

Board of Forestry and Fire Protection

**Notice of Proposed Emergency Action,
(pursuant to GOV § 11346.1)**

**“Emergency Fire Safe Regulations Applicability”
1st Readoption (GOV § 11346.1(h))**

Notice Date: April 23, 2021

The Board of Forestry and Fire Protection (hereafter “Board”) has adopted emergency regulations to restructure, modify, and clarify standards for the scope and applicability of the State Responsibility Area/Very High Fire Hazard Severity Zone (SRA/VHFHSZ) Fire Safe Regulations, a set of regulatory standards for construction in the SRA and VHFHSZ as set forth in PRC § 4290. This action is being taken in accordance with GOV §§ 11346.1, 11346.5 (2) through (6) inclusive, and 11349.6. The Board adopted the emergency regulation at their regular meeting scheduled on June 10, 2020.

At their regularly scheduled meeting on April 7, 2021, the Board authorized re-adoption of the regulatory text and findings of emergency. Emergency circumstances are unchanged since the initial adoption of the regulations.

Pursuant to GOV § 11346.1(h), the Board has taken steps to make the emergency regulation permanent, however more time is required to complete the regular rulemaking process. At their regularly scheduled April 7, 2021 meeting, the Board considered proposed regulatory text and an Initial Statement of Reasons for the permanent adoption of related regulations pursuant to GOV § 11346.2, but has not yet noticed those documents as additional refinement was necessary. The Board continues to proceed with diligence to comply with GOV § 11346.1(e).

If you wish to comment on the adopted emergency regulations, you must submit the comment directly to the Office of Administrative Law (hereafter “OAL”) within **five (5) calendar days** of OAL’s posting of the proposed emergency regulations on the OAL web site. You may submit comments on the adopted emergency regulations to:

Mail:

OAL Reference Attorney
300 Capitol Mall, Suite 1250
Sacramento, California 95814

Fax:

(916) 323-6826

E-mail:

staff@oal.ca.gov

OAL will accept all comments submitted by the specified deadline.

When you submit a comment to OAL, you must also submit a copy of your comment to the rulemaking agency's specified contact person provided below.

Mail:

Edith Hannigan
Land Use Planning Program Manager
Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 944244-2460

Fax:

(916) 653-0989

E-mail:

publiccomments@BOF.ca.gov

GOV § 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to OAL, the adopting agency provide a notice of the proposed emergency action with the agency. After submission of the proposed emergency to the OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in GOV 11349.6.

This regulation will be submitted to the Office of Administrative Law on April 30, 2021. **If the regulation is submitted to OAL on that date, the public comment period closes on May 5, 2021.**

OAL will confirm that the agency has received the comment. Pursuant to Title 1, California Code of Regulations (CCR), §§ 55(b)(1) through (4), the comment must state that it is about an emergency regulation and include the topic of the emergency.

The Board is not required and, in this instance, not likely to respond to comments submitted. However, should the Board choose to respond, it must submit its response to OAL within **eight (8) calendar days** following the date of submission of the proposed emergency regulation to OAL, unless specific exceptions are applicable. [Title 1 CCR § 55].

Pursuant to **GOV § 11346.1(a)(2)(A)**, the specific rule text associated with the proposed action immediately follows this notice.

Pursuant to **GOV § 11346.1(b)(2)**, following is a description of the facts demonstrating the existence of an emergency and the need for immediate action, and demonstrating, by substantial evidence, the need for the proposed regulation to effectuate the statute being implemented, interpreted, or made specific and to address only the demonstrated emergency.

Wildfire Risks to Housing Supply, Costs, and Security

Wildfires have influenced California's landscape as a natural process for millennia, with their frequency, intensity, and seasonal timing being major factors in determining not only floristic composition, but also general land use, throughout the state. Anthropogenic activity,

including fire suppression without active forest management as well as increases in human-caused wildfires over the last several centuries has resulted in alterations to the natural fire regime, which has resulted in substantial ecosystem stress, particularly in forest and shrub-dominated habitats.¹ Due to fire suppression, the Sierra Nevada and northwestern California have experienced less frequent fires than have historically occurred, causing a buildup of forest fuels, and southern California is experiencing larger and more frequent fires than under historic conditions.² Additionally, fire suppression in forested areas has resulted in dense forest stands and has caused a build-up of fuels resulting in higher-than-natural intensity and heat of wildfires, which can destroy otherwise fire-adapted plants and damage soil structure.³ Furthermore, the recent and prolonged periods of drought throughout the state have resulted in forests which are more prone to fire due to tree mortality from both drought and pests, and are more vulnerable due to fires from the buildup of fuels resulting from these environmental and anthropogenic conditions.

