

BOARD OF SUPERVISORS GRAND JURY REPORT RESPONSES

Response to Grand Jury Report

Report Title: Is Fire Safety a Priority in Rural Sonoma County?

Report Date: May 22, 2024

Response by: David Rabbit Title: Chairperson

Agency/Department Name: Sonoma County Board of Supervisors

FINDINGS:

- F1. Sonoma County’s Fire Safety Ordinance permits “Same Practical Effect” mitigation within the [State Responsibility Area] SRA that is inconsistent with the Grand Jury’s interpretation of the State Minimum Fire Safety Regulations [FSR].
- F2. Permit Sonoma is permitting development exceptions within the State Responsibility Area that are not congruent with the Grand Jury’s interpretation of the State Minimum Fire Safety Regulations.
- F3. Fire Safety mitigation approvals are considered by Permit Sonoma on a case-by-case basis during the permit application process but are not always publicly noticed or reviewed when issued.
- F4. Citizen and first responder safety is properly considered during permit review and approval, and local firefighter leadership believe that Permit Sonoma is doing its job appropriately.

I (we) agree with the findings numbered: F4

I (we) disagree wholly or partially with the findings numbered: F1, F2, and F3

See attached.

RECOMMENDATIONS:

- R1. By November 1, 2024, the Board of Supervisors will direct Permit Sonoma to publish an applicant’s guide to fire safety ingress and egress requirements and mitigation procedures for applications on roads that don’t meet FSR requirements.
- R2. By November 1, 2024, the Board of Supervisors will direct Permit Sonoma to include administrative review of *all* exceptional fire safety mitigation plans to the list of permits needing approval by either Permit Sonoma Design Review Committee or Permit Sonoma Project Review Advisory Committee.
- R3. By November 1, 2024, the Board of Supervisors will direct Permit Sonoma to meet

and confer with all independent Fire Prevention agencies to review its mitigation and appeal procedures by February 1, 2025.

R4. By November 1, 2024, the Board of Supervisors will direct Permit Sonoma to identify and map all roads within the SRA that don't meet State FSR standards and publish that map on the County Department of Emergency Management website by February 28, 2025.

- Recommendations numbered R1, R3 and R4 have not yet been implemented, but will be implemented in the future. See attached.
- Recommendation number R2 will not be implemented because it is not warranted or is not reasonable. See attached.

Date: _____ Signed: _____

Number of pages attached: 7 _____

Response to 2023-2024 Grand Jury Report: Is Fire Safety a Priority in Rural Sonoma County?

Following are the Sonoma County Board of Supervisors' required responses to F1 through F2 and R1 through R4 in the 2024 Grand Jury Report investigation entitled "Is Fire Safety a Priority in Rural Sonoma County."

F1. Sonoma County's Fire Safety Ordinance permits "Same Practical Effect" mitigation within the SRA that is inconsistent with the Grand Jury's interpretation of the State Minimum Fire Safety Regulations.

Board of Supervisors Response: We disagree wholly or in part with this Finding. See comment to Finding F2 below, which addresses F1 and F2.

F2. Permit Sonoma is permitting development exceptions within the State Responsibility Area that are not congruent with the Grand Jury's interpretation of the State Minimum Fire Safety Regulations.

Board of Supervisors Response: We disagree wholly or in part with this Finding.

The County partially disagrees with these findings. The County agrees that it implements the State Minimum Fire Safety Regulations¹ in a way that is incongruent with the Grand Jury's interpretations. However, while the County thanks and commends the Grand Jury for diving deep into such a critical issue, the County maintains that the Grand Jury's interpretations are incorrect because they are based on legal and factual inaccuracies.²

Recent History of Fire Safe Regulations

To address the Grand Jury's findings, it is important to correct the historic factual and legal premises upon which the findings are based. Most importantly, the Fire Safe Regulations were not amended in 2020 to "add [] a prohibition of new development on roads deemed too narrow for simultaneous ingress and egress of emergency vehicles and civilian traffic" or to "reduce [] the number and scope of permissible exceptions to road-width requirements, thereby limiting local authorities' flexibility for issuing new

¹ 14 CCR 1270.00 et seq.

