

# County of Santa Clara

## Department of Planning and Development

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November 16, 2021

Board of Forestry and Fire Protection  
Attn: Regulations Priority Review  
P.O. Box 944246  
Sacramento, CA

**RE: Feedback Regarding 2021 Regulations and Priority Review**

Dear Board of Forestry and Fire Protection:

On behalf of the County of Santa Clara, Department of Planning and Development, I am writing to provide feedback on the impacts to our jurisdiction of the SRA/VHFHSZ Fire Safe Regulations (14 CCR § 1270) (the "Fire Safe regulations"), and their current application as part of the 2021 regulations and priority review by the Board of Forestry and Fire Protection (the Board). We wholeheartedly support the intention of these regulations to reduce the risk of wildfires, and thus reduce the loss of life and property resulting from them, as well as to protect natural resources and the environment. We acknowledge that the severity of such wildfires is likely to continue to increase due to climate change. Comprehensive regulations are therefore not only required but welcomed to address this critical issue. The County of Santa Clara has also been undertaking several efforts which we believe help achieve these goals. Through our County General Plan, we discourage high intensity and high density uses in our hillsides and ranchland districts. County Parks and partner agencies such as the Santa Clara Valley Habitat Agency, Santa Clara Valley Open Space Authority, and Midpeninsula Regional Open Space District actively acquire open space and recreational lands to keep in a natural state.

However, we have several concerns about how the current Fire Safe regulations, as implemented locally by the Department of Forestry and Fire Protection (CAL Fire), impact small-scale residential development on existing legal lots along existing roads in our County. For most of the first 30 years that these regulations have existed, CAL Fire requirements on such projects were limited to on-site improvements. For the past year or so, CAL Fire has strictly applied the regulations in Article 2 concerning Emergency Access and Egress to all proposed development projects in the State Responsibility Area (SRA), including those projects that had previously obtained approvals that had been reviewed by CAL FIRE. It is unclear if this is occurring statewide, or if there is variation in different CAL Fire offices. Because many of the roads, both public and private, in our County which pass through the Santa Cruz Mountains and the Diablo Range and their foothills were constructed well before 1991 (in some cases in the early twentieth century or based on horse carts from the nineteenth century), they do not fully meet the 1991 standards. Specifically, many are not two ten-foot traffic lanes and/or are too far down a dead-end

Board of Supervisors: Mike Wasserman, Cindy Chavez, Otto Lee, Susan Ellenberg, S. Joseph Simitian  
County Executive: Jeffrey V. Smith

road, although there are also some issues involving slope, turning radius, and weight bearance, especially concerning bridges.

To date, over the last 11 months, this strict application has impacted over 30 projects in unincorporated Santa Clara County, some of which had received previous approvals and others which are similar to other projects in the same neighborhood which have received approvals in the past five years. This number continues to increase with significant push-back from the residents who own legally existing properties and who desire to build a new single-family residence. While there is an exception process set forth in § 1270.06, and our County has adopted a process to hear appeals of CAL Fire's exception decisions, this has not provided relief to applicants at this time. The phrase limiting approval of these requests to "*where the exceptions provide the same practical effect*" severely limits the ability to grant exceptions from the access and egress standards. For example, it is difficult to come up with any alternate method to reducing the length of a dead-end road short of constructing an entirely new loop road or other access connection.

The application of the maximum allowable dead-end road length on existing roads will render many legally existing parcels undevelopable and could lead to significant pressure on local public agencies to broadly apply their eminent domain power to create additional public road networks through terrain where new private roads may not be feasible due to lack of property rights or sufficient financial resources. Also, the County estimates that there are approximately 70-80 miles (if not more) of existing roads in the County-maintained road system that do not meet the 20-foot width requirement. Most of these roads are in rural areas affected by the Fire Safe regulations. This total does not include privately-maintained roads, for which the County believes there are at least as many impacted miles that would not meet the width requirement in the regulations. Many of these roads cannot be improved without major civil engineering projects due to their location neighboring steep terrain, sheer drop-offs, or watercourses. Upgrading these roads could also conflict with other State or Federal regulations, especially with regard to watercourses or protected habitats/species.

These constraints have the practical effect of either stopping the development projects or requiring major upgrades to hundreds of miles of roads, costs by which the County would not be able to fund. **We do not believe that the Legislature or the Board intended to prohibit this type of small-scale, residential development on existing legal lots along existing roads.** This is consistent with the Board's decision to categorically exempt Accessory Dwelling Units from the Fire Safe regulations through emergency rule making, as these projects also add to California's housing supply.

If the Board does intend to use the Fire Safe regulations to block this type of development or to force private property owners and public agencies throughout the state to dramatically upgrade the existing road systems in local jurisdictions, then the Board must consider the cost, feasibility, environmental impact, and equity of this significant policy decision. Additionally, the Board should seek out funding to supplement all local jurisdictions severely impacted to upgrade existing roads throughout the State.

Although the existing Fire Safe regulations technically have been in effect within the SRA for 30 years, those regulations have rarely been applied to rural road networks or development projects within the SRA **across the State**. Consequently, it is incorrect to assume that most roads in the SRA meet the 1991 standards. As the roads within the local VHFHZ only became subject to these regulations on July 1, 2021, those road networks are even less likely to meet the regulatory standards.

To remedy this situation, the County hopes that the currently in process amendments to 14 CCR § 1270 will alleviate some of these concerns, however given the time it will take to adopt these amendments, we strongly encourage the Board to act now. The Board should make clear to what extent the Fire Safe regulations should apply to small-scale residential development, through emergency rule making or through a directive to CAL Fire and local inspection entities on how to proceed with these projects. Requiring applicants to go through a lengthy and costly process, which may not provide them with any relief, is not fair to small property owners seeking to build a home for themselves in already established residential areas if there is no intent by the Board to block such development without the massive road upgrades currently required by the regulations. This could be handled through a categorical exemption, a formal clarification that the standards apply to roads constructed after 1991, or by delegating the determination of whether a road built prior to 1991 is sufficient to meet the intent of these regulations to generally allow for concurrent access to the site by emergency vehicles and evacuation of residents to local fire authorities. The Board should also provide guidance on what is considered “*substantial compliance*.” We would also encourage that the regulations in areas outside the SRA that are now covered by the regulations only be applied to roads constructed after July 1, 2021.

The County of Santa Clara appreciates the Board’s efforts to make California residents safer from wildfires, and we fully support the goals and intentions of the State’s Fire Safe regulations. The County is hopeful that the Board will seriously consider our request to immediately take action to ensure the existing regulations are fairly applied across the State in a manner which does not unintentionally block small-scale, single-site residential development, and to fully address these concerns in the pending regulatory amendments.

Sincerely,

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 Leza Mikhail, MPL  
 Planning Manager

DocuSigned by:  
  
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 Robert Cain, MCP  
 Associate Planner

CC: Jacqueline Onciano – Director of Planning and Development  
 Harry Freitas – Director of Roads and Airports  
 Lizanne Reynolds – Deputy County Counsel

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