In addition to changing forest conditions, increasing development in the Wildland-Urban Interface (WUI) continues to put more people, homes, and infrastructure in harm's way from wildland fire. The most recent assessment of California's WUI shows that as of 2010, there were about 3 million housing units in Fire Hazard Severity Zones (FHSZ) that are potentially at risk from wildland fire. A large proportion of the houses within FHSZs are in the southern portion of the state. The top five counties for FHSZ housing units, all in southern California, contain about half of all statewide housing units in FHSZ. However, this is a statewide problem, with 37 counties having at least 10,000 housing units in FHSZ.⁴ Furthermore, since the frequency of extreme weather events is projected to increase, urban areas both immediately adjacent to and near wildlands will be at risk. The 2017 October Fire Siege clearly showed that the damage from wildland fires can occur in areas previously thought to be at low risk. Recent wildland fires also have demonstrated that post-fire mudslide events can cause substantial loss of life and damage to property and natural resources.

The aggregation of these changing forest conditions and human demographics has resulted in increases in the number of wildfire ignitions, areas burned, and impacts to ecosystems. The number of ignitions has been increasing since 2007, the average acreage burned has doubled since the 1960's, and forests represent approximately one-third of the 700,000 acres which burn annually. Additionally, the increasing prevalence of very large fires (>100,000 acres) across the West, as well as large scale tree mortality events, has led many experts to posit that the US has entered an era of "mega-fires" or "mega-disturbances." During this decade, although the number of annual fires has decreased compared to the 2000s, the average fire

1 Ainsworth, J. and Doss, T. A. 1995. Natural history of fire & flood cycles. California Coastal Commission.

2 Safford, H.D. and Van de Water, K.M. 2014. Using Fire Return Interval Departure (FRID) analysis to map spatial and temporal changes in fire frequency on National Forest lands in California. Research Paper PSW-RP-266, USDA Forest Service, Pacific Southwest Research Station, Albany, CA.

3 Baker, W.L. and Shinneman, D.J. 2004. Fire and restoration of pinyon-juniper woodlands in the western United States: a review. *Forest Ecology and Management* 189:1-21.

4 Fire Hazard Severity Zones, FRAP, v11; Census block data, U.S. Census Bureau, 2010.

size has increased from approximately 11,000 acres to 15,000 acres.⁵ Fifteen of the twenty largest wildland fires of the modern era have occurred since 2000, and ten of the most destructive have occurred since 2015 including the 2018 Mendocino Complex, which burned almost 460,000 acres. Five of the 20 deadliest fires in California's history have occurred within the last three years alone (2017 and 2018). The California Department of Insurance identified that insured losses from 2017 and 2018 wildfires and 2018 mudslides totaled over 13.8 billion dollars. This trend of increasingly large, destructive, and costly wildfires is likely to continue unless immediate action is taken.

This trend also exacerbates the availability of affordable and secure housing in California. More than half of all renters in the state pay more than 30% of their income towards rent, and nearly 30% pay over 50% of their income toward rent.⁶ Housing supply is not keeping up with demand, and recent destructive wildfires have reduced the available housing supply while creating increased demand. Even amongst those whose homes survive, the disruption to businesses and jobs causes a spike in serious delinquency rates on home mortgages. Within three months of major wildfires, Sonoma and Butte counties saw 50% and 70% spikes in these delinquencies.⁷ In both areas, home prices were rising at or slower than average statewide growth, but after the wildfires home prices ran 4 to 7 percentage points higher than the rest of the state's.⁸

In the last ten years, California built an average of 80,000 homes a year, far below the 180,000 homes per year that are needed to keep up with housing growth from 2015-2025. The five counties where the most homes in FHSZs exist is also the same region expected to grow by 38% between 2015 and 2025,⁹ contributing to housing insecurity by putting more people in harm's way. Additionally, the Department of Finance projects the over-65 population will grow by more than four million people by 2030. The median personal income of seniors in California is \$21,300¹⁰ – in the next ten years California will only see an increase of pressure on the limited affordable housing stock in the state.

In GOV 65852.150, the Legislature made several findings relating to the role of accessory dwelling units (ADUs) in increasing the affordable housing stock in California. In addition to providing housing at below-market rates, ADUs can provide income to the primary homeowners, improving their own housing security. Constructing ADUs improves the ability to utilize infill development, reducing the state's greenhouse gas emissions, and ADUs are an essential component of California's housing supply. These findings end with the direction from the Legislature to local governments to adopt ordinances that provide for the creation of accessory dwelling units, and that requirements in those ordinances "are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units in zones in which they are authorized by local ordinance."

5 CAL FIRE California Interagency Fire Perimeter Database 2017

6 California Department of Housing and Community Development, "Final Statewide Housing Assessment 2025," February 2018.

7 Frank Nothaft, "Wildfire and Housing Markets." July 10, 2019. CoreLogic.

8 Ibid.

9 California Department of Housing and Community Development

10 Ibid.

The Board of Forestry and Fire Protection is uniquely situated at the intersection of the wildfire emergency and the housing emergency present in the state. Without immediate action by the Board, these emergencies are likely to continue.