² The Sonoma County Fire Safety Ordinance (Sonoma County Code Chapter 13) contains several articles that are governed by different state statutes and have varying applicability throughout the County. Article IV is the County Fire Code, which is the State California Fire Code with local amendments that are updated and readopted on three-year cycles. The Grand Jury's Report notes that the County Fire Code includes: "The 2022 California Fire Code as adopted by reference and amended in this article, shall constitute the county fire code." First, this is standard implementing language that has been and must be included in every triennial update to the County Fire Code. Second, the County Fire Code does not implement and is entirely distinct from the State Minimum Fire Safety Regulations. The California Fire Code is comprised of regulations promulgated by the State Fire Marshal under the California Health and Safety Code, whereas the State Minimum Fire Safety Regulations are promulgated by the Board of Forestry under the California Public Resources Code. Additionally, Article V of the Fire Safety Ordinance known as the Sonoma County Fire Safe Standards applies only to development in the Local Responsibility Area (LRA) while development in the State Responsibility Area (SRA) and Very High Fire Hazard Severity Zones within the LRA is subject to the Fire Safety Regulations. Thus, this response speaks to the County's interpretation and implementation of the Fire Safety Regulations and not consistency between these regulations and various articles of the County's Fire Safety Ordinance.

development permits on roads that don't comply with the standards." Simply put, Fire Safe Regulations addressing road widths and exceptions to standards were not changed in 2020 at all, and there were also no related changes to the authorizing statute, California Public Resources Code (PRC) § 4290.

What changed in 2020 was the Board of Forestry's (BOF) *interpretation* of its Fire Safe Regulations, but the Regulations were never revised to match. Though the BOF had certified nearly identical language in Sonoma County's 2017 ordinance (as well as ordinances from other counties as recent as 2019), it took a new position in letters from staff stating that an ordinance exempting existing roads was inconsistent with PRC § 4290. After refusing to certify local ordinances altogether, the BOF attempted to amend the Fire Safe Regulations to achieve its new policy goals. Noting the need to resolve confusion and differing interpretations throughout the state, the BOF released draft emergency regulations in May 2020 stating that existing roads legally constructed after January 1, 1991, were not subject to the Fire Safe Regulations unless a tentative or final map was required. **That regulation was not adopted.** In April 2021, the BOF released new draft regulations that precluded building construction on nonconforming existing roads and held existing roads to the same standard as new road construction. **That regulation was not adopted.** Those draft regulations were modified and rereleased in January 2022 proposing standards for existing roads that were less stringent than for new roads. **Those regulations also were not adopted.**

The BOF then stopped attempting to amend regulations related to existing roads. In May 2022, the BOF released its final set of regulations with a narrow scope that did not include amendments related to existing roads or exceptions to standards.³ In its Final Statement of Reasons (FSOR) when the regulations were finally adopted in August 2022, the BOF stated: "The narrowed scope of the proposed action...no longer proposes changes to the existing regulations with respect to existing roads..." However, the BOF went on to opine via responses to comments that the regulations applied equally to new and existing roads. The Rural County Representatives of California (RCRC) challenged this as an unlawful underground regulation.⁴ The BOF ultimately settled and agreed to not issue, utilize, enforce, or attempt to enforce the existing roads interpretation in the FSOR or any other interpretation of the Fire Safe Regulations not properly adopted under the Administrative Procedures Act. In summary, the regulations related to existing roads and

³ "The proposed amendments narrow the scope of the proposed action...The Board now intends to simply promote compliance with the revisions to PRC 4290 within SB 901 (Chapter 626, 2018), and to improve the clarity of certain administrative processes...The Board proposes to delete the term 'existing road' as it is no longer used in this specific defined capacity in the regulations." (May 2022 (2nd 15-Day) Supplement to Statement of Reasons.)

SB 901 made the following amendments to PRC 4290: made the new designation "very high fire hazard severity zone" subject to the BOF's Fire Safe Regulations, required regulations for fuel breaks, greenbelts, and ridgelines, and authorized the BOF to enter into contract with technical experts.

⁴ Office of Administrative Law Petition for Determination of Underground Rulemaking filed August 26, 2022; Petition for Writ of Mandate and Complaint, County of Fresno Superior Court, Case No. 22 CE CG 00123, filed January 13, 2022.

exceptions to standards were not amended and the BOF cannot treat unadopted interpretations as regulation.

Interpretation and Implementation of Fire Safe Regulations

There are primarily two interpretations at issue: (1) whether the Fire Safe Regulations apply to existing offsite roads, and (2) the allowable scope of exceptions to standards. Sonoma County, consistent with most other jurisdictions in the State, interprets the regulations to not apply to existing offsite roads. Still, the County reviews existing offsite roads and requires an applicant to apply for an exception to standards if those existing roads are nonconforming. Depending on the use, exceptions may be granted, and upgrades may be required consistent with constitutional considerations.

