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DATE: May 27, 2021

TO: Housing, Land Use, Environment, and Transportation Committee (HLUET)

FROM: Jacqueline R. Onciano, Director, Dept. of Planning and Development
Harry Freitas, Director, Roads and Airports
Don Rocha, Director, Parks and Recreation Department

SUBJECT: State Minimum Fire Safe Regulations Report

RECOMMENDED ACTION

Receive report from the Department of Planning and Development, Roads and Airports Department, and Department of Parks and Recreation relating to the Board of Forestry and Fire Protection State Minimum Fire Safe Regulations.

FISCAL IMPLICATIONS

There is no impact to the County General Fund as a result of receiving this report. Adoption and implementation of the proposed Minimum Fire Safe Regulations by the Board of Forestry may impact the County General Fund by necessitating improvements to the existing County Road System, increasing costs for County Parks acquisition, and undertaking facility improvements associated with required improvements to the road network.

REASONS FOR RECOMMENDATION

This report provides information to the HLUET Committee regarding the California Board of Forestry and Fire Protection (BOF) State Minimum Fire Safe Regulations, expansion of the areas in which these regulations will apply, BOF-proposed amendments to the regulations, and how the regulations impact the County. These regulations are implemented and enforced by the California Department of Forestry and Fire Protection (CAL-FIRE) within the State Response Areas (SRA), and will be implemented by the County within the portions of the Very High Fire Hazard Severity Zones (VHFHSZ) that are outside the SRA.

Executive Summary

Wildfires are a serious risk to California communities in terms of health, safety, threat to life, loss of property, and impacts to the environment. These issues have gained a higher priority throughout the State after the destructive fires experienced over the past five years. Since 1991, lands located in the SRA have been governed by regulations developed by the BOF

and enforced by CAL-FIRE. These regulations largely address two issues: 1) on-site development (including defensible space, water supply, and driveways), and 2) access to the site (roads and bridges).

The Administration recognizes the serious threat that wildfires pose, and fully supports the underlying intent of State regulations to dissuade development or mitigate wildfire impacts in high-risk zones. Adopted Santa Clara County land use policies and associated regulations reinforce these principles. However, the identified issues in this memo relate to the specific methods and standards used under State regulations and the resulting unintended consequences that impact the County.

The State Minimum Fire Safe Regulations impact current and future building construction of public facilities and private development projects in the County. Private property owners, County roads, and parks are most likely to be affected. CAL-FIRE has recently begun to strictly enforce current BOF standards for development in the SRA. Commencing July 1, 2021, per the adoption of Senate Bill (SB) 901, the regulations will also apply to Very High Fire Hazard Severity Zones outside the SRA which is referred to as the “local VHFHSZ.” The BOF is currently updating the regulations that will apply to both areas; the proposed updates will place greater restrictions on development. A State-mandated 45-day comment period for the proposed updates began on April 23, 2021.

Historically, since adoption, CAL-FIRE has not consistently enforced the regulations pertaining to site access. Many existing roads in the rural hillsides (both private and County-maintained) do not comply with existing 1991 standards, including those constructed after 1991. In the past six months, CAL-FIRE has required 20 private development projects to demonstrate that the existing road system (private and County-maintained) meets the access standards in order to develop. The Administration estimates that a significant percentage of County-maintained roads and bridges in the rural hillsides do not meet these standards. Approximately 26 County parks or park properties are also in areas covered by these regulations and could also be required to make extensive improvements to the existing road system in association with on-site facility improvements.

The Administration is concerned that implementation of the current and proposed amended fire safe regulations will have significant impacts upon the County road system and County facilities, and could result in one of two unintended consequences:

- If the rural road system is improved to CAL-FIRE standards, this may lead to additional growth pressure for development in the high fire hazard areas. While the General Plan designates most of the high fire hazard areas for resource conservation and has a number of policies that significantly limit the intensity of development allowed, road upgrades could intensify real estate speculation for rural lot development.
- Conversely, if these regulations are strictly enforced and no road improvements are made, it will create a virtual moratorium on development in much of the rural hillsides, preventing facility improvements at County parks, and preventing all residential development.