Finding of Emergency

The Board recognizes that wildfire conditions pose a significant, urgent, extensive, and on-going threat to humans and natural resources throughout the state and the imminent nature of the fire hazard problem has been repeatedly recognized by many high-profile efforts, including the Governor's Blue Ribbon Fire Commission of 2004; U.S. General Accounting Office report on western National Forest fire conditions; the Western Governors' Association promulgation of the National Fire Plan; the USDA Forest Service (USFS) Sierra Nevada Forest Plan Amendment, 2004; legislation proposed by both houses of the California Legislature; Governor Brown's Executive Order B-52-18 (May 2018); the Little Hoover Commission report "Fire on the Mountain: Rethinking Forest Management in the Sierra Nevada" (February 2018); and Governor Newsom's Strike Force Report on Wildfires and Climate Change (April 2019).

The Board recognizes the intersection of the wildfire crisis and the housing affordability crisis in the state. A Redfin analysis noted that in 2019 that four southern California counties alone could lose up to \$2 trillion dollars in housing value due to wildfires,¹¹ and destructive wildfires simultaneously decrease housing supply and increase housing demand, all while raising home prices and increasing mortgage defaults.

The Board recognizes that its authority in the regulation of land use development in the State Responsibility Area (SRA) plays a critical role in the availability of affordable housing statewide and the provision of minimum standards by which residential uses and business enterprises are constructed to provide for adequate emergency ingress and egress during wildfire. The Board initially adopted regulations related to fire safe development standards in 1991. Since that adoption the regulations remained largely unchanged until increasing wildfire severity and destruction necessitated amendments in the 2010s. Without clarity regarding the applicability of these regulations, their scope, and the required minimum development standards, the Board may be inadvertently contributing to the housing crisis.

Promulgation of these regulations is immediate and necessary to clarify the applicability of the existing SRA Fire Safe Regulations and inspection authorities thereunder in order to increase the availability of affordable housing in the state, reduce housing costs generally, as well as to improve the safety of communities developed in the SRA. The following is a list of evidence of the immediate and necessary need for emergency regulations to address the impacts of destructive wildfires and high housing costs throughout the state for the immediate preservation of the public peace, health and safety, and general welfare:

One: The values at stake in wildland fire protection are extensive and at imminent threat. The most recent assessment of California's Wildland-Urban Interface (Fire

¹¹ Dana Anderson, "Los Angeles, Orange & Santa Clara Counties Are at Risk of Losing More Than \$2 Trillion Worth of Housing Value Due to Wildfires." Published November 1, 2019, updated December 2, 2019. Redfin.

Hazard Severity Zones, FRAP, v11; Census block data, U.S. Census Bureau, 2010) shows that as of 2010, there were about 3 million housing units in FHSZ that are potentially at risk from wildland fire, with 37 counties having at least 10,000 housing units in FHSZ.

Two: Wildfire risk is increasing statewide. Within the last decade, the average wildfire size in the state has increased from approximately 11,000 acres to 15,000 acres. Fifteen of the 20 largest wildland fires of the modern era have occurred since 2000, and ten of the most destructive have occurred since 2015, including the 2018 Mendocino Complex, which burned almost 460,000 acres. Five of the twenty deadliest fires in California's history have occurred within the last two years alone (2017 and 2018). This trend of increasingly large and destructive wildfires is likely to continue unless immediate action is taken.

Three: Extreme costs associated with wildfire losses. The California Department of Insurance has reported that direct incurred insured losses from 2017 and 2018 wildfires and associated 2018 mudslides total over \$13.8 billion, with the uninsured losses currently unquantified. CoreLogic reports that home prices rise after wildfires, and a Redfin analysis found that four southern California counties alone could lose up to \$2 trillion dollars in housing value.

Four: California Housing and Community Development (HCD) 2025 Statewide Housing Assessment. HCD's 2018 report on California's housing future contains short and long term strategies to increase the availability of affordable housing in California. In the short term, the report recommends reducing per-unit costs by reducing permit and construction policies that drive up housing costs. In the long term, the report establishes three goals relating to 1) reforming land use policies to advance affordability, sustainability, and equity; 2) addressing housing needs for vulnerable populations; and 3) investing in affordable home development and rental homes. The application of the Board's regulations to the construction of ADUs and the rebuilding of homes lost to wildfires has direct impacts on those costs.

Five: Legislative direction to increase ADUs. The Legislature established findings in GOV 65852.150 regarding the importance of accessory dwelling units to housing affordability, housing availability, and housing security in California. Their intent, in GOV 65852.150(b), is to reduce any overly "arbitrary, excessive, or burdensome" requirements that "unreasonably restrict the ability of homeowners to create accessory dwelling units in zones in which they are authorized by local ordinance." The application of the Board's regulations to the construction of ADUs may represent such overly burdensome requirements.

