

Summary of Fire Safety Regulations Applicable to New Construction and Development in El Dorado County

In August, 2009, the Board of Supervisors held the second of two workshops concerning Fire Safe Regulations, the 2007 California Fire Code, the relationship between the two and the effect on land use policy in the County. At that workshop, the Board referred the issue to EDAC to work with staff, CalFire and the Fire Districts to compile one set of comprehensive standards for the County. EDAC has referred the issue to its Regulatory Reform Subcommittee. This analysis is provided to the Subcommittee as the first step in the process to answer the most basic questions: "What are the regulations that have been adopted by the State and must be enforced by El Dorado County?" and "Who has the authority to adopt other, more restrictive, regulations?"

Executive Summary

Our review of state legislation and authorized regulations leads to the following conclusions:

- "State Responsibility Area Fire Safe Regulations" adopted by the Board of Forestry under authority of Public Resource Code Section 4290:
 - Are the minimum "non-building standards" that must be enforced by the County within State Responsibility Areas. These standards address emergency access, signage, water supply and fuel breaks.
 - Include provisions for "same practical effect" alternatives and the opportunity to appeal to the Board of Supervisors for an exception.
 - Require that the construction of new roads (or extension of existing roads) comply with access road standards. The standards do not apply to existing roads.
 - May require applicant for a building permit to construct onsite driveway, but do not require offsite road widening as condition of building permit issuance.
- The County has authority to regulate design and improvement of subdivisions under the Subdivision Map Act, and broad authority to regulate land use under police powers granted to cities and counties under the State Constitution. Accordingly, the County may adopt more stringent regulations for road width, surface grades, curve radius, etc., than those contained in the SRA Fire Safe Regulations.
- The California Fire Code, as adopted by the responsible state agencies:
 - Contains the minimum "building standards" applicable to buildings in the state, and must be enforced by the County.
 - Does not include "non-building standards" such as road width, surface, grades, curve radius, turnarounds or dead-end road standards. As shown in the Matrix Adoption Tables, the state did not adopt any of the *model code language* pertaining to fire apparatus access roads, found in Appendix D and Chapter 5.

Exhibits Not Included.

- The County may adopt more stringent building standards than those contained in the California Fire Code, and the County may *ratify, modify or deny* ordinances adopted by local fire protection districts which adopt building standards more restrictive than those contained in the California Building Standards code, including the California Fire Code. In either case, findings are required that the more stringent *building standards* are required due to unique climatic, geological or topographical conditions.

Background and Statement of the Issues

A Board of Supervisors workshop was held on August 18, 2009 to address the relationship between various state regulations dealing with defensible space, fire and panic safety, and the application of those regulations to permits issued by the county, including both building permits and new subdivision approvals. The County is familiar with and has routinely enforced state regulations pertaining to defensible space and fire safety. Recent adoption of the 2007 California Fire Code by the state, and its relationship to other state regulations, seems to be the main source of confusion and misunderstanding. Many important questions were raised during the course of the discussion that day.

An understanding of these issues is critical to many of the decisions routinely facing county staff, and decision-makers, including the Planning Commission and Board of Supervisors. Additionally, the county is in the process of updating both its Zoning Ordinance ("ZO"), and Design and Improvement Standards Manual ("DISM") which must, at a minimum, comply with regulations adopted by the state.

Before the county can undertake revision of major policy plan documents such as the DISM, some fundamental questions must be answered, including:

1. What are the laws and regulations adopted by the state that must be enforced by the County when issuing various permits, such as building permits, special use permits, and approval of subdivisions?
2. If more stringent regulations than those adopted by the state are considered to be appropriate, (a) what is the process for adoption of more stringent regulations, and (b) who has the ultimate authority to adopt those more stringent standards?
3. Who is responsible for enforcement of adopted *building and non-building standards* in El Dorado County?