The Administration is currently drafting comments and recommended edits to the BOF's proposed amendments to the State Minimum Fire Safe Regulations to address these major areas of concern. The Administration's comments and edits request that the standards are written and implemented in a manner that allows judicious and proportionate improvements to existing roads to ensure safe access without the unintended consequences of growth inducement or a moratorium on development.

The Administration intends to work with other Counties and organizations such as California State Association of Counties (CSAC) to collectively request the BOF adopt these recommended changes.

Wildfire Concerns in Rural Areas

Wildfires throughout the state, especially over the last five years, have highlighted issues surrounding development in steep, forested areas. Concerns over the safety of the residents attempting to evacuate and the firefighter(s) who respond to these areas, along with impacts to the environment, and the financial costs and impacts to communities have elevated. The County's General Plan identifies impacts resulting from increased development in these high fire hazard areas, and designates these areas, classified as Hillsides or Ranchlands, for resource conservation, limiting development potential.

Since January 1, 1991, the BOF has been required to adopt and periodically update regulations applicable to fire safety in the SRA, pursuant to Section 4290 of the Public Resources Code. These regulations are published under Title 14 of the California Code of Regulations, Sections 1270.00 through 1276.04. They govern "*future design and construction of structures, subdivisions and developments,*" "*provide for basic emergency access and perimeter wildfire protection measures,*" and establish standards for on-site improvements and minimum water supply.

CAL-FIRE Review and State Regulation Enforcement

The BOF State Minimum Fire Safe Regulations currently apply to the SRA and are enforced by CAL-FIRE. Planning applications including, but not limited to, Subdivisions, Building Site Approval, Grading Approval, Design Review, and Development Permit applications for construction of new structures within the SRA are routed to CAL-FIRE for review.

CAL-FIRE reviews the development proposal to determine if access to the property, including County-maintained and private roads and bridges, meets the Fire Safe Regulations. Roads used solely for agriculture, mining, or timber harvesting are exempt from the regulations. Although the regulations have been in effect since 1991, historically CAL-FIRE did not review existing roads leading to a development site for conformance with the Fire Safe Regulations. Within the last six months, however, CAL-FIRE has begun requiring all projects in the SRA to meet the regulations.

Proposed Amendments to State Minimum Fire Safe Regulations

When State law was amended to apply the State Minimum Fire Safe Regulations to the VHFHSZ outside the SRA, the law mandated that the BOF amend the current regulations. The BOF adopted emergency regulations last year, but those regulations were intended to be a stop-gap measure to incorporate the VHFHSZ areas while the BOF was able to consider

more extensive changes to the regulations. The BOF released draft amendments on March 14, 2021, and at its March meeting directed its staff to prepare the amendments for formal publication under the Administrative Procedure Act. The amendments were published for formal public notice and comment on April 23, 2021, triggering a 45-day public comment period ending on June 22, 2021. Their adoption will be considered at a BOF hearing on June 22, 2021. The proposed amendments establish minimum regulations in the SRA and local VHFHSZ, including separate standards for new and existing roads. While proposed standards for existing roads are less strict than for new roads, many local roads (both County-maintained and private) do not meet those lesser standards.

Expansion of Regulations to Additional Areas

SB 901 mandates that, beginning on July 1, 2021, the State Minimum Fire Safe Regulations will also apply to the local VHFHSZ. Most of the VHFHSZ in the unincorporated County are located in the SRA. However, this change will greatly impact several communities in the West Valley for which County Fire is the primary or secondary responder. Currently, over 11,000 parcels in the SRA in Santa Clara County (almost all in unincorporated areas) are subject to these regulations, and the Administration estimates over 7,500 new parcels (in both the unincorporated areas and cities) outside the SRA but within the VHFHSZ will be subject to the regulations on July 1, 2021.