Six: Public outreach to the Board for assistance with this emergency issue. The Board has been contacted by numerous fire protection professionals, local government officials, and the general public requesting regulatory revision to facilitate affordable yet fire safe land use development in the SRA. Promulgation of these regulations is immediate and necessary in order to address the threat to Californians' housing

affordability, safety, and security, as well as to reduce the risk of structure loss due to destructive wildfires.

Pursuant to **GOV § 11342.545**, this situation calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare. The situation presents a significant threat to housing supply and housing security in the state. The Board was compelled to respond to the evidence, as described above, to address this threat. These proposed revisions are immediate and necessary to address the costs these regulations may add to housing, including the construction of ADUs and reconstructions after wildfires, that may be contributing to this housing crisis. Appropriate and strategic application of the minimum standards in the SRA/VHFHSZ Fire Safe Regulations can:

- Reduce fire severity and destruction in the wildland-urban interface.
- Decrease losses of homes and structures to wildfire events.
- Improve the safety of evacuation routes, particularly those relying on existing road networks.
- Increase the amount of affordable and secure housing in the state and reduce housing costs generally.
- Increase public safety.

Pursuant to **GOV § 11342.545**, this situation calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.

The Board is proposing action to amend 14 CCR §§ 1270.02, 1270.04, and 1270.05.

Pursuant to **GOV § 11346.1(b)(2)**, following is the list of each technical, theoretical and empirical study, report, or similar documents, if any, upon which the Board relied to make the “emergency” finding:

Assembly Bill No. 881, Chapter 659, Signed by the Governor October 9, 2019, Filed with the Secretary of State October 9, 2019

Governor Newsom’s Strike Force, “Wildfires and Climate Change: California’s Energy Future,” April 12, 2019.

California Department of Insurance, “Insured Losses from the 2018 Mudslide and the 2017 & 2018 Wildfires,” September 6, 2018

Board of Forestry and Fire Protection, CAL FIRE, “2018 Strategic Fire Plan for California”, August 22, 2018

California Department of Housing and Community Development, “Final Statewide Housing Assessment 2025,” February 2018.

Frank Nothaft, “Wildfire and Housing Markets.” July 10, 2019. CoreLogic.

Dana Anderson, "Los Angeles, Orange & Santa Clara Counties Are at Risk of Losing More Than \$2 Trillion Worth of Housing Value Due to Wildfires." Published November 1, 2019, updated December 2, 2019. Redfin.

Letter from Sonoma County Counsel, dated February 5, 2020

Letter from Sonoma County Counsel, dated April 22, 2020

Representative sample of public comment received from Sonoma County residents: Email from Deborah Eppstein, dated February 18, 2020

Representative sample of communications received from fire and land use professionals: Email from Steve Werner, Humboldt County Planning and Building Department, dated January 22, 2020; email from Dave Bookout, CAL FIRE/Placer County Fire Planner, dated January 15, 2020; email from Steve Mosuirchak, Sonoma County Fire Prevention, dated January 16, 2020

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 11346.5(a)(2)** (the reference to the authority(s) under which the regulation is proposed and a reference(s) to the particular code sections or other provisions of law that are being implemented, interpreted, or made specific).

14 CCR § 1270.02 Note: Authority cited: Section 4290, Public Resources Code. Reference: Sections 4290 and 4291, Public Resources Code.; Section 65852.2 Government Code.

14 CCR § 1270.04 Note: Authority cited: Sections 4111 and 4290, Public Resources Code. Reference: Sections 4117 and 4290, Public Resources Code.

14 CCR § 1270.05 Note: Authority cited: Sections 4111, 4119 and 4290, Public Resources Code. Reference: Section 4290, Public Resources Code.

Pursuant to **1 CCR § 20(c)(1)**, no documents are incorporated by reference in these regulations.

The Board had available the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office in Sacramento, California.

Pursuant to **1 CCR § 48**, the notice required by Government Code section § 11346.1(a) shall contain the following or substantially similar statement:

"Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6."