I. Authority for Fire Regulations in California

A. Fire Safe Regulations for State Responsibility Areas

In 1987, the Public Resource Code was amended to add Section 4290 and 4291 to address minimum fire safety standards and the provision of defensible space within lands designated as State Responsibility Areas. State Responsibility Areas ("SRA") are those areas in which the financial responsibility for preventing and suppressing fires is primarily the responsibility of the state. Most of the territory within El Dorado County, except federal lands, land within the cities of Placerville and South

Lake Tahoe, and small portions of the communities of El Dorado Hills and Cameron Park are within SRA. A map of the SRA is attached as Exhibit "A".

Public Resource Code Section 4290 directed the Board of Forestry to adopt minimum fire safety standards related to defensible space within SRA, applicable to the perimeters and access to all residential, commercial and industrial building construction approved after January 1, 1989 (later extended to January 1, 1991). PRC Section 4290 expressly prohibits adoption of "building standards" as defined in Health and Safety Code Section 18909. Instead, the Board of Forestry's authority is limited to the adoption of regulations related to non-building standards, including all of the following:

- Road standards for fire equipment access
- Signage for streets, roads, and buildings
- Private water supply reserves for emergency use
- Fuel breaks and greenbelts

Public Resource Code § 4290 includes the following exemption:

"These regulations do not apply where an application for a building permit was filed prior to January 1, 1991, or to parcel or tentative maps or other developments approved prior to January 1, 1991, if the final map for the tentative map is approved within the time prescribed by the local ordinance."

The regulations adopted by the Board of Forestry to implement PRC § 4290 are found in the California Code of Regulations, Title 14, Sections 1270 through 1276.03. These regulations are commonly referred to as the "SRA Fire Safe Regulations".

During the Board of Supervisors' workshop on August 18, 2009, there was considerable discussion about the scope and application of these regulations to new construction activity. In particular, some Board members were concerned that a plain reading of the language of the regulations might require the County to impose offsite road improvements as conditions of building permit issuance, or alternatively, deny a building permit application where existing roads did not meet the minimum standards of the SRA Fire Safe Regulations.

The meaning of the PRC 4290 exemption cited above has been addressed by the following:

1. A detailed reading of PRC 4290 and the adopted regulations found in Title 14 provides clarification. PRC 4290 directed the Board of Forestry to adopt "...regulations implementing minimum fire safety standards related to defensible space which are applicable to state responsibility area lands...". The term "defensible space" is defined in Title 14, Section 1271.00 as "the area within the perimeter of a parcel, development, neighborhood or community where basic wildland fire protection practices and measures are implemented...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, street names and building identification, and fuel

modification measures." In essence, the regulations do not extend to areas "offsite" of the proposed construction or development activity.

PRC § 4290 includes a "grandfather clause" providing that "[t]hese regulations do not apply where an application for a building permit was filed prior to January 1, 1991, or to parcel or tentative maps or other developments approved prior to January 1, 1991, if the final map for the tentative map is approved within the time prescribed by the local ordinance."

Additionally, Title 14, § 1270.02 addresses the scope of PRC § 4290, by providing that the regulations "do not apply to existing structures, roads, streets, private lanes or facilities..." but do apply "as appropriate to all construction...approved after January 1, 1991..." including "...permitting or approval of new parcels...application for a building permit for new construction..." and "...road construction, including construction of a road that does not currently exist, or extension of an existing road." An exemption is provided for "...roads required as a condition of tentative parcel maps..." prior to January 1, 1991.

2. In response to a request from County Counsel of Amador County, the California Attorney General ("AG") issued Opinion 92-807, on March 17, 1993. The AG concluded that the SRA Fire Safe Regulations "apply to the perimeters and access to buildings constructed after January 1, 1991, on parcels created by parcel or tentative maps approved prior to January 1, 1991, to the extent that conditions relating to the perimeters and access to the buildings were not imposed as part of the approval of the parcel or tentative maps." A copy of the AG Opinion No 92-807 is attached as Exhibit "B".