The Administration has identified that the strict application of the State Minimum Fire Safe Regulations to existing roads and the proposed amendments to the regulations, combined with the expansion of the BOF standards to the VHFHSZ in July 2021, will have the following impacts upon the County:

Impacts on Private Development Projects Mid-Review

As the 1991 BOF standards were not strictly enforced until recently, the applicants for approximately 20 projects that were previously approved but are now seeking extensions, minor modifications, or who are applying for Building Permits associated with previous Planning approvals, are now being informed by CAL-FIRE that road access to their parcel must be improved to meet the regulations. The road access improvement requirement applies from the development site, along a public or private road, to a road that meets the BOF standards. The change in strictness of CAL-FIRE's review has resulted in requests for exceptions and appeals to the County, and raises concerns regarding equity and the validity of existing land use approvals.

Impacts on Existing Road Networks

The current regulations are ambiguous on the extent that they apply to existing roads, but CAL-FIRE has recently informed applicants with properties along existing roads that do not meet the current standards that their projects cannot be approved without off-site road improvements. The proposed draft regulations that could take effect later this year set separate standards for new and existing roads. The regulations address width, length of dead-ends, weight capacity, slope, curve radii, vertical and horizontal clearance, turnarounds, turnouts, and signage. The Administration anticipates that a portion of existing County-maintained roads do not currently meet the standards for "existing roads." Most significant of

these upgrades would be road widening and creating loops to eliminate dead-end roads over a mile in length (draft proposal decreases this to ½ mile). Private roads serving development must comply with the same regulations.

A proposed development that will utilize existing roads that do not meet the regulations cannot be approved until such time that the road is improved to meet the regulations. Although the existing regulations have been in effect for 30 years within the SRA, CAL-FIRE has not consistently applied the regulations to development projects in Santa Clara County. In some cases, CAL-FIRE is now requiring the entire length of an access road be improved to meet the regulations for an individual development project, which places the burden on one property owner rather than all properties benefiting from the required improvement. The requirement to upgrade some of these roads is both technically and financially infeasible.

Many roads in the SRA and local VHFHSZ are either built alongside watercourses in the bottom of valleys or use switchbacks with tight turning radii up extreme slopes. Widening roads adjacent to watercourses in the hillsides has riparian impacts or requires significant grading and tree removal, or large retaining walls. Switchback roads frequently do not meet the minimum required turn radii and cannot be straightened due to the slope increase.

The Administration is concerned that private property owners may expect the County to fund and improve the roads serving their properties or add a private road to County inventory. While the County is under no obligation to comply with these requests, the Administration foresees pressure to do so. The County's road repair budget, which is funded by gas taxes and user fees, is allocated to the County by formula and is almost wholly used for maintenance of the existing system. Most capital improvements to the County road system are special one-time allocations or specific programs such as the Highway Bridge Replacement program. Since the County is unable to fund these improvements, there may be disputes and challenges associated with the ability of private development projects to comply with the fire safe regulations.

The Administration is concerned about costs being distributed in a fair manner. For example, if a property owner wishes to build on a single parcel located on a rural hillside or mountain road, that project must bear the entire cost of the road improvement. Once improved, other parcels may develop without the financial burden of road improvements.

The Roads and Airports Department maintains a list of County-maintained roads that is updated and published annually, known as the "Official County Road Book." The Road Book currently reports attributes such as paved width, right-of-way width, average daily traffic, pavement condition index, and classification such as valley, hill or mountain. In order to better understand the impacts of the new BOF regulations, staff will perform additional surveys this year to develop data sets that describe more detailed width, vertical slope, and horizontal curve radius, in the VHFHSZ.

This data will allow County Roads and the Fire Responders, CAL-FIRE and local Services, to identify and quantify steep, narrow, and curved roads. This will also help the community better understand the physical limitations of the local road network as it is adapted to the local terrain.

Impacts on Bridges

It is common for roadways to narrow when crossing waterways. In many cases these crossings do not meet existing or new fire standards. This was done historically for economic reasons when the bridges were built and currently for environmental reasons to protect habitat. Some water crossings are pipes or boxes (culverts) that convey the wet weather flow, and some are bridges for named creeks.