Pursuant to **1 CCR §50(a)(5)(A)** and **GOV § 11346.1(a)(2)** the Board provided a five working-day notice. The proposed action was, at a minimum, posted on the Board’s website (pursuant to **GOV § 11346.4(a)(6)**), sent to the Board mailing list (pursuant to **GOV § 11346.4(a)**), and widely distributed via email (pursuant to **GOV § 11340.85**) at least five working days prior to being submitted to the Office of Administrative Law.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 11346.5(a)(3)**

INFORMATIVE DIGEST

Pursuant to Public Resources Code 4290, the Board is required to “...adopt regulations implementing minimum fire safety standards related to defensible space which are applicable to state responsibility area lands under the authority of the department.” The statute, among other things, requires minimum wildfire protection standards in conjunction with building, construction and development in State Responsibility Area (SRA). The regulations set standards for certain design and construction of structures, subdivisions and developments in SRA and provide for basic emergency access and perimeter wildfire protection. These measures provide for emergency access; signage and building numbering; private water supply reserves for emergency fire use; and vegetation modification. This action amends the existing regulations for the purposes of improving regulatory clarity and uniform implementation of wildfire protection standards association with land use and development.

The Board’s first adopted regulations to implement PRC 4290 within the SRA/VHFHSZ Fire Safe Regulations became effective on May 30, 1991. Amendments were later made to Article 1, Administration, §§ 1270, 1270.02-1270.09, effective April 1, 2013. A more exhaustive set of revisions amending portions of Articles 2 through 5 were made effective on January 1, 2016, and another set of revisions amending most of the sections in Title 14, Division 1.5, Chapter 7, Subchapter 2 were made effective on January 1, 2020.

In the fall of 2019, AB 881 was passed by both houses of the Legislature and signed into law by the Governor, with an effective date of January 1, 2020. AB 881 amended a section of Government Code, (GOV), § 65852.2, allowing local agencies to pass ordinances regulating the location, design, and construction of accessory and junior accessory dwelling units (ADUs). GOV 65852.2 places limits on the requirements a local agency can place on the location, design, and construction of ADUs, such as reducing or eliminating parking requirements, setback requirements, and other requirements that may provide a barrier to the swift and cost-effective construction of ADUs.

However, several of those limitations on requirements conflict with, or appear to conflict with, the minimum standards set forth in the SRA Fire Safe Regulations. The Board has received numerous requests from fire officials across the state to interpret the SRA Fire Safe Regulations in the context of the requirements in GOV 65852.2. There is an urgent

need to clarify the SRA Fire Safe Standards regarding their applicability to ADUs, so as not to conflict with the goals of AB 881 and the efficient construction of ADUs.

It has also been brought to the Board's attention that there is confusion and differing interpretations throughout the state regarding the applicability of these regulations to the reconstruction or repair of structures lost after a wildfire. It is a matter of urgency that revisions to clarify the application of these standards to reconstruction and repair be effective prior to the most destructive months of the California fire season. Of the top 20 most destructive wildfires, all but three of them took place in the last four months of the year. One each occurred in June, July, and August. Regulatory amendments are required to reduce confusion regarding the application of the SRA Fire Safe Regulations to reconstruction and repairs, in order to facilitate a cost effective and timely restoration of people's homes and businesses while ensuring the future safety of the community.

Since 1991, the SRA Fire Safe Regulations have contained a provision to allow the Board to certify local ordinances as meeting or exceeding the Board standards, which allows counties to use those local standards in the SRA instead of the statewide Board standards. Those certifications become invalid when the county amends their local ordinances or when the Board amends the state regulations. As a result of the Board's 2016 and 2020 changes to the Fire Safe Regulations, all previously issued certifications were rendered invalid. Certification of local ordinances was one of the preconditions that allowed CAL FIRE to delegate the SRA Fire Safe Regulations inspection authority to the local jurisdiction. It has become evident that this requirement has been overly burdensome for both local jurisdictions and CAL FIRE units, and it is urgent these regulations be revised so as to prevent a statewide slowing – a potential halt – of the permitting, inspection, and approval of new construction.

The effect of the action is to provide clarity regarding the scope and application of, and enforcement authority under, the SRA/VHFHSZ Fire Safe Regulations.

The primary benefit of the action is: 1) the improvement of civilian and firefighter safety during wildfire events requiring mass evacuation; 2) the reduction of overly burdensome preconditions to the efficient application and enforcement of the SRA Fire Safe Regulations; 3) the reduction of overly burdensome regulations that may be inhibiting housing construction goals; and 4) the reduction in risk to life, property and the environment posed by unregulated development by applying defensible space principles to requirements for construction in the SRA and VHFHSZ, thereby providing sufficient space for civilians to safely evacuate from a wildfire, and for firefighters to safely defend a community from wildfire. Without these emergency regulations, these benefits will not be realized.

The proposed action does not differ substantially from an existing comparable federal regulation or statute. There are no federal regulations or statutes addressing land development in the SRA or VHFHSZ.

The Board performed a search of existing regulations and concluded that the proposed regulation is not inconsistent or incompatible with existing state regulations.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 1346.5(a)(4)**. There are no other matters as are prescribed by statute applicable to the specific state agency or to any specific regulation or class of regulations.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 11346.5(a)(5)**. The Board finds that the proposed regulation does not impose a mandate on local agencies or school districts.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 1346.5(a)(6)**. No costs or savings to any State agency are expected.