3. The manner in which the issue is interpreted in other jurisdictions can provide guidance to address this issue as well. Section 1270.03 of the SRA Fire Safe Regulations permits the Board of Forestry to certify ordinances adopted by a local jurisdiction as equaling or exceeding the state regulations if the local ordinances provide the same practical effect.

The BOF has certified local ordinances in about 80% of counties in the state since 1991. The Board of Forestry ("BOF") approved El Dorado County's request for certification of its local ordinance based on the County's Design and Improvement Standards Manual (adopted in 1986 and revised in 1990.) A copy of the El Dorado County version of the SRA Fire Safe Regulations with local ordinance references is available at www.co.el-dorado.ca.us/building/FSRegs.htm.

In 2006, Amador County's local ordinance, attached as Exhibit "C" was certified by the Board of Forestry. Amador's ordinance varies from the language contained in the SRA Fire Safe Regulations, but has been certified because it achieves the "same practical effect" as the regulations adopted by the state.

Notably, the ordinance adopted by Amador County provides language clarifying the extent of improvements required when a building permit or grading permit is the only approval sought for a parcel (See Exhibit "C", Section 15.30.120. A.1.). Under those circumstances, the ordinance provides that "improvements required by this section shall not be imposed on any existing driveway, road, right-

of-way, easement, or real property other than on the parcel for which the building permit is sought." In other words, only onsite road or driveway improvements could be imposed as a condition of a building permit or grading permit. However, Amador County may require offsite improvements for subdivisions, parcel maps, use permits, general plan changes and zone changes at the discretion of the decision-making body. **The ordinance containing this language has been certified by the BOF as compliant with the requirements of PRC §4290.** This clarifying language is consistent with the exemption under PRC §4290, and Title 14, Section 1270.02.

4. Two recent unpublished Fifth District Court of Appeal cases¹ involving the same defendant landowner, addressed the fire access road requirements of PRC §4290 as an ancillary matter. Among other issues raised in the litigation was the question of whether or not the paving of a dirt road built before the effective date of the SRA Fire Safe Regulations required compliance with the minimum road width standards. Relative to PRC §4290, the opinion says "When a new road is built, certain width and grade standards are required in order to provide access for firefighting equipment...In ordinary parlance, improvement of an existing road does not make it a new road." "At the very least, the county could reasonably exercise its discretion to determine that the fire safety access road regulations were not applicable to the paving of an existing unpaved road that, neither before nor after paving, was the primary access road to the relevant properties."

B. California Fire Code (Part 9 of the California Building Standards Code)

The adoption of a single comprehensive set of building standards codes is a relatively new development in the State of California. Until the late 1970's, as many as 20 state agencies (from the State Architect to the Barber's Licensing Board) had statutory authority to develop and adopt building standards. These building standards were found in various portions (known as "Titles") of the California Code of Regulations. This process resulted in an uncoordinated proliferation of often conflicting, duplicate and overlapping regulations.

In 1978, to correct the problems and confusion caused by the decentralized code adoption process, SB 331 expanded the authority of the California Building Standards Commission ("Commission") to require that building regulations proposed to be adopted by state agencies must first be reviewed and approved by the Commission. That legislation also required that the building standards contained in the California Code of Regulations be consolidated into a single set of regulations under Title 24. Further, the Commission is charged with responsibility for ensuring that proposed building standards meet the following criteria found in Health & Safety Code Section 18930 (a):

1. The regulation does not conflict, overlap, or duplicate other regulations.
2. The regulation is within parameters of enabling legislation.
3. The public interest requires the adoption of the regulation.
4. The regulation is not unreasonable, arbitrary, unfair, or capricious.

¹ (James B. Dean, et. al. v. Deerwood Corporation, et. al., Mariposa Superior Court No. F054026, March 5, 2009)

5. The cost to the public is reasonable, based on the overall benefit derived from the regulation.
6. The regulation is not necessarily ambiguous or vague.
7. Applicable national standards, published standards, and model codes have been incorporated.
8. The format of the regulation is consistent with the Commission's format.
9. The regulation, if it promotes fire and panic safety as determined by the State Fire Marshal, has their written approval.