Existing bridges are inventoried and inspected by Caltrans, and maintenance funding is prioritized through a rating system based on carrying capacity and condition. It is very difficult and expensive for the County or an individual development project to upgrade an existing bridge outside of this process. The permitting process to rebuild or widen bridges involves multiple agencies at the local, State, and Federal level due to concerns over water quality, wildlife, and other environmental resources, and can often take years.

Growth Implications/Moratorium

The proposed regulations conflict with a number of important County and State policies regarding habitat preservation, compact urban growth, wetland and waterway protection, environmental stewardship, and greenhouse gas emissions reduction. The Administration is concerned that significant improvement of the rural roads to meet these regulations, if implemented, may lead to additional growth pressure for development in the high fire hazard areas. This is especially alarming if triggered by small, single-site development. While the General Plan designates most of the high fire hazard areas for resource conservation and has a number of policies that significantly limit the intensity of development allowed, road upgrades could intensify real estate speculation for rural lot development in these areas. Conversely, if these regulations are strictly enforced and no road improvements are made, it will create a virtual moratorium on development in much of the rural hillsides. Thus, the Administration recommends modifications that allow road and safety improvements proportionate to the new development proposed, to avoid either scenario of growth inducement or a prohibition on all development.

Impacts to County Parks

Application of the current and amended fire safe regulations may also significantly impact County Parks within the SRA and local VHFHSZ. The County maintains 26 parks or Parks-managed properties within the SRA and local VHFHSZ. These parks and properties include 113 buildings (82 of which are actively used) that could be subject to the fire safe regulations, including small structures that are minimally occupied, such as visitor centers, restrooms, kiosks, offices, shops, and lease facilities. There are about 23 miles of existing paved and unpaved roads that provide access and support buildings within the SRA and local VHFHSZ that may not meet the standards in the proposed fire safe regulations.

Parks and open space are a highly desirable use of land and are often within areas at high risk for wildfires. The Parks and Recreation Department (Parks Department) is concerned about both the potential cost and the possible degradation of park land if the fire safe regulations are applied without exception to parks and open space, and related projects. The Parks Department uses existing infrastructure and develops the necessary facilities and

infrastructure to provide public access and support to County Parks' operations, maintenance, and land stewardship within these areas. Changes to road access may not be possible due to topography, environmental impacts, or adjacent property rights. Where feasible, improvements will likely have substantial costs and impacts on the natural environment to meet the fire safe regulations.

The draft regulations could impact property protected as parklands and potentially impact future acquisitions and development of new County parkland due to necessary road improvements. There may be requirements and pressure on County parks to provide new secondary egress or evacuation routes serving private development. County parklands are often targeted for this purpose as they are large, contiguous parcels with regularly maintained trails, and unpaved roads. Expansions of the existing roads to meet the proposed fire safe regulations could take parklands that are adjacent to public and private roads, as well as easements. In addition, appropriate public access, balanced with stewardship, is the goal for properties purchased with Park Charter funds. Development of buildings and facilities necessary to support and enhance public access would likely trigger significant development required by the proposed fire safe regulations despite the low impact of open space recreation.

Review Process and Appeals

If upon review of the project, CAL-FIRE determines that a project does not comply with BOF standards, the applicant can apply to CAL-FIRE for an exception. If an exception request is denied, the applicant may file an appeal with the local jurisdiction. Since this stricter scrutiny began, the Administration has not seen CAL-FIRE approve any exception requests. Historically, the County has not received appeals of this nature. With stricter enforcement of the State regulations, several applicants have indicated that they intend to appeal the CAL-FIRE decision, and additional appeal requests are anticipated.

As the County does not currently have an appeals process specified for this, such appeals would have to go through the appeal process associated with the County's applicable land use approval. The Administration is concerned with the appeals on two counts: First, the awkward position of local authorities ruling on an appeal of an exception from a State regulation that CAL-FIRE has denied; and second, hearing the appeals, which are very technical in nature, before persons and commissions who do not have technical expertise in this area. The Administration recommends creating a review process of these appeals incorporating technical expertise, potentially comprised of the Fire Marshal, Director of Planning and Development, and Director of Roads and Airports. The Administration is working on a proposed ordinance, which will be forwarded to the Board as soon as possible.