The proposed regulation does not impose a reimbursable cost to any local agency or school district (under Part 7 (commencing with Section 17500 of Division 4)). There are no other nondiscretionary costs or savings imposed on local agencies. There are no costs or savings in federal funding to the State.

The Board took action to authorize emergency rulemaking based on the findings provided pursuant to GOV § 11346.1(b)(2). The problem that the Board has addressed in the proposed action is described in the findings provided pursuant to GOV § 11346.1(b)(2). The fundamental problem is that there is confusion across the state regarding the application and interpretation of the SRA/VHFHSZ Fire Safe Regulations, reducing the likelihood of the state achieving its goals for increased housing supply and lower housing costs as well as reducing firefighter and civilian safety during mass evacuations. The regulatory mechanism which exists to establish the minimum fire safety standards for development in the SRA is currently not sufficient to address these areas of confusion, potentially creating hazardous housing conditions throughout the state.

The purpose of the proposed action is to provide clarity regarding the scope and application of the SRA/VHFHSZ Fire Safe Regulations, and to reduce overly burdensome requirements inhibiting increases in affordable housing and increasing housing supply generally in the state.

Amend § 1270.02 Scope

§ 1270.02(a)(1) was revised to reflect exceptions to the SRA/VHFHSZ Fire Safe Regulations added in this proposed rulemaking.

§ 1270.02(c) Local government officials noted the SRA/VHFHSZ Fire Safe Regulations could be interpreted to apply to the reconstruction or repair of buildings in the SRA/VHFHSZ that had been damaged or destroyed by a wildfire. Subsection (c) was added to make it explicit that, at the discretion of and subject to any requirements imposed by the local jurisdiction, these regulations do not apply to the reconstruction or repair of certain buildings, under certain conditions.

The first condition is that the exemption may only be utilized at the discretion of the local jurisdiction, and that the local jurisdiction may impose requirements to ensure reasonable

access even if this exemption is utilized. The proposed revision to this section allows the local authority to require compliance with the SRA/VHFHSZ Fire Safe Regulations when reconstructing or repairing buildings if they so choose (see Mendocino County, “Frequently Asked Questions: Rebuilding After the 2017 Redwood Complex Fire,” <https://www.mendocinocounty.org/home/showdocument?id=17863>). However, this proposed revision also allows a local jurisdiction to exempt wildfire-related reconstructions or repairs from the specific standards in the SRA/VHFHSZ Fire Safe Regulations while giving them the flexibility to impose their own requirements to provide for adequate ingress and egress as is necessary.

The second condition is that this exemption only applies to legally constructed buildings impacted by wildfires. Those who failed to comply with the requirements when their building(s) their buildings were constructed should not be given a second opportunity to avoid compliance with the SRA/VHFHSZ Fire Safe Regulations, and so this exemption is limited to the reconstruction or repair of legally constructed buildings only. During the scoping phase of this rulemaking, local government officials brought up several hypothetical situations where the applicability of this exemption was not clear. In order to reduce confusion, and to address the specific emergency issue identified above, this exemption is limited only to reconstruction or repair necessitated by a wildfire.

Additional conditions place restrictions on the expansion of the buildings during reconstruction or repair, to prevent the property owner from taking advantage of this exemption to expand their occupancy, thus adding more traffic to the roadways and increasing the risk to firefighters and civilians during a wildfire. In order to avoid this, the exemption for reconstruction and rebuilding:

- 1) precludes a person from increasing the size of the residential, commercial or industrial building(s) that existed previously, which limits a commercial enterprises from increasing the number of persons on site and prevents significant increases in residential traffic associated with higher density development, which would reduce fire safety along the existing roads;
- 2) does not allow a change in use of the building(s) that previously existed, which prevents a use change that would increase the number of persons on site;
- 3) construct a new building(s) on the site which did not previously exist, which prevents an increase in capacity of the site.

This exemption is narrowly applied to rebuilds after wildfire because of the direct nexus of the SRA/VHFHSZ Fire Safe Regulations to the wildfire safety of the built environment. After the destructive wildfires of the last half decade, and especially 2017 and 2018, there have been many questions about the application of the SRA/VHFHSZ Fire Safe Regulations to those rebuilds. However, it is important to avoid ambiguity regarding other instances where construction or permitting may or may not be exempted from the SRA/VHFHSZ Fire Safe Regulations. To reduce ambiguity and clarify the narrow scope of this amendment, subsection § 1270.02(c)(2) was added to confirm that the enumeration of this particular exemption does not alter the extent to which these regulations apply to reconstructions or repairs unrelated to a wildfire.