Other legislation adopted since 1978 transfers building standards adoption authority of other state agencies (including the State Fire Marshal) to the Commission, but provides that the Commission's authority to review fire and life safety building standards is limited to a technical review for compliance with the nine-point criteria outlined above. The Commission may not revise or re-write fire or life safety building standards without the express mutual agreement of the State Fire Marshal, and where the State Fire Marshal does not agree with the modification, the Commission's authority is limited to disapproval of the standard pursuant to the nine-point criteria. In essence, the Commission relies substantially on the technical expertise of the State Fire Marshal in adoption of building standards relating to fire and panic safety.

The California Building Standards Code ("CBSC") consists of twelve parts, including the Building Code, Plumbing Code, Electrical Code, Mechanical Code, and Fire Code, among others. Many parts of the CBSC are based on "model codes", proprietary documents developed by private organizations such as the International Conference of Building Officials or the International Code Council. These private entities are generally funded by the sales of the "model codes", reprint royalties and consulting services provided to state or local government entities. The primary advantage of using a "model code" as the basis for state or local government regulations is that it results in greater consistency between jurisdictions and enhanced technical expertise at a cost that is much less than the cost that would be incurred if each jurisdiction were to develop its own regulations.

Generally, the Commission updates the CBSC every three years. The most recent code adoption cycle occurred in 2007, with revised codes becoming effective on or about January 1, 2008. The next triennial code adoption cycle is now underway, with code adoption expected in 2010, to become effective in January, 2011.

The enabling legislation for building standards adoption defines the term building standards to refer generally to materials, performance standards, and methods of construction. The definition of "building standards" does not include items such as road width, turnarounds, length of dead-end roads or similar standards that are not building standards as defined in the Health & Safety Code. The State Fire Marshal ("SFM") has declined to adopt any of the provisions contained in the "model code" that are considered "non-building standards". Moreover, the SFM adopted the following state amendment to the model code to add a provision clarifying that "non-building standards" contained in the model code are not adopted, and are not considered a part of the code:

"California Fire Code Section 101.6 Non-building standards, orders and regulations.

Requirements contained in the California Fire Code, or in any other referenced standard, code or document, which are not building standards as defined in Section 18909, Health and Safety Code, shall not be construed as part of the provisions of this code. For non-building standards, orders, and regulations, see other titles of the California Code of Regulations."

1. The Significance of "Matrix Adoption Tables" in the California Fire Code

The 2007 California Fire Code ("CFC") is based on the 2006 International Fire Code as the "model code". Under regulations of the Commission, various state agencies review the selected model code to determine whether to adopt, modify, or decline to adopt portions or all of the model code. The CFC includes a "Matrix Adoption Table" listing which state agency has determined to adopt provisions of each chapter of the "model code", and whether each chapter is adopted as written, adopted with modifications to certain sections, whether only specific sections are adopted, or whether the chapter is not adopted at all. *The Matrix Adoption Tables are an integral part of the California Fire Code, and without those tables the reader cannot ascertain which provisions of the model code have been adopted into state law.*

The "Preface" to the CFC (attached as Exhibit "D") explains how to utilize the Matrix Adoption Tables to identify which portions (if any) of various Chapters have been adopted or amended by various state agencies.

A copy of Chapter 5 of the CFC is attached as Exhibit "E". This Chapter is used to demonstrate how the Matrix Adoption Tables are to be applied. The Matrix Adoption Table for Chapter 5 shows that the SFM has adopted only five sections: 503.5.2, 508.3, 508.5, 508.5.3, and 509.1. All of these sections have been modified by state amendments (distinguished from the model code language by the use of italics).

Other portions of Chapter 5, are often mistakenly cited as the basis for so-called "requirements" for minimum fire apparatus access road standards, when these sections have, in fact, not been adopted by any state agency. Sections not adopted by state agencies are not to be interpreted as part of the CFC and therefore are not state-mandated requirements. For example, Section 503.2.1 of the model code reads as follows:

"503.2.1 Dimensions. Fire apparatus access roads shall have an unobstructed width of not less than 20 feet, except for approved security gates in accordance with Section 503.6, and an unobstructed vertical clearance of not less than 13 feet 6 inches."

