to be an exhaustive explanation of the proposed changes in the December 1, 2020 draft, but an overview of some of the areas WPI and Board staff are specifically seeking input on or continuing to refine based on recent comments from stakeholders.

In Article 1, Administration, Board staff seek to simplify the scope of these regulations by relying on key defined terms, rather than attempting an exhaustive list of each local planning and process that may or may fall under the scope of these regulations. By defining new terms such as “Building Construction,” and relying on existing definitions such as “Road” and “Building,” the applicability of these regulations to a given project can be determined with greater accuracy. This is one of the areas of greatest debate in these regulations, and we encourage a close read of Article 1 and § 1270.02 especially.

Another area in Article 1 we are especially seeking feedback on is an alternative to the Board’s local ordinance certification process that balances the authority of a local jurisdiction to write and enforce stricter standards than those in the Fire Safe Regulations, while maintaining a level of oversight to ensure those local standards do in fact meet the state minimums. The current proposed changes repeal the existing process by which counties could have their local ordinances “certified” by the Board and use their local code in lieu of the Fire Safe Regulations in the SRA. However, the proposed changes provide more guidance for local jurisdictions so that they may implement PRC 4290(c) (“(c) These regulations do not supersede local regulations which equal or exceed minimum regulations adopted by the state.”) where their local standards may equal or exceed the minimum standards in the Fire Safe Regulations.

In § 1270.06, the process by which exceptions are requested, decided upon, and appealed have been revised, now requiring a greater level of detail to explain why the exception is necessary, any proposed alternative means of compliance, and, if a denied exception is successfully appealed, a statement of findings that the exception provides for fire safety. The Board has heard some comments from the public indicating frustration with a perceived lack of transparency regarding local decisions on exceptions, and Board staff are investigating state-level tools to improve this transparency without creating an overly burdensome process for local jurisdictions.

The standards for road construction found in Article 2, Emergency Access and Egress, have largely remained the same, except more nuance has been added to give local jurisdictions more flexibility in applying the standards. Many standards now provide for multiple methods of compliance or a performance-based standard in addition to a prescriptive based standard. This is to provide acceptable alternative methods of compliance to achieve fire safety, rather than providing for a single standard and no guidance for appropriate alternative means of compliance. This will improve compliance with the regulations and overall fire safety in the SRA and LRA VHFHSZ.

The standards for dead-end roads have been changed, to shorten the allowable length of a dead-end road (from one mile to half a mile) and to specify that a dead-end road must connect to a through road (a road connected to other roads at both ends). A dead-end road cannot connect to another dead-end road. One concern these new requirements raise, especially the lower length requirement, is the matter of new construction occurring along pre-existing, non-compliant dead-end roads. Board staff and WPI are contemplating possible appropriate mitigation requirements or other alternative means of compliance, but we are especially interested in hearing from the Board members your thoughts on the matter.

Article 2 also has new standards for “secondary access,” giving the local fire code official or local jurisdiction the authority to require a secondary access for commercial or industrial uses seeking to increase their capacity, but where their existing access is substandard.

Work on Article 3, Signing and Building Numbering, is ongoing as we try to ensure compliance with the requirement to regulate signs for roads and addresses pursuant to PRC 4290(a)(2) without creating conflicts with the California Manual of Uniform Traffic Control Devices or other state and federal requirements for road signs.

Article 4, Emergency Water Standards (now Fire Water Supply), offers greater clarity and flexibility to local jurisdictions regarding the water supply requirements for wildland firefighting, but we are engaged in ongoing conversations with experts in non-municipal water supply systems to ensure these new requirements are achievable by those relying on atypical water supply systems.

SB 901 revised PRC 4290(b) to add requirements that the Board “…shall, on and after July 1, 2021, periodically update regulations for fuel breaks and greenbelts near communities to provide greater fire safety…[t]hese regulations shall include measures to preserve undeveloped ridgelines to reduce fire risk and improve fire protection.” These standards and regulations are found in Article 5, formerly Fuel Modification Standards and now Building Siting, Setbacks, and Fuel Modification.

Article 5 has been greatly expanded from its current form in order to address these new directives from the Legislature. It includes appropriate requirements for fuel modification for single parcel development and appropriate requirements for larger-scale development. A “lot and block” plan is now required that outlines the fuel modification plans for a development. Determining the appropriate setback is more complex, requiring the setback distance to be adjusted for slope. New requirements specify the appropriate purposes, locations, and methods of creating fuel breaks, and new requirements provide a definition of “ridgeline” and setback requirements therefrom. As these are significantly new requirements, we are particularly invested in soliciting and incorporating feedback on the proposals in Article 5.

# Next Steps

After the Board’s Joint Committee meeting on December 8, 2020, the WPI team and Board staff will carefully review comments from the Board members, the public, local government, and other interested groups to continue revising the Fire Safe Regulations. If necessary, we’ll arrange follow up conversations with commenters and, if needed, host another workgroup. A “final draft” of the proposed changes, an ISOR, and 45-day Notice will be presented at the Committee meeting on January 19, 2021, with the goal of Board approval of the Notice at your full meeting on January 20, 2021.

# Reminder regarding the emergency regulations

The emergency regulations amending sections 1270.02, 1270.04, 1270.05, and 1271.00 were approved by the Office of Administrative Law and made effective on July 27, 2020. Two recent executive orders, N-40-20 and N-66-20, have extended the usual timelines regarding the effectiveness of emergency regulations; these regulations will be in effect for 300 days, until May 26, 2021. The last day to submit re-adoption paperwork to OAL is May 14, 2021, so action must be taken at the April 7, 2021, Board meeting to continue the effectiveness of these regulations until permanent rules can be in place.

Executive Orders N-40-20 and N-66-20 also extend the timelines for emergency re-adoptions – the Board can readopt these emergency regulations twice, as usual, but each re-adoption will be in effect for 270 days (usually 90). Upon a first re-adoption of these emergency regulations at the Board’s April 7, 2021, meeting, these regulations will be in effect through February 2022.

Thank you.