Existing Roads

The BOF's longstanding interpretation was consistent with the County's that the Fire Safe Regulations did not apply to existing roads because they were exempted by the statute. PRC § 4290 provides that the "regulations do not apply...to parcel or tentative maps or other developments approved prior to January 1, 1991..." The plain meaning and most reasonable statutory interpretation is that road development approved prior to 1991 is exempt. The BOF has been clear since road standards were first adopted in 1991 that it considered existing roads exempt. The initial regulations stated expressly: "These regulations do not apply to existing structures, roads, streets and private lanes or facilities."⁵ An Attorney General Opinion refined the scope of the exemption as it relates to parcel and tentative maps but did not address the scope of "other developments" that are exempt.⁶ The BOF amended its regulations in 2013 to remove the express statement that exempted existing roads in an effort to conform to the Attorney General opinion, but continued to state that existing roads were nevertheless exempt: "The Board's regulations *may* also apply to perimeter and access standards outside the boundaries of a parcel or lot *as determined by the local permitting authority.*"⁷ The BOF additionally described the express exclusion for existing roads as "redundant."⁸ The BOF continued to certify local ordinances with exemptions for existing roads.⁹ During regulatory updates in 2019 the BOF similarly stated of off-site dead-end roads that "[e]xisting roads over a mile in length are considered 'existing non-conforming' and do not necessarily preclude development along the parcels that they serve" and deferred to local jurisdictions to apply stricter standards at their discretion.¹⁰ The BOF maintained its

⁵ 14 CCR 1270.02 adopted 1991 (not current). The supporting regulatory materials further stated: "These regulations do not apply to existing roads providing service to existing parcels, nor to approved subdivision easements where roads have not been constructed. Where a parcel is not access by a road or easement for an approved unconstructed road, these road standards apply."

⁶ 76 Ops.Cal.Atty.Gen. 92-807 (1993).

⁷ BOF, Initial Statement of Reasons, SRA Fire Safe Regulations Update, 2011 (Dec. 23, 2011). This conclusion was based on a letter from the Attorney General stating that upgrades to these existing roads were not an issue for BOF or CalFire but instead up to the local governments.

⁸ *Id.*

⁹ E.g., see Shasta County Ordinance certified August 2017, Sonoma County Ordinance certified March 2017, and Napa County Ordinance certified June 2019.

¹⁰ BOF, Final Statement of Reasons, SRA Fire Safe Regulations, 2020 (Mar. 6, 2019).

reasonable interpretation for nearly 30 years and as is shown above, a new interpretation was not due to a change in the statute or the regulations and the new interpretation can no longer be issued by the BOF under its settlement agreement with RCRC.

Exceptions to Standards/Same Practical Effect

The County's interpretation and implementation of the exceptions to standards provision in the Fire Safe Regulations is consistent with the BOF's previously longstanding interpretation. The Fire Safe Regulations state that "an Exception to standards within this Subchapter may be allowed by the Inspection entity . . . where the Exceptions provide the Same Practical Effect as these regulations towards providing Defensible Space."¹¹ While the Grand Jury recognized that the definition of "same practical effect" is broad and applies to any measures that provide for fire fighter and public safety, the report goes on to conclude that exceptions cannot be granted for road standards because they are only allowed for defensible space standards. However, it is unclear the definition of defensible space upon which the Grand Jury relies. In the Fire Safe Regulations, "defensible space" is defined as:

The area within the perimeter of a parcel, Development, neighborhood or community where basic wildland fire protection practices and measures are implemented, providing the key point of defense from an approaching Wildfire or defense against encroaching Wildfires or escaping Structure fires. The perimeter as used in this regulation is the area encompassing the parcel or parcels proposed for construction and/or Development, excluding the physical Structure itself. The area is characterized by the establishment and maintenance of emergency vehicle access, emergency water reserves, Road names and Building identification, and fuel modification measures.

This definition is extremely broad and includes emergency vehicle access, water reserves, road names, and fuel modification. PRC § 4290 also supports a broad interpretation of defensible space and explains its use in the exceptions to standards context. The statute directs "[t]he board [to] adopt regulations implementing minimum fire safety standards related to **defensible space**..." The entire scope of the statute's mandate falls within the term "defensible space" and makes clear that all the regulatory categories (e.g., road standards, water supplies, etc.) fall under the umbrella of "defensible space." Notably, when addressing fuel breaks and required buffer areas around structures (what most people commonly think of as defensible space), the Fire Safe Regulations cite to a different definition of defensible space that is in an entirely different subchapter.¹² This shows that defensible space as defined under the Fire Safe Regulations is much broader.

¹¹ 14 CCR 1270.01(f) (emphasis added).

¹² See 14 CCR 1276.03(d)(1) citing to 14 CCR 1299.02 defining "defensible space" as "The buffer that landowners are required to create on their property between a 'Building or Structure' and the plants, brush and trees or other items surrounding the 'Building or Structure' that could ignite in the event of a fire."

The construction of the regulations further supports the County's interpretation. The allowance for exceptions to standards is in Article 1 of the Fire Safe Regulations governing Administration, showing it is intended to apply to all other articles, which include ingress and egress (i.e., road standards), signing and building numbering, emergency water standards, and building siting, setbacks, and fuel modification. Lastly, while the Grand Jury's report states that "same practical effect" only appears in the definitions and the provision on exceptions to standards, this is inaccurate. The term also appears in the regulation related to road grades and expressly allows an exception for up to 20% road grade with mitigations providing the same practical effect.¹³ Since the only substantive article in the regulations that uses "same practical effect" governs a road standard, it is difficult to maintain that exceptions to standards are not allowed for road standards.