As reflected in the Matrix Adoption Tables, this section has not been adopted by the State Fire Marshal or other state agency, and therefore is not a part of the CFC. This provision is not required to be enforced by any local jurisdiction. The Matrix Adoption Tables also indicate that the entire Appendix D, (attached as Exhibit "F") was not adopted by the State Fire Marshal. Moreover, access road width, (as well as surface, grade, turnarounds and similar criteria) are not a "building standards" within the meaning of Health & Safety Code Section 18909, and would not be construed to be a part of the Fire

Code pursuant to CFC Section 101.6, referenced above. In short, there is no “state law” within the building standards code which mandates that fire apparatus access roads be a minimum of 20’ wide.

A comprehensive explanation regarding the use of the Matrix Adoption Tables can be found at http://www.documents.dgs.ca.gov/bsc/Title_24/Title_24_Training_for_CBSC.doc.

2. Adoption and Amendment of California Building Standards Codes by Local Jurisdictions

Cities and counties are required to enforce the provisions of the CBSC as adopted by various state agencies. Local governments may amend the CBSC to adopt *building standards* that are more stringent than the standards contained in the code. The procedure for adoption of local amendments by a city or county are as follows:

- The governing body of the local government must make express findings that amendments to the building standard are necessary because of local climatic, geological or topographical conditions.
- The local government amendments must provide a more restrictive building standard than that contained in the CBSC.
- The amendments are not effective until copies of both the express findings and the amendments, with the amendments expressly marked and identified as to the applicable findings, have been filed with the Commission.

Fire protection districts may adopt amendments to the *building standards* in the California Fire Code adopted by the State Fire Marshal for fire and panic safety under a similar procedure. Amendments adopted by fire protection districts must be presented to the legislative body of the city, county or city and county in which the amendments will apply. The legislative body of the city, county, or city and county may ratify, modify, or deny the fire protection district amendments. The procedure is as follows:

- The fire district board must make an express finding that amendments to *building standards* for fire and panic safety that are contained in the CBSC are necessary because of local climatic, geological or topographical conditions.
- The fire district is required to notify the city, county, or city and county where the amendments will apply of the proposed amendments, and receive their comments.
- Upon adoption by the fire district board, the amendments are required to be presented for consideration to the city, county, or city and county where the amendments will apply. The city, county, or city and county may ratify, modify or deny the proposed amendments. Any modification or denial of an adopted ordinance shall include a written statement describing the reasons for any modifications or denial.

Where a local fire district amendment to *building standards* is ratified by a city or county, the city or county is required to delegate the enforcement of the ordinance to either (a) the chief of the fire protection district that adopted the ordinance, or (b) the chief building official of the city or county, or their authorized representatives.

C. *Fire and Panic Safety Regulations adopted by the State Fire Marshal for Special "Occupancies"*

Under authority of various provisions of the Health & Safety Code, the State Fire Marshal adopts fire and panic safety regulations pertaining to certain special uses, referred to as "occupancies". These specialized regulations are found in Title 19 of the California Code of Regulations. The types of occupancies covered by the scope of Title 19 include jails, hospitals, mental hospitals, theaters, auditoriums, schools, skating rinks, night clubs, bars and restaurants. Title 19 covers state institutions, state-owned or state-occupied buildings and high-rise buildings (over 75 feet). (A comprehensive list can be found at 19 CCR §1.03.)

19 CCR §3.05 requires all-weather hard-surface access roads from the building to the public street for fire apparatus access for occupancies included in the scope of these regulations. Title 19 regulations apply to a small number of properties in the County.