§ 1270.02(d) Local government officials noted the SRA/VHFHSZ Fire Safe Regulations could be interpreted to apply to the creation of ADUs, and that a property owner wishing to create an ADU would be required to make any necessary upgrades to the road network to bring it up to the minimum standards in the SRA Fire Safe Regulations. As such upgrades may be quite costly to an individual homeowner, applying these regulations to the creation of ADUs would directly contradict the Legislature’s intent to allow local jurisdictions to seamlessly approve accessory-style housing projects in their communities.

Government Code sections 65852.2 and 65852.22 set limitations on the requirements a local jurisdiction may place on the creation of ADUs, or requires a local jurisdiction to have ordinances regulating the design and construction of ADUs that do not exceed, and may be less restrictive than, the standards in the Government Code. Several jurisdictions and their fire officials have contacted the Board for interpretation of the SRA/VHFHSZ Fire Safe Regulations where they are more stringent, or appear to be more stringent, than the requirements in Government Code §§ 65852.2 and 65852.22. Clearly stating the applicability of these regulations in regards to the creation of ADUs will reduce confusion among agencies and avoid any hindrances to the rapid expansion of accessory-style housing in the state.

GOV § 65852.2 allows local jurisdictions to “Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted” and specifies that “the designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.” It also allows local jurisdictions to allow for setbacks sufficient for “fire and safety” and some allowances for parking requirements based on “fire and life safety conditions.” GOV § 65852.22 additionally allows a local jurisdiction to pass an ordinance relating to fire and life safety requirements for single-family residences that include a Junior ADU (JADU), so long as those requirements applied to all single-family residences in that zone.

The exemption for ADU or JADU construction specified in § 1270.02(d) allows local jurisdictions to place their own restrictions on ADU or JADU construction for fire safety, for example by requiring larger setbacks for ADU construction in FHSZs or not allowing ADUs or JADUs in the Very High Fire Hazard Severity Zone.

§ 1270.02(e) This section was relettered and amended. This section denotes a general nonexclusive list of activities to which the SRA/VHFHSZ Fire Safe Regulations apply. However, in certain circumstances activities that may otherwise fall within this list may be exempt, such as roads when used solely for agricultural, mining, or wood products management. The phrase “unless otherwise exempt pursuant to this subchapter” was added for clarification.

Subsection 1270.02(e)(2) was revised to reduce confusion in the field regarding the phrase “not relating to an existing structure.” It was unclear to land use and firefighting professionals the intent of that phrase, and reviews of historical rulemaking documents provided inconclusive guidance; it appears this language was a holdover from the original regulations that expressly exempted existing structures, which was deleted in a prior amendment to clarify the applicability of the regulations as required by PRC § 4290. To further improve clarity, the term

“building,” which is a defined term in § 1271.00, was put in front of the term “construction,” to use the same terminology as in § 1270.02(a)(1) – “(a) These regulations shall apply to: (1) the perimeters and access to all residential, commercial, and industrial building construction...”

Modifying this subsection to reduce confusion is necessary to reduce barriers to affordable housing construction – without clarity regarding whether ADUs or wildfire rebuilding were “relating” to an existing structure or not, these regulations could be applied in such a way as to reduce the ability of local governments to comply with the Legislature’s intent in AB 881. Modifying this subsection also provides clarity when a commercial or industrial enterprise wants to increase the capacity of their site – for example, if a business enterprise has a shed on their property, and would like to expand their operations by constructing a packaging facility with staff quarters, the business could argue that because the packaging facility was “related to” the shed, which is “an existing structure” (“structure” is defined in § 1271.00), that the SRA Fire Safe Regulations should not be applied. Deleting this phrase will improve compliance with the SRA Fire Safe Regulations across the board.

§ 1270.02(e)(4) was revised to reduce confusion in the field regarding the phrase “including construction of a road that does not currently exist, or extension of an existing road.” It was unclear to land use and firefighting professionals the intent of that phrase, and reviews of historical rulemaking documents provided inconclusive guidance; it appears this language was a holdover from the original regulations that expressly exempted existing roads, which language was deleted in a prior amendment to clarify the applicability of the regulations as required by PRC § 4290. Modifying this subsection to reduce confusion is also necessary to ensure consistency and avoid a conflict with § 1273.00. Section 1273.00 imposes certain requirements on all “[r]oads and driveways... unless exempted under 14 CCR § 1270.02(d)...” (the exemption for “roads used solely for agricultural, mining, or the management and harvesting of wood products”, which subdivision is being relettered to § 1270.02(f) as part of this rulemaking).

§ 1270.02(d) was relettered to § 1270.02(f) to reflect the new subsections added to this section.