Just as with existing roads exemptions, the BOF certified local ordinances with broad allowances for exceptions to standards for years, including Sonoma County's Ordinance in 2017. The BOF's new interpretation was not due to a change in the statute or the regulations and cannot be issued or enforced without properly adopted regulatory amendments.

F3. Fire Safety mitigation approvals are considered by Permit Sonoma on a case-by-case basis during the permit application process but are not always publicly noticed or reviewed when issued.

Board of Supervisors Response: The County partially disagrees with this finding. Permit Sonoma reviews almost all permit applications for compliance with the County Code Chapter 13, Fire Code Article 4 and Fire Safe Standards Article 5 or the Fire Safe Regulations. Small scale projects such as retaining walls, bathroom remodels, and septic systems, are not reviewed by Fire Division staff. Permit applications fall into two general categories – ministerial and discretionary. Staff review ministerial applications, such as building permits, for compliance with standards or qualification for same practical effect finding. Discretionary applications, such as use permits, require staff to conduct more exacting ad hoc analyses followed by public notice and hearings. Ministerial applications are not publicly noticed. All discretionary applications, including same practical effect determinations, are publicly noticed.

F4. Citizen and first responder safety is properly considered during permit review and approval, and local firefighter leadership believe that Permit Sonoma is doing its job appropriately.

Board of Supervisors Response: The County agrees with this finding.

RECOMMENDATIONS

R1. By November 1, 2024, the Board of Supervisors will direct Permit Sonoma to publish an applicant's guide to fire safety ingress and egress requirements and mitigation procedures for applications on roads that don't meet FSR requirements.

Board of Supervisors Response: Recommendation R1 has not yet been implemented but will be implemented in the future. Permit Sonoma updated its website links to PRC § 4290 and Fire Safe Regulations.¹⁴ The website additionally has illustrations to assist applicants with complying with the County's Fire Safe Standards or the Fire Safe Regulations. Permit Sonoma has an application form to request an exception to standards which can be found on its website. The Board of Supervisors directs Permit Sonoma to publish additional materials related the Fire Safe Regulation's requirements and the forms and process for applying for an exception to standards.

R2. By November 1, 2024, the Board of Supervisors will direct Permit Sonoma to include administrative review of all exceptional fire safety mitigation plans to the list of permits needing approval by either Permit Sonoma Design Review Committee or Permit Sonoma Project Review Advisory Committee.

Board of Supervisors Response: The recommendation will not be implemented as written due to pending code amendments expected to be considered by the Board by December 10, 2024 that will eliminate the Design Review Committee and Project Review Advisory Committee to streamline the permitting process in compliance with State housing law. Instead, the Director will provide direct review and approval of ministerial and discretionary Fire Marshal Same Practical Effect Determinations, before posting them within the department's permitting system. Approximately 15 determinations are made annually. For discretionary permits with exceptions to standards, public notice is already provided prior to adoption and all application materials are available to the public upon request. When the discretionary permit requires a public hearing, application materials, including the exception to standards application, are posted online prior to the noticed public hearing. Annually, Permit Sonoma will post prominently on its website a summary of Same Practical Effect Determinations with individual determinations attached.

R3. By November 1, 2024, the Board of Supervisors will direct Permit Sonoma to meet and confer with all independent Fire Prevention agencies to review its mitigation and appeal procedures by February 1, 2025.

Board of Supervisors Response: Recommendation R3 has not yet been implemented but will be implemented in the future consistent with the timeline in the recommendation. The Board of Supervisors directs Permit Sonoma to meet and confer with the fire prevention agencies and solicit comments on its forms and procedures for applying for and reviewing exceptions to standards.

R4. By November 1, 2024, the Board of Supervisors will direct Permit Sonoma to identify and map all roads within the SRA that don't meet State FSR standards and publish that map on the County Department of Emergency Management website by February 28, 2025.

Board of Supervisors Response: Recommendation has not yet been implemented but will be implemented in the future for public roads only. The Board of Supervisors directs Permit Sonoma to work with Sonoma Public Infrastructure and the Department of Emergency Management to identify and map public roads in the SRA and indicate whether they meet the

¹⁴ <https://permitsonoma.org/divisions/firepreventionandhazmat/countyfirecode>.

standards of the Fire Safe Regulations. These maps will be made publicly available on the county's online mapping hub.

Mapping private roads is not feasible because the County does not have legal access to those roads and tree coverage and aerial image limitations prohibit effective remote analysis.