D. *Constitutional and Statutory Authority of Cities and Counties to Regulate Land Use and Subdivision Design*

Counties and cities have broad authority to enact local planning and land use regulations to protect the public health, safety, and welfare of their residents through their police power. The authority is found in the California Constitution:

"A county or city may make and enforce within its limits all local police, sanitary, and other ordinances and regulations not in conflict with general laws." (Article XI, Section 7)

Government Code §66411 provides that "regulation and control of the design and improvement of subdivisions are vested in the legislative bodies of local agencies". "Design" is defined as:

"...(1) street alignments, grades and widths; (2) drainage and sanitary facilities and utilities, including alignments and grades thereof; (3) location and size of all required easements and rights-of-way; (4) fire roads and firebreaks; (5) lot size and configuration; (6) traffic access; (7) grading; (8) land to be dedicated for park or recreational purposes; and (9) other specific physical requirements in the plan and configuration of the entire subdivision that are necessary to ensure consistency with, or implementation of, the general plan or any applicable specific plan." (Government Code §66418.)

E. *Failed Legislation – AB 2447 (2008/Jones) and AB 666 (2009/Jones)*

During the past two legislative sessions, Assembly Bills were introduced that would have amended state laws to regulate the conditions under which counties could approve new tentative maps and parcel maps.

AB 2447 (Jones, 2008) would have amended the Subdivision Map Act (Government Code §66474) to require the legislative body of a city or county to deny an application for a tentative map (or a parcel map where a tentative map is not required) on lands within a high- or very-high fire hazard areas, except where the city or county made findings, based on substantial evidence in the record, that:

- Sufficient structural fire protection is available for the subdivision, and
- Adequate access is available, including two points of access into and out of the subdivision. An exception (for not more than 30 lots) could be made where access was found to be infeasible due to topographic limitations or land ownership patterns.

AB 666 (Jones, 2009) would have added a section the Subdivision Map Act (Government Code § 66474.02) requiring that a local jurisdiction *deny* a proposed tentative map or parcel map unless the jurisdiction made three specific findings prior to approval:

1. that the design of the subdivision is in compliance with the SRA Fire Safe Regulations adopted pursuant to Public Resource Code §4290,
2. that structural fire protection is available for the subdivision, and
3. that ingress and egress for the subdivision meets the road standards for fire equipment access in the SRA Fire Safe Regulations adopted pursuant to Public Resource Code §4290.

In addition, the AB 666 would have amended Public Resource Code §4290 requiring the Board of Forestry to initiate a rule-making process prior to January 1, 2011, to consider adopting regulations requiring a minimum of two separate access roads for a subdivision located in a state responsibility area or a very high fire hazard severity zone.

Although both bills were ultimately vetoed by the governor, it is significant to note that the amendments and proposed regulations were incorporated into the Subdivision Map Act and Public Resource Code §4290, not the California Fire Code. The failed legislation illustrates the legislative strategy that separates building standards, which are incorporated into the Building Standards Code (Title 24), from non-building standards, including fire access roads, which are regulated under the land use authority of cities and counties, subject to the Fire Safe Regulations found in Title 14.

F. Enforcement Authority

As a general rule, the agency with primary authority for adoption of a regulation, also has primary responsibility for enforcement. The County is responsible for approval of new subdivision or parcel maps, and accordingly must enforce and interpret the SRA Fire Safe Regulations and other subdivision regulations adopted by the County. The County building department is responsible for the review and approval of building plans and the issuance of building permits for new construction.

Proposed discretionary permit applications, are submitted to both CalFire and the local Fire Districts for review and comment before the permit application is considered by the decision-making

authority. Building permit applications are submitted to the local Fire District for review for compliance with the *building standards* included in the California Fire Code.

G. Future Discussions

The purpose of this analysis is intentionally limited to address the issues identified at the beginning of this paper. The Subcommittee concludes that the County has broad authority to regulate design of subdivisions, including standards for fire access roads. The next step should include an analysis of the standards contained in the local fire district amendments to determine which of those standards should be adopted by the County into its design manuals, including the Highway Design Manual. The County's analysis should encompass both public safety considerations, as well as impacts to the environment, the cost of infrastructure and the character of the County's rural communities.