Amend § 1270.04 Local Ordinances

§ 1270.04(a) is revised to delete the reference to the “general plan element” that counties may submit to the Board for certification. The term “general plan element” is unclear, as the general plan can have seven elements or more, and the general plan is not typically the policy document in which a local government places their specific standards for construction and development. The Board reviews general plan safety elements under their authority in Government Code § 65302.5, and to reference a generic “general plan element” here was confusing and could result in the delay in the implementation of a community’s general plan, thereby slowing the implementation of local affordable housing codes or codes to facilitate increased housing supply and delaying housing construction. In addition, the language in Public Resources Code § 4290(c) does not refer to a general plan element. The phrase “more stringent than” was deleted, in reference to local ordinances, rules, or regulations that may be equal to or exceeding the Board’s minimum standards in these regulations, and was replaced with “exceeds,” in order to accurately reflect the language in Public Resources Code § 4290(c).

By mirroring the statutory language, these regulations reduce confusion regarding the application of the SRA/VHFHSZ Fire Safe Regulations, improving the ability of local governments to approve housing projects.

§ 1270.04(b) and (c) were combined into the new first sentence of a revised § 1270.04(b), for clarity. A new sentence, “If the Board determines that the local requirements do not equal or exceed these regulations, it shall not certify the local ordinance.” was added because previously the regulations did not address the conditions under which the Board may decline to certify local ordinances as meeting or exceeding the state minimum standards. In particular, local government officials noted that the existing regulations can be interpreted to imply that the Board must certify submitted local ordinances, regardless of whether the Board determines if the local standards meet or exceed the state’s minimum standards. Given that the Board is revising these regulations to provide greater clarity to the applicability of these regulations in order to support the necessary increase in housing supply in California, it is necessary to provide additional clarification regarding the conditions under which the Board may or may not decide to certify a local jurisdiction’s standards. This reduces confusion when a local agency is determining which requirements apply to ADU construction, rebuilding and reconstruction, and other projects, thereby reducing the likelihood the Board’s regulations will result in prohibitive construction costs.

The new language in subsection (c), “When the Board grants certification, the local ordinances, in lieu of these regulations, shall be applied as described in 14 CCR § 1270.02 and used as the basis for inspections performed under 14 CCR § 1270.05,” was added to provide clarity to the regulated public regarding the administrative impacts of local ordinance certification. In conversations with county officials across the state, it was unclear to them what benefits certification provided to counties and how certification impacted the applicability of and inspection authority for development standards in their county. Given that the Board is revising these regulations to provide greater clarity to the applicability of these regulations in order to support the necessary increase in housing supply in California, it is necessary to provide additional clarification regarding the application of local rules versus those of the state in land use development.

§ 1270.02(d) was revised to specify that local ordinance certifications are invalid when the Board amends these regulations. Previously, this section only voided certifications when the local ordinance was updated. However, if the Board revises its regulations so they are stricter than the previous minimum standards, a local ordinance that is certified under those previous standards no longer “meets or exceeds” the new minimum standard, and must be re-certified.

Amend § 1270.05 Inspections

§ 1270.05(b) is deleted, as it created an overly burdensome threshold for local jurisdictions regarding inspections. These requirements, that local jurisdictions must include the SRA/VHFHSZ Fire Safe Regulations verbatim in their local planning processes (§ 1270.05(b) (1)) or have their ordinances certified (1270.05(b)(2)) in order to allow inspection duties to be delegated from CAL FIRE to the local jurisdiction, created confusion amongst counties across the state. In the last decade, the Board has been updating these regulations on an irregular and unpredictable schedule. While recent efforts have been made to align these updates with

the triennial California Fire Code updates, which is a code update schedule on a strict 18-month timetable that is well known and familiar to local jurisdictions, it is clear that legislative directives and emergency situations will continue to interrupt the Board's efforts at a consistent triennial update schedule. With such an irregular update schedule, it is difficult for county planning officials, local fire officials, CAL FIRE unit staff, and legal officials at each government level to follow how changes to the standards might impact local ordinance certification and how that impacts who has inspection authorities. The Board has received questions on this issue from numerous counties who no longer have certified ordinances but rely on a delegation of authority from CAL FIRE to inspect new construction in a cost efficient and timely manner. Upon a close review of the Board's regulations, the requirement in § 1270.03, which places the responsibility of enforcing the applicable standards of this subchapter on local government, is sufficient to allow the delegation of authority without the additional conditions in § 1270.04(b).

This modification is necessary to address the emergency situation described above. Without such delegations of authority in place, CAL FIRE would suddenly be responsible for inspecting thousands of developments across the state. The Department does not have sufficient numbers of adequately trained staff to take on this responsibility. Relying on overworked and untrained CAL FIRE staff to complete these inspections would create a backlog of permit approvals that could stretch for months or even years. This would prevent local governments from addressing the housing shortages in their communities in a timely manner and do nothing to relieve the pressure on California's existing housing supply as people wait longer and longer to occupy these new buildings.

The rest of this section was relettered to reflect the deletion of § 1270.04(b).