Actions by the Administration and Next Steps

As noted above, on April 23, 2021, the BOF formally published proposed amendments to the State Minimum Fire Safe Regulations for a 45-day public comment period. Adoption will be considered at a BOF hearing on June 22, 2021. The County may advocate, either individually or with other partner Counties, that the BOF consider alternative language as well as voice

the County's concerns about the impacts of the proposed regulations during the 45-day comment period. The Department of Planning and Development is currently working with County Counsel, the Fire Marshal's Office, Parks and Recreation, Roads and Airports, and Facilities and Fleet to develop and propose alternative language which would address the impacts of the regulations upon the County while still meeting the intent of the regulations to reduce wildfire risks.

The Administration is preparing specific alternate language in addition to comments of general concern. These comments will focus on clarification of applicability, minimizing impacts to County facilities, the appeals process, specificity on technical terms, what constitutes "substantial compliance," and unintended consequences of the regulations.

The County is engaging with other Counties and entities and may decide to collectively voice concerns regarding State Minimum Fire Safe Regulations and laws and the impacts they have locally. The Administration recommends that efforts be made to lobby the State government on issues including alternative mitigation measures and funds for wildfire safety planning and infrastructure implementation. The Administration also recommends that the County work with CSAC to increase collective lobbying efforts to address desired changes.

The Administration also recommends that the County consider how it will approach Land Use Entitlements and Building Permits in areas of the unincorporated County where the existing road networks do not meet standards, if the draft regulation amendments are adopted. The Administration is preparing draft amendments to the County Ordinance Code that will establish an appeal review process related to exceptions to the State Minimum Fire Safe Regulations, and will return to HLUET and the Board of Supervisors with these draft amendments.

The Administration also recommends that the County work with fire response agencies to establish wildfire prevention infrastructure (e.g., fuel breaks) and community-specific emergency plans, especially in existing neighborhoods where access does not meet BOF standards. The Santa Clara County Community Wildfire Protection Plan is one such effort.

The County could also, in the long term, facilitate the voluntary sale or donation of parcels in high fire risk areas to County Parks, the Santa Clara Valley Open Space Authority, the Habitat Plan Agency, and similar organizations to reduce fire risk and promote resource conservation.

CHILD IMPACT

The recommended action will have no/neutral impact on children and youth.

SENIOR IMPACT

The recommended action will have no/neutral impact on seniors.

SUSTAINABILITY IMPLICATIONS

The recommended action will have no/neutral sustainability implications.

BACKGROUND

The State divides all areas into Federal, State, or Local Responsibility Areas. These designations identify which entities are primarily responsible for responding to fires and overseeing fire safety measures. Areas in the Wildfire Urban Interface areas are also rated according to their risk of wildfire as Very High, High, or Moderate.

State Responsibility Areas

SRAs are areas where CAL-FIRE is the primary responder to fires and responsible for fire safety. Since January 1, 1991, all lands within the SRA have been governed by Minimum Fire Safe Regulations established by the BOF. While CAL-FIRE can assign the review of projects for compliance with and the enforcement of these regulations to local entities, in Santa Clara County CAL-FIRE reviews applications for and inspects building construction and development in the SRA.

Local Responsibility Areas

Local Responsibility Areas (LRAs) are areas where the County or municipalities are the primary responder to fires and responsible for fire safety. Starting on July 1, 2021, BOF regulations will also apply to VHFHSZ in the LRA (called “local VHFHSZ” in this report). The County Fire Marshal’s Office reviews applications for and inspects building construction and development in these unincorporated areas.

CONSEQUENCES OF NEGATIVE ACTION

If the HLUET Committee does not accept the report, the Department will revise the report as directed by HLUET.

STEPS FOLLOWING APPROVAL

The Department requests no follow-up steps with the Clerk of the Board.

ATTACHMENTS:

- Attachment A – SRA VHFHSZ Fire Safe Regulations (current) (PDF)
- Attachment B – State Minimum Fire Safe Regulations, 2021 (April 23, 2021 draft) (PDF)
- Attachment C – SRA VHFHSZ in Santa Clara County Map (PDF)